



MICHAEL CURTIS
ELECTIONS COMMISSION CHAIR

**STATE OF HAWAII
ELECTIONS COMMISSION**

**MINUTES OF THE
REGULAR MEETING OF THE
ELECTIONS COMMISSION**

February 4, 2026 at 10:00 AM

Pursuant to Section 92-3.7, Hawaii Revised Statutes, the Elections Commission met remotely using interactive conference technology. The video of the meeting may be viewed on our website at: <https://elections.hawaii.gov/about-us/boards-and-commissions/elections-commission/>.

Commissioners in Attendance:

Michael Curtis, Chair
Dylan Andrion
James Apana
Ralph Cushnie
Barbara Dalton
Lindsay Kamm
Jeffrey Osterkamp
Kahiolani Papalimu
John Sabas

Support Staff in Attendance:

Jordan Ching, Department of the Attorney General
Scott T. Nago, Office of Elections
Nicole Noel, Office of Elections
Aaron Schulaner, Office of Elections
Aulii Tenn, Office of Elections

PROCEEDINGS

I. Call to order [10:00 AM]

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

II. Roll call and determination of a quorum [10:00 AM]

All members of the Elections Commission were present at the meeting.

III. Approval of written minutes from the January 7, 2026 meeting [10:01 AM]

Shelby Billionaire provided testimony expressing approval of the meeting minutes.

Commissioner Dalton moved to approve the written minutes from the January 7, 2026 meeting. The motion was further amended to include on page 15 paragraph 5, Robert's Rules of Order would apply if the Commission by majority agree to adopt. As an example, Deputy Attorney General Ching referenced that there is nothing in our Administrative Rules that dictate procedure for appealing the ruling of the Chair. The motion was seconded by Commissioner Apana and **carried** unanimously. [10:03 AM]

Commissioner Andrion proposed adding language to the minutes clarifying that, under HAR 3-170, the Commission is not bound by Robert's Rules of Order unless they are formally adopted, including with respect to appeals of the Chair's rulings. DAG Ching confirmed that Robert's Rules are not currently adopted in the Commission's rules.

Commissioner Andrion moved to amend the motion, to approve the written minutes from the January 7, 2026 meeting, by including on page 15 paragraph 5, Robert's Rules of Order would apply if the Commission by majority agree to adopt. As an example, Deputy Attorney General Ching referenced that there is nothing in our Administrative Rules that dictate procedure for appealing the ruling of the Chair. The motion was seconded by Commissioner Kamm and **carried** unanimously. [10:07 AM]

The Commission discussed whether to formally adopt Robert's Rules of Order to govern its meetings, citing concerns about the lack of clear procedures. Commissioners debated whether the item could be acted on without prior notice and whether it constituted a substantial agenda amendment.

Deputy Attorney General (DAG) Jordan Ching advised that the Commission could not vote on a non-agendized item unless the agenda was properly amended and noted that Robert's Rules apply only if formally adopted.

Commissioner Andrion moved to amend the agenda to add the consideration of Robert's Rules of Order as our operating system under Agenda Item IV. The motion was seconded by Commissioner Cushnie and **carried**. [10:26 AM]

YES: Andrion, Apana, Cushnie, Dalton, Kamm, Osterkamp, Papalimu, Sabas

NO: Curtis

IV. Communications and correspondence [10:27 AM]

Victoria Thompson provided testimony stating that the meeting was being recorded by third parties for transparency and potential judicial review, and she requested clarification on which procedural rules governed the meeting, including how correspondence items would be handled so participants could proceed properly.

Alohalani Hope Cermelj provided testimony criticizing the Chair and Commission for poor organization and failure to follow proper procedures, alleging election-related misconduct and failures, and stating an intent to pursue a federal court case.

Michelle Stefanik provided testimony urging the Commission to adopt Robert's Rules of Order and clarify that election policy authority rests with the Commission, not staff, including concerns about the Chief Election Officer's role in drafting legislation.

Susan Strom provided testimony expressing support for adopting Robert's Rules of Order and encouraging the Commission to proceed with the item and move forward.

Tara Rojas provided testimony emphasizing that no one is above the law, urging the Commission to follow Robert's Rules of Order to maintain transparency, accountability, and public trust in the election process.

Shelby Billionaire provided testimony expressing support for Robert's Rules of Order, praising certain Commissioners' work, and raising concerns about audit follow-up, Commissioner turnover, chain of custody issues, election integrity, and the impact of the two-party system.

Jennifer provided testimony supporting adoption of Robert's Rules of Order, criticizing prior correspondence with the postmaster, and urging the Commission to proceed with audits due to concerns about voting systems, ballot discrepancies, chain of custody, and election integrity.

Brennon Cabral (via Andrew Aker) provided testimony describing his serious medical condition, emphasizing the importance of being heard, expressing

concern about transparency, and urging the Commission to count the Big Island envelopes.

Junya Nakoa provided testimony criticizing the Chair's conduct, supporting adoption of Robert's Rules and election audits, and stating that adherence to rules and accountability are necessary for him to trust the Commission and consider running for office.

Erica Barrett provided testimony supporting adoption of Robert's Rules of Order and urging an election audit, citing her experience of receiving a mailed ballot addressed to her dog as a reason for concern.

AnnMarie Hamilton provided testimony stating that Hawaii elections should not be certified without a complete and documented chain of custody, as required by law.

Jamie Detwiler provided testimony expressing agreement with AnnMarie Hamilton and appreciation for the Commission adopting Robert's Rules of Order to restore fairness and order in proceedings.

Tammy Ash Perkins provided testimony urging strict compliance with Hawaii election law, emphasizing that documented chain of custody, transparency, and accountability are essential to election integrity and public trust.

Jennifer Cabjuan provided testimony raising concerns about mail-in ballot chain of custody, citing personal experiences and urging audits and postmaster involvement to ensure transparency and public confidence.

Megeso-William Denis provided testimony supporting stricter election integrity measures, citing public support for in-person voting, voter ID, and paper ballots, and calling on election officials to oppose what he described as systemic corruption.

Adriel Lam provided testimony raising concerns about the reliability, data integrity, and access controls of Hawaii's statewide voter registration system, citing irregular voter records and urging audits and paper ballot verification.

Laurie Thorson provided testimony alleging violations of the Sunshine Law, claiming ballot counts were altered to keep Democrats in office, asserting this led to increased state debt and corruption, and referencing her ongoing court case as evidence.

Sherilyn Wells provided testimony alleging election corruption in Hawaii, including illegal internet connections to election systems, failure to release requested cast vote records, and lack of accountability by election officials.

Commissioner Apana stated that members should vote based on whether they viewed the matter as minor or significant enough to warrant additional public input. He noted that if the motion failed, it could return on a future agenda. He described the issue as a minor procedural change, consistent with past adherence to Robert's Rules, and stated he would vote in favor while acknowledging both sides of the argument.

Commissioner Andrion moved that the Elections Commission adopt Robert's Rules of Order as our parliamentary authority for conducting meetings, except where superseded by our Administrative Rules or Sunshine Law. The motion was seconded by Commissioner Cushnie and **carried** unanimously. [11:17 AM]

Commissioner Dalton stated that sending certified mail costs approximately six to seven dollars per piece and that applying this requirement statewide would be prohibitively expensive. She noted that postal rates have increased significantly and characterized the proposal as financially unrealistic given the volume of ballots involved. Commissioner Andrion supported the motion in principle, citing concerns about discrepancies in business reply mail (BRM) records and arguing that ballot tracking should be verifiable. Commissioner Cushnie emphasized ballot security and stated the cost was justified.

Commissioner Papalimu argued there remained a discrepancy between USPS receipts and recorded ballot totals and suggested reviewing financial records to reconcile the amounts paid to USPS. Commissioner Apana sought clarification on how accountable mail would function and its cost implications, including whether voters would bear return postage costs.

Commissioner Osterkamp stated that missing USPS daily figures did not indicate fraud, but rather incomplete reporting, and characterized the proposal as unrealistic and unnecessary given existing records and audit options.

Commissioner Cushnie moved that all mail in ballots for the 2026 Election be sent via accountable mail in order to enhance chain of custody controls and reduce the risk of fraud. The motion was seconded by Commissioner Andrion and **failed**. [11:28 AM]

YES: Andrion, Cushnie

NO: Apana, Dalton, Kamm, Osterkamp, Papalimu, Curtis

ABSTAIN: Sabas

Chief Election Officer (CEO) Scott Nago stated that seal and unsealing forms had already been provided and clarified that the 2024 logs did not include envelope counts, only seal numbers. He described this as an inventory practice rather than a chain of custody issue and noted efforts to standardize procedures in future elections. Commissioners discussed concerns about the absence of envelope counts. Chair Curtis clarified that the motion was limited to producing the existing transfer logs.

Commissioner Cushnie moved that the Chief Election Officer produce the transfer logs used when the County of Hawaii delivered the 2024 General Election ballots to the State Counting Center before the next meeting. The motion was seconded by Commissioner Papalimu and **carried**. [12:12 PM]

YES: Andrion, Apana, Cushnie, Kamm, Papalimu, Curtis

NO: Dalton, Osterkamp

ABSTAIN: Sabas

Commissioner Dalton called for the question, and it **failed**. [12:21 PM]

YES: Apana, Dalton, Osterkamp, Sabas, Curtis

NO: Andrion, Cushnie, Kamm, Papalimu

The Commission discussed the motion to seek legislative funding for a Hawaii County audit. Some members questioned whether the request was feasible given that bill introduction deadlines had passed. CEO Nago clarified that recent testimony he gave concerned a separate bill and that those funds could not be used for an audit.

Commissioner Apana and others stated there may still be procedural options to pursue funding. Commissioner Andrion supported the motion and requested that a preliminary PIG report be placed on the next agenda.

Commissioner Apana moved that the Elections Commission send a letter to the Legislature requesting funding to conduct an audit of the County of Hawaii and management. The motion was seconded by Commissioner Papalimu and **carried**. [12:30 PM]

YES: Andrion, Apana, Cushnie, Kamm, Papalimu, Sabas, Curtis

NO: Dalton, Osterkamp

Commissioner Papalimu opposed the amendment, stating that focusing on one county would improve the likelihood of obtaining funding and could support future requests for statewide audits. Commissioner Apana agreed, noting limited legislative resources and expressing concern that a broader request could reduce the chances of approval. He stated that beginning with Hawaii County would provide the strongest opportunity for success.

Commissioner Cushnie moved to amend the motion, that the Elections Commission send a letter to the Legislature requesting funding to conduct an audit of the County of Hawaii and management, to expand the request for funding to include the entire State of Hawaii. The motion was seconded by Commissioner Andrion and **failed**. [12:39 PM]

YES: Cushnie

NO: Andrion, Apana, Dalton, Kamm, Osterkamp, Papalimu
Sabas, Curtis

Commissioner Cushnie introduced a motion to request a written opinion from the Attorney General regarding whether CEO Nago lawfully certified an election before the statutory deadline for filing an election contest had expired. He stated that the law requires certification only after the contest period and questioned whether certifying early was permissible.

Commissioner Apana expressed concern that the motion was framed as a loaded question and suggested that the issue would ultimately be resolved by the courts. Commissioner Osterkamp stated that the matter was related to ongoing litigation initiated by Commissioner Cushnie and questioned whether the request would benefit the Commission.

Commissioner Cushnie moved that the Elections Commission request a written legal opinion from the Deputy Attorney General on whether it was lawful for the Chief Election Officer to certify the 2024 General Election on the same day a timely election contest was filed under HRS 11-174.5. The motion was seconded by Commissioner Andrion and **failed**. [12:46 PM]

YES: Andrion, Cushnie, Kamm, Papalimu

NO: Apana, Dalton, Osterkamp, Sabas, Curtis

Commissioner Cushnie requested that outstanding motions, including one related to chain of custody certification, be tracked and placed under unfinished

business until implemented. Commissioners Andrion and Kamm supported reinstating a status report or unfinished business section. Commissioner Papalimu questioned whether a new motion was needed and suggested the Chair could direct resuming prior practice.

Commissioner Cushnie moved that the Elections Commission direct the staff to prepare and place on future agenda a written status report identifying prior Elections Commission motions that were adopted related to election verification, ballot accountability, audits, and permitted interaction group (PIG) recommendations and for each such motion, indicate the date of the motion, the action directed, whether the motion has been completed, partially completed, remains outstanding, or was rescinded, and any additional Commission action required to bring the motion to completion. The motion was seconded by Commissioner Andrion and **failed**. [12:55 AM]

YES: Andrion, Cushnie, Kamm

NO: Apana, Dalton, Osterkamp, Papalimu, Sabas, Curtis

Commissioner Cushnie stated that certain past motions, including one related to chain of custody documentation, had not been fully implemented and requested that outstanding motions be regularly updated and placed under unfinished business until completed.

Commissioners Andrion and Kamm expressed support for reinstating a practice of tracking and reporting on the status of motions. Commissioner Papalimu questioned whether a new motion was necessary and suggested the Chair direct that staff resume tracking motions.

Chair Curtis stated that preparation of the agenda falls within his authority and discretion and acknowledged that some requested items had not been placed on the agenda.

Commissioner Papalimu moved to include unfinished business on all future agendas. The motion was seconded by Commissioner Kamm and **carried**. [1:06 PM]

YES: Andrion, Apana, Cushnie, Kamm, Papalimu, Sabas

NO: Dalton, Osterkamp, Curtis

- V. Discussion Regarding Legal Authority to Unseal Election Ballots from the 2024 Hawaii County General Election in relation to Permitted Interaction Group formed at the January 7, 2026 Elections Commission Meeting [1:10 PM]

The Board may move into Executive Session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities in accordance with HRS section 92-5(a)(4).

Elizabeth Cook provided testimony expressing a preference for returning to local neighborhood polling places, noting she had to travel a long distance to vote in person, while also supporting public testimony and transparency.

Austin Martin provided testimony criticizing secrecy and lack of procedural rules, alleging election misconduct, and urging the Commission to adopt Robert's Rules of Order and control its agenda.

Sherilyn Wells provided testimony arguing that sealing election records violates federal retention and preservation laws and warning Commissioners of potential legal liability for failing to act.

Jennifer provided testimony stating that it is unreasonable to restrict access to election records, since reviewing them is necessary to validate discrepancies and is the purpose of retaining them.

Jamie Detwiler provided testimony clarifying that federal law requires ballot envelopes to be retained and preserved for 22 months and argued they should be accessible for inspection and audit, noting that unsealing and auditing election materials is lawful and routinely done.

Michelle Stefanik provided testimony urging the Commission to proceed immediately with the approved audit of ballots and envelopes, stating that the law allows unsealing for audits and that delays undermine transparency and public trust.

Shelby Billionaire provided testimony urging the Commission to stop internal disputes, complete the audit, address primary election party requirements, and restore public trust.

Susan Strom provided testimony urging the Commission to eliminate executive sessions, waive attorney-client privilege, and conduct all discussions fully in public to restore trust and ensure transparency in election oversight.

Laurie Thorson provided testimony alleging election fraud, accusing the Attorney General and election officials of protecting misconduct, politicizing oversight, and silencing her after she pursued legal action and whistleblower claims.

Victoria Thompson provided testimony alleging misinformation about USPS ballot handling, lack of chain of custody, failures by the Chief Election Officer, and discriminatory impacts of current voter registration practices.

Jennifer Cabjuan provided testimony calling for unsealing ballot envelopes for audit, stating that envelope signatures and tracking are necessary to verify mail-in ballot integrity and expose procedural flaws.

Debra Bringman provided testimony supporting audits, voter ID, and in-person voting, stating that transparency and verification are necessary to restore public confidence in Hawaii's elections.

Junya Nakoa provided testimony opposing vote-by-mail, questioning USPS reliability and costs, expressing distrust in election administration, and advocating in-person voting with ID.

Wallyn Christian provided testimony calling for transparency over executive sessions, accountability and integrity in elections, support for Robert's Rules, concern about primary ballot practices, and a request for the Commission to move business forward efficiently.

Tara Malia Gregory provided testimony warning that delayed ballot audits risk losing federal funding and urging timely accountability to protect election integrity and taxpayers.

Adriel Lam provided testimony asserting that ballots can be unsealed for lawful audits and should be fully hand-counted to verify election integrity.

During discussion of Agenda Item III, Commissioner Kamm noted that the wording of Agenda Item V required correction, clarifying that the agenda item concerns "unsealing envelopes", not "ballots", and that no Permitted Interaction Group was formed, as only two Commissioners were authorized to set up and oversee the audit.

Commissioner Cushnie stated that the matter involved the public's election and should remain fully open to the public. He expressed opposition to entering executive session and stated that any legal advice should be shared publicly.

Chair Curtis explained that executive session would allow for discussion under attorney client privilege and that any resulting motion or resolution would be brought back into open session for public discussion.

Commissioner Dalton moved that the Commission enter Executive Session to consider Agenda Item V. The motion was seconded by Commissioner Apana and **failed**. [1:12 PM]

YES: Apana, Dalton, Osterkamp, Sabas, Curtis

NO: Andrion, Cushnie, Kamm, Papalimu

Commissioner Cushnie characterized the issue as significant and stated that the matter involved fundamental questions about the Commission's oversight authority and ability to verify election processes. He emphasized the importance of obtaining DAG Ching's interpretation in writing rather than relying solely on verbal guidance provided during the meeting. Commissioner Cushnie stated that a written opinion would create a clear record that could be reviewed by legal counsel or, if necessary, by a court. He expressed disagreement with DAG Ching's interpretation and reiterated his belief that applicable law permits the Commission to conduct an audit, including unsealing and counting envelopes. He further stated that if the legal interpretation would effectively prevent the Commission from proceeding, that position should be clearly articulated in writing so the Commission could determine its next steps.

DAG Ching clarified that he was not attempting to obstruct or prevent the Commission from taking action. He stated that his role was to provide legal advice based on his interpretation of the relevant statutes and administrative rules. He explained that his comments were advisory in nature and intended to inform the Commission's decision-making.

Commissioner Sabas thanked DAG Ching for providing his legal perspective and stated that he was comfortable deferring further action until the expiration of the 22-month retention period, at which time the statutory constraints would no longer apply. He indicated that waiting would avoid potential legal complications.

Chair Curtis reiterated that the motion under consideration was limited to requesting a written opinion from DAG Ching memorializing his legal interpretation. He invited further discussion from Commissioners regarding the request before proceeding with consideration of the motion.

Commissioner Cushnie moved to get Deputy Attorney General Ching's opinion reading Agenda Item V in writing within two weeks. The motion was seconded by Commissioner Kamm and **carried**. [2:24 PM]

YES: Andrion, Apana, Cushnie, Kamm, Papalimu, Curtis

NO: Dalton, Osterkamp, Sabas

DAG Ching clarified that he could provide a written opinion reflecting his legal interpretation in a shorter timeframe, but that a formal Attorney General opinion requiring full departmental review and publication would take significantly longer and did not have a specific timeline. He explained that his written opinion would be provided in his capacity as Deputy Attorney General to the Commission, not as a personal opinion.

Commissioner Apana indicated he would vote against the motion, stating a preference for a formal opinion from the full Attorney General's office and expressing concern that two weeks was not a reasonable timeframe. Additional discussion addressed the distinction between an individual written opinion and a formal, binding opinion.

Commissioner Cushnie moved that the Elections Commission call a special session or meeting in two weeks to discuss Deputy Attorney General Ching's written opinion regarding Agenda Item V. The motion was seconded by Commissioner Kamm and **failed**. [2:37 PM]

YES: Andrion, Cushnie, Kamm, Papalimu

NO: Apana, Dalton, Osterkamp, Sabas, Curtis

Commissioner Papalimu stated that discussion did not require a motion under Robert's Rules and requested a formal written opinion from the Attorney General clarifying whether the Elections Commission is a designated entity authorized to conduct an audit. Commissioner Cushnie argued that counting envelopes was necessary to verify statewide voter registration system totals and urged obtaining clear legal authority to proceed quickly with unsealing and counting the envelopes.

Commissioner Cushnie moved to request an opinion from the Attorney General's on whether the Elections Commission can count envelopes. The motion was seconded by Commissioner Kamm. During discussion, Commissioner Cushnie moved to request an opinion from the Attorney General and Deputy Attorney General on whether the Elections Commission has the authority to unseal the records within the 22-month period to conduct an audit. The motion was seconded by Commissioner Papalimu. During discussion, Commissioner Papalimu stated she would like a written opinion from the Attorney General clarifying whether the Elections Commission, who oversees the Office of Elections for the State of Hawaii, is designated under Hawaii Administrative Rule §3-177-757 as one of the entities that can conduct an audit. Chair Curtis clarified that the motion is to ask the Attorney General if the Elections Commission is designated to access the ballots. The motion **carried**. [2:43 PM]

YES: Andrion, Apana, Cushnie, Kamm, Papalimu

NO: Dalton, Osterkamp, Sabas, Curtis

CEO Nago clarified that for the 2020 Elections, only the General Election ballots are retained due to litigation. For the 2022 Elections, only the General Election ballots are retained due to the House District 37 audit. Lastly, for the 2024 Elections, both the Primary and General Election ballots are retained.

Commissioner Cushnie moved to advise the Chief Election Officer to retain and preserve the records from the 2020, 2022, and 2024 Elections that remain. The motion was seconded by Commissioner Andrion and **carried** unanimously. [2:55 PM]

VI. Pending OIP Appeals [3:13 PM]

a) S Appeal 26-17

Victoria Thompson provided testimony stating that the Commission must ensure full public testimony and transparency in connection with the OIP appeal, criticized time limits and alleged failures by the Chief Election Officer, and urged the Commission to consider replacing him.

Jamie Detwiler provided testimony explaining that a House District 37 election audit was lawfully approved and pursued within the 22-month preservation period, demonstrating that audits can be conducted during that timeframe and should not be delayed or denied.

Sheryl Bieler provided testimony requesting that the Chair enforce Robert's Rules of Order by addressing Commissioner Dalton's disruptive language and behavior to maintain proper decorum.

Tammy Ash Perkins provided testimony questioning why election records cannot be publicly reconciled if processes were done correctly, and called for clear answers, orderly procedure, and transparency to restore public confidence in elections.

Enoka Shayne Bingo provided testimony arguing that the prior House District 37 audit sets precedent, questioning the need to wait for a DAGS response, and asking the Commission to revisit and set a date for the audit.

Michelle Stefanik provided testimony stating that precedent exists to set an audit date, criticizing incomplete meeting minutes and lengthy video records, citing

Sunshine Law requirements, and requesting corrected and detailed minutes for the October 29, 2025 meeting before the next Commission meeting.

Tara Rojas provided testimony urging the Commission to immediately set an audit date, citing repeated Sunshine Law violations, improper minutes, curtailed public testimony, and emphasizing that the Commission already has the authority to act without further approval.

Jennifer provided testimony expressing concern that the Chair frequently cuts off public speakers before they can connect their comments to agenda items and argued that the public should be allowed to fully voice concerns, including alleged legal violations.

Shelby Billionaire provided testimony alleging widespread Sunshine Law and UIPA violations, citing complaint statistics and declining transparency rankings, and urged the Commission to fully investigate OIP complaints and restore public trust.

Susan Strom provided testimony supporting prior speakers, stating that since precedent has been set the Commission should stop delaying and set the audit date immediately to move forward.

Tara Malia Gregory provided testimony correcting the ballot preservation deadline to September 2026 and called on the Commission to set an audit date and enforce compliance.

The Commission discussed an OIP complaint alleging a testifier was improperly cut off during public testimony. Commissioners expressed differing views on the Chair's enforcement of agenda limits, with some supporting the need for order and others raising concerns about fairness and consistency.

DAG Ching clarified that no response had yet been submitted. He offered to draft a response explaining the circumstances, and the Commission referenced adopting Robert's Rules of Order to guide future meetings.

Commissioner Dalton shared that she had received a threatening text message on January 24. She requested that the incident be reflected in the record and expressed concern that heightened public frustration had led some individuals to move beyond civil discourse and attempt to intimidate members of the Commission.

Commissioner Cushnie moved that the Elections Commission recognize that Chair Curtis violated the Sunshine Law regarding S Appeal 26-17. The motion was seconded by Commissioner Papalimu and **failed**. [3:43 PM]

YES: Andrion, Cushnie, Kamm, Papalimu

NO: Apana, Dalton, Osterkamp, Sabas, Curtis

The Commission clarified that DAG Ching would draft a response letter to OIP on behalf of the Commission, if approved. Commissioner Andrion questioned whether the matter had already been voted on, and Chair Curtis clarified that this motion specifically authorized the DAG to prepare a response.

Commissioner Apana moved to have Deputy Attorney General Ching prepare a letter responding to S Appeal 26-17, including the events that occurred during the meeting, an apology from the Elections Commission, and that the Commission will improve moving forward. The motion was seconded by Commissioner Sabas and **carried** unanimously. [3:57 PM]

VII. Adjournment [4:02 PM]

Chair Curtis adjourned the meeting at 4:02 PM.

Respectfully submitted,



Nicole Noel
Elections Commission Secretary

JOSH GREEN, M.D.
GOVERNOR



ANNE E. LOPEZ
ATTORNEY GENERAL

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DEPARTMENT OF THE ATTORNEY GENERAL
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MATTHEW S. DVONCH
FIRST DEPUTY ATTORNEY GENERAL

February 26, 2026

To the Elections Commission:

At the February 4, 2026 meeting, the Elections Commission (“Commission”) requested the undersigned Deputy Attorney General to provide written advice on the following inquiries: (1) whether the Commission has authority to unseal election ballot envelopes within the twenty-two month retention period established under state and federal law; and (2) whether the Commission is the “designated representative” authorized to conduct subsequent audits of elections results under Hawai‘i Administrative Rules (“HAR”) section 3-177-757(g).

As to the first inquiry, the relevant federal and state election record retention laws and rules do not expressly authorize the Office of Elections or the Commission to unseal voted ballots within the twenty-two-month retention period. Further, although HAR section 3-177-757 allows the chief election officer or “designated representative” to conduct subsequent audits, the rule states that such audits be conducted “in accordance with established procedures.” Because the only audit procedures established under state law are done prior to election certification, it is unclear whether unsealing the election records to conduct an audit performed after election certification and within the federal retention period is authorized.

As to the second inquiry, the laws and rules of the Office of Elections and the Commission do not designate the Commission as the “designated representative” referred to in HAR section 3-177-757(g). Rather, the “designated representative” referred to in this provision would be the person or entity designated by the chief election officer, who is authorized to delegate his responsibilities in administering state elections under Hawaii Revised Statutes (“HRS”) section 11-2(a).

I. Legal Authority to Unseal Election Results

As explained below, federal law establishes a mandatory retention period that requires election officers to retain and preserve certain election records for twenty-two months. Our state laws and rules require certain election records to be sealed and

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stored for at least the twenty-two-month period required under federal law. Although our rules allow the chief election officer or his designated representative to conduct subsequent audits, such audits must be conducted “in accordance with established procedures.” Because the audit procedures established under Hawaii law only contemplate audits performed prior to election certification, it is unclear whether the Commission or the Office of Elections may unseal these documents to conduct an audit after an election is certified and within the federal retention period.

a. Federal Election Record Retention Laws.

52 United States Code (“U.S.C.”) section 20701 states:

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.

Under this provision, election officers are required to retain and preserve certain election records except for the limited circumstances stated in the statute. Under 52 U.S.C. section 20703, only the Federal Attorney General is allowed to request any records retained in accordance with this provision for its review.¹ Any person that willfully steals, destroys, conceals, mutilates, or alters such records is subject to criminal penalties.²

¹ See 52 U.S.C. § 20703.

² See 52 U.S.C. § 20702.

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b. State Election Records Retention Laws and Rules.

HRS chapter 11, part X, sets forth the Office of Elections' procedures for vote disposition in Hawaii elections, including the procedures for tabulating elections results and sealing voted ballots. HRS section 11-154 states:

The voted ballots shall be kept secure and handled only in the presence of representatives not of the same political party or official observers in accordance with rules adopted for the various voting systems. After all the ballots have been tabulated they shall be sealed in containers. Thereafter, these containers shall be unsealed and resealed only as prescribed by rules governing elections.

The ballots and other election records may be destroyed by the chief election officer or clerk when all elected candidates have been certified by the chief election officer, or in the case of candidates for county offices, by the clerk and after compliance with retention schedules of applicable federal law.³

As stated above, voted ballots that have been tabulated are required to be sealed in containers and may only be unsealed in accordance with the procedures set forth in the Office of Elections' administrative rules. The statute further states that the Office of Elections may destroy election records only after compliance with the retention schedules required by federal law, e.g., the twenty-two-month retention period established under 52 U.S.C. section 20701.

HAR section 3-177-757 sets forth, amongst other things, the procedures for sealing and storing counted ballots, which include:

(f) After all ballots are counted, the election database and vote data storage media, test ballots and results, the election results, and the voted ballots shall be sealed in containers or cabinets.

(g) Subsequent audits may be conducted by the chief election officer, clerk, or designated representative in accordance with established procedures.

(h) A written record shall be maintained of each opening and sealing of these storage containers or cabinets. The record shall include all of the following:

³ (Emphases added).

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- (1) Date and time;
- (2) Name of each person requesting opening and reasons for opening;
- (3) Seal numbers; and
- (4) Signatures of two or more witnesses attesting to the opening and closing of these containers or cabinets and certifying that ballots were handled in their presence at all times.

(i) The containers or cabinets shall be sealed and stored for twenty-two months in accordance with federal law.⁴

As set forth above, all voted ballots are required to be sealed in containers or cabinets after they have been counted, and subsection (i) states that said containers are required to be sealed and stored for the duration of the twenty-two month federal retention period. Although the rule allows for subsequent audits to be conducted by the chief election officer or “designated representative,” it also specifies that such audits must be conducted “in accordance with established procedures.”

In reviewing HRS chapters 11 and 16, as well as HAR chapter 3-177, it appears that the only established audit procedures for voted ballots are post-election, pre-certification audits. For example, HRS section 16-42(b) requires the chief election officer to conduct 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,” before he is able to rely on electronic tallies created by electronic voting systems. This requirement is further implemented in HAR section 3-177-762, which sets forth specific procedures to conduct the manual audit and to expand the audit in the event discrepancies are found. Such audits are required to be considered prior to election certification.⁵

In sum, the federal and state authority discussed above does not expressly authorize the unsealing of election records prior to the twenty-two-month federal retention period. Although HAR section 3-177-757 allows for subsequent audits to be conducted that may require unsealing of said records, such audits must be done in accordance with established procedures. Because the only audit procedures for voted ballots established by law or rule appears to contemplate post-election, pre-certification audits, it is unclear whether the Office of Elections or the Commission may unseal the election records for the purpose of conducting an audit post-certification within the

⁴ See HAR § 3-177-757 (emphases added).

⁵ See HRS § 11-155.

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federal retention period. Given this, there may be exposure to a legal challenge against the Commission for authorizing such an audit.

II. “Designated Representative” under HAR section 3-177-757(g)

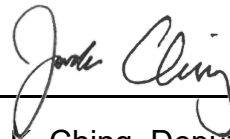
Under HRS section 11-2(a), the chief election officer is authorized to “delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.” Accordingly, HAR chapter 3-177 makes reference to “designated representatives” in prescribing the various functions and responsibilities of the chief election officer, as he is statutorily authorized to delegate such responsibilities in administering state elections.⁶

Consistent with this authority, HAR section 3-177-757(g) states that after ballots are tabulated and sealed, “[s]ubsequent audits may be conducted by the chief election officer, clerk, or designated representative in accordance with established procedures.”⁷ The “designated representative” referred to in this provision (as with the other provisions in HAR chapter 3-177) is not specifically identified or stated, and there is nothing in the Office of Elections or the Commission’s laws or rules that designate the Commission as the representative referred to in this rule.

Given this, it does not appear that the Commission is the “designated representative” referred to in HAR section 3-177-757(g). Rather, as with his other responsibilities in administering state elections, it is the chief election officer who may designate a representative to conduct the audit authorized under this provision as allowed under HRS section 11-2(a).

III. Conclusion

Thank you for your attention to this memorandum. If you have any further questions, we can discuss further at the next properly agenda meeting.



Jordan A. K. Ching, Deputy Attorney General

⁶ See, e.g., HAR § 3-177-502 (authorizing the chief election officer, clerk, or designated representative to collect voted ballots, vote date storage media, etc.); HAR § 3-177-453 (requiring the chief election officer or designated representative to maintain a complete count of marksense ballots); HAR § 3-177-701 (requiring the chief election officer or designated representative to approve all necessary forms, supplies, and procedures used in the operation of any voting system); HAR § 3-177-552 (authorizing the chief election officer, clerk, or designated representative to establish procedures associated with the return of specific voter service center materials prior to election day).

⁷ (Emphasis added).