

Electronically Filed  
Supreme Court  
SCEC-24-0000794  
20-DEC-2024  
12:24 PM  
Dkt. 41 DEC

DECLARATION OF MOANA M. LUTEY

SCEC NO. 24-0000794

IN THE SUPREME COURT OF THE STATE OF HAWAII

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  
MOANA M. LUTEY

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I, MOANA M. LUTEY, 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 County Clerk for the County of Maui and have held this position since January 2, 2023.

3. Immediately prior to my appointment as County Clerk, I was the Corporation Counsel for the County of Maui. I served as the Corporation Counsel from 2019 – 2022 after serving as a Deputy Corporation Counsel from 1999 – 2019 and as a Deputy Prosecuting Attorney from 1995-1999. During my tenure with the Department of the Corporation Counsel, I provided legal assistance to the Office of the County Clerk related to elections when requested.

4. I intimately understand the impact the Lahaina wildfires had on our community because Lahaina is my hometown. Many of my family members lost their homes in the Lahaina wildfires and were forced to move to other parts of the island. Because of this, I was acutely aware of the need to obtain updated voter information countywide.

5. To obtain updated voter information, we conducted voter outreach that included partnering with the State Office of Elections. A letter and form to update was mailed to all registered voters in West Maui, with a return envelope addressed to my office. Radio ads and social media posts were also utilized.

6. Our office worked with the County of Maui's Real Property Tax Division to obtain the mailing addresses of all registered voters in the Lahaina burn zone. Once we received that information, we emailed, called and sent letters to all registered voters in the Lahaina burn zone.

7. In addition, we participated in various community events, such as job fairs, a disability fair, senior citizen meetings, Bingo Blast events, etc. to obtain updated voter information, educate voters about the voting process in our county, including basic information about when ballots would be mailed, how to track their ballots using BallotTrax, hours and

locations for Voter Service Centers, our contact information, etc. Our staff participated in these events to update as many voter records as possible.

8. Beginning in the fall of 2023, the State Office of Elections and my office coordinated a number of press releases, radio advertisements and social media posts requesting that voters impacted by the wildfires update their addresses.

9. Throughout the 2024 election cycle, for both the primary and general elections, I gave numerous media interviews to update voters on a number of matters, including deficient return identification envelopes. I believe that we received a significant amount of media attention because of the Lahaina wildfires. During most interviews, I would provide the number of return identification envelopes that still needed to be cured and asked voters to check their ballot status on BallotTrax. Because the interviews were given at different times throughout the election cycle, the number of deficient return identification envelopes would vary based on the number of return envelopes that had been cured.

10. Any reliance on numbers released during media interviews and press releases would only be accurate for that moment in time.

11. Accordingly, the press release referenced by Plaintiffs in their Exhibit 11 notes that that “as of November 7, 2024, the total number of ballots that remain with deficient conditions for the 2024 General Election is 1,069.” That number was accurate at that specific moment. Voters could, and did, cure their return envelopes on a continual basis all the way through November 13, 2024.

12. Similarly, the press release referenced by Plaintiffs in their Exhibit 12 notes that “. . .[a]s of 4:30 p.m. November 13, 2024, 298 Maui County voters cured deficiencies with ballot envelopes” was also a number provided at that specific time.

13. My office provided clear, accurate totals in its motion and declarations of Marielle Ramos at ¶¶ 31, 35-38 and Richelle Thomson at ¶¶ 30-39.

14. Following the filing of the Plaintiffs' Complaint, I reviewed Plaintiff's declarants' signatures, except for Declarant Mybeck who had no signature issues in the General Election and Ian Martins who never received a cure letter and voted in person. Mr. Martin's vote was accepted without issue.

15. After comparing declarants' signatures on their return envelopes to the reference signatures on file, I can definitively confirm that the signatures on the return envelopes bear no resemblance to the reference signatures on file.

16. I consider the return envelopes to be "voted materials" that are not subject to inspection until the end of the contest period or by order of the court. H.R.S. §11-97 (b). As a result, declarants' return envelopes have not been attached as exhibits. However, images of the envelopes and reference materials will be produced if ordered by the Court.

17. I understand HAR §3-177-652(c)(1), including the presumption that the voter was the person who signed the return envelope. My staff and I presumed that the voter signed the return envelope and considered various factors, such as age, when comparing reference signatures to signatures on return envelopes. This was a part of our training and a legal requirement.

18. The remedy to deficient return envelopes, according to HAR §3-177-654(a), was to notify voters of the deficiency with their return envelope. We notified voters using every option cited in HAR §3-177-654(a). Voters were notified by BallotTrax, email, if we had an email on file, by USPS first class mail to the address we mailed the ballot packet, that included an explanation of the problem and an Affidavit to Cure and a phone call if the return envelope

was not cured within a few days. In other words, we went beyond the legal requirements of choosing just one way of notifying voters. All of our notifications to voters was done within a twenty-four period of us discovering deficient envelopes.

19. Staff visually compared signatures on return envelopes that were not validated by AGILIS. In cases where the reference signature did not match the return envelope signature, and after considering the mandates contained in Hawaii Administrative Rule 3-177-652 (c), the return envelope would be designated as “non-matching” and reviewed by the Election Administrator, or her assistant, for a final determination on validity.

20. If the Election Administrator, or her assistant, determined that the envelope signature matched the reference signature, the return envelope would be considered valid and placed in a locked box for transmission to the Counting Center.

21. If the Election Administrator, or her assistant, determined that the return envelope signature did not match the reference signature, the return envelope would be considered invalid.

22. Voters do not have access to the database containing reference signatures.

23. All return envelopes are secured, transferred to the Counting Center run by the State Office of Elections, and opened by a ballot opening team.

24. All 939 return envelopes that were deemed “invalid” and, therefore, unable to be counted, are maintained and stored in a secured location in the Clerk’s Office. None have been tampered with or destroyed.

DATED: Wailuku, Hawaii, December 20, 2024.

  
MOANA M. LUTEY