

**SB-2414-SD-1**

Submitted on: 3/10/2020 5:45:06 PM

Testimony for JUD on 3/12/2020 2:31:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Don Aweau           | Individual          | Support                   | No                        |

Comments:



**STATE OF HAWAII**  
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SCOTT T. NAGO  
CHIEF ELECTION OFFICER

TESTIMONY OF THE  
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS  
TO THE HOUSE COMMITTEE ON JUDICIARY  
ON SENATE BILL NO. 2414, SD 1  
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS

March 12, 2020

Chair Lee and members of the House Committee on Judiciary, thank you for the opportunity to provide comments regarding Senate Bill No. 2414, SD 1. This bill amends ballot requirements to display candidates for the office of Hawaiian affairs, board of trustees, by residency and non-residency requirements and to randomize the order of candidate names within those groupings.

We would accomplish the purpose of this measure by randomly selecting a letter of the alphabet for each district/precinct (ballot type) to be the first letter to organize the candidate names. For example, if the letter "L" was randomly selected by lot, candidates whose last name started with an "L" would be listed first and subsequent names will follow alphabetically (e.g., "L", "M", "N"). We would also note that the randomly selected letter would only be applied to the first letter of the last name and not modify additional alphabetizing.

We use the alphabetical organization to proof the ballots ensuring all candidates are properly listed. This also corresponds to the voting position to be counted by the voting and vote counting system.

Thank you for the opportunity to testify on Senate Bill No. 2414, SD 1.



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COMMITTEE ON JUDICIARY  
THURSDAY, March 12, 2020, 2:31 p.m., Room 325  
SB2414, SD1 RELATING TO THE OFFICE OF HAWAII AFFAIRS  
**TESTIMONY**

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

Chair Lee, Vice-Chair San Buenaventura and Committee Members:

**The League of Women Voters of Hawaii offers comments on SB2414,SD1** which would amend ballot requirements to display candidates for the office of Hawaiian Affairs, Board of Trustees, by residency and non- residency requirements and then randomize the order of candidate names within each grouping.

This bill recognizes that ballot design is important in producing a fair election; the main purpose of the bill is to address the well-known problem that coming first on the ballot increases a candidate's total vote count.<sup>i</sup> This phenomenon is well documented in political science and psychology research. Estimates of the typical average advantage are varied, from two to three percentage points, depending on whether major or minor party candidates are involved, whether it is a nonpartisan race or whether it is a primary or general election.<sup>ii</sup>

This is not trivial theoretical research. In 2000 in California, George W. Bush got nine percent more votes in the assembly districts where he was listed first than in the assembly districts where he was listed last. This occurred in California even though California was also rotating the name order across assembly districts. The nine percent advantage was present even when researchers considered the fact that certain districts tend to vote Democratic and others tend to vote Republican. The authors concluded that although name order cannot swing the votes of decided voters, in a close race like this one the winner can (and in this race was), decided by the order of candidates' names on the ballot.<sup>iii</sup>



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SB2414 SD1 appears to propose a simple rotation scheme to mitigate this positional problem, by randomly choosing a letter of the alphabet (the first letter of the person's last name) to organize the candidates' names. Candidates whose names started with this random letter would be listed first, and subsequent names would follow alphabetically by the last name of the remaining candidates (e.g. if "K" was randomly chosen as the first letter, "M,""N","O","P" etc. would be the subsequent order).

Choosing a letter of the alphabet would introduce a small amount of randomization, but not much.<sup>iv</sup> Using the procedure described in the bill wouldn't eliminate the problem – it would only lead to greater success for the candidate who was lucky enough to get selected first in the draw. I am also saying "simple" rotation because the bill does not propose to rotate the order of names across the State, as many states such as Ohio and California already do.

In an ideal world, you would want each possible ordering of candidates to be represented equally. To have a chance at being equally represented, you would have to choose the first order candidate at random, then choose the subsequent candidate at random from among the remaining names (excluding the first name), then the third candidate from among the rest of the names (excluding names 1 and 2, etc.). This is very different than the alphabet drawing approach in this bill.

For example, if there were 4 candidates for the at-large OHA trustees, there would be 24 possible orders of candidates.<sup>v</sup> Even with extremely careful printing and distribution by the Office of Elections and the proposed statement on the ballot that candidate names may not be listed in alphabetical order, it would be impractical and confuse voters to print and distribute 24 different ballot orderings. The Office of Elections currently makes sample ballots available for voters in advance of elections, and this "best practice" would be infeasible. With 24 different orderings how could voters feel assured they had received the correct ballot?

Coming up with a practical, fairer approach to ballot ordering is possible in Hawaii elections, when there are a limited number of candidates (e.g. the presidential candidates in a general election) for a relatively large number of districts. Ohio, for example, tries hard to optimize fairness and accountability by varying the name order across the state so that each possible permutation of names appears an equal number of times, and observers can inspect ballots on Election Day to be sure the rotation was done properly. Idaho,



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North Dakota, Wyoming and a few other states use versions of this system.<sup>vi</sup> But the larger the field of candidates the more difficult it is to use this approach.

The League concludes that the intent of the proposed bill is good, but the methodology and implementation are very imperfect. Under these circumstances, there is no compelling reason to spend the money required to implement the proposed complex ballot order system rather than using the current approach of ordering names alphabetically.

Thank you for the opportunity to submit testimony.

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<sup>i</sup> Krosnick, Jon A. and Joanne M. Miller, *The Public Opinion Quarterly*, Vol. 62, No. 3 (Autumn, 1998), pp. 291-330.

<sup>ii</sup> Ho, Daniel E. and Kosuke, Imai, "Estimating the Causal Effects of Ballot Order from a Randomized Natural Experiment: the California Alphabet Lottery, 1978-2002," *The Public Opinion Quarterly*, (2008) 72 (2): 216-240.

<sup>iii</sup> Jon A. Krosnik, Joanne M. Miller, and Michael P. Tichy, "An unrecognized need for ballot reform," in Ann N. Crigler, Marion R. Just, and Edward J. McCaffery (eds.), *Rethinking the Vote: The Politics and Prospects of American Election Reform* (New York: Oxford University Press, 2004), pp. 52, 53, 63

<sup>iv</sup> One problem is that the letters of the alphabet are not equally like to be used at the beginning of last names. I know only one person in Hawaii whose last names begins with X," but I know many people whose last names begin with "L."

<sup>v</sup> (4 factorial, i.e. 4x3x2x1)).

<sup>vi</sup> Krosnick, Jon A. "In the Voting Booth, Bias Starts at the Top," *New York Times*, November 4, 2006.

TESTIMONY OF ESTHER KIA'AINA IN SUPPORT OF SB 2414, SD1  
BEFORE THE HOUSE COMMITTEE ON JUDICIARY

March 12, 2020, 2:31 p.m., Conference Room 325

Chair Lee, Vice-Chair Buenaventura, and Committee Members:

My name is Esther Kia'aina and I am testifying in support of SB 2414, SD1, which amends ballot requirements to display candidates for the Board of Trustees, Office of Hawaiian Affairs, by residency and non-residency requirements and to randomize the order of candidate names within those groupings on individual ballots.

Given the sheer number of candidates that run for OHA elections and the costs for candidates to mount a state-wide campaign, random balloting would provide for a fairer opportunity for all candidates to be considered by the electorate.

I respectfully urge members to support the passage of SB 2414, SD1, out of your committee with an effective date upon enactment into law.

Respectfully,

Esther Kia'aina  
Kailua, Oahu