

IN THE SUPREME COURT OF THE STATE OF HAWAII

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Supreme Court
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KELLY T. KING, ROBERT KING,
DANIEL KALEOALOHA KANAHELE,
RACHEL CHRISTOPHER, WENDY
CHING, PATRICIA NUCKOLLS, LISA
SEIKAI DARCY, ROBIN KNOX, BRANDI
CORPUZ, ANN L. PITCAITHLEY,
BRIDGET A. MOWAT, KRISSTA
CALDWELL, CLARE H. APANA, CALEB
S. HARPER, LEONARD NAKOA III,
SUSAN CAMPBELL, PHYLLIS
ROBINSON, BONNIE NEWMAN, AMY J.
CHANG, KYLANNAH SPRADLIN,
JOCELYN CRUZ, DANIEL GRANTHAM,
ALIKA ATAY, WILLIAM R.
GREENLEAF, ASHFORD DELIMA, PAUL
DESLAURIERS, CONNIE JO HAMILTON,
GARY GREGG SAVAGE, COLLEEN
DELIMA, KAREN DORRANCE, and
MICHAEL ZARATE,

Plaintiffs-Contestants,

vs.

MOANA M. LUTEY, County Clerk, County
of Maui, and TOM COOK,

Defendants-Contestees.

DECLARATION OF
RICHELLE M. THOMSON

DECLARATION OF RICHELLE M. THOMSON

I, RICHELLE M. THOMSON, under penalty of law, do hereby declare as follows:

1. I have personal knowledge of the following facts and am competent to testify to them.
2. I am the Deputy County Clerk for the County of Maui.

3. As noted in my previous declaration, I am well-versed in the laws relating to elections, and in my previous roles as Deputy and First Deputy Corporation Counsel for the County of Maui, advised the Office of the County Clerk (“Clerk’s Office”) on election law and procedure.

4. To my knowledge and belief, Hawaii is one of only 10 states that conduct all mail-in elections on a statewide basis, with Hawaii’s first all-mail election being held in 2020.

5. I have reviewed the press release provided as Plaintiffs’ Exhibit 16 attached to their opposition to Moana M. Lutey’s Motion to Dismiss or Alternatively for Summary Judgment (“Clerk’s Motion”).

6. This press release was issued by the Clerk’s Office in response to one issued by Attorney Lance Collins. His press release contained the following statement from Plaintiff King: “[T]he clerk’s shortcomings should not be allowed to defeat the will of the voters.” Attorney Collins stated: “Despite the Supreme Court’s admonition to the Maui County Clerk two years ago regarding election shortcomings, it is deeply troubling to see Maui County with an even larger numbers of voters being deprived of their constitutional right to vote in this election.”

7. I was concerned that this language would foster public mistrust in the Clerk’s Office’s administration of elections. Plaintiffs’ counsel’s public release of this statement additionally caused me distress, and other Clerk’s Office staff communicated distress to me as well. As an office, we are already on alert for potential acts of harm directed at elections officials.

8. The Clerk is required by law and administrative rules to determine the validity of return identification envelopes.

9. The County Clerk and I ensure that the Clerk's Office follows the law and administrative rules. For signature verification process, we instruct the staff to follow the guidelines provided in HAR § 3-177-652, entitled "Return identification envelopes; signature validation," which at subsection (c)(1) describes that the issuance, transmittal, and return of a return identification envelope will be rebuttably presumed to be from the voter and any signature contained therein as that of the voter.

10. We instruct Clerk's Office staff to check the return identification envelopes for the following: 1) A signature on the affirmation statement; 2) Whether the signature corresponds with a reference signature using the provisions of HAR 3-177-652; and 3) Whether another condition exists that would not allow the counting of the contents of the return identification envelope.

11. Our staff were instructed to, and to my knowledge followed, the reviewing and difference standards set forth in HAR 3-177-652 in our review of return identification envelopes that were not initially validated by the Agilis signature device.

12. Plaintiffs incorrectly state: "This puts the burden on the clerk to have evidence invalidating envelopes as opposed to the burden on the voter to validate their envelope." This misstates the administrative rules. To wit, for those return envelopes not validated by the Agilis signature device and after staff's applying the presumption of validity that a return envelope is that of the voter, if a signature does not correspond with a reference image after both tier one and two review, which as stated follow the provisions of HAR §3-177-652, the presumption of validity is rebutted, and the Clerk is required to segregate these return identification envelopes and follow the provisions of HAR §3-177-654 relating to the correction of deficient return envelopes.

13. Plaintiffs included references to public records requests in its Motion for Summary Judgment (“Plaintiffs’ MSJ”). The Clerk’s Office timely responded to all of the public records requests, as detailed below.

14. In the days following the General Election, the Clerk’s Office received two UIPA public records requests from Plaintiff King and multiple requests from Michelle Del Rosario.

15. I requested that Plaintiff King and her staff direct all communications related to their requests through me.

16. Plaintiffs’ MSJ, which was filed on December 13, 2024, at 7:00 p.m., states: “As of this writing, the Clerk has not produced requested public records.”

17. However, the Clerk’s Office responded promptly to Plaintiff King’s request for voter data on November 12, 2024, which was provided to her on November 18, 2024, informing her it was ready to be picked up, which she did.

18. For other requests, the Clerk’s Office requested pre-payment due to their voluminous size, the difficulty and time involved with searching and segregating requested documents, along with balancing our regular work loads.

19. As to Ms. Del Rosario’s request for “all communications” from “any member of the Maui County Clerk’s office” from May 1 through November 15, 2024, and referenced in Plaintiffs’ Exhibit 6 to their Complaint, this records request includes all communication from the Clerk’s Legislative Division as well as the Elections Division and all nine Maui County Councilmembers, as well as the County Council’s general communications delivery recipient. Additionally, it involves the records of approximately 20 full time and temporary employees. It is unclear whether “members” also would implicate the records of dozens of paid volunteers who worked at the voter service centers and in other roles during the election. Either way, without

narrowing the request by topic or individual, we estimated the search time alone for this request was 450 hours. We would then need to ensure no communication was privileged or otherwise subject to withholding, and Corporation Counsel review time was estimated at 25 hours as described in the notice sent to Ms. Del Rosario.

20. As of the date of this writing, the Clerk's Office has not received any prepayment of fees or narrowing of requests, and is therefore not under an obligation to start searching for or producing documents in accordance with HAR sections 2-71-2, ("prepayment" means the fees that a requester must tender to the agency before the agency begins processing a request for records in accordance with section 2-71-19(b)), and 2-71-14 through 2-71-19.

DATED: Wailuku, Hawaii, December 20, 2024.


RICHELLE M. THOMSON