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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

MOTION OF PUBLIC INTEREST LEGAL FOUNDATION
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF; PROPOSED *AMICUS CURIAE*
BRIEF; CERTIFICATE OF SERVICE

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MOTION OF PUBLIC INTEREST LEGAL FOUNDATION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF

Pursuant to Hawai‘i Rules of Appellate Procedure (HRAP) Rules 27 and 28(g), the Public Interest Legal Foundation (Foundation) respectfully moves this Court for leave to appear as amicus curiae and to file a brief in the form attached.

The Foundation is a non-partisan, public interest organization whose mission includes preserving the integrity of elections. It litigates and files amicus briefs in election law matters nationwide, and it has an interest in how this Court construes the statutory relationship between the Elections Commission and the Office of Elections. In the interest of full disclosure, Petitioner Ralph S. Cushnie is a co-plaintiff with the Foundation, represented by Foundation counsel, in *Public Interest Legal Foundation, Inc. v. Lutey*, No. 1:26-cv-00421-DKW-RT (D. Haw.). Petitioners appear *pro se* in this proceeding.

The parties have addressed the text of H.R.S. § 11-1.5(b), and Public First Law Center has addressed the Sunshine Law (Dkt. 43). The proposed brief addresses the statutory structure that 2004 Haw. Sess. Laws Act 57 created. Act 57 increased the operational autonomy of the Office of Elections, established the Elections Commission to oversee that office, and required the Office of Elections to provide staff support to the Commission. The brief explains how those provisions work together, and why the Commission’s administrative dependence on the Office of Elections should not be construed to give that office authority to decide whether the Commission may assemble.

The proposed brief introduces no new factual record. The Foundation seeks no discovery and does not request to participate in oral argument.

Because oral argument is set for October 16, 2026 (Dkt. 51), the Foundation respectfully requests that the Court grant leave and deem the proposed brief filed as of the date of the order granting this motion.

DATED: Honolulu, Hawai‘i, October 9, 2026.

Respectfully submitted,

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Respondents.

Original Proceeding

BRIEF OF *AMICUS CURIAE* PUBLIC INTEREST LEGAL FOUNDATION
IN SUPPORT OF PETITIONERS

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I. INTRODUCTION

Elections function efficiently and honestly when the government bodies tasked with overseeing elections and holding election officials accountable have the necessary resources and personnel and are operational.

The state of elections in Hawai‘i demands public accountability and possible reforms to its election processes. The Chief Election Officer keeps important election-related documents in the dark, away from the public, and processes are not in place to ensure honest and efficient elections. The Elections Commission has the authority and responsibility to hold the Chief Election Officer accountable and to solve these problems, but it is stymied from doing so.

Hawai‘i voters are the ones suffering.

The Elections Commission is statutorily tasked with oversight, investigation, evaluation, advice, and review of election administration: all activities necessary to ensure Hawai‘i elections operate efficiently, honestly, and fairly. Its responsibilities include oversight of the Office of Elections, which, in turn, provides staff support to the Elections Commission when requested. Unfortunately for Hawai‘i voters, the Office of Elections is not providing the administrative support the Elections Commission needs to organize a meeting and elect a Chair.

The Elections Commission is unable to fulfill its statutory responsibilities when it does not have the resources it needs, when it is not able to convene and perform its statutory duties.

To protect the Hawai‘i electorate and elections, Hawai‘i statutes must be construed as intended—to keep the Elections Commission fully staffed and with the necessary resources to fulfill its duties.

II. INTEREST OF AMICUS CURIAE

The Public Interest Legal Foundation (“Foundation”) is a non-partisan, public interest organization whose mission includes preserving election integrity across the country. The Foundation has sought to advance the public’s interest in having election processes in alignment with federal law and free from inefficiencies, dishonesty, and improper burdens. At the state level, this is best done by ensuring enforcement of state laws that relieve burdens and ensure efficient elections.

This case is of interest to the Foundation as it is concerned with protecting the sanctity and integrity of elections and ensuring the ability of those election governing bodies to function properly.

The Foundation has extensive experience in election law litigation and is involved in such cases throughout the nation. The Foundation has filed *amicus curiae* briefs in cases on various election-related issues and has been involved in cases determining the legality and constitutionality of state election practices. *See, e.g.*, Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellants, *Merrill v. Milligan*, 2022 U.S. S. Ct. Briefs LEXIS 1410 (2022); Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellants, *Rucho v. Common Cause*, 2019 U.S. S. Ct. Briefs LEXIS 539 (2019); Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellees, *Lichtenstein v. Hargett*, Case No. 22-5028 (6th Cir. 2022); Brief of Public Interest Legal Foundation as *Amicus Curiae* in Support of Appellants, *VoteAmerica v. Schwab*, 121 F.4th 822 (10th Cir. 2024).

No counsel for a party authored this brief in whole or part, and no person other than *amicus* or its counsel has made a monetary contribution intended to fund the preparation or submission of the brief.

III. ARGUMENT

Elections run better when the Elections Commission is operational, fully staffed, and has the resources it needs. Hawai‘i voters need the Elections Commission at full capacity because the Elections Commission provides accountability that protects Hawai‘i voters and Hawai‘i elections.

The issue before this Court is whether the Office of Elections failed or refused to provide staff support requested pursuant to H.R.S. § 11-1.5(b), and whether that failure prevented the Elections Commission from meeting to elect a chairperson. The statutory relationship between these bodies, and the Commission’s role in ensuring accountable election administration, should guide the Court’s resolution of that question.

The statutory framework preserves the Office of Elections’ operational autonomy while assigning oversight responsibilities to the Elections Commission. The Office’s obligation to provide staff support enables the Commission to assemble and exercise those responsibilities. Construing that obligation to permit lawful organization gives effect to both bodies’ statutory roles and ensures that Hawai‘i voters retain the benefit of public hearings, performance review, and informed oversight of election administration.

A. Hawai‘i Voters Depend on a Functioning Elections Commission for Effective Oversight of Election Administration.

A functioning Elections Commission provides the accountability necessary for honest and well-run elections that benefit Hawai‘i voters. Recent lawsuits and election-related events in Hawai‘i demonstrate the need for the reform and accountability the Elections Commission can effectuate—but only if it is able to convene and perform its statutory duties.

The Elections Commission’s statutory responsibilities include holding public hearings, investigating and holding hearings for receiving evidence of violations or complaints, adopting rules, employing a full-time Chief Election Officer, and holding the Chief Election Officer

accountable by conducting a performance evaluation within two months after the date a general election is certified, holding a public hearing on the performance of the Chief Election Officer, and advising the Chief Election Officer on matters relating to elections. H.R.S. § 11-7.5.

Now more than ever, Hawai‘i voters need the Elections Commission functioning and fulfilling those duties.

In 2023, the Foundation requested Hawai‘i’s statewide voter registration list (“SVRL”) from the Chief Election Officer, Scott Nago. *Pub. Int. Legal Found., Inc. v. Nago*, 174 F.4th 664, 669 (9th Cir. 2026), *petition for writ of certiorari docketed*, No. 26-98 (July 22, 2026). Instead of providing the SVRL, Nago’s office referred the Foundation to the county clerks and told the Foundation it must request the individual county voter registration lists from the County Elections Divisions instead. *Id.*

The Foundation, a public interest organization dedicated to protecting elections and assisting states in ensuring honest elections, should not have to go on a wild goose chase across the state to get the documents necessary to ensure the state maintains accurate and current voter rolls.

Even more recently, both the Foundation and Ralph Cushnie, an Elections Commissioner himself, sent requests to Honolulu, Hawai‘i, Maui, and Kaua‘i counties asking for various voter list maintenance documents under the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507(i)(1). *Pub. Int. Legal Found., Inc. v. Lutey*, No. 1:26-cv-00421, ECF No. 14, ¶ 17 (D. Haw. Sept. 2, 2026) (amended complaint). Maui and Kaua‘i refused to provide the documents to the Foundation and the Elections Commissioner, *id.* at ¶¶ 32, 38, and they were forced to sue.

The Chief Election Officer's lack of transparency precludes public accountability, and Hawai'i voters pay the price.

If the Elections Commission cannot fulfill its responsibility of holding the Chief Election Officer accountable, then there is effectively *no accountability* to Hawai'i voters that their voter rolls are accurate and current or that all the counties are maintaining the voter list maintenance documents needed to ensure proper elections.

Act 57 created the Elections Commission to oversee the Office of Elections and appoint the Chief Election Officer. 2004 Haw. Sess. Laws Act 57, §§ 1, 6, 9. When it cannot operate at full capacity and hold the Chief Election Officer accountable, Hawai'i voters suffer.

Elections run better when the Elections Commission can do its job. Hawai'i voters need the Elections Commission holding the Chief Election Officer accountable and protecting the sanctity and efficacy of Hawai'i elections. This can only happen if the Elections Commission is fully staffed and able to convene. Act 57 provides the framework for that to happen.

B. Act 57 Preserves the Office of Elections' Operational Autonomy While Mandating the Support Necessary for the Elections Commission to Function.

Hawai'i voters need the Elections Commission fully staffed and functioning so that elections run better and the bodies responsible for election administration are held accountable to their statutory obligations. When the provisions of Chapter 11 and Act 57 are given effect, the Office of Elections retains operational autonomy and the Elections Commission remains capable of assembling to exercise the oversight and statutory responsibilities Hawai'i voters rely on for efficient and honest elections.

Hawai'i courts "must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose." *Kanahele v. Maui Cnty. Council*, 130 Hawai'i 228, 244, 307 P.3d 1174, 1190 (2013) (quoting *Franks v. City & Cnty. of Honolulu*, 74 Haw. 328,

334–35, 843 P.2d 668, 671–72 (1993)). Those principles are particularly useful here because Act 57 established an interdependent institutional arrangement. It increased the Office of Elections’ operational autonomy; established an Elections Commission expressly “to oversee the office of elections” and assigned it substantive statutory responsibilities; and directed the Office of Elections to “provide staff support to the elections commission, as requested by the elections commission.” 2004 Haw. Sess. Laws Act 57, §§ 1–2, 6, 8.

Respondents believe the Office of Elections requires prior collective Elections Commission authorization before furnishing the administrative support necessary for the Elections Commission to assemble and exercise that collective authority. Not so. The Hawai‘i legislature could not have intended this circular arrangement. The administrative dependency the Elections Commission has on the Office of Elections was built into the statutory design, but that dependency is not itself a delegation of authority to the Office of Elections to determine whether the Elections Commission may assemble and perform its statutory obligations.

Nothing in Chapter 11 or Act 57 supports Respondents’ upside-down arrangement. Nor does H.R.S. § 11-1.5(b) condition the Office of Elections’ staff-support obligation upon a prior majority vote or a request through a sitting Chair. Instead, the legislature directed that the Office of Elections “shall provide staff support to the elections commission, as requested by the elections commission.” 2004 Haw. Sess. Laws Act 57, § 8. This does not mean that an individual Elections Commissioner may unilaterally exercise the Elections Commission’s substantive authority. It means that the Elections Commission’s collective-action requirement should not be treated as a condition precedent to obtaining the administrative support necessary for the Elections Commission to assemble and exercise its authority, particularly when Hawai‘i voters depend on the Elections Commission to fulfill its responsibilities and protect Hawai‘i elections.

This also does not mean that the Office of Elections loses autonomy. The Office of Elections retains the operational autonomy and election-administration responsibilities assigned to it by law. The Elections Commission remains capable of assembling to exercise the oversight and other statutory responsibilities assigned to it.

Read together, Act 57 and Chapter 11 require administrative support that enables the Elections Commission to assemble and fulfill its statutory responsibilities. That support obligation should not be construed to give the Office of Elections control over whether the Commission can organize and exercise oversight. A functioning Commission serves Hawai'i voters by promoting accountable election administration and providing a public forum for evaluating the Chief Election Officer's performance.

IV. **CONCLUSION**

Hawai'i voters need the Elections Commission at full operational capacity, so elections run better. The applicable law should not be construed to confer substantive authority to the Office of Elections to control whether the Elections Commission, the oversight body, may assemble and fulfill its statutory obligations.

Dated: Honolulu, Hawai'i, October 9, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on October 9, 2026, I served a true and correct copy of the foregoing Motion of Public Interest Legal Foundation for Leave to File Amicus Curiae Brief and the attached Proposed Amicus Curiae Brief on all parties of record through JEFS and on Petitioner Tamara McKay electronically, by consent, at the following email address:

RootedHeartLife@proton.me

DATED: Honolulu, Hawai‘i, October 9, 2026.

/s/ Robert J. Christensen
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