



House Judiciary Committee
Chair Gilbert Keith-Agaran, Vice Chair Maile Shimabukuro

Wednesday 02/04/2015 at 9:00 AM in Room 016
SB243 Relating to the Elections

TESTIMONY OF SUPPORT
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and members of the Senate Judiciary and Labor Committee:

Common Cause Hawaii supports SB243, which we see as a “housekeeping” bill. SB243 clarifies and specifies the roles and authority the Chief Election Officer (CEO), county clerk, and governor has regarding postponing an election on Election Day in the event that there is a natural disaster.

In particular, SB243:

1. Clarifies that the chief election officer or county clerk has the authority to postpone an election that is affected by a natural disaster. This bill would also require voters in the affected precinct to cast their ballot by mail, thus providing clarity on how the CEO/County Clerk ought to conduct any “makeup” voting.
2. Gives the governor authority on Election Day to postpone an election affected by a natural disaster, and require voters of the affected precinct to cast their vote by mail (unless the governor is a candidate in that election – then the authority would be with the CEO or county clerk)

In this past election cycle*, weather reports predicted that two hurricanes (later reclassified as tropical storms) would hit Hawaii on August 9, 2014 – primary election day. On Election Day, it became clear that the windward side of Hawaii Island would face the brunt of the storm. Once the polling places open on Election Day, only the governor has the authority to postpone an election – something our governor did not do. As a result, many residents of Puna and Pahoia – the areas impacted by Tropical Storm Iselle – were unable to cast ballots on primary election day.

Following this, the CEO initially announced that voters living in the affected areas – who were not able to vote on August 9 – could cast their votes through absentee ballots. The CEO subsequently announced a change of plans and that in-person polling places would be established instead. This caused confusion and frustration among many Puna and Pahoia residents – particularly those who maintain that their roads were blocked, and those who did not have electricity or basic needs.

SB243 is important because it offers clarity on who has authority to postpone an election, and also prescribes a specific way to host any “make up” election. Doing so would avoid future confusions on how “make up votes” can be cast.

Thank you for the opportunity to testify in support of SB243.

*Note: You may refer to the Office of Elections' official 2014 Primary Election Report here:
http://hawaii.gov/elections/ec/docs/2014/primary_ec-report_2014-08-21.pdf



Committee: Committee on Judiciary and Labor
Hearing Date/Time: Wednesday, February 4, 2015, 9:00 a.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in **Support of S.B. 243**, Relating to Elections

Dear Chair Keith-Agaran and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in **support of S.B. 243**, Relating to Elections. The ACLU of Hawaii also recommends that the bill be strengthened as follows:

1. Provide that the Chief Election Officer **shall** take reasonable measures to allow voters who were eligible to cast ballots on the day of the election, but were prohibited from doing so because of a natural disaster or emergency, the ability to vote. This will help to ensure that voters’ fundamental rights do not depend upon the discretion of the chief election officer or county clerk, and will also help to ensure that the Legislature has met its obligations under article II, section 4 of the Hawaii Constitution; and
2. Expand HRS § 11-92.3(a) to allow the governor or chief election officer to accommodate voters in the event of emergencies other than “natural disasters” (such as acts of terrorism or other events not caused by nature).

After Hurricane/Tropical Storm Iselle in August 2014, many voters in Hawai‘i County were denied the opportunity to cast their ballots in the primary election. The ACLU of Hawai‘i filed a case in the Hawai‘i Supreme Court, Lathers v. Abercrombie, asking the Court to address the deprivation of the fundamental right to vote. The Court declined to exercise jurisdiction over the case, which highlights the need for legislative action to ensure that the right to vote is both protected and preserved in the event of a future emergency or natural disaster.

Hurricane/Tropical Storm Iselle demonstrated that HRS § 11-92.3 – enacted in 1992, after Hurricane Iniki disrupted voting on Kaua‘i – did not adequately protect voters’ rights, for two principal reasons: first, while HRS § 11-92.3 currently allows the Office of Elections to make accommodations for voters who are physically unable to access the polls due to a natural disaster, it does not require any accommodation whatsoever – allowing the exercise of a fundamental right to hinge upon the discretion of

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the chief elections officer or county clerk. Second, according to the Department of the Attorney General, HRS § 11-92.3 in its current form only allows for modification of voting locations prior to the opening of the polls, and does not allow for any flexibility once the polls are open (at which point officials may learn that conditions are worse than they had originally believed, as occurred in August 2014).

In its current form, S.B. 243 is a good first step towards protecting the fundamental right to vote in Hawaii. The ACLU of Hawaii supports the bill, but recommends that the Committee strengthen the bill as set forth above.

Thank you for this opportunity to testify.

Daniel M. Gluck
Legal Director
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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COMMITTEE ON JUDICIARY AND LABOR

Wednesday, February 4, 2015, 9:00 a.m., Conference Room 016

SB 243 RELATING TO ELECTIONS

TESTIMONY

Susan Irvine, Legislative Committee, League of Women Voters of Hawaii

Chair Keith-Agaran, Vice Chair Shimabakuro and Committee Members:

The League of Women Voters of Hawaii strongly supports SB 243 that clarifies that in the event of a natural disaster, the chief election officer or county clerk prior to the day of election has the authority to determine whether to postpone or vote by absentee ballot in an election affected by the natural disaster, and that authorizes the governor on the day of election and thereafter to determine whether to postpone or vote by absentee ballot in an election affected by the natural disaster unless the governor is a candidate for office in that election.

The League of Women Voters strongly supports SB 243, which, as it states, adds clarity to how elections are to be handled at times of natural disaster. This bill clearly amends Section 11 - 92.3, Hawaii Revised Statutes so that key decision-makers can either postpone an election or require voters to vote by absentee ballot.

We urge you to pass this bill and thank you for the opportunity to submit testimony.