



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782  
elections.hawaii.gov

SCOTT T. NAGO  
CHIEF ELECTION OFFICER

December 24, 2025

VIA EMAIL

Mr. Peter Bernegger & Election Watch, Inc.

RE: HAVA Complaint

Dear Mr. Bernegger & Election Watch, Inc.,

On September 29, 2025, you submitted to the Elections Commission a document framed as a complaint alleging violations of the Help America Vote Act of 2002 (HAVA).

The document indicated that you were the complainants and the respondents were the Elections Commission, "Chief Election Officer Michael Curtis," and the clerks for Hawaii, Maui, and the City and County of Honolulu. With that in mind, you sought "a formal hearing, comprehensive investigation, expedited review given the federal implications, and a final determination within 90 days or such other period permitted by law with Complainant's consent."

There are two main issues as it relates to your complaint. First, there is the issue of whether the Elections Commission is entrusted with the authority to conduct any administrative complaint process referenced in HAVA or if that authority rests with the Chief Election Officer unless clearly delegated by state law to the Elections Commission. The second issue is how to address the inherent conflict that exists in your complaint as it is against the Elections Commission, "Chief Election Officer Michael Curtis," who we assume you meant Chief Election Officer Scott T. Nago, and the clerks for Hawaii, Maui, and the City and County of Honolulu.

Issue 1 (Authority to Resolve HAVA Complaints)

As a starting point, Art. IV, § 3 of the Hawaii Constitution provides that "[t]he legislature shall provide for a chief election officer of the State, whose responsibilities shall be as provided by law and shall include the supervision of state elections." In effectuating this, the Legislature has passed a variety of laws outlining how elections are to be conducted and the roles and responsibilities of the Chief Election Officer and the county clerks. Title 2, HRS (Chapters 11-19, HRS).

The duties and responsibilities of the Chief Election Officer and county clerks are primarily summarized in HRS §§ 11-110(b)(1)(A) & (B). In regular elections, "[t]he counties shall be responsible for voter registration, absentee voting, voter service centers, places of deposits, and the mailing and receipt of ballots" and "[t]he State shall be responsible for the printing and counting of ballots." Additionally, HRS § 11-2 provides that the State is responsible for "public education with respect to voter registration and information."

Consistent with this, state election law is filled with specific references to the "chief election officer" and the county "clerk" reflecting their inherent duties and responsibilities. See Title 2, HRS, and Chapter 3-177, HAR.

Separate and apart from the actual performances of these duties and responsibilities, there is an Elections Commission that is addressed in a handful of statutes. HRS §§ 11-7 to 11-9. Its primary duties are to employ and to evaluate the performance of the Chief Election Officer. HRS § 11-7.5(4) and (5). As it relates to effectuating those duties and responsibilities, it has the ability to "[i]nvestigate and hold hearings for receiving evidence of any violations and complaints." HRS § 11-7.5(2).

However, this is distinguishable from the handling of a complaint filed pursuant to a procedure required by federal law. Specifically, HAVA requires a state-based administrative complaint process administered by the State. 52 USC § 21112(a)(1). For purposes of HAVA and various other federal laws, the Chief Election Officer in our state and the Secretary of State frequently in other states is considered the State for purposes of compliance with those laws, absent a specific state law to the contrary.

Consistent with this, on October 28, 2025, we informed you, with a copy to the Elections Commission, that the Elections Commission had no actual jurisdiction to decide alleged violations of HAVA and that it was not the proper venue for your complaint. Our position remains the same today. Specifically, it is the Chief Election Officer, as opposed to the Elections Commission, that has authority to address HAVA complaints brought pursuant to Section 402 of HAVA (i.e. 52 USC § 21112).

Issue 2 (Handling of HAVA Complaints)

Having said that, to the extent your complaint is considered to have been submitted to my office, the next issue is to determine how your complaint should be addressed. Pursuant to HAVA, “the State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period which begins on the date of the complaint is filed.” 52 USC § 21112(a)(2)(H).

As previously noted, your complaint is made against the Elections Commission, “Chief Election Officer Michael Curtis,” who we assume you meant Chief Election Officer Scott T. Nago, and the clerks for Hawaii, Maui, and the City and County of Honolulu. This framing of the complaint naturally raises a variety of possible conflict issues. Of note, your complaint could be seen as requesting this office to sit in judgment of itself or of the Election Commission.

In considering how other jurisdictions have handled such HAVA complaints, we would note that Wisconsin has indicated that it is appropriate for such complaints to be “disposed of without consideration” to address “the need to avoid conflicts associated with an adjudicative body deciding a matter brought against itself, similar to the provisions of law and ethics precluding a judge from presiding over a case filed against herself, or someone with personal or professional ties to her.” Specifically, it noted, in part, the following:

This communication is to inform you that the verified complaint you submitted is being disposed of without consideration by the Wisconsin Elections Commission (“the Commission”) because it names Deputy Administrator Robert Kehoe, Administrator Meagan Wolfe, individual Commissioners, and the Commission itself as the Respondents. It is the position of the Commission that a complaint against the Commission, against Commissioners in their official capacities, or against Commission staff, including the Administrator, warrants an ethical recusal by the body. The Commission’s position reflects the need to avoid conflicts associated with an adjudicative body deciding a matter brought against itself, similar to the provisions of law and ethics precluding a judge from presiding over a case filed against herself, or someone with personal or professional ties to her. The concept of recusal is well-established in published jurisprudence, and dates back at least to the early days of the Republic. See *Caperton v. A.T. Massey Coal Co., Inc.* 556 U.S. 868, 876 (2009) (quoting *The Federalist* No. 10, p. 59 (J. Cooke ed. 1961) (J. Madison)) (No one may “be a judge in his own cause, because his interest would certainly bias his judgement, and, not improbably, corrupt his integrity.”)

*Bernegger v. Kehoe, et al.* (EL 25-81) (Wisconsin Elections Commission).

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Our office likewise has decided that it is appropriate for your complaint to be “disposed of without consideration” to address “the need to avoid conflicts associated with an adjudicative body deciding a matter brought against itself, similar to the provisions of law and ethics precluding a judge from presiding over a case filed against herself, or someone with personal or professional ties to her.” *Id.*

Given this, this letter shall constitute a final determination with respect to your complaint. Specifically, it is a final determination in that we will be taking no further action on your complaint.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SCOTT T. NAGO', with a long horizontal flourish extending to the right.

SCOTT T. NAGO  
Chief Election Officer

STN:AS:nn  
OE-25-159

Enclosures

cc: Elections Commission  
Jon Henricks, Hawaii County Clerk  
Moana Lutey, Maui County Clerk  
Glen Takahashi, City & County of Honolulu Clerk