



**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  
ON SENATE BILL NO. 1289  
RELATING TO ELECTIONS  
February 16, 2021

Chair Rhoads and members of the Senate Committee on Judiciary, thank you for the opportunity to testify in support of Senate Bill No. 1289. This bill expands access of election watchers during elections to include all instances in which ballots are handled, prepared, tabulated, or reviewed; allows for more than one election watcher to be appointed by a political party; and allows for election watchers to be appointed by media organizations.

Our office supports this bill as it ensures transparency in the electoral process and public confidence in elections. However, we would note that parts of this bill relating to counting center operations should be amended in Chapter 16 rather than creating new statutes, and amending Chapter 11 as it relates to testing the electronic voting system, counting and certification of ballots, audit of vote tabulation, and recounts.

We would also note that Official Observers are recruited beginning in February of the election year for both the primary election and general election. We start by reaching out to the qualified political parties – asking them to provide names, availability, and indicate their County, as well as reaching out to groups and individuals who have served as Official Observers in previous elections. We ask Official Observers to sign up by May of the election year to prepare for training and testing of the voting and vote counting system. Test materials are disseminated approximately six weeks prior to the election to allow the Official Observers time to develop and mark a test pattern on their test ballots and a manual tally of their expected results, which they will reconcile with the results produced by the voting and vote counting system. The testing of the voting and

vote counting system begins approximately one month prior to the election for the equipment deployed to the voter service centers, and two weeks prior to the election for the equipment at the counting center before processing of voted ballots.

The processing of voted ballots at the counting center begins 10 days prior to the election. Official Observers are present when handling ballots at the counting center. This includes recounts, post-election count, and auditing the results. While we determine the dates and times of processing, Official Observers are scheduled based on their availability and space allowed by the facility. The recruitment and scheduling of Official Observers begins in February to ensure adequate coverage of these dates and times. If there are any vacant Official Observer positions, or the Official Observers recommend that more Official Observers should be present, we continue to recruit to fill those positions.

Thank you for the opportunity to testify in support of Senate Bill No. 1289.



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TESTIMONY OF REX QUIDILLA,  
ELECTIONS ADMINISTRATOR,  
CITY AND COUNTY OF HONOLULU  
TO THE SENATE COMMITTEE ON JUDICIARY  
ON SENATE BILL NO. 1289  
RELATING TO ELECTIONS

February 16, 2021

Chair Rhoads and Committee members:

Thank you for the opportunity to provide testimony on Senate Bill 1289.

The City recommends the bill be amended to utilize the Official Observer program HRS §16-45 – than HRS §11-77 which pertains to “watchers” – to capitalize on the existing statewide management structure that has proven successful in training, allocating and deploying knowledgeable observers to various election operations.

The Official Observer program was utilized to deploy observers in the 2020 Elections, covering various county operational areas noted in SB1289. From our 2020 experience, utilizing the Official Observer program also serves as a practical function – a single point of contact to coordinate when observers are needed to when county elections operations occur.

Acting as the “eyes and ears” of the public, Official Observers play an important part in ensuring the security and integrity of elections. That being said, management and structure is also needed to ensure the orderly administration of elections.

Thank you for the opportunity to testify on SB1289.



Statement Before The  
Tuesday, February 16, 2021  
9:16 AM  
Via Videoconference

in consideration of  
**SB 1289**  
**RELATING TO ELECTIONS.**

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

Common Cause Hawaii supports SB 1289, which (1) expands access of election watchers during elections to include all instances in which ballots are handled, prepared, tabulated, or reviewed, (2) allows for more than one election watcher to be appointed by a political party, and (3) allows for election watchers to be appointed by media organizations.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to strengthening democracy through modernizing our elections system and securing our elections. Common Cause Hawaii gives thanks to all the elections administrators, workers, and volunteers, who made the 2020 elections a tremendous success. The elections administrations, workers, and volunteers are the backbone of our democracy, and we owe them a huge debt of gratitude.

Our vote-by-mail elections process is a complex system involving coordination between federal government, State Office of Elections, and County Clerks. The public, via election watchers, knows about the coordination between federal, state, and local governments, and has insight into the process, and, therefore, confidence that our elections, conducted by elections administrators, are fairly, safely, and securely run. SB 1289 will improve upon the work of the elections administrators by expanding the role and number of election watchers for increased election security and public transparency.

Even with SB 1289, which will provide additional election watchers and expand their role, improved transparency must be provided by the elections administrators regarding how watchers, not specifically provided in statute, are selected. There are organizations that are not affiliated with media or political parties and are specifically invited to be elections watchers. Elections administrators should develop neutral guidelines to select those individuals, who want to be an elections watcher, provided that they are registered voters, undergo the required training, and there is a need.

Thank you for the opportunity to testify in support of SB 1289. If you have questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii



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## COMMITTEE ON JUDICIARY

TUESDAY, February 16, 2021, 9:16 a.m., Via Videoconference  
SB 1289 RELATING TO ELECTIONS

### TESTIMONY

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

Chair Rhoads, Vice-Chair Keohokalole and Committee Members:

**The League of Women Voters of Hawaii strongly supports SB1289, which expands access of election observers during elections to include all instances in which ballots are handled, prepared, tabulated, or reviewed. Allows for more than one election observer to be appointed by a political party. Allows for more than one election observer to be appointed by media organizations.**

The 2020 elections were widely acknowledged to be “the most secure in American history,”<sup>1</sup> due largely to extensive preparation and planning on the part of elections officials. Such plans made voters confident about voting and are essential to a well-functioning democracy.

While cybersecurity and reliable voter education are the main strategies for safeguarding elections, use of independent election observers is also a well-established approach with the same goal. These official observers monitor the election process objectively, to ensure that elections are fair and above-board, taking no positions on political candidates or issues. As independent observers, they also provide objective reporting on the electoral process, with a view toward improving the voting experience.

Where observers are used in the United States, lawmakers set public policy concerning observers, prohibiting observers from interfering in the election process and aiming to provide feedback to hard-working election officials during the election.<sup>2</sup>

Hawaii has used election observers for many years, and our laws provide for witnessing many stages of elections administration.<sup>3</sup> Left unaddressed here are certain critical activities such as transportation of

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<sup>1</sup>Members of the Election Infrastructure Government Council Executive Committee and other committees within the Department of Homeland Security released a statement on November 12, 2020 which was widely reported to the public. See for example: <https://www.fox5dc.com/news/2020-election-was-most-secure-in-american-history-according-to-cisa-committees>

<sup>2</sup> Nine states and the District of Columbia have explicit statutory provisions to allow nonpartisan observers, and nine states provide public access. Most other states provide access on an ad hoc basis. <https://www.ncsl.org/research/elections-and-campaigns/policies-for-election-observers.aspx>



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ballots from one location to another and signature verification on return ballot envelopes. We believe officially appointed observers should be permitted to observe **all** stages of the electoral process, as described in Section 2 of this measure.

Also important is the provision in the bill permitting observation of activities at all types of voting locations including voter service centers, mailing centers, and vehicles, also as described in this bill. These locations and activities should be routinely available to election observers and not available only upon request.

Clarifying the extent of activities and the location where observation can occur is necessary in part because certain of these functions and locations are administered by the State, while others are administered by County clerks. But for observation purposes, the voting process is a single process.

Extending observer functions as described in this bill implies using more observers than in the past, but we think the bill's requirements are possible and cost-effective, adding value to Hawaii's elections security.

It should be clear to the public who is responsible for recruiting, training, and overseeing official observers, as well as how the public might volunteer for such service. Since responsibility for elections administration is shared between the State and Counties, as described in Act 136, it makes sense to us that this bill be amended to provide that State officials appoint official observers for operations for which they are responsible and county officials appoint official observers for operations for which they are responsible. We request that the bill be amended accordingly.

We defer to election officials about whether submitting the names of observers 20 days before an election (as provided in this bill) provides sufficient time for observer training and observer testing of equipment before an election begins. To provide adequate service, it is important for observers to participate in official training.

We request that the words "official observer" be substituted for "watcher" throughout the bill reflecting this customary reference to nonpartisan observers rather than "watchers," which is associated with political parties, candidates, or groups with a declared interest in a particular ballot question. ***Hawaii's election observer program should not be limited to watchers appointed by such groups.***

In conclusion the League commends the election observer training and oversight provided in the 2020 elections at the Oahu Counting Center, but we believe it is now prudent to codify and restate voluntary "best practices" rather than leaving these up to election officials.

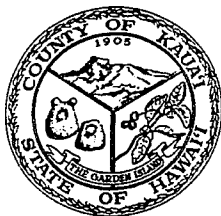
Thank you for the opportunity to submit testimony.

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<sup>3</sup> Observation already permitted includes pre-election day testing of voting equipment, observation of in-person voting at voter service centers, preparation of ballots for counting, post-election counting, post-election testing of voting equipment and (upon request) conducting a manual audit. See <https://www.ncsl.org/research/elections-and-campaigns/policies-for-election-observers.aspx>.

**JADE K. FOUNTAIN-TANIGAWA**  
County Clerk

Telephone: (808) 241-4800  
TTY: (808) 241-5116



**SCOTT K. SATO**  
Deputy County Clerk

Facsimile: (808) 241-6207  
E-mail: elections@kauai.gov

**ELECTIONS DIVISION**  
**OFFICE OF THE COUNTY CLERK**  
4386 RICE STREET, SUITE 101  
LĪHUʻE, KAUAʻI, HAWAII 96766-1819

February 16, 2021

**TESTIMONY OF JADE K. FOUNTAIN-TANIGAWA**  
**COUNTY CLERK, COUNTY OF KAUAI**  
**TO THE SENATE COMMITTEE ON JUDICIARY**  
**ON SENATE BILL NO. 1289**

**RELATING TO ELECTIONS**

Dear Chair Rhoads and Committee Members:

Thank you for the opportunity to submit comments on Senate Bill No. 1289. This Bill would expand access of election watchers during elections to include all instances in which ballots are handled, prepared, tabulated, or reviewed, allow for more than one election watcher to be appointed by a political party, and allow for election watchers to be appointed by media organizations.

Our office takes no position on this Bill but notes that the administration of elections is a tightly controlled process with extremely sensitive and immovable timelines. The operations described may occur multiple times throughout the day in the weeks immediately preceding each election.

We note that official observers appointed by political parties and the media pursuant to HRS § 16-45 are already authorized to oversee the testing and certification of the voting and ballot tabulation system; the counting, auditing, and securing of all counted ballots; and recounts. Also, HRS § 11-77 already authorizes watchers at any voter service center, and as a matter of office policy, we permit them to observe all operations occurring in the facility. Finally, we note that some operations described in the Bill involve accessing confidential voter information which is not public record.

We therefore respectfully request the following amendments to the Bill to address the aforementioned concerns and to clarify the administration of watchers in the described operations.

- 1) Operations are highly time sensitive so work must be permitted to continue uninterrupted to ensure that we adhere to the election timeline. Please clarify that any operation described in the Bill will be allowed to proceed as scheduled even if no watcher is available.

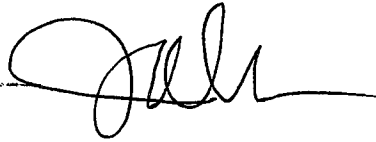
Testimony of Jade K. Fountain-Tanigawa, Kaua'i County Clerk  
Senate Bill 1289, Relating to Elections  
Senate Committee on Judiciary  
February, 16, 2021

2) Some processes require accessing confidential voter information, which is not a matter of public record. Please require watchers to execute a Non-disclosure Agreement or similar document in order to be authorized to observe any operation.

3) Due to space constraints and in anticipation of having to maintain social distancing and related guidelines established by the Centers for Disease Control and Prevention due to the on-going COVID-19 pandemic, please authorize the chief election officer or county clerk to determine the appropriate number of watchers allowed in election facilities.

4) Please specify that watchers shall serve without compensation.

Thank you for this opportunity to submit comments on Senate Bill No. 1289.

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', written over a horizontal line.

JADE K. FOUNTAIN-TANIGAWA  
County Clerk



**SB-1289**

Submitted on: 2/11/2021 3:49:29 PM

Testimony for JDC on 2/16/2021 9:16:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Oppose	No

Comments:

This will allow to much corruption during the Election. The 2020 Election was the most corrupt Election ever. The people Deman trasparance and fair Elections. We will not stand for any more corruption in Government!

**SB-1289**

Submitted on: 2/11/2021 4:42:59 PM

Testimony for JDC on 2/16/2021 9:16:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jim Hochberg	Individual	Support	No

Comments:

Dear Committee Members,

Please use this language from H.R. 2722 from the 116th Congress which passed the House in June 2019 (before any COVID issues) as part of the Securing America's Federal Elections (SAFE) Act:

**SEC. 102. PAPER BALLOT AND MANUAL COUNTING REQUIREMENTS.**

(a) In General.--Section 301(a)(2) of the Help America Vote Act of 2002 (52 U.S.C. 21081(a)(2)) is amended to read as follows:

(2) Paper ballot requirement.--

(A) Voter-verified paper ballots.--

(i) Paper ballot requirement.--

(I) The voting system shall require the use of an individual, durable, voter-verified paper ballot of the voter's vote that shall be marked and made available for inspection and verification by the voter before the voter's vote is cast and counted, and which shall be counted by hand or read by an optical character recognition device or other counting device. For purposes of this subclause, the term 'individual, durable, voter-verified paper ballot' means a paper ballot marked by the voter by hand or a paper ballot marked through the use of a non-tabulating ballot marking device or system, so long as the voter shall have the option to mark his or her ballot by hand. The paper ballot shall be printed or marked in such a way that vote selections, including all vote selections scanned by voting systems to tabulate votes, can be inspected and verified by the voter without training or instruction or audited by election officials without the aid of any machine or other equipment.

(II) The voting system shall provide the voter with an opportunity to correct any error on the paper ballot before the permanent voter-verified paper ballot is preserved in accordance with clause (ii).

(III) The voting system shall not preserve the voter-verified paper ballots in any manner that makes it possible, at any time after the ballot has been cast, to associate a voter with the record of the voter's vote without the voter's consent.

(ii) Preservation as official record.-- The individual, durable, voter-verified paper ballot used in accordance with clause (i) shall constitute the official ballot and shall be preserved and used as the official ballot for purposes of any recount or audit conducted with respect to any election for Federal office in which the voting system is used.

(iii) Manual counting requirements for recounts and audits.--

(I) Each paper ballot used pursuant to clause (i) shall be suitable for a manual audit, and shall be counted by hand in any recount or audit conducted with respect to any election for Federal office.

(II) In the event of any inconsistencies or irregularities between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable, voter-verified paper ballots used pursuant to clause (i), and subject to subparagraph (B), the individual, durable, voter-verified paper ballots shall be the true and correct record of the votes cast.

(iv) Application to all ballots.--The requirements of this subparagraph shall apply to all ballots cast in elections for Federal office, including ballots cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act and other absentee voters.

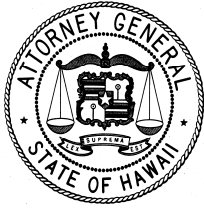
(B) Special rule for treatment of disputes where paper ballots have been shown to be compromised.--

(i) In general.--In the event that--

(I) there is any inconsistency between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable, voter-verified paper ballots used pursuant to subparagraph (A)(i) with respect to any election for Federal office; and

(II) it is demonstrated by clear and convincing evidence (as determined in accordance with the applicable standards in the jurisdiction involved) in any recount, audit, or contest of the result of the election that the paper ballots have been compromised (by damage or mischief or otherwise) and that a sufficient number of the ballots have been so compromised that the result of the election could be changed, the determination of the appropriate remedy with respect to the election shall be made in accordance with applicable State law, except that the electronic tally shall not be used as the exclusive basis for determining the official certified result.

(ii) Rule for consideration of ballots associated with each voting machine.-- For purposes of clause (i), only the paper ballots deemed compromised, if any, shall be considered in the calculation of whether or not the result of the election could be changed due to the compromised paper ballots.



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**  
S.B. NO. 1289, RELATING TO ELECTIONS.

**LATE**

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 16, 2021 **TIME:** 9:16 a.m.

**LOCATION:** State Capitol, Via Videoconference

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Lori N. Tanigawa,  
Deputy Attorney General, at 586-0618)

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of the bill are to (1) expand access of election watchers during elections to include all instances in which ballots are handled, prepared, tabulated, or reviewed; (2) allow for more than one election watcher to be appointed by a political party; and (3) allow for election watchers to be appointed by media organizations.

The Department understands that there have been occasions in which other third-party vendors, such as FedEx, have been utilized to transport ballots. The Department recommends that page 1, line 13, through page 2, line 2, of the bill be amended as follows:

**“§11- Transportation of ballots; watchers.** Watchers appointed pursuant to section 11-77 shall be permitted to be present in every vehicle used to transport ballots while ballots are in the vehicle, where practicable; provided that this section shall not apply to vehicles operated by ~~[the United States Post Office]~~ third-party vendors for the purpose of delivery or transporting ~~[mail]~~ ballots.”

The Department further notes that many of the functions being designated to election watchers are part of the statutory authority of “official observers” pursuant to section 16-45, HRS. Thank you for the opportunity to provide these comments.



**OFFICE OF THE COUNTY CLERK**

COUNTY OF MAUI  
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**LATE**

February 15, 2021

TO: The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Kathy L. Kaohu   
Maui County Clerk

SUBJECT: **HEARING OF FEBRUARY 16, 2021  
SB 1289, RELATING TO ELECTIONS**

Thank you for the opportunity to provide comments on SB1289 as it relates to Elections Transparency, Ballot Chain of Custody, and Ballot Watchers.

The purpose of this measure is to further increase election-related transparency to ballot related processes of Hawai'i's Elections By Mail System by expanding the access of election watchers during election periods to include all instances in which ballots are handled, prepared, issued, tabulated, and reviewed; and, allows for more than one election watcher to be appointed by a political party and media organizations.

While I am supportive of efforts to enhance election transparency, following are several vague areas related to implementation that are silent and of concern:

- 1.) The deletion of current language: [All Watchers shall serve without expense to the county.] (SECTION 2, Section 11-77 (a) )

This language is vague as to what the alternatives to "serving without expense" may be? If there is an intended compensation what would that cost be? And who would be covering that expense? The State and/or the Counties? It was my understanding that in the past the political parties provided their own internal stipends for their watchers.

- 2.) Allowing access to the State's third-party contracted mailing vendor location (SECTION 2, Section 11-77.(2) & 11)

During the period that ballots are under the custody of the State's third-party mailing-house contractor, is it proper to impose itself via the presence of watchers, into a facility that is responsible for not only ballots, but other pieces of sensitive and personal mail documents relative to its other customers like financial institutions? Perhaps the mail house could be considered exempt from access similar to the USPS exemption.

- 3.) Watcher list to be submitted no later than the twentieth day before any election.  
(SECTION 2. Section 11-77 (a) )

This is not included as a proposed amendment, however, there could be some thought in moving the required date back, as trainings and other functions mentioned in this proposal may commence prior to twenty days of the election.

- 4.) Media organizations (SECTION 2. 11-77 (b))

Please consider a definition for the term "media organization". Is this term inclusive of all media types? Print, radio, television, including bloggers, social media outlets, freelance journalist operating as an independent contractor? Will some type of credentialing process be required or conducted?

- 5.) Require Advance Training to be provided by the Office of Elections, or as delegated to the Counties, as a pre-requisite for both categories (political party and media organization) of election watcher appointees for the purpose of an introduction and overview of what functions the watchers will be exposed and/or assigned to.

- 6.) Watchers appointed pursuant to section 11-77 shall be permitted to be present during all procedures intended to determine the validity of ballots, including the verification of signatures. (SECTION 2. Section 11-77. SECTION 6(c) )

The language is vague in describing what is acceptable placement of a watcher in the case of a limited office space situation, such as at a Control Center. Is it intended, that the watcher will be placed within the workstation space of an election official while the official scans the voter registration database for a signature comparison? Or is placement within the shared public space of the lobby acceptable?

Recognizing that these questions may fall under the purview of Administrative Rules, they do resemble scenarios experienced during the past General election.

In closing, I would add that it is vital that elections officials be able to complete their work in a timely fashion, especially since some processes must happen in sequence of each other. For example, ballot packages need to be collected from places of deposit and from the post office prior to being sorted. A delay in any of those processes could cause a serious problem in the elections process overall. I respectfully ask that any changes to the law take these factors into account. Thank you for your time and consideration of these comments.

**LATE**

**SB-1289**

Submitted on: 2/15/2021 12:52:31 PM

Testimony for JDC on 2/16/2021 9:16:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dylan P. Armstrong	Individual	Support	No

Comments:

Aloha mai kakou, Senator Rhoads and Member of the Committee on Judiciary:

**SUBJECT: Senate Bill (SB) 1289**

I am in favor of this SB 1289, relating to elections; this measure would expand access for election watchers. The 2018 Honolulu City Council election demonstrated for us all how a lack of election transparency can lead to dramatic reversals and added costs for we taxpayers. To be proactive, we can find ways to encourage transparency like this measure.

Thank you for your consideration; again, please vote in favor.

Sincerely yours,  
Dylan P. Armstrong, Manoa, Oahu  
individual capacity