



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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

SCOTT T. NAGO
CHIEF ELECTION OFFICER

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON HOUSE BILL NO. 27
RELATING TO ELECTIONS

March 23, 2016

Chair Keith-Agaran and members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to provide comments on House Bill No. 27. This bill allows voters to exhibit their voted ballot.

Nationwide, with the prevalence of electronic mobile devices and social media, there has been an increase in people who wish to display their voted ballot on social media sites (i.e., a ballot selfie). In other states, there has been a debate whether laws can be enforced to specifically prohibit such photographs to address voter coercion or vote buying that could occur if one could readily prove to someone else how one voted.

We are not aware of any specific prohibition against a voter disseminating a photo of their ballot on a social media site. Specifically, there is nothing presently stopping a voter from taking a photo of their ballot at home if they are voting on an absentee mail ballot and then distributing it, so long as matters related to vote buying, voter coercion, or others prohibited by chapter 19, HRS are not involved.

We believe that HRS § 11-137 may not be the appropriate statute to amend if the Legislature wishes to explicitly make it clear that it is permissible to disseminate an image of one's voted ballot. Specifically, HRS § 11-137 is geared toward the operation of a polling place and ensuring that it is an apolitical environment in which voting can occur without electioneering. The language that

this bill proposes to remove regarding willfully exhibiting one's ballot is meant to stop people for essentially declaring in the polling place how they voted and encouraging others in the polling place to vote similarly. We would propose the following changes to HRS § 11-137.

"§11-137 Secrecy; removal or exhibition of ballot. No person in a polling place shall look at or ask to see the contents of the ballot or the choice of party or nonpartisan ballot of any voter, except as provided in ~~[section]~~ sections 11-139 and 11-132, nor shall any person within the polling place attempt to influence a voter in regard to whom the voter shall vote for. When a voter is in the voting booth for the purpose of voting, no other person, except as provided in ~~[section]~~ sections 11-139 and 11-132, shall be allowed to enter the booth or to be in a position from which the person can observe how the voter votes. The voter will not be prohibited from taking an image of their ballot in the voting booth or any similar area designated by election officials for voting in private, so long as the voter does not disrupt other voters, invade the privacy of other voters, or otherwise extend the time permitted for voting under section 11-138. The transmitting of the image of the ballot by the voter should occur outside of the area of two hundred feet from the perimeter of the polling place and its appurtenances, provided for in section 11-132. The ability to take and distribute images of a ballot shall not constitute a defense against any action for vote buying, voter coercion, or any other matter prohibited under chapter 19 or the Hawaii Penal Code.

No person shall take a ballot out of the polling place except as provided in sections 11-135 and 11-139. However, a voter may take with them an electronic image of their own ballot. After voting the voter shall leave the voting booth and deliver the voter's ballot to the precinct official in charge of the ballot boxes or precinct counter. The precinct official shall make certain that the precinct official has received the correct ballot and no other and then shall deposit the ballot into the ballot box or permit the voter to insert the ballot in the precinct counter. No person shall look at or ask to see the contents of the ~~[unvoted ballots]~~ ballot prior to it being cast.

If any person having received a ballot leaves the polling place without first delivering the ballot to the precinct official as provided above, or willfully exhibits the person's ballot after the ballot has been marked ~~[or the person's unvoted ballots in a special primary or primary election]~~, except as provided in ~~[section]~~ sections 11-139 and 11-132, [after the ballot has been marked,] the person shall forfeit the person's right to vote, and the chairperson of the precinct officials shall cause a record to be made of the proceeding. To the

extent the voting system, in relation to a primary election, permits a voter to select among distinct ballot cards associated with different political parties, a voter shall not willfully exhibit an unmarked or marked ballot that would indicate their political affiliation. If this occurs, the person shall forfeit the person's right to vote, and the chairperson of the precinct officials shall cause a record to be made of the proceeding.

Thank you for the opportunity to testify on House Bill No. 27.

From: mailinglist@capitol.hawaii.gov
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HB27

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Testimony for JDL on Mar 23, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Support	No

Comments: strong support

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