

**From:** [Kristin Barrett](#)  
**To:** [OE.Elections.Commission](#)  
**Subject:** [EXTERNAL] Written Testimony for May 6, 2026 Elections Commission Meeting – Big Island Ballot Discrepancy and Recommended Reforms  
**Date:** Saturday, May 2, 2026 5:41:29 PM

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To the Chair and Members of the Hawaii Elections Commission:

My name is Kristin Barrett, and I am a resident of Hawai'i Island. I am submitting this written testimony ahead of the May 6, 2026 Elections Commission meeting. I am not affiliated with any political party or advocacy organization. I attended a recent Commission meeting as a private citizen and have followed these proceedings closely. I am here not to allege fraud, but to urge the Commission to pursue the concrete steps that remain available to it, and to recommend legislative reforms that would prevent this situation from recurring in 2026 and beyond.

Before turning to concerns, I want to acknowledge two genuine accomplishments.

First, at the April 1, 2026 meeting, the Commission formally documented that required ballot accounting records demonstrating compliance with HAR §3-177-453 were not provided for the 2024 General Election. This passed 5-4 and represents a meaningful official finding — not an allegation, but a documented compliance gap that creates a legitimate basis for requiring corrective action. The Commission should be recognized for making this finding on the record despite the divisions that surround it.

Second, the Office of Elections has implemented BallotTrax, the same individual ballot tracking tool used by Colorado, widely regarded as the national model for mail ballot integrity. That is a genuine strength Hawaii should build on.

As for the current meeting, the Commission's unanimous-minus-one vote to invite Hawaii County Clerk Jon Henricks to the May 6 meeting is perhaps the most constructive action taken in months. Rather than relying on secondhand information, written reports, or internal agency data, the Commission will have the opportunity to ask the person with direct operational knowledge the questions that matter most.

I would respectfully urge the Commission to focus Mr. Henricks' time on the following specific questions, which are not accusatory but are the basic accounting questions any well-run election system should be able to answer:

1. Do the physical ballot envelopes from the 2024 Big Island general election still exist in secure storage? If so, have they been counted, and does that count match the certified total of 76,595?
2. What records does Hawaii County maintain independently of the SVRS to separately account for ballots received by mail versus ballots returned via drop box? Are those records available for the 2024 general election?
3. Has the county directly contacted USPS to reconcile the intelligent mail barcode data against the county's certified totals? Testimony at the April 1 meeting noted that USPS intelligent mail barcodes automatically count and report returned mail pieces through USPS systems. If that data exists at the USPS end and was never reconciled with the county's count,

that is a straightforward step that could resolve or significantly narrow the discrepancy.

4. Going forward, what specific recordkeeping changes is the county prepared to implement to ensure compliance with HAR §3-177-453, now that the Commission has formally documented noncompliance for 2024?

Mr. Henricks has been described in prior proceedings as cooperative and responsive. This meeting is an opportunity to obtain clear, firsthand answers in a public forum. The Commission should use it fully.

To summarize the current state of this issue as reflected in Commission proceedings:

The Osterkamp PIG report, completed in late 2025, found no credible evidence of a significant ballot discrepancy, reporting that the SVRS-based envelope tally differed from the certified count by just eight ballots. However, that investigation relied entirely on internal SVRS data — the same centralized system whose accuracy was the underlying question — and did not include independent external verification such as a physical envelope count or direct USPS reconciliation.

The Andrión PIG report was not formally adopted by the Commission at the April 1 meeting, failing 4-5. However, the Commission did formally document on the record that required ballot accounting records under HAR §3-177-453 were not provided for the 2024 General Election.

The motion to refer the matter to the Department of Justice failed 3-6. The motion asserting that election results should be independently verifiable failed 3-5. The statewide audit request was rejected by the State Auditor. Former Commissioner McAdams declined to conduct the county-level audit citing a conflict of interest. The Legislature has not yet provided funding for an alternative audit path.

In short: every avenue pursued so far has either relied on internal verification or been blocked. What remains are the steps that require cooperation from the county — which is precisely why Mr. Henricks' appearance today matters so much.

With a primary election in August and a general election in November 2026, the window to implement meaningful reforms before the next election is narrow but not closed. The Commission's formal finding of noncompliance with HAR §3-177-453 now provides a documented basis for legislative action that did not exist before April 1.

I urge the Commission to formally recommend the Legislature require the following:

#### 1. County-Level Daily Reconciliation Logs

The core structural problem is that Hawaii centralized all ballot accounting in the SVRS and eliminated independent county-level paper records. Colorado requires counties to maintain daily mail ballot reconciliation logs tracking three separate streams — ballots issued, ballots returned by mail, and ballots returned by drop box — independently of the state's central system, signed by election officials, and retained as public records. Any discrepancy can be traced to a specific day, location, and collection method. Hawaii should require the same.

I recognize that practicability concerns were raised when a similar motion failed previously,

particularly for high-volume counties like Honolulu. The Legislature should address those concerns through appropriations for additional staff or resources rather than allowing practicability to permanently block independent verification. The Commission's formal finding of noncompliance with HAR §3-177-453 makes this recommendation more urgent and better grounded than it was before.

## 2. Bipartisan Observation at Every Stage

Colorado requires election judges from different political parties to be present and sign off at every stage of ballot handling — collection, transport, signature verification, and counting. This makes the process self-auditing and protects election officials as much as it protects voters, because it provides independent documentation that procedures were followed correctly. This reform does not imply bad faith by current officials — it is a structural safeguard that makes unfounded accusations easier to refute.

## 3. Post-Election Risk Limiting Audits

A Risk Limiting Audit is a statistically rigorous method of hand-counting a random sample of ballots and comparing results against machine tabulations. Colorado has required them after every general election since 2017. They are relatively inexpensive, completed within weeks of the election, and produce a publicly verifiable result that does not depend on trusting any single agency's internal records. Had Hawaii conducted an RLA after the 2024 general election, the Commission would not be relitigating 2024 in 2026. I urge the Commission to recommend the Legislature require post-election Risk Limiting Audits beginning with the November 2026 general election.

The Commission's April 1 finding that required ballot accounting records were not provided for the 2024 general election is a turning point — if the Commission uses it as one. It provides documented grounds for requiring corrective action from the county, for recommending legislative reform, and for insisting that 2026 elections be conducted with the independent verification infrastructure that 2024 lacked.

Today's appearance by County Clerk Henricks is the most direct opportunity yet to obtain answers from the source. The Commission should use it to ask specific, documented questions and to hold the county accountable for providing specific, documented answers.

Hawaii's voters — of every political persuasion — deserve elections that can be verified independently, not just internally. The system reforms needed to make that possible are not radical. They are standard practice in states that have earned national recognition for election integrity. Hawaii can get there, but it requires this Commission to act with clarity and urgency before November.

Thank you for your service and for considering this testimony.

Respectfully submitted,  
Kristin Barrett  
12-7004 Kamelewai St.  
Pahoa, HI 96778  
[krissysmoto@gmail.com](mailto:krissysmoto@gmail.com)  
719-839-0280

**From:** [cookshi@aol.com](mailto:cookshi@aol.com)  
**To:** [OE.Elections.Commission](#)  
**Subject:** [EXTERNAL] Testimony for 5-6-26 Elections Commission Meeting  
**Date:** Tuesday, May 5, 2026 8:26:21 AM  
**Attachments:** [PCook EC Testimony 5-6-26 Meeting FINAL.pdf](#)

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***Aloha from Waimea, Island of Hawai'i - please find attached my testimony for tomorrow's Elections Commission meeting. May I please ask you to confirm receiving this.***

***Also, I plan to log in to testify orally if possible and understand the procedures.***

***Mahalo, Patti Cook 808-937-2833***

# Patti Cook

Box 6960 – Kamuela, HI 96743  
[cookshi@aol.com](mailto:cookshi@aol.com) \* 808-937-2833

May 5, 2026

**To:** Hawai'i State Elections Commission  
**Meeting:** Wednesday, May 6, 2026 – 10AM  
**Re:** Testimony – Agenda Item V  
**Email to:** [elections.commission@hawaii.gov](mailto:elections.commission@hawaii.gov)

Aloha Commissioners:

I'm Patti Cook from Waimea, Island of Hawai'i. I am testifying on my own behalf. Thank you for your time and consideration of my comments regarding the May 6, 2026 Election Commission Agenda Item **V. Discussion on electing a new Elections Commission Chair, and a) Applicants for Elections Commission Chair.** I will also be referencing the related posting of a **Notice of Anticipated Vacancy** for a Commission Chair on the commission website.

Having reviewed the commission website and law governing this commission, I do not find much detail in terms of requirements for commission members other than residency in a specific County, appointment by one or another elected Legislative leader, and that they are restricted from taking an active part in political management or in political campaigns, HRS § 11-8(a).

I'm grateful eight individuals from across the state have applied – meeting the April 30, 2026 deadline. I am now very interested in the specific process to be employed by the commission – how will candidates be introduced to commissioners and the community, and how will they be vetted by the commission, how will the public be able to participate, and how will the selection process occur. Specifically, I am interested in what discussions or interviews will occur with candidates, and will the public be able to listen in on these interviews for full transparency. I am not asking for the public to participate in interviews but to be able to listen in – in person or virtually.

Hawai'i County recently underwent recruitment of a new Police Chief. Responsibility for hiring a police chief rests with the appointed Police Commission and there were no clear guidelines in place for a vetting and election process. Therefore, the commission developed – during several public meetings all governed by Sunshine law and guided by Corporation Counsel and human resources personnel – what proved to be a transparent and accountable process, and I would urge a similar process be followed by the Elections Commission.

Specifically, now that we know the names and some information about eight applicants, I urge the commission develop a series of questions that each candidate would be given time to respond to – within an hour-long interview – and that this interview process be visible to the public. The Hawai'i County Police Commission drew straws to determine the order of interviews and one commissioner handled all the questions for a given candidate. Then the commission voted, some briefly explaining their rationale. Every step was visible to the public either in-person or virtually.

As always, this process should be preceded by public testimony focused on the appointment of a commission chair.

#### Suggested Questions:

1. Ask for a 3-minute introduction to include why the individual applied for this position and why he or she should be appointed.
2. Briefly explain your personal involvement in Hawai'i elections – roles played, observations, concerns if any, lessons learned.
3. Are you/have you been a member of a specific political party and if so, which one and role(s) played. (Revealing Party affiliation is relevant – a must - given the existing appointment process for commissioners and clear legislative intent – and preference on my part – that the chair be able to balance political beliefs and influence during commission meetings.)
4. How many Hawai'i elections have you voted in? Did you vote by mail or walk-in?
5. When voting, did you personally encounter any actions or situations that caused concern? If yes, what did you do about it?
6. Have you read reports received in the past year from the State Elections Chief and County of Hawai'i Elections staff and Permitted Interaction Groups (PIGs) responding to concerns about elections in Hawai'i since the state transitioned to Vote By Mail? What is your assessment of these reports?
7. What do you think about Hawai'i's Vote By Mail system?
8. Do you have observations or suggestions about the way the Hawai'i Election Commission has functioned?
9. How would you conduct commission meetings to ensure transparency and civility?
10. Is there something more you would like to share that has not been asked about your candidacy or the commission or Hawai'i elections process?

Separate from these questions, I have reviewed submittals received from prospective candidates and found a concern. The Notice of Anticipated Vacancy specifically requests that interested individuals should submit a resume with a cover letter. I note that neither current Commissioner Cushnie nor applicant Sherilyn Wells fulfilled this requirement – neither submitted a resume with their application and therefore, both should be disregarded. I say this because throughout my many years of work with public agencies,

private businesses and non-profits, applicants who failed to meet application requirements were immediately eliminated. This is standard practice and no exception should be considered other than a mahalo for offering to serve.

Overall, I urge the commission to honor our US and State Constitutions and thus, rule of law, conducting meetings with respect and civility to enable all voices to be reasonably heard. However, this must entail respect for the law, individual commissioners (who are volunteers), and state and county elections commission staff, even when there might be differences of opinion.

Thank you for your time.

**Patti Cook**, Registered Voter – Waimea, Island of Hawai'i

**From:** [LWV Hawaii](#)  
**To:** [OE.Elections.Commission](#)  
**Subject:** [EXTERNAL] Testimony regarding Agenda Item V  
**Date:** Tuesday, May 5, 2026 9:22:25 AM  
**Attachments:** [EComtestimonyMay62026.docx](#)

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Aloha,

The League of Women Voters of Hawaii wishes to submit the attached testimony regarding Agenda Item V: Discussion on electing a new Elections Commission Chair  
Thank you for the opportunity to submit testimony.

Judith Mills Wong  
President  
League of Women Voters of Hawaii  
Find us on Instagram at **lwvofhawaii**  
[hawaiiwv@gmail.com](mailto:hawaiiwv@gmail.com)  
[lwvhawaii.lwv.org](http://lwvhawaii.lwv.org)



P. O. Box 235026  
Honolulu, HI 96823-3500

The League of Women Voters of Hawaii respectfully submits our comments for **Agenda item V. Discussion on electing a new Elections Commission Chair**

We congratulate the Board on establishing a transparent process for nominations. This has produced eight candidates worthy of your consideration.

The League of Women Voters of Hawaii seeks a fair, transparent and competency-based process for selection of the Chair of the Elections Commission. We hope that the Commission will define the job, define the criteria for selection and define the process before selecting the new chair.

**Please adopt a simple but explicit description of the role** that includes:

- Core duties (agenda-setting, meeting facilitation, liaison role)
- Ethical expectations (neutrality, avoiding favoritism)
- Time commitment
- Relationship boundaries with public elections officials and other staff.

Defining the role in this way anchors the selection in *function*, not personalities.

**Please adopt selection criteria and publish those criteria** in the Minutes of this meeting. We respectfully suggest the following:

- Demonstrated ability to run meetings fairly and efficiently
- Understanding of open meetings laws and public accountability
- Experience with governance (not just subject-matter expertise)
- Ability to represent the entire Board and the avoidance of faction loyalty

**Please standardize your evaluation process** as much as possible by making a scoring sheet that matches the published criteria. If all Board members use a standardized scoring sheet, we believe it will allow for personal judgements but help reduce bias and improve transparency of the process.

After the selection of the next Board Chair, please issue a joint statement explaining how the selected Chair meets the criteria and how your decision serves the mission of this Board.

Thank you for the opportunity to submit testimony.

Judith Wong, President  
League of Women Voters of Hawaii

**From:** [Nancy Moser](#)  
**To:** [OE.Elections.Commission](#)  
**Subject:** [EXTERNAL] Election commission meeting 5/6/2026 testimony  
**Date:** Tuesday, May 5, 2026 9:36:57 AM

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Aloha Commissioners,

I am Nancy Moser, registered voter in Hawai'i County, testifying on Agenda Item V. I ask that the commission provide our public the maximum transparency in conducting the selection of the next Commission Chair. You have a big job to do and I'm glad that the meeting materials have included the Chair vacancy posting notice as well as the individuals' responses received until the deadline.

I'd like to know the process the Commission will conduct for this replacement. Please be very explicit and consistent about the process as you apply it to each candidate.

Thank you for your volunteer service on the Commission.

Mahalo,

Nancy Moser

**From:** [Austin Martin](#)  
**To:** [OE.Elections.Commission](#)  
**Subject:** [EXTERNAL] Re: Selection of Chairperson — Voting Roll for Agenda Item, HRS § 11-7(a)(5)  
**Date:** Tuesday, May 5, 2026 8:24:15 PM

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**To:** Chair Curtis, Hawai'i Elections Commission  
Deputy Attorney General Jordan Ching, Office of the Attorney General  
Elections Commission Administrative Staff, Office of Elections  
**cc:** The eight appointed members of the Hawai'i Elections Commission  
**Re:** **Selection of Chairperson — Voting Roll for Agenda Item, HRS § 11-7(a)(5)**

*May 5th, 2026*

Aloha Chair Curtis, Deputy Jordan Ching, and Members of the Administrative Staff:

I write in advance of the Commission's May 6th meeting to respectfully request that the agenda for the chair-selection item be structured in plain conformity with HRS § 11-7(a)(5). The basis is the plain text of the statute. Subsection (a)(5) provides that the chair "shall be selected by the members of the elections commission selected pursuant to paragraphs (1) to (4)." Subsection (b) prescribes a two-thirds threshold. Subsection (d) confirms that the Commission's general voting authority and procedural autonomy operate "except as may be provided by law," and the chair-selection procedure is provided by law. The voting body is the eight members appointed under (1)–(4); the threshold is two-thirds (six votes) calculated against those eight.

**The request.** I respectfully ask that the agenda or meeting notice be updated, prior to the meeting, to confirm that the (a)(5) voting roll will be limited to the eight appointed members. I also respectfully ask for written confirmation in advance of the meeting of the Commission's intended structure of the vote — or, if the Commission's position is that the vote will be structured otherwise, a written statement of that position so the Commissioners may consider it on the record before they cast.

Submitting this request in writing, in advance, is intended to be helpful, not adversarial. A clearly-structured agenda protects the institution, the integrity of the selection ultimately made, and each Commissioner individually. I am available to provide any further citations or sources on request, and will additionally submit testimony on this point through the standard channel under HAR § 3-170-11.

Mahalo for your service,

## **Austin Martin**

Chair, Libertarian Party of Hawai'i  
Region 1 Alternate of the Libertarian National Committee  
[Austin.Martin@LP.org](mailto:Austin.Martin@LP.org) | [LPHChair@gmail.com](mailto:LPHChair@gmail.com)

**From:** [Austin Martin](#)  
**To:** [OE.Elections.Commission](#)  
**Subject:** [EXTERNAL] Memorandum: Re: The (a)(5) Voting Roll for Selection of the Chairperson — HRS § 11-7  
**Date:** Tuesday, May 5, 2026 8:54:29 PM

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## MEMORANDUM

**To:** Members of the Hawai'i Elections Commission  
**From:** Austin Martin, Chair, Libertarian Party of Hawai'i  
**Date:** May 5th, 2026  
**Re:** The (a)(5) Voting Roll for Selection of the Chairperson — HRS § 11-7

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I write with reference to my service as Chair of the Libertarian Party of Hawai'i, as Region 1 Alternate on the Libertarian National Committee, and my prior work as a Hawai'i election observer, to bring to your attention a statutory question that may arise at the next meeting of the Commission. This memorandum is informational. It is not legal advice, and I am not a registered parliamentarian. The citations are provided so that each Commissioner may independently verify and weigh the analysis, and so that each may share the document with counsel of their own choosing.

**A note on Sunshine Law.** Each of you receives this memorandum individually. I respectfully ask that you not discuss it with one another outside a properly noticed meeting; HRS Chapter 92 limits Commissioner-to-Commissioner deliberations to such meetings. The memorandum is intended for your individual review and, if you wish, consultation with your own counsel.

### I. The Statutory Rule

HRS § 11-7(a) establishes a nine-member Commission. Paragraphs (1) through (4) provide for the eight members appointed by the legislative leadership of both houses, majority and minority. Paragraph (5) reads in relevant part:

*“One member, who shall serve as chairperson of the elections commission, shall be selected by the members of the elections commission selected pursuant to paragraphs (1) to (4)...”*

HRS § 11-7(b) prescribes the threshold:

*“The chairperson of the elections commission under subsection (a)(5) shall be selected by a two-thirds vote.”*

The plain text identifies the voting body for chair selection as the eight members appointed under (a)(1)–(4). The chair is the member selected under (a)(5) — by definition, not within

that voting body for purposes of selecting his own successor. The two-thirds threshold is calculated against those eight, not against the full nine.

## **II. The Statute's Carve-Out from General Voting and Rule-Making Authority**

HRS § 11-7(d) is dispositive on the question of whether the Commission may, by its own procedure or by parliamentary authority, expand the voting body for chair selection beyond what (a)(5) prescribes:

*“The elections commission shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law.”*

The clause “except as may be provided by law” expressly subordinates both the Commission’s general voting rule and its rule-making authority to other statutory provisions. The chair-selection process is provided by law in (a)(5) and (b). The Commission therefore lacks authority to expand the voting body — by motion, by chair ruling, by counsel’s advice, or by acquiescence.

This conclusion is reinforced by Robert’s Rules of Order Newly Revised (12th ed.) 2:5, which provides that applicable local, state, or federal law supersedes any rule of the body. RONR 2:5 confirms what § 11-7(d) already establishes on its face: the statute controls.

## **III. Two Common Pressure Levers — and Why Neither Is Binding**

Two arguments are sometimes deployed to constrain the (a)(5) selection: an application or filing deadline that purports to limit the field of candidates, and an interpretation of HRS § 11-7(c) that would substitute the Chief Justice as selector if the Commission does not act on a particular timeline. Neither, on examination, binds the eight appointed members in the manner suggested.

### **A. A self-imposed application deadline is suspendable on the same threshold required to elect.**

If the application or filing deadline was established by motion of the Commission or by its own internal procedure — rather than promulgated through HAR Chapter 3-170 amendment with the force of law — it is a rule of order subject to suspension under RONR (12th ed.) 25:2(7). The threshold to suspend a rule of order is two-thirds.

The threshold to elect a chairperson under HRS § 11-7(b) is also two-thirds. The two thresholds are identical. Any six members who have the votes to elect a chair under (b) automatically have the votes to suspend a self-imposed procedural deadline that would constrain the choice. The deadline therefore binds nothing the same six votes cannot remove. Its practical effect is procedural friction, not procedural finality.

The implication is straightforward: if six appointed members are prepared to elect, no

internally-adopted deadline, slate restriction, or procedural funnel is a barrier to that election. They may suspend the rule and consider an applicant submitted late, recognize a nominee from the floor, or otherwise structure the vote to reflect their statutory authority. The deadline cannot be used to compel a result the six would not otherwise reach.

**B. HRS § 11-7(c) does not convert deliberation into forfeiture.**

Subsection (c) provides:

*“A vacancy in the elections commission shall be filled in the same manner as the original appointment as specified in subsection (a) within fifteen days. A vacancy in the elections commission shall be filled with a person from the same county as the departing elections commission member. Elections commission member vacancies not filled within the times specified shall be filled promptly thereafter by the chief justice of the supreme court.”*

An argument is sometimes advanced that (c)’s Chief Justice fallback applies to the (a)(5) chair seat — that is, that the Commission’s failure to elect a chair within some specified window automatically transfers the selection to the Chief Justice. This reading is contestable on its face for three textual and structural reasons.

**First, the same-county requirement in (c) has no coherent application to the chair seat.** The county designation in (a)(5)’s proviso attaches only to “each group of four elections commission members selected by each house” — the eight (1)–(4) seats in two groups of four. The chair under (a)(5) has no statutory county designation. The (c) clause “filled with a person from the same county as the departing elections commission member” operates coherently against the (1)–(4) seats and not against the chair.

**Second, (c) requires a vacancy to be filled “in the same manner as the original appointment.”** For (1)–(4) seats, the appointing authority is unilateral — the Senate President, the Speaker, or a designated minority member acting alone — and the Chief Justice can plausibly stand in for that single official when the official fails to act. For (a)(5), the appointing authority is collective: eight members acting through a deliberative two-thirds vote. The Chief Justice cannot fill a chair vacancy “in the same manner” because he is not, and cannot become, the deliberative body of the eight. Reading (c) into (a)(5) requires writing “in the same manner” out of the statute.

**Third, (a)(5) was deliberately structured as a collective deliberative selection.** The legislature could have made the Chief Justice, the Governor, or any number of other unilateral officials the chair-selector and chose instead to lodge that power in the eight legislatively diverse appointees acting collectively. To convert good-faith deliberation that does not immediately yield two-thirds into a forfeiture event under (c) writes the deliberative architecture of (a)(5) out of the statute.

The effect for the Commissioner considering this question: the suggestion that the Chief Justice “takes over” if the eight do not produce a 2/3 vote on a particular timeline is an interpretation, not a foregone conclusion. It is contestable on the text in three independent ways. A vote cast under the impression that the alternative to immediate election is automatic Chief Justice substitution is a vote cast under false procedural pressure. The deliberative architecture the statute creates includes the time required to deliberate.

#### **IV. Continuing Breach**

Violation of a procedural rule prescribed by statute creates what RONR (12th ed.) 23:6(b) (2) describes as a continuing breach. A point of order to that effect may be raised at any time the offending action is in effect — not only at the moment of the vote. Practically, a chair selection conducted in violation of HRS § 11-7(a)(5) does not become unchallengeable simply because the moment passes. It remains procedurally and legally vulnerable for as long as the resulting selection is in effect, and any official act of an improperly selected chair carries the same defect.

#### **V. The Role of Counsel**

The Office of the Attorney General serves as counsel to the Commission. Counsel’s role is advisory. Three points are worth keeping in mind:

- A. An advisory opinion of counsel does not displace the plain text of HRS § 11-7. The Commission’s duty is to follow the statute.
- B. The Commission, not its counsel, is the ultimate parliamentary authority over its own meetings.
- C. Reliance on counsel’s advice is not a complete defense to ultra vires action. A vote cast contrary to a clear statutory limit is a personal vote, recorded by name in the minutes.

#### **VI. Personal Considerations for Each Commissioner**

These are not raised as threats. They are raised because the realistic consequences of an improperly conducted chair selection should be understood by each member voting:

- The selection itself becomes void or voidable; subsequent official acts of an improperly selected chair carry the same defect.
- The defect is preserved in the Commission’s public record under HRS Chapter 92, by name, indefinitely.
- Standing to challenge is broad. Political parties, candidates, and registered voters can plausibly seek review of a selection conducted in violation of the statute.
- The Hawai’i State Ethics Commission has jurisdiction over standards of conduct for

Commission members in the discharge of their statutory duties.

- Reliance on counsel does not transfer personal responsibility. Ultra vires votes are, by name, the voter's.

## VII. The Cleanest Path

The procedure most respectful of the institution and of the outgoing chair is for the chair to recuse himself — only for this single agenda item — from the (a)(5) roll, citing the statute. This preserves dignity, the record, and the statutory selection process simultaneously. Everything that follows in this memorandum applies only if recusal is refused.

## VIII. Preparing for the Meeting

Quiet preparation makes a steady meeting. Suggestions, offered for your individual consideration:

- Have HRS § 11-7 in printed form on the table, and tabbed copies of RONR (12th ed.) §§ 23, 24, 25:2(7), and 62.
- Confirm that the meeting will be fully recorded under HRS Chapter 92 and that the recording will be retained.
- Consider in advance, in your individual capacity and outside any deliberative discussion among yourselves, whether and how you would respond if the agenda is structured to include the outgoing chair in the (a)(5) vote, if a deadline is invoked to constrain candidate consideration, or if the Chief Justice fallback under (c) is invoked as pressure.
- If you intend to raise a point of order, consider notifying the Commission's administrative staff in advance that you may do so, so the moment is not a surprise to the chair.

## IX. If the Question Arises in the Meeting

**Step 1 — Point of Order under RONR 23.** If, during the meeting, the agenda item for chair selection is structured or conducted in a manner that would include the outgoing chair in the voting roll, the proper procedural response is a point of order. Suggested language, modeled tightly to statute:

*“Point of order. Under HRS § 11-7(a)(5) and (b), the chair is selected by — and only by — the members appointed under paragraphs (1) through (4). The presiding chair is the member selected under paragraph (5) and therefore is not within the voting body for his own succession. HRS § 11-7(d) reserves this carve-out from the Commission's general voting authority. RONR 2:5 confirms that an applicable statute supersedes any contrary*

*parliamentary rule. I respectfully ask that the voting roll for this agenda item be limited to the eight members appointed under (a)(1)–(4).”*

**Step 2 — Appeal under RONR 24.** If the chair rules the point of order not well taken, any member may immediately appeal:

*“I appeal from the decision of the chair.”*

The appeal requires a second. Once seconded, the question goes to the Commission: “Shall the decision of the chair be sustained?” A majority vote of “no” overturns the chair’s ruling. The appeal is the principal protection against a ruling chair’s misuse of the gavel; it is also the moment at which the Commission’s authority over its own procedure is most clearly expressed. The chair does not control whether an appeal is permitted — the rules do.

**Step 3 — If a deadline is invoked.** If an internally-adopted application or filing deadline is invoked to bar consideration of a candidate, see Section III.A. A motion to suspend the rule under RONR 25:2(7) requires the same two-thirds vote required to elect under HRS § 11-7(b); the same six votes that elect can suspend.

**Step 4 — If the Chief Justice fallback is invoked.** If HRS § 11-7(c) is invoked as pressure to compel a particular vote, see Section III.B. The interpretation that (c) substitutes the Chief Justice for an (a)(5) selection is contestable on three independent textual and structural grounds and is not a foregone conclusion. The Commissioners are entitled to deliberate.

**Step 5 — Remedies for misconduct of the presiding officer (RONR 62:10–12).** If the chair refuses to recognize the appeal, declines to put the question, or attempts to gavel discussion of the point closed, RONR 62:10–12 provides the procedure for declaring the chair to have vacated the chair and electing a chair pro tempore to preside over the remainder of the agenda. This is an extraordinary remedy and should be invoked only if ordinary remedies are obstructed. It exists precisely for the situation in which it is needed.

## **X. Bearing**

The most effective procedural objections are quiet, precise, and grounded in plain text. The point of order need not be raised in anger. It need not be repeated. Said once, in the language above, the citation does the work. The Commission’s authority over its own procedure is total when exercised in conformity with the statute that creates the body.

The objective is not confrontation. It is the protection of the institution and of the integrity of any selection ultimately made. A chair selected in plain conformity with the statute is unassailable. A chair selected outside it is permanently vulnerable, to the detriment of the

Commission and of every Commissioner of record.

## **XI. Closing Notes**

I am not a lawyer, and I am not a registered parliamentarian. I have served as chair on similarly contested committees (and other director-level positions in both majority and minority configurations) and have observed and testified in this jurisdiction on parliamentary questions. The citations in this memorandum are provided for your independent verification.

I will additionally submit testimony on the same statutory point through the public testimony channel under HAR § 3-170-11, so the analysis is on the public record before the vote, and a separate written request to the Chair and Counsel asking that the agenda be structured in conformity with § 11-7(a)(5).

With respect for your service,

**Austin Martin**

Chair, Libertarian Party of Hawai'i

Region 1 Alt — Libertarian National Committee

[Austin.martin@lp.org](mailto:Austin.martin@lp.org) | [LPHChair@gmail.com](mailto:LPHChair@gmail.com)

Ua mau ke ea o ka 'āina i ka pono