



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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CHIEF ELECTION OFFICER

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Logan Churchwell, Research Director
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Alexandria, Virginia 22314

Dear Mr. Churchwell:

This is written in response to your letter dated May 17, 2023, in which you seek a copy of what you refer to as the voter file.

As you note in your letter, you have previously been referred to the counties regarding your request. Despite this, we understand you take issue with being referred to the counties and believe this referral essentially constitutes a violation of the National Voter Registration Act of 1993 (NVRA). We respectfully disagree and believe that you should submit your request to the county clerks.

Your letter cites a variety of cases that you believe supports your position. However, we are not aware of any authority applicable to the Ninth Circuit that would mandate your interpretation of the law that it is improper to refer you to the counties in relation to your request.

National Voter Registration Act of 1993

As a starting point, you reference subsection (i) of 52 USC § 20507. In looking at the complete text of 52 USC § 20507, which corresponds to Section 8 of the NVRA, this section lays out a variety of requirements concerning “the administration of voter registration for elections for Federal office.” *Id.* It is our understanding that nothing in 52 USC § 20507 prohibits a state from continuing to provide that the county clerks will perform the associated functions of a registrar, including list maintenance. Likewise, there appears to be nothing in the NVRA that prevents other federal laws from acknowledging that this is permitted.

In our state, the duties of the registrar are handled by the four county clerks, and this would naturally include requests under state law, such as HRS § 11-97, and separately federal law, such as 52 USC § 20507(i). A review of 52 USC § 20507 reflects over twenty times an acknowledgement of the concept of a “registrar” or “registrar’s jurisdiction” and the associated administration of voter registration through its use of those terms.

We expand on this topic below, as your letter appears indirectly to equate the requirement of a computerized statewide voter registration list at the state level under the Help America Vote Act of 2002 (HAVA) with the Chief Election Officer being functionally the registrar of a single registrar jurisdiction encompassing the entire state. This apparently leads to your conclusion that the Chief Election Officer can provide access to the voter registration information of the entire state under 52 USC § 20507(i).

The Chief Election Officer is not a registrar and does not have a “registrar’s jurisdiction” that encompasses the whole state. The NVRA describes a “registrar’s jurisdiction” as essentially a unit of government or office that covers a specific geographic area and performs “all functions of a voting registrar.”

For example, it refers to “an incorporated city, town, borough, or other form of municipality.” 52 USC § 20507(j)(1). In Hawaii, there are no such incorporated municipalities other than Honolulu, which is incorporated as both a city and a county (i.e., City & County of Honolulu). Next, the statute refers to a registrar’s jurisdiction in which “voter registration is maintained by a county, parish or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government.” 52 USC § 20507(j)(2). This equates to the County of Hawaii, County of Maui, County of Kauai, and the City and County of Honolulu. Finally, the statute references the possibility of a registrar’s jurisdiction meaning “if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government **by an office that performs all of the functions of a voting registrar**, the geographic areas of the consolidated municipalities or other geographic units.” 52 USC § 20507(j) (emphasis added).

As previously noted, the county clerks perform the functions of a voting registrar for their respective jurisdictions. HRS §§ 11-11 to 11-26. As such, the Chief Election Officer does not “perform[] all of the functions of a voting registrar” and our state cannot be considered a single registrar’s jurisdiction for purposes of the NVRA, including the disclosure of “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 USC § 20507(i).

In terms of background, our state constitution provides that “[t]he legislature shall provide for the registration of voters and for absentee voting and shall prescribe the method of voting at all elections.” Article II, Section 4. A review of Chapter 11, Hawaii Revised Statutes, reflects Part II concerning registration. HRS §§ 11-11 to 11-26. This part contains the traditional functions of a voter registrar and associates them with the county clerk.

Below is the text of some of these statutes, HRS §§ 11-11, 11-14, and 11-17, that reference the county clerks and their role in terms of the general county register.

§11-11 Registration. A person who registers as required by law shall be entitled to vote at any election provided that the person shall have attained the age of eighteen at the time of that election. **The county clerk shall be responsible for voter registration in the respective counties and the keeping of the general register and precinct lists within the county.**

Emphasis added.

§11-14 General county register; restrictions in use. (a) The clerk of each county shall register all the voters in the clerk's county in the general county register. The register shall contain the name and address of each voter unless the voter's address is deemed confidential pursuant to section 11-14.5. Additional information required by section 11-15 may be included in the register at the discretion of the clerk. **The general county register shall be available for election or government purposes only in accordance with section 11-97.**

(b) The affidavits filed under section 11-15 and the general county register may be copied, and the clerk may release voter lists or data; provided that information furnished in the affidavits shall be copied or released for election or government purposes only in accordance with section 11-97.

(c) Voter registration information that is collected and maintained by the clerk of each county may be transmitted to a central file for the purpose of correlating registration data to prevent or detect duplicate voter registrations and for the compilation of election reports.

(d) Unless authorized under section 11-97, it shall be unlawful for any person to use, print, publish, or distribute any voter registration information acquired directly or indirectly from the voter registration affidavits or any list prepared therefrom. Any person who is designated by the clerk to register

voters and collect voter registration affidavits shall be advised of the provisions of this subsection. Any person who violates this subsection shall be guilty of a misdemeanor.

Emphasis added.

§11-17 Removal of names from register, when; reregistration. (a) The clerk, after every general election, shall remove the names of registered voters who were identified as having an outdated or undeliverable address who did not vote in all elections held during the two previous federal election cycles with the exception of anyone who preregistered pursuant to section 11-12(b). For this purpose, "vote" means the depositing of the ballot in the ballot box regardless of whether the ballot is blank or later rejected for any reason. In the case of voting machines, "vote" means the voter has activated the proper mechanism and fed the ballot into the machine. In the case of an election by mail pursuant to part VIIA, "vote" means the voter has returned the ballot to the chief election officer or clerk by the United States Postal Service, by personal delivery of the ballot to a place of deposit or voter service center, or by electronic transmission under certain circumstances pursuant to part VIIA.

(b) Before removal as noted in subsection (a), the clerk shall identify registered voter names from a postal database containing outdated or undeliverable addresses or by mailing a notice or other correspondence, properly addressed, and receiving a postal notation that the notice or other correspondence was not deliverable.

(c) Upon identification of names of registered voters as prescribed in subsection (b), the clerk shall conduct any notification mailings as required by applicable federal law.

(d) The clerk may also remove the name of any registered voter, if the voter so desires and properly notifies the clerk pursuant to the procedures established by the chief election officer.

(e) Any person whose name has been removed from the register may have that person's name restored in the register by presenting oneself to the clerk and reregistering pursuant to section 11-15, or by making application by mail or otherwise pursuant to procedures established by the clerk. The clerk shall require satisfactory evidence to establish the identity of the applicant. The names of all those persons shall be reentered in the register.

Emphases added.

Finally, as HRS § 11-14 references HRS § 11-97 in terms of requests of for the general county register the text of that statute is also provided.

§11-97 Records open to inspection. (a) A voter's full name, district/precinct designation, and voter status shall be public; but all other personal information, as provided on the voter registration affidavit, shall be confidential except for election or government purposes in accordance with rules adopted by the chief election officer, pursuant to chapter 91.

(b) Voted materials shall not be open to the inspection of any voter until after the end of the contest period unless opened upon order of the court.

Consistent with the above, without getting into the merits of your request, you were properly referred to the county clerks to address your request. Specifically, the county clerks would appear to be able to address whether your request for what you refer to as a voter file was in fact for a “record[] concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” under 52 USC § 20507(i), unless they determined it could simply be granted under HRS § 11-97.

HRS § 11-97

Your letter appears to equate a request not meeting the requirements of HRS § 11-97 as likewise being refused under 52 USC § 20507(i). However, that is not necessarily the case. Likewise, while a requester may claim their request is covered by 52 USC § 20507(i), it may not actually be applicable and the request could possibly be granted under HRS § 11-97. In the end, what is sought is relevant in determining which law may be applicable. In your case, you are requesting what you refer to as the voter file.

As a starting point, “[a] voter's full name, district/precinct designation, and voter status shall be public.” HRS § 11-97. This type of information is readily available from the county clerks. However, certain personal information is limited to those with an election or government purpose (i.e., “but all other personal information, as provided on the voter registration affidavit, shall be confidential except for election or government purposes in accordance with rules adopted by the chief election officer, pursuant to chapter 91”). Id.

Your letter focuses on the concept of an “election purpose” and draws the conclusion that a request to the county clerks would be rejected. You equate “election purpose” as being limited to “engag[ing] in **candidate** election-related activities,” something that you state your non-profit status prohibits you from

doing. Emphasis added. However, one of the administrative rules for HRS § 11-97, HAR § 3-177-60, does not limit an election purpose to activities related to a candidate.

§3-177-160 Voter registration information; prohibited uses. (a) Voter registration forms, the general county register, the statewide voter registration system, or any lists or data prepared therefrom shall be released or used for election or government purposes only, unless otherwise provided by law.

(b) Notwithstanding subsection (a), a voter's full name, district/precinct designation, and voter status is public information available for any purpose.

(c) Voter registration information that is not public under subsection (b), excluding the voter's full or last four digits of the social security number, driver license number, state identification card number, electronic mail address, telephone number, or date of birth, may, as determined by the clerk, be made available for an election purpose (e.g., the clerk may not disclose information they determine would interfere with the operations of elections or unduly compromise the privacy of voters). At a minimum, unless otherwise prohibited by law, the residence address and mailing address will be provided.

(d) Voter registration information that is not public under subsection (b) may be made available to federal, state or county government agencies for government purposes.

(e) The following constitutes a non-exhaustive list of election or government purposes, unless otherwise provided by law:

- (1) To support or oppose any candidate or incumbent for partisan or nonpartisan office;**
- (2) To support or oppose any proposed or existing ballot measure, proposition, or issue;**
- (3) To support or encourage voter registration or the voting process;**
- (4) To authorized government officials who, by the nature of their official responsibilities, must have access to the voter registration information for legitimate government purposes within the scope of their official duties;**
- (5) To challenge the right of any person to vote or to seek public office; or**
- (6) To satisfy the requirements of HRS §11-62 or HRS §11-113.**
- (f) Voter registration information that is not public under

subsection (b) may not be used for any commercial purpose, such as mailing or delivering an advertisement or offer for any property, establishment, organization, product or service, or for the purpose of mailing or delivering any solicitation for money, services, or anything of value; provided that service bureaus may charge a fee for their services involving the use or disclosure of voter registration information that is not public under subsection (b) so long as the underlying election or government purpose is verified.

(g) A request for voter registration information that is not public under subsection (b) shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

- (1) A sworn certification by self-subscribing oath setting forth the election or government purpose for which the information is sought;
- (2) A sworn certification by self-subscribing oath establishing that the information will only be used for election or government purposes;
- (3) Where the requesting party is a government agency seeking the voter's full or last four digits of the social security number, driver license number, state identification card number, electronic mail address, telephone number, or date of birth, a statement setting forth reasons why such information is required; and
- (4) A sworn certification by self-subscribing oath that the information will not be sold, released, distributed, or used in any way for commercial purposes, provided that service bureaus may charge a fee for their services in accordance with subsection (f).

Emphasis added.

Help America Vote Act of 2002

As previously noted, it appears it is your contention that a provision of HAVA does not permit the traditional responsibilities of the registrar to remain with the county clerks, such as addressing requests for records.

Specifically, 52 USC § 21083(a)(1)(A) (Section 303(a) of HAVA) provides for “a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level.” This same subsection notes that local election officials will have immediate

electronic access to the system and will enter voter registration information into it. 52 USC §§ 21083(a)(1)(A)(v) & (vi).

As for list maintenance responsibilities under the NVRA, HAVA clearly acknowledges that “[t]he appropriate State or **local election official** shall perform list maintenance with respect to the computerized list.” 52 USC § 21083(a)(1)(B) (emphasis added).

Finally, we do not interpret 52 USC § 21083(a)(1)(A) (Section 303(a) of HAVA) as impacting the NVRA in relation to 52 USC § 20507(i). In fact, we would point out that HAVA has specific language discussing how its provisions, except for 52 USC § 21083(b) (Section 303(b) of HAVA), have no effect on other laws, including the NVRA.

Conclusion

With the above in mind, we respectfully disagree with your interpretation of the law and refer you to the county clerks.

Sincerely,

Aaron H. Schulaner

AARON H. SCHULANER
General Counsel