



**STATE OF HAWAII
ELECTIONS COMMISSION**

F.M. SCOTTY ANDERSON
ELECTIONS COMMISSION CHAIR

MINUTES

**REGULAR MEETING OF THE
ELECTIONS COMMISSION**

JANUARY 21, 2021 @ 10:00 AM

Pursuant to the Governor's Fifteenth Proclamation Related to the COVID-19 Emergency dated November 16, 2020, the Elections Commission held this meeting using remote videoconferencing technology. Members of the public may have participated in the meeting via Microsoft Teams.

Commissioners in Attendance:

F.M. Scotty Anderson, Chair
Michael Curtis
Stafford Kiguchi
Lillian Koller
Carol Seielstad
Cynthia Takenaka
Victor Vierra

Technical Support Staff in Attendance:

Lori Tanigawa, Department of the Attorney General (AG)
Scott Nago, Chief Election Officer (CEO)
Nedielyn Bueno, Office of Elections
Jaime Kataoka, Office of Elections
Keenan Kinimaka, Office of Elections
Jasmine Ko, Office of Elections
Aaron Schulaner, Office of Elections
'Auli'i Tenn, Office of Elections
Kristen Uyeda, Office of Elections
Kimberly Yamada, Office of Elections

Guests in Attendance:

Nancy Cook Lauer
Kurt Fevella
Casey Harlow
Miriam Hellreich
Jon Henricks
Brett Kulbis, Honolulu County Republican Party
Blaze Lovell
Sandy Ma, Common Cause Hawaii
Janet Mason, League of Women Voters of Hawaii
Mel Masuda
Laura Nakanelua, Hawaii Republican Party
Allison Schaefer

PROCEEDINGS

I. Call to Order

Chair Anderson called the meeting to order at 10:02 a.m. on January 21, 2021.

II. Roll Call and Determination of a Quorum

Elections Commission (EC) Secretary conducted roll call. Commissioners Dean and Kuwada were not in attendance. All other Commissioners were in attendance and the Commission had a quorum.

III. Biennial Evaluation of the Operations of Elections and Report to the Legislature, Pursuant to HRS Section 11-8.5 and Action

Pursuant to HRS Section 92-5(4), the Commission anticipates going into an executive session to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

As the League of Women Voters of Hawaii (LWV) had submitted testimony prior to the meeting, Chair Anderson called on Ms. Janet Mason to present.

Janet Mason: Ms. Mason identified herself as a representative of LWV and stated that she will present the testimony submitted by LWV President Piilani Kaopuiki who was unable to attend the meeting. She said that LWV had six of their members volunteer at the Counting Centers and in various county

operations, and were very happy to report that they did not find any major issues with the implementation of voting by mail. Ms. Mason added that it was an outstanding experience for LWV and that the results speak for themselves, with 75,000 new registrants and a 17% increase in voter turnout for the general election. She commended OE and the County Elections Divisions for a wonderful job in administering the elections.

Sandy Ma: Ms. Ma introduced herself as a representative of Common Cause Hawaii and said that she would like to echo LWV and say that the 2020 Elections were mostly successful with the implementation of voting by mail statewide. She stated that there were very long lines at the voter service centers (VSCs) on General Election Day, and that Common Cause is hoping for more VSCs and drop boxes statewide in the future to accommodate voters' needs. Ms. Ma mentioned that Common Cause does have other concerns that she will not address at this time. She congratulated OE and the County Elections Divisions for running a smooth elections-by-mail process during the pandemic, and said Common Cause is glad to have worked with them, as well as with other partners like LWV, in implementing the process.

Laura Nakanelua: Ms. Nakanelua introduced herself as the RNC national committeewoman for the Hawaii Republican Party, and said it concerned her that the 2020 Elections were being described as "mostly" successful. She stated that she understands that the minutes from the last EC meeting have not yet been posted, which includes testimony that she and others presented voicing their concerns about the 2020 Elections. Ms. Nakanelua requested that the EC pause their evaluation until she and others are able to submit their concerns in writing. She told the EC that she thought by presenting testimony at the last EC meeting that that would be public record, and asked if she misunderstood.

Chair Anderson recalled that there were several individuals who voiced their concerns at the last EC meeting, but the EC received nothing in writing that he was aware of.

Ms. Nakanelua said that in addition to herself, she thinks the County Republican Party Chairs for Oahu and Maui provided testimony at the last EC meeting, and she assumed that would become public record. She recalled Commissioner Koller requesting that CEO Nago include some of those concerns in his report to the Legislature, and asked the EC if they will be including that information in their evaluation. Ms. Nakanelua stated that to not have their concerns shared is disenfranchising a number of voters, and that they only want their issues (e.g., the lack of verifiable chain of custody, opportunity for fraud, Maui County concerns) on record.

Chair Anderson told Ms. Nakanelua that some of her concerns fall under the jurisdiction of the County Elections Divisions. He asked if CEO Nago was in the room, to which CEO Nago replied that he was.

Chair Anderson asked CEO Nago if OE received anything in writing regarding the concerns that were just mentioned. CEO Nago answered none that he is aware of.

Commissioner Koller expressed concern that the EC does not have the minutes from the last meeting on December 15, 2020, which is where these concerns were first presented, and will not be posted until January 24, as per the Sunshine Law. She said that is not timely with respect to the report to the Legislature that the EC is supposed to take action on today, and that the draft report makes no reference to the concerns that were raised at the last EC meeting.

Commissioner Koller stated that it is not just about the December 15th minutes being posted by January 24, but following that, the EC will need to have another meeting to review and approve those minutes for accuracy purposes. She said she does not understand how the EC can communicate with the Legislature without including the concerns that were raised in their evaluation.

Commissioner Koller agreed with Chair Anderson that many of the issues focused on the conduct of the County Elections Divisions, particularly Maui County, however she did recall a number of complaints that required the review of the EC. As an example, she mentioned the issue regarding official observers. Commissioner Koller stated that CEO Nago did submit a letter to the EC after the December 15 meeting detailing his record of what occurred regarding the selection of official observers, though that was disputed by Mr. Greg Lussier, the Chair for the Maui County Republican Party, via verbal testimony at the December 15 EC meeting. Commissioner Koller recalled other concerns raised at the last EC meeting regarding the votes of military absentee voters appearing to heavily favor Biden versus Trump, and the lack of chain of custody for ballots from drop boxes. She added that Commissioner Dean had also raised concerns about whether the technology used to compare signatures was reliable.

Commissioner Koller stated that the purpose of the EC's report to the Legislature is not to "gush with enthusiasm over a job well done," but to identify and share concerns within the EC's jurisdiction to the Legislature so they may take action if necessary. She said the only way to capture that is to first review and approve the minutes for the last EC meeting.

Commissioner Seielstad referenced a line in the draft report to the Legislature that reads, "Going forward, we will continue to review procedures to ensure voters and volunteers have a smooth experience," and said she believes this statement covers much of what Commissioner Koller discussed. She added that the issues that were raised regarding Maui County do not necessarily apply to Kauai.

Chair Anderson stated that they are aware of these concerns, and that OE is always looking for ways to improve the system. He said he understands that Mr. Brett Kulbis would like to speak, and asked him to hold his comments to about three minutes.

Brett Kulbis: Mr. Kulbis, Chair of the Honolulu County Republican Party, stated that he agrees with Commissioner Koller and Ms. Nakanelua. He said that he asked the Honolulu County Elections Division for the administrative rules regarding the conduct of elections, specifically the signature verification process and where it is held, which he knows is someplace near the airport. Mr. Kulbis stated that the Honolulu County Elections Division deferred to OE and pointed to the administrative rules, though he said the administrative rules said nothing about the signature verification process or VSC procedures. He explained that his other concern is regarding the voter rolls, though he does understand that the relevant federal and state laws conflict. Mr. Kulbis said that the Honolulu County Elections Division claimed that it is OE's responsibility to clean up the voter rolls, and vice versa, and he is unsure of who to reach out to next to ensure that the voter rolls are being cleaned up properly.

Chair Anderson told Mr. Kulbis that they are required to follow the federal law when cleaning up the voter rolls, which is a lengthy process. He thanked the testifiers for sharing their comments and concerns, and assured them that the EC will work to find answers for them within a reasonable amount of time.

Ms. Nakanelua asked the EC if they could have the opportunity to submit written testimony of their concerns within the next few days that the EC can refer back to. Chair Anderson answered that submitting written testimony is recommended, as there is no dispute over what was said or what question is being asked.

Commissioner Koller said that it is her understanding that the EC meetings are not recorded. Chair Anderson stated that he believes EC Secretary, Ms. Jaime Kataoka, does record the meetings. Commissioner Koller said that although there is an audio recording, it is a good suggestion to submit written testimony. Commissioner Curtis added that there will also be minutes. Commissioner Koller agreed, but explained that the minutes are not timely with regard to the report to the Legislature. She stated that making a general comment that there were concerns and that the EC is looking into them does not tell the Legislature anything substantial.

Chair Anderson asked the EC if they had a chance to review the draft report to the Legislature, to which the EC confirmed that they did. He told the EC that if they have any questions for Deputy AG Tanigawa, the EC would need to go into

Executive Session. Chair Anderson said that if there are no questions, he can call for a motion to accept the draft report as written.

Commissioner Curtis moved that the EC defer consideration of this evaluation until they have had a chance to review the minutes from the last EC meeting, and the motion was seconded by Commissioner Koller.

Commissioner Vierra asked if there is a deadline to get the report to the Legislature, to which Commissioner Koller answered that the deadline has passed. Chair Anderson added that the report is now 20 days late. Commissioner Koller said that it is better that the report is late but complete in their consideration of the minutes from the last meeting.

Chair Anderson stated that the motion has been moved and seconded, and asked EC Secretary Ms. Kataoka to take a vote. The votes were as follows: 4 Ayes: Commissioners Curtis, Kiguchi, Koller, Vierra; 3 Noes: Commissioners Anderson, Seielstad, Takenaka.

Chair Anderson asked EC Secretary Ms. Kataoka if there is a recording of the last EC meeting. Ms. Kataoka replied that there is no audio recording, but the minutes are almost complete. Chair Anderson asked Ms. Kataoka if the minutes include all comments from the last meeting, to which Ms. Kataoka confirmed that they do. Chair Anderson asked when the minutes could be available, to which Ms. Kataoka answered that they could be completed by today.

Chair Anderson asked Ms. Kataoka to confirm the vote again, to which Ms. Kataoka reported that there were four (4) ayes and three (3) noes. Chair Anderson asked Deputy AG Tanigawa if she was present, to which Deputy AG Tanigawa responded that five votes are required to make an action valid.

Commissioner Takenaka asked if the EC would be able to submit the current draft report to the Legislature, review the minutes at the next meeting, and then add to the report if necessary. Chair Anderson said he does not see why they would not be able to do that. He stated that he wants to review all the issues raised at the last meeting, but he does not want to delay the report further. Chair Anderson asked Deputy AG Tanigawa if the EC would be able to provide an addendum to the report if necessary. Deputy AG Tanigawa suggested that if the EC did plan to do that, they should note in the report that the EC is anticipating that they may submit a supplement to the report.

Chair Anderson stated that the EC can easily add a paragraph to the draft report that says that they may be submitting an addendum, and that he thinks they can complete this “in a matter of days.” Commissioner Koller said that she does not think the EC can do this “in a matter of days” because not only do the December 15 EC meeting minutes need to be posted, but the EC also needs to review, make changes, and approve the minutes at the next meeting. She reiterated that the report is already late, so it is better to submit a report that is complete. Commissioner Koller recommended that the added paragraph say, at a minimum, that the EC is submitting the report without having reviewed the minutes from the December 15 meeting in which a number of testifiers expressed concerns about the 2020 Elections, and that the EC may submit further comments to the Legislature after the minutes have been reviewed and finalized.

Commissioner Curtis stated that a majority of the quorum voted to defer the report until inspection of the December 15 minutes, so he did not think it was legally possible to push the report through. Chair Anderson said that five votes are required to make an action valid. Commissioner Curtis stated that he thinks the requirement is a majority of the quorum to pass a motion. Chair Anderson asked EC Secretary Ms. Kataoka to confirm that the motion failed because it did not garner five votes. Ms. Kataoka replied that she believes Deputy AG Tanigawa said five votes are required. Deputy AG Tanigawa said she will look into it right now.

Commissioner Takenaka asked Chair Anderson if the EC will be going into Executive Session. Chair Anderson answered that they will if they have questions for Deputy AG Tanigawa. Deputy AG Tanigawa told Chair Anderson that she would prefer to go into Executive Session before she provides her answer.

Chair Anderson asked for a motion to enter Executive Session. The motion was made by Commissioner Curtis, seconded by Commissioner Seielstad, and approved unanimously by the Commissioners.

The Commission went into executive session at 10:38 a.m.

The Commission reconvened into open meeting at 10:59 a.m.

Commissioner Curtis asked if it is possible for all meeting attendees except for EC members to be muted, as they have already received public testimony and he would prefer not to be interrupted by non-members. Commissioner Takenaka asked EC Secretary Ms. Kataoka and Office of Elections Computer Services Section Head, Ms. Kimberly Yamada, if the meeting host is able to control the mute function. Ms. Yamada replied that she can turn off the capability for

participants to be able to unmute themselves, but she would then need the EC to unmute themselves again.

Chair Anderson stated that he would like to hear from all of the EC members, but his suggestion is to send the draft report with an added paragraph that explains that the EC is looking into X number of issues that they will investigate and send to the Legislature via a supplemental report. Commissioner Seielstad disagreed with specifying the number of concerns, as the EC simply listened to the public's comments, much of which was hearsay. She suggested that the added paragraph say that they do not yet have the minutes from the last meeting, and that the EC may submit an addendum at a later time without specificity. Commissioner Takenaka agreed with Commissioner Seielstad.

Commissioner Seielstad made a motion for the EC to add a paragraph to the draft report indicating that they have not yet reviewed the minutes from the last meeting and that they may submit an addendum at a future date if necessary.

Commissioner Vierra recalled that Deputy AG Tanigawa said that they would need to have another meeting if they added anything to the existing draft report. He asked Commissioner Seielstad if by taking her motion, the EC would need to return for another meeting. Commissioner Seielstad told Commissioner Vierra that he is correct, and withdrew the motion.

Commissioner Curtis reiterated that the item on the agenda today is the approval or disapproval of the draft report. He stated that for the sake of discussion, he made a motion to approve the draft report to the Legislature as is. The motion was seconded by Commissioner Seielstad.

Commissioner Koller asked if it is the priority of the EC to minimize the need for discussion and meetings. Commissioner Curtis stated that it takes five votes to make an action valid, and he does not think the five votes are there. Commissioner Koller said that it seems as though the EC does not want to discuss matters that were raised during the December 15 meeting. Commissioner Seielstad and Chair Anderson disagreed. Commissioner Curtis suggested that they take a vote.

Commissioner Kiguchi stated that he completely agrees with the contents of the draft letter, and thinks that CEO Nago and his team did a very good job with conducting the 2020 Elections. He asked the EC where they left off with regard to addressing the concerns that were raised at the last meeting. Chair Anderson suggested that they add a paragraph to the draft report stating that they do not have the minutes from the last meeting, but will be conducting an investigation and may submit a supplemental report at a later date.

Commissioner Takenaka asked if they could make another motion to add the paragraph to the draft report. She pointed out that the EC will need to meet anyway to approve the minutes from the December 15 meeting.

EC Secretary Ms. Kataoka took a vote. The votes were as follows: 3 Ayes: Commissioners Anderson, Seielstad, Takenaka; 4 Noes: Commissioners Curtis, Kiguchi, Koller, Vierra.

Commissioner Takenaka made a motion that the EC will add a paragraph to the draft report explaining that they have not yet seen the minutes from the December 15 meeting, and that after reviewing those minutes, they may be submitting an addendum to the report if necessary. The motion was seconded by Commissioner Seielstad.

Commissioner Vierra asked if by changing the report, the EC would need to return for another meeting. Commissioners Curtis, Seielstad, and Takenaka confirmed that they would. Commissioner Koller again asked what the EC's priority is.

Commissioner Takenaka asked Deputy AG Tanigawa if the EC is able to make changes to the draft report, or if they are only allowed to vote on the draft as is. Deputy AG Tanigawa stated that to her understanding, the motion on the floor is to send the report with the additional language explaining that the EC has not yet seen the minutes for the December 15 meeting and that they may be submitting an addendum to the report if necessary.

Commissioner Takenaka asked Deputy AG Tanigawa if the EC is able to approve that additional paragraph now, or if they would need to return for another meeting to approve the paragraph. Commissioner Koller confirmed that the EC would not need to come back for another meeting to approve the additional paragraph, but they will need to meet to consider the December 15 minutes and decide if they want to submit additional findings or recommendations to the Legislature.

Commissioner Curtis asked Deputy AG Tanigawa if the EC can add an agenda item to a published agenda. Deputy AG Tanigawa asked Commissioner Curtis what he would want to add. Commissioner Curtis stated that he does not want to add anything, but did not think it was legal to add an agenda item to the meeting without prior public notice. Deputy AG Tanigawa said that she does not think the motion violates that because the intent is not to add an agenda item.

Commissioner Koller stated that her preference would still be for the EC to not send the report, which is already 20 days late and communicates nothing substantial. She said that though they do not yet have the minutes for the December 15 meeting, the EC knows that there were concerns raised regarding OE duties and functions. Commissioner Koller stated that the EC will look foolish to the Legislature if they submit the report now, then identify issues later that may need Legislative action to correct. She reiterated that she would prefer that the EC votes down the draft report today and waits until after they have reviewed and approved the December 15 minutes to write an appropriate report.

Chair Anderson stated that there is a motion on the floor and asked for a vote. The votes were as follows: 6 Ayes: Commissioners Anderson, Curtis, Kiguchi, Seielstad, Takenaka, Vierra; 1 No: Commissioner Koller.

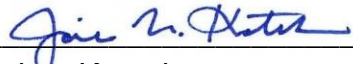
Chair Anderson stated that the motion carried.

IV. Adjournment

With no further business before the Commission, Chair Anderson asked for a motion to adjourn the meeting. The motion was made by Commissioner Vierra, seconded by Commissioner Seielstad, and approved unanimously by the Commissioners.

Elections Commission meeting was adjourned at 11:13 a.m.

Respectfully submitted,



Jaime Kataoka
Elections Commission Secretary