

**Report of the  
Elections Review Task Force**

**May 2, 2002**

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State of Hawaii**

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STATE OF HAWAII  
OFFICE OF ELECTIONS

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DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER

April 22, 2002

The Honorable Robert Bunda  
President of the Senate  
State Capitol, Room 003  
Honolulu, Hawaii 96813

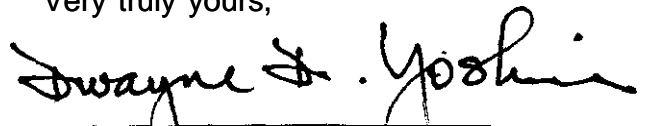
The Honorable Calvin K.Y. Say  
Speaker of the House of Representatives  
State Capitol, Room 431  
Honolulu, Hawaii 96813

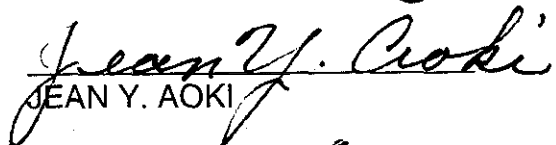
Dear Mr. President and Mr. Speaker:

We are pleased to transmit to you our report of the Elections  
Review Task Force, pursuant to Act 139, Regular Session of 2001.

The report discusses the work done by the Task Force and offers  
considerations for future legislation.

Very truly yours,

  
\_\_\_\_\_  
DWAYNE D. YOSHINA, Chair

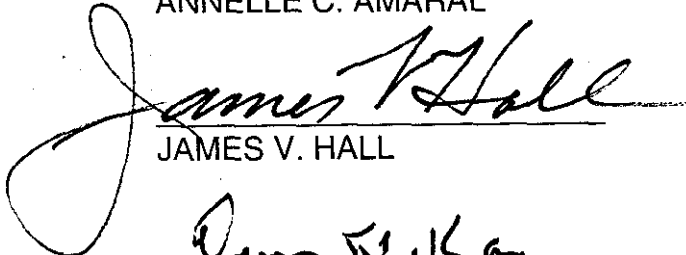
  
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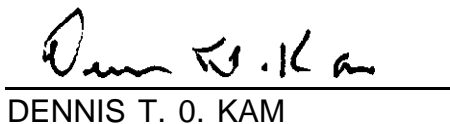
  
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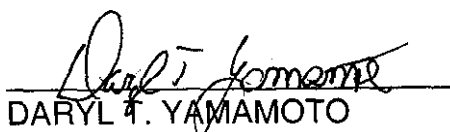
  
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**REPORT OF THE ELECTIONS REVIEW TASK FORCE**  
**May 2, 2002**

**I. BACKGROUND**

**A. ACT 139, REGULAR SESSION OF 2001**

The purpose of Act 139, Regular Session of 2001, was to establish the Elections Review Task Force to comprehensively review, evaluate, and recommend changes to Hawaii's election laws regarding vote tabulation, with particular consideration of automatic recounts and contest procedures, to ensure the integrity and certainty of the State's electoral process.

In reviewing, evaluating, and recommending changes, the Task Force was directed to consider the adequacy of the law with respect to vote tabulation and contest procedures and the feasibility of implementing automatic recount and improved contest procedures.

The Task Force was to submit its study of Hawaii's election laws with its findings and recommendations, including any proposed legislation, to the Legislature not later than 20 days prior to the convening of the Regular Session of 2002.

The original plan presented to the Legislature called for statewide hearings to gather input, comments, concerns, and suggestions regarding Hawaii's voting system and election laws. However, because of the untimely appointment of the Task Force members, the limited amount of time before the convening of the 2002 Regular Session, and the approaching deadline of January 18, 2002 for bill introduction, the Task Force Chairperson requested clarification from the Senate President and Speaker of the House on the course of action the Task Force should undertake. In his memorandum dated November 27, 2001, the Senate President noted, "the scope of the Task Force is vote tabulation, with particular consideration of automatic recount and contest procedures."

The final appointment was received on November 30, 2001 and shortly thereafter, the Task Force convened and held its first Regular Meeting on December 10, 2001. Because of the limited amount of time prior to the deadline for bill introduction, the Task Force agreed to focus first on developing proposed recount legislation to be addressed by the 2002 Legislature, after which the Task Force would deal with other pertinent issues relating to ballot tabulation and elections.

B. MEMBERS

chairperson of the Task Force and the remaining members would be

- Two members appointed by the Governor;
- Two members appointed by the President of the Senate;
- Two members appointed by the Speaker of the House of Representatives;
- One member appointed by the Minority Leader of the Senate; and
- One member appointed by the Minority Leader of the House of Representatives.

The Task Force was appointed as follows:

<b><u>Appointing Authority</u></b>	<b><u>Task Force Member(s) Appointed</u></b>
Act 139.	Chief Election Officer, State of Hawaii
Governor	Former Elections Administrator, City & County of Honolulu Daryl T. Yamamoto
President of the Senate	Jean Y. Aoki Observer Annelle C. Amaral Hawaii Precinct Official Trainer

Speaker of the  
House of Representatives

Dennis T.O. Kam  
Official Observer, Chairperson

Thomas I. Yamashiro  
Former Counting Center Manager,  
Office of the Lt. Governor  
Former Administrator, Information and  
Communication Services Division  
(ICSD)

Minority Leader of the Senate

James V. Hall  
House Minority Research  
Precinct Official

Minority Leader of the  
House of Representatives

Catherine Y. Lagareta  
Official Observer

#### C. STATE LAWS

As a starting point, the Office of Elections requested that the Deputy Attorney General provide the Task Force with a legal review at its December 17, 2001, Regular Meeting. The presentation consisted of information in the following areas:

##### 1. Voting Systems

Section 16-1, Hawaii Revised Statutes (HRS) provides that the Chief Election Officer may adopt, experiment with, or abandon any voting system authorized under this chapter or to be authorized by the Legislature. Pursuant to Section 16-2, HRS, the system shall satisfy the following requirements:

- . It shall secure to the voter secrecy in the act of voting.
- . It shall provide for voting for all candidates of as many political parties as may make nominations, nonpartisans, and for and against as many questions as are submitted.
- . It shall correctly register or record and accurately count all votes cast for any and all persons, and for and against any and all questions.

Chapter 16, HRS, defines three types of voting systems, They are:

- Voting Machine System;
- Paper Ballot Voting System; and
- Electronic Voting System.

The “voting machine system” is defined in Section 16-11, HRS, as a method of electrically, mechanically, or electronically recording and counting votes upon being cast. The “paper ballot voting system” is defined in Section 16-21, HRS, as the method of counting votes which are counted manually. Section 16-41, HRS, defines the “electronic voting system” as the method of recording votes which are counted by automatic tabulating equipment.

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be discovered to change the result.” Brown v. Laukea, 18 Haw. 131, 133 (1906).

A Plaintiff must show “actual information of mistakes or errors sufficient to change the result.” Funakoshi, 65 Haw. 312, 316-17 (1982) (citing Laukea, 18 Haw. at 133). His or her challenge cannot be based on “mere belief or indefinite information” Akaka, 84 Hawaii at 388 (citing Kulike v. Fern, 19 Haw. 278, 283 (1909)). Our court has determined that

[i]n the absence of facts showing that irregularities exceed the reported margin between the candidates, the complaint is legally insufficient because, even if its truth were assumed, the result of the election would not be affected.

Akaka, 84 Hawaii at 388 (internal citations omitted).

Our court has stated previously, if there had been an opportunity to correct any irregularities in the election process or in the ballots prior to the election itself, plaintiffs will not, in the absence of fraud or major misconduct, be heard to complain of them afterwards. Lewis v. Cavetano, 72 Haw. 499, 503 (1992) (citing Thirty Voters v. Doi, 61 Haw. 179, 181 (1979)). The court reasoned that the efficient use of public resources requires that an individual should not be allowed to gamble on the outcome of the election, and then challenge the results only if they are unfavorable. Id. at 503. This is especially so when the alleged irregularities and errors could have been made prior to the election itself so that the public, is spared the expense of conducting the election process. Id.

4. Supreme Court

Section 11-175, HRS, specifies that the Supreme Court may compel the attendance of witnesses, punish contempts, and do whatsoever else may be necessary fully to determine the proceedings, and enforce its decrees therein. The court may make such special rules as it may find necessary or proper.

5. Automatic Recount

The State of Hawaii currently has no automatic recount provision. What is established is a process to contest an election for cause and for the resolution of that dispute left to the courts. The Supreme Court is given its powers under Section 1 I-1 75, HRS, and is able to order a recount of the ballots to aid in its determination of which candidate was elected.

The Supreme Court has ordered recounts on two previous occasions. In 1908, the Supreme Court actually admitted into evidence the ballots of a contested sheriff's election. Brown v. Laukea, 18 Haw. 131 (1906). The Court proceeded to count the ballots with the attorneys and ruled on various objections that the attorneys made to specific ballots. The most recent recounting of the ballots occurred after the 1998 General Election.

An automatic recount provision did exist from 1961 to 1973. This provision was established by Act 7, Session Laws of Hawaii 1961 which amended Section 1 I-85.2, RLH. The provision regarding statewide elections was one-eighth of one per cent or less between the winning and losing candidates and one-quarter of one per cent for all other races. A complaint would have to be filed with Circuit Court which would then order a recount. The law was subsequently renumbered as Section 12-102, RLH and eventually Section 1 I-173, HRS (1970).

The apparent reason why the Legislature vested the automatic recount provision with the courts was to obviate the concern that the courts under then Article II, Section 5, State Constitution of Hawaii, now Article II, Section 10, State Constitution of Hawaii, vests the determination of contested elections with the judiciary and an automatic recount could, arguably, be thought of as a determination of a contested election. SCRep. 208 (Majority Judiciary on H.B. No. 35 (1961)).

In 1973 the Legislature passed Act 217 which amended the election laws to clarify deadlines and to provide procedures for administering elections. In regards to election contests, it transferred contests from the Circuit Court to the Supreme Court. The Legislature believed that adequate safeguards existed and the need for recounts was minimal. SCRep. No. 572 Judiciary on H.B. No. 809 (1973). The 1973 LRB Digest and Index of Laws noted that the Act "[r]epeals the specific allowance of an election contest due to small vote difference and includes such contests within contests for cause. Requires remaining election contests provisions without changing their substance, except that such contests shall be brought in the Supreme Court instead of the Circuit Court." Page 104-I 05.

## II. **AUTOMATIC RECOUNT – FINDINGS AND RECOMMENDED LEGISLATION**

### A. **FINDINGS**

The Task Force differentiated the issue of “election contest” from the issue of “automatic recount.” The Task Force requested an opinion from the Department of the Attorney General, on whether a constitutional amendment would be necessary to establish an automatic recount provision.

The Deputy Attorney General advised that such an amendment would not be required.

The Task Force then began to develop its proposed recount legislation,

After review and discussion, the Task Force believes that recounts could help to build voter confidence in the system. It concluded that the establishment of an automatic recount provision may provide the public with further assurance and confidence that the outcomes of contests with small vote differences are validated. It may foster the development of a sense of ownership amongst the general public. Furthermore, Task Force members noted that bipartisan participation through an Official Observer’s program ensures that the conduct of an election is implemented in an impartial and secure manner.

The following is a list of items discussed by the Task Force in developing proposed recount legislation for consideration by the State Legislature.

#### 1. **VALIDATION OF ELECTION RESULTS**

In its discussions to develop the proposed recount legislation, some members of the Task Force argued that merely recounting ballots – as what appears to be the case in the 2000 Florida experience – does not, in and of itself, validate the outcome of an election. Some Task Force members maintained that the validation and confirmation of the election results are determined by a comprehensive process that includes a number of prescribed steps. This process starts with voter registration and ends with the certification of election results. From start to finish, Hawaii’s election system is built around the requirements of accuracy, transparency, professionalism, security, accountability, integrity, and replicability through independent audits and tests. Because of these standards and ongoing insistence on meeting these standards by the various election offices in the State of Hawaii, vendors who provide services to the State have, time and again, characterized the State’s election administrative requirements as

“security overkill.” It is this concern with the abovementioned offices to develop and establish uniform statewide policies and

The results of an election (both uncertified and certified) are

- Pre-election tests by observers, of all vote-counting machines to be used in the elections, to ensure that the vote counting hardware and software are operating correctly.
- Election night poll book audits of all precincts and districts statewide by a semi-autonomous team of election officials.
- Manual audits of randomly selected contests and precincts by a semi-autonomous team of election officials.
- Office of Elections and/or Official Observer-initiated machine audits of ballots to verify and substantiate results provided by the precinct counters.
- Official Observer-initiated tests of the vote accumulation program - which can be conducted at any time during the Election Day - to verify that tabulation is accurate and correct.

Additionally, all operations, including voter registration, absentee voting, precinct operations, and counting center operations are required to be conducted in an impartial, non-partisan, and secure manner. The operation procedures are found in Hawaii Administrative Rules rather than HRS. The standard of conducting such an impartial, non-partisan, and secure election is further carried out by having all election-day operations scrutinized by the Official Observers. The Official Observers, according to HRS, are representatives of various political parties, interest groups, and interested individuals within the community who serve as the “eyes and ears” of the general public. Although the Official Observers are primarily interested in the processing and vote tallying procedures, they have historically been allowed to observe all election activities. Official Observers play an important role in the validation process and the certification of election results.

A member of the Task Force stated that the process would be “more open” and fair with the participation of the political parties at all phases of the election. Section 11-72, (HRS), provides for the political parties to staff the polling place with precinct officials. The Office of Elections noted that it receives little participation statewide by the political parties with regard to this law.



Further Task Force discussion continues in section (V),(D), "Validation of Election Results in Statute" on page 20 of this report,

## 2. MACHINE RECOUNTS

In its deliberation, the Task Force first discussed whether recounts would be conducted by machine or manual review. The Task Force was confident that recounts could be conducted by machine. Manual or hand recounts have been known to be inaccurate, require multiple recounts, and therefore require an inordinate amount of time to validate the election results.

## 3. RECOUNTS BY ADMINISTRATIVE RULES

After deciding that recounts should be conducted by machine, a second discussion was held to decide whether the recount provision should be codified in statute or rules. It was suggested by the Office of Elections that Chapter 51, HAR, already provides for the validation of election results, and as such would be the appropriate place to provide for automatic recounts. However, the Task Force concluded that in order to provide the public with additional assurance, confidence, and control over elections, an amendment to the HRS may be a more appropriate avenue to prescribe recounts.

## 4. THRESHOLD

After agreeing that a statutory recount provision would be provided by HRS, it was decided that the threshold set by the 1970 recount statute, Section 1 I-1 73, HRS, was appropriate for the proposed recount legislation.

The proposed legislation provides for a recount when the results between two leading candidates, are less than:

- . One-eighth of one per cent of the ballots cast for statewide contests; and
- . One-fourth of one per cent of the ballots cast for all other contests.

The Task Force agreed to these thresholds for the following reasons:

- . Recounts are to be conducted only in close races.
- . The vote and vote counting system already in place validates the results of the election.

- Historically, recounts of races with a large vote difference did not produce a change in the winners and losers.

## 5. PRIMARY ELECTION DATE

The Task Force recognized that recounts require time and proposed a change in the date of the primary election. It was determined that the current time period between the primary and general election – between five and six weeks- is inadequate to carry out the provisions of a recount and to meet additional Federal and State legal and administrative requirements. The Task Force proposed an additional six weeks (for a total of 12 weeks between the primary and general elections). This amendment would provide the time to carry out the following requirements:

- . Recounts and post election audits that are required to validate the recount results;
- . Adequate time after the validation processes for election contests to be filed with and resolved by the Supreme Court; a n d
- . Production and proofing of general election ballots.

Moreover, the change in the primary election date would allow uniformed and overseas voters to apply for, receive, vote, and return mail absentee ballots to the County Clerk within the 45-days recommended by the Federal Voting Assistance Program.

The Task Force recognized that the State of Hawaii conducts one of the latest primary elections in the nation.

## 6. CONTEST PROVISION

Article II, Section 10, State Constitution of Hawaii, provides that all contested elections shall be determined by a court of competent jurisdiction. The Task Force found that an automatic recount may be initiated without court intervention if the recount is clearly made a part of the normal vote counting process for elections in which there is a small vote difference. The goal of the Task Force was to keep separate automatic recount from contest for cause provisions. Automatic recount is a method to validate and confirm election results in elections with small vote differences. Contest for cause deals with the issue of provable fraud and overages or underages that could cause a difference in the election results and must set forth any reason for reversing, correcting, or changing the decisions of the precinct and counting center officials.

In recognition of Article II, Section 10, State Constitution of Hawaii, the courts would still retain sole jurisdiction over contested elections, including those in which an automatic recount has occurred.

B. RECOMMENDATIONS FOR RECOUNT LEGISLATION

The Task Force recommends that the Legislature adopt recount legislation that provides for the following:

1. Conducting automatic recounts by machine rather than by manual recount.
2. Amending HRS to provide for automatic recounts.
3. Conducting automatic recounts when the results between the two leading candidates are less than one-eighth of one per cent of the ballots cast for statewide contests and one-fourth of one per cent of the ballots cast for all other contests.
4. Changing the date of the primary election to the second Saturday in August.
5. Amending contest provision in HRS to differentiate automatic recounts from elections contest.

The Task Force unanimously adopted the proposed legislation at its January 14, 2002, Regular Meeting, thus accomplishing the recount provisions of Act 139. The proposed legislation was forwarded to the Legislature prior to the January 18, 2002 deadline for bill introduction in 2002 Regular Session.

Senate Bill No. 2622 was introduced and passed first reading on January 23, 2002. Senate Bill No. 2622 was referred to Senate Committees on Judiciary, Tourism and Intergovernmental Affairs, and Ways and Means. The bill failed to pass the Senate Judiciary, and Tourism and Intergovernmental Affairs Committees,

House Bill No. 2843 was introduced and passed first reading on January 25, 2002. House Bill No. 2843 was referred to the House Committees on Judiciary and Hawaiian Affairs, and Finance. The bill passed the House unamended and was referred to the Senate Committees on Transportation, Military Affairs and Government Operations, Tourism and Intergovernmental Affairs, and Judiciary. The bill was significantly amended by the Senate.

### III. ADDITIONAL RECOMMENDATIONS FROM THE TASK FORCE

- A. The Task Force discussed and supported recommendations for Legislative consideration of the following:
1. Require State Senate and State House candidates be qualified voters of the districts they wish to represent prior to filing nomination papers.
  2. Allow the Chief Election Officer, or County Clerk in the case of County Elections, the option to conduct all-mail elections, for elections not held in conjunction with a regularly scheduled primary or general election.
- B. The Task Force made the following administrative recommendation for implementation by the Office of Elections:
- Extend the “challenged ballot” procedures to voters whose voter registration is in question.
- C. CANDIDATE QUALIFICATIONS

**Recommendation:** Require State Senate and State House candidates be qualified voters of the districts they wish to represent prior to filing nomination papers.

**Background:**

Currently, a candidate has until the day of the general election to qualify for office for a particular district, and are not required to become qualified voter of that district until after the results of the primary election are known. The Office of Elections has received repeated complaints of candidates seeking to run for office, but not residing in the districts in which they plan to serve.

Should the Legislature seek to amend this constitutional provision to require candidates to be qualified voters at the time of filing their nomination papers, the affected section is Article III, Section 6, State Constitution of Hawaii.

The measure provides that candidates be qualified voters of the districts they wish to represent prior to filing their nomination papers. The bill passed both the House and Senate.

**Discussion:**

At its January 28, 2002, Regular Meeting, the Task Force voted unanimously to support House Bill No. 1012 and Senate Bill No. 1430, which proposed an amendment to the State Constitution requiring candidates to be qualified voters prior to filing nomination papers.

**D. ELECTIONS BY MAIL**

**Recommendation:** Allow the Chief Election Officer, or County Clerk in the case of County Elections, the option to conduct all-mail elections, for elections not held in conjunction with a regularly scheduled primary or general election.

**Background:**

According to the Office of Elections, HRS does not currently provide for an election to be conducted entirely by mail.

Pursuant to Section 1 I-I 74.5, HRS, the State has 120 days to conduct a new election if the Hawaii Supreme Court invalidates an election and the Governor duly calls a new election.

On July 10, 1997, the United States District Court ruled that the 1996 General Election results of the constitutional convention question were void and the court ordered the State to hold a new special election within 60 days pursuant to Section 1 I-I 74.5, Hawaii Revised Statutes. The decision was appealed to and overturned by the Ninth Circuit Court of Appeals.

If the above-cited case had not been overturned, the State of Hawaii and the Office of Elections would have been required to establish approximately 350 polling places statewide, recruit and train 4,000 election day officials, prepare and procure ballots, provide voter education, and fulfill all other responsibilities attached to conducting a statewide election.

The City & County of Honolulu was faced with this challenge in conducting its Special Election on January 26, 2002. Current law prohibited the City from conducting the single council district special election by mail and as such, it was required to appropriate funds to establish, staff, and operate 19 precincts. The City staff was faced with many logistical challenges and a short period of time in which to overcome them. For example, facilities traditionally used for polling places were unavailable, resulting in the consolidation or establishment of new polling places. Because of the lack of availability of traditional polling places, some voters were inconvenienced on Election Day. Should a special election be conducted statewide, the limited time available and the staff required to conduct

an election is anticipated to result in similar, but more widespread, inconveniences.

**Discussion:**

At its January 28, 2002, Regular Meeting, the majority of the Task Force voted to support House Bill No. 1008 and Senate Bill No. 1426 introduced on behalf of the Office of Elections, providing for the Chief Election Officer, or County Clerk in the case of county elections, the option of conducting an all-mail election, for elections not held in conjunction with a regularly scheduled primary or general election.

However, a concern was raised by a Task Force member that ail-mail elections may provide an opportunity for voter fraud to occur.

Additionally, a concern was raised by a Task Force member about protections provided to the voter in the polling place (Section 11-139, HRS) which are not provided to voters who vote absentee by mail. This issue arises because allegations received indicate that absentee ballots have been mailed to employers or union halls because no provisions were made to protect the absentee voter from their employer, union or agent of the employer or union,

Review by various county clerks has found no basis for this allegation. This is an area that should be closely monitored as a preventive action.

E. PROVISIONAL BALLOTS

**Recommendation:** Extend the “challenge ballot” procedures to voters whose voter registration is in question.

**Background:**

According to various national studies, each year, thousands of people arrive at the polls on Election Day only to find their names missing from the list of eligible voters. While these voters may believe they are registered, they discover that, often through no fault of their own, they are lost in the system - through purges, database errors, simple clerical mistakes, or recent moves. The term “Provisional Balloting” is used loosely to refer to a variety of practices that safeguard the right of these voters to cast their ballot on Election Day.

The State of Hawaii is one of the only states to have a statewide, online, real-time voter registration system. On Election Day, each polling place has access to the voter registration system via the control center. Each polling place is equipped with a telephone to call control center for any questions regarding a voter’s registration status.

Currently, the State of Hawaii has a “challenged ballot” process in which appeals are heard by the Board of Registration. Prior to election day, the Board will hear appeals of a City/County Clerks decision regarding voter registration. For example, a City/County Clerk can register individuals, reject registration applications, strike the names of disqualified voters, and make corrections of errors on the voter registration rolls. In addition, a City/County Clerk is empowered to rule on a voter challenge if it occurs prior to the date of the election. A voter challenge is a situation in which a registered voter challenges the right of a person to be or to remain registered as a voter in any precinct for any cause. All of these decisions may be appealed to the Board. If an individual wishes to appeal the Boards decision, then in the interim while the Supreme Court is resolving the matter, the individual is able to vote what is generally called a “challenged ballot.” The Supreme Court ultimately determines whether the “challenged ballot” will be counted.

On Election Day, the law also provides for a voter challenge. However, on Election Day only a voter rightfully in the polling place may challenge the right of another person to vote. The challenge can be on the grounds that the voter is not the person the voter alleges to be, or that the voter is not entitled to vote in that precinct. The voter challenge is determined by the precinct official that day and not by the City/County Clerk. The decision can then be appealed to the Board of Registration. As previously noted, if the individual wishes to appeal the Board's decision, then in the interim the individual is able to vote what is generally called a “challenged ballot.”

An individual is not precluded from appealing a decision by a City/County Clerk that the person is not registered to vote, even on the date of the election, although typically voter challenges occur on the date of the election.

Extending the “challenged ballot’ procedure to voters whose registrations are in question will further align the State of Hawaii with the recommendations of the various national Task Forces convened in the wake of the 2000 Presidential Election recommending that states adopt a form of provisional balloting.

#### **Discussion:**

The Deputy Attorney General provided an opinion to the Task Force on January 28, 2002. In his opinion he notes:

“As such, ~~the current~~ laws do provide that during the ~~pendency~~ of a registration dispute that the individual will be allowed to vote what our State calls a ‘challenged ballot’ or what others may call a ‘provisional ballot’.”

Subsequent to this opinion, a concern was raised by a Task Force member that immediate confirmation or proof of voter registration would be necessary to allow

a voter whose registration is in question the opportunity to provide confirmation of their voter registration.

It was noted that a Notice of Voter Registration and Address Confirmation is sent to each registered voter prior to the elections. However, it was acknowledged that such mailings are not done immediately following a processed registration application.

Pending Congressional legislation may ultimately require Hawaii to adopt a system of provisional ballots or a system that substantively achieves the same goals.

At its February 18, 2002, Regular Meeting, the Task Force voted unanimously to recommend the extension on the "challenge ballot" procedures to voters whose voter registrations are in question.



#### IV. **ADDITIONAL DISCUSSION ISSUES**

While no formal action was taken on the following issues, the Task Force submits the following items for Legislative consideration.

##### A. **STUDY OF VOTING BEHAVIOR (ASSESS VOTER NEEDS)**

###### **Issue:**

To conduct a study on voters and voting in Hawaii,

###### **Background:**

A member of the Task Force asserted that the Office of Elections has no knowledge of why individuals register to vote, what difficulties they may face in registering, what information may be needed to assist the voter in closed primary elections, and what may prevent voters from participating in the electoral process. Further, the Office has not determined the adequacy level of information available to voters regarding the use of the voting machines, the practice of voting, the placement of polling places, or any other relevant information related to voting behavior and participation. The Office of Elections has not conducted this type of needs assessment.

The practice of the Office is to conduct post-election evaluations and debriefings with all county clerks and their elections staff and all other involved individuals throughout the State. The purpose of these meetings is to provide an opportunity for election officials to share concerns and suggestions. These meetings have resulted in operational or statutory changes in law that further strengthen the practices, policies, and procedures utilized by the State to ensure that voting remains secure and accessible for all voters in the State of Hawaii.

Additionally, according to the Office of Elections, the State of Hawaii culls data and statistics from Election Day materials to evaluate specific operations. The State also receives and responds to comments, concerns and suggestions provided by the public polling place record books, phone calls, letters and referrals from the Legislature.

###### **Discussion:**

It was an opinion of a Task Force member that the Office of Elections does not know the behavior of the voting public. A survey was recommended to learn more about the voting behaviors of the public and improve services to the voters. For example, what time is most convenient for voters to vote and their primary

mode of transportation to and from the polling place. A suggestion was made that monies appropriated for Act 139 could be used to conduct this survey/study.<sup>1</sup>

## B. POSTING OF ELECTION RESULTS AT THE POLLING PLACE

### **Issue:**

Printing and posting of election results of the individual polling places at the close of the polls to validate results and provide information to the general public.

### **Background:**

The optical scan precinct counter currently used in precincts throughout the State is capable of printing a tape of results for that precinct at the close of the polls.

As requested by the Task Force, the Office of Elections contacted six other jurisdictions known to use optical scan precinct counters capable of printing results at the polling place. The jurisdictions contacted by the Office of Elections were:

1. Dallas County, Texas
2. Jefferson County, Alabama
3. San Mateo County, California
4. Maricopa County, Arizona
5. Spokane County, Washington
6. State of Maryland

With the exception of Spokane and Maricopa (which print but do not post the results) all the above jurisdictions post results at the polls. The State of Maryland provides for posting of results at the polling place if the county utilizes a precinct count, vote counting system.

Results are printed primarily for public information but additional copies are printed for the purposes of post election audits and/or contest challenges.

The Office of Elections noted that modem transmission could be used to improve the timely release of election results, but necessitates adequate funding for implementation.

Section 1-I-52 (b), HRS, prohibits the printing and disclosure of the number of votes cast until all polls are closed on Election Day. It reads, in part:

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<sup>1</sup> After subsequent clarification from the Department of Budget and Finance and Department of the Attorney General, it was determined that monies appropriated for the purpose of Act 139 may not be used to conduct this survey/study.

“...the ballots shall be taken in the sealed ballot boxes to the counting center according to procedure and schedule promulgated by the chief election officer to promote the security of the ballot. In the presence of official observers, counting center employees may start to count the ballots prior to the closing of the polls provided there shall be no printout by the computer or other disclosure of the number of votes cast for a candidate or on a question prior to the closing of the polls., ..”

In practice, this law has required the Office of Elections to coordinate between control centers on each island to ascertain whether all polls are closed and that it is lawful to release election results.

The Deputy Attorney General explained that HRS requires that election material, i.e. PCMCIA cards and ballots, be sealed at the polling place and collected at the central counting center where results are tabulated and released centrally at the closing of all polls.

#### **Discussion:**

Arguments in favor of this recommendation note that posting results at the polls has the beneficial effect of fostering ownership of the electoral process and a sense of community amongst voters. Voters may go back to the polling place at the end of the evening to see, specifically, the results of how their community voted.

Additional arguments note that posting results at the polls provides for additional transparency of the elections process and safeguards against the possible tampering of sensitive election data (ballots, PCMCIA cards) when such materials are transported from the polling place to the counting center.

It was noted by the Office of Elections that, while well-intended, posting results at the polls may adversely impact the Office of Elections' operation to ensure the timely release of accurate and validated election results. The Office of Elections noted a concern raised that posting at the polls is not self-confirming or self-validating since the validation of the election results requires a series of checks and audits.

### **C. ELECTION DAY REGISTRATION**

#### **Issue:**

Allow for voter registration on Election Day.

**Background:**

The Office of Elections introduced a bill during the 2002 Regular Session to provide for Election Day Registration. Pursuant to Section 1 I-24, HRS, the voter register is closed 30 days prior to each election. A voter is not allowed to register and vote in that election once the register, is closed. Election Day registration would allow qualified voters, with proper identification, to register and vote on Election Day.

The following table depicts the six states with Election Day Registration and their turnout percentages of the six states that provide for Election Day registration before and after it was enacted.

State	Year Enacted	Previous Election Turnout	Following Election Turnout	% Change
Idaho	1994	65.15	57.04	-8%
Maine	1973	60.27	63.66	3%
Minnesota	1974	68.65	71.53	3%
<b>New Hampshire</b>	1996	63.14	57.30	-6%
Wisconsin	1971	66.52	62.49	-4%
Wyoming	1994	62.30	59.43	-3%

Should the Legislature seek to amend current law to specifically provide for Election Day Registration, the affected section would be Section 1 I-24, HRS, "Closing register; list of voters."

**Discussion:**

It was noted that Election Day registration is provided in some states in conjunction with provisional balloting. However, a concern was raised that Election Day Registration may increase the opportunity for voter fraud to occur, a point questioned at the January 22, 2002, Regular Meeting, by the various City/County Clerks who had not yet assessed the potential for voter fraud to occur.

D. VALIDATION OF ELECTION RESULTS IN STATUTE

**Issue:**

Codify the validation procedures currently in Administrative Rules into the Hawaii Revised Statutes.

## **Background:**

During the development of proposed recount legislation, the Task Force deliberated on the issue of validation of election results. This issue is continued from earlier discussion,

Some Task Force members maintained that the validation and confirmation of the election results are determined by a comprehensive process that includes a number of prescribed steps, This process starts with voter registration and ends with the certification of election results.

The results of an election are validated only after:

- Pre-election tests by observers of all vote-counting machines to be used in the elections to ensure that the vote counting hardware and software are operating correctly.
- Election night poll book audits of all precincts and districts statewide by a semi-autonomous team of election officials.
- Manual audits of randomly selected contests and precincts by a semi-autonomous team of election officials.
- Office of Elections and/or Official Observer-initiated machine audits of ballots to verify and substantiate results provided by the precinct counters.
- Official Observer-initiated tests of the vote accumulation program - which can be conducted at any time during the Election Day - to verify that tabulation is accurate and correct.

Presently, the process by which election results are validated is prescribed in Chapter 51, Subchapter 9, HAR.

## **Discussion:**

In its discussions, a Task Force member stated that the general public is not as aware of Administrative Rules as it is with State Law.

It was noted by a Task Force member that currently, the validation procedure in Administrative Rules allows for the flexibility of amendment by the election administrators in response to issues or new requirements that may arise through the conduct of elections. Codifying the procedures into statute makes it harder to amend because changes are subject to elected officials and the Legislative process.

The Task Force noted that codifying validation procedures into statute would make the general public more aware of what the Office of Elections does to

validate and certify the results of an election. Furthermore, the process of

## E. CLARIFYING THE ROLE OF OFFICIAL OBSERVERS

Issue:

Codify roles for the Official Observers in statute.

### **Background:**

Chapter 16, HRS, establishes the institution of Official Observers. It provides that the Official Observers are comprised of members of the various political parties, various community organizations, and other interested individuals.

The Official Observers serve as the “eyes and ears” of the general public. The role of the Official Observer is to:

- Conduct tests of the vote counting system
- Observe the handling of election materials and the operation of the counting center.

Over the years the State has received requests to observe other election activities. As matter of practice, the State of Hawaii allows its Officials Observers to observe all facets of the election process, from absentee processing to lockdown of voted ballots.

Should the Legislature seek to amend current law, the affected section would be Chapter 16, HRS, “Voting Systems.”

### **Discussion:**

It was recommended by the Task Force member that the role of the Official Observers be further clarified in HRS, in particular, to clarify situations in which an Official Observer would be required to be present.

It was noted by the Task Force that the role of the Official Observers is not always clear. There is, for example, no statutory provision in law clearly stating when an Official Observer is required to be present. Statute should clearly establish points of participation by Official Observers in the conduct of an election.

## F. DEFINE WHAT CONSTITUTES A VALID VOTE

Define what constitutes a valid vote.

### **Background:**

These definitions are provided to the voter on the ballot stub, voting instructions,

Election policies, procedures, and standards have been established to ensure

State of Hawaii has established objective criteria to determine a proper mark.

whereby voters are given the opportunity to correct marginally marked ballots. In

These ballots are duplicated under strict guidelines and under the observation of

Should the legislature seek to amend current law to provide for voter intent, the

Chapter 16, "Voting Systems".

### **Discussion:**

The Task Force felt that this issue was important and required further discussion. However, because of the lack of time, the Task Force did not have a formal discussion on this issue. A Task Force member stated there needs to be additional discussion on the policy of "voter intent" in the State of Hawaii.

## G. ASSISTANCE TO ABSENTEE VOTERS

### **Issue:**

To extend protections afforded to voters voting at the polling place to voters who vote by absentee ballot, in particular, the prohibition of voting assistance provided by a voter's employer, union, or their agents.

## **Background:**

The Office of the Attorney General provided the following:

1. Pursuant to the Voting Rights Act, employers, unions, and their agents may not provide assistance to a voter. The provision states that that “any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” (42 U.S.C. Sec. 1973aa-6).
2. Forwarding ballots by mail to a voter’s employer or agent of that employer or officer or agent of the voter’s union would not, in and of itself, appear to constitute assistance under the Voting Rights Act.
3. The two provisions that speak to the issue of absentee voting and assistance, Section 2-53-3 (c), HAR, and Section 15-5, HRS, relates specifically to intermediaries identified to provide assistance to an incapacitated voter. These intermediaries may not be a voter’s employer or agent of that employer or officer or agent of the voter’s union.

## **Discussion:**

The Task Force discussed whether it is against federal and/or state law to forward absentee ballots to the address of a voter’s employer, union, or their agent.

The concern expressed by some members of the Task Force is whether state and county elections officials have afforded absentee voters the same protections provided to voters who vote in the polling place. Pursuant to section 11-139, HRS, a voter’s employer or agent of that employer or officer or agent of the voter’s union is prohibited from providing assistance. Precinct Officials are instructed to notify voters of this prohibition when voters have identified a person to provide assistance in the voting booth.

Task Force members have recommended that elections administrators review forwarding addresses provided on the absentee ballot requests forms to determine whether the address provided belongs to a union or an employer.

Concerns raised in opposition to this proposal noted right to privacy issues, and the unique and separate nature of absentee voting. Concerns were expressed whether elections administrators could check all forwarding addresses given the limited timeframe that exists during an election, and whether it is possible to conduct these checks given that it is not possible to determine with certainty whether an address belongs to an employer.



The Task Force received a recommendation from a member to amend Chapter 15, HRS. The recommendation amends Section 15-4, HRS, to add the language, "No ballot shall be forwarded to the address of the person's employer or agent of the person's union, unless that person shall certify under oath that he has no other address at which he would be able to receive mail."

It was stated by the Deputy Attorney General that the current law in place is not in conflict with existing Federal Law. It is, however, a policy decision as to whether or not the Legislature wishes to preclude the mailing of ballots to employers or union halls.

#### H. PRESIDENTIAL PREFERENCE PRIMARY

**Issue:**

Establish a provision in HRS for the State of Hawaii to conduct a Presidential Preference Primary Election to nominate the candidates who will appear on the General Election ballot.

**Background:**

Article II, Section 9 of the Hawaii State Constitution states that "a presidential preference primary may be held as provided by law." Hawaii Revised Statutes does not currently provide specific provisions for the implementation and conduct of presidential primaries.

Access to the State of Hawaii's General Election Presidential Ballot is currently provided pursuant to section 11-1 13, HRS. Access is provided in two ways:

1.

An Independent candidate or party may apply to petition to appear on the General Election, Presidential Ballot by submitting

of the total number of votes cast in the prior Presidential Election.

2.

Qualified Political Parties (parties that have qualified to appear on the ballot pursuant to Section 11-1 62 & 11-62, HRS) may submit the

the General Election Presidential Ballot.

The party shall include a statement that the candidate is legally

Constitution; and a statement that candidates are duly chosen by

both the state and national party, with the time, place, and manner the selection was made.

Hawaii is one of seven states whose major parties select presidential nominees via party caucus. The other six states are: Alaska, Iowa, Kansas, Nevada, North Dakota, and Wyoming.

Michigan, South Carolina, and Virginia employ both methods, depending on the party.

The remaining 40 States conduct presidential preference primaries, the earliest of which is conducted in February (New Hampshire) and the latest, in June (Alabama, Montana, New Jersey, New Mexico, South Dakota).

Presently, Hawaii holds the latest primary election in the nation. Therefore, the presidential and vice-presidential nominees are chosen long before Hawaii's regular primary date. State Republican and Democratic Party Conventions take place in May and June respectively, also after the nominees are determined through the presidential preference primary system in other states.

**Discussion:**

Should the legislature seek to amend current law to specifically provide for presidential preference primaries, the affected section would be Section 1 I-I 13,

It was noted by a Task Force Member that the presidential nominations are March. One-third of all the states participate in these elections including primary, especially an early one, allows the voters of Hawaii to participate in the

While not covered in discussion, the Office of Elections notes that should the, need to be considered:

- Who pays for the election?
- . Should the state charge the parties, as in certain mainland jurisdictions?
- . Whether the primaries would be determined by the parties or in statute.

## I. MAIL ABSENTEE BALLOT FRAUD

### **Issue:**

That there be a provision in the statutes for the Chief Election Officer to request an investigation of potential absentee voter fraud should certain statistical anomalies appear in the final vote tally.

### **Background:**

Hawaii is a “no-reason absentee ballot” state. This means the voter does not have to provide any of the traditional reasons for casting an absentee ballot.

A voter may request a mail absentee ballot up to sixty days, but no later than one week, prior to an election. A request may be made by completing a “Request for Absentee Voter Ballot Application” or in writing to the respective City/County Clerk.

### **Discussion:**

A Task Force member noted that because of the increased use of absentee ballots and the State’s “no reason” policy for absentee ballot requests there is an increased potential for mail absentee ballot fraud.

A Task Force member recommended that thresholds be established in the use of mail absentee ballots for the purpose of initiating an investigation of fraud. The Task Force member suggested the following thresholds:

1. election and who would be the winner;
2. If, after determining the statewide percentage of mail absentee percentage points greater than the state average;  
10
3. If the percentage of mail absentee votes cast for the winning winning candidate’s votes by walk-in voters; and
4. If the winning candidate receives 20 percent more mail absentee

An investigation should include, but not be limited to, re-examination of the absentee ballots including signatures, multiple names at one residence, and

Arguments were made by other Task Force members that, absent empirical data, a high absentee ballot turnout is not, in and of itself, evidence that voter fraud

has occurred. The members also questioned how these thresholds were established. One member provided charts based on previous elections that indicated how such thresholds may be established.

One Task Force member contended that voting by mail may be a preferable means of voting for certain segments of Hawaii's population.

V. **ISSUES RAISED BY PUBLIC TESTIMONY**

A. **PRECINCT STAFFING**

**Issues:**

To repeal section 11-72 (4), HRS, which states, ‘The chairperson of the precinct officials shall be of the same party as the governor and shall be the first named precinct official on the list prepared by the chief election officer.’”

**Background:**

In 1949, the Territorial Legislature enacted a law that authorized the governor to appoint election inspectors. In practice, the inspectors were of the same party as the governor.

This process changed in 1970 when the State Legislature recodified Hawaii’s election laws. The State Legislature discussed various formulas to determine party representation of precinct workers. In keeping with the 1949 Law, the new law retained the provisions that the Chair of the Precinct be of the same party as the Governor, Section II-72 (4), HRS.

Because of the difficulty political parties had in recruiting precinct officials, the law was amended in 1990 to allow for open recruitment of precinct officials if the parties fail to submit the allotted number of names by a specified date. Open recruitment begins 60 days prior to the close of candidate filing.

**Discussion:**

The Elections Review Task Force received testimony from State Republican Chair Micah Kane suggesting that the Task Force revisit the issue with the goal of abolishing this provision.

The Office of Elections reiterated the difficulty in recruiting and retaining volunteers to serve in the precincts, regardless of party affiliation.

It was noted that precinct recruitment by party provides for the checks and balances which ensures the orderly conduct of each precinct. It was also noted that the present recruitment policy requires political parties to organize and be active at the precinct level.

In the 2000 Elections, 115 of 334 precincts in the Primary Election and 114 of 334 precincts in the General Election were chaired by persons not of the same party as the governor (Republican, Green, or not affiliated with any party).

## B. VOTERS GUIDE

### **Issue:**

To develop a voter's guide that can focus on candidate profiles and how to cast a proper ballot.

### **Background:**

A request in public testimony by Larry Meacham, of Common Cause Hawaii, for the development and distribution of a voter's guide.

The Office of Elections noted that it has requested for funds for a voter's guide to be developed, produced, and disseminated amongst the voting public.

The Office of Elections currently produces FACTSHEETS – primers that provide the public with basic information on elections and voting. They are made available to the voters who request such information and are also made available electronically on the Office of Elections' website.

### **Discussion:**

This issue was raised at the December 31, 2001, Regular Meeting of the Task Force. It was discussed that the voter's guide would emphasize the "how to" of voting.

While the Task Force took no formal action on this item, it agreed that voter education materials are necessary to promote and foster a well-informed electorate and that a voter's guide is merely the first step in achieving this shared goal.

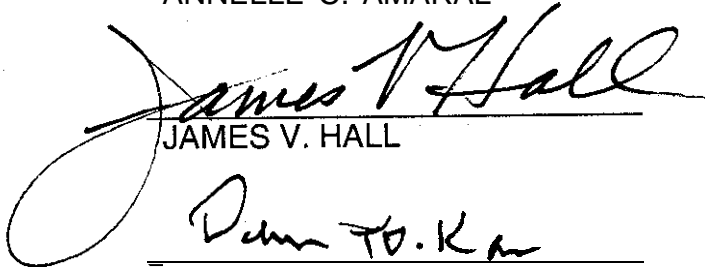
VI. CONCLUSION

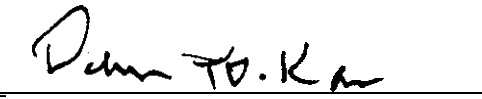
'The Task Force met from December 10, 2001 to April 29, 2002. It was able to accomplish a great deal in the limited time given it, however, if it had been allowed to continue its work and present a report in January of 2003, it may have resolved issues that have otherwise remain un-addressed.

We therefore submit this record of debates and suggest that further study and discussion is required beyond that which has taken place. The work of elections is critical to the preservation of democracy, and the time given to preserve this work should be indicative of the value it has to us as a state and as a free people.

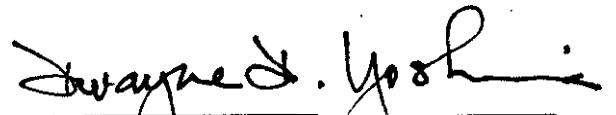
Respectfully submitted,

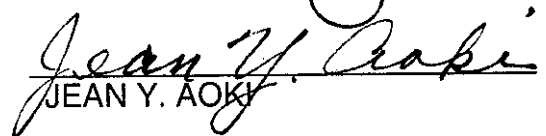
  
ANNELLE C. AMARAL

  
JAMES V. HALL

  
DENNIS T.O. KAM

  
DARYL T. YAMAMOTO

  
DWAYNE D. YOSHINA, Chair

  
JEAN Y. AOKI

  
KENNETH M. HASHIMOTO

  
CATHERINE Y. LAGARETA

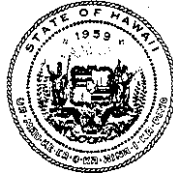
  
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**APPENDIX A**  
**MINUTES OF THE REGULAR MEETINGS**  
**OF THE ELECTIONS REVIEW TASK FORCE**

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**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
FIRST REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**December 10, 2001**

**State Capitol, Room 016  
Honolulu, Hawaii**

**Task Force Members in Attendance:**

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

**Technical Support Staff in Attendance:**

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General  
Ms. Robyn Yokooji, Office of Elections

**Guests in Attendance:**

Mr. Micah Kane, Hawaii Republican Party  
Mr. Glen Takahashi, Honolulu City Clerks Office

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the First Regular Meeting of the Elections Review Task Force to order on December 10, 2001, 2:00 p.m., at the State Capitol in Conference Room 016, Honolulu, Hawaii.

### II. INTRODUCTION

Each Task Force Member, Technical Staff, and Guest present introduced themselves.

### III. ACT 139 – PURPOSE

Chair Yoshina stated that the purpose of ACT 139 is, "To comprehensively review, evaluate, and recommend changes to Hawaii's election laws regarding vote tabulation, with particular consideration of automatic recount and contest procedures."

Yoshina said that ACT 139 states that, "The Task Force shall consider the adequacy of the laws with respect to vote tabulation and contest procedures and the feasibility of implementing an automatic recount and improved contest procedure."

Yoshina provided an overview of the Acts provisions:

The task force consists of nine (9) members composed as follows:

- Two (2) members appointed by the Governor;
- Two (2) members appointed by the Senate President;
- One (1) member appointed by the Senate Minority Leader;
- Two (2) members appointed by the Speaker of the House;
- One (1) member appointed by the House Minority Leader;
- and
- The Chief Election Officer, who shall serve as the chair of the Task Force.

The Task Force members shall serve without pay, but may be reimbursed for actual and necessary expenses.

The Task Force shall submit a study of Hawaii's election laws with its findings and recommendations, including proposed legislation to the legislature not later than twenty days prior to the convening of the regular session of 2002.

The Task Force shall terminate upon the adjournment of the 2002 Regular Session.

#### IV. PROPOSED TASK FORCE RULES

Yoshina distributed the proposed draft rules for the Task Force to review on their own and for discussion at the next scheduled meeting. He noted that the rules follow the provisions of Chapter 92, Hawaii Revised Statutes, relating to the public meeting laws.

#### V. ADMINISTRATIVE BRIEFING

Ms. Robynn Yokooji of the Office of Elections provided an administrative briefing, regarding mileage forms, travel forms etc.

#### VI. PROGRAM DISCUSSION

- A. Yoshina stated that he will be sending a letter to the House and Senate Leadership informing them that the Task Force will not be able to meet the reporting deadline as stated in ACT 139 and will submit a report prior to the adjournment of the 2002 Legislative Session.

Ms. Kitty Lagareta expressed her concerns that the recommendations of the Task Force will not be taken up by the 2002 Legislature.

- B. Yoshina asked the Task Force to include the clerks of various counties as ex-officio members of the Task Force. Yoshina added that the clerks would be affected by any changes or recommendations made by the Task Force and that they would provide a statewide perspective on elections administration.
- C. The Task Force agreed to meet every Monday at 2:00 p.m., unless determined as not necessary. Ms. Annelie Amaral expressed her concern that if the purpose of these meetings was to gather feedback from the public, they should hold some meetings in the evening, in order to better

provide the public an opportunity to attend the Task Force's meeting,

- D. The Task Force also agreed that it should review current procedures, rules, and laws prior to any serious discussion on possible changes to the existing system.
- E. Correspondence will be sent to the Senate and House Leadership advising that the Task Force is convened, that it cannot meet its deadline, but will submit a report to the Legislature prior to the sunset of the Task Force.

#### VII. PUBLIC TESTIMONY

Written and oral testimony was received from Mr. Micah Kane of the Hawaii Republican Party. (See attached copy of the written testimony.)

Yoshina responded to Kane's comment regarding what constitutes a vote. The State of Hawaii has statewide uniform procedures regarding what a vote is.

#### VIII. CORRESPONDENCE AND ANNOUNCEMENTS

The Task Force received correspondence from the:

- Governor appointing Mr. Ken Hashimoto and Mr. Daryi Yamamoto to the Task Force;
- . Senate President appointing Ms. Annelle Amaral and Ms. Jean Aoki to the Task Force;
- . Senate Minority appointing Mr. James Hall to the Task Force;
- . Speaker of the House appointing Mr. Dennis Kam and Mr. Thomas Yamashiro to the Task Force: and
- . House Minority appointing Ms. Kitty Lagareta to the Task Force.

The Task Force also received correspondence from the Senate President, dated November 27, 2001, limiting the scope of ACT 139 to vote tabulation, with consideration to automatic recounts and contest.

IX. ADJOURNMENT

There being no further business, the First Regular Meeting of the Elections Review Task Force was adjourned at 3:30 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", with a long horizontal flourish extending to the right.

Scott Nago  
Office of Elections

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**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
SECOND REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**December 17, 2001**

**State Capitol, Room 016  
Honolulu, Hawaii**

**Task Force Members in Attendance:**

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

**Technical Support Staff in Attendance:**

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

**Guests in Attendance:**

Ms. Estelle Allen, Office of Elections  
Mr. Glen Takahashi, City Clerks Office  
Ms. Lori Tomczyk, Office of Elections  
Mr. Lyndon Yoshioka, Kauai County Clerks Office

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Second Regular Meeting of the Elections Review Task Force to order on December 17, 2001, 2:05 p.m., at the State Capitol in Conference Room 016, Honolulu, Hawaii.

### II. APPROVAL OF DECEMBER 10, 2001 MINUTES

- A. Ms. Annelle Amaral moved to approve the minutes of the Regular Meeting, December 10, 2001.
- B. Ms. Jean Aoki seconded.
- C. Discussion -there was no discussion.
- D. Motion carried unanimously

### III. LEGAL REVIEW

- A. Mr. Aaron Schulaner, Department of Attorney General, provided a legal review (see attached Legal Review).
  - 1. ACT 139 – Purpose is to establish a task force to comprehensively review, evaluate, and recommend changes to Hawaii's election laws regarding vote tabulation, with particular consideration of automatic recounts and contest procedures, to ensure the integrity and certainty of the State's electoral process.
  - 2. VOTING SYSTEMS AS PRESCRIBED BY LAW
    - a) Voting Machine
    - b) Paper Ballot
    - c) Electronic Voting
  - 3. UNIFORM METHOD FOR MARKING BALLOTS

A current uniform method is a completely blackened oval marked in accordance of Section 2-51-85.1, Hawaii Administrative Rules.

4. ELECTION CONTEST

- a) Primary Election -The deadline for filing a contest is 4:30 p.m. on the sixth day after the primary election.
- b) General Election -The deadline for filing a contest is 4:30 p.m. on the twentieth day after the general election.

5. STANDARDS FOR ELECTION CONTEST

The standards for filing an election contest are prescribed in Section 11-172, Hawaii Revised Statutes.

6. AUTOMATIC RECOUNTS

Hawaii does not have an automatic recount provision. The provision for an automatic recount was repealed in 1973.

7. BUSH V. GORE

Bush v. Gore focused on equal protection. The court spoke of the adoption of adequate statewide standards for determining what a legal vote is, practicable procedures to implement them, and an orderly judicial review of any disputed matters.

- B. Amaral asked if the manual audits could be expanded to include recounts. It is specifically stated in rules how audits are conducted.

Schulaner answered the manual audits could be expanded in rules to include recounts. Rules are promulgated by the Chief Election Officer pursuant to statute.

Amaral asked that a copy of the repealed law be provided to the Task Force (see attached statute).

- C. Yoshina noted, in the State of Hawaii, recounts are determined by the courts and are one action that the courts may use to remedy an election.

- D. Amaral asked Schulaner if there was any case law regarding recounts in the State of Hawaii.

Schulaner stated there was no case law. in Hawaii regarding elections. He noted that with the exception of 1998, the courts have never ordered a recount. The evidence needed for the courts to order a recount are high pursuant to statute.

- E. Amaral asked the Task Force if the issue of posting results at the polling place needs to be discussed.

- F. Aoki stated that it would be worthwhile to review what constitutes a vote.

#### IV. REVIEW AND ADOPTION OF PROPOSED TASK FORCE RULES

- A. Mr. Daryl Yamamoto asked Deputy Attorney General Schulaner to review Rule 9 regarding executive session.

Schulaner said he would check on that provision

- B. Aoki asked that Rule 5, relating to Cost of Copies of Public Records, be amended because the law states up to \$0.25 per page. The Task Force agreed to amend the rule to up to \$0.10 per page.

- C. The Task Force agreed to defer adoption of the rules to the next scheduled meeting.

#### V. PROGRAM DISCUSSION

- A. Yoshina provided the Task Force with a handout titled "IFES: Administration and Cost of Elections, Ace Project". The handout was prepared by a consortium of participants from the: International IDEA – International Institute for Democracy and Electoral Assistance; UNDESA – The UN's Department of Economic and Social Affairs; and IFES – International Foundation for Election Systems.

The handout is a primer on vote counting and contains concepts, principles, and guidelines related to the activity of processing and tallying votes during an election. The Task Force was asked to review the primer, as it would be used as the basis for discussion at the next meeting.

- B. The Task Force was provided a handout containing Hawaii laws relating to vote counting and election contest. The handout was composed of excerpts of the Hawaii State Constitution and statutes relating to the vote counting and election contest. Members were encouraged to review the materials in preparation for the next regular meeting.

VI. PUBLIC TESTIMONY

No public testimony received.

VII. CORRESPONDENCE AND ANNOUNCEMENTS

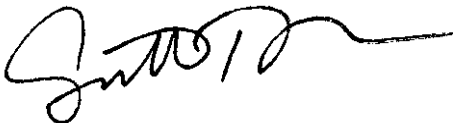
A memorandum, dated December 12, 2001, was forwarded to the Senate President and Speaker of the House. The memo stated that the Task Force has convened and, given the late timing of the appointments, will not be able to meet the deadline as provided for in ACT 139. However, the Task Force will submit a report prior to its termination date of May 2, 2002 as provided in the ACT.

Yoshina clarified that the memo stated a report would be submitted not later than May 2, 2002.

VIII. ADJOURNMENT

There being no further business, the Second Regular Meeting of the Elections Review Task Force was adjourned at 3:33 p.m.

Respectfully submitted,



Scott Nago  
Office of Elections

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**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
THIRD REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**December 24, 2001**

**State Capitol, Room 016  
Honolulu, Hawaii**

**Task Force Members in Attendance:**

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

**Technical Support Staff in Attendance:**

Mr. Scott Nago, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

**Guests in Attendance:**

Mr. Kevin Dayton, The Honolulu Advertiser  
Mr. Pat Omandan, Honolulu Star-Bulletin

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Third Regular Meeting of the Elections Review Task Force to order on December 24, 2001, 9:08 a.m., at the State Capitol in Conference Room 016, Honolulu, Hawaii.

### II. APPROVAL OF DECEMBER 17, 2001 MINUTES

- A. Ms. Kitty Lagareta moved to approve the minutes of the Second Regular Meeting, December 17, 2001.
- B. Mr. Daryl Yamamoto seconded
- C. Discussion – Amaral stated that the minutes did not capture the discussions that occurred regarding Deputy Attorney General Schulaner's legal review. Amaral asked that the staff do a better job at recording the minutes, She also asked that a recording device be used at the next meeting.

Also, a written copy of the Deputy Attorney General's legal review was not provided as asked for by the Task Force. The Task Force had also asked to see the 1972 recount provision in statute, which was not provided.

- D. The approval of the December 17, 2001 minutes was deferred until the next meeting.

### III. PUBLIC TESTIMONY

No public testimony received.

### IV. REVIEW AND ADOPTION OF PROPOSED TASK FORCE RULES

- A. The Deputy Attorney General clarified the rules regarding executive session for Yamamoto. The Task Force would still need a majority of members to go into executive session.
- B. Aoki asked that Rule 5 be amended to state, "Up to ten cents per page for materials photocopied. ." The Task Force agreed to the amendment.



- C. Aoki moved to adopt the proposed Task Force rules with the abovementioned amendment.
- D. Amaral seconded.
- E. The motion passed unanimously with no objections.

V. PROGRAM DISCUSSION

The Task Force conducted an open discussion:

Yoshina stated that the marksense system is touted as being market ready, whereas Internet voting and Direct Recording Electronic (DRE) are not.

Yoshina then went on to state that because the criteria for contest for cause is so high, the Office of Elections does everything possible to make certain that the results are correct. Whenever the results are close, the Office of Elections conducts a canvass of the district/precinct or contest.

Lagareta stated that even though the system appears to be a good system, she has some areas of concerns that she would like to see addressed, e.g., the verification of signatures by the clerk's office.

Hall added that he would like to look at the voter rolls. He stated that Hawaii has the lowest turnout per registered voters and that the two areas most vulnerable to fraud are absentee ballots and tabulation of contest.

Amaral questioned how absentee ballots relate to tabulation and contest procedures.

Lagareta responded by saying that the scope of the act was broad; however, the counting of absentee ballots is related to tabulation.

The Task Force then went on to discuss the timetable to submit recommendations and proposed legislation for the Legislature to act upon.

Yoshina noted that if recounts occur, the Office of Elections will need more time between the primary and general election. Currently, there are 45 days between the primary and general election. The Federal Voting Assistance Program (FVAP) recommends that overseas absentee ballots be mailed at least 35 days prior to the election.

Amaral responded by saying that the legislature will not change the date of the primary before the 2002 Elections.

Aoki talked about internal vs. external audits. 'She went on to explain that internal audits are conducted by the Office of Elections, Manual Audit Team and Poll Book Audit Team. External audits are conducted by an independent third party such as the Official Observers.

Yoshina responded by saying that the Manual Audit Team and Poll Book Audit Team are semi-autonomous of the Office of Elections. Although the Office of Elections recruits the team members, the teams determine what to audit based on the criteria provided for in the Hawaii Administrative Rules.

Aoki suggested putting external audit provisions and procedures in the administrative rules to make them formal.

Hashimoto brought up provisional ballots and how the Federal government may mandate the use of provisional ballots. The Task Force then had a discussion on provisional ballots.

Yoshina noted that the State of Hawaii has procedures in place to address the recommendations raised by various election reform reviews and proposed legislation. He then went on to explain that the State has a statewide voter registration system, a control center on Election Day, a "voter challenge and appeals" procedure, which other states with provisional ballots do not have.

Yoshina asked the Task Force what they wanted to do regarding recounts.

Amaral then went to the board and diagrammed what the Task Force would need to accomplish:

1. Determine a threshold for automatic recounts
2. Propose language for a constitutional amendment allowing recounts.
3. Amendment of administrative rules allowing for manual or machine audits.

She also talked about changing the date of the primary election, voter education, and funding for the Office of Elections.

Amaral also asked to see past legislation proposed by the Office of Elections.

Yamamoto suggested not putting recounts in the administrative rules because the Legislature probably will not provide for more time between elections.

Deputy Attorney General Schulaner informed the Task Force that a change in the Constitution may not be necessary for automatic recounts. Schulaner stated he would need to check on the definition of recounts. The Task Force then had a discussion on same-day registration. Yamamoto raised the concern that there would be difficulty in the polling place handling same-day registration.

The Task Force then moved on to a discussion regarding precinct staffing and poll watchers. Yoshina said he would provide a FACTSHEET at the next meeting.

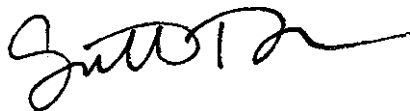
#### VI. CORRESPONDENCE AND ANNOUNCEMENTS

No correspondence and announcements received,

#### VII. ADJOURNMENT

There being no further business, the Third Regular Meeting of the Elections Review Task Force was adjourned at 11:24 a.m.

Respectfully submitted,



Scott Nago  
Office of Elections

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**STATE OF HAWAII  
OFFICE OF ELECTIONS  
801 E HUA AVENUE  
PEARL CITY, HAWAII 96782**

**DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER**

**MINUTES  
of the  
FOURTH REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**December 31, 2001**

**State Capitol, Room 016  
Honolulu, Hawaii**

**Task Force Members in Attendance:**

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

**Technical Staff in Attendance:**

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

**Guests in Attendance:**

Mr. Kevin Dayton, The Honolulu Advertiser  
Mr. Larry Meacham, Common Cause, Hawaii

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Fourth Regular Meeting of the Elections Review Task Force to order on December 31, 2001, 9:10 a.m., at the State Capitol, Room 016.

### II. APPROVAL OF MINUTES

#### A. Approval of December 17, 2001 Minutes

1. Kam moved to approve the minutes of the Regular Meeting, December 17, 2001.
2. Yamashiro seconded
3. Discussion – Amaral asked if the Deputy Attorney General's Legal Review and copy of the statute "contest for small vote difference" would be attached. The legal review and statute was distributed and will be attached.
4. Motion carried unanimously.

#### B. Approval of December 24, 2001 Minutes

1. Amaral moved to approve the minutes of the Regular Meeting, December 24, 2001.
2. Lagareta seconded
3. Discussion - Yoshina proposed the following amendments:
  - a) Page 3, final paragraph should read: "The [Federal Election Commission (FEC)] Federal Voting Assistance Program (FVAP) recommends that overseas absentee ballots be mailed at least 35 days prior to that election."
  - b) Page 4, fourth paragraph should read: "Yoshina noted that the State of Hawaii has procedures in place to address the

- c) concerns [addressed by provisional ballots] raised by various election reform reviews and proposed legislation.

4. Motion carried unanimously.

### III. PUBLIC TESTIMONY

Written testimony was submitted by Meacham of Common Cause Hawaii. Yoshina summarized Meacham's testimony (see attached copy of the written testimony).

In his testimony, Meacham recommended (1) with or without recounts, the primary election should be held earlier to provide more time for candidates and the Office of Election to prepare for the general election, (2) recounts be conducted by machine, which is quicker and more accurate, (3) in addition to pushing the legislature for voter education funds, the effort should be supplemented with a public/private partnership.

On the latter point, Meacham opined that a publication may want to participate in developing a candidate information insert that, unlike the current candidates guides, would allow candidates to provide statements of their choosing (subject to length limits).

In addition to his written testimony, Meacham commented on the following:

Meacham recommended the State study same-day registration.

Ballot design review: The Office of Elections should allow review and modifications of the ballot design, possibly by the Elections Appointment and Review Panel. The current ballot could be improved.

Yoshina noted that draft layout revisions of the ballot have been developed. He will provide a copy for Meacham. However, Yoshina noted that changes to the ballot design, in particular color density and layout, are limited by the technical specifications of the vendor's ballot counting machines.

Discussion: Amaral noted that there must be an effort to make voters familiar with the ballot; Yoshina commented that it appears that voters do not understand the purpose of a primary election and in particular, Hawaii's single party primary system; Lagareta commented that free media could be obtained if coordinated

appropriately, and that she now supports machine over manual recounts. Amaral added that the free campaign could follow (KHON's Lokahi Tree Christmas) campaign.

In response to Yoshina's comment that it has been difficult to enlist people and organizations to conduct voting demonstrations, Aoki commented that the League could provide assistance. However, Aoki concurred that the difficulty is obtaining invitations to the various community groups. Lagareta recommended contacting the District Governor for Hawaii's Rotary Clubs. Yoshina agreed to contact the Rotary Club.

Ypshina explained that past discussions with media for free publicity invariably ended in requests for money. In response to Yamamoto's comments that groups should be enlisted to conduct voting demonstrations, Yoshina commented that the Office of Elections is currently working with the Honolulu County Commission on the Status of Women to supplement the Office's outreach efforts. The Office will also provide ballot counting machines to the commission members and participating groups to conduct voting demonstrations.

#### IV. PROGRAM DISCUSSION

##### A. Prior Office of Elections' Legislative Packages

###### 1997

HI31400 – Adopted. Lower threshold for party petitions to appear on primary election ballot

HB1401 -Violation for employers that do not provide time off for voting

Discussion:

In response to Amaral's question regarding where the Office gets its ideas for legislation, Yoshina explained that ideas come from the public, the various county clerks and their staff, the Elections Appointment and Review Panel, and other organizations and groups.

Yoshina explained that the Office's approach to legislation has been to introduce measures that fine tune or provide "housekeeping" to Hawaii's election laws. Because Hawaii's elections system already incorporates features being



recommended by mainland jurisdictions (uniform statewide voting systems, state voter registration database) this approach has been sufficient.

Yoshina commented that a Constitutional Convention would provide the best opportunity to take a studied and comprehensive review of election law. The office has been advised that an omnibus reform bill may not be the best vehicle for passage by the legislature.

Discussion ensued on all-mail elections. Aoki recommended investigation on this issue. Hashimoto commented that elected officials are skeptical of that type of system.

HB1402 – Measure to allow the Office of Elections to recruit precinct officials of any party.

Discussion: Lagareta asked why the law requires the chair to be of the same party as the governor. Yoshina explained that it has been practice that anyone can serve. Amaral explained that this law is a holdover from Hawaii's territorial government, Kam commented that officials of different parties provide necessary checks and balances to election operations.

HB1403 – Office of Elections proposed recount measure. Yoshina noted that the measure has been repeatedly introduced by the Office over the years.

Discussion: Deputy Attorney General, Schulaner, explained that an automatic recount provision does not require amending the State Constitution if the proposed measure clearly establishes that an 'automatic recount is part of the normal, vote counting process, Election contests may still be initiated pursuant to the onstitution after all normal procedures – including recounts - are exhausted.

Aoki noted that neither the Takumi v. Sonson, nor Aki v. Tilly contests would have met the recount threshold provided in this measure

Discussion ensued regarding the purpose of recounts versus the logistical concerns required to conduct them, past media reports of errors in absentee ballot mailings, and the need to allow observers to view the absentee processing.

Without objection, the Task Force recessed at 10:30 a.m. The meeting resumed at 10:40 a.m.

HB1404 – Change primary election date. Office of Elections staff Nago, noted that the measure proposed to move the primary election to the second week in August would provide 12 weeks between the primary and the general election.

Nago clarified that certain operational deadlines would change because they are based on the election dates.

HB1405 – AB drop-off at polls - Current law allows voters who requested and received an absentee ballot to drop off their ballots at their designated precinct, or, on election day, cancel their AB ballots and vote in the precinct. These provisions were originally intended to provide this option only in special and emergency cases.

Use of this provision has contributed to delays in counting and control centers statewide, AB cancellations require a check and approval by control center, and AB ballots dropped off at the polls require verification and sorting, but arrive late on election night.

Yoshina commented that this measure would have clarified the provision to abolish these practices, The measure had not passed. Opponents to the measure argue that this proposed measure is a cut in government service.

In response to Lagareta's question, Yoshina commented that observers are allowed to view the AB processing at control center.

HB1406 – Measure to amend candidate filing requirements. Proposed measure included a requirement that a candidate be a resident and registered voter of district at the time of filing. Measure has not passed.

HB1407 – Relating to certification of election results. Includes provisions for reconciliation of ballots. Measure has been adopted into law.

In response to Lagareta, Yoshina explained that interested parties are welcome to observe the post-election pollbook audits conducted by Office of Elections staff and the various county clerks.

HB1408 – Housekeeping measure. Changed law to allow clerks to open absentee polling places when ballots are available.

HB1409 – Relating to access to voter registration affidavits, lists and registers.

HB1410 -Authorizes chief election officer to establish rules relating to the inspection of election records, Amendments include prohibiting inspection of election materials for commercial purposes. Measure has been adopted.

HB1411 – Relating to voters’ residence address confidentiality. Permits individuals to request to keep confidential their residence address and telephone number. Yoshina noted that requests are not limited to law enforcement officials,

HB1412 – Relating to election contests for cause. Measure proposed to curb frivolous lawsuits by requiring the complainant to submit sufficient evidence with the complaint to establish a prima facie case. Did not pass; Yoshina commented that Legislature felt this standard was too high.

1998

HB2522 – Relating to parties. Measure passed.

HB 2523 – Relating to the General County Register. Housekeeping amendments to Section II-14 and 1 I-I 5, Hawaii Revised Statutes. Measure passed.

HB 2524 – Relating to contest for cause. Changes governor to chief election officer. Measure did not pass because the governor has jurisdiction over judgments.

HB 2525 – Relating to elections by mail. This allows for the Office of Elections to conduct special elections by mail. This measure has not passed.

HB 2526 -Short form bill.

HB 2527 – Relating to the board of registration. Asked for an increase in the compensation of board members, The measure did not pass. Compensation is now set through Hawaii Administrative Rules.

HB 2528 – Relating to Employment Security. Exempts taxes from election officials who have earned \$1,000 or less. Measure passed.

HB 2529 – Proposing an amendment to the State Constitution. Requires candidates to reside in the district at the time of filing nomination papers.

HB 2530 – Relating to registration. Deletes unwarranted invasion of privacy from Section 11-14.5, Hawaii Revised Statutes. Measure has not passed.

HB 2531 – Relating to county elections requiring a runoff, Measure passed

1999

SB 1264 – Relating to election recounts. Requires the court to order a recount if certain triggers are met.

HB 1462 -- Proposing an amendment to the state constitution. Requires candidates to reside in the district at the time of filing nomination papers.

HB 1463 – Relating to AB drop off at the polls. Measure did not pass.

HB 1464 – Relating to the Primary Election date. Moves the date of the primary election to the second Saturday in August, Measure has not passed.

HB 1465 – Relating to reapportionment. Measure has not passed

HB 1466 – Relating to vote count. Amends Section 11-151, Hawaii Revised Statutes to conform with the Supreme Court ruling relating to constitutional conventions. Measure passed.

HB 1467 – Relating to candidate vacancies, Provides that replacement candidates fill out an application and take the oath or affirmation before being placed on the ballot. Measure passed.

HB 1468 – Relating to candidate vacancies. Relating to vacancies in nonpartisan offices. This bill was proposed by the City and County of Honolulu. Measure has not passed.

HB 1469 – Lowers the signatures required for parties to gather for qualification. Measure passed.

HB 1470 – Relating to elections by mail. This allows for the Office of Elections to conduct special elections by mail. This measure has not passed.

2000

HB 2630 – Making an appropriation for adjustment in staff compensation. The measure has not passed.

HB 2631 – Requires that all election officials be assigned in a nonpartisan manner. Measure has not passed.

HB 2632 – Making an appropriation for voter education. Yoshina reported that the Office has asked for \$100,000 and received none in 2001.

HB 2633 – Relating to voter registration. This would amend the laws to conform with the National Voter Registration Act. Measure has not passed.

Schulaner informed the Task Force that although our laws do not conform with the Federal law, we are not in violation because we currently practice and follow the Federal law.

HB 2634 -Relating to no candidates filed for elective office. Measure has not passed.

HB 2635 – Relating to arrangement of names on the ballot. Deletes the provision that the voting target be to the right of the candidate's name. Measure has passed.

2001

Relating to elections by mail. Allows the State to conduct all special elections by mail. Measure has not passed.

Relating to AB drop off at the polls. Measure has not passed.

Relating to the primary election date. Moves the primary election to the second Saturday in August. Measure has not passed.

Relating to voter assistance. Amends Section II-I 39, Hawaii Revised Statutes to conform with the Federal Voting Rights Act. Measure has not passed.

Proposing an amendment to the State Constitution. Requires candidates to reside in the district at the time of filing nomination papers. Measure has not passed,

Relating to voter registration. This would amend the laws to conform with the National Voter Registration Act. Measure has not passed.

Relating to recounts, Requires the court to order a recount if certain triggers are met.

The Task Force then had discussion on the proposed recount language for the next meeting, The Task Force decided to have language regarding automatic recounts and change in primary election date.

#### B. PROPOSED CONSTITUTIONAL AMENDMENT

Opinion by Deputy Attorney General, Schulaner, was distributed to the Task Force members.

Amaral clarified that a recount provision would not do away with existing contest provisions. Amaral stated that the Task Force should review draft legislation at the next meeting and decide on a threshold. Amaral also added that a legislation to move the primary election should be included in the proposed automatic recount bill.

Amaral requested an analysis of how Hawaii Administrative Rules would have to be amended to be consistent with the recount provision.

After some discussion on other election-related issues proposed to be investigated by the Task Force, Yamamoto recommended that the Task Force complete the automatic recount legislation before considering other issues.

Discussion ensued on provisional ballots and how the State currently address election-day challenges relating to voter registration. Hall commented that one alternative to solving this bottleneck is providing electronic and/or terminal access to the voter rolls at the precinct. Yoshina reiterated that voters are responsible for keeping their voter registration correct and updated. Hashimoto added that voters who do not receive a Voter Notification Card would experience delays on election day.

Discussion ensued on aliens on the voter rolls. Yoshina explained that some of the names on the list are U.S. Nationals who have been told that they are entitled to vote. The U.S. Immigration and Naturalization Services conducted a two-year

investigation on a list of 15,000 aliens suspected to be registered to vote. The investigation found four individuals, registered to vote, of which one voted.

After some discussion regarding access to election materials, Schulaner commented that, pursuant to State law relating to information practices, the parties and election officials should work together to ensure timely access to election materials.

V. CORRESPONDENCE AND ANNOUNCEMENTS

Yoshina provided the Task Force the following:

1. Matrix titled "Comparison of Hawaii's Election Laws Against the National Election Reform Recommendations"
2. Ney-Hoyer Bill - Help America Vote
3. Dodds-Conyer Bill
4. National Voter Registration Act

VI. ADJOURNMENT

There being no further business, the Fourth Regular Meeting of the Elections Review Task Force was adjourned at 12:20 p.m.

Respectfully submitted,



Rex Quidilla  
Office of Elections

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**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
FIFTH REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**January 7, 2002**

**State Capitol, Room 016  
Honolulu, Hawaii**

**Task Force Members in Attendance:**

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

**Technical Staff in Attendance:**

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

**Guests in Attendance:**

Ms. Estelle Allen, Office of Elections  
Ms. Gina Bernabe-Haina, County of Hawaii  
Mr. Kevin Dayton, The Honolulu Advertiser  
Ms. Shirley Magarifuji, County of Maui  
Mr. Larry Meacham, Common Cause Hawaii  
Ms. Pat Nakamoto, County of Hawaii  
Ms. Lori Tomczyk, Office of Elections

Ms. Diane Wakamatsu, County of Maui  
Ms. Robynn Yokooji, Office of Elections  
Mr. Lyndon Yoshioka, County of Kauai

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Fifth Regular Meeting of the Elections Review Task Force to order on January 7, 2001, 2:04 p.m., at the State Capitol, Room 016.

### II. APPROVAL OF DECEMBER 31, 2001 MINUTES

- A. Amaral moved to approve the minutes of the Regular Meeting.
- B. Kam seconded.
- C. Discussion – Amaral asked for clarification of the minutes relating to Meacham’s testimony. Quidilla clarified that Meacham referred to developing a candidates guide that provided candidate information. Amaral noted that voter information should not be limited only to candidate information, but include the various types of instruction that could aid the voter in voting.

Page 3, third paragraph, first sentence should read: “On the latter point, Meacham opined that, unlike candidates guides currently produced by the dailies, a candidate guide should be developed that would provide candidates an opportunity to issue statements of their own choosing (subject to word limits).”

Yoshina proposed an amendment on page 10, PROPOSED [CONSTITUTION] CONSTITUTIONAL AMENDMENT.

- D. Motion carried unanimously.

### III. PUBLIC TESTIMONY

No public testimony received.

#### IV. PROGRAM DISCUSSION

At the request of Amaral, Deputy Attorney General Schulaner will restore language relating to the history of recounts in section 1 of proposed automatic recount legislation. The intent is to make clear that automatic recounts are separate from, and do not conflict with, the existing election contest provisions provided by the State Constitution and statute.

Office of Elections staff member Nago explained the various subsections of the proposed recount legislation. Subsection (a) includes two triggers - separate percentage differences for (1) offices voted by at least one-third of the state, and, (2) all other contests. Subsection (c) provision would prescribe whether the recounts would be conducted manually (by hand) or by machine.

Discussion ensued on voter trigger percentages. Aoki commented that Hawaii has few close races. Yoshina commented that “close” depends on which side you’re on. Hall commented that in the last gubernatorial election -the closest ever – the margin of victory was 1.4 percent.

Yoshina explained that merely conducting recounts does not confirm the election results. Results are reconciled with other election materials and procedures. He noted that the discussions regarding Florida’s recounts focused only on the counting of ballots, not the secondary checks (e.g. pollbook, manual audits) that are important to make the result valid and reliable.

Yoshina recommended the Task Force consider amending Chapter 16, voting systems be amended to include a “Vote Confirmation” provision that would mirror and make statutory current procedures used to confirm and validate the election results. In response to Aoki’s question, Yoshina commented that he envisions the confirmation process to be conducted on election night while official observers are present.

Amaral questioned whether codifying existing procedures would provide the voters of the community with the feeling that the elections are within the voter’s control, and not the control of the election administrators. Hall commented that recounts – regardless of trigger percentage-would make the people feel better about elections.

Lagareta commented that the vote counting system and procedures she observed during the 2000 Elections, which includes official observers and required

secondary checks, should also be included in an official recount. Lagareta added that a recount system must go back to the people.

In response to Lagareta's comments regarding office control over the recount of the Makini/Kanno senate race, Yoshina explained that the audit was initiated by the counting center observers and not the chief election officer.

Yoshina explained that a proposed amendment to Chapter 16 could allow recounts if:

- a contest meets a vote difference threshold;
- all secondary checks/audits are conducted; and
- Official Observers and election administrators agree on a recount

Yamashiro commented that the process of recounts are conducted on election night, however, that process is not specifically presented as a recount.

In response to Amaral's comments that Yoshina and Yamashiro's proposals do not address the powerlessness of people towards elections, Yamamoto explained that elections is a grassroots effort by the public -- confidence in the system comes from direct public participation and observation of the electoral process.

Yoshina responded to comments and questions: simply recounting the ballots achieves nothing; should a recount provision made law, Yoshina believes the recounts must be conducted on election night.

After discussion on a threshold for the proposed recount the Task Force agreed on the following:

- one-eighth of one per cent threshold for statewide contests
- one-quarter of one per cent threshold for all other races

Aoki proposed that all contests within a four-vote difference also be recounted. She noted that in House Representative 45, the difference was four votes, but did not meet the threshold requirements.

After discussion whether "state contests" should be amended to include elections voted by at least one-third of all voters, Yoshina commented that the Office would clean up the threshold language for the Task Force's consideration at the next meeting.

Yamamoto moved and Lagareta seconded to conduct recounts by machines, The motion carried unanimously.

Discussion ensued regarding whether the recount language should be in statute or in Administrative Rules.

Amaral commented that amending rules to allow for recounts would not change the perception that administrators -- not the people - conduct elections. She added that, rulemaking is not an ideal forum for broad public debate and discussion.

Yamashiro supported including recount provisions in rules. He commented that with proper voter education, the same goal of instilling public confidence in the vote counting system could be achieved.

In response to Aoki's comments on the "survivability" of a recount measure, Amaral and Lagareta commented that a bill proposed by the bi-partisan Task Force should carry some weight in the legislature.

Lagareta moved and Amaral seconded to propose a recount provision in statute. Yes: Amaral, Aoki, Lagareta, and Hall. No: Kam, Yamamoto, and Yamashiro. Yoshina did not vote.

It was clarified that the motion failed for not receiving the majority of affirmative votes required by the number of members entitled to the body. It was clarified by the Deputy Attorney General that reconsideration of the motion would require a motion from the prevailing side. Yamashiro moved, Yamamoto seconded, to reconsider the motion at the next meeting.

#### IV. ANNOUNCEMENTS AND CORRESPONDENCE

There were no announcements or correspondence

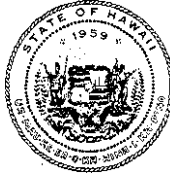
V. ADJOURNMENT

There being no further business, the Fifth Regular Meeting of the Elections Review Task Force was adjourned at 4:40 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", written in a cursive style.

Scott Nago  
Office of Elections



STATE OF HAWAII  
**OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER

**MINUTES**  
of the  
**SIXTH REGULAR MEETING**  
of the  
**ELECTIONS REVIEW TASK FORCE**

January 14, 2002

State Capitol, Room 016  
Honolulu, Hawaii

**Task Force Members in Attendance:**

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Kenneth Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

**Technical Staff in Attendance:**

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

**Guests in Attendance:**

Senator Sam Slom  
Ms. Estelle Allen, Office of Elections  
Mr. Kevin Dayton, The Honolulu Advertiser  
Mr. Larry Meacham, Common Cause Hawaii  
Ms. Lori Tomczyk, Office of Elections

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Sixth Regular Meeting of the Elections Review Task Force to order on January 14, 2002, 2:00 p.m., at the State Capitol, Room 016.

### II. APPROVAL OF JANUARY 7, 2002 MINUTES

- A. Yamashiro moved to approve the minutes of the Regular Meeting
- B. Yamamoto seconded,
- C. Discussion – Amaral asked that page 5 be changed to read, “It was clarified, by the Deputy Attorney General, that the motion failed for not receiving the majority of affirmative votes required by the number of members entitled to the body as required by rules.”

Aoki clarified on page 4, that she did not mean all contest within four votes should be recounted. She used “four votes” as an example.

Yoshina asked for clarification from Amaral regarding comments on page 4. Page 4 should read, “In response to Amaral’s comments that Yoshina and Yamashiro’s proposals do not address the feeling or sense of powerlessness of people toward elections, Yamamoto explained that elections is a grassroots effort by the public – confidence in the system comes from direct public participation and observation of the electoral process.”

Lagareta clarified that page 3, should read, “Lagareta commented that the manual audit procedures she observed during the 2000 Elections, which includes official observers should remain even though we have a recount. [~~Lagareta added that a recount system must go back to the people.~~]”

- D. Motion carried unanimously.



III. PUBLIC TESTIMONY

No public testimony received.

III. PROGRAM DISCUSSION

Yamashiro stated he would be voting in favor of statute, rather than rules, upon the condition that the Task Force also work on Administrative Rules. This is to let the legislature know that the Task Force will be submitting a statute and also will be working on Administrative Rules. If nothing is done in terms of legislation, the Task Force will still have the Administrative Rules.

Yamashiro also pointed out that an automatic recount should not be limited to just small vote differences. He stated that the criteria for automatic recounts should be broadened to include discrepancies in the manual audit and poll book audit.

Yamashiro proposed the following triggers for automatic recounts:

1. Small vote differences;
2. Discrepancies in the manual audit;
3. Discrepancies in the poll book audit; or
4. Discrepancies in an operational area.

Aoki proposed that automatic recounts be done by Administrative Rules, provided that it is made clear that in addition to the auditing done by the Manual Audit Team and the Poll Book Audit Team, the official observers will conduct recounts, on that evening, for all contests with a small vote difference.

Aoki also proposed having recounts by request rather than having an automatic recount because she stated, "If the candidates knew of all the different steps taken to ensure the integrity of the vote count, maybe that person may be satisfied that everything was done and recount would not make a difference." However, she also stated that she would not be opposed to a change in statute allowing recounts.

Yamashiro asked if the requests would be formal or informal. Aoki stated that the request would be made to the Office of Elections. Aoki then went on to state that her idea of a recount is that it would take place on another day after Election Day.

Yamamoto noted that if the criteria for recounts are to include discrepancies in the poll book audit, the Office of Elections does not reconcile the poll book audits until after the elections, Therefore a recount cannot take place on Election Day.

Yamashiro responded to Yamamoto's statement by saying blatant discrepancies on Election Day may trigger a recount that day and discrepancies found after Election Day may trigger an election contest.

Kam stated the need to quantify any triggers. He went on to state that any statute or rule without a quantification number would be difficult to carry out.

Yamamoto stated his position that he would be in support of an automatic recount provision.

Yamashiro moved that the Task Force propose a recount provision in statute. Yamamoto seconded the motion.

Kam stated that a recount provision in statute was the correct way to go because of the limited time in between each election. By proposing it in statute, the Task Force will be able to draft legislation, to move the date of the primary election.

Hashimoto asked if the procedures for an automatic recount would be put in the Administrative Rules rather than statute. Yamashiro responded by stating that he wanted both Administrative Rules and statute.

Hashimoto stated that any time you put procedures in statute, you would have a hard time amending the procedures because you have to go to the Legislature for changes.

Amaral clarified that the issue before the Task Force is if there is an agreement amongst the Task Force to move forward on proposing a recount in statute.

Amaral called for the vote.

The motion carried unanimously.

Discussion ensued on the proposed Task Force legislation. The Task Force was presented with three options:

1. An automatic recount provision.
2. A machine audit for small vote differences with a validation provision.
3. A provision for audits for small vote differences initiated by the official observers.

The Task Force agreed to look at the first option. The first option:

1. Proposes an automatic recount;
2. Proposes a threshold of one-eighth of one per cent for statewide offices and one-fourth of one per cent for all other offices;
3. Moves the date of the primary election from the second to last Saturday in September to the second Saturday in August; and
4. Clarifies that the contest period will not start until after a recount takes place.
5. Will take effect on January 1, 2004.

The Task Force proposed the following amendments to the first option:

1. Add a reference to the past recount law and when it was repealed.
2. Amend page 1, line 11, to read "The validity and legitimacy of the election results are based on the transparency, security, professionalism, accuracy, secrecy of vote, timeliness, accountability, and equity of the voting and vote counting system."
3. Amend page 3, line 9, to state, "Automatic recount for small vote differences."
4. Page 3, line 12, change the word "one-eight" to "one-eighth"
5. Page 3, line 17, delete, "or the difference in votes cast between the winning and losing candidates is four or less votes of the total ballots cast for any other state and county office,"
6. Page 4, line 3, change the word "differential" to "difference".
7. Page 4, line 5, delete the word "the".
8. Page 4, line 7, should read, "county election shall order a recount of the questioned ballots for that contest."
9. Page 4, line 8, delete the following sentence, "The lowest and highest among the winning and losing candidates may include more than one candidate: provided that they are within the difference mentioned in subsection (a)."

10. Page 4, line 11, should read, "The ballots shall be recounted by a machine count no later than seven days after the election."
11. Page 5, line 18, should read, "runoff, or automatic recount for small vote difference, and shall be accompanied by a..."
12. Page 7, line 1, should read, "or automatic recount for small vote difference and shall be accompanied by a deposit for..."

Yamashiro moved that the legislation as amended be submitted to the Legislature. Kam seconded the motion.

The motion carried unanimously.

The Task Force then had a discussion on Provisional Voting and Election Day Voter Registration.

Yoshina stated that Election Day registration obviates the need for provisional ballots. He noted that the specter of fraud may arise with Election Day registration. He also stated that provisional balloting would be a tremendous strain on the county staff. Federal provision ballot legislation may also require the counties to establish a provisional ballot hotline which would enable voters to find out whether their ballot was counted.

Yoshina commented that he believes Hawaii's statewide electronic voter registration system and challenge process adequately meets or exceeds the features provided by provisional voting.

Given a choice, Yoshina commented that he prefers Election Day voter registration. He requested the Task Force continue discussion on this matter at the next meeting. Yoshina stated he will invite the various county clerks to attend and participate at the next meeting.

Hall commented that there is already a study that has found Election Day registration as the only adequate, alternative system to provisional ballots

In advance of formal action by the Task Force, Yoshina proposed to submit Election Day registration to the Legislature. The Task Force was presented with draft legislation for Election Day registration.

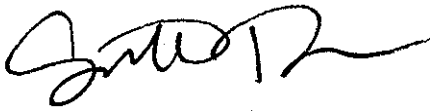
#### IV. ANNOUNCEMENTS AND CORRESPONDENCE

There were no announcements or correspondence.

V. ADJOURNMENT

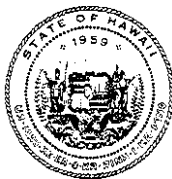
There being no further business, the Sixth Regular Meeting of the Elections Review Task Force was adjourned at 4:30 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", written in a cursive style.

Scott Nago  
Office of Elections

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**STATE OF HAWAII  
OFFICE OF ELECTIONS**

801 E. HUA AVE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
SEVENTH REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**January 22, 2002**

**Kalanimoku Building, Room 322A  
Honolulu, Hawaii**

**Task Force Members in Attendance:**

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Kenneth Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto

**Technical Staff in Attendance:**

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

**Guests in Attendance:**

Mr. Roy Hiraga, County Clerk, County of Maui  
Ms. Pat Nakamoto, County of Hawaii  
Mr. Peter Nakamura, County Clerk, County of Kauai  
Mr. Glen Takahashi, City & County of Honolulu  
Ms. Genny Wong, City Clerk, City & County of Honolulu

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Seventh Regular Meeting of the Elections Review Task Force to order on January 22, 2002, 2:00 p.m., at the State Capitol, Room 016

### II APPROVAL OF JANUARY 7, 2002 MINUTES

- A. Yamashiro moved to approve the minutes of the Regular Meeting
- B. Yamamoto seconded.
- C. Discussion – Amaral asked that page 5 be changed to read, “It was clarified, by the Deputy Attorney General, that the motion failed for not receiving the majority of affirmative votes required by the number of members entitled to the body as required by rules.

Aoki clarified on page 4, that she did not mean all contest within four votes should be recounted. She used “four votes” as an example.

Yoshina asked for clarification from Amaral regarding comments on page 4. Page 4 should read, “In response to Amaral’s comments that Yoshina and Yamashiro’s proposals do not address the feeling or sense of powerlessness of people toward elections, Daryl Yamamoto explained that elections is a grassroots effort by the public – confidence in the system comes from direct public participation and observation of the electoral process.”

Lagareta clarified that page 3, should read, “Lagareta commented that the manual audit procedures she observed during the 2000 Elections, which includes official observers should remain even though we have a recount [~~Lagareta added that a recount system must go back to the people.~~]”

- D. Motion carried unanimously.



### III. PUBLIC TESTIMONY

No public testimony received.

### IV. PROGRAM DISCUSSION

Yamashiro stated he will be voting in favor of statute, rather than rules, upon the condition that the Task Force also work on Administrative Rules. This is to let the legislature know that the Task Force will be submitting a statute and also will be working on Administrative Rules. If nothing is done in terms of legislation, the Task Force will still have the Administrative Rules.

Yamsashiro also pointed out that an automatic recount should not be limited to just small vote differences. He stated that the criteria for automatic recounts should be broadened to include discrepancies in the manual audit and poll book audit.

Yamashiro proposed the following triggers for automatic recounts:

1. Small vote differences;
2. Discrepancies in the manual audit;
3. Discrepancies in the poll book audit; or
4. Discrepancies in an operational area.

Aoki proposed that automatic recounts be done by Administrative Rules, provided that it is made clear that in addition to the auditing done by the Manual Audit Team and the Poll Book Audit Team, the Official Observers will conduct recounts, on that evening, for all contest with a small vote difference.

Aoki also proposed having recounts by request rather than having an automatic recount because she stated, "If the candidates knew of all the different steps taken to ensure the integrity of the vote count, maybe that person may be satisfied that everything was done and recount would not make a difference." However, she also stated that she would not be opposed to a change in statute allowing recounts.

Yamashiro asked if the requests would be formal or informal. Aoki stated that the request would be made to the Office of Elections. Aoki then went on to state that her idea of a recount is that it would take place on another day after Election Day.

Yamamoto noted that if the criteria for recounts are to include discrepancies in the poll book audit, the Office of Elections does not reconcile the poll book audits until after the elections. Therefore a recount cannot take place on Election Day.

Yamashiro responded to Yamamoto's statement by saying blatant discrepancies on Election Day may trigger a recount that day and discrepancies found after Election Day may trigger an election contest.

Kam stated the need to quantify any triggers. He went on to state that any statute or rule without a quantification number would be difficult to carry out.

Yamamoto stated his position that he would be in support of an automatic recount provision.

Yamashiro moved that the Task Force propose a recount provision is statute. Yamamoto seconded the motion.

Kam stated that a recount provision in statute was the correct way to go because of the limited time in between each election. By proposing it in statute the Task Force will be able to draft legislation to move the date of the primary election.

Hashimoto asked if the procedures for an automatic recount would be put in the Administrative Rules rather than statute. Yamashiro responded by stating that he wanted both Administrative Rules and statute.

Hashimoto stated that any time you put procedures in statute, you would have a hard time amending the procedures because you have to go to the Legislature for changes.

Amaral clarified that the issue before the Task Force is if there is an agreement amongst the Task Force to move forward on proposing a recount in statute.

Amaral called for the vote.

The motion carried unanimously

Discussion ensued on the proposed Task Force legislation. The Task Force was presented with three options:

1. An automatic recount provision.
2. A machine audit for small vote differences with a validation provision.
3. A provision for audits for small vote differences initiated by the Official Observers.

The Task Force agreed to look at the first option. The first option:

1. Proposes an automatic recount;
2. Proposes a threshold of one eighth of one per cent for statewide offices and one fourth of one per cent for all other offices;
3. Moves the date of the Primary Election from the second to last Saturday in September to the second Saturday in August: and
4. Clarifies that the contest period will not start until after a recount takes place.
5. Will take effect on January 1, 2004.

The Task Force proposed the following amendments to the first option:

1. Add a reference to the past recount law and when it was repealed.
2. Amend page 1, line 11, to read "The validity and legitimacy of the election results are based on the transparency, security, professionalism, accuracy, secrecy of vote, timeliness, accountability, and equity of the voting and vote counting system."
3. Amend page 3, line 9, to state, "Automatic recount for small vote differences"
4. Page 3, line 12, change the word "one-eight" to "one-eighth"
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6. Page 4, line 3, change the word "differential" to "difference".
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10. Page 4, line 11, should read, "The ballots shall be recounted by a machine count no later than seven days after the election."
11. Page 5, line 18, should read, "runoff, or automatic recount for small vote difference, and shall be accompanied by a..."
12. Page 7, line 1, should read, "or automatic recount for small vote difference and shall be accompanied by a deposit for..."

Yamashiro moved that the legislation as amended be submitted to the Legislature. Kam seconded the motion.

The motion carried unanimously

The Task Force then had a discussion on Provisional Voting and Election Day Voter Registration.

Yoshina stated that Election Day registration obviates the need for provisional ballots. He noted that the specter of fraud may arise with Election Day registration. He also stated that provisional balloting would be a tremendous strain on the county staff. Federal provision ballot legislation may also require the counties to establish a provisional ballot hotline which would enable voters to find out whether their ballot was counted.

Yoshina commented that he believes Hawaii's statewide electronic voter registration system and challenge process adequately meets or exceeds the features provided by provisional voting.

Given a choice, Yoshina commented that he prefers Election Day voter registration. He requested the Task Force continue discussion on this matter at the next meeting. Yoshina stated he will invite the various county clerks to attend and participate at the next meeting.

Hall commented that there is already a study that has found Election Day Registration as the only adequate, alternative system to provisional ballots

In advance of formal action by the Task Force, Yoshina proposed to submit Election Day registration to the Legislature. The Task Force was presented with draft legislation for Election Day registration.

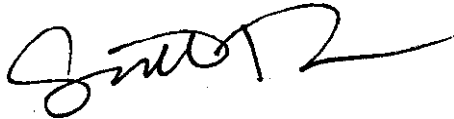
V. ANNOUNCEMENTS AND CORRESPONDENCE

There were no announcements or correspondence.

VI. ADJOURNMENT

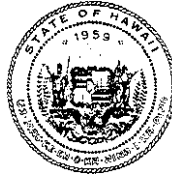
There being no further business, the Sixth Regular Meeting of the Elections Review Task Force was adjourned at 4:30 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", with a long horizontal flourish extending to the right.

Scott Nago  
Office of Elections

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STATE OF HAWAII  
**OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

**MINUTES**  
of the  
**EIGHTH REGULAR MEETING**  
of the  
**ELECTIONS REVIEW TASK FORCE**

**January 28, 2002**

**Leiopapa A Kamehameha, Room 204**  
**Honolulu, Hawaii**

Task Force Members in Attendance:

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

Technical Staff in Attendance:

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

Guest in Attendance:

Ms. Malia Zimmerman, Media

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Eighth, Regular Meeting of the Elections Review Task Force to order on January 28, 2002, 2:06 p.m. at Leiopapa A Kamehameha Building, Room 204.

### II. APPROVAL OF JANUARY 22, 2002 MINUTES

- A. Amaral moved to approve the minutes of the Regular Meeting.
- B. Aoki seconded,
- C. Discussion – Aoki asked that page 4 be changed to read as follows, “She also stated that once a citizen gets involved in the electoral process they are more likely to vote in subsequent elections.” She stated that “vote repeatedly” sounds like they are voting more than once in an election.
- D. Motion carried unanimously.

### III. PUBLIC TESTIMONY

No public testimony received

### IV. PROGRAM DISCUSSION

Hall provided the Task Force with handouts. Yamamoto asked whom the handouts were from because it was not clearly stated on the covers. Yamamoto stated that in the future all handouts provided by the Task Force be clearly identified. Yoshina asked that Hall label all handouts and claim authorship of his writings.

The Task Force entered into a discussion on candidate qualifications. Yamamoto stated that the current law requires a candidate to be a qualified voter of the district at the time of the General Election. He stated candidates could re-register on the day of the General Election.

Hashimoto asked the Deputy Attorney General if there was anything in statute stating that an elected official has to forfeit their seat if they move out of the district.



Deputy Attorney General Schulaner answered by stating that issue of qualification has to do with internal rules or penalties of the House or Senate

Hall asked what would happen in the case of reapportionment and the senator or representative is reapportioned about of their district. Yamamoto responded by stating the current bill has language stating that a Senator or Representative will not be disqualified if they are not in their district after reapportionment.

Aoki moved that the task force support H.B. 1012 and S.B. 1430 requiring candidates be a qualified voter prior to filing their nomination papers. Yamamoto seconded the motion.

The motion carried unanimously.

The Task Force entered into a discussion on validation of election results

Amaral stated that the validation of election results are in the Administrative Rules, however she proposed putting them in statute. She suggested having enabling statute for specifying when officials observers are required.

Lagareta stated that information is in the Official Observer manual.

Amaral responded by saying that the public does not know about the Official Observers Manual. She stated that putting in the statute will allow the public to know more about what the Election's Office does to validate results.

Amaral moved that staff begin to identify and exam rules that validated the election and make recommendations to the Task Fforce. Aoki seconded the motion.

The motion carried unanimously

The Task Force then entered into a discussion on Absentee Voting. Hall stated there were certain flags that required further investigation about fraudulent absentee voting. He read percentages of absentee voting from the 1998 Gubernatorial Election.

Amaral stated that Hall's analysis would is a good ethnic study. She stated the absentee voting, "is a tool used by candidates of Filipino ancestry." She stated

that districts 29, 30, and 41 had candidates of Filipino ancestry and that could be the number of high absentee turnout.

Lagareta questioned voting of comatose patients at nursing homes.

Hashimoto responded that patients are not always comatose. He stated that on certain days patients may appear to be comatose because of the medication and other days appear to be alert.

Yoshina added that a letter is sent out to all nursing homes prior to the elections addressing the concerns raised by Lagareta.

Lagareta stated that the Republican Party has seen a list of locations AB Ballots were mailed to. She stated that a number of them were mailed to nursing homes and union halls.

Hashimoto stated he does not recall if ballots were mailed to union halls in large quantities, He does recall that a lot of AB ballots went to nursing homes.

Lagareta recommended that observers be available to observe the AB process and we make it illegal to receive an AB ballot at ,a union hall.

Yoshina stated that we already have in law a statute that makes it illegal for an employer or union official to assist a voter in the polling place.

Aoki moved that the Task Force support H.B. 1008 and S.B. 1426, establishing a provision for elections by mail. Amaral seconded the motion.

The motion passed 8 to 1. Ayes-Amaral, Aoki, Hall, Hashimoto, Kam, Yamamoto, Yamashiro, and Yoshina. Noes-Lagareta.

The Task Force then went on to discuss other business. Amaral stated that since the Office of Elections does not know the voter, she suggested a survey be conducted with the money not used by the Task Force.

Yoshina stated that he did not know if the money could be used for a survey. He would check to see if it were possible.

An opinion by Deputy Attorney Schulaner was distributed regarding the challenge voter process and if it could be used as a provisional voting system.

The Task Force then discussed agenda items for the next meeting. The items are:

1. Provisional Balloting
2. Study of Voters
3. Presidential Primary

V. CORRESPONDENCE AND ANNOUNCEMENTS

There were no correspondence and announcements.

VI. Adjournment

There being no further business, the Eighth Regular Meeting was adjourned at 4:46 p.m.

Respectfully submitted,



Scott Nago  
Office of Elections

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STATE OF HAWAII  
**OFFICE OF ELECTIONS**  
802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER

**MINUTES**  
**of the**  
**NINTH REGULAR MEETING**  
**of the**  
**ELECTIONS REVIEW TASK FORCE**

**February 4, 2002**

**Leiopapa A Kamehameha, Room 204**  
**Honolulu, Hawaii**

Task Force Members in Attendance:

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hail  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

Technical Staff in Attendance:

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

Guest in Attendance:

Ms. Malia Zimmerman, Media

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Ninth Regular Meeting of the Elections Review Task Force to order on February 4, 2002, 2:10 p.m. at Leiopapa A Kamehameha Building, Room 204.

### II. APPROVAL OF JANUARY 28, 2002 MINUTES

A. Tom Yamashiro moved to approve the minutes of the Regular Meeting.

B. Dennis Kam seconded

C. Discussion – Page 3, 5th paragraph, should read, ‘Amaral stated that the validation of election results are in the Administrative Rules, however she proposed the chair’s recommendation of putting them into statute.’

Page 3, 6th paragraph, should read, “[Lagreta] Laqareta stated that information is in the Official Observer manual.”

Page 3, 8th paragraph, should read, ‘Amaral moved that the staff, begin to identify and [exam] analyze rules that validate the election [and make] for the purposes of making recommendations [to] for the task force. Aoki seconded the motion.

Page 3, 11th paragraph, should read, “Amaral stated that Hall’s analysis would [is a] make for a good ethnic study, raising the issue of voting behavior with issue of ethnicity.”

Page 3, 12th paragraph, should read, “Lagareta questioned voting of [comatose] patients who may not be fully cognizant at nursing homes.”

Page 3, 13th paragraph, should read, “Hashimoto responded that patients are not always [comatose] cognizant.”

D. Motion carried unanimously.

### III. PUBLIC TESTIMONY

No public testimony received.

IV. PROGRAM DISCUSSION

As a point of information, Yoshina asked staff if they checked with the City & County of Honolulu, regarding a list containing all the addresses AB Mail Ballots were sent to.

Quidilla checked with the City & County of Honolulu and was informed no such list generated for the 2000 Elections.

Hashimoto recalled generating that list for the 1998 Elections because the City & County of Honolulu was asked by various individuals and groups. He remembers providing the list to VIP (Voting Integrity Project), Malia Zimmerman, and the various political parties,

Yoshina stated that VIP had investigators in Hawaii during the 1999 Review of the 1998 General Election Results and found no unthwart behavior in the districts that they checked. VIP had investigators interviewing voters in those districts.

Hall added that VIP has since went out of business

Schulaner researched whether the law could be amended to prohibit the mailing of absentee ballots to union halls or employers. This question arose because Lagareta believed that absentee ballots were being mailed to union halls.

Schulaner reported to the task force regarding the mailing of absentee ballots to union halls or employers. He noted that section 11-139, HRS, allows a voter to receive assistance in the polls by anyone of the voter's choice, except for the voters employer or agent of that employer or agent of the voter's union. He also noted section 15-4, HRS, allows an absentee ballot to be forwarded to any address and does not permit forwarding of absentee ballots to union halls or employer's addresses.

The Federal Voting Right Act prohibits voters from receiving assistance in the polling place from a voter's employer or agent of the voters union. Section 11-139, HRS, tracks Federal Legislation. Looking into the definition of assistance, it could be interpreted that sending a ballot to a voter's union or employer maybe some form of assistance.

Schulaner also researched the administrative rules and found that section 2-53-3, (c), HAR, states any voter may authorize the clerk to deliver the ballot through an intermediary other than the voter's employer or agent.

Schulaner concluded that prohibiting someone from receiving a ballot at an employer's address or union hall is covered under federal legislation and

administrative rules. Schulaner stated that it was a policy decision on whether to put it into statute or leave it in administrative rules.

Yoshina clarified with Schulaner, that presently the Federal Voting Rights Act and Administrative Rules prohibit mailing of ballots to union halls or employers.

Yamamoto stated that this question arose because of an accusation that ballots were being bulked mailed to union halls. He wanted to see proof that ballots were being bulked mailed to union halls, if not he does not see any reason to second-guess something that allegedly happened. He clarified that the clerk's office does not bulk mail absentee ballots.

Amaral clarified the issue. The issue is that statute prohibits the employer or union representative from assisting the voter in the polling place, but we do not provide the same prohibition to absentee mail voters.

Yamamoto noted that we are assuming that the employer is assisting the voter vote their absentee ballot. When in actuality the voter could be simply requesting the ballot be forwarded to their work address.

Amaral disagreed with Yamamoto's statement. The law provides that there will be no interference by a voter's union agent or employer when a person is voting in the voting booth and similarly that protection should be provided when a voter is voting an absentee ballot. There no prohibition in the absentee ballot procedure as it exists, in the polling place, but both are voting activities. If protection is given to one shouldn't it given to the other.

Yoshina stated that prohibiting mailing of absentee ballots to employers will be an administrative problem identifying all business addresses.

Yamamoto brought up the concern with confidential business addresses. A confidential voter is required to provide a mailing address and vote by absentee mail. He does not want to tell an Office of the Maui Police Department that they can no longer receive their ballot at the Police Station because it is illegal to receive an absentee ballot at their place of employment.

Yoshina stated that a voter needs to raise the issue or file a complaint, of an employer or union representative assisting the voter. He is not certain that the



Office of Elections has the authority under law to be proactive in this area to second-guess a voter.

Aoki asked what can be done to investigate an address if it is not the same as residence address.

Hashimoto stated the computer can bunch the address together and see if more than one absentee ballot is forwarded to one address. The State sends notice to unions and nursing homes regarding voter assistance.

Aoki asked if there was any law prohibiting a group of voters from gathering together and voting together.

Yoshina stated that that is a question of freedom of association and not a process that government should interfere on. The question is does government get involve in the free association of people. The government cannot just raise the police powers of the state and tell someone how to run their business. Yoshina questioned whether the task force wanted government to intrude.

Kam clarified the difference between receiving an absentee ballot and voting an absentee ballot and currently the task force is comparing apples to oranges.

Yamamoto questioned how anybody would enforce receiving an absentee ballot not at their residential address.

Yoshina stated that if the task force wants to regulate absentee voting, then we would have to ask the legislature to take it up as a policy issue, because up to this point the legislature has stated that they want voting to be convenient and accessible and therefore we opened up absentee voting.

Schulaner clarified the issue of whether it was the Office of Elections responsibility to enforce the law or whether someone needed to file a complaint, then the office would investigate and enforce the law.

Amaral clarified that the Deputy AG is stating that this is covered in Federal and Administrative Rules, so we do not need a State Law.

Schulaner clarified that section 11-139, HRS, happens within the context of the polling place and section 2-53-3, HAR, prohibits the employer or union agent from acting as an intermediary. Schulaner asked how to you implement the law, which is a policy question, but the law already covers.

Hashimoto stated that enforcing this law puts a burden of on the office to check the status of addresses.

Amaral put the task force on notice that she was concerned with the protection of the voter. If the majority of the task force feels that the sufficient protection exist in administrative rules, and if this task force feels that responsibility is on the voter to bring a case forward, she'll have a great difficulty supporting mail in voting.

Put on the absentee ballot business addresses are prohibited from being used as forwarding addresses.

Schulaner informed Yoshina that there was authority under present law to regulate this issue. Yoshina stated he will bring this issue up with ACEOH regarding the concerns that were raised.

Kam made a motion that this item should be deferred. Aoki seconded the motion, The motion carried unanimously.

The task force agreed to post on the agenda for the next meeting the issue of printing results at the polling place.

The task force entered into a discussion of provisional ballots. Schulaner reiterated his early opinion that challenged ballots meet the requirements of provisional voting.

Yoshina asked whether the laws are broad enough that the precinct official allows a voter vote a challenged ballot if they are not in the poll books. Schulaner stated that there has to be a dispute as to the voter's registration status.

Yoshina stated that statistics show that voters are not responsible for updating their voter registration.

The task force discussed where the task force was going and what it wanted to do. Yamamoto stated that he did not want the task force to discuss issues outside of the scope of the ACT. Hashimoto agrees with Yamamoto.

Amaral stated that her hope was to do something significant She hopes that the task force could meet once a month with the hope of being of service to the Office of Elections.

V.. CORRESPONDENCEANDANNOUNCEMENTS

Yoshina announced that House Bill No. 2843 – RELATING TO ELECTIONS, will be heard by the House Judiciary and Hawaiian Affairs Committee on February 5, 2002, at 2:00 p.m. This was the bill proposed by the task force regarding recounts.

Adjournment

There being no further business, the Eighth Regular Meeting was adjourned at 4:35 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", with a long horizontal flourish extending to the right.

Scott Nago  
Office of Elections

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STATE OF HAWAII  
OFFICE **OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

**MINUTES**  
of the  
**TENTH REGULAR MEETING**  
of the  
**ELECTIONS REVIEW TASK FORCE**

**February 18, 2002**

**State Capitol, Room 225**  
**Honolulu, Hawaii**

Task Force Members in Attendance:

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

Technical Staff in Attendance:

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

Guest in Attendance:

Mr. Ed Kubo, U.S. Attorney  
Mr. Glen Takahashi, City Clerks Office  
Ms. Malia Zimmerman, Media

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Tenth Regular Meeting of the Elections Review Task Force to order on February 18, 2002, 9:17 a.m. at the State Capitol, Room 225.

### II. APPROVAL OF FEBRUARY 4, 2002 MINUTES

- A. Amaral moved to approve the minutes of the Regular Meeting.
- B. Aoki seconded
- C. Discussion – Page 3, 4th paragraph, should read, “Yoshina stated that VIP had investigators in Hawaii during the 1999 Review of the 1998 General Election Results and found no [unthwart] untoward behavior in the districts they checked. VIP had investigators interviewing voters in those districts.”

Page 3, 7th paragraph, should read, “Schulaner reported to the task force regarding the mailing of absentee ballots to union halls or employers. He noted that section 11-139, HRS, allows a voter to receive assistance in the polls by anyone of the voter’s choice, except for the voter’s employer or agent of that employer or agent of the voter’s union. [He also noted section 15-4, HRS, allows an absentee ballot to be forwarded to any address and does not permit forwarding of absentee ballots to union halls or employer’s addresses].”

Page 3, 9th paragraph, should read, “ Schulaner also researched the administrative rules and found that section 2-53-3, (c), HAR, states any voter may authorize the clerk to deliver the ballot through an intermediary other than the voter’s employer [or], agent or union.”

Page 4, 6th paragraph, should read, “ Amaral disagreed with Yamamoto’s statement. The law provides that there will be no interference by a voter’s union agent or employer when a person is voting in the voting booth and similarly that protection should be provided when a voter is voting an absentee ballot. There is no prohibition in the absentee ballot procedure as it exists in the polling place, but both are voting activities. If protection is given to one shouldn’t it given to the other.”

Page 5, 2nd paragraph, should read, "Aoki asked if there was any law prohibiting a group of voters [form] from gathering together and voting together."

Page 5, 6th paragraph, should read, "Yoshina stated that if the task force wants to regulate absentee voting, then [we would have to ask] the legislature needs to take it up as a policy issue, because up to this point the legislature has stated that they want voting to be convenient and accessible and therefore we opened up absentee voting."

Page 5, 8th paragraph, should read, "Amaral clarified that since the Deputy AG is stating that this is covered in Federal and Administrative Rules, [so we do not need a State Law] a state law is not needed."

Page 5, 9th paragraph, should read, "Schulaner clarified that section 11-139, HRS, happens within the context of the polling place and section 2-53-3, HAR, prohibits the employer or union agent from acting as an intermediary. Schulaner [asked how to you implement the law, which is a policy question, but the law already covers] stated the manner in which you implement the law is a policy decision."

Page 5, 9th paragraph, should read, "Hashimoto stated that enforcing this law puts a burden of proof on the office to check the status of addresses."

Page 6, 7th paragraph, should read, "Yoshina stated that statistics show that voters are not [responsible for] acting responsibly by updating their voter registration."

D. Motion carried unanimously.

### III. AMENDED AGENDA

A. Amaral moved to amend the agenda to include Absentee Voting and Provisional Voting.

B. Lagareta seconded the motion.

C. Discussion -- Amaral stated that in the minutes of February 4, 2002, the Task Force deferred Absentee Voting (page 3) and provisional voting

(page 6). Also, the Task Force received correspondence from the Office of the City Clerk regarding absentee voting.

Yamamoto spoke against the motion. He stated the correspondence received from the Office of the City Clerk would be discussed under "Public Testimony" and before adjourning the Task Force, the Task Force would have a discussion on any open items.

- D. The motion failed to receive the two-thirds votes required to amend the agenda. Members Aoki, Amaral, Hall and Lagareta voting aye, members Hashimoto, Yamamoto, Yamashiro and Yoshina voting no, and member Kam excused.

#### IV. PUBLIC TESTIMONY

No public testimony received.

#### V. PROGRAM DISCUSSION

Deputy Attorney General Schulaner commented on the legality of posting results at the polling place. Schulaner stated the law does not allow for the printing of results at the polling place. He explained that Section 11-152, Hawaii Revised Statutes only allows for the releasing of the results at the polling place for paper ballot and hand-count voting systems. He stated that in section 11-152, HRS, for an electronic voting system, there are provisions for sealing the ballots and transporting them to a central location and then releasing the printouts or results.

Schulaner stated that the Office of the Attorney General takes no position whether or not the task force or Legislature should amend these laws. However, he noted that the law is currently setup for the electronic voting system. Under the electronic voting system, the law provides for the ballots to be sealed and transported to the counting center and the results shall be released from the counting center.

Amaral asked Schulaner why he cited section 11-152, HRS, as this section relates to the issue of counting. She stated the question does not have to do with the method of counting, but the issue of when you can post information (results) from that ballot box.

Schulaner answered, "When I read 11-152 (b), it says, 'In those precincts using the electronic voting system, the ballots shall be taken in the sealed ballot boxes



to the counting center in accordance to the procedures and schedule promulgated by the chief election officer to promote the security of the ballots. In the presence of official observers, counting center employees may start to count the ballots prior to the closing of the polls provided there shall be no printout by the computer or other disclosure of the of the number of votes cast for a candidate or on a question prior to the closing of the polls.' When I read that, to me, it means you seal the ballots and go to the counting center and at that time you printout and I really can't read it any other way. Because the idea was to get it all centralized and the control of the counting center with the official observers and then you follow your procedures and then you start printing out."

Aoki asked what would be the purpose of posting the results at the polls.

Yoshina responded that printing of results at the polling place is perceived as a way to validate and confirm the election results. Currently it has been alleged that there is no way to know if the results posted at the counting center are accurate and true. There is an assumption that something untoward may happen to the PCMCIA card as it is being transported from the polling place to the counting center, thus compromising the results. Yoshina also stated that technically this would be impossible because any changes made to the PCMCIA card is recorded on an internal audit log contained in the PCMCIA card. Also, the counts contained on the PCMCIA cards are verified with the results of the poll book audits and the manual audits conducted on election night.

Amaral stated that she raised the issue because the task force received testimony from Micah Kane of the Republican Party asking that the task force look into the printing of the results at the polling place.

Lagareta questioned why the State of Hawaii does not print results at the polls if these machines have the capability to do so. She stated that she comes from the perspective that, with a little bit of voter education, the more information the public has, the more aware the public becomes.

Amaral clarified that a change in law would be necessary to inform and educate the public by printing results at the polling place.

Yoshina stated that when bad information gets out it has a life of its own. This is one of the reasons why the State went to a central count system. A central count system allows for a controlled environment. Yoshina questioned how much control the State has at the end of the day when everyone is trying to lockdown and go home.

Lagareta stated that there is serious problem with the credibility of the elections process in the State. She argued for the need of more information, even if it came with the price of having to educate people more. She states the media and the volunteers could live with the procedural change, even if the State would have to take a few extra steps. She believes the office and everyone will be better off because there will be less questioning of the procedures if there is more information.

Lagareta asked if the task force could be provided examples of other jurisdictions that print out results at the polling place.

Yoshina answered yes. He also clarified that 49 of 50 States do not have the laws that the State of Hawaii has. No other state counts ballots and releases final results on election night like the State of Hawaii does. He stated that other states have at least a week after the election to certify the results of the election.

Lagareta brought up the issue of duplicate ballots being mailed to the Punchbowl and Makakilo area as an issue of credibility. She passed around an article from the newspaper. She stated that the party received calls from voters claiming that they were mailed two AB Mail Ballots.

Hashimoto responded that the City Clerk's Office had made a mistake and mailed the wrong ballot to a few voters. After the error was discovered by the Clerks Office, the correct ballot was mailed to the voter. He stated that the first ballot was flagged in the system to prevent it from being counted should it be returned by the voter. He also stated that the computer system is setup to prevent two ballots from being sent to the voter without one ballot being flagged.

The task force deferred action on printing of results at the polling place

Yamamoto apologized to the task force for assuming that the issue of Absentee Voting would be discussed during public testimony. Yoshina called Glen Takahashi to the table to discuss the correspondence received from the Office of the City Clerk regarding Absentee Voting.

Takahashi addressed the issue of ballots being sent to union halls. In his correspondence he stated that the Clerk's Office did a computer check of some union addresses and found no instances of multiple ballots being mailed to union halls in mass, by bulk mail. Takahashi noted two instances of ballots being mailed to known union addresses. In both cases, it was the requestor's place of employment.

Amaral asked if the Clerks Office was able to identify a business address separate from a residential address and whether the office has the capability to do this.

Takahashi responded that they are currently not able to identify a business address from residential address. He stated that there are mixed-use parcels with both business and residential addresses. The Clerks Office is not able to isolate a business address from a residential address in a mixed-use parcel.

Amaral stated that previously, the task force was under the understanding that the Clerk's Office was able to verify if the address was a residential or business address.

Hashimoto stated that this feature is for voter registration purposes.

Amaral asked why this could not be done for absentee voting.

Takahashi stated that when a voter registers to vote, the office checks the validity of the address. He provided an example of a valid address.

Amaral clarified that the Clerk's Office does not verify that the address provided by a voter is a residential address.

Takahashi stated that the Clerks Offices takes as prima facie evidence that the address the voter lists is on the application is valid and is there residential address. The office also check via mailings if an address is valid.

Amaral asked why the Clerks Office couldn't also check AB applications

Takahashi stated that in AB Voting there is a lack of time to check addresses.

Yamamoto pointed out this issue was not problem until the Deputy Attorney General interpreted "intermediary" and "assistance" as a mailing address. Prior to this interpretation, there was no need to verify business addresses and residential addresses for AB Mail. Yamamoto disagreed with Schulaner's previous opinion.

Schulaner stated that he checked with the Department of Justice regarding the mailing of AB ballots to union halls and employers. He was informed by the Department of Justice that this was a gray area. Yoshina asked Schulaner to review the Absentee Voting Laws.

Lagareta asked if she could be provided the opportunity to produce a list that she saw in 1998 showing multiple ballots being mailed to one address.

Amaral expressed her concern that while the law protects the voter in the polling place from their agent of their union or employer, it does not extend to absentee voting. She stated that she is not confident with these protections being provided only in Hawaii Administrative Rules and stated that it should be placed in statute.

Amaral stated that she wished to wait for further clarification from the Deputy Attorney General before making a motion.

The task force deferred this motion until receiving further clarification from the Deputy Attorney General.

The task force entered into a discussion regarding Provisional Voting. Schulaner clarified that the "challenged ballot" is for voters with a question about their voter registration status. Yoshina clarified that the voting registration system currently in place in Hawaii addresses some of the issues raised in provisional voting discussions taking place nationwide. Schulaner stated currently there are provisions in statute that achieve the provisions of Provisional Voting.

Amaral stated that the voter has to be made aware of this process and change has to be made through education of the voter.

Amaral moved that the challenged ballot be extended to voters whose voter registration is in question. Lagareta seconded the motion.

The motion carried unanimously.

Yamamoto asked for clarification on the outstanding items. They are:

1. Posting of results at the polling place
2. Absentee Voting

## VI. CORRESPONDENCE AND ANNOUNCEMENTS

No correspondence and announcements.

Minutes of the Elections Review Task Force  
Tenth Regular Meeting  
Page 9

Adjournment

There being no further business, the Tenth Regular Meeting was adjourned  
at 11:50 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", with a long horizontal flourish extending to the right.

Scott Nago  
Office of Elections

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STATE OF HAWAII  
OFFICE OF ELECTIONS

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
ELEVENTH REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**March 4, 2002**

**Leiopapa A Kamehameha, Room 204  
Honolulu, Hawaii**

Task Force Members in Attendance:

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

Technical Staff in Attendance:

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

Guests in Attendance:

Ms. Estelle Allen, Office of Elections  
Mr. Mark Bennett, Legal Counsel, Hawaii Republican Party  
Mr. Glen Takahashi, City & County of Honolulu  
Ms. Lori Tomczyk, Office of Elections  
Ms. Malia Zimmerman, Media

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Eleventh Regular Meeting of the Elections Review Task Force to order on March 4, 2002, at the Leiopapa A Kamehameha Building, Room 204, at 2:10 p.m.

### II. APPROVAL OF FEBRUARY 18, 2002 MINUTES

A. Yamamoto moved to approve the minutes of the Regular Meeting.

B. Hashimoto seconded

Discussion – None

C. Motion carried unanimously.

### III. PUBLIC TESTIMONY

No public testimony received

### IV. PROGRAM DISCUSSION

The Chairperson recognized Mark Bennett, Legal Counsel, for the Hawaii Republican Party.

### **POSTING RESULTS AT THE POLLING PLACE**

Nago reported to the Task Force that Election Systems & Software (ES&S) stated that Hawaii is the only jurisdiction serviced by ES&S that does not post results at the polling place. He stated that other jurisdictions use the results printout in their post-election canvass. He noted Jefferson County, Alabama and Dallas County, Texas were cited by ES&S as two of the larger jurisdictions that post election results.

Aoki asked whether jurisdictions that post results use these results as their final report. Nago answered that the results printed at the polling place is used for their canvass process.



Aoki asked what the canvass process entails. Yoshina responded that the canvassing is a post-election process used to validate an election. It includes activities such as the poll book audit, manual audit, ballot reconciliation and other similar audits and checks.

Yoshina noted that the new system has additional administrative requirements, not needed previously with the punchcard system. These include the requirement for additional time, and in some instances processing uncounted ballots found in the emergency bin. The uncounted ballots were discovered during the poll book audit and were subsequently counted in the presence of official observers.

Yoshina stated that as we become more familiar with the current system, we need to adopt and adapt procedures so the current system begins to do what the previous system did for the past 26 years.

Amaral asked how other states are able to post the results at the polling place without any problems. She asked what reason would we give for not posting results at the polling place in Hawaii.

Yoshina said that in his conversations with election administrators in Oklahoma, he sensed that they post results because of political pressure. He said they noted the same concerns he had expressed in a previous meeting. They are:

1. Delayed release of results to the larger population; and
2. Wrong information getting out.

He also noted that other jurisdictions have a longer period of time to conduct their post election canvass. In some instances, up to one month is provided to complete the post-election canvas.

Yoshina asked the Task Force be cognizant of the fact that the precincts are understaffed. He also noted, if the Office of Elections did what the Task Force was recommending, the Office would have to educate the public as well as the media, because posting of results at the polls will result in the delayed release of results to the general public.

Aoki stated that she did not wish to see any additional tasks given to the precinct officials unless there is a purpose. She asked what purpose posting results at the polls would serve.

Yoshina answered the main purpose he has heard was “that it helps to gain public trust in the system,” However, he believes that merely providing the results at the polling place does not validate the election. The validation of elections is done by verifying the counts against the results of the poll book audit, manual audit results, and the data contained on the PCMCIA card. These procedures take place at the counting center on election night in the presence of and often because of requests by the official observers, Yoshina stated that merely posting results at the polls, does not validate the election.

Yamashiro asked what information is included on the printout.

Yoshina noted that the precinct counter is able to print the results of the election at that precinct. This report contains turnout, contest headings, candidate names, candidate vote totals, overvotes and blank votes. He noted the printout contains only totals from ballots cast at that precinct.

Aoki stated that this issue may be addressing the concern that something may occur when the PCMCIA cards are transferred from the polling place to the counting center. She asked what the purpose of printing results at the polling place is and stated she had not heard a reason why it was necessary.

Yoshina explained to Aoki that technical features and administrative procedures are in place during the transportation of the PCMCIA card to the counting center to address this concern. Also, any major event happening to the card is logged on an internal audit log contained on the PCMCIA card. He also, stated that the card and the audit log is sealed in a precinct can with a uniquely numbered seal and recorded on the *Ballot/Seal* Control Form. He further stated that everything is done in the presence of at least two officials not of the same party and the official observers.

Lagareta argued that all the things that are supposed to show up on the PCMCIA card are really invisible. As an official observer, she stated that observers do not always notice every little glitch. She stated that with education of the public and media, we could make the information more transparent.

Yamamoto stated the posting of the results would not address concerns regarding the integrity of the system. The only way it will be addressed is by getting the political parties to participate in the electoral process, from the precincts to the counting center, He also noted that the delay caused by the printing of the reports will also affect the delivery/collection team pick-up of materials from the precincts and delivery of these items to the counting center.

Amaral stated posting of the election results “brings the election home.” She stated that it would localize the election process and help voters identify with the elections process, She asked that the Task Force consider posting results at the polling place to help the community come together and reconnect with the process, instead of leaving it in the hands of professionals.

Yamashiro stated that posting of the results may make voters more aware, however, he is uncertain whether it will improve the integrity of the elections

Yoshina stated that ES&S informed him that the printout is returned to the central location and used to verify the results of the PCMCIA cards. He stated that his understanding is that they do not post results at the polling place.

Amaral asked Nago for clarification regarding posting versus printing results at the polling place. She asked Nago to clarify with ES&S regarding printing results and posting results. Nago stated he will clarify this issue with ES&S.

Kam stated that in the case of a polling place with more than one precinct counter, the results will not be cumulative.

Hashimoto asked for clarification on what is currently printed at the polling place. Yoshina responded that currently an audit report, and the number of voters voting on the machine are produced on the report at the close of the polls.

The Task Force deferred decision on this matter.

### **ABSENTEE VOTING**

The Task Force entered into a discussion on Absentee Voting. Deputy Attorney General Schulaner provided to the Task Force an opinion on Absentee Voting. Schulaner reported that upon additional review of Section 2-53-3, Hawaii Administrative Rules, he noted that the implementing statute is Section 15-5, Hawaii Revised Statutes (HRS). Section 15-5, HRS, states that an incapacitated voter may send a representative to obtain the voter’s ballot pursuant to rules promulgated by the Chief Election Officer. Schulaner stated that in that circumstance, the intermediary cannot be an employer or union agent.

Schulaner informed the Task Force that he inquired with the Department of Justice, Elections Crime Branch, regarding mailing an absentee ballot to a place of employment or union hall. They responded mailing of a ballot to a place of

employment or union hall could raise a flag of concern, However, technically it is not a violation of the Voting Rights Act because it is not considered "assistance." Also, there is no state law that specifically prohibits the mailing of an absentee ballot to a place of employment or union hall.

Schulaner recommended to the Task Force that the voter be informed that they can receive assistance from anyone, except from the agent of their employer or union.

Yoshina clarified that under the Voting Rights Act, voter assistance by an employer or union agent is prohibited. Further, that assistance is limited to a person helping a voter to vote. Schulaner agreed.

Schulaner stated that mailing a ballot to an employer or union hall is not considered assistance. He stated that he could not find case law to this point, He noted that some jurisdictions have statutes that specifically prohibit mailing of ballots to an organization.

Yoshina clarified that assistance in the act of voting is prohibited by the Voting Rights Act and state law. He asked if the challenge process is adequate to address concerns relating to assistance by an employer or union agent.

Schulaner answered, "When it comes to administrative matters, if someone makes an allegation, you would want to substantiate it, then follow up with an investigation."

Amaral stated, "If some of us saw this as an oversight in the protection of the absentee voter, wouldn't it appear to be reasonable that an amendment to the section dealing with the mailing of an absentee ballot (should be amended) to preclude that from happening with any employer or union agent?"

Schulaner answered that that would be a policy issue,

Amaral stated that the protection of the voter in the booth should apply to the absentee voter. She stated language should be put in statute prohibiting the forwarding of absentee ballots to employers or unions for the purpose of assisting the voter.

The Task Force took a short recess at 3:25 p.m.

Amaral stated that an amendment should be proposed to provide the same protections currently provided to voters in the precinct be extended to absentee voters. She stated that the amendment would have to be constructed to avoid a "blanket refusal" to voters who want to receive their mail at their place of work. She noted that the language could be the same as what is currently in statute.

She suggested that the section in law that requires amending is Chapter 15, HRS.

Bennett noted that the Voting Rights Act expressed a strong federal preference for protection of the disabled absentee voter. He stated that the disabled voters are the people that are most susceptible to influence. He stated he believes there is a policy question that needs to be decided by the legislature. He provided three examples:

1. Leave the law the way it is;
2. Take the middle ground and pass a statute that explicitly forbids providing assistance from an employer or union; or
3. Prohibit ballots from being sent to employers or union halls.

Aoki questioned how many absentee ballots are being sent to employers or union halls. Yoshina answered, "we don't know." He referred to the report given by the City Clerks Office stating two ballots mailed to union halls. Should note that these ballots were sent to the union hall because it appears to be the requestors place of employment.

Yoshina asked Task Force members to provide language, amending Chapter 15, HRS.

The Task Force deferred decision on this matter

#### V. CORRESPONDENCE AND ANNOUNCEMENTS

The Chairperson noted correspondence was received from member Amaral. She provided a list of items the Task Force needs to take up.

The next meeting is March 18, 2002.

VI. Adjournment

There being no further business, the Eleventh Regular Meeting was adjourned  
at 4:05 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", with a long horizontal flourish extending to the right.

Scott Nago  
Office of Elections



**STATE OF HAWAII  
OFFICE OF ELECTIONS  
801 E. HUALA AVENUE  
PEARL CITY, HAWAII 96782**

**DWAYNE D. YOSHINA  
CHIEF ELECTIONS OFFICER**

**MINUTES  
of the  
TWELFTH REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**March 18, 2002**

**Leiopapa A Kamehameha, Room 204  
Honolulu, Hawaii**

Task Force Members in Attendance:

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Thomas Yamashiro

Technical Staff in Attendance:

Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

Guests in Attendance:

Mr. Rick Daysog, Media  
Mr. Warren Iwasa, Media  
Ms. Diane Lee, Senator Ihara's Office

## PROCEEDINGS

### I. CALL TO ORDER

Chairperson Dwayne D. Yoshina called the Twelfth Regular Meeting of the Elections Review Task Force to order on March 18, 2002, at the Leiopapa A Kamehameha Building, Room 204, at 2:17 p.m.

### II. APPROVAL OF MARCH 4, 2002 MINUTES

A. Amaral moved to approve the minutes of the Regular Meeting

B. Lagareta seconded.

Discussion – None

C. Motion carried unanimously,

### III. PUBLIC TESTIMONY

No public testimony received

### IV. PROGRAM DISCUSSION

Yoshina read to the Task Force a matrix titled, “Comparison of Hawaii’s Election Laws Against the National Election Reform Recommendations” which was previously distributed to the Task Force.

Aoki questioned whether “challenged ballots” served the same purpose as “provisional ballots.”

Yoshina answered that Hawaii’s current system, in totality, makes sure that voters on the registration rolls are allowed to vote, which is what “provisional ballots” accomplish. He stated that voters know with 99% certainty if they are on the voter registration rolls. The reason for this is the State of Hawaii is one of the few jurisdictions that have an on-line, real time, and statewide voter registration system. Also, each polling place is connected to the control center via a phone line, which allows precinct officials to check on the registration status of a voter.

Aoki suggested changing the name of the “challenge ballot” process to “provisional voting.”



Yoshina then discussed the issue of voting technologies with the Task Force. He noted the State of Hawaii migrated from the DATAVOTE system to the marksense system, which was recommended by the various Federal and State task forces. It was also recommended that the counties in Florida migrate to a marksense system. However, many counties opted to go with the touch screen system.

After further discussion, Yoshina recommended that the Task Force review the matrix.

Amaral stated that the matrix was distributed but never discussed. She also stated that the matrix was never identified as the priorities of the Task Force and that if it were to act as the template of the Task Force, it is being suggested too late.

Yoshina answered that the document provides the Task Force a map to base their discussions on.

Amaral noted that because the Task Force was provided an overview of the existing laws, the Task Force was led to believe that was the charge of the Task Force. She suggested that if the matrix was to limit the work of the Task Force, then a matrix should be developed listing all the issues raised by the Task Force and the status of each issue.

Lagareta asked if Amaral's list of items would be discussed because it was not on the agenda. Amaral noted that she is willing to go over the list with the Task Force.

Amaral expressed her concerns that the purpose of the Task Force was not made clear when the Task Force first met. She commented that it was not stated that the work of the Task Force be limited to the matrix.

Yoshina clarified that he was not limiting the work of the Task Force to the matrix. He stated the purpose of the Task Force is to review the laws regarding recounts, election contest, and vote tabulation, Beyond that he was willing to look at the election laws and recommend changes.

He noted that because of the lateness in convening the Task Force, there was a deadline to submit recount legislation. In his capacity as Chief Election Officer he introduced a provision for election day registration. He clarified that the task

is currently identifying legislation for future sessions. Yoshina stated that he wanted to put direction back into the discussions.

Lagareta stated that it seems we discussed the same issues week after week because of lack of information to make an informed recommendation.

Yoshina stated that, in the case of posting results at the polling place, current law prohibits the posting of the results and a change in the law is required.

Deputy Attorney General Schulaner clarified an earlier opinion that the law states that the ballots be sealed, taken to a central location, and then the results released from the central location, Schulaner noted that it would be a policy decision by the Legislature whether to change this law.

Lagareta asked what the Task Force achieved in the past 12 meetings

Yoshina answered that the Task Force proposed recount legislation, answered questions relating the Federal recommendation for provisional ballots, and took up the question of absentee voting and assistance for absentee voters.

Yoshina noted that funding was an area not addressed by the Task Force. He stated that the office has asked continuously for voter education funding and has received very little funding in the area of voter education. He stated that with the limited funding the office has partnered with the Department of Education and Sassy Magazine to conduct voter registration drives in the high schools. He noted they are also working with the DOE to institutionalize voting in the social studies curriculum.

Lagareta questioned spending limited resources on educating high school students, when there are other adult groups that could also need education.

Amaral suggested that a matrix be developed that identifies the issues raised and accomplished. Amaral expressed her concerns that she does not have an idea of what was accomplished by the Task Force.

Aoki suggested that the Task Force focus on the issue of voter education with the remaining time the Task Force has.

Yoshina then explained the Office of Elections supplemental budget request to the Task Force. The office was asking for additional precinct counters, additional

precinct officials, increase in the pay of precinct officials, and increase in the pay of the precinct trainers.

Lagareta expressed her feelings the main duty of the Task Force was the recount bill and the rest was a waste of time.

Amaral stated the need for a matrix with all pending issues and what is completed. She stated that she would like to see something come out of this Task Force.

Yamashiro noted that a matrix is one way of discussing what was accomplished by the Task force. He asked Amaral to further clarify the matrix.

Amaral clarified the matrix. She stated that the staff would need to comb through the past minutes and list all issues and the status of the issues taken up by the Task Force.

The question of when the legislation is due was asked. Amaral questioned the May 2, 2002 deadline for submitting bills because the Legislature cannot act upon the recommendations until the 2003 Session.

Schulaner stated that the Task Force dissolves after the end of the Session on May 2, 2002. Amaral questioned whether the Task Force dissolves after the end of the Session. Schulaner will check into this.

Lagareta stated that she had hoped that the Task Force would help her become educated in the election process so that she could go back to the party and alleviate any concerns.

It was agreed that the staff would develop a matrix

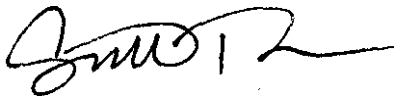
#### V. CORRESPONDENCE AND ANNOUNCEMENTS

The next meeting is April 1, 2002

VI. Adjournment

There being no further business, the Twelfth Regular Meeting was adjourned  
at 2:40 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", with a stylized flourish at the end.

Scott Nago  
Office of Elections



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
THIRTEENTH REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**APRIL 1, 2002**

**Kalanimoku Building, Room 322-A  
Honolulu, Hawaii**

Task Force Members in Attendance:

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Thomas Yamashiro

Technical Staff in Attendance:

Mr. Jeffrey Fuke, Office of Elections  
Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

Guests in Attendance:

Ms. Malia Zimmerman, Media

PROCEEDINGS

I. CALL TO ORDER

The Thirteenth Regular Meeting of the Elections Review Task Force was called to order by Chairperson Dwayne D. Yoshina at 2:10 p.m. on April 1, 2002, at the Kalanimoku Building, Room 322.

II. APPROVAL OF MARCH 18, 2002 MINUTES

A. Lagareta recommended the following changes:

- “Lagareta asked if Amaral’s list of items [would] could be discussed because it was not on the agenda.”
- “Lagareta [questioned spending limited resources on educating high school students, when there are other adult groups that could also need education] noted there are other programs already such as kids voting that address the schools, including high schools and that the limited resources of the Office of Elections should be spent on other broader efforts.”
- “Lagareta expressed her feelings that the main [duty] achievement of the task force was the recount bill which was finished eight meetings ago and the rest was a waste of time.”
- “Lagareta stated that she had hoped that the task force would [help her become educated in the election process so that she could go back to the party to alleviate any concerns] alleviate some of her concerns about the election process so she could go back and assist her party”

B. Aoki moved that the minutes of the Twelfth Regular Meeting be accepted as corrected.

C. Yamashiro seconded

Discussion -- none

D. Motion carried unanimously.

III. PUBLIC TESTIMONY

No public testimony received

IV. PROGRAM DISCUSSION

Amaral provided the Task Force with a memo, from herself, dated April 2, 2002. She asked to discuss this memo during the Program Discussion regarding the Task Force matrix.

Yoshina provided two matrices to the Task Force. The first matrix analyzes election reform recommendations from task forces nationwide and the second matrix issues and recommendations made by the Task Force.

Yoshina explained that she serves the Task Force as a map by which the review of Hawaii's elections was to proceed.

Amaral explained her memo outlined nine (9) recommendations made at previous meetings but not covered in the matrices and asked that these points be included.

Yoshina asked if the Task Force members were okay with this. All concurred  
The nine are:

- a) December 10, 2002: Posting results at polling places, clarification of what constitutes a vote, repeal of provision that the chair be a member of Governor's party.
- b) December 31, 2002: Creation of a voter's guide, changing administrative rules to allow for a recount, addressing aliens on the rolls.
- c) January 7, 2002: Changing Chapter 16 to include vote confirmation provisions to mirror correct procedures to confirm and validate election results.
- d) January 28, 2002: Specifying what circumstances require official observers, study voting behavior.

Yoshina pointed out that the Task Force had already addressed the issue of clarifying what a vote is.

Amaral expressed concern over the role of the Task Force to actually define what a vote is, instead of simply referring to Chapter 51, HAR. Amaral also suggested that the Task Force could have addressed a voter intent provision.

Aoki asked if Hawaii can really be considered non-voter intent state. Yoshina explained that features in the vote-counting machines allow voters to correct or re-darken ovals if the threshold if a valid vote is not met.

Hashimoto explained that the statutes defining what is and what is not a vote came about to prevent any controversy with absentee mail.

Aoki suggested that the Task Force look into changing the definition of a vote to include the circling of an oval. Amaral agreed. Schulaner explained that voter intent and non-voter intent were shorthand for objective or subjective criteria being used to count votes. He clarified that the state does care about intent, but uses objective criteria for determining the validity of a vote.

Amaral reiterated her first concern in #3 above.

Amaral pointed out that the “comments” section on the Hawaii-only matrix incorrectly cited the motion regarding provisional ballots (recommendation #1). It should read: “[The task force voted unanimously on 2-18-2002 to extend Deputy Attorney General Aaron Schulaner’s opinion that Provisional Voting is covered under the provisions of “voter challenges” in Chapter 11, HRS, be extended to voters whose registration is in question.] Amaral moved that the challenged ballot be extended to voters whose voter registration is in question. Lagareta seconded the motion, and it was carried unanimously.”

Schulaner clarified that Hawaii’s challenged ballot process already encompasses what provisional voting accomplishes. He explained that procedural changes could be made operationally since the law already exists.

Amaral then stated that if the Task Force accepted the extension of the challenged ballot process to provisional voting, there is a consequent need for required acknowledgement of registration to the voter. Yoshina responded that this is accomplished through the voter registration and address confirmation card.



Yamamoto explained that the card is supposed to inform voters of their registration and polling place. Amaral noted that a voter wouldn't even get the card if their address were incorrect.

Hashimoto commented that the ability to call Control Center eliminated the need for a more immediate acknowledgement of registration than the card, adding that Hawaii's SVRS enables immediate verification of a voter's registration status.

Schulaner added that technically speaking, a voter could still appeal the decision of the clerk and the SVRS after they are ruled ineligible to vote.

Yamashiro commented that the current challenged ballot and appeal processes are sufficient. He then asked for clarification regarding the status of Amaral's original motion (regarding the extension of challenged ballot process to include provisional voting).

Yamamoto said that the motion called for a procedural change, and Yoshina said the record would be changed to reflect this.

Amaral requested that since the challenged ballot process would be changed procedurally to include provisional voting, there be added a required acknowledgement of registration at the time of registration. She stated that another alternative would be to have the "three-sheet" carbon copy-style registration form. Hashimoto said this wouldn't work with mail-in registration, and such a format of registration opens the door for fraud.

Aoki asked for clarification regarding the Task Force's opinion regarding same-day registration, and what action was taken on the matter. There was some discussion and disagreement amongst the members regarding this.

Lagareta, in checking her notes, stated to the Task Force that there was no action taken on the previous issue brought up by Aoki regarding same-day registration.

Yoshina asked the Task Force which of the two matrices they should work with, either the national matrix or the Hawaii-only matrix.

Lagareta asked for clarification on the status of the Task Force after the close of the Legislature.

Schulaner explained that the Task Force ceases to exist after the close according to Act 139. There is no, penalty, however, stipulated in the law regarding not submitting the Task Force Report after the deadline. He stressed, however, that there should be some record of votes or position taken by the Task Force in the report, along with a record of the discussions that took place.

Yoshina then explained that the main task at hand was to address the issue of recounts, and in broad discussions, to have as many issues as possible be included in the report to the Legislature, including posting results, same-party chair, etc.

Schulaner warned the members about exceeding the scope of its responsibility.

Amaral pointed out that the remaining one or two meetings should be dedicated to writing the report.

Yoshina reiterated his position that all discussion items would be included in the final report, whether they ended up as recommendations from the Task Force or not. Yoshina explained his intention that all issues be raised; he has no intention to curtail any discussion items.

Amaral asked how the discussion items in the report would be chosen.

Yoshina repeated his above statement, stressing that all items be included

Amaral asked how simply compiling a list would be of any help.

Lagareta shared her idea that the list be generated as a group, and that the essence of each of the discussions be captured, instead of simply saying that the issue was discussed. Capturing the nuances of the discussion is important especially in situations where the group was somewhat divided.

Yamashiro asked Yoshina if there was anything else the Task Force could continue discussion on.

Yoshina asked that each member look over the two-page matrix along with the points raised in Amaral's memo. He asked if everyone was in agreement that those two documents should comprise the list of items the Task Force would raise.

Yoshina stated that the first item would be corrected, and that some explanation would be made of provisional voting, as is to be included in the challenged ballot process. He also said that the final report might be in a different format.

Amaral asked how the interest of the Task Force to address an issue would be handled if the Task Force had run out of time, with specific reference to the issue of chairpersons being of the same party as the governor.

Yoshina said he heard lengthy discussions regarding the topic.

Yamamoto reiterated his earlier point that some of the points brought up were individual opinions rather than expressed by the entire group.

Yoshina responded that he still wants to include all opinions and issues raised in the report, and leave it up to the Legislature to decide what to do with the information.

Amaral suggested that the Task Force take a vote on every single item listed in the final report to record the opinions of the Task Force.

Aoki suggested that the list be divided into two sections: (1) recommendations, and (2) other items discussed by the Task Force.

Amaral suggested that the issues that pass a vote become a recommendation, and those that don't simply stand as an item for discussion by the Legislature.

Yoshina said he would like for every issue raised to see an opportunity for discussion, whether or not the entire Task Force agrees.

Hall requested that the "preferential ballot" be added to the list.

Yamamoto suggested that the list be limited to whatever is included thus far

Yoshina clarified the list to include the points raised by Amaral in Section IV, B, 1, a-c above, along with those in the two-page, Hawaii-only matrix.

Lagareta expressed her agreement with such a list.

Amaral asked that acknowledgement of voter registration be included if the record be changed to show the Task Force's actual action regarding the provisional voting.

Hashimoto expressed his feeling that the voter registration and address confirmation card is sufficient acknowledgment of voter registration.

Amaral disagreed and expressed her concern that people who move around and don't receive voter registration and address confirmation cards are those who are economically disadvantaged, undereducated, etc.

Hashimoto stated that some of the responsibility for making sure that one is registered falls onto the voter.

Yoshina clarified the differing viewpoints in the discussion between Amaral and the county representatives. Amaral wants a sort of receipt that can be kept by the registrant at the time of registration. The other side is talking about the voter registration and address confirmation card that is sent out later on.

Yoshina asked if the neighbor islands keep "suspense files." Hashimoto confirmed that all counties do, and that clerks can even check declinations and previous elections' poll books in any case of questionable registration.

Aoki pointed out that the voter registration card also serves to prevent fraud

Hashimoto stated that allowing voters to vote a challenged ballot expedites the voting process; there's no need to argue with the voter at the precinct, etc., and that there are processes to direct the handling of such ballots.

Yoshina will determine a way to put together some sort of draft of the list of the Task Force discussion items for the next meeting.

#### V. CORRESPONDENCE AND ANNOUNCEMENTS

The next meeting is April 8, 2002,

Minutes of the Elections Review Task Force  
Thirteenth Regular Meeting  
Page 9

VI. Adjournment

There being no further business, the Thirteenth Regular Meeting was adjourned at 4:20 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Nago", followed by a long horizontal line extending to the right.

Scott Nago  
Office of Elections

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**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
FOURTEENTH REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**APRIL 8, 2002**

**LEIOPAPA A KAMEHAMEHA  
Honolulu, Hawaii**

Task Force Members in Attendance:

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto

Technical Staff in Attendance:

Mr. Jeffrey Fuke, Office of Elections  
Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

Guests in Attendance:

Mr. Warren Iwasa, Media

## PROCEEDINGS

### I. CALL TO ORDER

The Fourteenth Regular Meeting of the **Elections Review** Task Force was called to order by Chairperson Dwayne D. Yoshina at 2:10 p.m. on April 8, 2002, at Leiopapa A Kamehameha, Room 405.

### II. APPROVAL OF APRIL 1, 2002 MINUTES

- A. Hall's statement on page 7 regarding preferential ballots should include the clarification that preferential ballots "allow the voter to designate his or her preference for an open office. This is a de facto, instant run-off in a non-partisan, winner-take-all special election."
- B. Yoshina requested that the page 8 reference to "county representatives" be replaced with "other task force members." He also requested that the page 8 characterization of the "other side" be replaced with "point of view," noting further that the voter registration and address confirmation cards are sent out after registration is process.
- C. Yamamoto moved that the minutes of the Thirteenth Regular Meeting be accepted as amended.
- D. Aoki seconded.
- E. Discussion – none
- D. Motion carried unanimously.

### III. PUBLIC TESTIMONY

No public testimony received.

Yoshina noted Hall had submitted two articles relating to voter education and voter fraud. Yoshina then discussed Hawaii's challenged ballot procedures as it related to dealing with voters whose registration was in question, or who may have been attempting to vote illegally.

### IV. PROGRAM DISCUSSION



### Review of the Draft Report

It was stated there should be a “Findings” section, as well as an “Executive Summary.” Amaral requested that the “Findings” section explain the Task Force’s limited amount of time and consequent focusing on recount legislation.

Amaral noted that section II, C, should explain what “Applicable State Laws” refers to, adding that readers may assume that the Task Force addressed the laws listed in this section, and questioned the relevance of including it. Yoshina explained that this section merely provided background.

Amaral suggested that the first sentence in section 111, “Recount Legislation,” be changed from “concluded” to a less forceful word. Discussion ensued regarding the accuracy of that first sentence. Amaral requested a change of language to this section.

Amaral and Lagareta questioned the language of the first paragraph in section III, ‘A, regarding the characterization of the Task Force’s findings and that perhaps this was the viewpoint of the Chairperson. Amaral asked that page 6 be changed to reflect that it was the Office of Elections that held the opinions contained within. Yamamoto stated that he ‘shared the opinion of the Office of Elections in III, A, with regard to party participation in recounts and validatio’n of election results.

Aoki asked whether hand-recounts should be characterized as “notoriously inaccurate.” She stated the League of Women Voters hand-counts ballots for the union elections. There was a discussion regarding recounts. Yamamoto suggested removing the word “notoriously.”

Amaral suggested for section III, C, “Recounts by Administrative Rules,” add to beginning of the second sentence, “It was the suggestion of the Office of Elections that.. .”

Amaral suggested that the word “triggers” in III, D, be changed to “thresholds,” and that “extraordinarily” be replaced with “close races.”

Aoki and Yoshina had a discussion regarding the Task Force request to increase the amount of time between the Primary and General Elections. Aoki suggested that this be addressed in the recommendation section. Hall suggested including that Hawaii holds the latest Primary nationwide.

Yamamoto requested that the word “suggested” in the last paragraph, section III, F, be changed to “recommended.”

Amaral asked section III, F, be rewritten to more accurately clarify the issue discussed. She requested a rewording of the entire section. There was a discussion on the involvement of the courts in cases of election contest versus recount based on small vote difference.

Amaral requested that the bill statuses listed in section III, G, be updated.

Amaral questioned the purpose behind the points made in section III. She asked that there be some clarification stated at the beginning of section III to denote that this is a list of recount legislation measures.

Amaral suggested amending the first paragraph of section IV so it reads, “[~~Having met the purpose of Act 139,~~] The Task Force agreed to discuss and make recommendations for further action, [~~by the Legislature during the 2003 Regular Session.~~]”

Yoshina asked about the last paragraph in the background section of section IV, A, should use the word “adopt” or “adapt.”

Amaral requested that section IV, A, include the statement, “The Task Force voted to extend Hawaii’s existing challenged ballot process to voter registration.” There was a discussion about the intent behind the challenge ballot procedure.

Aoki asked how many other states have a real-time, online system like Hawaii’s SVRS. Yoshina thinks Hawaii is the only state with such a system.

Amaral asked that the last sentence in section IV, A, be removed. [~~“It was noted that Hawaii’s system, taken in totality...”~~]

Hall pointed out a typo in the second-to-last paragraph, “. .confirmation of registration would be necessary.. .”

Section IV, B, Lagareta asked that “this office” be clearly identified as “Office of Elections.

Amaral requested that the first line in the “Discussion” section of IV, B, be deleted as follows, “[~~The task force did not discuss this issue~~]”. It was decided that the following sentence would be rewritten and moved.

Amaral asked that the "Recommendation" and "Background" sections of IV, C, be rewritten.

There was a discussion regarding terminology that could be used, and that "special election" is a term of art with a specific definition.

Amaral requested that her concern regarding the extension of voter protections from their employer(s) and/or union agent(s), with relation to absentee ballots. Kam asked that the protection be from more than just the employer and union agent. Amaral explained that these two parties were stipulated by law.

The first line in Section V was changed to read, 'While no formal action was taken on the following items, the Task Force ~~[concludes]~~ submits these items ~~[may be taken up at the 2003 Legislative Session.]~~ for Legislative consideration.'

The "Recommendation" statement of Section V, A, was changed to read, "To conduct a study on ~~[voting behavior.]~~ voters and voting in Hawaii." The first background paragraph will be removed.

Amaral suggested the reordering of the paragraphs in Section V, B. See revised draft report for details. There was also a discussion regarding the prohibition against printing and posting at the polls. It was requested that the information contained in the "Background" sections be clearly identified as separate from discussion points brought up by the Task Force.

Lagareta requested that all "Recommendation" headings be changed to "Issue" in Section V.

Amaral inquired about the proposal to vote on all items contained in the report, It was decided that all items be presented as being from the entire Task Force.

The first sentence in the last paragraph in Section V, C: **Hall** asked that "in place of" be replaced with "in conjunction with." Amaral requested that the "Background" be elaborated on.

Amaral requested that the "Background" section for V, D, be elaborated on to include more substantive information. Also, "Discussion" should include Yamashiro's comments regarding codification.

Amaral asked that Lagareta's recommendation for establishing statutory rules for Official Observers (from previous minutes) be included.

Aoki asked that the paragraph regarding voter intent (Section V, F) be clarified to include Schulaner's opinion that Hawaii uses "objective criteria." Amaral wanted to note that although the Task Force wanted to further discuss this issue, but ran out of time. Amaral also wanted it noted that there was never a discussion regarding the discrepancy between marginal marks on the marksense paper ballot and the punch card systems.

Lagareta shared with the Task Force copies of her proposed language for assistance to absentee voters.

Regarding presidential primary, Hall will propose language with reference to "Super Tuesday," in which Hawaii does not participate.

Lagareta asked that citation be made to Larry Meacham in the section containing public testimony.

The staff will continue to revise the draft report for the next meeting.


#### V. CORRESPONDENCE AND ANNOUNCEMENTS

The next meeting is April 22, 2002.

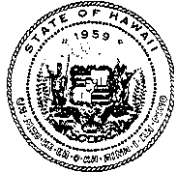
#### VI. Adjournment

There being no further business, the Fourteenth Regular Meeting was adjourned at 5:17 p.m.

Respectfully submitted,



Scott Nago



STATE OF HAWAII  
OFFICE **OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEFELECTIONOFFICER

**MINUTES**  
of the  
**FIFTEENTH REGULAR MEETING**  
of the  
**ELECTIONS REVIEW TASK FORCE**

**APRIL 22, 2002**

**LEIOPAPA A KAMEHAMEHA**  
Honolulu, Hawaii

Task Force Members in Attendance:

· Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Dennis Kam  
Mr. Daryl Yamamoto  
Mr. Tom Yamashiro

Technical Staff in Attendance:

Mr. Jeffrey Fuke, Office of Elections  
Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

Guests in Attendance:

Mr. Warren Iwasa, Media  
Ms. Malia Zimmerman, Media

## PROCEEDINGS

### I. CALL TO ORDER

The Fifteenth Regular Meeting of the Elections Review Task Force was called to order by Chairperson Dwayne D. Yoshina at 2:10 p.m. on April 22, 2002, at Leiopapa A Kamehameha, Room 405.

### II. APPROVAL OF APRIL 8, 2002 MINUTES

- A. Hall clarified his correction to the minutes of the April 8, 2002 meeting regarding preferential ballots as follows: preferential ballots allow voters to “prioritize” their preferences for an open office. Hall stated, in response to Aoki’s question, that preferential ballots are not “write-in” ballots.
- B. Aoki suggested the last sentence in II, B, be amended to read, “...noting further that the voter registration and address confirmation cards are sent out after registration is process&.”
- C. Aoki moved that the minutes of the Fourteenth Regular Meeting be accepted as amended.
- D. Yamamoto seconded.
- E. Discussion – none
- D. Motion carried unanimously.

### III. PUBLIC TESTIMONY

No public testimony received.

### IV. PROGRAM DISCUSSION

#### Review 2nd Draft of Report

Amaral asked that the Background section of the Executive Summary begin with the signing of Act 139 and proceed sequentially from that point on.

Yamashiro pointed out an error in II, E: “. . . contest provision [is] in HRS...”

Amaral questioned the meaning behind the introductory paragraph in section III. Quidilla explained that this paragraph should be the introductory paragraph for section IV.

Amaral suggested that the three recommendations listed in section III be separated into two sections: recommendations directed to the Legislature (B and C), and the recommendation to the Office of Elections (A).

Amaral suggested deleting the "Introduction" heading from the Report.

Amaral clarified the last sentence of the last paragraph in section II, B, to read: "Because of the limited amount of time prior to the deadline for bill introduction, the Task Force agreed to focus first on developing proposed recount legislation to be addressed by the 2002 Legislature[.], and, later, deal with other pertinent issues related to ballot tabulation and election."

Amaral suggested that section II, B, include background information on each of the members (e.g. Dennis Kam, Chair, Official Observers). Yoshina asked that "Catherine" be used instead of "Kitty."

In section II, C, Amaral reworded the opening paragraph as follows, "As the agenda set earlier, the Deputy Attorney General, in the December 17, 2001, Regular Meeting provided the Task Force a legal review of the elections laws relating to vote tabulation. The presentation was as follows:"

In section II, C, 5, Aoki suggested deleting the first sentence in the second paragraph: [Historically, the State of Hawaii . ..]

Amaral provided language for an opening paragraph for section III, Automatic Recount – Findings and Recommended Legislation, to read as follows: "The Task Force differentiated the issue of "election contest" from the issue of "automatic recount." The Task Force requested an opinion from the Department of the Attorney General on whether a constitutional amendment would be necessary to establish an automatic recount provision. After having been advised by the Deputy Attorney General that such an amendment would not be required, the Task Force began to develop its proposed recount legislation."

In the first paragraph in section III, Amaral requested that "rigorous Official Observers' Program" be changed to "Official Observers' Program".

There was a discussion regarding the use of "Office of Elections" in place of "some Task Force members." It was decided to keep the existing language.

In section III “Automatic Recount”, A, 1, Amaral suggested changing the second-to-last paragraph to read, “...and secure manner, all of which are provided for in Administrative Rules, rather than state statute... The Official Observers, according to HRS...” Amaral also suggested noting the continuation of this discussion in section V, D.

In section III “Automatic Recount, A, 2, “Machine Recounts,” Aoki suggested removing the word “Alternatively” from the last sentence.

In section III, “Automatic Recount,” A, 3, “Recounts by Administrative Rules,” Yamashiro suggested a language change: “...the recount provision [would] should be [codify] codified in statute or rules. It was [the] suggested...”

There was a discussion regarding the difference between section III, A, 1, “Validation of Election Results,” and section V, D, “Validation of Election Results in Statute.” Staff clarified that the former resulted in a formal recommendation by the Task Force, while the latter was just a discussion. Amaral suggested noting that the discussion was continued in section V.

Yoshina pointed out that the list in section IV, “Additional Recommendations from the Task Force,” would be separated into legislative and administrative recommendations, as was suggested for the Executive Summary.

In section IV, A, Background, the first sentence was changed to read, “According to [these] national studies.. .”

There was a discussion about separating the third paragraph in section IV, A, “Provisional Ballots.” It was explained that the third paragraph deals with voter challenge *prior* to election day, while the fourth paragraph deals with voter challenge on election day. Also,, Amaral pointed out that “appealable“ is not a word, and suggested, “may be appealed.”

In the same section, Amaral asked about the usage of “challenge” versus “challenged” ballot. “Challenged” is the proper legal terminology. In the same section, Amaral suggested changing the last sentence in the third paragraph to read, “...will be counted or not [depending on whether it determines the person was properly registered to vote]. In the same section, Amaral requested using the proper name of the “Board, of Registration” instead of just the “Board.”

In section IV, A, “Discussion,” Amaral suggested clarifying the discussion to more specifically cite the single member who raised the concern over immediate



confirmation of registration. She also suggested splitting up the last sentence of the third paragraph to read, "...prior to elections[, however]; It was acknowledged, however, that.. ."

In section IV, C, "Background," Amaral asked that "According to the Office of Elections" be added to the first sentence in the first paragraph. Also, in "Discussion," of that same section, Amaral asked that "introduced by the Office of Elections" be added after "Senate Bill No. 1426"

In section IV, C, "Discussion," Amaral requested that "as no provision was made to protect voters from undue influence by employer or union" be added to the end of the second paragraph.

In section V, A, "Study of Voting Behavior," Amaral requested that it be made more explicit the reasons why the Office of Elections should conduct a survey of voters. She also asked if the term "behavior" would be more appropriate instead of "needs." Yoshina stated that "behavior" might connote determining for whom the voters are voting.

In section IV, H, "Presidential Primary," Hall provided language to clarify the paragraph that begins, "Presently, Hawaii holds the latest primary..."

In section IV, I, "Absentee Ballot Fraud," Hall corrected an error in item (3) in the list of triggers to read, "...percentage points higher [that] than the percentage.. ." In that same section, Hall asked that the report reflect that he provided charts detailing how thresholds might be determined.

In section IV, B, "Posting of Elections Results at the Polling Place," Amaral asked that the second sentence in "Background" be changed to read, "...at the polling place to identify how many jurisdictions print results at the polling place."

In section IV, B, Amaral suggested changing the first sentence of the fifth paragraph to read, "[It should be] The Office of Elections noted..."

In section IV, B, "Discussion," Amaral asked that reference to the Office of Elections be made in the first sentences of the last two paragraphs. "It was noted by the Office of Elections that.. ." and "[There was also] Office of Elections also noted.. ."

In section IV, D, "Validation of Election Results in Statute," Amaral suggested inserting the note that the discussion stemmed from the earlier recommendation regarding validating election results.

In section IV, E, "Clarifying the Role of Official Observers," the second-to-last paragraph now begins, "It was suaaested bv the Task Force that state..."

In section IV, E, "Discussion," "a Task Force member" was changed to "the Task Force," in the first paragraph.

In section IV, F, "Define What Constitutes a Valid Vote," "procedure" was changed to "procedures" in the second paragraph of "Background." In "Discussion," Amaral provided language regarding Hawaii not being a voter intent state. She felt that the current discussion didn't adequately illustrate the sentiments of the Task Force.

Amaral suggested including a "Conclusion" section. She provided language as follows:

"The Task Force met from December 10, 2001, to April 22, 2002. It was able to accomplish a great deal in the limit time given it, however, if it had been allowed to continue its work and present a report in January of 2003, it may have resolved issues that have otherwise remained un-addressed.

We therefore submit a record of debates and suggest that further study and discussion is required beyond that which has taken place. The work of elections is critical to the preservation of democracy, and the time given to preserve this work should be indicative of the value it has to us as a state and as a free people."

The report will again be edited as requested and disseminated to the members.

v . CORRESPONDENCE AND ANNOUNCEMENTS

The next meeting is April 29, 2002, at 2:00.

VI. Adjournment

There being no further business, the Fifteenth Regular Meeting was adjourned at 4:15 p.m.

Respectfully submitted,

d & Q - - -

Scott Nago



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

**MINUTES  
of the  
SIXTEENTH REGULAR MEETING  
of the  
ELECTIONS REVIEW TASK FORCE**

**APRIL 29, 2002**

**LEIOPAPA A KAMEHAMEHA  
Honolulu, Hawaii**

Task Force Members in Attendance:

Mr. Dwayne D. Yoshina  
Ms. Annelle Amaral  
Ms. Jean Aoki  
Mr. James Hall  
Mr. Ken Hashimoto  
Mr. Dennis Kam  
Ms. Kitty Lagareta  
Mr. Daryl Yamamoto  
Mr. Tom Yamashiro

Technical Staff in Attendance:

Mr. Jeffrey Fuke, Office of Elections  
Mr. Scott Nago, Office of Elections  
Mr. Rex Quidilla, Office of Elections  
Mr. Aaron Schulaner, Department of Attorney General

## PROCEEDINGS

### I. CALL TO ORDER

The Sixteenth Regular Meeting of the Elections Review Task Force was called to order by Chairperson Dwayne D. Yoshina at 2:10 p.m. on April 29, 2002, at Leiopapa A Kamehameha, Room 405.

### II. APPROVAL OF APRIL 22, 2002 MINUTES

- A. Amaral moved that the minutes of the Fifteenth Regular Meeting be approved as circulated.
- B. Yamamoto seconded.
- C. Discussion -- none
- D. Motion carried unanimously.

### III. PUBLIC TESTIMONY

No public testimony received.

### IV. PROGRAM DISCUSSION

#### Review Final Draft of Report

The following changes were made to the Final Draft of Report:

In the Executive Summary, the recommendations were reworded such that they are all parallel in the present, active tense.

Section III, A, 2 now reads, "Allowing the Chief Election Officer, or County Clerk in the case of County Elections, to conduct all-mail elections ~~[except in the case of]~~ for elections not held in conjunction with a regularly scheduled primary or general election." This change will also be reflected in corresponding sections throughout the Report.

In the Report, section I, B, "Members": Yamashiro is the Former Counting Center Manager, and Former [Director] Administrator of ICSD.

In section II, A, 1: ". . .and ongoing insistence [to meet] on meeting these.. ."

In section II, A, 1: "...**various** county election offices[,] to develop and establish..."

In section II, A, 1, first bulleted section (and corresponding sections throughout the text):

- "Election night poll book audits of all precincts and districts statewide by a semi-autonomous team of election officials [~~of all precincts and districts statewide~~]."
- "Manual audits of randomly selected contests and precincts by a semi-autonomous team of election officials [~~of randomly selected contests and districts~~]."

In section II, A, 2, "Machine Recounts": "In it deliberation, the Task Force..." (added a comma)

In section II, A, 5, "Primary Election Date": "The Task Force recognized that the State of Hawaii [~~is one of the last states to conduct a~~] conducts one of the latest primary elections in the nation."

In section II, B, "Recommendations for Recount Legislation," recommendations 1 and 3 were reworded such that they are in parallel tense with the others.

In section IV, C, "Election Day Registration," there was a discussion regarding removing the table or adding a note that the information contained within refers to only one election cycle. Aoki suggested that the table was biased and did not take into account the fact that some elections were Presidential and others were Gubernatorial. Yamamoto and Lagareta felt that the facts contained in the table spoke for themselves. It was pointed out that the Task Force was not making a recommendation or taking a stance, but simply putting information on the table. Some members felt, however, that there needed to be a sort of disclaimer regarding the context of the information in the table. Yamashiro moved to keep the language the way it is in the draft. Lagareta seconded. The motion carried with seven "Ayes", one "No" (Aoki), and one excused (Amaral).

In section IV, G, "Assistance to. Absentee Voters": number 3 in "Background": "...and Section 15-5, HRS, relate[s] specifically.. ."

In section IV, H, "Presidential Primary": will be changed to Presidential Preference Primary. "Preference" will be inserted where appropriate throughout the text. Also, in "Discussion", ".Office of Elections notes that [the] should the.. ."

In section IV, I, "Absentee Ballot Fraud": Hall clarified that ~~his~~ intended emphasis was on the mail aspect of absentee balloting. The word "mail" will be inserted where appropriate throughout the text. The numbered list in, "Discussion" now reads:

1. "If the number of mail absentee ballots [changed] chances the result of the election and who would be the winner;
2. If, after determining the statewide percentage of mail absentee ballots cast, the percentage cast in the contested district is 10 percentage points greater than the state average;
3. If the percentage of mail absentee votes [received by] cast for the winning candidate is 15 percentage points higher than the percentage of the winning candidate's votes by walk-in voters; and
4. If the winning candidate receives 20 percent more mail absentee ballot votes than the other candidate."

In the same section, the comma was removed from the last sentence in "Discussion".

Yoshina requested that the members also take a look at the appendices.

Yoshina entertained a motion to adopt the report as amended. Yamamoto moved as such. Yamashiro seconded. There was no discussion. The motion carried unanimously.

Yoshina requested that the Task Force members sign the report.

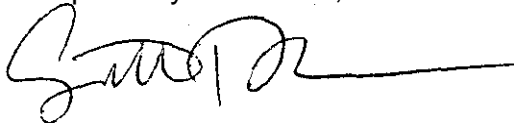
V. CORRESPONDENCE AND ANNOUNCEMENTS

None.

VI. ADJOURNMENT

There being no further business, the Sixteenth Regular Meeting was adjourned at 3:15 p.m.

Respectfully submitted,



Scott Nago

**APPENDIX B  
WRITTEN OPINIONS  
OF THE DEPUTY ATTORNEY GENERAL**

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BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



EARL I. ANZAI  
ATTORNEY GENERAL

THOMAS R. KELLER  
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
EDUCATION DIVISION  
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December 17, 2001

To: Dwayne D. Yoshina, Chairman  
Election Task Force

From: Aaron H. Schulaner *AHS*  
Deputy Attorney General

Re: Legal Overview

As per your request on December 10, 2001, I am submitting the following legal overview of the law in regards to the matters addressed in Act 139.

I. ACT 139

The purpose of the Act was "to establish a task force to comprehensively review, evaluate, and recommend changes to Hawaii's elections laws regarding vote tabulation, with particular consideration of automatic recount and contest procedures, to ensure the integrity and certainty of the State's electoral process."

The task force's comprehensive review will involve considering the adequacy of the law with respect to vote tabulation and contest procedures; and the feasibility of implementing an automatic recount and improved contest procedure. Additionally, the task force is to consider the procedures utilized or proposed in other states,

II. VOTING SYSTEM REQUIREMENTS

The starting point for an overview of the election system is an understanding of what the voting system requirements of our state are.

The Chief Election Officer has broad discretion to authorize the use of any voting system or combination of voting systems for a specific election. HRS § 16-1. The system initially needs to allow the voter to (1) vote in all the applicable contest and ballot questions, (2) correctly record and count the votes, and (3) provide for the voter secrecy while he or she is voting. HRS § 16-2. Depending on the type of voting system there may be additional requirements under the law.

The law recognizes three categories of voting systems: (1) voting machine, (2) paper ballot, and (3) electronic voting. Chapter 16, Parts II-IV. A “voting machine system” means the method of electrically, mechanically, or electronically recording and counting votes upon being cast.” HRS § 16-1 1. A “paper ballot system’ means the method of recording votes which are counted manually.” Finally, an “electronic voting system’ means the method of recording votes which are counted by automatic tabulating equipment.”

The voting machine requirements include the machine preventing overvoting in any election and cross-party voting in primary elections. HRS § 16-12 (2) & (4) Security is addressed by the requirement of a “protective counter or protective device whereby any operation of the machine before or after the election will be detected and the requirement that the machine have a counter which shows at all times how many people have voted. HRS § 16-12 (5) & (6). The electronic voting system requirements similarly in HRS § 16-42 require overvotes and cross-party votes to not be counted.

### III. UNIFORM METHOD OF MARKING BALLOTS

The Chief Election Officer is charged with prescribing a uniform method of marking paper ballots by rules and regulations promulgated in accordance with Chapter

91. HRS § 16-22. The current uniform method for mark sense paper ballots is found at HAR § 2-51-85.1. A proper mark is a completely blackened oval (i.e. target area) in accordance with the “card of instruction” issued for that election. HAR § 2-51-85.1(f)(l). The “card of instruction” may state the type of marking device which may be used (e.g. black ink pen or #2 pencil) depending on the requirements of the voting system. HAR § 2-51-85.1 (a). A marginal mark is a mark which is either completely within the voting oval or intersects the voting oval. HAR § 2-51-85.1(f)(2) Finally, an improper mark is a mark outside of the voting oval. HAR § 2-51-85.1(f)(3)

#### IV. ELECTION CONTESTS

##### A. PRIMARY ELECTION (HRS § 11-173.5)

The deadline for filing an election contest is 4:30 p.m. on the sixth day after the primary election. The election contest is filed with the Supreme Court. The court clerk issues to the Defendant a summons to appear before the Court no later than 4:30 p.m. on the fifth day after service of the summons. The Defendant is either the Chief Election Officer or the County Clerk depending on whether it is a state or county election. In practice, the Defendant does not appear before the Court in person, but instead files a Motion to Dismiss or a Motion for Summary Judgment in response to the Complaint. The Court, no later than 4:30 p.m. on the fourth day after the return gives its judgment fully stating who was nominated or elected.

##### B. GENERAL ELECTION (HRS § 11-174.5)

The deadline for filing an election contest is 4:30 p.m. on the twentieth day after the general election. The court clerk issues to the Defendant a summons to appear before the Court no later than 4:30 p.m. on the tenth day after service of the summons.

The Court issues its judgment, historically, before the convening of the next legislature. The judgment may invalidate the election or decide which candidate or candidates have been elected. If the election is invalidated, a new election is held no later than one hundred twenty days after the judgment is filed.

C. STANDARD FOR ELECTION CONTESTS (HRS §11-172)

The law provides “with respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in the supreme court. The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, **that could cause a difference in the election results.** The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the precinct officials or the officials at a counting center in an election using the electronic voting system: A copy of the complaint shall be delivered to the chief election officer or the clerk in the case of county elections.” HRS § 11-172 (emphasis added).

Our Court has specifically interpreted “difference in election results” to mean the production of sufficient evidence to demonstrate that the irregularities complained of could have caused a difference in the election results. Akaka v. Yoshina, 84 Haw. 383 (citing Elkins v. Arivoshi, 56 Haw. 47.49 (1974) (per curiam)). Sufficient evidence requires something more than a “mere fishing expedition undertaken in the hope that in an examination of all the ballots enough might be discovered to change the result.” Brown v. Iaukea, 18 Haw. 131,133 (1906).

A Plaintiff must show “actual information of mistakes or errors sufficient to

change the result.” Funakoshi, 65 Haw. 312, 316-17 (1982)(citing laukea, 18 Haw. at 133). His or her challenge cannot be based on “mere belief or indefinite information.” Akaka, 84 Hawai’i at 388 (citing Kulike v. Fern, 19 Haw. 278, 283 (1909)). Our Court has determined that

[i]n the absence of facts showing that irregularities exceed the reported margin between the candidates, the complaint is legally insufficient because, even if its truth were assumed, the result of the election would not be affected.

Akaka, 84 Hawaii at 388 (internal citations omitted).

D. POWERS OF THE SUPREME COURT (HRS § 11-1.75)

“The supreme court may compel the attendance of witnesses, punish contempts, and do whatsoever else may be necessary fully to determine the proceedings and enforce its decrees therein.” HRS § 11-175.

E. DEFECTS THAT COULD HAVE BEEN CURED BY THE CANDIDATE BEFORE THE ELECTION ARE GENERALLY NOT A BASIS FOR A SUCCESSFUL ELECTION CHALLENGE

Our Court has stated previously, if there has been an opportunity to correct any irregularities in the election process or in the ballot prior to the election itself, plaintiffs will not, in the absence of fraud or major misconduct, be heard to complain of them afterward. Lewis v. Cavetano, 72 Haw. 499, 503 (1992) (citing Tiiirtv Voters v. Doj, 61 Haw. 179, 181 (1979)). Our Court reasoned that the efficient use of public resources requires that an individual should not be allowed to gamble on the outcome of the election, and then challenge the results only if they are unfavorable. Id. at 503. This is especially so when the alleged irregularities and errors could have been made prior to the election itself so that the public is spared the expense of conducting the election process. Id.

## V. AUTOMATIC RECOUNT

The State of Hawaii currently has no **automatic** recount provision. What is established is a process to contest an election for cause and for the resolution of the dispute to be left to the courts. The Supreme Court given its powers under HRS § 11-175 is able to order a recounting of the ballots in order to aid it in its determination of which candidate was elected. The most recent recounting of the ballots occurred after the 1998 General Election. However, such a recounting of the ballots is very rare in our state's history. In 1908, the Supreme Court actually admitted into evidence the ballots of a contested sheriff's election. Brown v. Iaukea, 18 Haw. 131 (1906). The Court proceeded to count the ballots with the attorneys and ruled on various objections that the attorneys made to specific ballots.

Historically, an automatic recount provision did exist from 1961 to 1973. The provision was established by Act 7, SLH 1961 which amended RLH 11-85.2. The provision regarding statewide elections was one-eighth of one percent or less between the winning and losing candidates and one-quarter of one percent for all other races. A complaint would be filed with circuit court which would then order a recount. The law was subsequently renumbered as RLH §12-102 and eventually HRS §11-173 (1970).

The apparent reason why the legislature vested the automatic recount with the courts was to obviate the concern that the courts under then Article II, Section 5, now Article II, Section 10 vests the determination of contested elections with the judiciary and an automatic recount could, arguably, be thought of as a determination of a contested election. SCRep. 208 (Majority) Judiciary on H.B. No. 35 (1961).

In 1973 the Legislature passed Act 217 which amended the election laws to clarify deadlines and to provide procedures for administering elections. In regards to elections contests, it transferred contests from circuit court to the Supreme Court. The legislature believed that adequate safeguards existed and the need for recounts was minimal. SCRep. No. 572 Judiciary on H.B. No. 809 (1973). The 1973 LRB Digest and Index of Laws noted that the Act “[r]epeals the specific allowance of an election contest due to small vote difference and includes such contests within contests for cause. Requires, remaining election contests provisions without changing their substance, except that such contests shall be brought in the supreme court instead of the circuit court.” Page 104-I 05.

VI. BUSH V. GORE, 531 U.S. 98,131 (2000).

We are all familiar with the circumstances surrounding the last presidential election. In reviewing the Bush v. Gore decision it is clear that the U.S. Supreme Court focused most of its attention on equal protection matters. Specifically, the Court emphasized the need for the adoption of adequate statewide standards for determining what was a legal vote, practicable procedures to implement them, and an orderly judicial review of any disputed matters that might arise. It is my understanding that we currently have those things in place.

Our administrative rules and procedures address the determination of what is a vote on a statewide basis given our unique situation of using one uniform system for the whole state versus other states which have a variety of counties or municipalities which each have different standards and procedures, thus resulting in a lack of uniformity as shown in Florida. Additionally, we have a judicial review function which

are our election challenge statutes which allows people to challenge election results directly to our Supreme Court.

## VII. CONCLUSION

Thank you for the opportunity to provide this abbreviated overview of election laws in the area of vote tabulation. I am available for any future legal requests that the Election Task Force may have.



BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII




EARL I. ANZAI  
ATTORNEY GENERAL

THOMAS R. KELLER  
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December 30, 2001

To: Dwayne D. Yoshina, Chairman  
Election Task Force

From: Aaron H. Schulaner   
Deputy Attorney General

Re: Automatic Recounts

As per our discussion on December 24, 2001, I have researched whether any proposed automatic recount provision would need to involve court intervention. The reason for this inquiry was that the automatic recount provision that existed from 1961 to 1973 required that a complaint be filed in circuit court and that it be the court which ordered a recount if the applicable recount triggers were met.

A review of the legislative history for Act 7, SLH 1961 shows that the House Committee on Judiciary had a question as to "whether the bill as introduced violated Section [IO], Article II of the State Constitution which provides in part that 'Contested elections shall be determined by a court of competent jurisdiction in such manner as shall be provided by law.'" SCRep. 208 (Majority) Judiciary on H.B. No. 35 (1961). The committee obviated the constitutional question by amending the bill to provide that the complaint was to be filed in the circuit court with the court being vested with the power to order a recount. Id.

As it is clear that our Constitution vests the resolution of contested elections with the courts, the ultimate question is when can an election be "contested." A contested election occurs when there is a dispute over the election results. Logically, the dispute

is not ripe for court resolution until the statutes regarding the election results found in Part X of Chapter 11, Hawaii Revised Statutes are completed. Assuming an automatic recount provision is placed in Part X as part of the normal counting of the ballots in situations where there is a small vote difference, then it would not violate Section 10, Article II. However, a party could still file an election contest, after the automatic recount, with the Supreme Court under Part XI of Chapter 11, Hawaii Revised Statutes.

BENJAMIN J. CAYETANO  
GOVERNOR



EARL I. ANZAI  
ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
235 S. BERETANIA STREET, ROOM 304  
HONOLULU, HAWAII 96813  
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THOMAS R. KELLER  
FIRST DEPUTY ATTORNEY GENERAL

January 28, 2002

Dwayne D. Yoshina, Chairman  
Elections Review Task Force  
Office of Elections  
802 Lehua Avenue  
Pearl City, HI 96782

Re: Provisional Ballots

Dear Mr. Yoshina:

As per the Task Force's request, I have researched the matter as to whether the State has in place laws to address the use of provisional ballots. In researching the matter I understand "provisional" to refer to allowing people *when there* is a dispute as to whether the person is properly registered to allow the person to "vote," with the counting of the ballot being contingent on the subsequent resolution of the question of whether the person is properly registered to vote.

The county clerks are responsible for voter registration and the maintenance of the general register for each county. HRS § 11-1. The clerks accept applications to register to vote both in person and by mail. HRS §§ 11-15, 11-16. An application must provide sufficient information for the county clerk to determine if the applicant has met the requirements to register to vote in our State. HRS § 11-15. The information in the application is presented in the form of a self-subscribing oath in which the applicant swears to the truth of the allegations he or she has made. The county clerk is free to not register an individual if the county clerk determines the individual has not met the requirements of HRS § 11-15.

Once a person is on the registration list, the county clerk is still free to use reliable and pertinent information to keep the register up to date. In addition, the county clerk may hear challenges by voters in regards to the registration of their fellow voters. HRS §§ 11-20, 11-21, 11-22, 11-23, 11-24, and 11-25. In the end, any changes to the register before election day occurs through a decision of the county clerk. On election day, a change in the register can occur through either a decision of the county clerk or the precinct officials at the precinct in which a voter challenge has occurred.

In any situation in which an applicant disputes not being allowed to be registered or a registrant disputes their registration being changed or struck, the individual is able to appeal to the Board of Registration. HRS § 11-22(b), 11-23(b), 11-25(c), 11-26. The Board of Registration hears the matter and issues a decision as to the registration dispute. This decision can be appealed to the Supreme Court. HRS § 11-51.

Throughout the appeal process from the clerk or precinct officials decision to the decision of the Supreme Court the voter is able to vote. Specifically, the voter votes a challenged ballot which is placed in a sealed envelope to be later counted or rejected in accordance with the ruling on appeal. HRS § 11-25(c).

As such, the current laws do provide that during the pendency of a registration dispute that the individual will be allowed to vote what our State calls a "challenged ballot" or what others may call a "provisional ballot."

Sincerely,



Aaron H. Schulaner  
Deputy Attorney General

PS  
Task Force

BENJAMIN J. CAYETANO  
GOVERNOR



EARL L. ANZAI  
ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
235 S. BERETANIA STREET, ROOM 304  
HONOLULU, HAWAII 96813  
(808) 586-1255  
FAX (808) 586-1488

THOMAS R. KELLER  
FIRST DEPUTY ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
MAR 1 11 21 AM '02

March 1, 2002

Dwayne D. Yoshina  
Chief Election Officer  
Office of Elections  
802 Lehua Avenue  
Pearl City, HI 96782

Re: Absentee Voting

Dear Mr. Yoshina:

You have inquired whether **the** Voter Assistance Provision of the Voting Rights Act applies to absentee voting. **The** short answer is yes.

The Voting **Rights** Act states **specifically** that "any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, **other than** the voter's employer or agent of that employer or officer or agent of **the** voter's union." 42 U.S.C. Sec. 1973aa-6. The **statute** does not limit its applicability to voting in the polling place versus outside of the polling place;

The **use** of a union or business address as a forwarding address for the receipt of an absentee ballot by a voter would not, in and of itself, appear to constitute assistance under the Voting **Rights** Act.

However, it would be a very different matter if **an** agent of **the** voter's employer or union were in some way to direct a voter on how to vote his ballot. This could result in a violation of the Voting Rights Act or of our own election fraud **statute**, HRS Sec. 19-3, depending on the specific facts involved.

As such, I would recommend that this be addressed by informing absentee voter's in the application **for an** absentee ballot **that** they may not be **given** assistance in voting by a "voter's employer or **agent of that** employer or officer or agent of the voter's union." A substantiated allegation may be investigated by election officials and subsequently referred to the appropriate law enforcement agency for appropriate action.

At the **last** meeting of the task force, I stated that HAR Sec. 2-53-3 (c) addressed the matter of requests for absentee ballots to be forwarded by mail to a union or employer's address. The text of the provision is the following:

(c) Any voter who is unable to vote at the polls on election day may, by written request authorize the clerk to deliver the ballot through an intermediary other than the voter's **employer** or agent of that employer or officer or agent of the voter's **union**. This request shall contain substantially the same information required of **any** voter who requests **an** absentee ballot.

Based upon the phrase "deliver the ballot through an intermediary" and my understanding **that** the subsection referred to the mailing of absentee ballots, which is the main manner in which absentee ballots are distributed, I interpreted it as not allowing **the forwarding** of ballots to a voter's union or business address.

**An** administrative rule must be read in the context of the **statute** it was promulgated to implement. In reviewing the notes following the administrative rule it notes that it was implementing a variety of laws including HRS Sec. 15-5. The statute states in part "an incapacitated voter may **send** a representative to obtain the voter's ballots pursuant to the rules promulgated by the chief election officer."

Reading **HAR Sec. 2-53-3 (c)** in, the context of **HRS Sec. 15-5** it appears that the section was not intended to apply to the mailing of **absentee** ballots but instead to the situation **referred** to in HRS Sec. 15-5 of an incapacitated voter sending a representative to obtain the voter's ballots **from** the clerk's office on the day of election.

This is consistent with our state **law, HRS Sec. 11-139**, in regards to agents of employers or unions at the polling place not being able to render assistance and the Voting Rights Act which does not **liit itself** to just the polling place.

Sincerely,



Aaron H. Schulaner  
Deputy Attorney General

**APPENDIX C  
CORRESPONDENCE**

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STATE OF HAWAII  
OFFICE OF ELECTIONS  
802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER

## MEMORANDUM

TO: The Honorable Robert Bunda  
Senate President  
Hawaii State Senate

FROM: Dwayne D. Yoshina   
Chief Election Officer

DATE: November 19, 2001

RE: ACT 139 – ELECTION REFORM TASK FORCE

Act 139, passed by the legislature in the 2001 Regular Session and signed by the Governor on May 24, 2001, establishes a task force to comprehensively review, evaluate, and recommend changes to Hawaii's Election Laws to ensure the integrity and certainty of the State's electoral process. The Act requires the task force to submit its study, recommendations, and proposed legislation to the legislature not later than 20 days prior to the convening of the regular session of 2002.

Also, provided in this bill was an appropriation of \$100,000 to carry out the purposes of this Act. With this appropriation it was the vision of the office to comprehensively review Hawaii's Election Laws and make recommend changes. We anticipated the task force to meet four times in each county to conduct:

1. An informational briefing;
2. A public hearing for the purposes of collection public input;
3. A public hearing to present the final draft of the recommendation of the task force; and
4. A review and debriefing session to finalize the report to the legislature.

The Honorable Robert Bunda  
November 19, 2001  
Page 2

This Office has not yet received official and formal notice of your appointees (both senate majority and senate minority leaders). Given the delay in appointments of task force members, the Office of Elections does not believe it has the time necessary to conduct a deliberate, comprehensive, and studied review of Hawaii's election laws. Additionally, there is inadequate time to conduct public hearings in each county given the sunshine laws and the legislative timetable for the upcoming session.

In addition to these responsibilities, this office is also faced with the added responsibilities of the Reapportionment Commission and its delayed submission of the final reapportionment plan. The late submission of the final plan has negatively impacted the various statutory and operational deadlines required to stage the 2002 Elections, i.e., precincting and candidate filing).

We ask for your guidance as to what the Office of Elections shall do in conducting this review of Hawaii's Election Laws, given the short timeframe that we are now faced with.

Should you have any questions please feel free to contact me at 453-VOTE(8683).

DDY/STN:ll  
#0111021

c. Governor Benjamin J. Cayetano  
Senate Minority




**FAXED**  
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6-6101

STATE OF HAWAII  
OFFICE OF ELECTIONS  
802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

**DWAYNE D. YOSHINA**  
CHIEF ELECTION OFFICER

## MEMORANDUM

TO: The Honorable Calvin K.Y. Say  
Speaker of the House  
State House of Representatives

FROM: Dwayne D. Yoshina   
Chief Election Officer

DATE: November 19, 2001

RE: ACT 139 ~ ELECTION REFORM TASK FORCE

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1. An informational briefing;
2. A public hearing for the purposes of collection public input;
3. A public hearing to present the final draft of the recommendation of the task force; and
4. A review and debriefing session to finalize the report to the legislature.

The Honorable Calvin K.Y. Say  
November 19, 2001  
Page 2

Given the delay in appointments of task force members (this Office has yet to receive official notice of the Senate's appointees, majority and minority leadership), the Office of Elections does not believe it has the time necessary to conduct a deliberate, comprehensive, and studied review of Hawaii's election laws. Additionally, there is inadequate time to conduct public hearings in each county given the sunshine laws and the legislative timetable for the upcoming session.

In addition to these responsibilities, this office is also faced with the added responsibilities of the Reapportionment Commission and its delayed submission of the final reapportionment plan. The late submission of the final plan has negatively impacted the various statutory and operational deadlines required to stage the 2002 Elections, i.e., precincting and candidate filing).

We ask for your guidance as to what the Office of Elections shall do in conducting this review of Hawaii's Election Laws, given the short timeframe that we are now faced with.

Should you have any questions please feel free to contact me at 453-VOTE(8683).

DDY/STN:ll  
#0111020

c. Governor Benjamin J. Cayetano  
House Minority

Office of the President  
The Senate  
State of Hawaii  
State Capitol  
Honolulu, Hawaii



OFFICE OF ELECTIONS  
01 NOV 28 P4:17

MEMORANDUM

Date: November 27, 2001

To: Dwayne Yoshina  
Chief Elections Officer

From: Senator Robert Bundo  
Senate President

Re: Act 139 - Election Reform Task Force

In response to your memo of November 19<sup>th</sup> requesting my input as to the direction of your Office in regards to the implementation of Act 139, I would like to offer the following recommendations:

1. Convene **the Task Force**

As you know, the Reapportionment Commission and Advisory Councils recruited many individuals in the community with elections experience. Nevertheless, now that qualified individuals have been found and have agreed to serve as members of the Task Force, it would appear feasible to continue what was started many months ago.

2. **Downsize the number of meetings in each county**

I appreciate your concerns over the timetable for a comprehensive review of Hawaii's election laws. However, the scope of the Task Force is vote tabulation, with particular consideration of automatic recount and contest procedures. It would seem that four public meetings in each county may be consolidated to perhaps half the frequency without sacrificing public access to the review process. With a focus on the specific objectives as stated in Act 139, I feel it is still possible to accomplish the task before the end of the 2002 Session.

3. **Prepare a request for an extension of the reporting date to the Legislature**

Act 139, approved by the Governor on May 24, 2001, is not scheduled to terminate until the adjournment of the 2002 Legislative Session. At the time the measure was signed into law, no one anticipated the convening of three succeeding special sessions, all of which contributed to the delay in the selection of appointees to the Task Force. I believe the Legislature would be more than receptive to, granting an extension of the reporting requirement if the Task Force, once convened, deems it necessary.

c: Governor Benjamin Cayetano  
House Speaker Calvin Say  
Senator Sam Slom

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STATE OF HAWAII  
OFFICE OF ELECTIONS


802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782

DWAYNE D. YOSHINA  
CHIEF ELECTION OFFICER

MEMORANDUM

TO: The Honorable Robert Bunda  
Senate President

The Honorable Calvin K.Y. Say  
Speaker of the House

FROM: Dwayne D. Yoshina   
Chief Election Officer

DATE: December 12, 2001

SUBJECT: ACT 139 – ELECTIONS REVIEW TASK FORCE

This memorandum is inform you that the Elections Review Task Force, as formed by Act 139, will not meet its reporting deadline as set forth in the Act. The Act calls for the task force to submit a report to the legislature, .no later than twenty (20) days prior to the convening of the 2002 Legislative Session.

Because of the late timing of the appointment of the task force members, we were not able to convene the task force until December 10, 2001. This does not leave the task force with much time to conduct a thorough study and draft a report to the Legislature by the December 26, 2001 deadline. We will, however, be submitting a report to the Legislature by May 2, 2002, prior to the termination of the task force.

Should you have any questions, please do not hesitate to contact me at 453-VOTE (8683).

DDY/STN:ll  
#0112014

c. Hon. Sam Slom, Senate Minority Leader  
Hon. Galen Fox, House Minority Leader

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**APPENDIX D  
PUBLIC TESTIMONY**

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## Hawaii Republican Party

Linda Lingle  
State Chairman

Micah Kane  
Executive Director

Miriam Hellreich  
National Committeewoman

Travis O. Thompson  
National Committeeman

December 10, 2001

Chairman Dwayne D. Yoshina and members of the Election Review Task Force  
State of Hawaii  
Office of Elections  
State Capital, Conference Room 016  
Honolulu, HI 968 13

Chairman Yoshina and Members of the Election Review Task Force:

My name is Micah Kane, Executive Director of the Hawaii Republican Party. Thank you for giving me the opportunity to testify this afternoon.

As you may know, the Hawaii Republican Party has serious concerns about Hawaii's election process. During the last two legislative sessions, the House of Representatives Republican Caucus introduced various bills that were not adopted by the House. I am confident that with a strong recommendation from the Elections Review Task Force, than has been seen in recent elections, reforms can be adopted.

On behalf of the members and supporters of our Party, we are asking the Election Review Task Force to recommend to the State Legislature the following reforms:

1. Require that after the closing of each precinct polling place, and prior to the removal of ballots from a counting machine, the precinct official print the tabulation of votes for that precinct and post them at the polling place.
2. The Office of Elections should conduct a manual audit of every election contest that is decided by a margin of one per cent or less of the votes cast in that election contest.
3. As a follow-up to recommendation #2, criteria and procedures for manual audits must be developed. The most pressing question being, what constitutes a vote?
4. Lastly, we must repeal the requirement that the chairperson of the precinct officials in each respective precinct be of the same party as the governor.

It is evident that voter confidence has been shaken by the recent voting irregularities in Hawaii and in other states. Hawaii now suffers from the lowest voter turnout of any state in the nation. We ask you to seize the opportunity to restore public confidence and encourage higher participation in the voting process by working to implement the reforms listed above.

Thank you again for giving me this opportunity to testify.

Respectfully submitted,

Micah A. Kane, Executive Director  
Hawaii Republican Party

**E Komo Mai!**

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# Common Cause Hawaii

P.O. Box 235353

Honolulu, HI 96823-3505

Tel. (808) 533-6996

*Citizens Working for **Open, Honest, Accountable Government***

December 27, 2001

To: Elections Task Force

Faxed to: 453-6006

From: Larry Meacham, CC/HI Spokesperson *LM*

Subject: **Our Support** for Suggested Reforms

1. **Earlier Primary Elections.** Our very late primary elections have already caused problems when disputes arise. The six weeks between primary and general elections is just barely enough to order, print and deliver the ballots and does not allow for any time to take care of problems. Inertia has been the only reason for turning aside past suggestions for an earlier primary date. Regardless of whether a automatic recount law is proposed, we strongly support moving the primary elections back at least two weeks, to eight weeks before election day. This will ensure a more orderly process and allow candidates, voters and the Elections Office time to properly prepare for the general election.

2. **Automatic Recounts.** As you know, the current law allows the Elections Office to do audits to check the validity of vote counts. Furthermore, the Elections Office does run audits. Full recounts require recourse to the courts. Reasonable people disagree over the merits and problems of requiring automatic recounts in close races. However, a very serious problem is that previous automatic recount proposals in Hawaii have specified hand counts, which are extremely time-consuming, much more inaccurate than machine counts, and rarely produce the same result twice. Hand recounts will only increase controversy and decrease public confidence in the system. (In fact, cynics accuse hand-recount advocates of exactly that intention.) If you must propose an automatic-recount law, you should at least clearly specify and emphasize that, in order to achieve maximum accuracy, it should be a machine recount.

3. **Voter Education Funds.** Previous requests for voter education funds have been given a low priority. However, this year they are crucial. Virtually all offices will be contested and many voters will be in different districts. Other states such as Oregon have had great success in voter education. We should follow these good examples and strongly urge the Legislature to fully fund the Elections Office request. This will be a difficult year for voters, with many new faces among whom to choose. We should give them all the help possible to make informed choices.

**Mahalo** for your consideration of our views in these matters.

OFFICE COMMUNICATIONS  
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