

From: [Wendell Elento](#)
To: [OE.Elections](#)
Subject: [EXTERNAL] Written Testimony for Wed's EC Meeting June 19, 2024
Date: Monday, June 17, 2024 1:32:54 PM
Attachments: [Written Testimony for June 19, 2024.pdf](#)
[EC Meeting 2024-02-20 Transcription.pdf](#)

Hello OE and Elections Commission,

Please add these two attachments to the written testimony part of our meeting this Wednesday. I also request that my May 16th submission be kept on too.

You can delete the transcription provided for the May 2024 EC meeting and use the updated one attached.

Mahalo All.

From Wendell Elento

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June 17, 2024

Chair Michael Curtis
State of Hawaii Election Commissions
Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

"I investigate hearings. Integrity is a matter of perception, there's no quantitative measures on that one."

—Chair Michael Curtis, April 21, 2024

Subject: Written Testimony by Wendell Elento for the Election Commission Meeting on June 19, 2024 at 1:30pm

Dear Chair Curtis,

Can you please add my testimony and its one attachment to the agenda for this upcoming Election Commission Meeting. I still would like to keep my written testimony dated May 16, 2024 also on the agenda please.

Hello Election Commissioners and our Office of Elections Team,

I would like to refocus on the important February 20, 2024 Elections Commission Meeting because of the February 28, 2024 deadline for the reappointment of the Chief Election Officer. I am re-submitting the Transcription for February 20, 2024 Election Commission Meeting; the most updated and accurate transcription of this EC meeting.

- I. **The February 20, 2024 Election Commission Meeting was not properly adjourned as the Adjournment was not Seconded and it required a majority vote.** Basic Robert's Rules of Order Newly Revised Definitions From 21:6 (RONR, page 222) states the following Standard Descriptive Characteristics for the privileged motion to Adjourn:
 1. Takes precedent over all motions...
 2. Is not applied to any motion, and no subsidiary motion can be applied to it.
 3. Is out of order when another has the floor.
 4. ***Must be seconded.***
 5. Is not debatable...
 6. Is not amendable.
 7. ***Requires a majority vote.***
 8. Can not be reconsidered...
- II. **Since the February 20th Election Commission Meeting was not Adjourned, quorum was still maintained even because none of the Election Commission members attending and leaving the meeting DID NOT DECLARE THE FACT that quorum is no longer present.** See Manner of Enforcing the Quorum Requirement, NONR, 40:12, page 331-332....Debate on a question already pending can be allowed to continue at length after a quorum is no longer present, however, until a member raises the point or point of order. Both actions were not done as members left the meeting without proper adjournment. The decision from this meeting can be subject to appeal.

40:12 When the chair has called a meeting to order after finding that a quorum is present, the continued presence of a quorum is presumed unless the chair or a member notices that a quorum is no longer present. If the chair notices the absence of a quorum, it is his duty to declare the fact, at least before taking any vote or stating the question on any new motion—which he can no longer do except in connection with the

permissible proceedings related to the absence of a quorum, as explained above. Any member noticing the apparent absence of a quorum can make a point of order to that effect at any time so long as he does not interrupt a person who is speaking. Debate on a question already pending can be allowed to continue at length after a quorum is no longer present, however, until a member raises the point. Because of the difficulty likely to be encountered in determining exactly how long the meeting has been without a quorum in such cases, a point of order relating to the absence of a quorum is generally not permitted to affect prior action; but upon clear and convincing proof, such a point of order can be given effect retrospectively by a ruling of the presiding officer, subject to appeal (24).

More Fatal Flaws to The February 20, 2024 Election Commission Meeting:

1. Per HRS 7-5 "Hold a public hearing on the performance of the chief election officer and consider the information gathered at the hearing in deliberations on the chief election officer's reappointment." This law mandates a public hearing. ***In accordance to DAG Kam, you cannot approve motions to not comply with State Law as DAG Kam reminded Commissioner Cushnie. DAG Kam was also in error of calling the February 20, 2024 meeting adjourned.***
2. The weakness of not using the complete transcript record of that February 20, 2024 meeting does not provide the correct context, decision making and actual actions taken by the Election Commission. Two valid truth points: the meeting was not adjourned correctly and that a declaration of lack of quorum or a point of order was not raised allowed the meeting to continue, correctly.
3. The minutes of this particular EC meeting is also being used in a lawsuit without the knowledge and agreement of the Election Commissioners. On a surface level, are we to ask if the Office of Elections, Chair Curtis, AG's Office and the Judiciary are colluding to deny any form of investigations to move forward as they are doing against the Dick's complaint; 1CCV-24-0000541? A FOIA needs to be requested for all communications of how Mr. Nago and Mr. Curtis decided to declare to DAGs that Mr. Nago was reappointed as CEO after the February 20, 2024 which clearly did not happen per my transcription of that meeting; as the last motion at the meeting shows clearly and is allowed per my RONR notes above; that Mr. Nago's Reappointment as Chief Election Officer did not pass.
4. Now looking at my last May 16, 2024 written testimony, for the last 10-years at least, you will see that there have been zero hearings, zero investigations and zero Judiciary actions to look into evidence-based election irregularities surfaced by so many. ***I can provide the actual transcripts of these evidence-based complaints to illuminate the seriousness of the lack of election integrity in Hawaii as exemplified in my enclosed transcription of the February 20, 2024.***

Respectfully Submitted,

Wendell A. Elento

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But what I like the biggest takeaway I want everybody to know is that the election security works in totality. So, when you take apart or when you look at each individual piece individually, it may not seem secure, but it's when you put all the layers upon layers and it works as you want to help the election security.

By Scott Nago, February 20, 2024 (Emphasis is mine)

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ELECTION COMMISSION MEETING; FEBRUARY 20, 2024 PART 1 **YouTube link:**

<https://www.youtube.com/live/hl4ec3yQJAc?si=AwyBqE5KH4s4tpAU>

Time stamp reflects the Time Stamp of the You Tube video. So 4:44 means 4 minutes and 44 seconds into the Youtube recording).

CURTIS (4:44): -Yeah, I think I got 1:30. I'd like to call the Election Commissions meeting February 20th at 1:30. The meeting is being recorded. All participants, except for the Commissioners will be muted, until we have public testimony. All the commissioners shall have their cameras on for the duration of the meeting. I'll like to call the meeting to order.

Ned, can you have roll call in determination of quorum.

NED (5:09): Yes chair.

Chair Curtis; Here

Commissioner Andrion; Aloha from Maui; Present

Commissioner Aquino; Present

Commissioner Cushnie; Here

Commissioner Kiguchi; Here

Commissioner Kuwada; Excused

Commissioner McAdam; I'm Here

Commissioner Papalimu; Present

Commissioner Takenaka; Here, sorry

Chair you have quorum.

CURTIS (6:02): Thank you. -Approval of the minutes of the January 16 2024. Meeting. A written summary on the video recording are online.

CURTIS (6:16): Is there a motion to approve the minutes of the last meeting.

CUSHNIE (6:21): I move to amend the minutes.

CURTIS (6:23): You correct the minutes with what?

CUSHNIE (6:25): I have several corrections but my understanding during the last meeting was we were not going to be doing summaries anymore.

CURTIS (6:33): The summary is the substitute for the written minutes.

CUSHNIE (6:40): It was my understanding that the board had to approve summary minutes.

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CURTIS (6:49): That's what we're doing.

CUSHNIE (6:50): What's that?

CURTIS (6:51): That's what we're doing now.

CUSHNIE (6:53): That they had to approve the writing of the summary and that they were not approved. The board is stated that they were going to stick with written minutes, but I'd like to amend the minutes as follows?

- At 2:42pm Chair Curtis asked that Commissioner Cushnie microphone be muted.
- At 3:08pm Deputy Attorney General Reese Nakamura stated that he represented the Office of Elections.
- During the vote on investigating chain of custody, Deputy AG Reese Nakamura advises the Commission against allowing Commissioner Cushnie to participate in the vote.
- Commissioner Cushnie did not recuse himself but he was prevented from voting.
- 3:24pm Commissioner Andrion requested that the conflict-of-interest dispute between Deputy AG Reese Nakamura and Commissioner Cushnie gets sorted out before the next meeting. Chair Curtis requested a written opinion from Deputy Attorney General on the conflict-of-interest concerns.
- That's all I have.

CURTIS (8:16): Thank you. Are there any other additions or corrections to the minutes?

ANDRION (8:22): Excuse me, I'm sorry. Commissioner Cushnie. Could you repeat the last last edition specifically who the chair is requesting a legal opinion from?

CUSHNIE (8:34): Chair Curtis requested a written opinion from the Deputy Attorney General on the conflict-of-interest concerns.

ANDRION (8:44): Okay, I think that part is incorrect. I rewatched our our our meeting and I believe Chair Curtis was going to actually seek out a legal opinion from the AG not the Deputy AG.

CUSHNIE (8:57): Okay. If that's what it is, then let's correct it to that.

ANDRION (9:00): But I agree with all the other amendments as well.

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CURTIS (9:05): Amendments or corrections I think he was reading the minutes and the only correction was the request was from Reese Nakamura to the AG was the correction of the minutes. I want to entertain a motion to receive the corrected minutes for the record.

CUSHNIE (9:26): I Second.

CURTIS (9:28): I can't make a motion or I don't make a motion so you can make the motion itself and somebody can second.

CUSHNIE (9:35): I believe I made the motion.

48:38

CURTIS (9:38): Okay. Thank you.

48:39

PAPALIMU (9:40): I'm so sorry. I'm raising my hand and it seems like nobody is noticing that. Commissioner Papalimu.

CURTIS (9:45): Yes ma'am.

PAPALIMU (9:47): I do have a question before we do this are we making a motion to accept the summary?

CURTIS (9:55): Yes, which is the substitute for the written minutes. The summary is essentially the written minutes.

PAPALIMU (10:02): But it is not the written minutes correct.

CURTIS (10:04): It is the written minutes.

PAPALIMU (10:07): We can't have both you can't have a summary and an actual written minutes.

CURTIS (10:11): Summary is in lieu of the recording. That records the operation of the elections commission. The summary verbalizes it and references the time stamp on the video.

PAPALIMU (10:30): Correct. I'm so sorry. My last meeting I attended. I believe the rules call for written minutes and not a written summary of minutes and I had questioned at the time the AG because he was saying that while we could work around those rules because we have a video. And I said I'm sorry. I was just given an oath of office and is that a suggestion that we break the rules? The rules require written minutes. And so I'm just want to make sure that if we're doing

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a motion to accept this current summary, that we are not making a motion to do away with the written minutes.

CURTIS (11:25): But let's let's remove the word summary because these are written minutes. And let's...it's not a summary. It's the minutes which is a distilled version of the video. It is the video record of the meeting. So rather than summary, let's say written minutes rather than summary. cause its essentially the minutes of the meeting that are in writing.

PAPALIMU (11:51): That would clarify this. So, if so, we would need a motion for a correction on that.

CURTIS (11:56): So, I would entertain a motion to amend the motion as currently on the floor of the approval of the written summary can become the written minutes of the January 16 meeting. And that would be an amendment to this one that's being voted on first.

CUSHNIE (12:14): Chair Curtis I have a point of Information.

CURTIS (12:16): Yes.

CUSHNIE (12:20): There's a summary on the website that was posted. But we were provided written minutes that were written out. So that's the confusion right now. Which one are we?

Which one are we approving what was posted on the website or the ones that we weren't given?

CURTIS (12:37): Aren't they the same?

CUSHNIE and PAPALIMU (12:39): They are not.

PAPALIMU (12:43): A summary was put on the website within a minute were sent to us they are not the same that's why I'm trying to clarify this.

So, I just want to clarify because I was very specific in my question to the AG at the last meeting.

Because apparently you folks have been doing summaries and we're thinking about getting rid of them and it's because we have recordings. But the law specifically requires that we have written minutes and not a written summary.

ANDRION (13:22): Chair, I just shared my screen. I believe this is what we're discussing these minutes that were sent to the Commission in draft form, correct?

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PAPALIMU (13:29): Correct.

ANDRION (13:33): Okay, then I think the motion still stands chair as long as this is the actual document we're talking about.

CURTIS (13:39): And is that available on our website for everybody to see?

CUSHNIE (13:45): It has not been posted.

CURTIS (13:51): Then we'll make our part of the record of this meeting. And we'll move on the motion to approve the minutes as circulated to the election commission. And those minutes will be posted on the website.

CUSHNIE (14:04): And I moved to amend the minutes.

ANDRION (14:07): Right, that's the motion on the floor.

ANDRION (14:15): I'll second the motion

CURTIS (14:17): And that's to amend the minutes and change the reference to the AG's Office rather than Reese Nakamura for the opinion as stated by Commissioner Cushnie, correct?

ANDRION (14:30): Right and the other two timestamped references that whole dialogue about you seeking out an opinion isn't even in the minutes right now. So, he is seeking to add that.

CUSHNIE (14:50): You'd like me to repeat my amendments?

CURTIS (14:51): Yes, please.

CUSHNIE (14:52): Okay at 242 as the Chair Curtis asked the staff to mute Commissioner Cushnie's microphone.

At 308 Deputy Attorney General Reece Nakamura stated that he represented the Office of Elections. During the vote on investigating chain of custody, Deputy AG Reese Nakamura advised the Commission against allowing Commissioner Cushnie to participate in the vote.

Commissioner Cushnie did not recuse himself but was prevented from voting.

At 324 Commissioner Andrion requested that the conflict of interest between Deputy AG Reese Nakamura and Commissioner Cushnie gets sorted out before the next meeting.

Chair Curtis requested and Commissioner Andrion...What was wording that you heard?

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ANDRION (15:53): Was going to request a legal opinion from the AG.

CUSHNIE (16:00): Request a legal opinion from the Attorney General.

CURTIS (16:04): From the AG's office. Are there any questions on the motions?

CUSHNIE (16:15): I have a point of information? Are these supposed to be posted ahead of time in public?

CURTIS (16:22): Not our actions today. Our actions today will be a matter of record from today.

CUSHNIE (16:28): But the meeting minutes did not need to be posted? The actual ones that we're approving?

KAM (16:34): No, the draft. I'm sorry, this is STELLA KAM from the AGs office. The draft and that's can be posted at any time but some form of the minutes either draft or permanent needs to be posted on the agency's website within 40 days of the meeting.

CURTIS (16:55): Thank you. So, I would call a motion on the amendment to the approval of the minutes all in favor of the amendment changes today. All those in favor say Aye.

MANY VOICES (17:14): Aye

CURTIS (17:16): Motion carries.

CURTIS (17:22): Back to the approval of the minutes I would entertain a motion to approve the minutes as amended.

ANDRION (17:27): So, moved, this is Commissioner Andrion.

CURTIS (17:29): Is there a second?

CUSHNIE and PAPALIMU (17:30): Second

CURTIS (17:32): Discussion? Anita?

AQUINO (17:39): I have a question about the amendments...

CURTIS (17:52): I can't understand you. I'm sorry, I cannot understand. You're coming in very broken and now you're muted.

ANDRION (18:13): Anita, try to turn off your virtual background it'll help with your bandwidth and your connection

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AQUINO (18:22): I turned off my virtual background.

CURTIS (18:25): And your background. And your video.

CURTIS (18:40): While Anita is working on that. Commissioner Papalimu. You have your hand up.

PAPALIMU (18:48): I'm sorry. I forgot to put it down.

CURTIS (18:50): No comments, okay. Anita are you up with us again?

CURTIS (19:14): On your video screen below, where there's a stop video, there is a mark where you can turn your background off.

CURTIS (19:33): Anita, give a thumbs up if you had a question about minutes.

PAPALIMU (19:46): Could you type your question in chat?

ANDRION (19:56): Anita, why don't you dial in from your phone. And we can have your audio but your video can stay on the zoom on your computer.

I'll text you the number

CURTIS (20:16): What's going on Anita?

CURTIS (20:40): Going to call for a question on the approval of the minutes. Again. All those in favor the approval of the minutes say aye.

MANY VOICES (20:46): Aye. Aye.

CURTIS (20:51): All those opposed say Nay.

CURTIS (20:55): The minutes are approved as amended.

CURTIS (20:59): Public testimony. I think we'd have a bunch of public testimony and Ned could you orchestrate that please?

ANDRION (21:09): Mr. Chair, Commissioner, I do actually have a couple motions to make them man our agenda for today. I don't know if you want to entertain that now or after public testimony.

CURTIS (21:17): We're public testimony and we're public testimony as we reach the items. You can talk about them.

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We're not going to add anything. We cannot add anything substantial to the agenda. We are going to have public testimony. Ned, could you coordinate this?

CURTIS (21:57): We are at public testimony. Ned, can you coordinate that please? Ned?

TESTIMONIES

NED (22:10): Sorry chair. If you would like to testify, please click raise hand in the reactions on Zoom. If you're joining us by phone press star nine. When recognized, please unmute your microphone before speaking. You may also turn on your video at this time. For the record, please state your first and last name and the items you will be testifying on. To ensure that we will have sufficient time to hear all testimony, each testifier will have three minutes to testify. Once your time has expired you will be asked to conclude your remarks.

The first testifier is Jaime Detweiler followed by Corinne Solomon.

JAIME DETWEILER (22:56): Aloha! Can you hear me?

CURTIS (22:58): Yes.

DETWELER (23:00): Aloha Chair and Commissioners. Thank you for this opportunity to testify. My name is Jamie Detweiler, Hawaii Federation of Republican Women. I stand on my written testimony that I submitted, which primarily covers Agenda Item eight with regards to the Electronic Registration Information Center, otherwise known as ERIC, however today. I would like to spend the majority of my oral testimony time on item 11 which is the evaluation of the Chief Election Officer. I strongly oppose the reappointment of the Chief Election Officer Mr. Scott Nago. During the November 15, 2023 and April 10, 2023 Elections Commission meetings, I submitted testimony regarding a salary increase and job performance for the Chief Election Officer. I never I don't think anybody here ever received a follow up on that. This is a true accounting of how Mr. Nago maladministration and failure to perform duties personally impacted me when I ran for Representative of the Hawaii House District 37.

- **Number one**— failure to perform audits in the 2022 primary and general elections in accordance with HRS 16-42. I recommended that the results of the audits be published for the public. And as of today, those numbers and data has have not been published.
- **Number two**— failure to respond to my written request to comply with HRS 16-42 received by the Office of Elections by certified US mail on November 14, 2022. And in person date stamped by the Office of Elections.
- **Number three**— failure to respond to my written request for headcount of House District 37 due to multiple discrepancies described in my May and November 2023 testimonies.
- **Number four**— I also testified before the House Committee on Judiciary and Hawaiian Affairs on HB 132. Regarding elections. That committee is chaired by Tarrant, Representative Tarnis. Chair Tarnis called Mr. Nago back to the podium. After all

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testimonies were received to answer a follow up question as to why he and his office failed to respond to my written inquiry by certified mail. He replied that some of these requests are not valid and may result in legal action. As of today, I have not received a response. This is not acceptable.

I'm a retired federal civilian who has served in supervisory and program management positions. If my performance evaluation showed failure to perform duties as required, I would have been admonished, suspended and possibly terminated from my position.

To this day again, I have not received a response to my certified letter. I strongly advise you to vote no on the reappointment of Chief Election Officer Mr. Scott Nago. Thank you for this opportunity to testify.

CURTIS (26:16): Thank you, Ms. Detweiler.

NED (26:19): Next testifier is Corinne Solomon followed by the Cecilia Ashton.

CURTIS (26:30): Solomon?

CURTIS (26:40): Miss Corinne Solomon?

CURTIS (26:47): Corinne Solomon. Going once, going twice, may have to come back to her. Number three.

NED (26:58): Next testifier Cecilia Ashton followed by Rosemarie Jausch.

CURTIS (27:10): Miss Ashton

CURTIS (27:15): Cecilia Ashton

CURTIS (27:18): 1, 2, 3, You have to go back to her.

NED (27:21): Rosemarie. Rosemarie Jausch followed by Scott Shedko.

CURTIS (27:31): Rosemarie?

ROSEMARIE JAUSCH (27:31): Unmuting.

CURTIS (27:35): Yes.

JAUSCH (27:38): Alright. Thank you, Commissioner. Chair. Chair and Commissioners for allowing us to give public testimony today. I will start off with the agenda item Scott Nago's re-appointment and according to Hawaiian Statutes, HRS. These may not be conducted in an

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executive session has to be public forum. It's on your agenda for Executive Session and I think that's a blatant violation. As far as Mr. Nago's performance goes, I am signature verification observer; one of the first. And in the objectives for the commission, it is to give credence to the quote; eyes and ears of the observation process. I have reported numerous times some very alarming statistics here on Kauai. And although the commission calls us the eyes and ears, we are muted. We do not have any pathway for reporting or resolution. No response from our Chief Elections Officer nor County Clerk Jade Tanigawa. I made numerous attempts as far as Scott Nago's performance. My law firm Bervar & Jones sent him not once but twice the demand letter to perform HRS 16-42. And that was met by no response both times. That is in my opinion, failure to perform his duties. And as far as reappointing, we're at the lowest participation in voter history I believe for Hawaii. Mail in voting for Harold Nelson and ex Commissioner discussion started in 2012. Voting is not a convenience. It's a civic duty. We're now limited to one voting center, which I believe constitutes voter suppression. I'm going to use the State of New Hampshire as a model. They have a population that is equal roughly to the population of the State of Hawaii. They vote in person on paper with immediate results tabulated.

CURTIS (31:09): Wrap it up please.

JAUSCH (31:10): I'll cede the rest of my time.

CURTIS (31:14): Thank you.

NED (31:17): Next testifier is Scott Shedko followed by Jennifer.

CURTIS (31:24): Mr. Shedko?

SCOTT SHEDKO (31:26): Aloha. Hello Chair and Commission members, can you hear me okay?

CURTIS (31:24): Yes. Thank you.

SHEDKO (31:26): That's good. I do appreciate your attention to details at the beginning of the meeting. Agenda Item nine B the performance of the Chief Election Officer. First, Hawaii Supreme Court Document SCEC-TT-0000703. This is a case regarding a complaint referred to already made that our Chief Election Officer did not conduct a proper audit. According to Hawaii State Election laws, specifically provisions in HRS section 16-42. Page four reads our review is strictly limited to the allegations of the complaint, which we view in the light phrase in the light most favorable to the plaintiff. And deemed to be true to the most important words in the documents my testimony at least signed by the Justices of the Supreme Court of Hawaii. Unfortunately, they did not follow through beyond that. Saying that the complaint fails to allege any specific facts that the audit procedures requested would change the outcome of the election. Page five and judgment is entered granting the motion to dismiss. Page six this is unfortunate because the audit procedures are designed for and the only hope for finding those

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specific facts. And just as importantly, these are not audit procedures requested. These are audit procedures required by law. There should be only two people in the state of Hawaii happy about the dismissal of the case. The defendant and his lawyer. The other 1,440,194 of us should be concerned that the Court concluded that the allegations in the complaint are true. And according to Hawaii Revised Statutes Section 19-3 Paragraph 8, "Every public officer by law required to do or perform any act with reference to any of the provisions in any law concerning elections who willfully fails, neglects, or refuses to perform the same show or even guilty of an election fraud." Question: Why is this public officer still running our elections?

JAUSCH (34:26): 15 years.

CURTIS (34:27): Thank you, Mr. Shedko.

SHEDKO (34:30): Thank you.

NED (34:31): Next testifier is Jennifer followed by Tom Stanton.

CURTIS (34:45): Jennifer?

JEN CABLAN (34:37): Hi, this is Jennifer Cablan.

CURTIS (34:53): We hear you. Now you're muted.

CABLAN (35:04): Sorry, can you hear me now?

CURTIS (35:05): Yep, there you go.

CABLAN (35:09): Okay. Okay. I'm Jennifer Cablan. And I would just like to testify on the agenda regarding Scott Nago. I believe that he should, we should have a public hearing at the his raise that was approved. It was done in executive committee and I think we need a public hearing upon him of his performance. Scott Nago was responsible for the elections; the voter rolls are out of control. There are many on there that are not supposed to be on there and I don't know why they can't clean it up. My I also put in a request for my father, because he voted. He showed that he voted by mail. And he was at that time he was actually he had a hemorrhagic stroke, so he didn't, he wasn't able to vote. So, I requested to the Office of checking the signature on the envelope so that I could see how he voted if it was really him or if it was like voter fraud and they could not give me a resolution for that. There's a lot of discrepancies and how the chain of custody is for this all mail in voting, and I don't think Scott Nago really managed that well, and I think we'll have a hearing on his continuation of his position. That's it.

CURTIS (36:41): Thank you, Jennifer.

NED (36:43): Next testifier Tom Stanton, followed by Stadia Pitts.

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TOM STANTON (36:50): Aloha, thank you for the opportunity. Tom Stanton Kauai Election Integrity testifying on 9B. I would like this body to seriously reconsider the reappointment of Scott Nago as the Chief Election Officer. The reason I say that is because Kauai needs a Chief Election Officer that's going to fight for election transparency and also accountability. And in my opinion and personal experience, Scott Nago has not done that. And I say that specifically because of the 2022 election when citizens and citizen groups and the Kauai Republican Party and the Hawaii Republican Party besieged; even our Kauai Council besieged to stop Scott Nago to do the HRS 16-42 audits correctly instead of working with us; instead of putting procedures in place that would help facilitate that. He chose to introduce legislation HB 132 That would have effectively eliminate the requirement for that audit. And when those same groups fought back to shut down that legislation. He then this year has introduced SB 2333, which passed which says that the ballot images are the same as the actual physical ballot, the actual voter, verifiable paper audit trail, and we all know that they're not the same because I submitted evidence that the valid images can be corrupted. And so, if this goes forward, again for another election, why citizens will not have any confidence or assurance that the machine votes will be accurate. And that's not what we need. We actually need a Chief Election Officer that's going to work with the different communities if there's a concern like valid chain of custody, like we've had on Kauai to help us with it, not just stonewall it and kick the can down the way so I would like this body to truly review what Scott Nago performance has been, and really the seriousness in trying to introduce legislation that is making our elections less transparent and less accountable. So, with that I will yield. Thank you for the opportunity.

CURTIS (39:32): Thank you Mr. Stanton.

NED (39:34): Next testifier is Stadia Pitts, followed by Perry Murakami.

CURTIS (39:46): Stadia Pitts?

CURTIS (39:52): Stadia Pitts?

CURTIS (39:54): Going once. Going twice. Stadia Pitts? Next.

NED (40:05): Next testifier is Perry Murakami; followed by Cathy Fine.

CURTIS (40:15): Mr. Murakami, Terry Murakami.

CURTIS (40:24): Terry Murakami.

CURTIS (40:27): Going once, Murakami going twice, Murakami three times. On to number 10.

NED (40:40): Next testifier Cathy Fine, followed by Kamakani A. Belly.

CURTIS (40:52): Kathy Fine, Kathy, going once, going twice, going three times. Next.

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NED (41:06): Next Kamakani Belly, followed by Sharon Van Dusen.

CURTIS (41:18): Kamakani?

CURTIS (41:24): Kamakani, going once, Kamakani going twice, Kamakani going thrice. Number 12.

NED (41:34): Sharon Van Dusen, followed by Jade Brown.

CURTIS (41:42): Sharon Van Dusen. Sharon?

CURTIS (41:50): Going once, twice, Sharon is anywhere? Next.

NED (42:01): Kate Brown followed by Laurie Searcy.

CURTIS (42:05): Kate Brown?

CURTIS (42:11): Kate Brown. Going once, twice three times. Next.

NED (42:24): Laurie Searcy, followed by Martin Choi.

CURTIS (42:29): Laurie?

CURTIS (42:33): Laurie going once; Laurie going twice, Laurie Searcy, going three times, Next.

NED (42:46): Michael Choi followed by Doug Pasnik.

CURTIS (42:54): Mr. Choi?

CURTIS (42:58): Mr. Choi, going once. Twice, Mr. Choi three times. Next

NED (43:06): Doug Pasnik followed by Lori Bell.

CURTIS (43:09): Doug Pasnik? Doug Pasnik.

DOUG PASNIK (43:20): Hello, Chair, can you hear me?

CURTIS (43:23): Yep.

PASNIK (43:24): Thank you. This testimony is being presented in addition to the information included in your supplemental meeting packet relating to the inefficiency of our vote by mail elections, and as presented during the January EC and relative to your item 9B on your agenda. Commissioners as you know Mr. Nago has been with the Office of Elections for more than 20-

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years and has been the Chief Election Officer since February 2010. Today's meeting marks the end of his fourth four-year term in this position. Mr. Nago stated that the Office of Elections goals are to conduct honest and efficient elections, encourage participation in the electoral process protecting the rights and promoting elections. Commissioners as you ponder his reappointment, I asked him reflect on the following facts. I mean, the 2022 election there were more than 20 court cases filed by the people in the Hawaii Supreme criminal and US Federal Court petitioning the administration of statutory law that govern Hawaii elections. Are elections deemed honest, when none of these complaints were ever investigated through the Elections Commission. And none of these cases were never heard during a public hearing, nor were they adjudicated based on their merits. Did you know that the determination of the Governor and Lieutenant Governor occurred before the 2022 election was certified and that the election was never certified in accordance with statutes. However, how can the elections be efficient when it comes to voter mail in elections was 30% more expensive than the Chief Election Officer's budget. Over the past 16 years Hawaii voter participation has been on a steady decline and has reached its lowest level of 48.7% and Hawaii once boasted voter participation of more than 82% but now more than half of Hawaii's eligible voters do not participate in Hawaii's elections. Mr. Curtis, why is there no public hearing being able to discuss performance? Before going into executive session to discuss Mr. Nago reappointment and as required for EC duties of HRS 11-7.5 (6). When is the Elections Commission who has the power to hire and fire going to hold the Chief Elections Officer accountable for performance and conducting elections in accordance with the legal statutory requirements? When is the commission going like the boss, instead of letting the Chief Elections Officer dictate the conduct of elections that are being actively questioned and challenged by the people? Last, and as per public testimony during the January meeting, and it began respectfully that the Elections Commission investigate the Office of Elections implementation vote by mail has met their mission and demonstrated efficiency and encourage voter participation and promoted participation in Hawaii's elections. If a commissioner would please motion for an investigation into this matter would be greatly appreciated by the people. Thank you for the opportunity to submit this testimony.

CURTIS (46:13): Thank you, Mr. Pasnik.

NED (46:18): The next testifier is Lori Bell followed by James Hurdle.

CURTIS (46:27): Lori Bell.

CURTIS (46:32): Lori Bell, Lori Bell going once, Lori Bell going twice. Three times. Lori. Next.

NED (46:44): James Purtyl followed by Jessica Caiazzo Priya.

CURTIS (46:48): James Purtyl, James Purtyl once, twice, three times, next.

NED (47:07): Jessica Caiazzo Priya, followed by Janice Upshaw.

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CURTIS (46:19): Jessica had a new partner, Jennifer, Jessica. Jessica Caiazzo.

CURTIS (46:30): Jessica Priya, Jessica, going once, twice, three times. Next.

NED (47:39): Janice Upshaw followed by Mary Beth Kikumu.

CURTIS (46:48): Janice Upshaw. Janice Upshaw, third time Janice Upshaw, Next.

NED (48:00): Marybeth Kikono, followed by Troy Strickland

CURTIS (48:09): Miss Kikumu. Marybeth Kikumu, going one, going twice, Marybeth Kikumu, Next.

NED (48:26): Troy Strickland followed by Adrial Lam.

CURTIS (48:09): Troy Strickland. Somebody trying to get on, Mr. Strickland, Troy Strickland, going once, going twice, three times, Troy Strickland, Next.

NED (48:56): Adrial Lam followed by Andy Crossland.

CURTIS (49:02): Mr. Lam.

ADRIAL LAM (49:03): Aloha Chair. This is Adrial Lam, thanks for letting me testify. I want to thank the Chief Elections Officer for providing the report on agenda item four on his election metrics. I just want to add to the report that gave a lot of data on ballots mailed in but not a not a summary. So, if I can just compile the numbers for you. In 2022, General Election mailed out in the summer 732,503 ballots and the primary mailed out 740,793 ballots. In 2020, General Election mailed out 753,516 ballots. In the 2020, the primary mailed out 710,402 ballots. Now if you know the numbers that actually voted in the elections, that means they were for the 2020 general we had 313,140 ballots that went out and never came back 406,134. The primary 103,072 and the 2020 General and 300,232 ballots in the 2020 primary. These are our accountable items, critical infrastructure as they keep telling us but where are these ballots and why are they not being tracked? I want to also want to further provide testimony on agenda item eight. You will be discussing, ERIC, my comment is there's a lot of legislation that went before Legislature this year. And which of those came before Election Commission to discuss and to be have a full vetting of the impact on our elections. I talked to two election officers, there's only two pieces of legislature that came from his office. Where are the rest of these coming from and why has the election commission not reviewed these to ensure that we can have trust in our elections? A lot of these legislations are eroding the public trust in the elections. And if they continue to pass through these, we do not have elections anymore. We have nothing that's accountable to the public. So, I asked the Election Commission to look into these things. Also, for the documentation of our elections. I had an associate who received who paid to them a princely sum for 1200 pages and 90% or I'm sorry, 70% is blank and unused

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forms, especially about chain of custody. Can you please look into chain of custody and how our ballots are being accounted for? Thank you for time to testify. Aloha.

CURTIS (51:43): Thank you, Mr. Lam.

NED (51:44): Andy Crossland, followed by Karl Dicks.

CURTIS (51:52): Is there, Andy Crossland. Andy Crossland?

ANDY CROSSLAND (51:59): Good afternoon commission.

CURTIS (52:03): How are you?

CROSSLAND (52:04): Good. Good afternoon. My name is Andy Crossland and I am testifying today on item 11 of the agenda related to the evaluation and voting on the reappointment of the Chief Election Officer. First off, the agenda for this meeting states and Item nine that the Commission anticipates going into executive session to discuss and evaluate the performance of the reappointment of the Chief Election Officer. Following that agenda 11 states the commission intends only to give a summary of the criteria and key points in the evaluation of the Chief Election Officer before voting on the reappointment of the Chief Election Officer. It is my understanding that Hawaii Revised Statutes Section 11-7.5 subsection 6 states and I quote the duties of the election commission are to hold a public hearing on the performance of the Chief Election Officer and to consider the information gathered at the hearing in deliberations on the Chief Election Officers reappointment. Based on these facts the agenda for this meeting appears to be in direct violation of Hawaii law pursuant to Hawaii Revised Statutes Section 11 Dash 7.5 subsection, six therefore I strongly urge the commission defer all agenda items including the executive session regarding the discussion and evaluation of the performance of the reappointment of the Chief Election Officer until a public hearing is held in accordance with Hawaii law and with proper advance notice to the public to provide testimony. Proceeding with the agenda as currently written will result in the immediate filing of a complaint with the state Ethics Commission. Now, that being said, Hawaii Revised Statutes Section 11-2 states that it is the Chief Election Officers duty and I quote to supervise all state elections. The Chief Election Officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons. The word supervises used here means that it is Scott enormous responsibility to oversee and direct all state elections and further by stating that he may delegate to the counties this means that he is not required to so it is clear that Scott Nago is ultimately responsible for the administration of our elections process since his appointment as the Chief Elections Officer in 2010, nearly 15 years ago. More importantly, the maladministration of the 2020 and 2022 mail in elections are solely his responsibility. Scott Nago likes to deflect responsibility to the Counties. However, the Hawaii Revised Statutes are clear that Scott Nago is ultimately responsible for supervising which means overseeing and directing the actions of any delegated tasks to the Counties for others. I don't have time to go into the numerous details of the issues that we've had with our elections over the past few

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years. But in summary, during Scott Nago time as the Chief Election Officer for the State of Hawaii, is malice. maladministration has destroyed election security, voter confidence and transparency, which has resulted in the lowest voter turnout in Hawaii history for the 2022 election, as shown in the background right here behind me. One last point, if the Commission chooses to move forward with the agenda as written, which is in violation of Hawaii law. I would like to strongly urge the Commission to vote no on the reappointment of Scott Nago as Chief Election Officer. And with that I yield.

CURTIS (55:19): Thank you, Mr. Crossland.

NED (55:21): Next testifier is Karl Dicks followed by AnnMarie Hamilton.

CURTIS (55:27): Good afternoon, Karl. Unmute.

KARL DICKS (55:29): Aloha Mr. Chair, thank you. I'll be brief here. My sentiments you've previously heard I've been since 2020 when I started to get involved in elections here in Hawaii. I've been involved in nearly 30 court cases involving our elections and violations of law. Since 2020 the Office of Elections has straight up violated nearly 50 state laws in regards to our elections and our election processes and I've exhausted every avenue of civil actions and civil remedy and civil complaints. And it's time for Scott Nago to be criminally prosecuted for the crimes against people in the State of Hawaii and the violations of law that he is allowed to be permitted under his watch as Chief Election Officer. I've spent the last four, nearly four years battling for fair and clean elections in the light and it's not happening. The courts collude with him and protect him. The Attorney General protects him protects his office. It's complete straight up fraud. Every bit of it is in violation of Hawaii State law. With that I yield.

CURTIS (57:00): Thank you, Mr. Dicks.

NED (57:01): Next testifier is AnnMarie Hamilton followed by Mary Hume.

CURTIS (57:06): Hi AnnMarie, you're muted.

ANNE MARIE HAMILTON (57:11): Hello, can you hear me?

CURTIS (57:16): Yup.

ANNE MARIE HAMILTON (57:17): My name is AnnMarie Hamilton. I'm from Kauai County. After the startling results of the last election and I'm testifying I'm Mr. Nago's performance as well as chain of custody. After the startling results of the last election commission meeting and no action on our complaints, I looked up the job of election commissioners. The second duty is to quote investigate and hold hearings for receiving evidence of any violations and complaints. This body is holding hearings and hearing the public's concerns about election integrity. But in my opinion, they are a sham because you're not investigating the evidence presented by the

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public in these meetings. Case in point at the last meeting I presented two actual written emails from an election administrator to a concerned Kauai citizen admitting that not only was this election administrator not following the proper chain of custody law, but the Hawaii Election administrator apparently didn't even know that there is a law called chain of custody. I presented this evidence at last month's meetings by reciting the email evidence verbatim. Afterwards I was told this body voted in Executive Session to not investigate the chain of custody fraud, I presented. It's truly insulting for citizens to raise concerns, month after month with no action from this body. And I for one am tired of this body making a sham of our elections and our vote due to their lack of investigations. Therefore, since the Election Commission body and the Election Commissioner of Hawaii Nago Scott Nag, they are not doing their job they were appointed to do. So, I demand that Hawaii Election Commissioner Nago and everyone on this committee that voted not to investigate the evidence of fraud, presented at the last meeting resign immediately. I yield.

CURTIS (59:24): Thank you, Miss Hamilton.

NED (59:26): Next testifier is Mary Haley, followed by Gary Cordery.

ANDRION (59:31): Sorry Chair, I just wanted to see if I can respond to the testimonies. Is that okay?

CURTIS (59:35): Not until the end of all testimonies.

ANDRION (59:39): All right.

CURTIS (59:40): And then we'll allow Scott Nago as well as the County Clerks to respond as they feel appropriate.

CURTIS (59:46): Next speaker is?

NED (59:51): Mary Healy, followed by Gary Cordery.

MARY HEALY (59:55): Hello, and thank you for hearing my testimony today regarding this very important matter. I'm also I'm giving testimony against item eight relating to ERIC voting system, and also against item 11, which is the reappointment of Chief Election Officer Scott Nago. Public hearings matter and this should be deferred as my fellow resident Andy Crossland, testified earlier. The lowest voter turnout in Hawaii State history falls squarely on the shoulders of Scott Nago. In fact, calling him the Chief Elections Officer. I'd rather call him the Chief Interference Officer. Elections are sacred to our Republic. If we don't have integrity and confidence in our elections, then we are not living in a free state. I gave testimony against HB 132 in March of 2023, which looked to change our audit process because I became very concerned when I noticed that Scott Nago violated HRS 16-42 which entailed using valid images in lieu of paper ballots for the 2022 audits. Hawaii has experienced an exodus of 36,789

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residents and this is a direct result of our election processes in the Islands. This cannot go on any longer. We as a state cannot allow officials to take control and completely violate our rights as citizens. At the end of the day, the buck stops with you. And there are four very important points of liberty four boxes of liberty and those lie in: the ballots, the jury, the cartridge, cartridge and so on at the end of the day, we are paying attention; we are not ignorant to the problems that our state faces and you aren't as a committee either. So, I thank you for listening to my testimony. I thank you for listening to your fellow residents' testimony. I yield the rest of my time. Aloha.

CURTIS (1:02:15): Thank you, Mary.

NED (1:02:17): Next testifier is Gary Cordery.

GARY CORDERY (1:02:20): Aloha Chair and Commission officers. I appreciate this moment to share with you and affirm the testimony of Mr. Crossland, Miss Detweiler and Mr. Pasnik. Their data is accurate and true and I would like to start and would testify on items on Nine A and B the reelection or the reaffirmation of Scott Nago as director. He has overseen the downfall and the reduction of people who have voted in Hawaii consistently year over year. This declaration to bring in Mail In voting ballots was going to save money and increase participation has done neither. He has been part of numerous lawsuits having to be defended by the Attorney General and Deputy Attorney General about his behavior as chief and chief officer and I will say that during this process the idea I know that let me back up. I know that you folks are volunteers. But you have such a sober and important role in our community in our society. You must exercise sober judgment and speak the truth about what's really going on and you must have these in the public forum. Public means public it does not mean behind closed doors behind closed session. Your your your responsibility to the citizens that you represent which I am one of them is to make sure that the elections in this state are true, accurate and fair. They are none of the three. Specifically, the audit issue. Mr. Nago has said where we can use the data may have in ballots to extrapolate what is accurate, and yet that same data determines which precinct will be audited. There is no random audit. This must be changed the idea that we have paper ballots to elect officials must go back to a paper ballot, one person one vote with an ID. This is more effective, it is faster, it is less costly, it costs less money, and the people will trust it. As mentioned, many people have said the voter turnout goes down, down down. That represents Mr. Nago's ability to run the election office he must not be allowed to continue as a state election officer. And I would assert that this conversation as Mr. Crossland stated so clearly, that your evaluation of him is in the public square. It is not behind closed doors. This behind closed doors way of relating is exactly what's wrong with our state and all the political aspects of it. You must exercise enough self-government and humility toward the Constitution and in service to the people. This conversation must be public and the public must have must know which of you are willing to actually listen to the facts, use your wisdom and deny Scott Nago another term. I thank you for the time.

CURTIS (1:05:32): Thank you Mr. Cordery.

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NED (1:05:34): Next testifier is Brett Kulbis.

BRETT KULBIS (1:05:40): Afternoon Chair.

CURTIS (1:05:44): Afternoon, sir.

BRETT KULBIS (1:04:45): Members of the committee. I just have a comment on this, the re-appointment or whatever this is considered of Scott Nago and find it very convenient that his term of office is coming up, you know, right on the heels of an election, which basically was going to tie this Commission's hands because now if if you do decide not to extend Scott Nago who's going to run the office of elections. I just find it very interesting that it was brought up here since according to the HRS statute 11 -1.6 that his term is the term of the elections officer begins February 1st after he is appointed. So, if February 1, 2024 is when he would have when you should he should have been. This should have been determined by where you guys are way behind the curve. This should have been happened in last year. So that should the commission decide not to re-reappoint Mr. Nago, you would have had time to find somebody else to fill that position. So that's my comments. I again, I find it's very suspect that when you're doing this now, right on the heels, less than 100 less than 170 days to the primary election. I yield.

CURTIS (1:07:28): Thank you, Mr. Kulbis.

NED (1:07:31): Next testifier is Boyd Ready.

CURTIS (1:07:33): Mr. Ready?

BOYD READY (1:07:36): Thank you for accepting my testimony. A lot has been said already so I won't belabor those points. I think we need to realize that we elect representatives and then those representatives elect leaders within their organization, and then those leaders appoint this commission. So, you guys are three steps removed from democracy. And when you walk into the Executive Session, to consider the behavior and function of the most important public officer in our elections, who has a great deal of power and discretion actually sets most of the rules and to do that in a secret session. It does not follow the spirit and I don't even think the letter of the rule. You don't you go into Executive Session, when there is personal information that would be harmful to the privacy of the individual. This is a public officer and every aspect of his performance is public. There's it has nothing to do with this awkward behavior. It has to do with his public performance. So, it should be considered in public. That's my keen point. Also watch out for what they call regulatory capture. I haven't watched this Commission's activities very long, but it does seem that the people that you're overseeing are having an inordinate influence on how you eat, how you operate, what you do, how often you do things, and your staff support is by the same organization you're overseeing. And then you're getting these Attorney General people coming in and just giving unsolicited advice, and without the body choosing and voting how they're going to be represented. So, I think there's a lot more

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independence and authority in this group than is being exercised. And I think it needs to be entirely public. And that's my testimony. Thank you.

CURTIS (1:09:30): Thank you, Mr. Ready.

NED (1:09:31): Chair, there are no more testifiers.

CURTIS (1:09:35): Are there any testifiers that were on the list that have since joined us that didn't have an opportunity to talk?

NED (1:09:44): Chair, we have Moana Lutey, County of Maui.

CURTIS (1:09:50): Miss Lutey?

MOANA LUTEY (1:09:54): Hi Chair, thank you for the opportunity to testify. I just wanted to jump on and share some thoughts. You know, my deputy and I are new to this office, the Clerk's Office on Maui. So, this will be our first round of elections. And what I'll say about Scott and his team is that they have been incredibly supportive in assisting us in planning out for our elections this year. We've done trainings on Oahu with them. They're coming here to do trainings for us here and these are statewide training. So, all the Clerks and some of their staff participate in these trainings. So, my thought is if today the decision is made to not reappoint Scott, who's going to take that role. That's the biggest concern I have. This is a Presidential Election. He's a key player in all of this. He is experienced and so I would strongly recommend that this commission consider retaining him for the reasons that I've stated. If you want to reevaluate them in a year or something, then go ahead and do that. But this is not the time to remove them.

CURTIS (1:11:02): Thank you Miss Lutey.

LUTEY (1:11:04): Thank you.

CURTIS (1:11:06): Anymore?

NED (1:11:07): No more to testify.

CURTIS (1:11:10): Thank you. Let's see who...

ANDRION (1:11:15): Chair gonna allow us to respond to testimony?

CURTIS (1:11:17): Yes, I was gonna ask Dylan would you care to reply, please?

ANDRION (1:11:20): Yeah, I just want to mahalo everyone for getting their testimony and I wrote down a couple wanting to specifically address from AnnMarie and I want to encourage

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you to rewatch the ending of that meeting the voting for investigating chain of custody of ballots was taken up in open session and amongst the affirmative was myself, Commissioner Papalimu and although he was forced to recuse himself, Commissioner Cushnie as well. You know we need to keep at this guys, together.

And I am trying to encourage our commissioners to take formal action through investigations. That's one of our duties and responsibilities eloquently pointed out. And then for testifier from Maui, the Clerks' Office, for the removal or not reappointment as Brett Kulbis shares, that would not take place until after February 1st of next year. This is why Mr. Kulbis is sharing that we are behind the curve here if you will. And I appreciate you sharing that you're new to your position and new to this process. I will I will advocate for the testifiers on the call today who have been on this journey the since before 2020 for Scott Nago's performance and I look forward to evaluating his performance today.

CURTIS (1:13:18): It is a personnel matter and I would ask Attorney General Rep Stella Kam to comment on the propriety of going into executive session regarding personnel matters.

KAM (1:13:27): Um, if you take a look at HRS 11-7.5 (6) it requires the public hearing on the performance and to consider the information gathered at the hearing. But then it doesn't require public deliberations on the Chief Election Officers for your appointment. No under the executive session statute in the Sunshine Law. It does say that the evaluation when a board evaluates an officer a public officer, it should it can be done in Executive Session, but that the person who is being evaluated can agree to make that public. If they don't, then it remains in executive session. So, the two statutes can be read in harmony. I don't believe that Mr. Nago has to go to his evaluation session. So, for that reason, it will remain in executive session at least as far as the deliberations and then we'll be; the commission will come back out and do the vote. And I believe the chair will also get the key points as to the deliberations.

CURTIS (1:14:56): And the prior testimony here is evidence of for and against the Chief Elections Officer. I am Gonna move on to communications and correspondence there more pieces from Ralph Cushnie.

PAPALIMU (1:15:12): I am so sorry. I had my hand up and I was not recognized.

CURTIS (1:15:17): I'm sorry. Do you care to comment on the testimonies?

PAPALIMU (1:15:22): That's okay. It is in regards to the testimonies that were given. I've heard now 1, 2, 3 months, this is my third month of hearing testimonies and thank you all so much. I agree I've I'm new to this as a commissioner and I have read what my job description is and I am whole-heartedly believe that there are things we should be doing. But my question is to Miss Kam, it states that it can be an executive session. Does it state that it must be an executive session?

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KAM (1:16:02): When you look at the entire section that covers the Executive Session provision. In 92-5 it does state that if the person being evaluated, wants to have it in public session that you can have it in public session. Sorry, I'm not finished. So, under rules of statutory construction, every word in a statute must be read. And if you ignore that provision, then it makes a mockery. It was put in there for a purpose and it was to allow to go into executive session to discuss things like an evaluation. So, the person is allowed to take it out into public session if they choose to do so.

PAPALIMU (1:17:05): So, could you give me that statute again please?

KAM (1:17:06): Sure. So, hang on. HRS 92-5 subsection A2.

PAPALIMU (1:17:20): Is there a way somebody could email that to me in the meeting?

CUSHNIE (1:17:27): Miss KAM, I have a question for you. It refers to personnel. Scott Nago is the CEO. Is that the same?

CURTIS and KAM (1:17:37): Yes, yes. Yeah.

CURTIS (1:17:41): Cynthia Takenaka. You had your hand up. You're still muted, Cynthia. But I see your question.

TAKENAKA (1:17:59): Okay. She answered my question.

CURTIS (1:17:59): Thank you.

TAKENAKA (1:18:00): Thanks.

CURTIS (1:18:03): Moving on to Correspondence and...

ANDRION (1:18:05): -Raise my hand like this.

CURTIS (1:18:07): Wait. No, we're under communications and correspondence. Mr. Cushnie you had four communications. Would you care to comment on those?

CUSHNIE (1:18:16): -Yes, I've been trying to get answers out of the Office of Elections and I keep on getting stonewalled. And I believe the public has the same experience. When we ask questions is readily available like readily available questions, does the Office of Elections request chain of custody...required chain of custody? I don't get a straight answer. They either do or they don't. And there's laws regarding chain custody and HAR 3-177-453 and HAR 3-177-61 that are on the books. And my simple ask is to have the Office of Elections reply to the correspondence from the public. We'll take them one at a time and I'm gonna move in small steps. So, on my written correspondence on chain of custody, I move that the Election

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Commissions formerly asked the counties to provide documentation showing compliance with HAR 3-177-453. HAR 3-177-453 which is the accountability and security of ballots. And HAR 3-177-61; security of ballots and election supplies. And that they reply seven days before the next scheduled meeting. Do I have a second?

ANDRION (1:19:53): Second for the motion. This is Commissioner Andrion.

CURTIS (1:19:56): So, the motion was to for a response from the clerk's within seven days of the next meeting?

CUSHNIE (1:20:02): If they're complying with those laws.

CURTIS (1:20:07): We have the Maui Clerk. Big Island Clerk opted out because he's in a meeting. We have Honolulu Clerk and the Kauai Clerks on the call that are present and they might be able to address that right now.

PAPALIMU (1:20:28): -Well, without Hawaii County there, then we wouldn't be getting an answer back from all of them.

CURTIS (1:20:33): -Yup, That's right.

PAPALIMU (1:20:36): We should send those letters out and ask for it.

CURTIS (1:20:37): But there is a discussion on the motion. The motion was to request a chain of custody evidence from the County Clerk's within seven days of the next meeting. Who would like to start motion?

CUSHNIE (1:20:50): I Would like to start.

CUSHNIE (1:20:53): Okay, I have personally asked the County of Kauai these questions and I have submitted email documentation. They do not keep chain of custody documentation that they are not required to do so. I notified them that there was an item on the website that said they kept chain of custody. And then I found the law which is HAR 3-177-453 that requires them to keep chain of custody from the moment they received any envelopes at a Dropbox or in a mailbox and to have tracking of those issues. And they said that they do not do it and they're not required to do it. And there is a statute already created administrative rule and I believe the other counties don't do it. So, we need to formally ask them and find out if this was happening or not.

CURTIS (1:21:54): So, that's the motion. Any other discussion?

ANDRION (1:21:58): Chair This is Commissioner Andrion. I'm in support of the motion only because this was actually already discussed that at last meeting. I have the video of it as well, but we discussed this already. And Chair you did say that you are going to ask for the County

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Clerk's to come with this information to this meeting today. So, I don't know what if that's already been done. That's why I was going to motion to amend the agenda to include chain of custody under election metrics today. And so, if that's not already going to be discussed idea, I want to make a formal motion whatever it takes so that this information get to us or otherwise, I was assuming the county courts we're going to report on all of that today. In our discussion on election metrics.

CURTIS (1:22:40): All right, I ask their attendance. Is there any further discussion on this motion? I would ask all those in favor say aye.

MANY VOICES (1:22:49): Aye.

CURTIS (1:22:53): All opposed say nay.

(1:22:53): Silence.

CURTIS (1:22:55): Motion carries unanimously. Mr. Cushnie, you're up to number two.

CUSHNIE (1:23:01): Okay. I submitted a formal complaint on the Office of Elections. They they sent a report in on elections by mail in October. That report never went on the agenda. And I wrote a formal complaint because there's many items in that report that need to be addressed. I moved that the Election Commissions direct the Office of Elections to answer the formal complaint in writing by seven days prior to the March meeting. And postpone the consideration of this matter to the March meeting.

CURTIS (1:23:40): And postpone the consideration of what matter?

CUSHNIE (1:23:42): Of this matter until the March meeting. Well, I would like the Office of Elections to reply to my complaint. Before we consider it.

CURTIS (1:23:51): And the complaint? What's the substance of the complaint?

CUSHNIE (1:23:56): -The complaint is replying to the elections by mail report that the Office of Elections wrote on October 26, I believe.

CURTIS (1:24:06): Okay, the October 26th elections report. Is there a second motion?

PAPALIMU (1:24:13): Second.

CURTIS (1:24:16): Seconded. Discussion?

TAKENAKA (1:24:19): What's the motion?

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CUSHNIE (1:24:22): Do you want me to re...Go ahead.

TAKENAKA (1:24:25): Please.

CURTIS (1:24:26): Alright, Go ahead Ralph.

CUSHNIE (1:24:27): I moved that the Election Commissions direct the Office of Elections to answer the formal complaint in writing by seven days prior to the March meeting and postpone the consideration of this matter (October 26th elections report) to the March meeting.

CURTIS (1:24:46): That's the October report of the elections that you were talking about?

CUSHNIE (1:24:49): Yeah, they need to respond to my complaint in writing.

MCADAM (1:24:54): What was your complaint? Sorry if I missed it earlier.

CUSHNIE (1:24:59): The Office of Elections, wrote a report on the elections by mail. And it never was put on the agenda for the public to comment on. I wrote an official complaint because you have to have you have to respond within 90 days to any action that happens. So because this was not on the agenda, within 90 days, I wrote an official complaint to the election complaint, elections commission, and I would like the Office of Elections to reply to the issues that I have brought up and then after they reply to it and we've had seven days to read their reply, then we will take it up in that matter in the March meeting.

CURTIS (1:25:46): So that's the elections by mail report that Commissioner Cushnie challenges. Are there is there any more discussion on this question for a reply to our Commissioner Cushnie's complaint on the elections by mail?

TAKENAKA (1:26:06): Mr. Chair, it's Cynthia Takenaka. Yes. Okay, let me get I'm so because the County Clerks aren't here. Are we talking about that report that came in from them?

CURTIS (1:26:26): Not the recent one, not all from last year on your report on election by mail. And I think that was an October report put out by the Office of Elections.

ANDRION (1:26:44): Yes, Commissioner Takenaka I just dropped in the chat a link to Ralph's actual formal complaint. So, you can read through that and he's just asking that this not get discussed today and instead, the office of election respond in writing seven days before our next meeting. That's what that's all he's requesting for us to do.

CURTIS (1:27:03): That's the substance of this motion.

ANDRION (1:27:07): And I support it. I think it's really smart. If we as the commission start to ask that and that's the Office of Elections to respond to things in writing, then it's available for

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us to look back at there's, you know, writing is good.

CURTIS (1:27:20): Is there any more discussion? All commissioners in favor say Aye.

MANY VOICES (1:27:25): Aye,

CURTIS (1:27:30): Cynthia, you need to unmute. All those opposed say nay.

(1:27:34): Silence

CURTIS (1:27:35): Motion carries, Ralph, your next point.

CUSHNIE (1:27:41): Okay. I had correspondence to Reese Nakamura after the last meeting. And I'm just going to cut it short. I moved that the Election Commissions request a deputy attorney that is not conflicted to represent the Elections Commission.

CURTIS (1:28:01): And I think you've accomplished that. We have Stella Kam.

ANDRION (1:28:05): Yes, chair, could you introduce Stella or do you have a moment to introduce...

CURTIS (1:28:08): Introduce yourself please? Let me see your face.

KAM (1:28:13): No, no requirements. And no, it's only the commissioners that have to be on camera at all times. I'm, I'm a longtime attorney with the Department of the Attorney General. More than two decades actually. I've been with the state for more than 30 years. And my specialties are procurement and the uniform Information Practices Act as well as the Sunshine Law.

CURTIS (1:28:44): And that was that was the expertise that I asked her about initially as that there are some things that were like Mr. Cushnie, these letters were weren't submitted to all the commissioners, saying that the sunset Sunshine Law prevents three or more commissioners from colluding and it's not it's not exactly what it says. It says you can't collude. Once you have to report if you have three or more commissioners talk about something related to the Commission. They have to report it and disclose it and the context and report back to the Commission and the public what that meeting was.

KAM (1:29:25): Actually, Mike, I'm sorry, that's not entirely correct. Commissioner, okay, that's fine. Commissioners should not be discussing commission business with each other. That's just a given. That's a Sunshine Law tenant. Any discussion about commission matters should be held pursuant to an agenda a properly noticed agenda and at an open session meeting unless the topic is specifically reserved for Executive Session. Commissioner Andrion you have a question?

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ANDRION (1:30:11): Yeah, I just I mean, I've been a part of our police commission, fire commission and several others and the council I was always given was like, one on one conversation is okay, but the moment you have three together, that's when it becomes an issue. So, I just want to make sure, like, what is correct and I'm following the law here?

KAM (1:30:30): Okay. Okay. You know, the law does not prohibit two commissioners from talking about commission matters. But the fact of the matter is that the Sunshine Law is all about openness. The purpose for or prohibition on more than two commissioners talking about commission matters, is because the idea is that commission matters really should be discussed in open session. Again, unless it has been a topic reserved for Executive Session. Now, there are situations under the Sunshine Law where more than two can talk about something that the commission has delegated to them. That would be when the commission has determined that it doesn't have the time or bandwidth to to investigate a specific matter and so then they would create the chair would create a committee interaction group of three commissioners but less than a quorum. And that group could go and investigate something and then come back and make a recommendation to the full commission. So that's the only situation in which it is allowed. But you know, again, you know, with the idea of sunshine and openness. I would I would not encourage people to have discussions. But But I do understand that it happens it's not prohibited by the Sunshine Law. I'll make that clarification.

CURTIS (1:32:15): -Commissioner Papalimu. You have your hand up?

PAPALIMU (1:32:19): She just answered my question.

CURTIS (1:32:21): Okay. Thank you.

PAPALIMU (1:32:22): Thank you very much, and welcome to the gang. You have not represented the Office of Elections?

KAM (1:32:29): No, I have no connection with it.

23:23

PAPALIMU (1:32:32): Welcome to the gang.

KAM (1:32:33): Thank you.

TAKENAKA (1:32:34): So, Chair, I have a follow up question for Stella Kam. So, Stella you are saying that three or more other than a special group being formed is prohibited, correct?

KAM (1:32:48): Correct.

TAKENAKA (1:32:50): Outside of a meeting?

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KAM (1:32:51): Correct.

TAKENAKA (1:32:52): So, can we go back to the last meeting Chair and what was the conflict with Reese and how come Stella doesn't have the same conflict?

CURTIS (1:33:04): Okay, well, I'll take this under the table and you can discuss that with Stella direct. Reese Nakamura represented the Office of Elections and the Election Commissions in a suit that was filed by Ralph Cushnie prior to this.

TAKENAKA (1:33:27): Okay.

CURTIS (1:33:28): Prior adjudicated. So, Ralph argued conflict of interest with Reese Nakamura representing the commission as well as representing the Office of Elections. So, to avoid any conflict of interest or appearance of conflict accordingly. So, Stella KAM is now our advisor. She has to represent us. She advises us from the Attorney General's office on our behavior.

CUSHNIE (1:33:50): Chair Curtis, what is the rule about talking to the Deputy Attorney General outside of the public meetings?

CURTIS (1:33:54): I don't know of any.

KAM (1:34:00): There is none. we act as the attorneys. You're able to speak with us.

CUSHNIE (1:34:08): -Okay, I have a motion on the floor.

TAKENAKA (1:34:11): No, I am not finished. Let me follow this. So, on another commission, for example, let's take, I don't know...campaign spending. Take another commission. So, they had an attorney assigned by by by the AG office. So, you mean to say that another commission that same attorney cannot represent the commission and cannot represent that particular office? Catch what I'm saying? So that's why Reese is going to be representing what is he representing? The Office of Elections and Stella is with the Commission.

STELLA (1:35:00): That's correct. That's correct. In some situations, boards, staff as well as the board do not have conflicts. And so, for those situations one deputy AG can represent both. But where there is an appearance of any conflict or I guess this is something for the Attorney General to decide to. There have been situations where separate deputy AGs have been assigned one to represent the staff and one to represent the board and that's the situation for the Employees Retirement System. And that's a routine separation of assignment over there.

PAPALIMU (1:35:49): Yeah, it makes sense. It makes sense.

CURTIS (1:35:55): Cynthia are you satisfied. Take your hand out, please. Are there any other comments? Ralph, you said you had a motion on the floor? I don't think you do.

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CUSHNIE (1:36:06): I move that the Election Commission request a deputy attorney that has not conflicted to represent the elections commission. So it should be an easy yes.

CURTIS (1:36:12): I think it's already a yes.

CUSHNIE (1:36:20): Okay so can we just do form link and then we'll be done.

PAPALIMU (1:36:23): Well, it's already been done. And so the motion becomes moot because that has already been done.

CUSHNIE (1:36:34): Okay, moving on.

CURTIS (1:36:35): Thank you. Let's see. Where are we at. Election voting metrics related to the 2020 election.

CUSHNIE (1:36:42): There's one more item on my communication please.

CURTIS (1:36:46): Look for whether you're number four.

CUSHNIE (1:36:49): Number four is the...

CURTIS (1:36:54): Roles of the elections commission.

CUSHNIE (1:36:57): The roles of the elections commission. The long and short of it. People are submitting questions to the Elections Commission, which needs to be answered by the Office of Elections. And so, I move that the Election Commissions direct the office elections to respond in writing, to all inquiries. Within 15 business days of receipt, and the inquiries and responses be posted on the Office of Elections website by that same deadline.

CURTIS (1:37:35): Is there a second?

ANDRION AND PAPALIMU (1:37:36): Second this.

KAM (1:37:42): Stella, this is Stella I have a little bit of concern here. I don't have an extensive background in elections, but I do know that if there is staff then the the election office direct by maybe the elections office is separate from the commission. And so, I'm I don't know if the commission has within the within its powers to be able to direct the elections office to answer every inquiry that comes to the election office. Yeah, and otherwise...

CURTIS (1:38:00): We don't manage them.

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KAM (1:38:00): Yeah, exactly. So, you know, I just want to point out my reservations about that issue and that I don't really know at this time. Sorry. I just don't know much about elections.

PAPALIMU (1:38:38): So then Yeah. If we, instead of directing the Office of Elections to answer should we directly ourselves respond to these questions.

CUSHNIE (1:39:05): Can you look up HAR?

CURTIS (1:39:07): Our commission are addressed in a commission meeting as appropriate. Incidental notes to the Office of Elections are beyond our purview. Their operation is for us to advise perhaps, but we're not operational control.

CUSHNIE (1:39:28): We need to read the rule.

CURTIS (1:39:30): Then read the rule.

CUSHNIE (1:39:31): Trying to pull it up. Sorry. HAR 3-170-45; 4 and 5.

PAPALIMU (1:39:49): HRS 3-170-4 and 5?

CUSHNIE (1:39:55): HAR 3-170-4 and 3-170-5.

CURTIS (1:40:03): What does it say?

CUSHNIE (1:40:08): All requests for government records or copies of government records maintained by the election commission shall be directed to the Election Commissions in writing or in person, stopping an inspection of government records maintained by the Election Commissions and the related fees and costs are governed by 92F. So, this is what people are having problems getting this information and I'm just saying we could get a timely response they need more time than the Office of Elections like to. I can't grant your request in 15 days, but we are working on it and then we'll we'll have it at this date. So that's what 3-170-4 and 3-170-5. Let me pull that up.

KAM (1:41:00): Can I comment on that the request under 92F HRS under the Uniform information that chapters govern access to government records so to the extent that you've made such a request for government records, then any government agency is required to respond within the parameters of chapter 92F. Now I'm not sure whether you're asking for records or information. There is no statute for HRS or HRS chapter that requires agencies to respond to general questions for information. We do get that a lot with a lot of different agencies. The public tends to confuse chapter 92F as being like an information booth chapter, which would require agencies to answer just general questions from the public. 92F does not do so. It's limited to the existing records maintained by that government agency. So, I just like to clarify that.

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CUSHNIE (1:42:24): Okay, can I read 3-170-5? Any person may obtain information available before public dissemination concerning the activities of Election Commission during established business hours. Any person may file in the Office of Elections Election Commission's request an objection or views on any matter before the elections commission.

KAM (1:42:51): Again, the sentence that you first read that implies that that is information that the agency maintains as a government record.

CURTIS (1:43:07): Like agenda and minutes.

KAM (1:43:08): Correct.

PAPALIMU (1:43:15): I am going to mute myself, just a minute, because I have a siren in the background.

CURTIS (1:43:20): Cynthia. Did you have something?

TAKENAKA (1:43:26): Okay, so this 3-170-5 Ralph. Is that HAR?

CUSHNIE (1:43:35): This is Yes (HAR) 3-170-5 and 3-170-4. So, one of the records that we're requesting is the certifications from Counties. So, all requests for government records, are for copies of government records. So, we're asking for government records.

TAKENAKA (1:43:57): Stop there. What do we as a commission have in terms of documents and records other than minutes and agendas and whatever reports come to us?

CUSHNIE (1:44:15): Let me read this again and I'll answer your question. All requests can inspect government records, or for copies of government records maintained by the Election Commissions shall be directed to the elections commission.

TAKENAKA (1:44:29): So where do we go? To the Elections Office, right?

CURTIS (1:44:31): Records are all online available immediately right now. Commission's records are all posted online and available online for anybody that wants to look. So those are Election Commissions records. That's us. Dylan, do you have something?

TAKENAKA (1:44:53): No, no, no, wait, wait, wait, wait. So, what exactly is Ralph asking for? He's asking for stuff that the elections office has under their purview not us as the commission. No Not.

CURTIS (1:45:11): He's asking, he's saying that the Office of Elections receives inquiries, and they're not as responsive as Ralph would like them to be.

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CUSHNIE (1:45:20): So, given the government record, I'll give you an example. We would like the County certifications of their elections, there was a discussion that the Counties certified their election, and there's no way for me to get it or the public to get it. Because we just get stonewalled at the Office of Elections. So, we need these documents should be readily available. If the counties are certifying their elections, they would certainly send that to the Office of Elections prior to the Office of Elections certifying the overall election but they're nowhere to be found. And how do we find these documents and how do we get them? That that's the question that I'm trying to get to is that the public is asking for this information. And they get stonewalled. And I would like the election commission to get involved with this and help provide this information. And in addition to that, post these items on the website because they're not on the website, so you don't get people asking for the same thing multiple times. Once it's posted, people can look it up and then the Office of Elections can say that was posted on November 10. Look it up. It's right there. And then that'll save a lot of time and money to fulfill these requests. But we're just trying to see how the overall election is certified and we can't get the information. So how do we get the information how does the public get the information?

TAKENAKA (1:46:51): Well, then I guess my question is what is documents?

CUSHNIE (1:46:57): Government records would be like a certification of election.

TAKENAKA (1:47:07): Yeah, but you're just saying information right?

CUSHNIE (1:47:11):-I'm saying requests in accordance with 3-170-4 and 3-170-5.

STELLA (1:47:21): I'd like to just chime in then usually questions as to why an agency is doing something or how they are doing something unless it's represented in a record. Chapter 92F does not require the agency to create the record to answer the questions.

CUSHNIE (1:47:47): These are records that should be there.

CURTIS (1:47:50): So, is there's a record from each county certifying their count in a report to the Office of Elections; Scott Nago? Is there a document? Is that document created at the end of each election certifying the election and documenting that the Office of Elections from each of the County Clerks? Is there such a document?

NAGO (1:48:15): Let me explain that by saying the two statutes there's HRS 11-155 which is certification of results and HRS 11-156 which is certificates of elections. In federal, state and county elections such as the regular scheduled Primary and General, the Office of Elections business certification currently 11-155 certification of results. We also do the certification of elections for Federal and State candidates, which is their certificates issued to each winning candidate to say that they were elected. The Counties do the county counties do the county

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candidates as well as the Charter Amendment questions that passed. And I forgot to say that the State does the Constitutional Amendments, the certificate of results for the Constitution. But as far as certifying the numbers there's one pursuant to HRS 11-155 certification of results, which is done by the State in all joint Federal, State and County elections.

CUSHNIE (1:49:19): So let me clarify that the Counties do not certify their election.

NAGO (1:49:25): Nope, they do not certify the results because under State law, the State is responsible for conducting the count of the ballots so that they're part of the certification for the results with us the certification of elections which is the certificate of the winners is done by the County for County candidates as well as Charter questions.

CUSHNIE (1:49:44): So that the State reports back to the Counties but there are countless.

NAGO (1:49:49): Yes, in the...when we do the results, the election results it's a report that the counties do have.

CUSHNIE (1:49:56): So there's no checks and balances? There's no independent number from the counties?

CURTIS (1:50:02): There is no editorializing. We're talking about receiving documents that are public record.

CUSHNIE (1:50:08): Okay, so in this case, then that answer answers my question, which we need to take up at another meeting. But if the Counties under 3-170-4 and 3-170-5, we need to make it so when the public requests these records under those two administrative rules that they get answered.

CURTIS (1:50:38): Those documents are available Scott and published somewhere?

NAGO (1:50:43): Those so...3-170-4 and 3-170-5 relates to all document government records maintained by the commission. So, I believe, like you said, the minutes, agendas the testimonies are all posted online.

ANDRION (1:51:03): Chair, If I may...You know, I think...We're running into election, is as the Election Commission right because we we've always been in in our roles and duties, able to say we need this information from the Office of Elections and the Office of Elections will present it just like we're asking the County Clerk's to present their information for chain of custody and all those procedures. In that way. I think we do serve the public when Ms. Detwiler has submitted an inquiry from November 2022 and has not yet received a response. What is she asking for? Let us as the Election Commissions ask for that information. Right, which is what I think 3-170 or whatever is talking about we're we're now maintaining that information as well. So, I think there's a mix of things I think we're all after the same goal. Activate the original motion on the

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floor to direct the Office of Elections to respond in writing within 15 days. Yeah, I don't know if Stella gave us insight that that might not be possible. But I would say let's start advising the Chief Election Officer and the Office of Elections to report to us when you know, I'd love to see what are all the questions that have come in and after they've been answered. I'd like to be aware that if my letter has not been answered for over two years now, or if, Jessica, if you remember, an inquiry in September or July and didn't get a response to September, we should be aware of that kind of stuff. So that we can go back and say okay, Scott, and team. I know you guys are busy. But please, we need to prioritize this because this is a member of our public community that has asked for a response and we're not getting in that way. I feel like we are responsible to govern the office of election in that in that level.

CURTIS (1:52:56): In an advisory capacity.

PAPALIMU (1:52:59): Yeah.

CUSHNIE (1:53:00): Can we amend the motion then Dylan, to to have the Office of Elections forward us that communication?

CURTIS (1:53:16): The Office of Elections to forward all their communications to the Election Commissions is unreasonable. There's a lot of people asking a lot of questions of Office of Elections. Some not and often overwhelming to the Office of Election. If they have concerns, they can bring it to us and we can raise those concerns with the Office of Election and get the information as we asked for the metrics. But documents, our Office of Information Practices available to anybody. Information and the interpretation of the laws, which may be asked of the Office of Elections may be beyond them, and they're not in a position to answer and it's a waste of time to pursue that because it's it's really not their kuleana. There are some documents all the documents are subject to the Office of Information Practices availability to the public. Asking for an opinion or an interpretation of the law or why the election turned out one way or another. Those questions of the Office of Elections would be overwhelming, in my opinion. Other comments? Yes, Miss Papalimu.

PAPALIMU (1:54:32): Oh, sorry, didn't put it down.

CURTIS (1:54:36): You got your hand up again.

ANDRION (1:54:37): I have a point of information chair....if Scott or any of our team can answer is do we keep any kind of like contact log or you know someone comes into the Office of Elections with question, do you have a log somewhere that you keep them maybe that's something we can start sharing and being aware of you know, what's getting answered? What's left unanswered that kind of thing. I don't know.

CURTIS (1:55:01): I would hesitate to intrude on the operation of the Office of Elections by this body, the Election Commission. We're there to advise and policy. But we're not there to ask the

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Office of Elections to answer every question that's asked of them. There're some opinions there's some legal opinions that the Office of Elections is not in a position to respond to.

CUSHNIE (1:55:28): Dylan was asking for a log of those things he wasn't. If we can get a log that can be posted on online. There's a lot of information that people are looking for that can be posted online.

CURTIS (1:55:43): Information is online that people aren't pursuing aren't doing their own research. It's not the job of the Office of Elections to do the research or the law of individual voters that have the questions or questions or that could be brought to this commission.

CUSHNIE (1:56:01): What is the mechanism that would be put in place if somebody is not getting results going into the Office of Elections? They come to the commission? What is their what is the mechanism do they approach an individual commissioner? Or do they address it to you? How does that work?

CURTIS (1:56:20): And the other side of that is unreasonable questions saying Why didn't you vote for that? Why didn't you do that? Why didn't you? There's no you can't ask the Office of Elections a bunch of whys about why the election turned out one way or another there. They're responsible for maintaining the integrity of the election for every voter, every vote counts. And that's Scott's responsibility.

CUSHNIE (1:56:44): So, in accordance with 11-155, Let's use that example. So, if the public wants to see the items that go into certifying the election, can those be posted online? So, we want to see all the documents that the Office of Elections used to certify the election, can that be posted?

NAGO (1:57:17): Well, they certainly can make the request under the Open Records Act, and we can provide it there but it's important. I believe it's like 9,000 pages.

CUSHNIE (1:57:34): Put a link up and let people click on it and go through it.

KAM (1:57:36): -Actually, from my experience with another board. I do know that all of the state websites have a limitation on space. And so, they do need to be cognizant of that. And if they put too much on their website, I think it might either crash or it just might not be able to be posted. I do know that.

CUSHNIE (1:58:03): Or a link be provided?

CURTIS (1:58:07): That that's something that needs to be addressed Stella. If we have too many documents that our computers can't hold.

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KAM (1:58:15): Yes, that is a problem.

CURTIS (1:58:20): So, restate the motion please.

CUSHNIE (1:58:24): I move that the Election Commissions direct the Office of Elections to respond in writing to all inquiries within 15 business days in accordance with 3-170-4 and 3-170-5.

CURTIS (1:58:42): I'd like to ask you to change direct to advise. I don't think we have the authority to direct the Office of Elections any behavior. I think it's our role to advise and I would ask the direct be changed to advise in the motion.

CUSHNIE (1:59:02): Okay.

KAM (1:59:04): Oh, and further. I was just wondering, is there a time period for that or is that forever? Like any inquiries from the time the office was created?

CUSHNIE (1:59:16): The inquiries can be answered. So, whether they're doing research or whatever the reason is, the the issue that people are having is there's no response at all.

PAPALIMU (1:59:31): No communication.

KAM (1:59:32): -But can you time period on that because...

CUSHNIE (1:59:34): Fourteen days.

KAM (1:59:35): No, no, no, no, no. What I meant was the Office of Elections needs to know what time period are you looking at? Is it the past year? Is it the past two years?

PAPALIMU (1:59:49): Well, it should be like the rolls, with two General Elections, right? That's the rule for the voter rolls.

CUSHNIE (2:00:01): Say starting from today.

CURTIS (2:00:09): And it would be our advice rather than direction. We don't have the authority to direct the Office of Elections. It's our authority to advise them. So, the motion is to advise the Office of Elections to respond within 14 days any inquiry at least seven days prior to our next commission meeting. Is that clear?

KIGUCHI (2:00:27): Chair I have a quick question for Ralph to perhaps, but when we I thought we were having a discussion about the requirements for the office to respond to any or all inquiries. I thought there was an issue with that. Perhaps maybe Stella could clarify.

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CUSHNIE (2:00:52): The if, if there's questions like How come you didn't vote for my candidate, then the Office of Elections just say we don't answer these questions and reply to them if there's questions that you think are frivolous just give an answer so that that person knows that the correspondence was received. And we don't answer this because it's a question for an attorney or whatever it may be. Just answer something so it doesn't stay in never Neverland.

KIGUCHI (2:01:27): and acknowledged that your question was received and heard and if it can't be answered, perhaps let them know why it can't be answered.

CUSHNIE (2:01:36): Yes.

KIGUCHI (2:01:37): Okay.

CURTIS (2:01:38): That would be a good business practice. And I think this commission should advise the Office of Elections if that's a good business practice and pursue that behavior. Is there any more discussion?

ANDRION (2:01:51): Roll Call Mr. Chair?

TAKENAKA (2:01:52): No, I'm sorry. I'm sorry.

CURTIS (2:01:57): Cynthia, go ahead.

TAKENAKA (2:01:59): Okay, so Ralph is really talking about this 11 H...HAR 3-170-4 and 5, right Ralph?

CUSHNIE (2:02:12): Yes.

TAKENAKA (2:02:13): But that your motion is much broader than that, isn't it?

TAKENAKA (2:02:26): The motion is stated is much broader than addressing the 9,000 pages that Scott was talking about. Because if that's the case I don't know if I'm not I don't think I'm gonna vote for the motion. I think it's too broad because it's whatever that's being funneled to the commission. Right, not the Office of Elections, because they got their own thing going on, right? People complaining you know, whatever, whatever...

CUSHNIE (2:03:02): Before asking the Office of Elections questions, and they're not giving responses.

TAKENAKA (2:03:13): That's them. This is the commission.

CUSHNIE (2:03:19): The Commission advises the Office of Elections.

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TAKENAKA (2:03:23): So I give the advice, right, but I don't know to me it's got to be much more control.

CURTIS (2:03:34): Defined.

TAKENAKA (2:03:36): Thank you. It's too broad. I'm voting No.

CURTIS (2:03:40): Is there any other discussion?

AQUINO (2:03:44): I do.

CURTIS (2:03:48): Yes, Miss Aquino.

AQUINO (2:03:50): I think STELLA was referring to as far as time element. I think she was referring to researching, like going back two years instead of 10 years. I think where we should be limited to more current questions instead of three years to many, many years. If I understand Stella...

KAM (2:04:04): Yes, that was my understanding. And I think Ralph revised it to say going forward that the commission would advise the Office of Elections to provide some kind of response to inquiries the Office of Elections receives.

CURTIS (2:04:34): Yes. Is there any more discussion?

KIGUCHI (2:04:41): As to give the office latitude to make its own decisions on whether or not to respond, right. We're just advising.

PAPALIMU (2:04:52): Share, best practice.

ANDRION (2:04:55): Can I just ask I mean we never even asked Scott, maybe there's already a internal memo protocol or response times. I'm just thinking like, I've worked for hotels, where 1000s of emails come in, and I direct my direct to my employees, like, we're going to answer each and you know, and so how much more should Office of Elections carry that high standard, especially if we're serving the public and so Scott, I know you feel the same way. But I mean, is there already something in place where you're, you know, engaged with the employees to make sure we're responding to things.

NAGO (2:05:23): So, we have a rule we want to respond generally within 48 hours. However, the issue we have is when the same question when, when people when we increase inquiries don't get the response they want, the answer doesn't exist, and that's where we run into a lot of problems.

CUSHNIE (2:05:43): Can we post the questions and the answers on the website?

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CURTIS (2:05:48): Can we address the motion on the floor? Anybody in any way want to discuss the motion on the floor before the vote?

ANDRION (2:05:54): I'm gonna vote for it because it already Scott's already got 48-hour thing in place.

PAPALIMU (2:05:59): So that's better than 15 days.

CURTIS (2:06:04): All those in favor their motion say aye.

MANY VOICES (2:06:06): -Aye.

CURTIS (2:06:10): All those opposed? Two No. We have two No.

AQUINO (2:06:24): I did not get to respond, I vote Aye.

CURTIS (2:06:29): We are voting now Anita.

NED (2:06:30): Do you want me to do roll call?

CURTIS (2:06:32): Please.

Commissioner ANDRION, Aye;
Commissioner AQUINO, Aye;
Commissioner CUSHNIE, Aye;
Commissioner KIGUCHI, Aye;
Commissioner KUWADA, Excused;
Commissioner MCADAM, No;
Commissioner PAPALIMU, Aye;
Commissioner TAKENAKA, No;
Chair CURTIS, Aye;

NED (2:07:08): Motion passes Chair.

CURTIS (2:07:08): Motion carries. Thank you very much. On to election metrics. Is there any discussion from the commissioners on metrics?

PAPALIMU (2:07:19): I have I would like to say something just because I receive all of this in email and I don't have the printer. The metrics was really hard to follow. It could have...I think it would have been so much easier for us to see and understand. If that would have been in a long Excel sheet.

CURTIS (2:07:41): Delimited data files.

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PAPALIMU (2:07:44): Do you know one Excel sheet could have the 2020, 2022, mailed out, and the received, and the not received all on one sheet. And for me that would have been easier to get through it. But I read all 84 pages.

CUSHNIE (2:08:02): I have questions on metrics.

CURTIS (2:08:04): And I would entertain a motion to receive this information in delimited data format.

CUSHNIE (2:08:10): Chair I have some discussion, please.

CURTIS (2:08:17): Yes.

CUSHNIE (2:08:18): So, on. I think what the public is concerned about is the key to cheating on any election is to generate excess ballots and can be possibly be voted. The metrics don't account for ballots that are not voted. So, in each precinct, how many ballots are sent out that are not voted that are floating around, and...

CURTIS (2:08:42): That's the difference between ballots sent and the ballots received the difference is ones not voting.

CUSHNIE (2:08:51): Okay, well that that should be highlighted, because that's that's a key concern of many in the public. That there's too many ballots floating around. That can be possibly be voted.

PAPALIMU (2:09:09): Yeah, mine were mine was pretty good. Pretty. I took my big island and I subtracted so that I could get all my numbers.

CURTIS (2:09:18): So, for the Office of Elections, Scott, I would ask for delimited data files on any metric in the future. There was also one of the testimonies submitted in writing about or four people that were live out of state, but still received. It hadn't seen ballots. Ballots voted this time. One of the testimonies one of the written testimonies mentioned something about that. You see that Scott?

NAGO (2:09:50): So Mail In ballots are mailed to the mailing address on file, and State law requires that you have a Hawaii mailing address. However, you can request absentee ballot if you're going to be traveling before the election cycle, where that ballot will be mailed to wherever you request it to be mailed out just for that election cycle. And when we're not having details, I can't really speak.

CURTIS (2:10:19): Get into what's the body that maintains the voter voter list?

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NAGO (2:10:24): Each individual county is responsible by statute for maintaining voter registration.

CURTIS (2:10:30): And who determines the precincts the districting?

NAGO (2:10:35): What to district the Senate the House and Senate district are determined by the reapportionment commission.

CURTIS (2:10:39): Reapportionment, that's what I was like asking for Thank you.

PAPALIMU (2:10:45): Yeah, because between 20 and 22, there was a reapportionment and interestingly enough, the Big Island has almost nine precincts with zero under 10-people, most of them zero. And I don't know how they did that. But it was interesting to see that on the metric I haven't noticed.

NAGO (2:11:09): So, the way that happens is because you have house lines, senate lines and council lines. It creates a precinct so each precinct has the same unique contests. And when you add all these layers on they're pockets, what we call them, where there are no population.

CURTIS (2:11:28): Okay, thank you.

CUSHNIE (2:11:30): So when you refer Chair Curtis on this question, or is there a question or is there something we're receiving formerly on this? What's what's in front of us? I'm not understanding this.

CURTIS (2:11:43): In prior meetings, we talked about election metrics, and measuring the performance of the chief elections officer. And these metrics were. Let's see. Dylan, Dylan was very concerned with as well as others, was the metrics of the election. And the specific numbers were usually it's just the results. Drilling down to these numbers, the ballots, the registered voters, the ballots and the ballots received. The ballots perfected the ballots picked out.

CUSHNIE (2:12:18): Where is this? Where do I find what you're looking at.

CURTIS (2:12:23): It's items six, election metrics, and Dylan mentioned it. And so, it's the numbers, the numbers of the balance that the Office of Election is responsible for they're, they're responsible for balance. We asked for the metrics and regard every metric regarding the ballots in an election. Not just the results. So that's what that's where these things came from. Any other discussion on these metrics?

PAPALIMU (2:12:52): Yes, I have a question.

CURTIS (2:12:57): Yes.

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PAPALIMU (2:12:59): And I think maybe I was misunderstood at the Previous meeting. The metrics I was looking for were the metrics: Responding to the Office of Elections chief, and performance wise metrics. How much did we spend on the election? What did we get for that? How many volunteers did we have? What was the How much do we pay for staffing during the elections? In the last, you know, comparable? Last three Elections? Because we've lost so many voters and I wanted to find out more per vote. And so these were the metrics of performance. I wasn't looking for the metrics of the vote.

ANDRION (2:14:03): We talked about both.

PAPALIMU (2:14:06): I'm sorry.

ANDIRON (2:14:07): We talked about both having both metrics for the next meeting. So...

PAPALIMU (2:14:12): In order to make a determination on performance, because I don't see those metrics where it shows that we saved money, it shows that we have to use less staffing and shows that you know more people came mailed them those ballots because they didn't have to drive. They didn't have to take the day off. So that's what I was looking for. The metrics that showed the job was being done better because of all these new things that that have been brought in to law. And because I learned today that Mr. Nago is working with legislation for the Office of Elections so now, you're making bills for your job. So how is that affecting the performance? And are we really getting the bang for our buck. is it really turning out more people? Is it really is the performance incentivizing people to go to the polls or to mail in their ballots? So that's what I was looking for. But I did appreciate the report.

CURTIS (2:15:40): Scott, you can send us the budgets, right. I've seen those before and I think we've all passed over it before. But I think Scott does estimated costs, different things as he presents them to the legislature and reports to us.

ANDIRON (2:15:58): Yeah, I just want to encourage my colleagues, I think we'll have those metrics discuss in our deliberations in Executive Session. Although, again, I'm in favor of doing that in open session. But also the the good news is commissioners, we have had great public testimony that have given us all the data we're looking for when it comes to metrics, turnout, actions on those those specific things so happy to getting most of my share. Yeah. That's all-thanks Chair.

CURTIS (2:16:34): Scott, do you want to chime in? So, Okay.

NAGO (2:16:38): So as far as cost, I would refer this Commission to the report that we did submit to the legislature regarding the implementation of elections by mail. It's in that report?

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CURTIS (2:16:52): Yep. That's where I...

PAPALIMU (2:16:54): I was not a commissioner at the time. So I did not receive that. If somebody could give that to me. I'd love it.

CUSHNIE (2:17:02): That was voted on. Next meeting.

ANDRION (2:17:06): I'll forward it to you.

PAPALIMU (2:17:07): Thank you.

AQUINO (2:17:12): I agree with Commissioner Papalimu. I am new to the board also. And I appreciate getting information going back.

ANDRION (2:17:21): I can send to both of you.

AQUINO (2:17:24): Thank you.

CURTIS (2:17:27): Are there any other discussion on election metrics.

CUSHNIE. (2:17:31): Chair Curtis. Yes. So, what are we getting out of this item right now? What are we accomplishing?

CURTIS (2:17:37): We got a 90-page report from Scott Nago including number of registered voters ballots mailed ballots returned counted ballots returned deficient etc, etc, etc.

CUSHNIE (2:17:49): So that was the report that was given to us on Friday afternoon?

CURTIS (2:17:52): I believe so, yes.

CUSHNIE (2:17:54): Okay. I move to defer action on this item until the next meeting, so that we have time to study it.

CURTIS (2:18:02): Well, we'll carry election metrics over to the next meeting, including some of the financials. Any other discussion? On voted ballot security. I want to ask the County Clerk's to chime in on this one. assuring us that our voted ballots are secure.

NAGO (2:18:28): So, Chair, just want to add that that report that we did prepare, which goes into the election security was actually is a joint report done by the Office of Election and the County Clerks.

CURTIS (2:18:40): You would like to report on that?

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NAGO (2:18:44): So, we do have our procedures for election security. But what I like the biggest takeaway I want everybody to know is that the election security works in totality. So, when you take apart or when you look at each individual piece individually, it may not seem secure, but it's when you put all the layers upon layers and it works as you want to help the election security.

CURTIS (2:19:12): Any comments by the commissioners?

CUSHNIE (2:19:15): I do chair.

CURTIS (2:19:21): Go ahead RALPH.

CUSHNIE (2:19:22): So, on election security and ballot security. I have asked the County of Kauai about their chain of custody documentation in the 2020 election. Their recordings of the ballots that they collected was 3,379 ballot difference from the number that the state reported. So, they hadn't counted the ballots. And they came up with basically 30,800 ballots when they turned those over to the state, the state reported 34,000. Now I just happened to ask them for their chain of custody information. And they did not keep any chain of custody daily documentation but they had a summary of the balance that they collected when I added up that summary, I found that there was a 3,379-vote count difference, which was almost 11% difference. And my question that started my whole quest on this being on the Election Commissions and finding out more about this is how could they not know that there was a difference in the count? And what are your checks and balances for this? So, when the county goes to a Dropbox, they don't count and record how many ballots they taken out of the Dropbox and I just like you to substitute ballots with the word \$100 bill. So, if we weren't getting \$100 bills, out of the Dropbox, there would be two people counting the \$100 bills and there would be a record saying we collected \$12,000 from Princeville and then we drove that back to Lihue. We turned in \$12,000 from Princeville and we turned in so many dollars from each Dropbox that we go to and there would be a piece of paper that that is accounted for but we don't do that for our ballots. And there's no checks and balances. There's an item on the website of Office of Elections and it says how do we ensure that elections officials do not throw away our ballots? And the answer is that we keep chain of custody but the County of Kauai has told me that they don't keep chain of custody and that there's no law requiring. So, that's for starters, that is just taking that by itself. So, if we don't know how many dollars they're collecting, how do we know what the total is supposed to be after we hand them over to the state? There should be some kind of check and balance mechanism just for that first point.

CURTIS (2:22:22): And this was your argument heard by the courts?

CURTIS (2:22:26): No, I did not bring that up to the courts.

NAGO (2:22:31): So, Chair, I just like to note that our report does address the fungible and non-fungible ballots are unique, so they can be tracked. Voters can definitely track they're bound to

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make sure that it was received. But you have to take everything into totality and not just individually when you get the whole security of the elections.

CUSHNIE (2:22:53): So, Chair, I'd like to address that. So, what he's saying is that under voter signature verification is what proves how many ballots are and this compares signature valid validation to checking serial numbers on dollar bills. The question is how many dollar bills that we picked up to be to compare the the numbers to the serial numbers. So...

CURTIS (2:23:27): The discrepancy is 3,400 ballots from Kauai to the state of Hawaii. Scott, what's happening there?

NAGO (2:23:32): I believe it was an election day issue where on election day they weren't counting the number of ballots they took on the places of deposit. So therefore, that was the discrepancy.

CURTIS (2:23:44): -Thank you.

CUSHNIE (2:23:45): Okay, that, that if you talk to the County of Kauai, they they added the number of ballots every single day. And that was their total number of ballots and that can't just be shooed under the rug like that. That's the big deal. Our County elections, our County Council is decided by 100 votes. And if we don't have an accounting for ballots, there needs to be a process to get from the to get from the drop box to the office on how many ballots were collected. There is no process right now.

CURTIS (2:24:23): Dylan.

ANDRION (2:24:25): Yeah, I just want to say so this I mean, this is all going back to chain of custody. And we voted last time and the motion didn't pass on investigation. And I think it was because we wanted to hear from the Counties first. And I know that that's what the Chair is suggesting we were doing now because the motion passed in the March meeting. But if Scott is saying that their response is already provided, in that report, Implementation by Mail Report...

NAGO (2:24:55): Not that report but the report that you received on Friday.

ANDRION (2:24:57): And the report that we received on Friday and if that's suffice is their response then the procedure for the commission, you know, when they're deciding on investigation is to hear from both sides and then decide if they want to investigate. So, what I'm hearing is we have from both sides now because of the report that was provided to us. And so, in that I think we're on the right track. I would like to make the motion to investigate on chain of custody.

PAPALIMU (2:25:24): Second.

CURTIS (2:25:27): Discussion?

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PAPALIMU (2:25:30): So, I'll discuss my my time as a volunteer because I was an observer for the elections at the Voting Service Center here on the Big Island. And our job my job as an observer was to stay until the end until everything got picked up. My problem with that is that they were picking these huge boxes up with all of these ballots that were dropped off at the Service Centers. And they were not in dual there were there were no two people. It was just one county worker throwing it in a van and driving off with it. And when I I stopped them and said ballots are always supposed to be transported in dual and and they said, oh no need we only going across the street. Does it matter where you're going? And so one of the other people jumped in with him to go right across the street. And so I don't know if councils are just making up their own rules and there's no I'm concerned now with all this training that Maui is getting. Are they being trained appropriately and correctly on what the rules are?

CURTIS (2:27:00): Every county gets that training not just Maui.

PAPALIMU (2:27:03): That's what I'm saying. Are they...(Kahio rudely cut off by Curtis)

CURTIS (2:27:08): Motion is for an investigation into web discussions is generally the chain of custody.

PAPALIMU (2:27:14): Yes, that's what I'm just discussing chain of custody...that...

CURTIS (2:27:17): I would ask the County on Maui. Want to...Ludy, would you care to offer us your ballot security procedures?

PAPALIMU (2:27:29): I'm sorry, did you not want me to continue my discussion?

CURTIS (2:27:31): You made your point.

PALALIMU (2:27:35): I did not get to the end of it. Okay?

CURTIS (2:27:37): No, you made your point in your concern, is valid and we've heard it. I'd like to hear from the County of Maui. She's willing to offer testimony for Scott in lieu of her. Don't think Kauai is here. I don't think Honolulu is here and I don't think Big Island is not here because he has a Council meeting. We have Maui County's attorney if she'd like to offer reassurances that the chain of custody is being honored. Can you offer anything?

LUDEY (2:28:18): Thank you chair. I well we are going to comply with all the legal requirements. If you don't know this, my deputy and I are licensed attorneys. So, it is very important for us to comply with the law. And as I stated earlier, this is our first election. So, we are relying on the law and also the guidance of all the other Clerks in the state and making sure that we're all in uniformity with the way that we comply.

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CURTIS (2:28:48): Thank you. Scott, do you have anything to offer?

CUSHNIE (2:28:51): I have discussion Chair.

CURTIS (2:28:59): I am asking Scott first.

NAGO (2:29:00): So, we do. We do have meetings like the one I mentioned where we do have all the Counties and we do so the Counties do discuss County matters such as what they're responsible for, and we do. We discussed but the state is responsible for and in this matter. This is the county's responsibility but for the most part they can want to say to everybody does follow the law.

CURTIS (2:29:24): Ralph you had something?

CUSHNIE (2:29:28): So all of these audit processes when we're talking about them I would like people to evaluate if the audit process that we are dealing with...(Interrupted by Chair)

CURTIS (2:29:40): The auditing is a different issue

CUSHNIE (2:29:46): Chain of custody process if the if the item was cash, how we would handle it. audits of chain of custody; independent. How would we handle cash and those sorts of procedures...(interrupted by Chair)

CURTIS (2:30:00): We're talking about votes. We're talking about chain of custody and voted ballots and an investigation of that and how the voting ballots the discrepancy, the 3000 some balance between Kauai and the Office of Elections. We you know the investigation we have to define this investigation and the chain of custody is the one of the things as the indication is the discrepancy in votes between Kauai and the Office of Elections. We should perhaps limit our investigation to that discrepancy and flesh it out with a chain of custody proof one way or the other to validate or recognize the deficiencies of the processes that we've applied to mail in voting versus in person voting. That was that was only two cycles ago and we were going to do it just just on Kauai but then the powers at be and the designers are the representatives. The senators and the representatives are the ones that make the laws. They're the ones that do and our investigation needs to be specific and targeted. And the chain of custody is one of the things that leads up to the discrepancy in the voted ballots between Kauai and the Office of Elections that you've indicated. Question is this investigation? Yes, Dylan.

ANDRION (2:31:33): Last point? I I mean, I I kind of I'm in favor of both. I think we can make it a broad investigation because as you said, all the counties are receiving the same training so why not hit them all it hit them all at once, get things through all at once. Although if the other Commissioners are more favorable towards a targeted investigation, I just want to get an investigation done. That's what we're here for. Therefore, I think it serves the public well, and I hope my fellow commissioners will vote for this motion. I sure would like to hear from

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Commissioner Takenaka, Kiguchi and McAdams. Are you feeling inclined towards an investigation if it were more appropriate or not?

CURTIS (2:32:11): Nah, nah. This discussion is in favor of the investigation. Or against it and I am not asking opinions now. I want statements by the commissioners for or against the investigations.

ANDRION (2:32:22): Right? Yes, for against the investigation. Thank you.

CUSHNIE (2:32:26): So, let's streamline it is as...(Interrupted by Chair)

CURTIS (2:32:32): Cynthia Cynthia you had something to say.

TAKENAKA (2:32:33): I don't like the broad investigation. So, if it's this particular motion, I won't vote for it. If you target it more, I'll consider that but right now I don't think it's necessary right now. Not not for all four counties. And this is what, February. I mean, they got enough work to do for the primary election and the general election. I mean, I don't even know if Kauai can handle what you guys are looking at. Maybe they can I don't know the process of how all of that goes but it's it's tough working these days. So you know, you don't want to lose workers either along the way. But no, I'm gonna vote down on this general broad investigation.

CURTIS (2:33:36): Anybody else speaking against the motion?

MCADAMS (2:32:40): Yes. I agree with Cynthia. I know what happens in Kauai's Peterborough contention by some of the public is possible. And I think it's worth looking into but I don't think a broad investigation with all counties is justified and is growing quite rapidly and I think that will require very specific to that instance. All right. Those are my thoughts.

CURTIS (2:34:12): Thank you. Somebody in favor of the motion?

CUSHNIE (2:34:16): Yes Chair, may I be recognized?

CURTIS (2:34:18): Yes, Ralph.

CUSHNIE (2:34:21): I asked that we investigate the laws on the books and then we find out if the Counties are following the law or not. It's HAR 3-177-453 and HAR 3-177-61.

CURTIS (2:34:39): Think that's broadening their request for an investigation

TAKENAKA (2:34:46): Isn't there a motion on the floor?

PAPALIMU (2:34:48): Right. You cannot have a second motion without waiving debate on the first motion. You cannot make another motion while you're already in discussion for a motion. You can amend your motion.

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ANDRION (2:35:02): So, I think I'm the original maker of the motion.

CURTIS (2:35:09): And what was that motion?

ANDRION (2:35:11): It was just to investigate chain of custody. That was my simple motion. But after hearing from my fellow colleagues, I'd love for them to be a part of this. So, I would like to amend the motion.

CURTIS (2:35:23): You can't. The motion belongs to the commission now.

ANDRION (2:35:26): Okay. Sure.

CUSHNIE (2:35:27): Motion.

PAPALIMU (2:35:28): I'm sorry. Point of information.

CURTIS (2:35:30): Yes.

PAPALIMU (2:35:31): The chair can allow him to make a friendly amendment.

CURTIS (2:35:36): I can entertain an amendment to the motion. The motion is on the floor. It belongs to the Commission. It cannot be changed other than Amendment by the commission.

CURTIS (2:35:48): Dylan?

CUSHNIE (2:35:49): I move to make an amendment.

CURTIS (2:35:50): Yes, Ralph.

CUSHNIE (2:35:51): I move to make an amendment to specify that we're going to investigate if HAR 3-177-453 and HAR 3-177-61 are being followed.

PAPALIMU (2:36:08): Now that is...(interrupted by Chair)

CURTIS (2:36:10): What specifically are those?

CUSHNIE (2:36:12): That's the chain of custody laws that are on the books. So, the first one is 3-177-453 accountability and security of ballots. 3-177-61 is security of ballots and election supplies.

CURTIS (2:36:28): Though that that's the extent of the investigation.

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CUSHNIE (2:36:36): Yes.

CURTIS (2:36:38): And that's an amendment to your motion. Dylan?

ANDRION (2:36:43): Ralph, can you add to that specifically for Kauai?

CUSHNIE (2:36:47): I'd like to ask all the counties. All they have to do is provide us documentation that they're doing it. It's pretty easy in my mind. It's not extensive. They should have all of these things on file and they can just port it to us and we can take a look at it and decide if they're doing it or not.

CURTIS (2:37:10): Is there a second to the amendment? Amendment to the motion. The amendment dies for lack of a second.

CUSHNIE (2:37:18): I second it.

CURTIS (2:37:21): You can't second it.

CUSHNIE (2:37:23): Oh.

PAPALIMU (2:37:24): No Dylan made the motion he was making them.

CURTIS (2:37:28): Ralph. You made second to the amendment to the original motion. Dylan's motion stands. The amendment dies for lack of a second point.

ANDRION (2:37:36): I'd like to amend my motion and then the amendment is to investigate that HAR 3-177-453 and HAR 3-177-61 are being followed as it relates to Kauai County's election.

AQUINO (2:37:57): I second the motion.

CURTIS (2:38:00): The amendments then moved and seconded. I don't think we need discussion. I'd like to call for a roll call vote on the amendment motion.

TAKENAKA (2:38:09): I got a question before you call roll.

CURTIS (2:38:11): Yeah.

TAKENAKA (2:38:13): So, Scott Nago. Do you know how much time this is going to take for the staff of Kauai to generate?

NAGO (2:38:21): I wouldn't know.

CURTIS (2:38:27): So, I'm gonna call for a roll call. On the amendment to the motion.

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Commissioner ANDRION, Aye;
Commissioner AQUINO, Aye;
Commissioner CUSHNIE, Aye;
Commissioner KIGUCHI, No;
Commissioner KUWADA, Excused;
Commissioner MCADAM, No;
Commissioner PAPALIMU, Aye;
Commissioner TAKENAKA, No;
Commissioner CURTIS, No;

CURTIS (2:39:04): The amendment dies. Back to the original motion investigating the chain of custody. Are there any other discussion? Can I have a roll call on that one?

AQUINO (2:39:21): Before they do the roll call could I could you read the original?

CURTIS (2:39:27): Dylan, Original Motion please.

ANDRION (2:39:30): The original motion was to investigate on chain of custody.

CURTIS (2:39:34): That was the motion. I would call for the roll call now.

Commissioner ANDRION, Aye;
Commissioner AQUINO, Aye;
Commissioner CUSHNIE, Aye;
Commissioner KIGUCHI, No;
Commissioner KUWADA, Excused;
Commissioner MACADAM, No;
Commissioner PAPALIMU, Aye;
Commissioner TAKENAKA, No;
Chair CURTIS, No again;

CURTIS (2:40:13): So on to electronic registration information center we received the Senate bills receive all kinds of negative responses. There were two positive responses that I saw one from Chief Election Officer supporting being coming a member of this nonprofit, non-governmental service and other one was younger Young Republicans voted in favor or testified in favor of the Senate bills. ERIC is what we'll call it. And that's that's everybody does. Everybody know what ERIC is?

AQUINO (2:40:58): Chair before you proceed, did that motion, pass or die?

CURTIS (2:41:03): It Died.

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AQUINO (2:41:05): All right. Thank you.

CURTIS (2:41:09): Scott, would you tell us what ERIC is, please?

NAGO (2:41:12): ERIC, is a nationwide file sharing system where if a voter moves from Hawaii and re-registers in another state, and that state is participating in ERIC, that we in Hawaii will be notified of that so we can take proper steps to move forward. It is basically a nationwide function where you don't have that unless the voter fills up the voter registration form that they were registered in another state. But that's incumbent upon voter to actually fill up. So, ERIC automatically does it if they re-register or they apply for a driver's license.

CURTIS (2:41:54): So that's an automatic data sharing operated by a nonprofit, non-governmental agency that governments are on track with, to share data and to correct their voter rolls. Because there may be voter registered in Hawaii and same voter registered in California making one of those registrations invalid. So that's the whole purpose of this the other side of the...Go ahead Scott.

NAGO (2:42:25): Can I...So when we did test out fines or our face testimony was it was just another tool for us to use to maintain the voter rolls.

CURTIS (2:42:34): Thank you.

PAPALIMU (2:42:37): I have some other questions. Do we know the organizations of the nonprofit organizations that own this?

NAGO (2:42:46): I believe it's ERIC the Electronic...

CURTIS (2:42:48): ERIC the Electronic Registration Information Center, Inc, their corporation, a nonprofit corporation for the sake of sharing data, and it's a lot of data that I don't think is secure.

PAPALIMU (2:43:11): Hold on...I am sorry, I'm still asking questions. My second question is, how many states are doing this?

NAGO (2:43:20): My understanding was 22.

PAPALIMU (2:43:22): And our state legislature has decided not to do it.

NAGO (2:43:28): No, they introduced the bill to join ERIC.

CURTIS (2:43:32): I think it's being considered now in our legislature actively.

PAPALIMU (2:43:38): And so what are we doing?

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CURTIS (2:43:42): Well, we're gonna see if we want to take a position one way or another. And we can offer an opinion or we could ignore it and go on to the next. Just thought we should talk about ERIC because it's a data sharing. voter registration rolls.

PAPALIMU (2:43:58): Oh, that's a lot of information...

CURTIS (2:44:00): And a lot of information...

PAPALIMU (2:44:04): And people are getting hacked nowadays. All of these large corporations. That's a lot of information.

CURTIS (2:44:08): You can't guarantee security.

PAPALIMU (2:44:12): Yeah...That's...

CURTIS (2:44:14): That's my that's my perception. Are there other other commissioners that have questions?

CUSHNIE (2:44:19): I do chair.

ANITA (2:44:20): I have a comment.

CURTIS (2:44:22): I have Ralph first and then Anita.

CUSHNIE (2:44:27): Um. Mr. Nago. Right now with the way we're currently mailing out ballots, over half of our ballots are not returned.

CURTIS (2:44:35): We're talking about ERIC and file sharing...

CUSHNIE (2:44:40): I'm talking about ERIC and what we're going to gain. So, what are we looking to gain if we sign up with ERIC? It's just going to make it so we have less ballots that are not being returned? Or are they're going to add more people to the voter rolls, and we're gonna have more ballots that are returned. What is what are we looking for as a result, because at the moment with our voter rolls, the way they are less than the half of the people returned a ballot. So, what what is the gain of signing up with ERIC?

CURTIS (2:45:16): ERIC has no influence on that whatsoever. Anita a question.

CUSHNIE (2:45:22): I was asking Scott Nago please...

CURTIS (2:45:24): And I was answering that I'm keeping us on the agenda. ERIC is the agenda. It's not the number of voted ballots. And Anita, you had a question about ERIC.

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AQUINO (2:45:36): Yes, have the other Commissioners looked at the testimony submitted by Corinne Solomon regarding ERIC?

ANDRION AND CUSHNIE (2:45:41): Yeah. Yes.

CURTIS (2:45:44): What was that testimonial

AQUINO (2:45:48): The testimonial was that ERIC would not be beneficial for us to get into based on metrics she has presented in her testimony. So, I would be hesitant to get into utilizing ERIC.

CURTIS (2:46:08): So, I believe she's talking about testimony regarding Senate bill SB 2333 or 2240.

AQUINO (2:46:21): Yes, Senate Bill 2240 and House Bill 1609, which is on ERIC. And this was submitted, I believe, by Scott Nago; the proposed bills.

NAGO (2:46:38): We did not propose that bill.

CURTIS (2:46:43): He didn't propose those bills.

AQUINO (2:46:44): I'm sorry. I didn't hear your response.

NAGO (2:46:45): The Office did not propose that those bills.

CURTIS (2:46:49): But you testified on them though...

AQUINO (2:46:55): I beg to differ because there's a whole bunch of correspondence I get, that came from your office.

CURTIS (2:47:02): Testimony. Similar, Solomon's testimony against the bill.

AQUINO (2:47:11): I don't have the documents with me now but it's I thought it came across the bills that were introduced by your office.

CURTIS (2:47:19): My question to Bill's

TAKENAKA (2:47:25): Point of order, Mr. Chair.

CURTIS (2:47:26): Yes, ma'am.

TAKENAKA (2:47:27): This is not an actionable menu. Item, right? It's just information.

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CURTIS (2:47:32): It's actual...we can offer an opinion. If we'd like to have as a commission, we could vote in that we support ERIC or we oppose ERIC or we could take an advisory position that way we do similarly to the response to correspondence to the Office of Elections. Would this commission like to take the position by ERIC, if so, I would entertain a motion?

CUSHNIE (2:48:04): I move to oppose.

CURTIS (2:48:07): There a second?

ANDRION (2:48:08): Second is Commissioner Andrion.

CURTIS (2:48:10): Discussion?

ANDRION (2:48:11): I think, ah, I think Corrine's testimony is sufficient and I hope every commissioner should read that testimony. She also submitted testimony back in April 2023 with suspicion that the grants that were given to us will be used for enrolling with ERIC. And so, I think everything she has stated in that testimony is substantiated and it would be worth us making a a stance as an Election Commissions to oppose it.

CURTIS (2:48:50): Any comments? Scott, your opinion please.

NAGO (2:48:54): So, ERIC would allow us or assist us to maintain the voter rolls. It won't be the be all or end all. It would be one of many tools to keep our rolls clean, one which would be we would still have to follow the National Voter Registration Act, which spells Voter Registration Act, which specifically spells out how votes can be removed. What ERIC does is that alerts us to these voters so when you start the process sooner, rather than wait for the the mailouts, like the yellow cards are any return mailing that the state sends out or the county sent out. ERIC would allow us to start the process sooner, but we'd still have to follow the process of removing the voters and we can't just automatically remove them.

CUSHNIE (2:49:35): I have a question to that procedure. So, what do you if this the state so what you're buying is the state is not doing a good enough job of keeping our voter registration clean to both to expose our information to a private vendor. What is our gain on clean voters? How many voters you expect to clean out for having that exposure of everybody's information to a third-party vendor? What's our gain versus our risk?

NAGO (2:50:15): So, our gain is anytime somebody moves and applies for a driver's license and moves to the mainland and applies for a driver's license, we'll be notified so we can start the removal process. Currently, we would have to wait until we either mail out the ballots or we mail out their voter registration card to start that process. It would allow us to start the process a lot sooner.

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CUSHNIE (2:50:35): What is the number What are you anticipating for? What what is the metrics of this? Are we talking about 10 voters or 10,000 voters?

NAGO (2:50:45): I mean you saw the news where the state is losing citizen problem residents moving to the mainland I mean after the Maui fire you have residents moving to the mainland. So, all those kinds of things would be caught if they moved to a state that was participating in ERIC.

PAPALIMU (2:51:03): Yes, yes. So, military your local military people sign up for the military. They joined they move. You would they go to let's say they go to Iowa, one of the places where you can get a driver's license there but you don't have to be a registered voter because you're in the military. So, I can keep my voter registration in Hawaii. But I have my license in Iowa, because I changed it. And you're saying that getting a driver's license in another state would automatically remove me from the voter rolls in Hawaii?

NAGO (2:51:43): That's not what I said. But what I said was it allows to start the process so we wouldn't mail a form to them. We mail a mailing to that voter that's portable, and that voter can opt to stay registered.

PAPALIMU (2:51:57): So, doesn't it get...

CURTIS (2:52:00): Wait Ralph. Miss Papalimu you were finishing up.

PAPALIMU (2:52:08): So, this notifies you earlier that somebody moved away. That's basically what it's doing?

NAGO (2:52:16): Yes. And it allows us to start the process. We still have to follow the federal law which says you have to mail a mailer to them and that person can re-register or keep the registration. But if they don't, and they all intended to move to the mainland, that's where that process come into place.

PAPALIMU (2:52:31): I don't know about that.

CURTIS (2:52:32): Anita you had a question?

AQUINO (2:52:35): Yes. Getting back to Ms. Solomon's testimony. She stated that the top three out migration states of Hawaii out going out are Texas, California and Florida. None of these states are ERIC members states. So, I know that doesn't help. And Mr. Nago you stated that you were not your office was not the one submitting Senate Bill 2240 and 1609. It's printed right here. I'm looking at it. Testimony of the Chief Election Officer, Office of Elections to the Senate Committee on Judiciary on Senate Bill number 2240. relating to elections.

CURTIS (2:53:20): Anita, he said they didn't sponsor them. He did testify on them. But he did

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not. We didn't sponsor them. A Representative and Senator sponsored those bills.

AQUINO (2:53:32): Okay, they may have sponsored it, but he was the one who positively testified on it. Yes, yes. Technically, maybe you didn't submit it, but you are supporting it. And if we are to look at Ms. Solomon's testimony, I don't feel like we should be agreeing with this. How much does this cost us?

CURTIS (2:53:58): Are there any other commissioners that would like to speak in favor of ERIC?

KIGUCHI (2:54:07): Questions to Scott. Did you have or take a look at any concerns your office had regarding the security of ERIC?

NAGO (2:54:17): Yes. And there are still 20 I believe it's 22 states that are still in ERIC are participating in ERIC. And it's my understanding that if security wasn't of the utmost concern for ERIC, you wouldn't have those 22 states.

CURTIS (2:54:37): Motion on the floor is to oppose ERIC as a commission and I would call for the roll call now. All those in favor opposing ERIC, vote Aye. Let's roll call this one.

Commissioner ANDRION. Aye;
Commissioner AQUINO, Aye;
Commissioner CUSHNIE. Aye;
Commissioner KIGUCHI; No;
Commissioner KUWADA, Excused;
Commissioner MCADAM, No;
Commissioner PAPALIMU, Aye;
Commissioner TAKENAKA, No;
Chair CURTIS, Aye;

CURTIS (2:55:32): Motion approved. The commission is making the state that it opposes ERIC. The Commission will be going into Executive Session to discuss HRS 92-5. The commission is going into the Executive Session to discuss the approval of the minutes of January 16, 2024 and the Commission is going into Executive Session to discuss the performance and reappointment of the Chief Election Officer. I would like to invite Scott to join us. I want to entertain a motion to discuss item B first.

CUSHNIE (2:56:21): Chair Curtis, I have a point of information.

CURTIS (2:56:25): The motion, is going into Executive Session.

CUSHNIE (2:56:29): Chair Curtis, I have a point of information.

CURTIS (2:56:31): I would entertain motion to go into Executive Session.

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TAKENAKA (2:56:35): So moved; Cynthia.

CUSHNIE (2:56:38): I have a point of order.

CURTIS (2:56:38): Do I have a second?

TWO VOICES (2:56:40): Second.

CURTIS (2:56:42): All those in favor of going into Executive Session...

ANDRION: (2:56:45): Discussion.

CURTIS (2:56:46): Discussion, I'm sorry. Discussion? Dylan, what do you have?

ANDRION -(2:56:49): This is commissioner Andrion. I know we want to head into Executive Session and I will really feel we should be doing this in open session. Aside from that, Chair you asked us to submit ideas for evaluation with testimony and I did submit that. I sent you a packet. I wonder if the public receive that. Can I share a link to my ideas?

CURTIS (2:57:18): Not right now. That was for discussion and consideration. It was not meant for distribution. I filled out mine for me. You filled out one for yours. But I don't want to publish that until after the Executive Session. Ralph, you had something?

CUSHNIE (2:57:33): Yes, has the Chief Election Officer petitioned the Elections Commission for reappointment?

CURTIS (2:57:41): Informally, yes.

CUSHNIE (2:57:45): Is there a formal...So he has not formally petitioned...(interrupted by Chair)

CURTIS (2:57:48): He has asked to be reappointed.

CUSHNIE (2:57:52): Have we heard him? Who's heard him?

CURTIS (2:57:56): We are going to hear him in Executive Session.

CUSHNIE (2:57:59): Can the public hear him and did he state his reason why he does not want to go into Executive Session? Please.

CURTIS (2:58:03): No. The employee has the right to confidentiality and privacy. He has exercised that. You asked if he has petitioned for reappointment and he is continuing on his job

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until we say otherwise. So, there is a motion to go into Executive Session. All those in favor say Aye.

THREE VOICES (2:58:26): (Takenaka, McAdam and Curtis) Aye.

CURTIS (2:58:28): Oppose?

TWO VOICES (2:58:30): (Aquino and Cushnie) Aye.

CURTIS (2:58:36): Raise your hand if you oppose.

CURTIS (2:58:42): We are going into Executive Session. Can you arrange that Neddy?

NED (2:58:43): Yes.

IN EXECUTIVE SESSION: (2:58:44)

BACK IN OPEN SESSION (3:49:32)

NED: (3:49:36): I will take roll call.

KAM: (3:49:39): I think he wanted to take a 5-minute break.

NED: (3:49:41): Oh, I'm sorry.

CURTIS: (3:49:57): We will take a short break and re-convene at 5:20pm.

CURTIS: (3:55:12): It is 5:20pm. We will call the Election Commission of the State of Hawaii back to order. Coming out of Executive Session, I would entertain a motion to approve the Executive Session minutes of January 16, 2024 ratified what was decided in Executive Session. I would entertain a motion.

ANDRION (3:55:39): I think we voted on that already.

CURTIS: (3:55:40): But we have to do it in open session.

ANDRION (3:55:43): So, moved. This is Commission Andrion.

PAPALIMU (3:55:47): Seconded. Commissioner Papalimu.

CURTIS: (3:55:51): Any discussion on the approving the Executive Session minutes of January 16, 2024?

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CURTIS: (3:55:58): All those in favor say Aye.

MANY VOICES (3:56:05): Aye.

CURTIS (3:56:07): Cynthia and Ralph, you have to be off Mute.

CURTIS (3:56:10): The Executive Session Minutes of January 16, 2024 have been approved.

CURTIS (3:56:14): The second part is Scott Nago reappointment. I would like to entertain a motion.

ANDRION (3:56:27): I move to not reappoint Scott Nago as Chief Election Officer.

CURTIS (3:56:31): Is there a second?

PAPALIMU (3:56:32): Commissioner Papalimu, second.

CURTIS (3:56:35): Discussion?

ANDRION (3:56:38): Enough said.

CURTIS (3:56:39): I would ask for a roll call vote. And this vote is to not renew his employment. Ned, could you take a rollcall?

NED (3:56:51):

Commissioner ANDRION? Aye

Commissioner AQUINO? -will come back

Commissioner CUSHNIE? Aye

Commissioner KIGUCHI? No

Commissioner KUWADA? Excused

Commissioner MCADAMS? No

Commissioner PAPALIMU? Yes

Commissioner TAKENAKA? No

Chair CURTIS? No

Commissioner AQUINO? She votes Yes with Thumbs up.

CURTIS (3:58:41): So, the motion does not pass and that leads to Scott Nago's reappointment. Is there any other business before the commission today?

PAPALIMU (3:59:04): Was that four, four to four. Was that a tie. Is that why it does not pass?

CURTIS (3:59:08): That is correct. Is there any more business before the commission today?

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ANDRION (3:59:20): Chair, I would just like to request to make sure that my public testimony is submitted for the public to see.

CURTIS (3:59:27): Ned, can you add that to the package that would be attached to this, today's meeting?

CUSHNIE (3:59:36): I'd like to make a point of information. We were supposed to be voting on his reappointment and not on his not reappointment.

CURTIS (3:59:45): That was not the motion.

CUSHNIE (3:59:48): Okay, but in the agenda. That is how it was stated in the agenda. We need to stick to the agenda and we need to vote on his appointment.

ANDRION (4:00:01): Okay.

CURTIS (4:00:03): Sorry Ralph, the vote was not to reappoint him and that vote did not pass.

CUSHNIE (4:00:09): I appeal the ruling of the Chair.

CURTIS (4:00:10): That means that his appointment continues.

CUSHNIE (4:00:12): I appeal the ruling of the chair.

ANDRION (4:00:18): Are you just saying, just for procedure Ralph?

CUSHNIE (4:00:21): Yes, I appeal the ruling of the chair. You guys can second it.

ANDRION (4:00:24): Yea, I second. Just to make things clean. I think.

CURTIS (4:00:28): That's a point of order and what rule am I not following?

CUSHNIE (4:00:33): I am just saying you made a rule that you made a ruling we are in the vote to approve the executive session and we're to vote on the reappointment of the Chief Election Officer.

CURTIS (4:00:52): That wasn't the motion. The motion was to not reappoint and that motion lost.

CUSHNIE (4:00:55): We did not have a vote to change the agenda item.

PAPALIMU (4:00:21): The motion should have been corrected.

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<https://youtu.be/2xTyYuMK0SY?si=mK9A7VhmVWUaLsc7>

Time stamp reflects the Time Stamp of the You Tube video. So 0:08 means 0 minutes and 8 seconds into the Youtube recording).

ANDRION (0:08): He knows the vote will be the same chair, he's just trying to keep things clean.

CUSHNIE (0:09): The vote was to vote on reappointment. We needed to vote to change the agenda item.

PAPALIMU (0:21): Correct.

CURTIS (0:22): To evaluate and performance and the reappointment of the elections officer the motion was to not reappointment him...that motion failed.

CUSHNIE (0:32): Okay, so the agenda item is vote on the reappointment of the Chief Election Officer. Vote on the reappointment. We did not have two thirds vote to change the language of this. We never voted on that. So, we need to follow what's on the agenda.

CURTIS (0:49): The motion was not to reappoint him. Reappointment is on the agenda and anything I would refer to um. What you saying Andrion?

ANDRION (1:04): Stella, maybe Stella can give us some insight. I'm okay either way cause I appreciate the commission...

KAM (1:11): The agenda is merely on the topic. You folks vote on the motion.

CURTIS (1:19): And the motion stands defeated, which means that he is reappointed. And I asked if there's any other agenda on today's calendar. And I don't see...

CUSHNIE (1:32): And I object to that.

CURTIS (1:33): You're welcome to.

PAPALIMU (1:37): I think you can have a motion to reappoint.

CUSHNIE (1:43): Yeah. So, Dylan was confused on what motion we were. And we did not have a two-thirds vote to change the agenda. We're voting not on not reappointing him, we are voting on reappointing him. And that makes a huge difference with the vote count. Because the other wording, the tie means he doesn't carry and he would not be appointed.

ELECTION COMMISSION MEETING; FEBRUARY 20, 2024;
(UPDATED JUNE 16, 2024 AT 1912)

ANDRION (2:08): So, you could still make an additional motion here.

CUSHNIE (2:10): The motion on the floor should be to vote on the reappointment.

CURTIS (2:14): No, that wasn't the motion. Motion was to not to reappoint him. And that was on the agenda.

CUSHNIE (2:20): That's not how it was on the agenda. So, my motion is to vote on the reappointment of Chief Elections Officer.

ANDRION (2:29): Second.

CURTIS (2:35): Stella, wasn't this already decided with the prior motion?

KAM (2:42): I believe it was.

CURTIS (2:43): So that vote stands

CUSHNIE (2:47): We didn't have two thirds vote to change that.

KAM (2:50): As I said before the agenda is about the topic. But the actual motion is what is voted on.

PAPALIMU (2:55): Right. But according to Robert's Rules. You need to reappoint him to the position. It was a negative motion. So that is and that's why the motion. That was a negative motion that was made. We should have corrected it. I apologize. I wasn't paying that close attention. It should have been corrected prior to the vote. So now you need a motion to appoint him. Voting in a negative is not is not an order for parliamentary procedure.

CURTIS (3:39): Correct. And Dylan should be shot.

PAPALIMU (3:42): You the boss. So, you need a new motion.

CURTIS (3:50): No motion. Agenda is over with as far as I'm concerned.

CUSHNIE (3:55): I appeal the ruling of the chair.

ANDRION (3:59): I Second.

TAKENAKA (4:06): So, let's vote on the appeal of the chair.

ANDRION (4:09): Second.

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ANDDRION (4:16): Roll call?

ANDRION (4:19): Commissioner, Chair?

CURTIS (4:21): What are you talking about Dylan?

ANDRION (4:22): We need a vote on the appeal of the chair.

CURTIS (4:26): So, what are you appealing? You're appealing my ruling. That the last vote stands. Our agenda is over. And I can adjourn the meeting.

ANDRION (4:39): You cannot!

ANDRION (4:41): Well, no, I'm not. I mean, yeah, Ralph is I'm seconding it.

CURTIS (4:45): Okay, so the appeal is whether I adjourn the meeting or not.

PAPALIMU (4:49): But you cannot adjourn.

TAKENAKA (4:56): The vote is on the appeal that Ralph made, so you vote on the appeal and then we can adjourn.

CURTIS (5:01): All those in favor of the appeal. I would have a roll call vote again.

PAPALIMU (5:08): Debate?

CURTIS (5:09): Okay.

TAKENAKA (5:12): Do it in the positive.

PAPALIMU (5:14): Always.

CURTIS (5:16): What would you like to say? So, comment on appeal of ...

PAPALIMU (5:20): Discussion on his, on Ralph's motion.

CURTIS (5:25): This is on my ending the agenda and terminating the meeting.

PAPALIMU (5:32): No, you cannot terminate.

CURTIS (5:35): That's the comment. That's the appeal that is on the floor, up for discussion and vote by the elections commission. Right?

ELECTION COMMISSION MEETING; FEBRUARY 20, 2024;
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TAKENAKA (5:46): Okay. Let's vote.

CUSHNIE (5:48): We didn't properly vote on number 11. And we want to properly vote on it in the positive.

PAPALIMU (5:55): We still need to still need a motion to appoint after this. Yeah.

ANDRION (6:07): So, it's been moved and seconded.

CURTIS (6:11): To appeal my decision, accept the last vote as...

ANDRION (6:19): We need to make a new motion because we have to.

CURTIS (6:22): No, we don't have to. We voted on your motion. And it lost. So now Ralph appealed. And now the discussion is on the appeal, whether we have to continue the agenda.

ANDRION (6:38): We have to vote to appoint him.

PAPALIMU (6:40): Right. The rules are very clear that the Office of Elections must vote to appoint him. We appoint.

TAKENAKA (6:45): We are voting on the appeal folks.

CURTIS (6:50): Ralph is appealing the chair's decision that the last vote stands. And the meeting will be adjourned. Discussion on that?

PAPALIMU (7:01): No. Nothing about adjourn. The motion is to appeal your ruling that that motion that that ruling is incorrect. We should have motion to reappoint.

CURTIS (7:19): Okay, So, my ruling was the motion the motion that was ... did not pass was to find somebody else to replace Scott. That did not pass. Now, that' my ruling and Ralph challenged my ruling. And that's what you get to vote on now.

PAPALIMU and C. TAKENAKA (7:40): -Correct. Correct.

CURTIS (7:41): So, I would call a roll call on Ralph's challenge for my position.

NED (7:47):

Commissioner ANDRION? Yes;

Commissioner AQUINO? Thumbs up; Yes;

Commissioner CUSHNIE? Yes;

Commissioner KIGUCHI? No;

Commissioner KUWADA? Excused;

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Commissioner MCADAMS? No;
Commissioner PAPALIMU? Yes;
Commissioner TAKENAKA? No;
Chair CURTIS? No;

CURTIS (8:32): And with that I'll adjourn the meeting.

PAPALIMU (8:34): You don't want motion to reappoint him?

CURTIS (8:39): My ruling was that he was reappointed, because the kicking out was did not win. And that was by ruling we just voted on and that vote did not pass either. So, I'll adjourn the meeting. Thank you very much.

ANDRION (8:58): Vote to adjourn.

CURTIS (9:00): Second

ANDRION (9:01): I didn't make a movement.

ANDRION (9:05): I think we need to take the vote, ahh Chair to appoint.

CURTIS (9:11): That motion just died.

ANDRION (9:16): The appeal died but the motion still needs...we still have to...This is going to come back.

PAPALIMU (9:23): Yeah.

KIGUCHI (9:26): Could you clarify for us it as of right now where things stand is Scott reappointed?

PAPALIMU (9:33): No.

CURTIS (9:34): He is not eliminated.

CUSHNIE (9:36): We did not vote to reappoint him.

ANDRION (9:38): We need a vote in the affirmative for him.

CUSHNIE (9:40): He's right.

ANDRION (9:42): We got rid of negative, but...

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CURTIS (9:44): The vote in the negative died. It didn't pass and that means he's still with us.

CUSHNIE (9:51): No, it doesn't. The agenda says we're gonna appoint vote to appoint him.

CURTIS (9:59): And the motion was to not reappoint him. And that motion lost.

CUSHNIE (10:04): That was a bad motion. The agenda item is to reappoint him.

KAM (10:13): Again, the agenda, provides the topics that will be discussed at the meeting. You folks vote on the actual motions.

CURTIS (10:26): And the actual motion was to not reappoint him. And that motion lost.

PAPALIMU (10:30): But you can't have negative motions is what I am saying. Because we need a positive motion.

ANDRION (10:39): Or we can make a motion and someone can still second it.

CURTIS (10:42): No, we're adjourned.

ANDRION (10:44): You need a motion to adjourn.

CUSHNIE (10:51): I motion to redo the vote the way it's written on the agenda.

ANDRION (10:57): Second.

MCADAM (10:58): The meeting has been adjourned.

ANDRION (11:00): It hasn't. There has to be a consensus for adjournment.

CURTIS (11:10): I don't think so. I think that the agenda is over. And I can adjourn the meeting.

CURTIS (11:22): We disposed of the agenda items and adjournment.

CUSHNIE (11:29): There's a motion and second on the floor.

CURTIS (11:31): I adjourned the meeting prior to that.

KAM (11:38): That motion. Yeah, the motion was to appeal chair Curtis's decision and his decision to adjourn the meeting and that motion failed.

CURTIS (11:58): So, the meeting is adjourned.

ELECTION COMMISSION MEETING; FEBRUARY 20, 2024;
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PAPALIMU (11:59): And he will not have been appointed by the Office of Elections.

CUSHNIE (12:06): Correct. He has not been appointed.

PAPALIMU (12:10): He will not have been appointed by the Office of Elections.

ANDRION (12:14): And that's why it matters.

PAPALIMU (12:17): ...and again, to be appointed. The Office of Elections must appoint. It doesn't say we must not fire it says we must appoint.

CUSHNIE (12:35): I motion to appoint Scott Nago.

ANDRION and PAPALIMU (12:42): Second, second.

CURTIS (12:51): So, I adjourned the meeting, yah?

KAM (12:53): That is my recollection.

CURTIS (12:57): That is my action, Aloha!

ANDRION (13:03): We needed to take the vote.

PAPALIMU (13:06): The vote to adjourn?

ANDRION (13:10): And the vote to appoint.

PAPALIMU (13:12): And the vote to appoint.

CUSHNIE (13:18): I motion to appoint Scott Nago.

ANDRION (13:21): Second.

PAPALIMU (13:23): It has already been motioned and seconded.

PAPALIMU (13:27): We need a vote; Chair.

PAPALIMU (13:29): The chair cannot adjourn the meeting. We need a motion to adjourn.

ANDRION (13:37): I think the Chair has left, so now we're, it is up to us. I like for the record to vote on this motion.

PAPALIMU (13:45): Without the Chair.

ELECTION COMMISSION MEETING; FEBRUARY 20, 2024;
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ANDRION (13:55): That I voted, no.

PAPALIMU (14:00): To not appoint, no.

CHUSHNIE (14:02): I voted NO to reappoint him.

Commissioner ANDRION, No;
Commissioner CUSHNIE No;
Commissioner AQUINO Thumbs down; No;
Commissioner KIGUCHI No response;
Commissioner KUWADA; Excused;
Commissioner PAPALIMU No;
Commissioner TAKENAKA; Not present; Not excused;
Chair CURTIS; Not present; Not excused;

PAPALIMU (14:40): Kiguchi, still looks like he is here.

CUSHNIE (14:46): -We are still recording

ANDRION (14:51): Well guys, I think history will look back at this meeting and will see that the four of us voted against the motion to appoint and that should be the ruling.

Elimination of mail-in balloting and electronic tabulation

Election officials and interested citizens:

Since the November 2020 election there has been several documented events that question the validity and transparency of the mail-in ballot election method combined with the electronic tabulation equipment. We the citizens of Hawaii demand our voices are correctly recorded, and the only way that our votes can be accurately recorded is by same-day, on paper, hand counted ballots in smaller precincts.

Current voting systems and methods ARE NOT TRANSPARENT, voting system vendors have not provided source code for close inspection by non-governmental interested parties. As elections are a public function, all aspects of the voting process should be open and transparent to all interested citizens of Hawaii and American citizens.

In summary, we the citizens of Hawaii demand our voices are properly counted:

- SINGLE DAY VOTING
- ON PAPER
- IN PERSON
- BALLOTS TO ONLY US CITIZENS WITH VALID GOVERNMENT ISSUED ID

Any other voting method will not provide accurate votes and we the citizens of Hawaii demand our voices are properly and accurately counted.

Thank you,

Respectfully,

Anthony M Gairnese
American and Hawaii citizen

From: [Sherilyn Wells](#)
To: [OE.Elections.Commission](#)
Cc: [OE.Elections](#)
Subject: [EXTERNAL] For BOTH external Auditors and Election Commission Members - I am reporting the Election Commission's failure to hold Scott Nago accountable for a federal felony, as delineated in attached DOJ document - Federal Law Constraints on Post-Elect...
Date: Monday, June 17, 2024 8:59:58 PM
Attachments: [September 10 Final Legal Declaration Timely UIPA Request for 2020 General Election Records for Hawaii County\(4\).doc](#)
[Request for Cast Vote Records hand carried to oahu\(6\).doc](#)
[Request for Clarification SMALLER FONT\(4\).doc](#)
[2022-10-05 Wells.pdf](#)
[2022-09-14 - Wells.pdf](#)
[edited_audit_guidance_508_1.pdf](#)
[Exact Contents of September October 2022 Email Request Reply Response for Elections Office Procedures.doc](#)

This is information previously provided to the Commission. With auditors now in the picture, this needs a second look, don't you think?

June 17, 2024

Chair Michael Curtis and Members of the Hawai'i Election Commission
State of Hawai'i Election Commission
Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Attached: Federal Law Constraints on Post-Election "Audits" - see pages "3 and 4 of 8" (pages numbered 2 and 3) regarding the **responsibility to maintain access to/control over Cast Vote Records. Failure to do so carries both financial and incarceration penalties.**

"..regardless of the relevant state law, federal law imposes additional constraints with which every jurisdiction must comply. This document provides information about those federal constraints, which are enforced by the Department of Justice.

The Civil Rights Act of 1960, now codified at 52 U.S.C. §§ 20701-20706, governs certain "[f]ederal election records."

Section 301 of the Act **requires state and local election officials**

to "retain and preserve" all records relating to any "act requisite to voting" for twenty-two months after the conduct of "any general, special, or primary election" at which citizens vote for "President, Vice President, presidential elector, Member of the Senate, [or] Member of the House of Representatives," 52 U.S.C. § 20701.

The materials covered by Section 301 extend beyond "papers" to include other "records." Jurisdictions must therefore also retain and preserve records created in digital or electronic form.

Sherilyn Wells continues:

In 2022, I timely requested the Cast Vote Records for Hawai'i County's 2020 election (attached). I subsequently submitted a legal Declaration of the steps taken to ensure the Request was timely submitted (attached).

Scott Nago's reply (attached), in which he declined to provide said records, is in violation of the guidance in Federal Law Constraints on Post-Election "Audits."

This information re Scott Nago failing to perform his statutory duty was provided to every elected county council member, county mayor, state representative, state senator, and more. No action ensued.

1. My September 10 Final Legal Declaration demonstrates all the steps I went through to get the request for the Hawai'i County 2020 Cast Vote Records submitted in a timely fashion, including both electronic delivery (8/31/22) and personal hand-delivery of hard copies (9/2/22).

2. The "Request for Cast Vote Records Hand Carried to Oahu" is the actual request, plus directions on how the hard copies were to be distributed.
3. The 9/14/22 **reply by Nago** is titled **2022-09-14 Wells.pdf** , a reply in which he clearly indicates he is committing a federal felony.

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

Cannot be granted. Agency is unable to disclose the requested records for the following reason:

Agency does not maintain the records. (HRS § 92F-3)

4. I then sent Scott Nago a lengthy, detailed "Request For Clarification," in which I point out that **the statutes Scott Nago cited are irrelevant** and that **his (in)action contradicts federal DOJ interpretation of the federal law governing provision of the ballots to citizens.**

Scott Nago: ***“..we would need the former contractor's proprietary voting system and access to their technical support to retrieve the cast vote records you are seeking from the storage media devices we have. However, our contract with the contractor for that system has expired and we no longer have the system.***

In regard to your request for a ballot view report, it would require the agency to create a summary or compilation from records, but the requested information is not readily retrievable.

Sherilyn Wells responds: And I pointed out that that violates federal law. Guidance from the DOJ states:

“...require that “administrative procedures be in place giving election officers ultimate management authority over the retention and security of those election records, including the right to physically access” such records..”

Additional Guidance from the DOJ:

The Department interprets the Civil Rights Act to require that covered elections records “be retained either physically by election officials themselves, or under their direct administrative supervision.” Federal Prosecution of Elections Offenses at 79. “This is because the document retention requirements of this federal law place the retention and safekeeping duties squarely on the shoulders election officers.”

Id. If a state or local election authority designates some other individual or organization to take custody of the election records covered by Section 301, then the Civil Rights Act provides that the “duty to retain and preserve any record or paper so deposited shall devolve upon such custodian.” 52 U.S.C. § 20701.

Therefore, if the original election official who has custody of records covered by the Act hands over those election records to other officials (for example, to legislators or other officeholders) or the official turns over the records to private parties (such as companies that offer to conduct “forensic examinations”), the Department interprets the Act to require that “administrative procedures be in place giving election officers ultimate management authority over the retention and security of those election records, including the right to physically access” such records. *Id.* In other words, the obligation to retain and preserve election records remains intact regardless of who has physical possession of those

records. Jurisdictions must ensure that if they conduct post-election ballot examinations, they also continue to comply with the retention and preservation requirements of Section 301.

There are federal criminal penalties attached to willful failures to comply with the retention and preservation requirements of the Civil Rights Act. First, Section 301 itself makes it a federal crime for “[a]ny officer of election” or “custodian” of election records to willfully fail to comply with the retention and preservation requirements. 52 U.S.C. § 20701. Second, Section 302 provides that any “person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper” covered by Section 301’s retention and preservation requirement is subject to federal criminal penalties. *Id.* § 20702. Violators of either section can face fines of up to \$1000 and imprisonment of up to one year for each violation.

Additional information -

Austin Martin (election observer/whistleblower) interview. Observed connections to the internet. **Hawai'i Elections Whistleblower Austin Martin.** <https://rumble.com/v2ig80s-hawaii-elections-whistleblower-austin-martin.html>

Video of a candidate attempting to get staff at the Office of Elections to answer questions about her prior submission.

The stonewalling is typical. **Return to Office of Elections (Sept 8, 2022) 4K.** <https://www.youtube.com/watch?v=XhnA4KSHloc>

More stonewalling by Scott Nago.

See attached document - Exact Contents of September October 2022 Email Request Reply Response for Elections Office

Procedures.

**Deliberate obfuscation reply by Scott Nago - see attached
2022-10-05 Wells.pdf**

Legal Declaration of Sherilyn Wells
re Timely UIPA Request for 2020 General Election Records for Hawai'i County

On penalty of perjury in, of, and by the State of Hawai'i, I, Sherilyn Wells, hereby make the following true and accurate statements.

1. Date - August 30, 2022

Time - 10:38 p.m.

Action - I emailed a two-page **Uniform Information Practices Act (UIPA)** request for a **digital copy of the 2020 General Election Records for Hawai'i County (Cast Vote Record and Ballot Transcript)** - hereinafter the **Request** - to elections@hawaii.gov (Hawai'i **Office** of Elections and Chief Election Officer **Scott Nago**).

I also included a request for "waiver of fees in the public interest" and I emailed the **Request** from my votetrees@protonmail.com address.

See Attachment A, the two-page **Request** document attached to email (content which was also in the body of the email – see Attachment B).

2. Date – August 30, 2022

Time – 11:40 p.m.

Action - I emailed the **Request** again, this time with a Page 3 "cover sheet" beginning "Aloha," detailing what additional content would be in the paper copies of my emailed **Request** that I would mail to the **Office**, to whom the three copies should be given, etc.

See Attachment B, the combined **email** (#1 and #2) and its attached **Request plus Page 3**.

3. I did not receive any emailed confirmation of receipt from the Hawai'i **Office** of Elections/Chief Election Officer **Scott Nago** in response to either of my two emailed **Request(s)**, containing the document as described in #1 and in #2.

See also #11.

4. Date - August 31, 2022

Time - 9:16 a.m.

Action – At the Waikoloa Post Office (zip 96738), I mailed three copies of my UIPA 2020 General Election records **Request** (see #2 above) to the **Office** of Elections and Chief Election Officer **Scott Nago** at 802 Lehua Avenue, Pearl City, HI 96782, using a USPS One-Day Express Flat Rate mail envelope, with tracking number EJ918752950US. The postal employee corrected my zip code on the mailing label (changed to 96782, as the USPS receipt indicates) before the documents were mailed.

See Attachment C - USPS receipt for mailing the **Request** on August 31, 2022, at 9:16 a.m. from Waikoloa, showing the Pearl City (96782) destination, the PM Express 1-Day Flat Rate Envelope charge, and tracking number EJ918752950US.

5. Date – September 2, 2022

Time – Before 1 a.m.

Action – USPS tracking revealed that the One-Day Express Flat Rate envelope had not been delivered on September 1, 2022, as scheduled. So, I added pages to the **Request** that I would now hand-deliver (see #6 & #7 Action) to the **Office** and to Chief Election Officer **Scott Nago**.

Contents of hand-delivered copies of **Request** -

- (a) a top page (Cover Page) LIST OF DOCUMENTS,
- (b) the three-page **Request** as described in #2 above, but with Page 3 updated to reflect the new developments,
- (c) the emailed copy of the **Request** in #2, showing time-and-date data in both #1 and #2,
- (d) the USPS receipt for mailing the **Request** on August 31, 2022, at 9:16 a.m. from Waikoloa, showing the Pearl City (96782) destination and the PM Express 1-Day Flat Rate Envelope charge, and tracking number EJ918752950US,
- (e) the USPS website tracking page – accessed very late on September 1, 2022 - for EJ918752950US, showing that the package was in the system/still not delivered, having departed the Waikoloa Post Office on 8/31/22.

See Attachment D, #5(a)-(e).

6. Date – September 2, 2022

Time – 6:15 a.m.

Action – I flew from Kona to Honolulu on Hawaiian Air 107 with four paper copies of the **Request**, three for the **Office**/Chief Election Officer **Scott Nago** and one to be timestamped for me, in order to timely hand-deliver the **Request** to the **Office** and Chief Election Officer **Scott Nago**.

See Attachment E – Hawaiian Airlines #107 boarding pass for Sherilyn Wells on September 2, 2022.

7. Date – September 2, 2022

Time – 7:44 a.m.

Action – Having taken the city bus from the Honolulu Airport to Pearl City (transferring mid-route), I signed the **Office** of Elections log at 7:44 a.m., after asking the man staffing the front counter/desk (to our right as visitors face the counter) what time it was.

I later asked for his name and (this is phonetic only, not sure of the correct spelling) he said Ray DeVega.

8. Date – September 2, 2022

Action - I tried to hand three copies of my **Request** to **Office** employee Ray DeVega (spelling?), but he declined to accept them.

List of the contents in each hand-delivered copy of the **Request** – **See Attachment D, #5(a)-(e)**.

9. Date – September 2, 2022

Action - Instead, Ray DeVega (spelling?) took one of my **Request** copies and said he would make their own copy for the **Office**.

The copying took place out of my line of sight and **I never saw the copy Ray (allegedly) made for the Office**.

When my **Request** copy was returned to me, it had been timestamped (see #10), its staple had been removed and the document restapled in a new configuration (horizontal instead of at an angle), but I still have no way of – at this time – conclusively verifying the physical existence of the **Office’s** hand-delivered copy and whether or not it contains all pages, as I was not given the “copy the **Office** made” of “my **Request** copy” to inspect.

10. Date – September 2, 2022

Time – 7:47 a.m.

Action - Ray DeVega (spelling) time/date stamped my copy and returned it to me with the machine stamp - 7:47 a.m. on September 2, 2022.

See Attachment F – re 5(a) - LIST OF DOCUMENTS Cover Page, now with Office of Elections time-and-date stamp.

11. Date – September 2, 2022

Action – I asked Ray DeVega (spelling) if the **Office** of Elections had received the emailed **Request** I’d sent on August 30, 2022 (see #1 and #2) from my votetrees@protonmail.com account. He looked in the **Office** computer at the front counter and verbally confirmed that they HAD received my emailed **Request**.

12. Date – September 2, 2022

Action – I flew from Honolulu to Lihue to Kona (Hawaiian Air # 233 and #320).

See Attachment E – All Sherilyn Wells boarding passes for September 2, 2022, on Hawaiian Airlines – Kona to Honolulu to Lihue to Kona – 107, 233, 320.

SIGNED this 10th day of September, 2022.

Sherilyn Wells
votetrees@protonmail.com
68-1921 Lina Poepoe St.
Waikoloa, Hawai’i 96738

August 31, 2022

To -

Hawai'i Chief Election Officer Scott T. Nago & Hawai'i Office of Elections
802 Lehua Avenue
Pearl City, HI 94702

ELECTION RECORDS REQUEST

Pursuant to Hawai'i's Public Records law – the Uniform Information Practices Act, chapter 92F, Hawaii Revised Statutes

[https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-](https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092F/HRS_0092F-.htm)

[0115/HRS0092F/HRS_0092F-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092F/HRS_0092F-.htm)

Also as per Title 2, Chapter 11, Hawai'i Revised Statutes, regarding the conduct of elections.

[https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-](https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/HRS0011/HRS_0011-.htm)

[0042F/HRS0011/HRS_0011-.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/HRS0011/HRS_0011-.htm)

As the requester (Sherilyn Wells, votetrees@protonmail.com), I am requesting Digital Copies of the following government records (1) and (2) below.

a. This information has been satisfactorily provided from other counties using Hart voting systems, so the information I request should be able to be generated.

b. A report of this type would have very likely already been created when Hawai'i County audited their election results.

c. "All mail voting has streamlined the administration side of elections, too, significantly reduced the number of personnel needed..."

<https://www.csg.org/2022/08/24/behind-the-ballot-with-scott-nago/>

(1) a copy of the Hawai'i County Cast Vote Record (CVR) report, in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election.

(2) a copy of the Hawai'i County Ballot View Report – Ballot Manifest Report for the above (1), also in a digital format.

Records Request details for the
November 3, 2020, General Election in Hawai'i County -
(Roman Numerals provided for ease of reference).

I. A text, comma or tab delimited file, or a text-based report, listing, in the sequence processed,

a. every ballot,

b. its sequential ID,

c. its timestamp,

d. its method of voting,

e. the specific votes contained for all races, and

f. the batch ID and

g. tabulator ID.

II. Should any fields not be available, please include the fields which are.

III.a. To be clear, I am not requesting a summary report of votes, I AM requesting a per-ballot report. This set of information is sometimes known as a “cast vote record (CVR)”, “ballot log”, or a “summary of ballots.”

III.b. A CVR is a file, either text or possible excel format, which lists on each line information about one ballot in the order processed. It will contain all the votes made on that ballot in some fashion. It will contain all or some of the following fields.

CVR Number

Tabulator ID

Counting Group (or other name – this tells how the vote was cast)

Batch ID

Precinct ID

Ballot Type

IV. If the data exists as multiple files or reports, for instance by batch or by precinct, you do not need to aggregate them, please send the individual files.

V. We specifically do not want to include any information which identifies a specific voter, and I guarantee and stipulate that this information will not be used for that purpose.

VI. This information has been satisfactorily provided from other counties using Hart voting systems, so the information I request should be able to be generated.

VII. Ballot manifest report means a detailed description of how the ballots are stored and organized, listing the unique physical location of each and every ballot card cast in the election in such a way that individual ballot cards or batches of ballot cards can be found, retrieved, and examined manually.

I am also requesting a waiver of fees in the public interest.

- The requested record pertains to the operation/activities of an agency.
- The record is not readily available in the public domain.
- The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

Signed this 31st day of August, 2022, in Waikoloa, Hawai'i.

Sherilyn Wells
68-1921 Lina Poepoe St.
Waikoloa, HI 96738

Aloha –

I have provided three “hard copies” of my Public Records Request by bringing the paperwork to the Office of Elections at 802 Lehua Avenue in Pearl City in person on September 2, 2022, to hand deliver the Request. (I have a Hawai’ian Airlines roundtrip reservation – KOA – HNL – KOA on September 2, 2022: Flights 117 R; 353 R; 320 R.)

I also mailed “hard copies” of my Public Records Request at 9:16 a.m. on 8/31/22 (USPS tracking # EJ 918 752 950 US) via Express One-Day Flat Rate Envelope from Waikoloa, Hawai’i. See attached photocopy of USPS transaction and tracking data.

I also emailed the Request to the Office of Elections/Scott Nago at elections@hawaii.gov the night of August 30, 2022, at 10:38 pm. See date and time stamp on email.

**One copy is for Chief Election Officer Scott Nago.
One copy is for the Office of Elections.
One copy is unmarked.**

I have attached a copy of the “duplicate-content email” that I sent to , with the email date and time indicated to demonstrate that the Office of Elections and Chief Election Officer Scott Nago had the Public Records request as of the morning of August 31, 2022.

Thank you for your attention re this matter and for providing the public with these important public records.

Signed this 31st day of August, 2022.

Sherilyn Wells

September 17, 2022

Aloha Chief Election Officer Scott Nago/Hawai'i Office of Elections,

Sherilyn Wells' Request for Clarification of Response and Request for another Public Record.

As we begin, let us be reminded of the words our legislators chose when they enacted the UIPA –

This chapter shall be applied and construed to promote its underlying purposes and policies, which are to:

- (1) Promote the public interest in disclosure;
- (2) Provide for accurate, relevant, timely, and complete government records;
- (3) Enhance governmental accountability through a general policy of access to government records;
- (4) Make government accountable to individuals in the collection, use, and dissemination of information relating to them; and

Accordingly and with gratitude to those constitutionally-designated servants of the Public -

I. I request clarification of your response to my request for election records as per UIPA and other applicable law.

II. Under the UIPA, I am also requesting an additional public record, as it directly pertains to the election records request. See re HRS 92F-11(c) on page 6. Please provide a copy of the contract cited in your response – “..our contract with the contractor for that system has expired and we no longer have the system.”

After some general clarification questions #1 through #6, I will separate this request for clarification into two categories: statutes and the Cast Vote Record request (CLARIFICATION #1) and statutes and the Ballot Transcript request (CLARIFICATION #2).

QUESTION #1 – were there any terms used in my request which you did not understand?

QUESTION #2(a) – which of these fields (a through h below), if any, is NOT found on the election records I requested?

YES – you DO have it. NO – you do NOT have it.

Cast Vote Record: A text, comma or tab delimited file, or a text-based report, listing, in the sequence processed,

- a. every ballot, YES OR NO.**
- b. its sequential ID (CVR number), YES OR NO.**
- c. its timestamp, YES OR NO.**
- d. its method of voting (Ballot Type), YES OR NO.**
- e. the specific votes contained for all races (Counting Group or other name), YES OR NO.**
- f. the batch ID, YES OR NO.**
- g. tabulator ID, YES OR NO.**
- h. Precinct ID. YES OR NO.**

QUESTION #2(b)(i) – You wrote: - Please note that the voting system used in 2020 did not have a mechanism for extracting cast vote records from the mail ballot component (Ballot Now) of the system.
Is this the system? <https://verifiedvoting.org/election-system/hart-intercivic-ballot-now/>

QUESTION #2(b)(ii) What types of records did it extract? Please provide a detailed list of the types of records.

QUESTION #3 – Yes or No. Did you take note of the fact that we wrote, “We specifically do not want to include any information which identifies a specific voter..”

QUESTION #4 – Yes or No. Did you take note of the fact that we wrote, “Should any fields not be available, please include the fields which are.”

QUESTION #5 – Yes or No. Did you take note of the fact that we wrote, “If the data exists as multiple files or reports, for instance by batch or by precinct, you do not need to aggregate them, please send the individual files.”

QUESTION #6 – You wrote, “Agency does not maintain the records.” Please specify which records you do not maintain (a through h below). Please indicate why IF you do NOT maintain them.

- a. every ballot, YES OR NO. If NO, why.
- b. its sequential ID (CVR number), YES OR NO. If NO, why.
- c. its timestamp, YES OR NO. If NO, why.
- d. its method of voting (Ballot Type), YES OR NO. If NO, why.
- e. the specific votes contained for all races (Counting Group or other name), YES OR NO. If NO, why.
- f. the batch ID, YES OR NO. If NO, why.
- g. tabulator ID, YES OR NO. If NO, why.
- h. Precinct ID. YES OR NO. If NO, why.

CLARIFICATION #1 re STATUTES

You cited multiple sections of HRS 92F in your response.

HRS 92F-3. This is the DEFINITIONS section.

QUESTION #7(a) – Which definition(s) were you citing?

QUESTION #7(b) - To which of (a through h) do/does the definition(s) you cited apply?

QUESTION #7(c) - How or why is that the relationship between (“a through h & definition”) supports a denial of request for records?

a. every ballot.

7(a)

7(b)

7(c)

b. its sequential ID (CVR number).

7(a)

7(b)

7(c)

c. its timestamp.

7(a)

7(b)

7(c)

d. its method of voting (Ballot Type).

7(a)

7(b)

7(c)

e. the specific votes contained for all races (Counting Group or other name).

7(a)

7(b)

7(c)

f. the batch ID.

7(a)

7(b)

7(c)

g. tabulator ID.

7(a)

7(b)

7(c)

h. Precinct ID.

7(a)

7(b)

7(c)

HRS 92F-11(c).

This refers to the retrievability of information in the form in which it is requested.

You stated that it was not retrievable because:

“..we would need the former contractor's proprietary voting system and access to their technical support to retrieve the cast vote records you are seeking from the storage media devices we have. However, our contract with the contractor for that system has expired and we no longer have the system.”

In regard to your request for a ballot view report, it would require the agency to create a summary or compilation from records, but the requested information is not readily retrievable.

And I pointed out that that violates federal law. Guidance from the DOJ states:

“...require that “administrative procedures be in place giving election officers ultimate management authority over the retention and security of those election records, including the right to physically access” such records..”

Additional Guidance from the DOJ:

The Department interprets the Civil Rights Act to require that covered elections records “be retained either physically by election officials themselves, or under their direct administrative supervision.” Federal Prosecution of Elections Offenses at 79. “This is because the document retention requirements of this federal law place the retention and safekeeping duties squarely on the shoulders election officers.” *Id.* If a state or local election authority designates some other individual or organization to take custody of the election records covered by Section 301, then the Civil Rights Act provides that the “duty to retain and preserve any record or paper so deposited shall devolve upon such custodian.” 52 U.S.C. § 20701.

Therefore, if the original election official who has custody of records covered by the Act hands over those election records to other officials (for example, to legislators or other officeholders) or the official turns over the records to private parties (such as companies that offer to conduct “forensic examinations”), the Department interprets the Act to require that “administrative procedures be in place giving election officers ultimate management authority over the retention and security of those election records, including the right to physically access” such records. *Id.* In other words, the obligation to retain and preserve election records remains intact regardless of who has physical possession of those records. Jurisdictions must ensure that if they conduct post-election ballot examinations, they also continue to comply with the retention and preservation requirements of Section 301.

There are federal criminal penalties attached to willful failures to comply with the retention and preservation requirements of the Civil Rights Act. First, Section 301 itself makes it a federal crime for “[a]ny officer of election” or “custodian” of election records to willfully fail to comply with the retention and preservation requirements. 52 U.S.C. § 20701. Second, Section 302 provides that any “person,

whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper” covered by Section 301’s retention and preservation requirement is subject to federal criminal penalties. *Id.* § 20702. Violators of either section can face fines of up to \$1000 and imprisonment of up to one year for each violation.

To the degree that any part of your assertion re “retrievability” relates to the form of the requested records and not to the Contractor -

***Re HRS 92F-11(c) - Did you take note of the fact that we wrote, “Should any fields not be available, please include the fields which are.”
In other words, whatever files/fields YOU HAVE are the ones we are requesting.***

***Re HRS 92F-11(c) - Did you take note of the fact that we wrote, “If the data exists as multiple files or reports, for instance by batch or by precinct, you do not need to aggregate them, please send the individual files.”
In other words, if the data exists in a different form than requested, we will accept them as they are.***

QUESTION #8(a) – (b) are below (c) – (e).

QUESTION #8(c) – to what degree do you think the Elections statute HRS 11-1 definition of Ballot and Ballot summary applies to our request?

§11-1 Definitions. Whenever used in this title, the words and phrases in this title shall, unless the same is inconsistent with the context, be construed as follows:

"Ballot" means a ballot, including an absentee ballot, that is a written or printed, or partly written and partly printed paper or papers containing the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on. "Ballot" includes:

(1) A ballot summary reflecting a complete record of the ballot selections made by a voter utilizing an HTML ballot or similar accessible ballot that produces a ballot summary;

(2) A voter verifiable paper audit trail in the event there is a discrepancy between a voting machine's electronic record of the voted ballot and the voter verifiable paper audit trail; and

(3) A ballot used in an election by mail pursuant to part VIIA, including a ballot approved for electronic transmission. A ballot may consist of one or more cards or pieces of paper, or one face of a card or piece of paper, or a portion of the face of a card or piece of paper, depending on the number of offices, candidates to be elected thereto, questions or issues to be voted on, and the voting system in use.

"Ballot summary" means a complete record of ballot selections that is verified by the voter.

QUESTION #8(d) – Do you perceive any conflict between HRS 11-1 and HRS 92(F)-11(c)?

QUESTION #8(e) – If YES re #8(d), how does the Office reconcile the statutes in regards to records requests?

QUESTION #8(a) – Which records (a through h) do you claim to no longer have access to, due to contract expiration, etc., as per your statement above?

QUESTION #8(b) – Which of these records (a through h) do you have available to immediately provide?

a. every ballot.

8(a)

8(b)

b. its sequential ID (CVR number).

8(a)

8(b)

c. its timestamp.

8(a)

8(b)

d. its method of voting (Ballot Type).

8(a)

8(b)

e. the specific votes contained for all races (Counting Group or other name).

8(a)

8(b)

f. the batch ID.

8(a)

8(b)

g. tabulator ID.

8(a)

8(b)

h. Precinct ID.

8(a)

8(b)

HRS 92F-13.

This delineates exceptions

- (1) to maintain personal privacy,**
- (2) re non-discoverable records and judicial/quasi-judicial actions to which the State/County is/may be a party,**
- (3) re confidential records to maintain legitimate government function,**
- (4) re records protected from disclosure by court order,**
- (5) re draft working papers of legislative committees.**

Re HRS 92F-13(1) - Did you take note of the fact that we wrote, “We specifically do not want to include any information which identifies a specific voter..”

Re HRS 92F-13(2) – these records are explicitly discoverable as per federal law. “These records” refers to (my request for) election records.

Re HRS 92F-13(3) – production of these records is explicitly allowed as per federal law. “These records” refers to (my request for) election records.

Re HRS 92F-13(4) – there is no court order protecting such records.

Re HRS 92F-13(5) – these are not draft working papers, etc., of legislative committees.

QUESTION #9(a) – Which section(s) of HRS 92F-13 did you believe applies?

QUESTION #9(b) - To which of (a through h) does that section(s) of HRS 92F-13 you cited apply?

QUESTION #9(c) - How or why is that relationship between (“a through h and cited section of HRS 92F-13”) applicable to a denial of request for records?

a. every ballot.

9(a)

9(b)

9(c)

b. its sequential ID (CVR number).

9(a)

9(b)
9(c)

c. its timestamp.

9(a)
9(b)
9(c)

d. its method of voting (Ballot Type).

9(a)
9(b)
9(c)

e. the specific votes contained for all races (Counting Group or other name).

9(a)
9(b)
9(c)

f. the batch ID.

9(a)
9(b)
9(c)

g. tabulator ID.

9(a)
9(b)
9(c)

h. Precinct ID.

9(a)
9(b)
9(c)

HRS 92F-22.

This is the section exempting and limiting individual access to PERSONAL records from certain agencies in the following circumstances:

HRS 92F-22(1)(A) – re an agency involved in prevention/control/reduction of crime - information compiled for criminal investigation is exempt.

HRS 92F-22(1)(B) – re reports prepared by an agency involved in prevention/control/reduction of crime at any stage of enforcement of criminal laws are exempt.

HRS 92F-22(2) – when necessary to prevent disclosure of the identity of a confidential source for an agency.

HRS 92F-22(3) – exempting testing or exam materials used to determine individual qualifications for public employment.

HRS 92F-22(4) – exempting investigative reports/materials when there is an upcoming/ongoing/pending civil or criminal or administrative action against an individual.

HRS 92F-22(5) – Personal records of the individual themselves when a statute/judicial decision/constitutional or statutory privilege applies.

QUESTION #10(d) Re HRS 92F-22(1)-(5) – YES or NO. Did you take note of the fact that we wrote, “We specifically do not want to include any information which identifies a specific voter..”

QUESTION #10(e) – In addition, given that this statute applies specifically to PERSONAL RECORDS as those records relate to agencies performing criminal investigations, agencies considering hiring an individual, agencies protecting confidential sources, agencies involved in existing or pending legal actions... How does this statute in any way apply to a request for election records, which fall in none of the above categories AND which are explicitly governed by pre-emptive federal law?

If you disagree -

QUESTION #10(a) – Which section(s) of HRS 92F-22 were you citing?

QUESTION #10(b) - To which of (a through h) does the section you cited apply?

QUESTION #10(c) - How or why is that specific relationship between (“a through h and the cited HRS section”) applicable to a denial of request for records?

a. every ballot.

10(a)

10(b)

10(c)

b. its sequential ID (CVR number).

10(a)

10(b)

10(c)

c. its timestamp.

10(a)

10(b)

10(c)

d. its method of voting (Ballot Type).

10(a)

10(b)

10(c)

e. the specific votes contained for all races (Counting Group or other name).

10(a)

10(b)

10(c)

f. the batch ID.

10(a)

10(b)

10(c)

g. tabulator ID.

10(a)

10(b)

10(c)

h. Precinct ID.

10(a)

10(b)

10(c)

CLARIFICATION #2.
Ballot Transcript request.

QUESTION #11 – what differences do you perceive, if any, between the Election law’s voter verifiable paper audit trail and our request for a Ballot Manifest?

“A voter verifiable paper audit trail in the event there is a discrepancy between a voting machine's electronic record of the voted ballot and the voter verifiable paper audit trail..”

Ballot manifest report means a detailed description of how the ballots are stored and organized, listing the unique physical location of each and every ballot card cast in the election in such a way that individual ballot cards or batches of ballot cards can be found, retrieved, and examined manually

Request for Clarification of Office of Elections’ Response to Request for 2020 General Election Records for County of Hawai’i (August 31, 2022) by Sherilyn Wells

AND

Additional UIPA Request for Public Record applicable to previous election records request.

Signed this 17th day of September, 2022, by Sherilyn Wells.

68-1921 Lina Poepoe St.
Waikoloa, Hi. 96738
votetrees@protonmail.com

NOTICE TO REQUESTER

TO: Sherilyn Wells

FROM: Office of Elections, (808) 453-VOTE (8683), elections@hawaii.gov

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: September 21, 2022

DATE OF THIS NOTICE: October 5, 2022

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

As Per §91-2 Public information. (a) In addition to other rulemaking requirements imposed by law, each agency shall:

(3) Make available for public inspection all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions.

Sherilyn continues: For instance, please provide your complete process for review of requests (e.g., what happens to a request once it is received - the sequence of events - and which staff positions are responsible for that stage of the review). **Please include how/when/to whom to appeal a decision** proffered by the agency IF such an administrative review is available or please indicate if the decision needs to be taken to court instead.

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

☒ Will be granted in its entirety.

Attached is a link to our administrative rules. <https://elections.hawaii.gov/wp-content/uploads/HAR-Office-of-Elections.pdf>.

☐ **Cannot be granted. Agency is unable to disclose the requested records for the following reason:**

- ☐ Agency does not maintain the records. (HRS § 92F-3)
Other agency that is believed to maintain records: _____
- ☐ Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
- ☐ Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))

☐ Will be granted in part and denied in part, OR ☐ Is denied in its entirety
Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.
(Describe the portions of records that the agency will not disclose.)

RECORDS OR
INFORMATION WITHHELD

APPLICABLE
STATUTES

AGENCY
JUSTIFICATION

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- ☐ Inspection at the following location: _____
- ☐ As requested, a copy of the record(s) will be provided in the following manner:
- ☐ Available for pick-up at the following location: _____
- ☐ Will be mailed to you.
- ☐ Will be transmitted to you by other means requested: _____

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- ☐ On _____, 20____.
- ☐ **After prepayment** of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- ☐ The prior increment (if one prepayment of fees is required and received), or
- ☐ Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- ☐ Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- ☐ Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- ☐ Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- ☐ A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its

entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

Fees: Search	Estimate of time to be spent: _____ hours (\$2.50 for each 15-minute period)	\$
Review & segregation	Estimate of time to be spent: _____ hours (\$5.00 for each 15-minute period)	\$
Fees waived	<input type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60) <\$ _____> (Only one waiver per request)	
Other	_____ (Pursuant to HAR §§ 2-71-19 & 2-71-31)	\$
Total Estimated Fees:		\$

For public or personal record requests:

Costs: Copying	Estimate of # of pages to be copied: _____ (@ \$ _____ per page, pursuant to HRS § 92-21)	\$
Delivery	Postage	\$
Other	_____	\$
Total Estimated Costs:		\$

TOTAL ESTIMATED FEES AND COSTS from above: \$

☐ **The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.**

☐ **PREPAYMENT IS REQUIRED** (50% of fees + 100% of costs, as estimated above) \$

☐ **UNPAID BALANCE FROM PRIOR REQUESTS** (100% must be paid before work begins) \$

TOTAL AMOUNT DUE AT THIS TIME \$

Payment may be made by: ☐ cash

☐ personal check payable to _____
☐ other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, ois@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

NOTICE TO REQUESTER

TO: Sherilyn Wells

FROM: Office of Elections, (808) 453-VOTE (8683), elections@hawaii.gov

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: August 31, 2022

DATE OF THIS NOTICE: September 14, 2022

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

(1) a copy of the Hawai'i County Cast Vote Record (CVR) report, in a digital format, for all of the elections that were on the ballot for the November 3, 2020 General Election.

(2) a copy of the Hawai'i County Ballot View Report – Ballot Manifest Report for the above (1), also in a digital format.

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

☐ Will be granted in its entirety.

☒ **Cannot be granted. Agency is unable to disclose the requested records for the following reason:**

☒ Agency does not maintain the records. (HRS § 92F-3)

Other agency that is believed to maintain records: _____

☐ Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____

☒ Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))

☐ Will be granted in part and denied in part, OR ☐ Is denied in its entirety

Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.

(Describe the portions of records that the agency will not disclose.)

RECORDS OR
INFORMATION WITHHELD

APPLICABLE
STATUTES

AGENCY
JUSTIFICATION

Please note that the voting system used in 2020 did not have a mechanism for extracting cast vote records from the mail ballot component (Ballot Now) of the system. As for ballots cast at voter service centers, the system had that capability. Having said that, we would need the former contractor's proprietary voting system and access to their technical support to retrieve the cast vote records you are seeking from the storage media devices we have. However, our contract with the contractor for that system has expired and we no longer have the system.

In regard to your request for a ballot view report, it would require the agency to create a summary or compilation from records, but the requested information is not readily retrievable.

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- ☐ Inspection at the following location: _____
- ☐ As requested, a copy of the record(s) will be provided in the following manner:
- ☐ Available for pick-up at the following location: _____
- ☐ Will be mailed to you.
- ☐ Will be transmitted to you by other means requested: _____

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- ☐ On _____, 20____.
- ☐ **After prepayment** of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- ☐ The prior increment (if one prepayment of fees is required and received), or
- ☐ Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- ☐ Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- ☐ Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- ☐ Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- ☐ A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

Fees: Search	Estimate of time to be spent: _____ hours (\$2.50 for each 15-minute period)	\$
Review & segregation	Estimate of time to be spent: _____ hours (\$5.00 for each 15-minute period)	\$
Fees waived	<input type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60) <\$ _____> (Only one waiver per request)	
Other	_____ (Pursuant to HAR §§ 2-71-19 & 2-71-31)	\$
Total Estimated Fees:		\$

For public or personal record requests:

Costs: Copying	Estimate of # of pages to be copied: _____ (@ \$ _____ per page, pursuant to HRS § 92-21)	\$
Delivery	Postage	\$
Other	_____	\$
Total Estimated Costs:		\$

TOTAL ESTIMATED FEES AND COSTS from above: \$

☐ **The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.**

☐ **PREPAYMENT IS REQUIRED** (50% of fees + 100% of costs, as estimated above) \$

☐ **UNPAID BALANCE FROM PRIOR REQUESTS** (100% must be paid before work begins) \$

TOTAL AMOUNT DUE AT THIS TIME \$

Payment may be made by: ☐ cash
☐ personal check payable to _____
☐ other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, oiip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.



U.S. Department of Justice

Federal Law Constraints on Post-Election “Audits”

Published July 28, 2021



U.S. Department of Justice

The U.S. Department of Justice is committed to ensuring full compliance with all federal laws regarding elections. This includes those provisions of federal law that govern the retention and preservation of election records or that prohibit intimidation of, or interference with, any person's right to vote or to serve as an election official.

The Department is also committed to ensuring that American elections are secure and reflect the choices made on the ballots cast by eligible citizens. "The November 3rd election was the most secure in American history," according to a [Joint Statement](#) issued by federal and state officials and released by the federal Cybersecurity & Infrastructure Security Agency. In many jurisdictions, there were automatic recounts or canvasses pursuant to state law due to the closeness of the election results. None of those state law recounts produced evidence of either wrongdoing or mistakes that casts any doubt on the outcome of the national election results.

In recent months, in a number of jurisdictions around the United States, an unusual second round of examinations have been conducted or proposed. These examinations would look at certain ballots, election records, and election systems used to conduct elections in 2020. These examinations, sometimes referred to as "audits," are governed, in the first instance, by state law. In some circumstances, the proposed examinations may comply with state law; in others, they will not. But regardless of the relevant state law, federal law imposes additional constraints with which every jurisdiction must comply. This document provides information about those federal constraints, which are enforced by the Department of Justice.



Constraints Imposed by the Civil Rights Act of 1960

The Civil Rights Act of 1960, now codified at 52 U.S.C. §§ 20701-20706, governs certain “[f]ederal election records.” Section 301 of the Act requires state and local election officials to “retain and preserve” all records relating to any “act requisite to voting” for twenty-two months after the conduct of “any general, special, or primary election” at which citizens vote for “President, Vice President, presidential elector, Member of the Senate, [or] Member of the House of Representatives,” 52 U.S.C. § 20701. The materials covered by Section 301 extend beyond “papers” to include other “records.” Jurisdictions must therefore also retain and preserve records created in digital or electronic form.

The ultimate purpose of the Civil Rights Act’s preservation and retention requirements for federal elections records is to “secure a more effective protection of the right to vote.” *State of Ala. ex rel. Gallion v. Rogers*, 187 F. Supp. 848, 853 (M.D. Ala. 1960) (citing H.R. Rep. 956, 86th Cong., 1st Sess. 7 (1959)), *aff’d sub nom. Dinkens v. Attorney General*, 285 F.2d 430 (5th Cir. 1961) (*per curiam*). The Act protects the right to vote by ensuring that federal elections records remain available in a form that allows for the Department to investigate and prosecute both civil and criminal elections matters under federal law. The Federal Prosecution of Election Offenses, Eighth Edition 2017 explains that “[t]he detection, investigation, and proof of election crimes – and in many instances Voting Rights Act violations – often depend[s] on documentation generated during the voter registration, voting, tabulation, and election certification processes.” *Id.* at 75. It provides that “all documents and records that may be relevant to the detection or prosecution of federal civil rights or election crimes must be maintained if the documents or records were generated in connection with an election that included one or more federal candidates.” *Id.* at 78.

The Department interprets the Civil Rights Act to require that covered elections records “be retained either physically by election officials themselves, or under their direct administrative supervision.” *Federal Prosecution of Elections Offenses* at 79. “This is because the document retention requirements of this federal law place the retention and safekeeping duties squarely on the shoulders



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of election officers.” *Id.* If a state or local election authority designates some other individual or organization to take custody of the election records covered by Section 301, then the Civil Rights Act provides that the “duty to retain and preserve any record or paper so deposited shall devolve upon such custodian.” 52 U.S.C. § 20701.

Therefore, if the original election official who has custody of records covered by the Act hands over those election records to other officials (for example, to legislators or other officeholders) or the official turns over the records to private parties (such as companies that offer to conduct “forensic examinations”), the Department interprets the Act to require that “administrative procedures be in place giving election officers ultimate management authority over the retention and security of those election records, including the right to physically access” such records. *Id.* In other words, the obligation to retain and preserve election records remains intact regardless of who has physical possession of those records. Jurisdictions must ensure that if they conduct post-election ballot examinations, they also continue to comply with the retention and preservation requirements of Section 301.

There are federal criminal penalties attached to willful failures to comply with the retention and preservation requirements of the Civil Rights Act. First, Section 301 itself makes it a federal crime for “[a]ny officer of election” or “custodian” of election records to willfully fail to comply with the retention and preservation requirements. 52 U.S.C. § 20701. Second, Section 302 provides that any “person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper” covered by Section 301’s retention and preservation requirement is subject to federal criminal penalties. *Id.* § 20702. Violators of either section can face fines of up to \$1000 and imprisonment of up to one year for each violation.

Election audits are exceedingly rare. But the Department is concerned that some jurisdictions conducting them may be using, or proposing to use, procedures that risk violating the Civil Rights Act. The duty to retain and preserve election records necessarily requires that elections officials maintain the security and integrity of those records and their attendant chain of custody, so that a complete and



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uncompromised record of federal elections can be reliably accessed and used in federal law enforcement matters. Where election records leave the control of elections officials, the systems for maintaining the security, integrity and chain of custody of those records can easily be broken. Moreover, where elections records are no longer under the control of elections officials, this can lead to a significant risk of the records being lost, stolen, altered, compromised, or destroyed. This risk is exacerbated if the election records are given to private actors who have neither experience nor expertise in handling such records and who are unfamiliar with the obligations imposed by federal law.



Constraints Imposed by the Federal Laws Prohibiting Intimidation

Federal law prohibits intimidating voters or those attempting to vote. For example, Section 11(b) of the Voting Rights Act of 1965 provides that “No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote...” 52 U.S.C. § 10307(b). Similarly, Section 12 of the National Voter Registration Act of 1993 makes it illegal for any person, “including an election official,” to “knowingly and willfully intimidate[], threaten[], or coerce[], or attempt to intimidate, threaten, or coerce, any person for . . . registering to vote, or voting, or attempting to register or vote” in any election for federal office. *Id.* § 20511(1)(A). Likewise, Section 131 of the Civil Rights Act of 1957 provides that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate” for federal office. 52 U.S.C. § 10101(b).

The Attorney General is authorized to file a civil action seeking preventative relief, including a temporary or permanent injunction, against any person who engages in actions that violate these statutes. See 52 U.S.C. §§ 10308(d); 20510(a). And there are criminal penalties as well. See, e.g., *id.* § 10308(a); 18 U.S.C. §§ 241, 242, 594; see *generally* Federal Prosecution of Election Offenses, at 33-38, 49-54, 56-58.

Judicial decisions have established that voter intimidation need not involve physical threats. In certain contexts, suggesting to individuals that they will face adverse social or legal consequences from voting can constitute an impermissible threat. Here are a few examples of the types of acts that may constitute intimidation:



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- Sending a letter to foreign-born Latino registered voters warning them that “if they voted in the upcoming election their personal information would be collected ... and ... could be provided to organizations who are ‘against immigration’” was potentially intimidating. See *United States v. Nguyen*, 673 F.3d 1259 (9th Cir. 2012).
- Having police officers take down the license plate numbers of individuals attending voter registration meetings contributed to intimidating prospective voters. See *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967).
- Sending robocalls telling individuals that if they voted by mail, their personal information would become part of a public database that could be used by police departments to track down old warrants and credit card companies to collect outstanding debts could constitute intimidation. See *Nat’l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457 (S.D.N.Y. 2020).
- Linking individual voters to alleged illegalities in a way that might trigger harassment could constitute intimidation. See *League of United Latin Am. Citizens - Richmond Region Council 4614 v. Pub. Int. Legal Found.*, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018).
- Conducting a “ballot security” program in which defendants stand near Native American voters discussing Native Americans who had been prosecuted for illegally voting, follow voters out of the polling places, and record their license plate numbers might constitute intimidation. See *Daschle v. Thune*, No. 4:04 Civ. 04177 (D.S.D. Nov. 1, 2004).

See also *United States v. North Carolina Republican Party*, No. 5:92-cv-00161 (E.D.N.C. Feb. 27, 1992) (approving a consent decree in a case where the United States alleged that it violated Section 11(b) to send postcards to voters in predominantly African American precincts falsely claiming that voters were required to have lived in the same precinct for thirty days prior to the election and stating that it is a “federal crime to knowingly give false information about your name, residence or period of residence to an election official”).¹

¹ While voter intimidation need not involve physical threats, federal law of course prohibits using “force or threat of force” to intimidate or interfere with, or attempt to intimidate or interfere with, any person’s “voting or qualifying to vote” or serving “as a poll watcher, or any legally authorized election official, in any primary, special, or general election.” 18 U.S.C. § 245(b)(1)(A). The Deputy Attorney General recently issued [Guidance Regarding Threats Against Election Workers](#).



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There have been reports, with respect to some of the post-2020 ballot examinations, of proposals to contact individuals face to face to see whether the individuals were qualified voters who had actually voted. See, e.g., [Cyber Ninjas Statement of Work ¶ 5.1](#) (proposing to select three precincts in a large urban county to collect information from individuals through “a combination of phone calls and physical canvassing”).

This sort of activity raises concerns regarding potential intimidation of voters. For example, when such investigative efforts are directed, or are perceived to be directed, at minority voters or minority communities, they can have a significant intimidating effect on qualified voters that can deter them from seeking to vote in the future. Jurisdictions that authorize or conduct audits must ensure that the way those reviews are conducted has neither the purpose nor the effect of dissuading qualified citizens from participating in the electoral process. If they do not, the Department will act to ensure that all eligible citizens feel safe in exercising their right to register and cast a ballot in future elections.

If jurisdictions have questions about the constraints federal law places on the kinds of post-election audits they can conduct, they should contact the Voting Section of the Civil Rights Division. If citizens believe a jurisdiction has violated the Civil Rights Act’s election record retention and preservation requirements, or believe they have been subjected to intimidation, they can use the [Civil Rights Division's online complaint form](#) to report their concerns or call (800) 253-3931.

**Exact Contents of September/October 2022 Email
Request/Reply/Response for Elections Office Procedures**

***From: Sherilyn Wells <votetrees@protonmail.com>
Sent: Wednesday, September 21, 2022 12:23 AM
To: OE.Elections <elections@hawaii.gov>
Subject: Please provide me with §91-2 (3) via email as it pertains
to the Office of Elections and the Chief Election Officer. Mahalo.***

***To Chief Election Officer Scott Nago/Office of Elections
(hereinafter "the agency"):***

***As Per §91-2 Public information. (a) In addition to other
rulemaking requirements imposed by law, each agency shall:***

***(3) Make available for public inspection all rules and written
statements of policy or interpretation formulated, adopted, or
used by the agency in the discharge of its functions.***

***Sherilyn continues: For instance, please provide your complete
process for review of requests (e.g., what happens to a request
once it is received - the sequence of events - and which staff
positions are responsible for that stage of the review). Please
include how/when/to whom to appeal a decision proffered by the
agency IF such an administrative review is available or please
indicate if the decision needs to be taken to court instead.***

Mahalo,

Sherilyn Wells

***On Wednesday, October 5th, 2022 at 4:20 PM, OE.Elections
<elections@hawaii.gov> wrote:***

Aloha,

Please see attached Notice to Requester in response to your records request.

Thank you,

Office of Elections

State of Hawaii, Office of Elections

(808) 453-VOTE (8683)

ATTACHED

2022-10-05 Wells.pdf

Wells Response to above Election Office Reply:

You did not provide what was requested. Request renewed, with addition. RE: [EXTERNAL] Please provide me with §91-2(a)(3) via email as it pertains to the Office of Elections and the Chief Election Officer. Mahalo.

From votetrees@protonmail.com

To elections@hawaii.gov

CC oip@hawaii.gov

Date Saturday, October 8th, 2022 at 9:44 AM

Thank you for providing me with information the public already has - one relevant statute.

However, what you provided – one section of the HRS (an "all rules" part of the HRS description) (1) falls far short of the rest of the statutory language description and (2) addresses very little of my Request, which I herein renew and will again describe.

As a side note, I am concerned that an official and Office tasked with ensuring the legitimacy of Hawai'i's elections seem incapable of reading clear statutory language and responding appropriately.

This failure does not inspire confidence in Hawai'i's overall election processes, whether the official's/Office's failure with a simple task is one of mental capacity or is one of deliberate obfuscation in direct contradiction to the statutory duties and responsibilities to the public.

Here's what you (Nago/Office) failed to provide from the statutory language:

The HRS 91-2(a)(3) language goes on to add, AFTER "the rules" (one section of the HRS, which you provided)....

things that are WRITTEN BY or INTERPRETED BY the agency (Office/Nago) regarding that which is relevant to the "discharge of your functions."

"..written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions"

ERGO..

What have you/are you – the Office/Nago (YOU) -

******FORMULATED (that refers to YOU internally generating/creating – see definitions of Formulate below) re content/documentation/communication/guidance/procedures/proc esses etc as described in my Request,***

******ADOPTED (that refers to YOU more formally incorporating guidance and/or to borrowing from what others have already done/made/created) re content/documentation/communication/guidance/procedures/proc esses etc as described in my Request,***

*****USED (that refers to YOU using content, including content created by others, without going through a more formal adoption process) re content/documentation/communication/guidance/procedures/processes etc as described in my Request**

Use means the direct or indirect ...developing, creating and marketing a product or process, or for creating and providing a service;

Sample 3

Use means to copy, download, install, run, access, display, use or otherwise interact with.

<https://www.lawinsider.com/dictionary/use>

Definition of FORMULATE, according to Law Insider, which, in the second definition, refers to content being known not just to employees, but to “all those who deal with” the agency..

Formulate means to develop, to devise a statement of policy or procedures, to put in a systematised statement, as in statement of procedure. <https://www.lawinsider.com/dictionary/formulate>

More Definitions of Formulate from Law Insider

Formulate means a written, formal and comprehensive document describing the data center’s operational rules and practices. This document should be known to all employees, and all those who deal with the data center.

Do you see the connection between these legal definitions, the statutory language, and my request for YOUR COMPLETE PROCESS FOR REVIEW OF REQUESTS (an internally-generated composition, written for and provided to Office employees, including content which can also have been adopted, can also

have been used, from other sources as per the HRS, flowcharts, etc.)?

ADDITION: This should include intra-office, intra-agency, intra-governmental, and public/private partnership communications (hereinafter Communications) on the Request topic, whether the Communications are written, emailed, notes made re/during phone calls and/or meetings and/or dialogue, etc.

EXCERPT FROM MY REQUEST:

Sherilyn continues: For instance, please provide your complete process for review of requests (e.g., what happens to a request once it is received - the sequence of events - and which staff positions are responsible for that stage of the review).

Please include how/when/to whom to appeal a decision proffered by the agency IF such an administrative review is available or please indicate if the decision needs to be taken to court instead.

FORMULATE examples – from Law Insider.

Examples of using Formulate in a sentence, making quite clear the internal creation and detail inherent in the use of the word "formulate":

Formulate the criteria for determining qualifications, positive attributes and independence of a director. Formulate criteria for evaluation of Independent Directors and the Board.

Formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy relating to the remuneration of Directors, key managerial personnel and other employees.

Formulate blend as required to produce color indicated or, if not indicated, as selected from manufacturer's standard colors.

Formulate the criteria for determining qualifications, positive attributes and independence of a Director. Formulate a rehabilitation & resettlement framework as per requirement and monitor implementation of Social safeguards & environmental standards, if any. Formulate the criteria and framework for evaluation of performance of every Director on the Board of the Company.

Formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

Formulate written communications with professional content and tone.

Sent with Proton Mail secure email.

From: [Ralph Cushnie \(EC\)](#)
To: [OE.Elections.Commission](#)
Subject: [EXTERNAL] Written Testimony Adopting Administrative rules
Date: Tuesday, June 18, 2024 9:40:02 PM
Attachments: [EC-24-00X DRAFT Gov letter re Administrative Rule Change June 2024.pdf](#)

Hello please add this to written testimony for Wednesday June 19 meeting.

Please find attached a DRAFT "PROPOSAL TO AMEND HAR §3-177-765 Election results; certification of." letter to Governor Green of 19 June 2024

This letter supports EC Agenda Item VI for Adopting Administrative Rules, and begins the process for a rule change pursuant to Administrative Directive 09-01, the Hawaii Administrative Rules Drafting Manual, HRS 11-7.5(3), Chapter 91, and as was approved by the commission during the March EC..

Respectfully,

Ralph Cushnie



**STATE OF HAWAII
ELECTIONS COMMISSION**

June 19, 2024

The Honorable Josh Green
Governor, State of Hawai'i
Executive Chambers
State Capitol
415 South Beretania St.
Honolulu, Hawai'i 96813

SUBJECT: PROPOSAL TO AMEND HAR §3-177-765 "Election results; certification of."

REF: (A) Hawaii Revised Statute Chapter 11
(B) Hawaii Revised Statutes Chapter 91
(C) Administrative Directive 09-01 Policy and Procedure for the Adoption,
Amendment, or Repeal of Administrative Rules
(D) Hawaii Administrative Rules Drafting Manual

ENCL: (1) Proposed Rule Change to HAR §3-177-765
(2) DRAFT Notice of Public Hearing for Proposed Rule Change

Dear Governor Green,

The Elections Commission met on Tuesday, March 19th, 2024 and voted to pursue adopting a rule in accordance with HRS § 11-7.5(3) to require the county clerks and the chief election officer to individually certify under penalty of perjury that chain of custody was maintained in accordance with HAR 3-177-61 and HAR 3-177-453.

Pursuant to Reference (C), answers to the following policy items are provided:

1. The proposed changes to HAR §3-177-765 are contained in Enclosure (1) and submitted pursuant to Reference (B).
2. The proposed rule further clarifies the requirements for certification of election, and as are required in accordance with the provision of HRS §11-155 Certification of results of election.

3. The proposed rule would clarify the statute and aid in ensuring the security and reliability of election results.

4. There are no anticipated financial or program impacts anticipated.

5. There are no long or short-term impacts to the economy of the State that are anticipated.

6. The Election Commission engaged in a robust discussion during the February Elections Commission meeting regarding the chain of custody documentation procedures that are currently being used by the counties. Multiple members of the public testified that they questioned whether chain of custody procedures were being properly followed. Several county clerks also testified, and there were conflicting reports from several counties and observers on what the statutes required them to do. During the meeting a motion was approved requesting chain of custody documentation from the counties prior to the next meeting. During the March Election Commission meeting, additional discrepancies were identified with chain of custody documentation and interpretation of the statutes. Based on the commissioners understanding of the problem during multiple meetings, and through observer and county testimony regarding misinterpretation of the chain of custody requirements, the rule change was proposed and approved by the commission.

7. No impact to small businesses is anticipated.

The Attorney General's Office has annotated approval "as to form" on Enclosure (1) and in support of the pre-hearing review per the requirements of Reference (C).

A DRAFT Notice of Public Hearing is provided in Enclosure (2) and will be published by the Office of Elections in support of the Elections Commission public hearing upon approval of this proposed rule change.

If you have any questions or need additional information, please feel free to contact me through the Office of Elections at (808) 453-VOTE (8683).

Sincerely,

Michael Curtis, Chair
State of Hawaii Elections Commission

c: Director of Budget and Finance (B&F)
Director of Business, Economic Development and Tourism (DBEDT)
Elections Commission

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Proposed Rule Amending
Title 3 Department of Accounting and General Services
Subtitle 13 Office of Elections
Chapter 177 Rules of the Office of Elections
Hawaii Administrative Rules

1. Chapter 177 Hawaii Administrative Rules of Title 3 Subtitle 13 Hawaii Administrative Rules, 765 entitled "Election results; certification of." is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 13

OFFICE OF ELECTIONS

CHAPTER 177

RULES OF THE OFFICE OF ELECTIONS

HAWAII ADMINISTRATIVE RULES

Subchapter 16 Vote Disposition

§3-177-765 Election results; certification of

§3-177-765 Election results; certification of. (a) The chief election officer or clerk, as the case may require, shall prepare a certified statement of the results of votes cast for the election.

(b) The certified statement shall be made under penalty of perjury and ensure that chain of custody was maintained in accordance with HAR §3-177-61 and HAR §3-177-453. [Eff .]
(Auth: HRS §11-4) (Imp:.. HRS §11-155, 11-156)"

APPROVED AS TO FORM:

Attorney General

NOTICE OF PUBLIC HEARING
ELECTIONS COMMISSION

PROPOSED RULE CHANGE TO ADMINISTRATIVE RULE REGARDING CERTIFICATION OF
ELECTIONS

Pursuant to Hawaii Revised Statutes Chapter 11 and Chapter 91, the Elections Commission hereby gives notice that it will be conducting a public hearing to afford interested persons an opportunity to submit views, arguments, or data, orally or in writing, related to the proposed rule change to the Hawaii Administrative Rules Subtitle 13 Chapter 177 regarding the requirements for election certification.

The proposed change to Hawaii Administrative Rule §3-177-765 adds the provision that during the election - chain of custody was maintained in accordance with statutes HAR §3-177-61 and HAR §3-177-453 and that the certification will be made under penalty of perjury.

The proposed rule reads:

Subchapter 16 Vote Disposition

§3-177-765 Election results; certification of

§3-177-765 Election results; certification of. (a) The chief election officer or clerk, as the case may require, shall prepare a certified statement of the results of votes cast for the election.

(b) The certified statement shall be made under penalty of perjury and ensure that chain of custody was maintained in accordance with HAR §3-177-61 and HAR §3-177-453. [Eff .] (Auth: HRS §11-4) (Imp: HRS §11-155, 11-156)"

A copy of the proposed rule will be mailed to any interested person who requests a copy, pays the required fees for the copy and the postage (FEE TO BE INSERTED HERE), by submitting a request to the Office of Elections contact as listed below.

The proposed rule will be available for review at the Office of the Lieutenant Governors website Office Services, Administrative Rules, Proposed Changes: <https://ltgov.hawaii.gov/the-office/administrative-rules/proposed-changes/> and posted pursuant to HRS 91-2.6, and physically at the Office of Elections address as listed below.

The public hearing will be held at (DATE), (TIME) at the Office of Elections address as listed below, and may be viewed remotely by video: (LINK TO BE INSERTED HERE). This notice shall be published thirty days prior to the date of this public hearing.

A copy of this notice shall be mailed to all persons who have made a timely written request from the Office of Elections for advance notice of its rulemaking proceedings.

All interested persons shall be afforded an opportunity to submit data, views, or arguments, orally or in writing prior to or during this public hearing. The Elections Commission shall fully consider all written and oral submissions respecting the proposed rule and will may make its decision at the public hearing or announce then the date when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.

Office of Elections is located at: 802 Lehua Avenue, Pearl City, Hawaii 96782, facsimile to: (808) 453-6006, or email to: elections.commission@hawaii.gov

DATED: Honolulu, Hawaii, DATE TBD

From: [Adriel Lam](#)
To: [OE.Elections](#); [OE.Elections.Commission](#)
Subject: [EXTERNAL] FW: Questions on updates to the Honolulu Voter Rolls
Date: Wednesday, June 19, 2024 10:57:12 AM

Aloha, I would like to provide public testimony at today's Election Commission hearing.

From: Adriel Lam
Sent: Monday, June 17, 2024 12:29 PM
To: elections@honolulu.gov
Cc: elections@hawaii.gov; elections.commission@hawaii.gov; repgarcia@capitol.hawaii.gov; atulba@honolulu.gov; atupola@honolulu.gov; cksay@honolulu.gov; ekiaaina@honolulu.gov; mweyer@honolulu.gov; rcordero@honolulu.gov; tdossantos-tam@honolulu.gov; tommy.waters@honolulu.gov; valokimoto@honolulu.gov
Subject: Questions on updates to the Honolulu Voter Rolls

Aloha Honolulu Election Office,

I'm following up on my phone call on Monday, 6/10/24, with the Honolulu Elections office regarding the update of INACTIVE statuses on the Honolulu Voter Rolls. I had recently purchased the Voter Rolls on 5/13/2024 for \$750.00 for the purposes of my election campaign soon after the Voter Rolls were updated on 5/10/2024.

As noted in our conversation, I was made aware through social media that Representative DIAMOND GARCIA's voter registration was INACTIVE when he tried to file for candidacy in the upcoming elections. Is there documentation for this unexplained status change to INACTIVE. From what I heard from him, he did not change his address, nor did he return the yellow ELECTION NOTIFICATION card for updates. For all intents and purposes, he remained an ACTIVE voter.

I also received a message from a GREEN Party candidate RITA RYAN in Makawao, Maui, whose name was removed from the Maui voter rolls, although an unchanged 13-year resident of the same registered address. Her name is now back on the Maui voter rolls, with the same data as before, without a status update, even though she was asked to re-register to vote. Others whose voter registrations were made INACTIVE, that I'm aware of so far, are former 2022 Hawaii Senate District 25 REPUBLICAN candidate BRIAN LAURO and his wife HEATHER LAURO. On the outer islands, ROBERT VATTER and YASMIN VATTER were also changed to INACTIVE even though they received a yellow ELECTIONS NOTIFICATION card and had no changes.

From my own canvassing of the voter rolls for my election campaign, residents have informed me of outdated registrations assigned to their addresses. While I applaud the extensive work of the Honolulu Elections Office in removing some 45,182 outdated voter files, and identifying 76,589 INACTIVE voter files, many of these errors remain unchanged. Of the errors reported to me by the registered resident, 68% of them remain unchanged in the 5/13/24 voter rolls, including 5 deceased relatives of the residents. In particular, I noted in a previous call to the Honolulu Elections office of registered voter KAYLEIGH C DAVIS presumably residing at the Honolulu Airport Hotel since 10/27/2020, but is neither a current occupant nor member of the hotel staff.

While checking on the status of recent participants in the March 12 REPUBLICAN Presidential Caucus, 34 names came up INACTIVE. For those that have responded, some registrations were indeed outdated and needed to be updated, but many were also inexplicably changed to INACTIVE. JASON and STEPHANIE WILSON both voted in the 2022 Election, but their address on file was not updated from 5 years ago. SHERRY PATINIO said she repeatedly requested updates to her voter registration, even using the online voter registration system, yet her voter registration was still not updated.

In my phone conversation with your staff on last Monday, I mentioned an odd feature regarding the INACTIVE registrations in the 5/13/2024 Voter Rolls that I purchased. It had a similar pattern to one that I have raised before on the 2020 Voter Rolls to the Elections Commission. I hope we can all work together in identifying the purpose, cause and source of such a feature.

I will be making another purchase soon of \$750.00 for the Credit Data of all the voters who will be sent a ballot for the 2024 Primary Election. I am concerned that many who should be getting a ballot in mail, will not due to an unfortunate status change to INACTIVE. There will also be tens of thousands of ballots being mailed to outdated addresses, that will unfortunately be wasted.

Aloha ke Akua,
Adriel

LAM4ALOHA – Adriel for US Senate
P.O. Box 4682
Kaneohe, HI 96744
(808) 721-9362

From: [gai kipi](#)
To: [OE.Elections](#)
Subject: [EXTERNAL] Elections
Date: Wednesday, June 19, 2024 6:59:05 AM



Elections should be taken in person with a valid ID (Drivers license/ state ID) in own designated district.

Elections are an American right and and by law employers may allow employees to leave work for a sufficient amount of time to vote (attached file) therefore no reason why the excuse of not having time is irrelevant.

Ballots should have paper trails and transparency when casted and when counted.


In short I oppose mail in ballots thank you




District of Columbia 	<i>No Voting Leave Statute</i>
Florida 	<i>No Voting Leave Statute</i>

Voting Leave




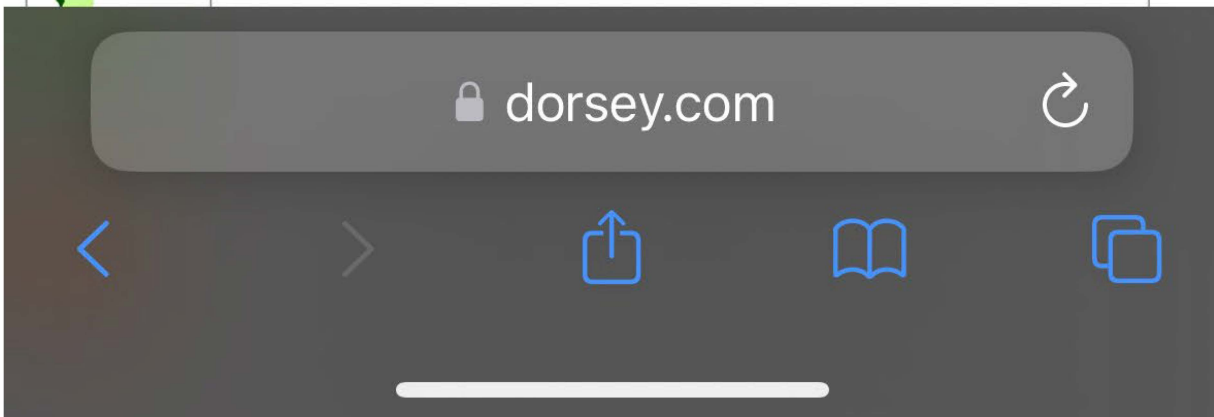
State	Statute	Description	Penalty
Georgia 	Ga. Code Ann. §§ 21-2-404, 21-2-598	<p>Time Off Allotted: An employer must permit an employee to take any necessary time off from his/her employment to vote. Such necessary time off shall not exceed two hours. The employer may specify the hours during which the employee may be absent.</p> <p>Wages: The statute does not specify whether the absence must be paid.</p> <p>Exceptions: An employer is not required to provide voting leave if the employee's shift begins at least two hours after the polls open or ends at least two hours before the polls close.</p> <p>Notice Requirement: An employee must provide his/her employer reasonable notice of the need to be absent.</p>	A violation of the statute is a misdemeanor, punishable by a fine of between \$100 and \$1,000, imprisonment for no more than six months, and/or confinement in a correctional institution for no more than 12 months.
Hawaii	Haw. Rev. Stat.	Time Off Allotted: Any voter shall be entitled to be absent from any service or	A violation of the

	§ 11-95	<p>employment in which the voter is then engaged or employed for a period of not more than two hours (excluding any lunch or rest periods) between the time of opening and closing the polls for the purpose of voting.</p> <p><u>Wages:</u> The employee may not be subjected to any rescheduling of normal hours or any deduction from any usual salary or wages for the absence, provided the employee actually does vote.</p> <p><u>Exception:</u> An employer is not required to provide voting leave if an employee has two consecutive hours (excluding lunch or rest periods) of non-working time while the polls are open.</p>	statute is punishable by a fine of not less than \$50 nor more than \$300.
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Voting Leave



State	Statute	Description	Penalty
Idaho 		No Voting Leave Statute	



From: paulnrg@aol.com
To: OE.Elections.Commission
Subject: [EXTERNAL] testimony on election integrity
Date: Wednesday, June 19, 2024 4:07:47 PM
Attachments: [election Integrity.docx](#)

Election Integrity Testimony, 5/14/2024

Paul Deslariers Resident: Kihei, Maui Phone: 808-264-3536

Aloha State Election Commissioners

My civic engagement includes being a Maui County Charter Commissioner, and director of a political action committee, the Maui Pono Network. I was also an election observer for the primary and general election for 2022 and used my 24-year experience as a systems engineer consultant. My comments are on the primary areas of vulnerability which are focused on the hired contractor and state process and a simple solution:

I Hundreds of free-floating thumb drives are used to record the data from each voting machine at the polls and transfers the data on these drives directly to the computer run by the contractor.

- Thumb Drives can be lost or misplaced.
- Any digital device can be hacked. Even encrypted drives.
- These thumb drives are used to upload votes into the computer. They do not use the paper ballots that are printed at the polls, that are safely removed and stored.

II Having worked with election integrity computer experts I can assure you that any digital device can be hacked. This opens questions regarding outside contractor counters.

- Despite calibration and testing prior to the count, the testing during the run and selected brief hand count, vulnerability can occur even remotely.
- The secured paper ballots are kept by the county, yet we rely on a contractor and the state to give us the result.
- Basically, the counties give control of their elections to a contractor and the state.

III The elections data in the hands of the contractor is transferred electronically by the contractor from Maui to Oahu where their tabulators come up with the elections results. Only after the state goes through our elections results do the voters receive it. There are several checks, yet vulnerability exists.

- Transfer of the data electronically is susceptible, despite the claims by the contractor.
- The state tabulators can be hacked remotely. I have seen it done for Alaska.

- The county has all the paper ballots, yet we rely on a system with many potential vulnerabilities.

IV The solution is simple at hardly no cost and any additional staff.

- The county holds the paper ballots for 22 month, this data is not impacted by the contractors or state digital exchanges.
- Maui county election crews are well-trained, experienced and they run a tight ship. They check and organize the paper ballots and assure each ballot is considered.
- All the paper ballots are assembled in the Maui County Chambers and there is plenty of room for two county owned counters.
- There is a lot of down time between counting runs and a crew of two can do an independent county run. These counters run about \$35,000 each and can be purchased directly from the manufacturer.

A simple solution is empowering a county to run a check on all the data moving around in digital form. It provides much greater voter confidence. It does not affect communication or voting results broadcasts as it will still come from the state. Those in the county chambers do not have phones so the county check will be only that and will not broadcast election results. There is no disruption to the overall process, requires no additional staff, and it would help resolve 12 areas of vulnerability and concern.

Mahalo for your consideration

Paul Deslauriers