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TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON JUDICIARY
ON SENATE BILL NO. 2794
RELATING TO ELECTIONS

February 20, 2020

Chair Rhoads and members of the Senate Committee on Judiciary, thank you for the opportunity to testify in support of Senate Bill No. 2794. This bill makes housekeeping amendments to elections laws to clarify the administration of elections by mail.

While this bill makes a variety of housekeeping changes, we are taking this opportunity to highlight four matters that are addressed by this bill.

Precincts vs. Districts

The concept of a precinct is integral to the administration of elections and was previously defined as the "smallest political subdivision established by law." HRS § 11-1 (prior to Act 136, SLH 2019). This involves accounting for the intersecting boundaries associated with different offices or jurisdictions for administrative and reporting purposes.

Each of these precincts would have a unique ballot type of the contests and questions that voters in these areas were eligible to vote upon. These precincts typically were assigned a polling place at which voters could go to vote on election day. As a result of this, it is understandable how some may equate precinct with polling place.

The term "district" is ambiguous as it could be referring to a general district associated with an office, such as congressional district, state senatorial district, state representative district, county council district, and so on. Additionally,

depending on the context, it could be referring to a district of one or more of these previously mentioned districts, resulting in what was previously called a “precinct.”

Continue Mailing Ballot Packages to Voters Who Update Their Voter Registration Address No Later Than 7 Days Before the Date of the Election

Currently, HRS § 11-102(b) provides that “[t]he clerk shall continue mailing ballot packages to voters who update their voter registration address no later than fourteen days before the date of an election.” However, HRS § 11-101 provides that elections by mail are still to be administered in accordance with Title 2. The provisions of Title 2 provide various explicit circumstances in which updates to voter registration records are received less than fourteen days prior to an election and an associated ballot is mailed to the voter.

For example, HRS § 15-4(a) provides that a request for an absentee ballot may be made up to the seventh day prior to the election. The absentee form itself indicates that the clerk can update a voter’s record, including their address, on the basis of the absentee request, pursuant to their authority under HRS § 11-20 to update an applicant’s voter registration record. This seventh day requirement is based on federal law related to presidential elections. 52 USC § 10502(d) (Voting Rights Act of 1965).

Taking it further, replacement ballots in elections by mail are provided for in HRS § 11-105 and there is no deadline stated as to when the request can be made. The statute provides that upon receipt the clerk is to check the system and issue the replacement ballot package by mail or have available for pick up. Similarly, HRS § 15-5 regarding absentee ballots notes that within five days of an election a voter may request a replacement ballot if they have not received their ballot or they otherwise require one (e.g., they may have spoiled their initial ballot).

Additionally, HRS § 15D-9 relating to military and overseas voters requires a ballot to be mailed within two business days or as soon as allowable after the application arrives.

Against this backdrop, this bill replaces the fourteen-day requirement in HRS § 11-102(b) with seven days and explicitly authorizes the county clerks to continue to mail ballots, if the clerk believes there is sufficient time for the voter to receive and return their ballot, or as required by any other statute.

Voter Service Centers

Currently, HRS §§ 11-109 and 11-131 provide for a voter service center in each county that will be open during regular business hours statewide from the

tenth business day preceding the election going forward until the day of the election on which it will operate from 7:00 a.m. to 7:00 p.m. Additionally, voter service centers "may be established at additional locations within a county as may be designated by a clerk to service the particular needs of a county's voters."

This bill amends HRS § 11-109(b) to authorize election officials to have the ability to establish additional voter service centers, by permitting those additional voter service centers to operate during different days and times. For example, a lack of available personnel or a shortage of facilities that can be used for ten business days may prevent voters of a particular area in a county from being provided a voter service center. While these voters could still avail themselves of the main voter service center in their county or they could mail back the ballot they have been provided, we would prefer to ensure that election officials would have the ability to provide a closer place for voting for these individuals.

Allowing additional voter service centers to operate on election day or a similar shorter period opens up the availability of private facilities and state and county buildings that have previously been available to serve as locations for voting. Additionally, opening voter service centers for a limited period provides services such as in-person voting and same day registration that voters would not otherwise have readily available.

Validation of Ballots

This bill amends the timeline for the county clerk to determine the validity of ballots following the election. However, we would ask that the date not be amended to maximize the time allowed to count and release the post-election results in a timely manner ahead of the deadline to file a contest for cause. Specifically, for the primary election, the contest for cause deadline is the thirteenth day following the election.

Thank you for the opportunity to testify in support of Senate Bill No. 2794.

Statement Before The
SENATE COMMITTEE ON JUDICIARY
Thursday, February 20, 2020
9:15 AM
State Capitol, Conference Room 016

in consideration of
SB 2794
RELATING TO ELECTIONS.

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports SB 2794, with amendments, which make several housekeeping amendments to Hawaii's elections laws to clarify and improve the administration of elections by mail.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through voting modernization efforts. Act 136, Session Laws of Hawaii 2019, enacting statewide vote by mail starting in 2020, is an excellent way to improve civic engagement and voter turnout in Hawaii, but there are still avenues to strengthen this law.

One, Common Cause Hawaii supports the provision of SB 2794, which will provide a ballot summary and a voter verifiable paper audit trail (VVPAT). Every voting machine in Hawaii should generate a backup paper record of each vote. Even if voter databases and other equipment are not connected to the internet, national experts have opined said that it will still be hard to protect computer systems from cyber threats.

Two, Common Cause Hawaii suggests amending Section 17 of SB 2794 (referring to Section 11—107, Hawaii Revised Statutes (HRS)) to delete any references that ballots may be forwarded and also returned by electronic transmission, except pursuant to federal laws. The cybersecurity experts are particularly concerned that any internet connection could be vulnerable to hacking or other cyberattacks. See <https://slate.com/news-and-politics/2019/07/elections-hacking-russia-senate-intelligence-committee.html>. It is not prudent, in these fraught times, to have emailed ballots and be able to return them via email. Further, with emailed ballots, it is unclear how ballot summaries and VVPATs would detect any hacking, because ballot summaries and VVPATs would ordinarily be conducted after receipt of the emailed ballots, when the hacks have already occurred.

Three, Common Cause Hawaii suggests amendments to Section 19 of SB 2794 (referring to Section 11-109, HRS). Starting in 2020, all Hawaii elections will be by mail; there will no longer be polling places for voters to cast their ballots. Instead, there will be a limited number of Voter Service Centers (VSCs) for people to perform in-person polling functions. VSCs will receive personal delivery of mail-in ballots, accommodate voters with special needs, offer same day registration and voting, and provide other election services.

Currently, all counties, except Kauai, will have more than one (1) VSC and they will be open ten (10) business days prior to election days and their hours are from Monday through Saturday, 8:00 a.m. to 4:30 p.m., and on election days from 7:00 am – 7:00 pm.

Unfortunately, SB 2794 states that “[i]n each county, **a voter service center** shall be open” Page 22, lines 1-2 (emphasis added). This means a county shall only need to open one (1) VSC. This needs to be revised in SB 2794. One VSC per county is simply not enough.

Further, counties should **not** be able to open only one (1) VSC and then have the unilateral ability to decide to open (or not open) “additional centers having varying days or hours of operations” Page 22, lines 5-6. While Common Cause Hawaii truly appreciates the difficulty in administrating VSCs with uniform hours of operations statewide, SB 2794 provides too much latitude to the county clerks and opens the door to having only one (1) VSC in each county “be open from the tenth business day preceding the day of the election during regular business hours until the time provided in section 11—131 on the date of the election and at the same times statewide.” Page 22, lines 2-5. Any other VSC open in a county, under SB 2794 as presently written, may only be open for a very limited amount of time during inconvenient days and hours, rendering it a meaningless service to voters.

Additionally, county clerks should not have the unilateral ability to decide to open (or not open) places of deposit. Page 23, lines 9-11.

Common Cause Hawaii requests that SB 2794 provides that each county clerk must afford a minimum number of VSCs and places of deposit in a county based upon a good faith determination of the following factors, in addition to other pertinent considerations not referenced below:

Transportation

- Proximity to public transit
- Access to free parking
- Traffic patterns
- Proximity to communities with low rates of vehicle ownership
- Time and distance a voter must travel to reach a location

Geography

- Proximity to population centers
- Proximity to geographically isolated populations

Underrepresented Voters

- Proximity to language minority communities
- Proximity to low-income communities
- Proximity to voters with disabilities
- The need for alternate voting methods for voters with disabilities
- Proximity to communities with historically low vote by mail usage
- Proximity to communities of eligible voters that are not registered



See Best Practices: Siting Vote Centers and Drop Boxes, California Civic Engagement Project,
<https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/5d409b2d9ee54a0001483b84/1564515161760/CCEP+VCA+Brief+3+Companion+2-Pager+Siting.pdf>

Common Cause Hawaii recommends that clerks seek a hardship waiver from a third party, neutral body before varying a VSC's and a place of deposit's hours from being open during statewide times.

In summary, Common Cause Hawaii supports SB 2794 efforts to create ballot summaries and VVPATs. Common Cause Hawaii suggests amendments to SB 2794 relating to the establishment of VSCs and places of deposit and permitting electronic ballots.

Thank you for the opportunity to testify in support of SB 2794 with suggested amendments. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

