

Electronically Filed
Supreme Court
SCPW-26-0000498
05-OCT-2026
10:00 AM
Dkt. 49 ORD

SCPW-26-0000498

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

RALPH S. CUSHNIE and TAMARA MCKAY, Petitioners,

vs.

SCOTT T. NAGO, in official capacity as Chief Election Officer,
State of Hawai'i; OFFICE OF ELECTIONS, State of Hawai'i; and
ELECTIONS COMMISSION, State of Hawai'i, Respondents.

ORIGINAL PROCEEDING

ORDER

(By: McKenna, Acting C.J., Eddins, and Ginoza, JJ., and
Circuit Judge Cahill, in place of Devens, C.J., recused,
and Circuit Judge Medeiros, assigned by reason of vacancy)

On July 8, 2026, Petitioners Ralph S. Cushnie and Tamara McKay filed a petition for a writ of mandamus directed to Respondents Office of Elections and Scott T. Nago, in his official capacity as Chief Election Officer.

On July 17, 2026, the court entered an order to entertain the petition.

On July 24, 2026, Respondents' answer was filed.

On July 28, 2026, Petitioners' reply was filed.

Petitioners also filed supplemental submissions. Dkt. 18, 25, 29, 33.

On August 21, 2026, Petitioners filed a motion for expedited disposition. Dkt. 27.

On September 18, 2026, Petitioners filed a motion for determination of asserted privilege and, if necessary, limited in camera review. Dkt. 35.

Upon review of the record, the court concludes that the Elections Commission should be joined as a party, and that supplemental briefing, oral argument, and the views of the Office of Information Practices would assist the court.

It is ordered:

A. The Elections Commission is joined as a Respondent to this original proceeding, and the caption shall be amended to identify it as a party. The appellate clerk shall serve a copy of this order on the Elections Commission, by and through the Department of the Attorney General.

B. The Office of Information Practices is invited to participate as amicus curiae. The appellate clerk shall serve a copy of this order on the Office of Information Practices, by and through its Director, Carlotta Amerino, Esq.

C. Petitioners' August 21, 2026 motion for expedited disposition, Dkt. 27, is denied.

D. Petitioners' September 18, 2026 motion for determination of asserted privilege and, if necessary, limited in camera review, Dkt. 35, which the court construes as a request for leave to conduct discovery, is denied.

E. By October 13, 2026, Respondent Office of Elections shall file certified copies of the minutes of the Elections Commission meeting held on January 27, 2006.

F. By October 13, 2026, Respondent Office of Elections and Respondent Scott T. Nago in his capacity as Chief Election Officer shall file a supplemental memorandum, not exceeding ten pages, addressing:

(1) whether the Elections Commission may lawfully convene, and request staff support under Hawai'i Revised Statutes (HRS) § 11-1.5(b), when no chairperson has been selected under HRS § 11-7(a)(5), including (a) the source of the authority Respondents attribute to the chairperson to call meetings and set agendas, given that Hawai'i Administrative Rules (HAR) § 3-170-14 assigns the notice and agenda functions to the Elections Commission, and (b) how Respondents' position is reconciled with the Office of Elections' provision of staff support to the Commission from December 2004 through December 2007, when the Commission had no chairperson selected under HRS § 11-7(a)(5) and was presided over by interim and acting chairs;

(2) what members of the Elections Commission must do, absent a chairperson and consistent with HRS §§ 92-2.5 and 92-7, to make a request for staff support under HRS § 11-1.5(b) that Respondent Office of Elections would honor, including whether Respondent Office of Elections would provide staff support for a meeting upon a written request by at least five commissioners stating that they are available to attend a meeting on a specified date; and

(3) whether the election of a chairperson pro tem – a member chosen only to preside temporarily – constitutes the selection of a chairperson under HRS § 11-7(a)(5) subject to the two-thirds vote requirement of HRS § 11-7(b), or is instead an ordinary procedural act governed by HRS § 11-7(d) and the Commission's adopted parliamentary authority.

G. By October 13, 2026 the Elections Commission may file a statement of its position, not exceeding ten pages, on the petition and any of the issues identified above, and the Office of Information Practices may file an amicus curiae brief, not exceeding ten pages, addressing any of those issues.

H. This matter is set for oral argument on October 16, 2026 at 10:00 a.m. The Office of Information Practices is invited to participate as amicus curiae. The Office of Information Practices shall file a notice in the case by October

13, 2026 on whether they will accept the court's invitation to participate in oral argument.

DATED: Honolulu, Hawai'i, October 5, 2026.

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Peter T. Cahill

/s/ Dyan M. Medeiros

