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SCPW-26-0000498

IN THE SUPREME COURT OF THE STATE OF HAWAII

RALPH S. CUSHNIE and TAMARA
MCKAY,

Petitioners,

vs.

SCOTT T. NAGO, in Official Capacity
as Chief Election Officer, State of
Hawai'i; and OFFICE OF ELECTIONS,
State of Hawai'i,

Respondents.

ORIGINAL PROCEEDING

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
PROPOSED *AMICUS CURIAE* BRIEF

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Pursuant to Hawai'i Rules of Appellate Procedure 27 and 28(g), Public First Law Center (Public First) respectfully moves this Court for leave to appear as *amicus curiae* and to file a brief, in the form attached.

Public First is a Hawai'i non-profit focused on solutions that promote transparency and responsiveness in government. It engages in a range of activities concerning public meetings, including legal advice and representation, legislative advocacy, and remedial litigation. Public First has a compelling interest in how this Court interprets the laws concerning public meetings, including the Sunshine Law, Hawai'i Revised Statutes (HRS) chapter 92.

No party has addressed an important legal principal underlying this dispute—pure scheduling discussions are *not* board business. Dkt. 14 at 1-2. Public First respectfully requests leave to file an *amicus curiae* brief in the attached form to address this issue.

Dated: Honolulu, Hawai'i, September 28, 2026

/s/ Benjamin M. Creps

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Attorneys for Movant Public First Law Center

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This case concerns an alleged failure of the Office of Elections to provide administrative support to facilitate meetings called by less than a majority of members of the Elections Commission.

If the Office of Elections needs a majority of members to request a meeting be scheduled, nothing in the Sunshine Law prohibits all the Elections Commission members from discussing among themselves when to schedule the meeting and the agenda.

Although the Sunshine Law generally restricts board members from discussing “board business”, it does not restrict board members from discussing purely “administrative” matters. Thus, any number of board members can discuss — outside a meeting — setting a date and time for a meeting and what topics to discuss.

Petitioners’ statement to the contrary, Dkt. 20 at 4, is mistaken.

1. A board may only discuss “board business” at a duly noticed public meeting; pure administrative matters do not constitute “board business”.

HRS § 92-2 defines “board business” as “specific matters over which a board has supervision, control, jurisdiction, or advisory power, that are actually pending before the board, or that can be reasonably anticipated to arise before the board in the foreseeable future.” A board may only discuss board business at a duly noticed public meeting, unless the discussion falls within a “permitted interaction” under HRS § 92-2.5. *E.g.*, OIP Op. No. 18-01 at 3-9 (board discussion of board business outside of meeting violates Sunshine Law unless a permitted interaction); OIP Op. No. 19-03 at 9-10 (violation of Sunshine Law for board chair to e-mail all members with informational status on matter to be discussed at upcoming meeting); OIP Opinion No. 26-02 at 2 (text message about board business improper).¹

By contrast, discussion of administrative matters, like scheduling and placing topics on an agenda, may be discussed by the entire board without holding a meeting. *E.g.*, OIP Op. No. 04-01 at 10 (“using email for routine, administrative matter such as scheduling purposes may be permissible under the Sunshine Law.”); OIP Opinion No.

¹ OIP opinions are binding precedent unless palpably erroneous. HRS § 92-12(d).

19-03 at 9 (routine scheduling matters such as availability for a meeting is not board business).

Petitioners state, “HRS § 92-2.5 prohibits obtaining the majority authorization Respondents require through serial communications outside a public meeting.” Dkt. 20 at 4. That is incorrect. Communications among board members outside of a meeting to discuss scheduling a meeting and the agenda are purely administrative discussions that will not violate the Sunshine Law.

Dated: Honolulu, Hawai‘i, _____

Respectfully submitted,

/s/_____

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