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COMMITTEE ON FINANCE

Thursday, February 28, 2019, 3:00 p.m., Room 308
SB 216 SD2 RELATING TO ELECTIONS

TESTIMONY

Janet Mason, Legislative Committee, League of Women Voters of Hawaii

Chair Luke, Vice-Chair Cullen and Committee Members:

The League of Women Voters of Hawaii strongly supports SB216 SD 2 that would require a mandatory recount of election votes when the margin of victory is less than one-half of one percent of the votes cast.

The public and the legislature already seem to realize this is a very important bill, which will make Hawaii compare more favorably with 43 states that already permit some form of recount. Twenty 20 states and the District of Columbia already provide for *mandatory* recounts like that proposed in this bill. All citizens need to be confident that in close elections there has been a fair examination of counting and other procedures. For a mandatory recount, the cost of the recount should be borne by taxpayers as required in this bill.

It should not be necessary for the Judiciary to intervene in close elections. The State's Chief Elections Officer can conduct the recount in the case of <u>Federal</u> or State elections and the County Clerk can conduct the recount in the case of single County-only elections. We are fortunate that these elections officials have protocols which should make it relatively easy to implement this bill, including using paper ballots, reconciliation of the number of ballots during the election, ballot security and independent observation of elections.

The measure sets standards for close votes recounts for either a) contests between individual candidates or b) tallies of ballot measures. Regarding the .5% trigger for a recount, this appears to compare favorably with an average of .4% used in other jurisdictions.[1] Having "less than 100 votes," is also a good standard.

We fully support allowing candidates or their representatives or parties challenging a ballot question to witness the recount and we suggest that the rules for the recount be disclosed to the public. As called for in the bill, close elections cannot be certified until after results of mandatory recounts are known. We also support a deadline of no later than 72 hours after election day for completion of a recount. Voters and candidates do have the right to prompt certification of an election.

Thank you for the opportunity to submit testimony.

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[1] Halvorseon, Mark, Platten, Jane, Reed, Sam and Ricthie, Mark. **Recount Principles and Best Practices**, February 2014, page 3.

Common Cause

Hawaii
Holding Power Accountable

Common Cause Hawaii • 307A Kamani St. • Honolulu, HI 96813 • 808.275.6275

To: The House Committee on Finance
From: Brodie Lockard, Board Member, Common Cause Hawaii
Date: Thursday, March 28, 2019, 3:00 pm

In support of SB 216 SD2

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

Common Cause Hawaii supports SB 216 SD2.

The 2018 Honolulu City Council election makes it very clear that an automatic recount in a very close election should be mandatory. A recount would avoid

- Voters' loss of confidence in the electoral system
- Acrimony among candidates and their supporters
- Time wasted by the office in question
- Inefficiency and confusion in the body of which the office is a part, e.g., the City Council
- Time and money wasted in the court system
- Time and money wasted on a special election

Please pass SB 216 SD2 and save all of the trouble caused by a contested election.

Thank you for the opportunity to testify.

Brodie Lockard
Board Member, Common Cause Hawaii

SB-216-SD-2
Submitted on: 3/25/2019 4:50:21 PM
Testimony for FIN on 3/28/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

SB-216-SD-2
Submitted on: 3/25/2019 8:11:42 PM
Testimony for FIN on 3/28/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson	Individual	Support	No

Comments:

As Chief Justice Richardson wrote in *Arakaki v. Hawaii*, "the right to vote is perhaps the most basic and fundamental of all the rights guaranteed by our democratic form of government. Implicit in that right is the right to have one's vote count and the right to have as nearly perfect an election proceeding as can be provided. The result we reach must be consistent with these principles." I strongly support a mandatory recount of election votes and ballot measures when the margin of victory for election contests or tabulation for ballot measures is equal to or less than one hundred or one-half of one per cent of the votes cast, whichever is greater.

TO: Members of the Committee on Finance

FROM: Natalie Iwasa
           808-395-3233

HEARING: 3 p.m. Thursday, March 28, 2019

SUBJECT: SB216, SD2 Mandatory Recount of Election Votes – **SUPPORT with Amendment**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB216, SD2, which would require mandatory recounts in close elections. I support automatic recounts.

One of the issues that was brought up in the recent Hawaii Supreme Court case regarding the election for councilmember of Honolulu City Council District 4 was machine error. The manufacturer indicated that **it is possible for ballot scans to read a box as marked in one scan and as unmarked in another.** (See attached page 24 from the Hawaii Supreme Court's January 25, 2019, decision to invalidate the election.)

Machines are not perfect. Given the potential for machine errors, it is important that in those cases of *extremely close* elections hand recounts be ordered. Therefore, **please amend this bill to include hand recounts in those instances.**

64. Thus, when a voter makes a "marginal mark" or a mark that does not fully comply with ballot instructions, the vote will generally be counted if 4.2% or more of the pixels within the option box are marked.

65. When an option box is marked so that the number of pixels marked falls within approximately seven pixels of 4.2%, it is possible for an option box to be read as marked in one scan but read as unmarked in a second scan (or vice-versa). Studies of past election data have shown that around 0.046% of option boxes fall into the pixel range where this variance can occur.[6]

66. On January 4, 2019, Waters filed a reply to the State Defendants' response to the December 28, 2018 order.

67. Waters argues that Chief Election Officer Nago and the Office of Elections' responses are misleading and reveal that the Hart system does not ensure the intent of the voter is honored in a close election without a hand count because it disregards ballots that are not "properly marked" regardless of

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[6]   Ballot Now can also apply an algorithm (the Ballot Now Overvote Reduction Algorithm, or "BNORA") to decrease this variance rate by eliminating false overvotes caused by pen rests, dirt, or other small marks on the ballot. The precinct counters used in polling places and at absentee walk-in locations do not use BNORA. Instead, as the voter is present in those locations, the precinct counters are equipped to return the ballot to the voter if the precinct counter detects an overvote (i.e., more voting positions have been marked in a contest than permitted) or a blank vote for a contest (i.e., no voting position in the contest has been marked).

SB-216-SD-2
Submitted on: 3/27/2019 10:07:17 AM
Testimony for FIN on 3/28/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments: