



MICHAEL CURTIS
ELECTIONS COMMISSION CHAIR

STATE OF HAWAII ELECTIONS COMMISSION

NOTICE OF ELECTIONS COMMISSION MEETING

Date: Tuesday, April 16, 2024
Time: 1:30 p.m.
Place: via Video Conference or Telephone*
or Office of Elections at 802 Lehua
Avenue, Pearl City, HI 96782

*Pursuant to Section 92-3.7, Hawaii Revised Statutes, the Elections Commission will be meeting remotely using interactive conference technology. The public may view the video and audio of the meeting through the following video conferencing link:

Video: <https://us02web.zoom.us/j/89381724860>

Telephone: +1 346 248 7799 +1 564 217 2000
 +1 253 215 8782 +1 646 931 3860
 +1 669 444 9171 +1 929 205 6099
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 +1 253 205 0468 +1 689 278 1000
 +1 305 224 1968 +1 360 209 5623
 +1 507 473 4847

Meeting ID: 893 8172 4860

The public may also attend the meeting at the Office of Elections, 802 Lehua Avenue, Pearl City, Hawaii 96782, where an audiovisual connection will be provided for the public to view and participate in the meeting.

In the event audiovisual communication cannot be maintained with all Commissioners participating in the meeting, the meeting shall be automatically recessed for up to thirty (30) minutes to allow staff to attempt to restore communication.

If, however, audiovisual communication cannot be restored, please go to <https://elections.hawaii.gov/about-us/boards-and-commissions/elections-commission/> for more information including reconnection instructions.

MEETING INFORMATION:

Public Testimony

Pursuant to Section 92-3, Hawaii Revised Statutes and Section 3-170-11, Hawaii Administrative Rules, oral testimony may be limited to three (3) minutes at the discretion of the presiding officer and will be accepted only on matters directly related to the board agenda. Generally, each agenda item is addressed (and testimony received) in the order listed in the agenda; however, agenda items may occur out of order without notice and testimony is not accepted for completed agenda items. The Board agenda and meeting materials for this meeting are also made available for inspection on the Elections Commission website at: <https://elections.hawaii.gov/about-us/boards-and-commissions/elections-commission/>.

Written Testimony

Pursuant to Section 3-170-11, Hawaii Administrative Rules, to ensure the public, as well as its board members, receive such testimony in a timely manner, written testimony should be submitted no later than two workdays prior to the scheduled meeting date and time. Any written testimony submitted after such time cannot be guaranteed to be distributed in time for the meeting. Written testimony may be submitted by one of the methods listed below:

- By email to: elections@hawaii.gov
- By U.S. Postal Mail: 802 Lehua Avenue, Pearl City, Hawaii 96782
- By facsimile to: (808) 453-6006

Written Testimony submitted to the Elections Commission will be made a public record and any contact information contained therein will be available for public inspection and copying. Please do not include information in your testimony that you do not want disclosed to the public.

Public Note

For propriety, all comments are to be addressed to the Elections Commission Chair. Arguments and side discussion will not be tolerated.

For Further Assistance

If you require special assistance or auxiliary aids and/or services to participate in the public hearing process of the Elections Commission, please contact the Office of Elections at (808) 453-8683 or toll free at 1-800-442-8683 or email elections@hawaii.gov as soon as possible. Requests made as early as possible will allow adequate time to fulfill your request.

A G E N D A

- I. Call to Order
- II. Roll Call and Determination of a Quorum
- III. Approval of the Written Minutes from the March 19, 2024 meeting

Written Minutes: <https://elections.hawaii.gov/wp-content/uploads/2024-03-19-24-EC-Regular-Mtg-Minutes-DRAFT.pdf>

Video Recording: <https://www.youtube.com/watch?v=fz4AukGGycg>

Written Summary of the Video Recording: <https://elections.hawaii.gov/wp-content/uploads/2024-03-19-EC-Written-Summary-AMENDED.pdf>

- IV. Public Testimony

Any interested person may submit comments or testimony on any agenda item.

- V. Communications & Correspondence

[March 13](#) – Communication from the Office of Elections

[March 19](#) – Communication from Jamie Detwiler

[April 4](#) – Communication from Wendell Elento

[April 5](#) – Communication from Jennifer

[April 6](#) – Communication from Ralph Cushnie

[April 8](#) – Communication from Ana Mo Des

[April 8](#) – Communication from Dalene McCormick

[April 8](#) – Communication from Tom Stanton

- VI. Documented Ballot Security

- VII. Executive Session

A. Pursuant to section 92-5(a)(4), HRS, the Commission anticipates going into executive session to consult with the Commission's attorney on questions or issues regarding the Commission's powers, duties, privileges, immunities, and liabilities.

- VIII. Adjournment

IV. PUBLIC TESTIMONY

From: [Ralph Cushnie \(EC\)](#)
To: [Bueno, Nedielyn I; OE.Elections](#)
Subject: [EXTERNAL] Written Testimony
Date: Thursday, April 11, 2024 6:37:07 AM
Attachments: [Formal Complaint regarding 2023 Implementing Elections by Mail Report per HAR 3-170-7 of 1.12.24.pdf](#)

Hi Nedielyn please add this to written testimony.

Formal Complaint in accordance with HAR §3-170-7

Submitted by Ralph Cushnie

Submitted to: State of Hawaii Office of Elections and Elections Commission

Regarding: Implementing Elections by Mail, Report Dated October, 26 2023.

The Office of Elections - Implementing Elections by Mail Report of October 2023 (further referred to as the “Implementing Report”) was submitted to the Legislature but was not identified on the Elections Commission Meeting agenda for public comment or discussion by Commission Members.

This formal complaint is being initiated pursuant to HAR § 3-170-7 and for further investigation pursuant to HAR § 3-170-9.

The stated mission of the Office of Elections is to provide secure, accessible, and convenient election services to all citizens statewide. Additionally in this report the office’s goals and objectives are published as: 1) conduct honest and efficient elections; 2) encourage participation in the electoral process; 3) protect voter rights; and 4) promote elections. With this mission and these objectives forefront, the complainant requests the commission inquire into the Office of Elections maladministration and the following disparities:

1) The 2023 Implementing Report is the fourth of six scheduled reports from the Office of Elections to the State Legislature as directed by ACT 136 regarding the implementation of vote by mail. This ACT implemented a radical departure from a long history of in-person voting in Hawaii, and without realizing any efficiencies in voter participation or reduced costs, and with little oversight and accountability.

2) The Implementation Report contains multiple discrepancies in the interpretation and application of a number of Hawaii statutory laws, and through the misapplication and maladministration of Hawaii administrative rules which run counter to legislative intent and accepted voting audit guidelines, and which are fundamental and necessary to ensure the accuracy of elections.

3) No where in the published or stated Office of Elections mission, goals or objectives is there emphasis on ensuring the accuracy of the voting process. This report merely identifies the progress made in implementation of elections by mail with no metrics for analysis of efficiency of the election process nor measures of accountability. Many of the statutory interpretations and subsequent application are not lawful, legal, nor follow accepted voting audit guidelines.

The complainant respectfully requests that the Elections Commission further investigate these disparities, inefficiencies, and the violations to statutory laws which undermine the objectives for a secure, honest, and efficient election process.

Provisions of the law which are being violated:

1. CHAIN OF CUSTODY

HAR §3-177-453 requires a complete count of ballots be maintained through chain of custody to ensure the accountability and security of all ballots. In his February 10, 2021, Biennial Evaluation of Elections Operations, Scotty Anderson, Chair of the Elections Commission, recommended prioritization of “Verifiable chain of custody of ballots at every stage of transportation and handling...” This was also identified as an item of concern during the December 15, 2020, Elections Committee meeting where “Commissioner Koller stated that CEO Nago does not seem concerned with chain of custody regarding the drop boxes.”

The Office of Elections has failed to implement the lawful requirements of HAR § 3-177-453 (Accountability and Security of Ballots) - yet they still certified the 2020 and 2022 Primary and General Election without chain of custody documentation nor the ability to ensure the accountability of all ballots. The County of Kauai and the other Counties do not keep chain of custody documentation nor acknowledge that they are legally obligated to do so. During the weeks long mail-in election, Counties send, receive, and hold ballots with no inventory controls.

Signature verification does not prove chain of custody. When ballots are handed from the Counties to the State to be counted, there is no official transfer record. The number of ballots distributed and received by a County should be declared before those ballots are handed over to the State and cross referenced to the State counts of the Counties ballots.

The Office of Elections website states under questions about Election Security: “How do you ensure election officials don’t throw away ballots?”

Without chain of custody documentation the answer to this question is that - We cannot ensure that election officials don’t throw away ballots. Chain of custody, from production (printing) through distribution, through collection during voting is a lawful requirement. An investigation into Office of Elections maladministration of the lawful requirement of HAR §3-177-453 is warranted.

2. POST-ELECTION AUDITS

Hawaii Revised Statute § 16-42 was passed into law via Act 200 during the SLH of 2005. This statute identifies specific requirements for post-election pre-certification audits when using electronic voting systems, and is intended to ensure the accuracy of elections (correctly register or record and accurately count all votes cast) as required by HRS § 16-2.

HRS 16-42 requires that a voter verifiable paper audit trail be retained as the definitive record of the vote cast by the voter, and that electronic voting systems may be relied for providing tallies of the vote. If a post-election, pre-certification audit is performed to ensure that the tallies generated by the electronic voting system is equal to the hand tallies of the paper ballots.

In this report, the Office of Elections affirms that “Election audits confirm the election results.” And further explains (via an extensive 33 page appendix) the history of this statute and their interpretation of this legislation to implement a defective procedure that compares “ballot images” against the output of the electronic voting system and with a claim that this satisfies the statutory audit requirements.

Further in this report the Office of Elections continues to promote a defective procedure that was also presented during SLH 2023 in HB 132 and SB 180 which attempted to rewrite HRS § 16-42 for the use of “ballot images” for the post-election, pre-certification audit, and which was rejected by the legislature.

Simply put, an audit by hand counting “ballot images” from an electronic voting machine is absurd, and per HRS § 1-15(3) “Every (statutory) construction which leads to an absurdity shall be rejected.”

In the Implementing Report (page 26) of the Review of Statutes Related to Elections, the Office of Elections states “Additionally, at the time of the audit, following the election, the ballot images are locked so that they are only available for review. Specifically, no further action can be taken – including resolving voting errors or writing vote data for tabulation.” The application of this statute is mis-administered, not just on its face, but also because if an algorithm is used to interpret the voters marks on the ballot, and if the ballot images can be locked and unlocked – that defeats the presumption that the ballot image is a true representation of the voters vote and cannot be changed.

If ballot images can be locked or unlocked, are they or could they be manipulated?

As well, since the implementation of mail in voting, voters who use the mail or drop boxes are not able to inspect or correct the machine interpretation of their voting choices, and any presumption of a ballot image being a true copy of the voter’s vote is unverifiable.

The Office of Elections dedicates an entire appendix (32 pages) of this report explaining why it does not use the original paper ballots (Mark sense) or VVPAT (Voter Verifiable Paper Audit Trail) to perform post-election audits. NOTE: “a Voter verifiable paper audit trail” means the paper record that constitutes a complete record of ballot selections that is verified by the voter. The record may also be used to assess the accuracy of the voting machine's electronic record and to verify the election results.

HRS §16-42 (b) (3) and HAR § 3-177-762 clearly states that the Chief Election Officer is required to conduct a post-election, pre-certification audit on 10% of randomly selected precincts to verify that the electronic tallies generated by the electronic voting system equal the hand tallies of the paper ballots.

According to HRS § 1-14, words have their usual meaning when interpreting statutes. The Office of Elections confirms and acknowledges this requirement in the Implementing Report (page 7) of the report by stating that “Against this backdrop, an audit is meant to verify the electronic tallies against the hand tally of the paper ballots.” And further “In other words, to confirm that the marks on the ballots were read consistently with the administrative rules.”

Furthermore, in the Implementing Report (page 12), the Office of Elections acknowledges that “No electronic voting system shall be used in any election unless it generates a paper ballot or voter verifiable paper audit trail that may be inspected and corrected by the voter before the vote is cast, and unless every paper ballot or voter verifiable paper audit trail is retained as the definitive record of the vote cast.”

HAR § 3-177-752 Electronic voting systems; marksense voting system; disposition of marks. This administrative rule allows the use of algorithms to interpret marks on a ballot. Using the vote by mail or drop box process does not allow voters to inspect or correct the machine interpretation of their voting choices contrary to what is presented in the Implementing Report (page 12), and renders any “ballot image” unverifiable by the voter.

Additionally, the Office of Elections contradicts itself by contorting words from the statutes to redefine an electronic voting machine as a mechanical voting machine, and in an effort to circumvent the lawful statutory requirement.

Ultimately, during the conduct of the audit, the Office of Elections reportedly hand counts ballot images from a computer screen instead of hand counting the original paper ballots which amounts to an absurdity in the conduct of an “audit.” This maladministration is contrary to law and contrary to sound

audit procedures that financial institutions would use. The paper ballots are the only definitive record of the votes cast by the voter but they are not being used in the post-election audit.

In the Implementing Report (page 7), the Office of Elections states that “any audit of results is focused on confirming how a properly functioning voting and vote counting system would count ballots. Given this, objective evidence that the system was not operating properly would need to be presented, to require additional auditing to occur.” This is a perplexing claim. In order to support this statement, an audit would be required to determine how the original paper ballots were actually counted by the electronic voting machine to ensure that they were functioning properly, and as the statute requires.

Ultimately, original Paper Ballots must be used for audits and recounts. All races and questions on the paper ballots need to be counted to validate electronic results. Voter confidence is shaken because the Office of Elections will not use the original paper ballots or Voter Verified Paper Audit Trail while conducting audits even though they claim in the Implementing Report (page 7) that, “Against this backdrop, an audit is meant to verify the electronic tallies against the hand tally of the paper ballots. In other words, to confirm that the marks on the ballots were read consistently with the administrative rules.” Conducting audits by hand counting ballot images on a computer screen is absurd and needs to be investigated immediately.

Auditing Ballot Batch Reports: In the Implementing Report (page 28) the Office of Elections states that “In recognition that no process is foolproof and with concerns with reviewing ballot images, election officials compare batches of the physical ballots to the hand tallies created from the ballot images to confirm the accuracy of the voting system.” This is effectively a shell game. Auditing ballot batches individually does not allow cross referencing. If ballot batch reports are going to be used for audits, then all the ballot batch reports must be made available to the public to be cross referenced. Following the 2022 election, ballot batch reports were requested so they could be cross referenced, but they were not provided by the Office of Elections.

HAR § 3-177-750 Electronic Voting System; documentation of overages and underages. This administrative rule states that “any overages or underages in any district shall be documented.” This cannot be accomplished without counting physical Paper Ballots. For example, there was a 3379 (10%) vote count discrepancy in Kauai’s 2020 Election between the paper and electronic counts. This was not reported.

With this extensive list of discrepancies, an investigation into the Office of Elections maladministration of the lawful requirement of HRS §16-42 and HAR § 3-177-762 is warranted.

3. PRE-ELECTION AUDIT PROCEDURES AKA LOGIC AND ACCURACY TEST

Will counting test ballots according to the procedures laid out in the counting center manual Detect Fraud, Hacking, or Mistakes? The Office of Elections states on its website that these tests will detect if Hacking or Fraud has occurred. Therefore, the complainant proposes asking for testimony from qualified cyber security experts to determine if hand counting test ballots in the first ballot batch to be scanned is an adequate procedure to detect if hacking or fraud has occurred. There is no actual inspection of the machine or its algorithms. At a very minimum the positioning of the test ballots should be random. Elections should have the same controls as Financial Institutions. The efficacy of these tests should be investigated.

4. 2020 ELECTION HAD MAJOR AUDIT DISCREPANCIES

In the Implementing Report (page 18), the Office of Elections states “The 2020 Election audits confirmed the accuracy and integrity of the results. No discrepancies with the ballots or miscounting or malfunctioning were identified. Specifically, for the 2020 General Election, audits were conducted in each County at each counting center in the presence of Official Observers. The audits were certified before the deadline to file an election contest with the Hawaii Supreme Court.”

It was discovered after the deadline to file a case with the State Supreme Court that the County of Kauai had a voting discrepancy between the paper and electronic ballot counts of over 10% in the 2020 General Election. The audit practices used by the Office of Elections and County of Kauai did not detect the discrepancies. Chain of custody documentation was not kept.

The County of Kauai counted 3379 fewer ballots than the Office of Elections reported counting, i.e.; 3379 ballots appeared at the state counting center that were not recorded by the county elections office on Kauai. Had actual Paper Ballots or VVPAT been used instead of ballot images during the required audit this discrepancy could have been detected. Furthermore, the post-election audit was not performed or witnessed by anyone on Kauai. Additionally, the Oahu audit forms were signed but the rest of the form - Date, Time, and Precincts were blank. This further example of the Office of Elections maladministration of chain of custody requirements needs to be investigated.

5. HAVA ACT REQUIREMENTS

HAVA Requirement: Produce a permanent paper record with manual audit capacity. Paper ballots are purposefully not used in Post Election Manual Audits and Recounts.

HAVA Requirement: Ensure that any notification to the voter maintains the privacy, secrecy, and independence of the voter's ballot. In the Implementing Report (page 19) on Review of Statutes, the Office of Elections details the presence of a unique ballot Identifier on all ballots.

The Office of Elections states: “The unique ballot identifier is not shared by the voting system vendor with the mailing house vendor that mails out the ballots to individual voters. Given this, there is no master list or way to associate a specific "Unique Ballot Identifier" with a specific voter meaning the secrecy of voting is preserved”. However, in the Implementing Report (page 5), the Office of Elections contradicts itself by establishing that, “the voting system contract in 2022 incorporated the mailing house services associated with elections by mail.” The Elections Commission needs to investigate if having a unique ballot identifier could expose the privacy and secrecy of the voter.

HAVA Requirement: Section 301 State recounts shall be done by Hand Counting Paper Ballots (iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

The Office of Elections uses the voting machines to perform recounts in violation of the HAVA act. Why have an audit capacity for paper per HAVA that is not used?

6. OFFICIAL OBSERVERS MAY CONDUCT THEIR OWN AUDIT

The Office of Elections Implementing Report (page 7) states that “Official Observers, pursuant to HAR §3-176-102 (a) (2) may conduct their own election audit.” Does the Office of Elections in fact allow official observers to conduct their own audit?

7. REPLICATING THE COUNTING OF ORIGINAL VOTING SYSTEM

The Office of Elections states in the Implementing Report (page 7) that “At all times, one strives to replicate the counting by the original voting system.” Further, the Office of Elections states that “[b]allots that were marked for use by a marksense ballot voting system, will be counted in accordance with those rules associated with that system to the extent reasonably possible. Any hand count of marksense ballots will not utilize any statute or rules associated with the paper ballot voting system, as those marking instruction and vote disposition rules are uniquely different from those statutes and rules associated with other voting systems.”

If a paper ballot is the ballot read by the Marksense ballot voting system, why are there different rules for how to read this ballot? Marksense ballots are simply the original paper ballots filled out by the voter. Why does the Office of Elections specify different methods to count a paper ballot?

All ballots should be counted pursuant to HRS § 16-25 Order and method of counting for paper ballots, wherein “Each ballot shall be counted and finished as to all the candidates thereon before counting a second and subsequent ballots.” How could this method produce different results?

Can the algorithm in different machines produce different results? Any method of counting should produce the same result. This disparity in counting procedures for counting ballots also needs to be investigated.

8. EARLY COUNTING HRS §11-108

In the Implementing Report (page 16): According to the Office of Elections, Early Counting is allowed up to 18 days prior to the election, “provided that any tabulation of the number of votes cast for a candidate or question appearing on the ballot, including a counting center printout or other disclosure, shall be kept confidential and shall not be disclosed to the public.”

Does early counting tabulation unnecessarily risk disclosure of election results?

9. SIGNATURE VERIFICATION

Signature verification procedures and criteria are identified in HAR § 3-177-652, and per HAR § 177-757(b) “The official observers shall observe the processes within the counting center and shall report any changes or deviations from the rules or procedures to the chief election officer, clerk in county elections, or designated representative. The observers shall also participate in all certifications that may be required by the chief election officer, clerk, or designated representative.”

Election observers were allowed to “watch” the signature verification process on Kauai during the 2022 election, however, mismatched signatures were reviewed behind closed doors where the majority were approved. Is the criteria for signature verification being followed? Why were observers not allowed to observe this process?

10. IMPACT OF CERTIFICATION TIMELINE

The Office of Elections states in the Implementing Report (page 31) that “the certification of the results impacts the dates the elected candidates take office.” During the 2022 general election the inauguration of the governor and lieutenant governor occurred prior to certification of the election, which was actually certified 11 days after the inauguration.

How does certification affect the dates that elected candidates take office when both the governor and lieutenant governor were sworn in before the election was certified?

11. ACT 136 MAIL IN VOTING

ACT 136 “A Bill for an Act Relating to Elections” implemented vote by mail during the 2019 Hawaii Legislative Session. In the ACT, the legislature stated that “The legislature finds that an increasing number of Hawaii voters are submitting their votes by mail” and that “(in 2014)...eighty-three per cent of those voters did so through a mail-in absentee ballot.”

In reviewing the Office of Elections open-source election data, absentee ballot submission has actually paralleled the increase in voter registration in the state, and in the 2014 cited statistic only 26.8% (not 83%) voted by mail-in absentee. Disappointingly, the legislature has used incorrect statistics and a proportional “increase” in votes by mail to justify a radical departure from more than sixty-two years of in-person voting in Hawaii.

The legislature has used ‘early voting’ as the primary reason for the shift to vote by mail, and through the expansion of ACT 182 of 2018 Legislative Session which established a pilot program for 2020 primary and general elections to be conducted by mail for counties with populations less than 100K; ACT 136 expanded this program so that mail in voting would be conducted state wide beginning in 2020.

The legislature stated in ACT 136 that “Expanding this program throughout the State would significantly reduce the logistical issues related to conducting elections at polling places.” And required the Office of Elections to submit a report to the legislature before the convening of each regular session (from 2020 through 2025) regarding the implementation of the election by mail system BUT with no stated accountability metrics.

Factually, 2022 was the second vote by mail election year, yet had the lowest registered voter turnout on record (48.7%). As well, the 2022 election was 22% (\$1,431,730) more expensive than the last in-person voting election. Worse, pursuant to the provisions of ACT 136, these implementation expenses were prorated across the counties, and Oahu, Kauai, Maui, and Hawaii have absorbed a \$2,863,460 increase in election costs in 2020 and 2022 over in-person voting, and with no increase in voter participation.

Further, does voting by mail discriminate against those that do not trust placing their ballot in a drop box or mailboxes and want to vote in person?

During the past two vote by mail elections, there were many complaints about the lack of voting service centers. There were long lines at voting service centers and long commutes getting to the limited number of in person voting centers, i.e.; Kauai had only one voting service center in 2020 and 2022. Also

on Kauai, during the 2022 Primary, many voters were stuck in traffic due to tree trimming blocking one lane of a two-lane highway.

Does ACT 136 unfairly discriminate against communities with limited mail access, especially on the Big Island of Hawaii? This specifically includes but is not limited to Hawaiian Paradise Park and Ocean View Estates.

Is the Office of Elections providing “secure, accessible, and convenient election services to all citizens statewide” through their implantation of Act 136?

The efficiencies purported through implementation of vote by mail have not been realized in either of the 2020 or 2022 vote by mail elections, and the Office of Elections continues to promote and implement this radical voting process with little oversight and no accountability.

Given these statistics, an investigation into Office of Elections maladministration and inefficiencies associated with the implementation of ACT 136 is warranted.

CONCLUSION:

The people of Hawaii are not counting our vote in our elections - a company from the mainland is - and the people have no way of knowing the result they are producing are accurate results of the election. Every effort by the people to ensure the accuracy of elections pursuant to statute has been thwarted by the Office of Elections and as evident through the maladministration of statues as claimed and stated in this Implementation Report. Further, the implementation of vote by mail has created an enormously complex voting system with an extended timeline (what was once conducted in one day now lasts up to six weeks), increased cost, and has done little to enhance voter participation or confidence in the voting process.

Notice is provided through this complaint as to knowledge of this maladministration; wherein violations exist per HAR § 3-170-6, and from which the Elections Commission shall investigate this complaint per HAR § 3-170-9 and take appropriate corrective action pursuant to HAR § 3-170-10.

From: [Ralph Cushnie \(EC\)](#)
To: [Bueno, Nedielyn I; OE.Elections](#)
Subject: [EXTERNAL] Written Testimony
Date: Thursday, April 11, 2024 6:37:44 AM
Attachments: [letter to Stella Kam 3.27.24.pdf](#)

Hi Nedielyn please add this to written testimony for next weeks meeting.

27 March 2024

Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

Deputy Attorney General Kam,

On March 15th and 16th, I sent emails to you requesting information and counsel about Election Commission activities.

As you may recall, you stated during the February 20th Elections Commission meeting, that the Deputy Attorney General acts as the Elections Commission attorney and that we are able to speak to you.

This is now my third request to you for counsel.

As a member and appointed commissioner of the Elections Commission, could you please advise me on the six items listed below:

- 1) What is the proper method to get communications distributed amongst the Elections Commission in accordance with HAR 3-170-5?
- 2) How as a commissioner get confirmation that all the commissioners have received communication that was intended to be shared amongst the commission?
- 3) Could you please share all the communications since you have been assigned to the Elections Commission between you and the Office of Elections, and between you and the Chair, with the rest of the commission?

Knowing the content of the discussions you are engaged in with the Chief Elections Officer and the Chair will help all the commissioners better perform our duties faithfully and as is required by the Attorney General's office per HRS 28-4.

4) I would also like to know if it is your opinion that the regularly scheduled commission meeting held on March 19th qualified as a special public hearing as required by HRS 11-7.5(6) and was properly noticed per HRS 92-3 and HRS 92-7.

You indicated with your comments to the commission during the meeting that this meeting wasn't a hearing, and as is required by the statute. As you know, the discussion on the reappointment of Mr Nago was only annotated in the agenda as an executive session item.

5) Did the regularly scheduled Election Commission meeting on March 19th meet the requirements for a special public hearing per HRS 11-7.5(6), and for an open meeting despite its listing as an executive session agenda item?

6) Also, as you may recall, during the March 19th Election Commission meeting I requested that you provide your counsel in writing as to the restriction you stated on not allowing the commission to question Mr Nago in public. I believe your counsel was confusing to the commission, and both Commissioner Papalimu and myself requested you provide this counsel in writing, and with the law that states we could not question Mr Nago in public during this meeting in accordance with HRS 11-7.5(6).

Last, the timing and context of your comments beg the question as to whether your counsel is neutral to the commission, or if your advice is being provided in defense of the Chief Elections Officer and the Office of Elections.

Please share this letter with the entire commission and with your response.

Thank you for your kind attention to these questions.

Respectfully,

A handwritten signature in blue ink that reads "Ralph Cushnie". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping underline.

Ralph Cushnie

From: [Ralph Cushnie \(EC\)](#)
To: [OE.Elections](#); [Bueno, Nedielyn I](#)
Subject: [EXTERNAL] Place of Deposit Collection Procedure
Date: Thursday, April 11, 2024 11:25:03 AM
Attachments: [PROCEDURE Place of Deposit Collection v1.1.pdf](#)

Hi Nedielyn please put this in written testimony.

PLACE OF DEPOSIT COLLECTION PROCEDURE



ELECTIONS DIVISION
OFFICE OF THE COUNTY
COUNTY OF KAUA'I

Revised June 26, 2022, v1.1

Disclaimer

This document is intended as a reference source only and should not be construed as the authority for the administration of elections or constituting legal advice.

Readers should consult the Hawai'i Revised Statutes and other sources for a complete and legal basis of the law or seek assistance from a licensed private attorney.

While every effort was made to keep this document up to date, if any item or section is outdated, the outdated material shall not affect other items or sections of this document that can be given effect without the outdated section or item, and to this end the sections of this Manual are severable.

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1 OVERVIEW

1.1 Terms and Acronyms.

Americans with Disabilities Act or **ADA** means the Americans with Disabilities Act of 1990 with amendments.

Ballot Dropbox or **Dropbox** means the apparatus set up by the County Clerk for receiving and securing voted ballots pursuant to HRS § 11-109.

Ballot Envelope means the envelope containing a voter's voted ballot.

County means the County of Kaua'i, State of Hawai'i.

County Clerk or **Clerk** means the County Clerk of the County of Kaua'i, State of Hawai'i.

DOJ means the U.S. Department of Justice.

Dropbox Late Invalid Envelope or **DLIE** means the envelope develop to secure ballots there were left outside a locked Dropbox.

Dropbox Locker or **DL** means a volunteer Election Day official whose responsibility is to lock the Dropbox at the close of polls on Election Day.

Elections Administrator or **EA** means the Elections Administrator of the Elections Division, Office of the County Clerk, County of Kaua'i, State of Hawai'i.

HAR means Hawai'i Administrative Rules.

HRS means Hawai'i Revised Statutes.

Place of Deposit or **POD** means the location designated by the County Clerk for the placement of a Ballot Dropbox pursuant to HRS § 11-109.

Staff means employees of the Office of the County Clerk, County of Kaua'i.

State means the State of Hawai'i.

Volunteer means an individual from the public assisting with an election process.

Watcher means an individual appointed by a political party pursuant to HRS § 11-77 to watch an election process.

1.2 Authority.

1.2.1 The Office of the County Clerk through its Elections Division is authorized to administer all official elections conducted in the County of Kaua'i, State of Hawai'i pursuant to:

- (1) U.S. Constitution;

- (2) Help America Vote Act of 2002 (HAVA);
- (3) Hawai'i State Constitution;
- (4) Hawai'i Revised Statutes;
- (5) Hawai'i Administrative Rules;
- (6) Charter of the County of Kaua'i; and
- (7) Kaua'i County Code 1987 as amended.

1.2.2 Specifically, the Office of the County Clerk is responsible for conducting "*...all elections held within the county pursuant to this charter, the laws of the State of Hawai'i or the United States of America.*" Section 5.01 (B) (4) of Article V of the Charter of the Kaua'i County. Emphasis added.

1.2.3 Additional information is available on the State Office of Elections webpage at: <https://elections.hawaii.gov/resources/election-laws/>

1.3 Organization.

1.3.1 The County Clerk serves at the department head for the Office of the County Clerk, which is comprised of the Council Services and Elections Divisions.

1.3.2 The County Clerk delegates oversight of all Federal, State, and County elections conducted in the County of Kaua'i to the Elections Administrator.

1.3.3 The EA serves as the division head for the Elections Division and oversees all election Staff and Volunteers in the County. The EA reports directly to the County Clerk.

2 PERSONNEL

2.1 Staff.

Staff shall be responsible for maintaining, deploying, and retrieving Dropboxes from the field, and shall be the only individuals authorized to collect ballots pursuant to Hawai'i law and procedures described in the document.

2.2 Dropbox Lockers.

Dropbox Lockers are members of the public who reside in the general area where a Dropbox is located and are only responsible for locking the Dropbox at the close of polls on Election Day.

2.3 Watchers.

A Watcher is a Volunteer from the public who is appointed by a political party to watch an election process. A Watcher shall serve in a purely observational capacity, shall have no authority over the process that they are watching, and shall

serve at no cost to the County or State. The absence of a Watcher shall not be cause for delaying or rescheduling any planned process.

3 PLACES OF DEPOSIT

3.1. Locations.

3.1.1 Places of Deposit (POD) shall be established in locations which are commonly known to area residents. The list of current PODs is depicted in Appendix 6.1.

3.1.2 The placement of Droboxes shall be in a visible location which is accessible pursuant to the DOJ's Americans with Disabilities Act Checklist for Polling Place.

3.2 Dropbox Deployment.

3.2.1 Dropboxes shall be deployed at approximately the same time that ballots are initially mailed to voters.

3.2.2 Deployment may be staggered to accommodate logistical or location specific issues.

3.2.3 Dropboxes shall be secured to a fixed object at each Place of Deposit.

3.3 Drobox Maintenance.

3.3.1 Prior to deployment Dropboxes shall be examined to ensure that the exterior and interior of the unit is clean.

3.3.2 Locks, doors, and the envelope chute shall be examined to ensure that they are clean, clear of obstruction, and functioning properly.

3.3.3 Dropboxes shall be examined and cleaned at every ballot collection.

3.3.4 Damaged Dropboxes shall not be deployed. A Dropbox damaged in the field shall be removed from service and a report shall be filed with the Kaua'i Police Department, if applicable.

3.3.5 A damaged Dropbox shall be replaced as soon as possible if a spare is available and an announcement shall be issued to inform the public of the temporary or permanent unavailability of the POD as applicable.

3.4 Dropbox Retrieval.

3.4.1 Staff shall retrieve and transport Dropboxes back to the Elections Division as soon after the election as practicable.

- 3.4.2 Retrieval may be staggered to accommodate logistical or location specific issues.

4 BALLOT COLLECTION

4.1 Documentation.

- 4.1.1 A Place of Deposit Collection Record form (Form) shall be completed to document the collection of ballots from each Dropbox. A sample of the Form is depicted in Appendix 6.2.
- 4.1.2 Staff shall be responsible for completing applicable items of the Form in ink. The field count of ballots from each Dropbox shall be recorded in the Note(s) section on the upper portion of the Form.
- 4.1.3 Watchers, if present, may confirm that the information recorded on the Form is correct by initialing in the Note(s) section on the upper portion of the Form.
- 4.1.4 The ballot count recorded in the No. Envelopes field in the lower portion of the Form shall be the official count of ballots collected from the Dropbox.

4.2 Collection Process.

4.2.1 Staff shall be responsible for:

- (1) Removing all ballots and confirming that the Dropbox is empty;
- (2) Securing ballots in a transport containers per procedure;
- (3) Examining the Dropbox to ensure it remains secured to the fixed object and is in proper working order; and
- (4) Ensuring the ballot bin door is locked after ballots are removed.

- 4.2.2 Prior to Election Day any voter appearing at the Dropbox before the transport container is sealed shall be allowed to place their ballot in the container.

4.3 Transport Container Security.

- 4.3.1 A uniquely numbered wire hasp seal shall be properly affixed to the transport container to prevent it from being opened without cutting the seal or damaging the container.
- 4.3.2 Upon completion of the Form, the white (original) copy shall be placed in the clear pouch affixed to each transport container and the yellow (NCR copy) shall be sealed inside the container with the ballots.

- 4.3.3 When collecting ballots, transport vehicles shall:
- (1) Be locked when occupants exit the vehicle to collect ballots and shall not be left unattended for prolonged periods of time;
 - (2) Proceed directly from one Dropbox to the next using the most direct route of travel possible; and
 - (3) Only stop at Dropbox locations and engage in functions relevant to the secure collection and transport of ballots to the Elections Division.

4.4 Processing at Election Division.

4.4.1 Staff shall document the receipt of transport containers on the White (original) copy of the Form by:

- (1) Recording the container arrival time in the Time ARRIVED field;
- (2) Confirming that the seal no. used to secure the container and seal no. recoded on the White copy of the Form match;
- (3) Cutting and removing the seal and taping it in the designated area;
- (4) Removing and counting the number of envelopes in the container and recording the number in the No. Envelopes field; and
- (5) Initialing in the Staff Initials field.

4.4.2 The number of ballots collected from each Dropbox shall be entered into a spreadsheet or similar document for future reference.

4.4.3 The White (original) and Yellow (NCR copy) of the Form shall be filed together for future reference.

4.4.4 Ballots collected from each Dropboxes shall be kept together until ballots are manually sorted into districts and precincts.

5 ELECTION DAY

5.1 Personnel.

5.1.1 Two (2) Election Staff.

5.1.2 Seven (7) Election Day volunteers.

5.1.3 Watchers, if any.

5.2 Logistics.

- 5.2.1 Dropboxes on the island shall be divided into two (2) service areas: Kōloa to Waimea and Waipouli to Hanalei. (Office Staff shall be responsible for servicing the Dropbox in the front of the Elections Division.)
- 5.2.2 Staff shall be responsible for collecting ballots from each service area.
- 5.2.3 A Dropbox Locker shall be assigned to each Dropbox.
- 5.2.4 Staff and Dropbox Lockers shall be provided with the keys for their assigned Dropbox ballot chute.
- 5.2.5 Staff shall be provided with the ballot box keys for all Dropboxes in their service area.

5.3 Close of Polls.

- 5.3.1 All Staff and Dropbox Lockers shall use the time at <https://time.gov/> and shall be at their assigned Dropbox prior to the close of polls at 7:00 p.m. on Election Day.
 - (1) A Staff person shall be assigned to each of the last Dropboxes at the extreme ends of the island.
 - (2) A Dropbox Locker shall be at all other Dropboxes.
- 5.3.2 At the close of polls, Staff and Dropbox Lockers shall position and lock the Dropbox chute plate into the ballot chute to prevent additional ballots from entering the Dropbox. A voter appearing at the Dropbox before the ballot chute is locked shall be allowed to place their ballot in the Dropbox.
- 5.3.3 After properly installing and locking the ballot chute, Dropbox Lockers shall not under any circumstances reopen the Dropbox and shall immediately leave the area.
- 5.3.4 Staff collecting ballots shall only travel directly between Dropboxes in their assigned service area and shall collect ballot pursuant to Section 4.
- 5.3.5 Ballots left by voters who show up at the Dropbox while ballots are being transferred into the transport container or ballots found outside a locked Dropbox shall be deemed late invalid and shall not be counted.
 - (1) Late invalid ballots shall not be comingled with valid ballots that are placed in the Dropbox prior to the close of polls on Election Day.

- (2) The quantity shall be recorded in the Note(s) field in the upper portion of the Place of Deposit Collection Record form.
- (3) Information on a Dropbox Late Invalid Envelope (DLIE) shall be recorded to document the late ballots and the corresponding late ballots shall be secured inside.
- (4) The DLIE shall be sealed inside the corresponding transport container.

6 APPENDIX

6.1 Place of Deposit Locations

NO.	LOCATION
1	Hanalei Neighborhood Center
2	Princeville Library
3	Kīlauea Neighborhood Center
4	Waipouli Shopping Center
5	Elections Division
6	Kōloa Neighborhood Center
7	Kalāheo Neighborhood Center
8	Hanapēpē Neighborhood Center
9	Waimea Neighborhood Center

6.2 Place of Deposit Collection Record

PLACE OF DEPOSIT COLLECTION RECORD	
Date	Location
Time ARRIVED	Time DEPARTED
Inspection Check List <input type="checkbox"/> Secured to fixed object with wheels locked. <input type="checkbox"/> Exterior clean. <input type="checkbox"/> Interior clean and dry. <input type="checkbox"/> Collection bin clean and dry. <input type="checkbox"/> Deposit chute unlocked and free of obstruction. <input type="checkbox"/> Doors locked.	
Note(s)	Seal No.
	Staff Initials
Time ARRIVED	Seal No.
Note(s)	<i>Tape seal here on ORIGINAL COPY</i>
No. Envelopes	Staff Initials
Office of the County Clerk, County of Kaua'i WHITE Original / YELLOW Copy	

6.3 Dropbox Late Invalid Envelope.

DROPBOX LATE INVALID

YEAR:	ELECTION: <input type="checkbox"/> Primary <input type="checkbox"/> General
LOCATION: <input type="checkbox"/> Hanalei Neighborhood Center <input type="checkbox"/> Princeville Library <input type="checkbox"/> Kilauea Neighborhood Center <input type="checkbox"/> Waipouli Shopping Center <input type="checkbox"/> Elections Division <input type="checkbox"/> Kōloa Neighborhood Center <input type="checkbox"/> Kalāheo Neighborhood Center <input type="checkbox"/> Hanapēpē Neighborhood Center <input type="checkbox"/> Waimea Neighborhood Center	
DATE:	TIME:
NOTE(S):	
INITIAL(S):	

Document History

Date	Version	Comments
06/15/2020	1.0	Origination v1.0
06/26/2022	1.1	Clarifying language and enhanced documentation

From: [Ralph Cushnie \(EC\)](#)
To: [OE.Elections; Bueno, Nedielyn I](#)
Subject: [EXTERNAL] Written testimony regarding OE response to Complaint item 4
Date: Thursday, April 11, 2024 11:48:30 AM
Attachments: [Manual Audit Certification \(General\).PDF](#)
[RE Drop Box Info 2020 election .msg](#)

Hi Nedielyn please submit this to written testimony.

This email responds to OE Item number 4. Audit discrepancies.

Please see manual audit certification.

Audits done on Kauai were conducted by personnel from Oahu only. No observers or Kauai staff.

Audits done on Oahu were signed but forms were blank.

Email from County of Kauai. 3379 ballot count difference between the state and County.

Manual Audit Certification

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

11/03/2020 @ 9:15pm

1	05-04	2	07-04	3	AUDIT 1	4	AUDIT 2	5	RE	6	IT PERIOD CHARTER AMENDMENT #13
7		8		9		10		11		12	
13		14		15		16		17		18	

Audit Members (Print and Sign)

Mark Tomori	Mark Tomori
Regina Marie Ching	Regina Marie Ching
Richard Miyamae	Richard Miyamae
Jean Sanborn-Miyamoto Greer McKeen	Jean Sanborn-Miyamoto Greer McKeen
Robyn Riedel	Robyn Riedel
DOUGLASS CAPOGROSSI	Douglas Capogrossi
Roxanne M. Lawson	Roxanne M. Lawson
Lennart Lundstrom	Lennart Lundstrom
Susan I Weber	Susan I Weber
SHELLEY ISHIMOTO	Shelley Ishimoto

Manual Audit Certification

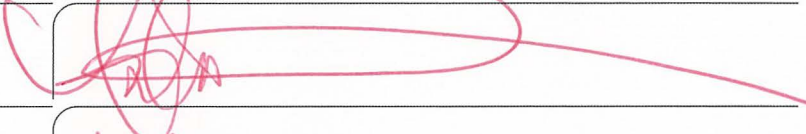



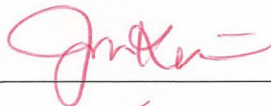

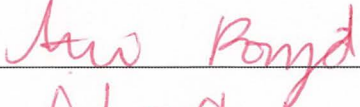

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

11/17/20 9:28a

1	01-09 HD1	2	02-03 CD2	3	05-04 Mayor	4	07-01 Q11	5		6	
7		8		9		10		11		12	
13		14		15		16		17		18	

Audit Members (Print and Sign)

AULII TENN	
Susan J Wilber	
 SCOTT NAGAO	
Jaime Kataoka	
Haun Keenem Keenem Keenem	
Annie Boyd	
Ruthie Ah Tee	

Manual Audit Certification

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

10:56a 11/13/20

1	District 12	2	3	4	5	6
7		8	9	10	11	12
13		14	15	16	17	18

Audit Members (Print and Sign)

Helen Tabaco	Helen Tabaco
MARIE McCABE	Marie McCabe
Gracey Gomez	Gracey Gomez
Doreen Kepaa	Doreen Kepaa
Scott NAWO	Scott NAWO
AULII TENN	AULII TENN
Raymond de Voz	Raymond de Voz
Keenan Laimanen	Keenan Laimanen
Annie Boyd	Annie Boyd
Ruthie Ah Hee	Ruthie Ah Hee

County: _____
 Work Area: _____
 Election: _____

Manual Audit Certification

Date & Time

11/3

Pursuant to the rules and regulations governing election, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

1	DIST 14 State Rep. Nashua Nakamura	2	DIST 16 Council Adelison Bulosan	3		4		5		6	
7		8		9		10		11		12	
13		14		15		16		17		18	

Audit Members (Print and Sign)

JOYE IRWIN	<i>JOYE Irwin</i>
LINDA GASPAR	<i>Linda Gaspar</i>
BLAINE AKAGI	<i>Blaine Akagi</i>
Diane Kam	<i>Diane Kam</i>
Erleen Spears	<i>Erleen Spears</i>

Manual Audit Certification

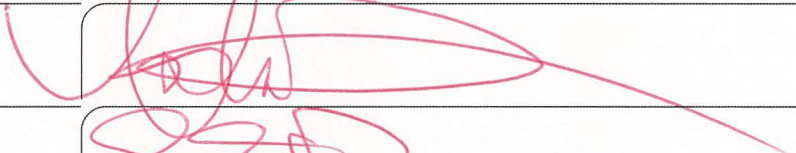
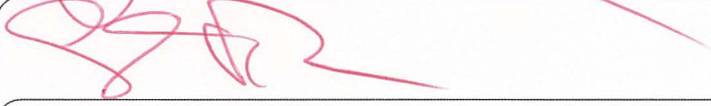
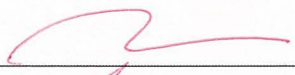

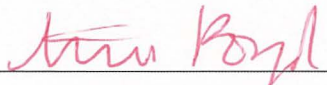
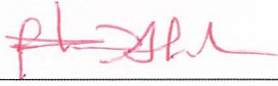
Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

9:50a 4/19/20

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

AVULI TENN	
SCOTT NAGO	
Raymund de Veger	
Keenan Kiriakos	
Annie Boyd	
Ruthie Ah Hee	

Manual Audit Certification

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

Kenyon Wong	50	Kenyon Wong
Marjie McWayte	51	Marjie McWayte
Sarah Murakami	51	Sarah Murakami
Kevin Wilson	51	Kevin Wilson
DEBORAH ARGUELLO	51	Deborah Arguello
VERANO RIBAC	51	Verano Ribac
Celeste Imamura	51	Celeste Imamura
Louise Cayetano	50	Louise Cayetano
Barbara J. Service	50	Barbara J. Service
ALBERT WONG	50	Albert Wong

Manual Audit Certification

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

NANCY HILDWEIN ⁵⁰	<i>Nancy Hildwein</i>
Liane Wong ⁵⁰	<i>Liane Wong</i>
Gisela G. Ferreira ⁵⁰	<i>Gisela G. Ferreira</i>
Janet Mason (49)	<i>Janet J. Mason</i>
Michael Cologan Jr (49)	<i>Michael Cologan Jr</i>
Kernon P. Ford ⁴⁹	<i>Kernon P. Ford</i>
Anna Misako Hudson (26)	<i>Anna Misako Hudson</i>
Blesilda Battista (26)	<i>Blesilda Battista</i>
Robbie Dingeman (26)	<i>Robbie Dingeman</i>
Amy Monk (26)	<i>Amy Monk</i>

Manual Audit Certification

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	18

Audit Members (Print and Sign)

Rene Morgan (18)	<i>Rene Morgan</i>
Gwen Kurashima (18)	<i>Gwen Kurashima</i>
Laurie Tom Clark (18)	<i>Laurie Tom Clark</i>

Manual Audit Certification

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

11/12/2020 12:35 pm

1	25	2	33	3	49	4		5		6	
7		8		9		10		11		12	
13		14		15		16		17		18	

Audit Members (Print and Sign)

Alice Adele Deming Chong Alice Adulidj Chong	Alice Adulidj Chong
Scott Nagao	[Signature]
Krista Uyeda	[Signature]
Jasmine Ko	[Signature]
Jaime Kataoka	[Signature]
Keenan Kiriimaka	[Signature]
Annice Boyd	Annice Boyd
Kimberly Yamada	[Signature]
Ruthie Ah Hee	[Signature]

Manual Audit Certification

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

11/12/2020 12:35 PM

1	25	2	33	3	49	4		5		6	
7		8		9		10		11		12	
13		14		15		16		17		18	

Audit Members (Print and Sign)

Manual Audit Certification

Date & Time

Pursuant to the rules and regulations governing elections, we, the undersigned, certify to have conducted a manual audit at the date and time stated and approve the same as being correct.

11/12/2020

12:35

1	25	2	33	3	49	4		5		6	
7		8		9		10		11		12	
13		14		15		16		17		18	

Audit Members (Print and Sign)

Anna Hudson	
Maxine Hawn	
Ellen Schroeder	
Katherine Kiyabu	
Connie Kalima	
John F. De Virgilio	
Mukulam Aman	
Amy Jampel	
WILLIAM METZGER	

From: [Ralph Cushnie](#)
To: [Lyndon Yoshioka](#)
Cc: [Jade Tanigawa](#)
Subject: RE: Drop Box Info 2020 election
Attachments: [DOC048.pdf](#)

Thank you, Lyndon, Per the General election Summary Report there were 2350 in person ballots cast. 2350 ballots cast in person plus 28,352 cast via drop box and mail totals to 30,702 ballots. The County of Kauai reported 34,081 ballots counted. Where did the extra 3,379 ballots come from? How were they received please provide chain of custody for those also.

Ralph Cushnie
Vice President

CUSHNIE CONSTRUCTION COMPANY, INC. Lic. # ABC-28974
Certified UDBE/HUBZone
Office: 808.332.9000 Ext. 4 • Cell: 808.645.0955
Fax: 808.332.9400 • Email: ralph@cushniecci.com
Mailing Address: P.O. Box 910 • Kalaheo, Kauai, Hawaii 96741
Physical Address: 4702 Lae Road • Kalaheo, Kauai, Hawaii 96741

From: Lyndon Yoshioka <lyoshioka@kauai.gov>
Sent: Wednesday, July 20, 2022 9:14 PM
To: Ralph Cushnie <ralph@cushniecci.com>
Cc: Jade Tanigawa <jtanigawa@kauai.gov>
Subject: RE: Drop Box Info 2020 election

Per your request the counts provided only represent envelopes received via drop boxes, not ballots counted. This response is late because I am at home recovering from COVID.

From: Ralph Cushnie <ralph@cushniecci.com>
Sent: Sunday, July 17, 2022 1:14 PM
To: Lyndon Yoshioka <lyoshioka@kauai.gov>
Cc: Jade Tanigawa <jtanigawa@kauai.gov>
Subject: RE: Drop Box Info 2020 election

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

attachment

Ralph Cushnie

From: Ralph Cushnie
Sent: Sunday, July 17, 2022 1:13 PM
To: Lyndon Yoshioka <lyoshioka@kauai.gov>

Cc: Jade Tanigawa <jtanigawa@kauai.gov>

Subject: RE: Drop Box Info 2020 election

Hi Lyndon, I have added the totals of the 2020 general election drop box counts. I came up with a total of 28,352. The online print out reports a total of 31,731. The difference is 3,379 ballots. Should these numbers line up?

Ralph Cushnie

Vice President

CUSHNIE CONSTRUCTION COMPANY, INC. Lic. # ABC-28974

Certified UDBE/HUBZone

Office: 808.332.9000 Ext. 4 • Cell: 808.645.0955

Fax: 808.332.9400 • Email: ralph@cushniecci.com

Mailing Address: P.O. Box 910 • Kalaheo, Kauai, Hawaii 96741

Physical Address: 4702 Lae Road • Kalaheo, Kauai, Hawaii 96741

From: Lyndon Yoshioka <lyoshioka@kauai.gov>

Sent: Thursday, July 14, 2022 12:42 PM

To: Ralph Cushnie <ralph@cushniecci.com>

Cc: Jade Tanigawa <jtanigawa@kauai.gov>

Subject: RE: Drop Box Info 2020 election

[See attached. We could not locate dropbox counts for the 2020 Primary Election.](#)

From: Ralph Cushnie <ralph@cushniecci.com>

Sent: Thursday, July 14, 2022 8:52 AM

To: Lyndon Yoshioka <lyoshioka@kauai.gov>

Cc: Jade Tanigawa <jtanigawa@kauai.gov>

Subject: RE: Drop Box Info 2020 election

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Good Morning, I am following up on this request to make sure you got it. My understanding is that chain of custody documents and records are public information. Please let me know if I am mistaken.

Ralph Cushnie

Vice President

CUSHNIE CONSTRUCTION COMPANY, INC. Lic. # ABC-28974

Certified UDBE/HUBZone

Office: 808.332.9000 Ext. 4 • Cell: 808.645.0955

Fax: 808.332.9400 • Email: ralph@cushniecci.com

Mailing Address: P.O. Box 910 • Kalaheo, Kauai, Hawaii 96741

Physical Address: 4702 Lae Road • Kalaheo, Kauai, Hawaii 96741

From: Ralph Cushnie
Sent: Tuesday, July 12, 2022 5:39 AM
To: Lyndon Yoshioka <lyoshioka@kauai.gov>
Cc: Jade Tanigawa <jtanicawa@kauai.gov>
Subject: RE: Drop Box Info 2020 election

Thank you

Ralph Cushnie
Vice President

CUSHNIE CONSTRUCTION COMPANY, INC. Lic. # ABC-28974
Certified UDBE/HUBZone
Office: 808.332.9000 Ext. 4 • Cell: 808.645.0955
Fax: 808.332.9400 • Email: ralph@cushniecci.com
Mailing Address: P.O. Box 910 • Kalaheo, Kauai, Hawaii 96741
Physical Address: 4702 Lae Road • Kalaheo, Kauai, Hawaii 96741

From: Ralph Cushnie
Sent: Tuesday, July 12, 2022 5:36 AM
To: Lyndon Yoshioka <lyoshioka@kauai.gov>
Cc: Jade Tanigawa <jtanicawa@kauai.gov>
Subject: Drop Box Info 2020 election

Good morning, Lyndon, could you provide me the statistics on drop boxes. I would like to know how many ballots were collected each day for each drop box. Also, could you provide the daily count of ballots that were received in the mail.

Ralph Cushnie
Board of Registration Kauai and Niihau

2020 GENERAL ELECTION DROPBOX COUNTS

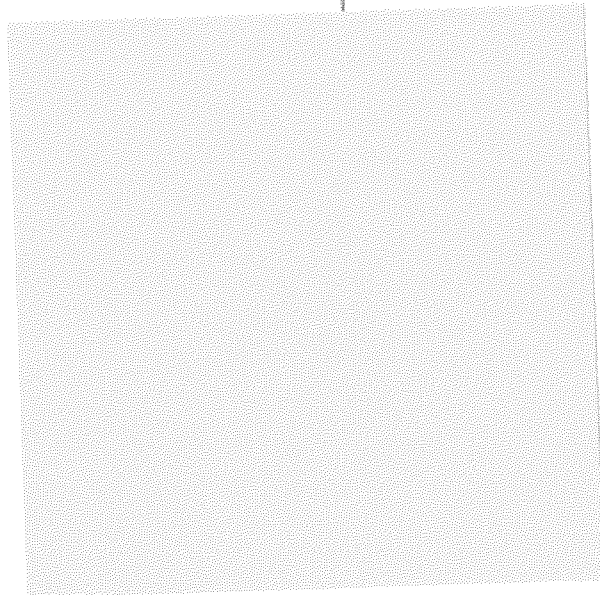
ELECTIONS OFFICE/WINDOW	821
ELECTIONS OFFICE/DROP BOX	1977
HANAIEI FIRE STATION	539
HANAIEI NEIGHBORHOOD CENTER	116
HANAPEPE FIRE STATION	238
KALAHEO FIRE STATION	492
KAPAA FIRE STATION	797
KILAUEA NEIGHBORHOOD CENTER	272
KOLOA NEIGHBORHOOD CENTER	363
USPS	20929
VOTER SERVICE CENTER	1573
WAIMEA NEIGHBORHOOD CENTER	235

28,352

GE Election 2020 31,731
report

3,379

Ballots



President and Vice President		
(D) BIDEN / HARRIS	21,225	62.3%
(R) TRUMP / PENCE	11,582	34.0%
(L) JORGENSEN / COHEN	303	0.9%
(G) HAWKINS / WALKER	254	0.7%
(AS) PIERCE / BALLARD	77	0.2%
(C) BLANKENSHIP / MOHR	56	0.2%
Blank Votes:	559	1.6%
Over Votes:	25	0.1%

U.S. Representative, Dist II		
(D) KAHELE, Kaiali'i (Kai)	19,880	58.3%
(R) AKANA, Joe	8,233	24.2%
(A) HOOMANAWANUI, Jonathan	812	2.4%
(L) TIPPENS, Michelle Rose	582	1.7%
(N) BURRUS, Ron	182	0.5%
(AS) GIUFFRE, John (Raghu)	35	0.1%
Blank Votes:	4,330	12.7%
Over Votes:	27	0.1%

State Representative, Dist 14		
(D) NAKAMURA, Nadine K.	7,983	69.7%
(R) MONAS, Steve	2,490	21.7%
Blank Votes:	978	8.5%
Over Votes:	2	0.0%

State Representative, Dist 15		
(D) TOKIOKA, James Kunane	7,712	66.7%
(R) YODER, Steve	2,880	24.9%
Blank Votes:	965	8.3%
Over Votes:	6	0.1%

State Representative, Dist 16		
(D) MORIKAWA, Daynette (Dee)	7,329	66.2%
(R) DES, Ana Mo	2,611	23.6%
Blank Votes:	1,121	10.1%
Over Votes:	4	0.0%

Hawaii Resident Trustee		
LINDSEY, Keola	10,817	31.7%
MANGAUIL, Lanakila	6,697	19.7%
Blank Votes:	16,562	48.6%
Over Votes:	5	0.0%

Molokai Resident Trustee		
ALAPA, Luana	8,385	24.6%
MACHADO, Colette (Piipii)	7,903	23.2%
Blank Votes:	17,789	52.2%
Over Votes:	4	0.0%

At-Large Trustee		
AKINA, Keii'i	9,153	26.9%
SOUZA, Keoni	9,118	26.8%
Blank Votes:	15,803	46.4%
Over Votes:	7	0.0%

Councilmember, County of Kauai		
Number To Vote For: 7		
CHOCK, Mason K.	18,599	7.8%
EVSLIN, Luke A.	17,371	7.3%
KANESHIRO, Arryl	16,556	6.9%
CARVALHO, Bernard, Jr.	16,351	6.9%
DeCOSTA, Billy	14,523	6.1%
COWDEN, Felicia	14,394	6.0%
KUALII, KipuKai L.P.	13,964	5.9%
BULOSAN, Addison	11,744	4.9%
WAIALEALE BATTAD, Jade T.	11,002	4.6%
JUSTUS, Ed	6,601	2.8%
DANDURAND, Mike	6,283	2.6%
NISHIMURA, Wally K.	6,213	2.6%
SIMBRE-MEDEIROS, Shirley R.	5,650	2.4%
FUKUSHIMA, Richard S.	5,039	2.1%
Blank Votes:	74,025	31.0%
Over Votes:	36	0.1%

KAUA'I: Negligence Claims		
YES	23,350	68.5%
NO	5,330	15.6%
Blank Votes:	5,394	15.8%
Over Votes:	7	0.0%

KAUA'I: Police Chief Qualifications		
YES	24,351	71.5%
NO	6,342	18.6%
Blank Votes:	3,378	9.9%
Over Votes:	10	0.0%

KAUA'I: Ethics Disclosures		
YES	26,398	77.5%
NO	3,402	10.0%
Blank Votes:	4,274	12.5%
Over Votes:	7	0.0%

KAUA'I: Prosecutor Vacancy		
YES	23,861	70.0%
NO	5,616	16.5%
Blank Votes:	4,595	13.5%
Over Votes:	9	0.0%

KAUA'I: County Engineer Qualifications		
YES	21,079	61.8%
NO	8,733	25.6%
Blank Votes:	4,244	12.5%
Over Votes:	25	0.1%

KAUA'I: Water Board Manager Qualifications		
YES	21,073	61.8%
NO	8,748	25.7%
Blank Votes:	4,251	12.5%
Over Votes:	9	0.0%

REGISTRATION AND TURNOUT		
.....		
GENERAL		
.....		
TOTAL REGISTRATION	47,253	
TOTAL TURNOUT	34,081	72.1%
MAIL TURNOUT	31,731	67.2%
IN-PERSON TURNOUT	2,350	5.0%

28,352

From: [Corinne S](#)
To: [OE.Elections](#)
Subject: [EXTERNAL] EC 4/16 meeting testimony attached for Corinne Solomon
Date: Thursday, April 11, 2024 12:02:50 PM
Attachments: [testimony Solomon Corinne EC 4.16.24.pdf](#)

Aloha,

Attached is my testimony for the 4/16/24 EC meeting.
I am unable to testify on zoom for this meeting.

Mahalo and have a great weekend,

Corinne Solomon

Corinne Solomon
April 11, 2024

Testimony on agenda item VI: Documented Ballot Security

Every ballot printed should be properly secured with Chain of Custody documentation and accounted for. From mail ballot printing based on the voter registration database, to ballot distribution from the private printing companies to the USPS facilities, then upon return to the counties via drop boxes, USPS mail, undeliverable ballots, replacement ballots, and the printed on-demand ballots at the Voter Service Centers.

A Washington state elections research group requested from their Secretary of State the list of registered voters that was sent to the private ballot printing company and noticed there was a 5% discrepancy from the voter registration list.

Wanting to do a similar analysis for Hawai'i, I requested from the Honolulu city clerk the list that was sent to the ballot printing company and was denied.

How were the Washington researchers able to do their analysis?

Here is a side-by-side comparison of data availability for the ballot printer reconciliation study:

	Washington	Hawai'i
Statewide voter registration database availability	Available via online request to the SoS ¹	Statewide list not available Must request county by county, and requests can only be fulfilled for "election purposes", which is in violation of the NVRA. Fine and possible jail time if data is used outside of vague definition of election purposes (see <i>Public Interest Legal Foundation vs Nago for this NVRA violation</i> ²)
Statewide voter registration database cost	free	Honolulu: \$750 Hawai'i county: \$100 Maui: \$100 Kauai: \$50 \$1000 total
Records requests for voter registration list sent to ballot printers	granted	denied

Hawai'i has some of the most prohibitive [public records laws in the country](#); notably as one of the most expensive states for the cost of public records, for the overly broad allowable interpretation of public records laws allowing for indiscriminate records denials, and a current OIP appeal wait time average of [795 days](#).

Most of my elections related public records requests are denied. The denial reasons are usually one of the following:

- 1) Frustration of a government agency
- 2) Critical infrastructure

Requests that are granted are often too expensive to fulfill.

These excuses are just that-excuses. How do I know this?

The “critical infrastructure” and “frustration of a government agency” denials are used by Hawai’i elections officials as a blanket excuse to deny records requests that are granted in other states.

Some data is even proactively put on other states’ elections websites. Why would these same critical infrastructure concerns not apply to other states? Or is it the case that Hawai’i elections officials are misusing the critical infrastructure and government frustration excuses to deny legitimate records requests?

Lack of transparency causes people to question the intentions of our elections officials as well as lose faith in our elections.

When there is a lack of transparency the minimum response from the citizens is doubt and mistrust: of our elections officials, elections processes, and election results.

When lack of transparency becomes the default year after year, conspiracy theories may form and flourish, and people’s frustration becomes palpable.

Perhaps the list of ballots printed by the private printing company perfectly matches the list of Hawai’i registered voters from the database. Or perhaps there is a discrepancy that can be explained with a legitimate reason, thus allaying doubts about the security and legitimacy of our ballots.

We will never know because of the lack of transparency from our elections officials. Instead the public is left to speculate and ask, “What are they hiding?”

Chief Elections Officer Nago and county clerks: Hawai’i’s people are going to continue to voice our concerns about Chain of Custody, elections processes, data reconciliation, etc. and unfortunately most likely default to a conclusion of mistrust of our elections processes and elections officials due to the lack of transparency. It is nothing personal against any of you. We know you are all hard working and dedicated and want secure elections. So do we. But we are collectively tired of the lack of transparency.

Elections Commissioners-I respectfully ask that you please consider requesting from the Chief Elections officer and the city and county clerks data that is denied to the residents of Hawai’i so that you may perform and publish your own analyses, starting with the ballot printing reconciliation data.

Mahalo for this opportunity to provide testimony,

Corinne Solomon
HD20 resident

1. <https://www.sos.wa.gov/washington-voter-registration-database-extract>
2. <https://publicinterestlegal.org/wp-content/uploads/2023/09/2023-09-21-filed-Complaint-dkt-1.pdf>

From: [Jamie Detwiler](#)
To: [Bueno, Nedielyn I](#)
Subject: [EXTERNAL] Re: Elections Commission Meeting - 4/16/24
Date: Thursday, April 11, 2024 5:08:51 PM
Attachments: [EC Testimony 4-16-24.docx](#)

Hawaii Elections Commissioners,

Please reference the attached Elections Commission Meeting Testimony for 4-16-24.

Respectfully,

Jamie Detwiler

On Wed, Apr 10, 2024 at 4:40 PM Bueno, Nedielyn I <nedielyn.i.bueno@hawaii.gov> wrote:
Aloha,

Attached please find the agenda for the next Elections Commission meeting on **April 16 @ 1:30pm**. It has been:

- Posted to the [State Calendar](#)
- Posted to the [OE website](#)

Thank you,

Nedielyn

Nedielyn Bueno
Voter Services
State of Hawaii, Office of Elections
(808) 453-VOTE (8683)

TESTIMONY
Hawaii Elections Commission
April 16, 2024

Aloha Chair Curtis and Members of the Hawaii Election Commission,

I am submitting testimony pertaining to agenda item V. Communications and Correspondence.

In response to Chair Curtis' request during the March 19, 2024, Hawaii Elections Commission meeting, I submitted copies of 2 letters sent to the Office of Elections by Certified USPS mail as well as in-person to the Office of Elections and Mr. Scott Nago in November 2022 and have not received a response from the OE and Mr. Nago as of this date. I have repeatedly stated this during previous EC meetings for the past 1 ½ years.

Thank you for listing my March 19, 2024, correspondence on today's meeting agenda.

When will I receive a response to my request for a hand counted paper ballot audit? My reason for an audit is outlined in my letter dated, November 14, 2022.

May I respectfully remind The Commission of HRS 16-42, Electronic voting requirements:

HRS 16-42

§16-42 Electronic voting requirements. (a) When used at primary or special primary elections, the automatic tabulating equipment of the electronic voting system shall count only votes for the candidates of one party, or nonpartisans. In all elections, the equipment shall reject all votes for an office when the number of votes therefore exceeds the number that the voter is entitled to cast.

No electronic voting system shall be used in any election unless it generates a paper ballot or voter verifiable paper audit trail that may be inspected and corrected by the voter before the vote is cast, and unless every paper ballot or voter verifiable paper audit trail is retained as the definitive record of the vote cast.

(b) The chief election officer may rely on electronic tallies created directly by electronic voting systems, in lieu of counting the paper ballots by hand or with a mechanical tabulation system if:

(1) The electronic voting system is subject to inspection, audit, and experimental testing, by qualified observers, before and after the election, pursuant to administrative rules adopted by the chief election officer under chapter 91;

(2) No upgrades, patches, fixes, or alterations shall be applied to the system through thirty days after the election;

(3) The chief election officer conducts 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, to verify that the electronic tallies generated by the system in those precincts equal hand tallies of the paper ballots generated by the system in those precincts; and

(4) If discrepancies appear in the pre-certification audits in paragraph (3), the chief election officer, pursuant to administrative rules, shall immediately conduct an expanded audit to determine the extent of misreporting in the system. [L 1970, c 26, pt of §2; am L 1973, c 217, §6(g); am L 1979, c 139, §12; am L 2005, c 200, §1; am L 2006, c 5, §2]

To my knowledge, HRS 16-42 (b)(3) was not conducted for District 37.

Thank you for this opportunity to testify.

Respectfully submitted,

Jamie Detwiler
2022 Hawaii House of Representatives Candidate, District 37

From: [R.Jauch](#)
To: [OE.Elections](#)
Subject: [EXTERNAL] Fwd: CEO
Date: Friday, April 12, 2024 10:04:57 AM
Attachments: [2024-02-21 Jauch - reappointment hearing for the Cheif Election Officer 2.pdf](#)

Chair, Commissioners, testifiers and concerned citizens,

The attached PDF dated Feb. 21 was posted under Comments and Correspondence, but it was not discussed or answered.

1. Did Scott Nago's contract expire?
2. Did he formally petition the Commission for re-appointment?

An expired appointment should not have been a re-appointment consideration. Candidates should have been interviewed. The CEO position would be elected from the finalists, by the Commission, as was the case when CEO Dwayne Yoshida stayed on as Interim CEO after rescinding his petition for reappointment until a "nation wide search" for candidates could be conducted. There were three finalists. Kevin Cronin was elected as the new CEO.

I am requesting the Commission's answers to the above questions be given during the public session of the upcoming April 16th meeting.

Regards,
Rosemarie Jauch
Kauai Signature Verification Observer

PS: The Chair would not recognize me during the last meeting as I had already given oral testimony. I was looking for clarification that members of the CCP are involved in Election Information Technologies. I request that the Commission verify or deny that testimony during the public session of the upcoming April 16th meeting.

From: [R.Jauch](#)
To: [OE.Elections](#)
Subject: [EXTERNAL] Chief Election Officer
Date: Wednesday, February 21, 2024 2:58:37 PM

Re: reappointment hearing

The question was posed during yesterday's meeting as to who would replace Scott Nago if he were not reappointed. It was not answered. If for any reason, the Chief Election Officer is not able to fulfill his duties, is there an individual trained to step in? Please advise.

The statement was also made about the timing of this reappointment hearing on the cusp of a presidential election. When should this evaluation have been conducted?

Be well,
RJ