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IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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RALPH S. CUSHNIE and TAMARA McKAY,
Petitioners,

vs.

SCOTT T. NAGO, in official capacity as Chief Election Officer, State of Hawaiʻi; OFFICE OF ELECTIONS, State of Hawaiʻi; and ELECTIONS COMMISSION, State of Hawaiʻi
Respondents.

SCPW-26-0000498

ORIGINAL PROCEEDING

OCTOBER 30, 2026

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

OPINION OF THE COURT BY EDDINS, J.

I.

The body that oversees the office running Hawaiʻi's elections cannot meet. The Elections Commission (Commission) has had no chairperson since June 30, 2026.

Why not? It has not met. So it cannot select a chairperson. Some of its members tried to bring the Commission together, but the way was never clear to them.

This is no minor board. In 2004, the legislature created the Elections Commission to oversee the Office of Elections (Office), replacing an earlier review panel with a standing commission. It appoints the chief election officer who heads the Office and may remove that officer for cause. Hawai'i Revised Statutes (HRS) §§ 11-1.6 (2009 & Supp. 2026), 11-7.5 (Supp. 2015).

For all that authority, the Commission cannot meet. The snag is mechanical. The commissioners lack each other's phone numbers and email addresses. To find a date, they go through the Office. It relays messages between the members.

The Office also keeps the Commission's mailing list, the roster of people who have asked to be notified of its meetings. The Sunshine Law requires notice to them before any meeting. HRS § 92-7 (Supp. 2024).

To come together at all, the Commission depends on the very Office it supervises.

Two of the commissioners, Ralph Cushnie and Tamara McKay, petition for a writ of mandamus. They ask us to order the Office to give the Commission the staff support it needs to

notice and hold a meeting, so that it may take up the board business stalled for months.

The statute could not be plainer. The Office's job here is support. The Office "shall provide staff support to the elections commission, as requested by the elections commission." HRS § 11-1.5(b) (2009).

The Office refused. It owed no support, it maintained, unless a chairperson asked, or a majority of commissioners asked after a vote at a public meeting. But there was no chair to ask. And no way to vote, because there was no meeting to hold one.

After this court ordered more briefing, the Office of Elections' position shifted. It now says that five members could ask for support by jointly settling on a date outside a public meeting.

One problem underlies all of this. The very agency the Commission oversees decides whether the Commission may meet. Each condition the Office sets on a meeting foils the public business the legislature entrusted to the Commission.

A Commission kept from meeting shuts the public out as surely as one that meets secretly. Either way, the people see nothing.

We hold that the power to call the Commission together belongs to that body, chair or no chair.

The rule is narrow. When the Commission has no chairperson and no way to set a meeting, a single member may ask the Office for the staff support a meeting requires.

Once the members convene, their first act is to elect a chairperson pro tem.

We grant the writ.

II.

The Elections Commission is a nine-member body. HRS § 11-7(a) (2009). Eight members are appointed. They select the ninth as chairperson by a two-thirds vote. HRS § 11-7(a)(5), (b). That requirement applies to the chair alone. For all other business, the Commission "shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law." HRS § 11-7(d).

The Commission's duties are wide-ranging. It investigates and holds hearings on election violations and complaints. HRS § 11-7.5(2). After each general election, it evaluates the chief election officer's performance. HRS § 11-7.5(5). There's more, structurally. The legislature set the Commission apart from the rest of the executive branch, free to deal directly with the governor and the legislature and to manage its own affairs. HRS § 11-9 (2009).

The Office supports the Commission's work. The "office of elections shall provide staff support to the elections

commission, as requested by the elections commission." HRS § 11-1.5(b).

The Sunshine Law binds the Commission's meetings. HRS chapter 92, part I; see HRS §§ 92-2 (2012 & Supp. 2022), 92-3 (Supp. 2022). It defines a "meeting" as "the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision" on a matter within the board's authority. HRS § 92-2.

The commission is nine members, and chapter 11 is silent on its quorum. So a majority — five — makes a quorum, and the "concurrence of a majority" is "necessary to make any action of the board . . . valid[.]" HRS § 92-15 (2012).

Every step toward a meeting runs through the Office. The commissioners have no direct line to one another. They do not have each other's contact information. When a single commissioner emails the Office, the Office relays their messages to the other commissioners. It also keeps the list of those who receive notice of meetings.

The Commission has been here before. From its first meeting in December 2004 through late 2007, it assembled, deliberated, and acted under interim and acting chairs. The Office of Elections staffed those meetings, throughout.

The pattern began at the start. At its first meeting, on December 7, 2004, the Commission had no chairperson selected

under HRS § 11-7(a)(5). How could it? It had never met to select one.

It convened anyway. The Commission elected an interim chair by unanimous vote. Then it formed a committee to recommend a permanent one. The Office staffed that first meeting before any majority had asked, and none could have, with the Commission yet to meet.

Interim Chair Harold Masumoto presided through 2005. Acting Chair Susan Russell presided from 2006 through late 2007. Across those years the Commission appointed a chief election officer, set that officer's salary, amended its administrative rules, seated new members, appointed a secretary, and declared seat vacancies — the ordinary work of the body, conducted under acting leadership.

The question of who fills a chair vacancy came up in 2007. At the August 9, 2007 meeting, the Maui County Clerk asked whether the fifteen-day vacancy provision, HRS § 11-7(c), applied to the vacant chair. Acting Chair Russell answered that the Commission fills that vacancy. The deputy attorney general agreed.

The Commission filled the chair seat on November 8, 2007, when it voted to select William Marston as chairperson. Marston was sworn in on December 4, 2007.

Flash forward nearly twenty years. On February 4, 2026, the Commission unanimously adopted *Robert's Rules of Order*. Henry M. Robert III et al., *Robert's Rules of Order Newly Revised* (12th ed. 2020). In the Commission's words, *Robert's Rules* is the "parliamentary authority for conducting meetings, except where superseded by our Administrative Rules or Sunshine Law."

Robert's Rules § 47:11(3) addresses a body that convenes with neither its chairperson nor a vice-chairperson present. A member calls the meeting to order, and the members elect a chairperson pro tem to preside.

The present stalemate took shape in the summer of 2026. Chair Michael Curtis' term was set to end on June 30, 2026. At the June 10, 2026 meeting, the Commission tried to select his successor. It could not.

Unable to muster the six votes a permanent chairperson takes, the commissioners turned to electing a chairperson pro tem.

That split them too. Cushnie argued under *Robert's Rules* that five votes were enough. Commissioner Jeffrey Osterkamp insisted on two-thirds, so six. Some doubted whether a pro tem could be elected at all. The meeting adjourned to June 24.

The June 24 meeting never happened. Chair Curtis canceled it by email on June 15. He reasoned that the Commission's

makeup made six votes for a successor unrealistic and that new appointments expected July 1, 2026 would change the math.

The chair seat has sat empty since.

Petitioners tried to break the impasse. McKay, newly appointed on June 15, and Cushnie sought to notice a meeting for July 8, 2026. They asked the Office of Elections for staff support. The Office said no.

Petitioners also asked for the Commission's mailing list. The Office maintains that roster - members of the public who want notice when the Commission meets. The Sunshine Law requires notice to them. See HRS § 92-7(b), (e); Hawaiʻi Administrative Rules (HAR) § 3-170-14(b), (d).

Petitioners never received the Commission's mailing list.

On July 8, 2026, Petitioners filed for a writ of mandamus. On July 17, this court took up the petition. We directed the Office to answer two questions. Had it refused the staff support requested under HRS § 11-1.5(b)? And had any such refusal kept the Commission from meeting to select a chairperson?

The Office answered on July 24. No support would come, it argued, unless a chairperson or a Commission majority, after a public vote, requested it. Two members acting alone, it said, lacked the authority to convene the body.

To support its response, the Office submitted a declaration from Raymund de Vega, an Office employee who provides staff support to the Commission.

De Vega's declaration backed the Office's position. As he understood it, the Office provides support when the Commission authorizes it through a majority-vote action or a chairperson's request. Outside a meeting, he said, the Commission cannot vote, and so cannot act.

He also feared for himself. Staffing a meeting called by a single commissioner, he believed, might expose him to the State Ethics Code, see HRS § 84-13 (Supp. 2021), or make him complicit in a Sunshine Law violation, HRS § 92-13 (2012), if the meeting turned out to be unauthorized.

De Vega's declaration also attached a July 10 letter from the Office of Information Practices (OIP) to McKay. OIP advised that a board may notice its own meeting without the Office's support. It added that the Sunshine Law governs boards, and the Office is not one.

The record grew after that. Petitioners replied, moved for expedited disposition, and filed supplemental facts reporting that each renewed request met the same refusal.

The Commission still has not met.

On October 5, 2026, we joined the Elections Commission as a respondent, ordered a supplemental memorandum on the convening,

staffing, and pro tem questions, invited the OIP to appear as amicus, and set the matter for oral argument.

The Public First Law Center filed an amicus brief, and we granted the Public Interest Legal Foundation leave to file one. We heard oral argument on October 16, 2026.

III.

Two questions first, standing and mootness. Then the merits, who may convene a chairless Commission. Last, why the writ issues.

A. Standing

The Office challenges Cushnie and McKay's standing. Petitioners have it.

Standing in Hawaiʻi "is a prudential concern and not an issue of subject matter jurisdiction." Tax Found. of Haw. v. State, 144 Hawaiʻi 175, 190, 439 P.3d 127, 142 (2019). The "touchstone remains the needs of justice." Life of the Land v. Land Use Comm'n of State of Haw., 63 Haw. 166, 176, 623 P.2d 431, 441 (1981) (cleaned up).

To establish standing, Petitioners must allege a personal stake in the outcome. See id. at 172, 623 P.2d at 438. The stake must warrant invocation of the court's jurisdiction and justify exercise of its remedial powers. Id.

Cushnie and McKay have one. As duly appointed Elections Commissioners, they have a direct stake in whether the Office of

Elections provides the staff support that the Elections Commission needs. Without support, the Commission's work goes undone.

No staff support means no one to notice a meeting. No one to publish an agenda. No one to distribute instructions for public testimony. See HRS § 92-7(a). Without those statutory steps, a Commission meeting violates the Sunshine Law.

If the Commission can't meet, the commissioners cannot fulfill their statutory duties. See, e.g., HRS § 11-7.5 (the Elections Commission shall "[h]old public hearings," "[e]mploy . . . a full-time chief election officer," and "[c]onduct a performance evaluation of the chief election officer within two months after the date a general election is certified").

That's a personal stake. Commissioners are bound by law to carry out those statutory responsibilities. See id. And it is the Commission, not the Office, that answers for Sunshine Law compliance. See HRS §§ 92-11 (2012), 92-12(c) (Supp. 2024).

According to the Office, Petitioners lack standing without prior Commission approval. In its view, neither § 11-7 nor § 11-7.5 allows individual commissioners to initiate actions absent a majority vote.

We disagree.

Cushnie and McKay assert their own statutory rights. They do not purport to represent the Commission.

Petitioners appear before the court in their capacity as individual commissioners. HRS § 602-5 (2016) and Hawai'i Rules of Appellate Procedure Rule (HRAP) Rule 21(b) allow any person to seek mandamus relief against public officers. Invoking HRS § 11-1.5(b), Petitioners seek a narrow writ of mandamus to compel the Office of Elections to provide staff support to the Elections Commission.

Acting for themselves, Petitioners need no authorization from the Commission before seeking mandamus relief under HRS § 602-5(a)(3) and HRAP Rule 21(b).

The Office has a fallback. If Petitioners have standing to sue in their individual capacity as commissioners, then they have to go through a lawyer.

The Office relies on Oahu Plumbing & Sheet Metal, Ltd. v. Kona Constr., Inc. A corporation "cannot appear and represent itself either in proper person or by its officers, but can do so only by an attorney admitted to practice law." 60 Haw. 372, 374, 590 P.2d 570, 572 (1979).

That rule is about the unauthorized practice of law. An officer who appears for a corporation in a lawsuit provides legal services for it. See id. at 377, 590 P.2d at 574. The concern is representation of the entity. A person who appears

on their own behalf is another matter. In Alexander & Baldwin, LLC v. Armitage, a non-attorney barred from representing an unincorporated association could still appear "in person and properly represent[] himself pro se"; self-representation "did not implicate the same policy concerns." 151 Hawaiʻi 37, 55, 508 P.3d 832, 850 (2022).

No concern like that here. Cushnie and McKay appear on their own behalf, for no one else. HRS § 605-2 (2016) provides that "nothing in this chapter shall prevent any person . . . from appearing in person before any court, and there prosecuting or defending that person's . . . own cause, without the aid of legal counsel."

Hawaiʻi standing requirements allow Cushnie and McKay to bring this petition.

B. Mootness

The Office argues the petition is moot. It's not.

Petitioners seek relief for a meeting that has come and gone. And the date they asked us to act by has passed. So relief, the Office claims, is impossible.

A case persists so long as the plaintiff still suffers an injury that a favorable decision would redress. Civ. Beat L. Ctr. for the Pub. Int., Inc. v. City & Cnty. of Honolulu, 144 Hawaiʻi 466, 476, 445 P.3d 47, 57 (2019). If the "requested

remedies can be effectuated," the issues presented are still "live" for judicial resolution. Id. (cleaned up).

The harm continues. Petitioners have asked and asked again. The Commission still has not met. It cannot meet while the Office withholds staff support. Cushnie, McKay, and the other commissioners are prevented from performing their duties.

Harm to the Commission. And harm to the Hawaiʻi electorate. The controversy is live.

C. Who May Convene a Chairless Commission

Who may call a meeting of the Elections Commission when the chairperson's seat is vacant?

Each side needs the answer. Petitioners want staff support. The Office says it owes none.

With no chair, permanent or pro tem, Petitioners say a single member may set a meeting in motion. They tried.

The Office resisted. No meeting, it insisted, without a request from a chairperson, or the vote of five commissioners at a public meeting. Then, in its last round of briefing before oral argument, the Office pivoted. A joint request of five commissioners outside a meeting would now do.

So the question is before us. Petitioners did not pose it directly, but the Office's defense puts it there. Staff support was withheld on the ground that two commissioners may not ask for it. We cannot decide whether the Office owed the support

without deciding who may ask. The petition requests "such further relief as the Court deems just and proper to effectuate compliance with HRS § 11-1.5(b)." Whether the Office is right decides the petition.

1. Sunshine Law

The Sunshine Law governs how the Commission meets. And it shapes what the commissioners may do beforehand.

The Sunshine Law's command is openness, start to finish. Every meeting of a board is open to the public. HRS § 92-3. Boards must honor the law's spirit and purpose at all times. Kanahele v. Maui County Council, 130 Hawaiʻi 228, 248, 307 P.3d 1174, 1194 (2013).

The openness depends on a broad meaning of what a meeting is. HRS § 92-2 defines a "meeting" as "the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision" on a matter within the board's authority. That quorum is a majority of the Commission members – five, even with the chair's seat vacant. HRS § 92-15. The definition extends past formal deliberation to discussion. Two members may "discuss between themselves matters relating to board business" only while they remain fewer than a quorum and seek no commitment to vote. HRS § 92-2.5(a) (Supp. 2024).

Thus when a quorum discusses the Commission's business away from a noticed session, it has held a meeting. That meeting must be open. Kanahele, 130 Hawaiʻi at 253, 307 P.3d at 1199.

Board business includes matters pending before the Commission or reasonably expected to come before it. HRS § 92-2. Arranging a meeting is housekeeping.

A single member's request to the Office does not trigger the quorum rule. Why? A request to meet is not board business. The Commission does its business at a meeting.

One member asking for staff support is only an ask, a step to open the door. The Commission acts after the members enter.

The members may talk among themselves. Finding a date is mere coordination. A commissioner may poll fellow members about when they are free. Nothing is decided or advanced when members compare calendars.

The OIP has long placed scheduling on the logistics side of the line, and we agree. Office of Info. Practices, Open Meetings: Guide to "The Sunshine Law" for State and County Boards 25 (Aug. 2025), available at https://ags.hawaii.gov/oip/wp-content/blogs.dir/11/files/2025/08/2025-Sunshine-GUIDE-Final-accessible.pdf [https://perma.cc/87N2-6A87].

A date is only the start. Lawful notice must go out to those on the Commission's mailing list. HRS § 92-7(e). The

members may see to that notice themselves, as OIP advised, so long as chapter 92 is satisfied.

But giving notice requires the Commission's mailing list. And the Office has it. That list, those who signed up to be notified when the body meets, belongs to the Commission. The Commission is entitled to it, current and complete. HAR § 3-170-14(d).

A meeting takes more than a notice. It must be staffed. That is the administrative support the Office must provide the Commission. HRS § 11-1.5(b). The members may arrange a date on their own, but the list and the staffing come from the Office. Chairless, a single member may ask for that support, as addressed in the next part.

The first meeting is organizational. The commissioners elect a chairperson pro tem and set the agenda for the next meeting.

2. Whose Power to Convene

Who may call a meeting of the Commission and issue notice?

The Office says the chairperson or a majority of the members. Petitioners say a single member. The Sunshine Law has nothing to say. The question involves governance under chapter 11 and the Commission's rules.

An administrative body holds only the powers the legislature delegated. It has no general or common-law

authority to supply what the statutes omit. Preble v. Bd. of Trs. of Emps.' Ret. Sys. of State of Haw., 111 Hawaiʻi 498, 505, 143 P.3d 37, 44 (2006).

Two statutory provisions control the Commission's voting and internal operation. HRS § 11-7(d) entrusts the Commission's business to a majority vote of its membership and lets it set its own procedures. HRS § 11-7(a)(5) and (b) direct the Commission to select its chairperson by a two-thirds vote.

Chapter 11 says nothing about how the Commission convenes. See HRS §§ 11-7, 11-7.5. The administrative rules answer it. They assign those functions to the body. HAR § 3-170-14 provides that "[t]he elections commission shall give written public notice," "file the notice," "maintain a list of names and addresses," and "not change the agenda, once filed," without a two-thirds recorded vote. At every turn the rules make the Commission the actor.

On February 4, 2026, the Commission voted unanimously to designate *Robert's Rules of Order* as its parliamentary authority. Meetings were then held under those rules until the Commission's last meeting on June 10, 2026.

The Office now protests. *Robert's Rules* amounts to unlawful rulemaking, it charges, thus the Commission may not elect a pro tem chair to run a meeting.

Not so. Under HRS § 11-7(d), the Commission "shall establish its own procedures, except as may be provided by law." How it runs its meetings and conducts orderly business is one of those procedures. This internal decision is exempt from the Hawaiʻi Administrative Procedure Act's (HAPA) rulemaking requirement.

HAPA's rulemaking does not touch a regulation "concerning only the internal management of an agency and not affecting private rights of or procedures available to the public." HRS § 91-1 (Supp. 2017). A rule, by contrast, prescribes agency procedure of general or particular application and affects the public's rights in the abstract. Green Party of Haw. v. Nago, 138 Hawaiʻi 228, 237, 378 P.3d 944, 953 (2016); see Souza v. Nago, No. SCEC-26-0000598, 2026 WL 2654175, at *6 (Haw. Sep. 4, 2026), as amended (Sep. 11, 2026) (separate opinion of Eddins, J.) (method for breaking an election tie — names sealed in plastic eggs, dropped in a lau hala basket, shaken, and drawn — is a rule, because it established the agency's procedure for future ties and affected candidates and voters).

Robert's Rules orders the Commission's own meetings and affects no one else.

Ordinarily, the chairperson calls the Commission's meetings. Nothing here disturbs that practice.

The question is whether the chair is the only one who may do so. Under the Commission's rules, the chairperson has three express powers: removing a person who willfully disrupts a meeting, HAR § 3-170-11(a), limiting testimony, HAR § 3-170-11(c), and designating a member to preside as chair for a limited time, HAR § 3-170-2.

Reading HRS § 11-7(d) and HAR § 3-170-14 together, the Commission holds the power to convene. When the chair's seat sits vacant, a member may exercise that power.

The Commission has no vice-chairperson. With the chair's seat open, *Robert's Rules* takes it from there. A member calls the meeting to order. The members then elect a chairperson pro tem. § 47:11(3). A majority vote binds the Commission. HRS § 92-15; HRS § 11-7(d).

The Commission did this long before it adopted *Robert's Rules*. From 2004 through 2007, with no chairperson selected, it convened and organized itself.

The statute's architecture empowers the Elections Commission. Act 57 created the Commission to oversee the Office of Elections and gave it real control over that Office - the authority to appoint and remove the Chief Election Officer who runs it, and evaluate performance after each general election. 2004 Haw. Sess. Laws Act 57, § 6 at 289-91; see HRS §§ 11-1.6,

11-7.5. The same Act directed the Office to provide the Commission's staff support. HRS § 11-1.5(b).

The Office serves the Commission. That duty secures the Commission's independence, by the legislature's design.

A subordinate office does not set the terms of its governing body's meetings.

3. A Single Member May Set the Meeting in Motion

In the Office's view, a chairperson calls a meeting alone, no vote needed. Without a chairperson, it takes a five-person majority. Petitioners say one is enough.

The members cannot notice a meeting on their own. The Office holds the list and assists only on a chairperson's request or a Commission vote. A chairless commission that has not met is locked out of both – no chair to ask, no meeting for the vote. The meeting needs the Office, and the Office waits for the meeting. A catch-22.

The statute breaks the circle. HRS § 11-1.5(b) directs the Office to provide the Commission the staff support it requests. A request by the Commission activates the duty. The statute requires no prior vote.

When the chair seat is empty and the schedule stalls, a single member's request to convene is a request by the Commission. The Office must provide the support. Second-guessing the member oversteps its role.

The number is one for a reason. The commissioners contact one another through the Office. One commissioner's request to schedule a meeting obligates the Office to circulate the request to the other commissioners. And sets the Office's scheduling duties in motion.

Scheduling is not board business. So a commissioner may communicate with all members to learn when a quorum is free. See HRS § 92-5(b) (2012 & Supp. 2022). Finding a date is logistics. The Commission's business waits for the public meeting.

The agenda is different. Without a chair, the first meeting's business is organizational – electing a chairperson pro tem. The notice must say so. Once filed, the agenda may not be enlarged except by a two-thirds recorded vote and not at all to add an item of reasonably major importance affecting a significant number of people. HRS § 92-7(a), (d); HAR § 3-170-14(a), (c). Future agendas come from the chair or commission vote.

One loose end. The Commission's adoption of *Robert's Rules* might seem to require more than a single member's request. The argument goes like this. Petitioners invoke § 47:11(3). But that provision governs who calls a meeting to order once the members have assembled, not who sets a meeting in motion.

Setting a meeting off the regular schedule means a special meeting. Under *Robert's Rules*, a special meeting may be called only by someone the bylaws authorize. §§ 9:13, 9:14. The Commission's bylaws authorize no one. *Robert's Rules* thus leaves a single member without the power to call a meeting. That returns the question to HRS § 11-7(d), where the call requires five commissioners' request or assent.

The argument has a practical side. Five are needed for a quorum anyway. If the five will not meet, the trouble lies elsewhere.

Robert's Rules § 47:11(3) addresses calling a meeting to order. Once the members are assembled, a member calls them to order, and the body elects a chairperson pro tem. The power to request support does not come from *Robert's Rules* at all.

The Commission adopted *Robert's Rules* "for conducting meetings," subordinate to its administrative rules and the Sunshine Law. A parliamentary authority orders the business of a body once it has convened. It is silent on who asks the Office to notice a meeting to begin with. That duty comes from HRS § 11-1.5(b). *Robert's Rules* cannot add a precondition the legislature left out.

The same goes for HRS § 11-7(d). It sets the Commission's default — majority vote, self-made procedure — and yields to other law. HRS § 11-1.5(b) is that law, and it conditions the

duty on a request, not a vote. Read § 11-7(d) to require five before the Office must act, and the circle closes again. The members cannot act by majority until they meet. They cannot meet until the Office helps.

That leaves the practical point. Sure, five must appear to do business, but the members find one another only through the Office. So a five-assent rule makes the Office the only channel for those assents. If five will not appear at all, that is a different matter, on a different record. A single request cannot conjure a quorum. A member asks, the Office notices the meeting, and the members convene or they do not.

De Vega's ethics concern does not change the duty. A meeting convened as this opinion describes is authorized by law. Staffing such a meeting is proper under HRS § 84-13, and does not implicate HRS § 92-13. Supporting the Commission is the Office's job.

The Office undercuts itself. It says no single commissioner may set a meeting in motion, because five commissioners must request support from the Office before a meeting may be held. Yet it cites an OIP letter to McKay advising that the Commission may notice its own meeting without the Office's help. And it withholds the very mailing list that notice requires. The Office can't lock the door and call it open.

4. Electing a Chairperson Pro Tem

One question remains. Resolving it now spares the parties a second trip to this court. When the commissioners convene, their first item of business is electing a chairperson pro tem. The split from June 10 could return. Five votes or six?

The question is properly before us. Petitioners disclaim any request that we resolve governance matters. But the Office's defense turns on a governance premise. Only a selected chairperson, or a Commission vote, it contends, may call a meeting.

The defense pulls in what the petition tried to leave out. Civil Beat held that a board's misunderstanding of the Sunshine Law was a live controversy fit for decision. Members who "misconstrue the Sunshine Law and take action based on these misconceptions" undermine its intent and the public's "right to know." 144 Hawaiʻi 466, 476–77, 445 P.3d 47, 57–58 (2019); HRS § 92-1 (2012). A squabble that has already halted a commission with duties to perform is a live problem of the same order. See HRS § 11-7.5(5).

The text settles it. The two-thirds requirement of HRS § 11-7(b) applies to select "[t]he chairperson of the elections commission under subsection (a)(5)." That person is the ninth member, selected by the eight appointed under subsections (a)(1) through (4).

Electing a chairperson pro tem leaves the chair's seat open and the Commission's membership unchanged. It is internal procedure. The majority rule of HRS § 11-7(d) governs, together with the parliamentary authority the Commission adopted under that same subsection. *Robert's Rules* provides for the members to elect a chairperson pro tem. § 47:11(3).

The Commission's rules agree. They define "chairperson" to include a member whom a sitting chairperson designates "to serve in that capacity for a limited period of time or circumstances." HAR § 3-170-2. A sitting chair's designation alone makes a member chairperson for that limited period.

The rule covers a sitting chair's designee. Here, no chair exists to designate anyone. But it shows that the two-thirds requirement attaches - to the chairperson's seat itself. A majority will do for a temporary turn in the chair.

A chairperson pro tem is therefore elected by five, a majority of the Commission. HRS § 92-15; see HRS § 11-7(d). If only a bare quorum of five attends, all five must concur in the choice. HRS § 11-7(b)'s two-thirds vote is for selecting the permanent chairperson under HRS § 11-7(a)(5).

The Office makes one more argument about the chair's seat. The last chair's term expired, leaving the seat empty. Under HRS § 11-7(c), a vacancy unfilled for fifteen days passes to

"the chief justice of the supreme court." The chair, the Office concludes, is the chief justice's to fill.

The 2004 through 2007 practice? That was different, the Office counters, because the seat had never been filled then; thus no vacancy.

The Office misreads the statute. HRS § 11-7(c) fills a vacancy "in the same manner as the original appointment." The commissioners appoint the chair. The eight select the ninth by a two-thirds vote. HRS § 11-7(a)(5), (b). A chair vacancy, then, is up to the Commission.

There's another reason that the two-thirds vote of the members ends each chairless period. HRS § 11-7(c) directs the chief justice to fill a vacancy with "a person from the same county as the departing elections commission member." The eight appointed members are tied to a county. HRS § 11-7(a)(1)-(4). But the chairperson's seat lacks a geographic link. HRS § 11-7(a)(5), (b). The county-match rule collapses at the chair.

Vacancy, open seat, chairless stretch. Each ends in the same two-thirds vote of the commissioners. The Commission read it the same way at its inception. The chief justice never stepped in.

The chair is the Commission's to fill, and the Office must support that. We decide no more. What role HRS § 11-7(c) gives the chief justice in filling a vacancy on an elections body, and

whether the Hawaiʻi Constitution permits it, is a separation-of-powers question for a case that presents it.

D. Why the Writ Issues

Mandamus is an extraordinary remedy. It issues only where the petitioner shows a clear and indisputable right to the relief requested, and no other means to adequately redress the wrong. Womble Bond Dickinson (US) LLP v. Kim, 153 Hawaiʻi 307, 319, 537 P.3d 1154, 1166 (2023); see Miller v. Collins, 158 Hawaiʻi 435, 439, 593 P.3d 374, 378 (2026). To compel a public officer's duty, the duty must also be ministerial. Barnett v. Broderick, 84 Hawaiʻi 109, 111, 929 P.2d 1359, 1361 (1996).

Petitioners satisfy each condition.

The duty is ministerial. HRS § 11-1.5(b) commands that the Office "shall provide staff support . . . as requested by the elections commission." The verb is mandatory. The statute spells out who must act, what they must do, and what sets the duty off, with the precision of a ministerial act. See Salling v. Moon, 76 Hawaiʻi 273, 274 n.3, 874 P.2d 1098, 1099 n.3 (1994). Nothing is left to discretion.

No adequate alternative remedy was available. A natural candidate is the Sunshine Law's own enforcement action. HRS § 92-12(c). But that action is brought against a board for a prohibited act, and Petitioners allege none. The Office of Elections is not a board, and, as OIP advised, the Sunshine Law

does not directly apply to it. A suit under § 92-12(c) could do nothing to let the Commission meet.

A declaratory action comes closer. HRS § 632-1 (2016) was theoretically open. See Alakaʻi Na Keiki, Inc. v. Matayoshi, 127 Hawaiʻi 263, 284, 277 P.3d 988, 1009 (2012). But a suit over so narrow a matter would mean months more of litigation, if not longer – on top of the months this case has already run. Petitioners want a prompt, lawful meeting. For commissioners who seek only to convene their own board lawfully, a declaratory action is too slow and too roundabout a remedy. Mandamus within this court's original jurisdiction fits.

The right to relief is clear and indisputable. HRS § 11-1.5(b) directs the Office to provide staff support on the Commission's request. Petitioners made that request, over and over.

Cushnie and McKay asked the Office to notice a meeting and staff it. The Office withheld the support. With the duty plain, the request made, and the refusal undisputed, Petitioners' right to the Office's performance is settled.

The Office's view cannot unsettle it. A duty is clear, cramped reading or not. Otherwise, a public officer could defeat mandamus by disputing the duty. The Office's own position shifted as the case wore on, from demanding a vote at a

meeting to accepting an out-of-meeting agreement of five. What did not shift was the refusal.

The statute resolves it. The right is clear. The writ issues.

IV.

The petition for a writ of mandamus is granted.

The Elections Commission can meet. The law sees to it.

When the Commission is chairless, a single member may ask the Office of Elections for staff support. The Office must provide it.

When there is no chairperson, on the request of any member, the Office of Elections shall give the staff support the Commission needs to notice and hold a meeting. The Commission may then convene and take up electing a chairperson pro tem.

The Sunshine Law promises an open government. Its purpose is to protect "the people's right to know." HRS § 92-1(1). That promise begins with a board able to meet. The Commission may now do so, and when it does, the public will be watching.

A final word. Those who exercise power for the people may contemplate the Aloha Spirit. HRS § 5-7.5 (2009). Among its qualities are lōkahi, unity expressed with harmony, and ʻoluʻolu, agreeableness expressed with pleasantness.

The Office of Elections and the Elections Commission serve one public and one end. Elections the people can trust. That

trust is earned when the two work together in harmony, in the open.

Ralph S. Cushnie petitioner	/s/ Sabrina S. McKenna
	/s/ Todd W. Eddins
Tamara McKay petitioner	/s/ Lisa M. Ginoza
Aaron H. Schulaner and Nietzsche L. Tolan (Randall S. Nishiyama on the briefs) for respondents	/s/ Peter T. Cahill
	/s/ Dyan M. Medeiros