



MICHAEL CURTIS
ELECTIONS COMMISSION CHAIR

**STATE OF HAWAII
ELECTIONS COMMISSION**

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

April 1, 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 with the exception of Commissioner Sabas.

Commissioner Sabas entered the meeting at 10:09 AM.

III. Approval of written minutes from the March 11, 2026 meeting [10:01 AM]

Jennifer Hunt provided testimony requesting that the minutes reflect that intelligent mail barcodes allow USPS to automatically count and report returned mail, which she said is relevant to the 19,000 ballot discrepancy.

Shelby Billionaire provided testimony requesting that specific DOJ report numbers be included in the minutes and expressing concern that prior testimony was overly paraphrased.

Michelle Stefanik provided testimony requesting that the minutes more fully reflect her observations of election issues and include Chief Election Officer (CEO) Scott Nago's written opinion.

Alohalani Hope Cermelj provided testimony stating that she contacted officials about the Commission's meetings and expressing concern that testimony was not accurately reflected in the minutes.

Austin Martin provided testimony alleging a pattern of mischaracterization in the meeting minutes, expressing concerns about transparency and accuracy, and urging the Commission to address deficiencies in the record.

Commissioners Cushnie and Kamm questioned why Deputy Attorney General (DAG) Jordan Ching's written opinion, which the Commission had previously voted to include, was not reflected in the meeting minutes. Chair Curtis responded that staff were responsible for the minutes and directed that the opinion be added. Raymund de Vega, Elections Commission Support Staff, explained that the minutes posted online remain in draft form and are not typically revised after posting, though he agreed to include the written opinion in the minutes if directed by the Commission.

Commissioner Dalton moved to approve the written minutes from the March 11, 2026 meeting. The motion was further amended to include in the comments of Jennifer Hunt that the intelligent mail barcode allows mail processing equipment to automatically count returned mail pieces and transmit counts to USPS

systems for reporting. The motion was seconded by Commissioner Kamm and **carried**. [10:17 AM]

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

NO: Osterkamp, Sabas

ABSTAIN: Apana

The amendment proposed adding barcode-related information to the meeting minutes, which Commissioner Andrion confirmed and Commissioner Cushnie supported, while also raising concerns about staff not including previously approved items; Chair Curtis ruled those concerns out of order as unrelated to the amendment and proceeded to a roll call vote on including the barcode testimony.

Commissioner Andrion moved to amend the motion, to approve the written minutes from the March 11, 2026 meeting, to include in the comments of Jennifer Hunt that the intelligent mail barcode allows mail processing equipment to automatically count returned mail pieces and transmit counts to USPS systems for reporting. The motion was seconded by Commissioner Papalimu and **carried**. [10:16 AM]

YES: Andrion, Cushnie, Kamm, Papalimu, Curtis

NO: Dalton, Osterkamp, Sabas

ABSTAIN: Apana

IV. Unfinished business [10:23 AM]

a) Correspondence regarding an audit of Hawaii County

Austin Martin provided testimony alleging omissions from unfinished business, criticizing the Chair's handling of points of order and germane requirements, and expressing concerns about transparency and accountability.

Jennifer Hunt provided testimony raising concerns about conflicts of interest and requesting that previously passed motions and unfinished business items be included in the record.

Gene Lamkin provided testimony asserting concerns about ballot chain of custody and requesting a hand recount of ballots and envelopes before the retention period ends.

Shelby Billionaire provided testimony raising concerns about unfinished business, alleging lack of action on prior issues and communications, and expressing concerns about election integrity and accountability.

Michelle Stefanik provided testimony regarding letters in the meeting packet, raising questions about audit funding, suggesting volunteer support as an option, and requesting clarification on conflict of interest issues and how the Commission will proceed.

Shawn B. provided testimony opposing an audit, stating based on his election experience that ballot reconciliation procedures already prevent discrepancies and recommending greater understanding of election processes.

Alohalani Hope Cermelj provided testimony expressing concerns about the audit of Hawaii County, election integrity, and adherence to procedural rules.

Monique Perreira provided testimony expressing concerns about election integrity, conflicts of interest, and the Commission's handling of election-related issues, and urging corrective action.

Jamie Detwiler provided testimony raising concerns about meeting decorum and requesting that previously passed motions be included under unfinished business.

Wallyn Christian provided testimony alleging a conflict of interest, calling for prior actions to be reconsidered, and requesting that all unfinished business be included on the agenda.

Jaerick Medeiros provided testimony raising concerns about conflicts of interest, the Commission's ability to conduct an audit, and the handling of unfinished business.

Keoni Payton provided testimony raising concerns about conflicts of interest and asserting that these issues should be addressed as part of unfinished business.

Discussion addressed correspondence related to the proposed audit, including a letter from House Speaker, Nadine Nakamura regarding potential legislative funding approaches and a letter from former Commissioner Claire McAdams declining to conduct the audit due to a stated conflict of interest. Commissioners debated how to proceed given the lack of funding support and McAdams' refusal, with some suggesting narrowing the audit scope or seeking alternative avenues, while others argued these responses further stalled efforts to obtain independent verification of ballot discrepancies.

Commissioner Cushnie advocated for referring the audit to the Department of Justice to resolve ballot discrepancies and obtain an independent review, and Commissioner Andrion supported the referral, emphasizing the need to address unresolved issues and ensure accountability before future elections.

Commissioner Kamm also supported the referral, citing delays and lack of progress through other avenues, while Commissioner Apana opposed it, stating that the Commission should complete its own work before seeking external involvement, and Commissioner Sabas also opposed it, expressing a preference to move on from the issue and focus on upcoming elections.

Commissioner Cushnie moved to refer the audit of the Hawaii County to the Department of Justice. The motion was seconded by Commissioner Andrion and **failed**. [11:28 AM]

YES: Andrion, Cushnie, Kamm

NO: Apana, Dalton, Osterkamp, Sabas, Curtis

ABSTAIN: Papalimu

Commissioner Cushnie requested written documentation of the Chair's asserted authority, including any privileges related to attorney-client communications and information handling. Commissioners Andrion and Kamm supported the request, emphasizing the need for clarity and transparency regarding the Chair's role.

Commissioner Apana stated that the Chair's authority is determined by the Commission rather than inherent powers, suggesting such privileges may not formally exist. Commissioner Sabas agreed clearer procedures are needed, while noting broader concerns about the Commission's functionality. Chair Curtis responded that authority is based on Robert's Rules of Order and applicable state laws, with some aspects subject to legal interpretation rather than explicitly written rules.

Commissioner Cushnie moved that the Election Commission direct the Chair to provide any written documentation, rule, or formal Commission action that grants the Chair the specific powers and privileges he has asserted, and to distribute that documentation to all Commissioners and post it on the website. The motion was seconded by Commissioner Andrion and **carried**. [11:40 AM]

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

NO: Dalton, Osterkamp, Curtis

Commissioner Papalimu suggested inviting Representative Garner Shimizu to provide an update on any actions he's taken at the Legislature regarding conducting an audit as he had committed to helping the Commission at an earlier meeting. Commissioner Cushnie questioned whether earlier efforts by a Commissioner to engage the legislature had resulted in any progress.

Commissioner Sabas moved to request that Representative Shimizu report to the Commission on his legislative efforts regarding the audit, as previously discussed during the December 3, 2025 meeting, and to place this item on the agenda for the next meeting. The motion was seconded by Commissioner Papalimu and **carried**. [11:51 AM]

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

ABSTAIN: Dalton

Commissioner Cushnie proposed inviting the County Clerk, Jon Henricks, to attend a meeting to directly address questions about ballot records, chain of custody procedures, and discrepancies, emphasizing the need for firsthand clarification rather than relying on secondhand information. Commissioner Andrion supported the invitation, noting Mr. Henricks' prior cooperation and responsiveness, and stating that a discussion would be beneficial.

Commissioner Osterkamp requested clarification that the motion to invite Mr. Henricks would not include or presume any "discrepancy," emphasizing the importance of neutrality. Chair Curtis confirmed that the invitation would not reference discrepancies and proceeded toward a vote on inviting the clerk to a future meeting.

Commissioner Cushnie moved that the Elections Commission invite the Hawaii County Clerk Jon Henricks to attend the next Elections Commission meeting. motion was seconded by Commissioner Andrion and **carried**. [11:53 AM]

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

NO: Dalton

- V. Discussion and decision making relating to Commissioner Andrion's Permitted Interaction Group (PIG) report [12:03 PM]

Keoni Payton provided testimony expressing disagreement with claims that no progress has been made and attributing delays to disagreements over an investigation and audit.

Shelby Billionaire provided testimony supporting the report, raising concerns about conflicts of interest among Commissioners, and referencing applicable law.

Tara Malia Gregory provided testimony citing findings from the PIG report, raising concerns about incomplete ballot documentation and verification, and urging action to address compliance and accountability issues.

Susan Strom provided testimony supporting the report, emphasizing the need for transparency, and expressing concern that resistance is delaying progress.

Jennifer Hunt provided testimony citing USPS barcode tracking to support concerns about ballot discrepancies and asserting that a lack of records limits the ability to verify election results.

AnnMarie Hamilton provided testimony alleging noncompliance with election laws, raising concerns about certification of the election, and calling for the removal of the Chief Election Officer.

Alohalani Hope Cermelj provided testimony alleging legal violations and calling for the removal of the Chief Election Officer.

Doug Pasnik provided testimony citing findings from permitted interaction group reports, raising concerns about unverifiable election processes and records, and questioning the certification of the election without required documentation.

Michael Golojuch Jr. provided testimony opposing the report, citing lack of supporting documentation, expressing confidence in the Chief Election Officer, and raising concerns about meeting procedures and agenda compliance.

Brennon Cabral via Enoka-Shayne Bingo provided testimony disputing the interpretation of the 22-month rule, raising concerns about ballot handling and discrepancies, and asserting a need for greater transparency and accountability.

Enoka-Shayne Bingo provided testimony objecting to a prior speaker's comments and defending a Commissioner against accusations of using ChatGPT to create a misleading report.

Austin Martin provided testimony requesting to complete his remarks without interruption and expressing concern about time management during testimony.

Michelle Stefanik provided testimony urging the Commission to act on the report, citing concerns about documentation, verification, and observer access, and calling for an audit.

Jamie Detwiler provided testimony supporting the report, citing specific findings and personal observations, and urging an audit and further investigation into ballot handling and discrepancies.

Victoria Thompson provided testimony urging the Commission to allow full testimony, act on report findings, and take timely action to address compliance and accountability concerns.

Noe Lecker provided testimony supporting the report, emphasizing transparency and standardized ballot documentation, and calling for accountability and timely action.

Meghan Ganser provided testimony supporting the report and calling for the removal of the Chief Election Officer.

Tara Rojas provided testimony supporting the report, expressing concerns about Commission decision-making and delays, and noting a potential inconsistency in prior meeting minutes.

Vernelle Oku provided testimony supporting the report and expressing concern about Commission members' actions related to election integrity and accountability.

Laurie Thorson provided testimony addressing the report, questioning the authority of the Chief Election Officer, and suggesting legal action in federal court.

Mary Healy provided testimony supporting the report, raising concerns about election discrepancies and integrity, and expressing dissatisfaction with the Commission's actions.

Monique Perreira provided testimony supporting the report's recommendations, emphasizing ballot accountability and chain of custody, and calling for corrective action and accountability.

Ailanna L. provided testimony supporting the report and expressing concern about prolonged delays in reaching decisions.

Jr Tupai provided testimony supporting the report and an audit, citing constitutional principles related to rights and election integrity.

Andrew Aker provided testimony referencing the PIG reports and alluded to arrests.

The Commission discussed whether the PIG report needed to be formally adopted or could simply be used to guide next steps. Commissioners Osterkamp and Dalton raised concerns about missing evidence and unclear legal support, while Commissioners Andrion and Apana said the report was a good-faith, preliminary effort meant to identify issues and guide improvements. Commissioner Sabas opposed the report, stating he was listed as a participant but did not contribute to it. Overall, the Commissioners remained divided on both the report's validity and how to proceed.

Commissioner Papalimu moved to adopt the Permitted Interaction Group (PIG) report as submitted. The motion was seconded by Commissioner Cushnie and **failed**. [1:24 PM]

YES: Andrion, Cushnie, Kamm, Papalimu

NO: Apana, Dalton, Osterkamp, Sabas, Curtis

The Commissioners debated what should happen when the person who has made a motion no longer wants to support it. Commissioner Apana argued that if the maker wants to rescind the motion, the motion effectively dies and others can introduce a new one, while Commissioner Andrion suggested it might still go to a vote if there's disagreement. Commissioner Cushnie supported keeping the motion alive to move things along. Chair Curtis then proposed taking a vote on whether to modify Robert's Rules of Order to allow motions to be withdrawn.

Commissioner Apana moved to adopt a change from the Robert's Rules of Order that the maker of the motion can withdraw their motion at any time prior to the vote thus taking the motion off the table. The motion was seconded by Commissioner Cushnie and **carried**. [1:54 PM]

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

NO: Dalton, Curtis

Commissioner Kamm argued that election results should be independently verifiable through a paper trail, not just internal systems, and Commissioner Cushnie supported this by emphasizing the need for daily logs and transparent chain-of-custody records to reconcile ballot counts. Commissioners Osterkamp and Dalton questioned whether the Commission has the legal authority to require such measures, stressing that existing laws do not mandate providing these

records externally. Commissioner Apana agreed that verification is important but said the Commission should first define what information it needs to do its job rather than broadly asserting new requirements, while CEO Nago stated that elections are already verifiable through existing legal processes such as court-ordered review. Commissioner Andrion supported the motion as a general recommendation to improve transparency through some form of third-party verification.

Commissioner Kamm moved that the Elections Commission assert the elections results should be verifiable by an independent party. The motion was seconded by Commissioner Cushnie and **failed**. [1:58 PM]

YES: Andrion, Cushnie, Kamm

NO: Apana, Dalton, Osterkamp, Papalimu

ABSTAIN: Sabas, Curtis

Commissioner Dalton called for the question, and it **failed**. [2:19 PM]

YES: Apana, Dalton, Osterkamp, Sabas, Curtis

NO: Andrion, Cushnie, Kamm, Papalimu

Commissioner Andrion introduced a motion for the Commission to formally document that required ballot accounting records under HAR 3-177-453 were not provided for the 2024 General Election, framing it as accountability and acknowledgment of past gaps despite promised improvements for 2026. Commissioner Apana questioned whether the issue stemmed from certain Counties not providing records and asked for clarification on the motion, while Commissioner Cushnie supported it, stating he had requested similar documentation for years and viewed the lack of records as a serious concern. Commissioner Sabas opposed the motion, explaining he was not included in discussions despite being a member of the PIG.

Commissioner Andrion moved that Elections Commission formally document that the required ballot accounting records demonstrating compliance with HAR §3-177-453 were not provided for the 2024 General Election. The motion was seconded by Commissioner Cushnie and **carried**. [2:32 PM]

YES: Andrion, Apana, Cushnie, Kamm, Papalimu

NO: Dalton, Osterkamp, Sabas, Curtis

Commissioners debated when chain of custody begins, with Commissioner Kamm suggesting it starts earlier in the process and Chair Curtis indicating it could begin when ballots are ordered. CEO Nago explained that the Office of Elections defines chain of custody as beginning only after a ballot is voted and secured under seal, distinguishing it from ballot inventory. Commissioners also raised questions about how ballots are counted, logged, and verified.

Commissioner Cushnie argued that there is a basic gap in accounting procedures and that ballots should be tracked with the same rigor as money, emphasizing that this is a straightforward principle rather than something overly complex. Commissioner Andrion framed it as a general recommendation that the Commission treat ballot tracking with the same level of accountability as a financial institution, urging agreement on this basic standard. Chair Curtis questioned how formal accounting principles like the Generally Accepted Accounting Practice (GAAP), could realistically be applied to elections, expressing skepticism about their practicality in this context.

Commissioner Cushnie moved to advise Scott Nago to have the same standards as a financial institution would to account for the ballots. The motion was seconded by Commissioner Andrion and **failed**. [2:58 PM]

YES: Andrion, Cushnie

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

Commissioner Dalton moved to adjourn the meeting. The motion was seconded by Commissioner Sabas and **carried**. [3:02 PM]

YES: Apana, Dalton, Osterkamp, Sabas, Curtis

NO: Andrion, Cushnie, Kamm, Papalimu

Several Commissioners stated that they objected to adjourning the meeting because they wanted to discuss the process of selecting a new Chair.

VI. Adjournment [3:04 PM]

Chair Curtis adjourned the meeting at 3:04 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicole Noel". The signature is written in a cursive, flowing style.

Nicole Noel
Elections Commission Secretary

JOSH GREEN, M.D.
GOVERNOR



ANNE E. LOPEZ
ATTORNEY GENERAL

STATE OF HAWAII
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)

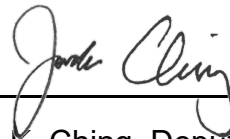
Under HRS section 11-2(a), the chief election officer is authorized to “delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.” Accordingly, HAR chapter 3-177 makes reference to “designated representatives” in prescribing the various functions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