

November 26, 2018

Election Objection re Hawaii State Senate seat in District 19

**Electronically Filed
Supreme Court
SCEC-18-0000908
26-NOV-2018
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Plaintiff:

Matthew S. LoPresti
91-1411 Keoneula Blvd., #2106
Ewa Beach, HI 96706

v.

Defendants:

The State of Hawaii

Scott Nago as Chief Elections Officer for the State of Hawaii
Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Office of Elections, State of Hawaii
802 Lehua Avenue
Pearl City, Hawaii 96782

Dear Justices:

Aloha. I, Matthew S. LoPresti, a candidate for the Hawaii State Senate seat in District 19, hereby file this election objection complaint for Hawaii State Senate District 19, pro se. The named defendants include but may not be limited to the State of Hawaii, Scott Nago as Chief Election Officer for the State of Hawaii who is responsible for the administration and supervision of all elections, and the Office of Elections. This Court has jurisdiction over this matter and venue is proper pursuant to HRS sections 11-172, 11-174.5.

This complaint sets forth pursuant to HRS section 11-172 several causes that individually or collectively could cause a difference in the election results. The complaint also sets forth reasons for reversing, correcting, or changing the decisions of the precinct officials or the officials at a counting center in an election using the electronic voting system and I ask that a copy of the complaint be delivered to the chief election officer. Some of the causes for filing this objection are irregularities in voting or in the counting of votes that also could have caused a difference in election outcome or could have precluded the correct result from being ascertained.

I shall be asking for a judgment pursuant to HRS section 11-172 and 11-174.5 that requires a hand recount as well as for a judgement that may invalidate the general election on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the precinct officials. Should the recount show that I was in fact the winner of the election once these irregularities are cleared away then I ask that, if appropriate, the judgement decide that my candidacy in fact received a majority or plurality of votes cast based on an accurate hand recount, and thus were elected to this office. I also ask that the court pursuant to HRS section 11-175 compel witnesses and do whatever else may be necessary to fully determine what in fact occurred on election day at the polling precincts in the State Senate District 19 race.

At the conclusion I will also make an argument that if these collective irregularities combined with the closeness of the results (0.9% difference between myself and my opponent) do not rise to the level warranting a hand recount or invalidation of the election, then in truth nothing would ever rise to these levels and therefore the current election law HRS section 11-172 is unconstitutional on the grounds that it prevents access to fundamental rights of free and fair elections, the results of which must also be subject to reasonable challenges to ensure the accuracy and integrity of elections. Given that nothing seems to practically meet the seemingly onerous standards in the statute or its interpretation, the statute itself then violates the people's right to free and fair elections and the Court must provide a remedy.

The causes, reasons, remedies, etc. all listed in this complaint are in relations to HRS section 11-172, 11-174.5, and 11-175. All events that occurred or were alleged to occur occurred on election refers to Nov. 6, 2018 in the City and County of Honolulu, in the State of Hawaii.

Section I.

I assert that the causes listed herein in combination with the fact that the current election numbers separate the winning and losing candidates by only 116 votes, approximately 0.9% of the total votes cast out of 12,294 ballots, are enough to reasonably cast into doubt on the election result and if hand recounted and/or further investigated could easily cause a difference in the election results. This difference could be either a different candidate being ruled the winner or could lead to a judgement that a fair determination about the winner of the election could not be made and therefore the election is invalid.

I ask the court to require a hand recount of the entire State Senate district 19 election and to order a thorough, independent investigation of the goings on at polling places (especially at precinct 41-02), to have the elections office disclose the expected margin of error for their electronic voting and tabulating systems, to force the Office of Elections to thoroughly explain what took so long for any of the precincts in the Senate 19 race to report any results beyond the first print out on election day 2018 (raising further suspicions about what exactly happened at the other 6 precincts besides 41-02 or if similar issues happened at the other precincts as well) that would have delayed their reporting results until near the very end, and take

measures to reverse or correct the decisions of the precinct officials with regard to their physical manipulations and physical alterations and handling of and counting ballots, etc. especially at the polling places themselves, and possibly rule that the election was invalid dependent on these findings.

The reasons for the above requests include but are not limited to reasonable concerns with regard to electronic tabulation machines not working from the start of election day at precinct 41-02 (and possibly the following issues occurred at some or all of the other 6 polling precincts as well) where voters being told to take their ballots away from the machine instead of depositing them into the required box, the box reportedly not being locked and secured at all times, precinct officials having access to that box throughout the day, precinct officials (at least one of whom was openly hostile to my candidacy) having had access to the ballots once the polling station was closed and the ballots that still needed to be tabulated by the machine were then admitted by the precinct captain the ballots were intentionally and deliberately physically altered and manipulated by poll workers, where the ballots (seemingly most if not all of the ones that did not initially get counted when the machine wasn't working through much of the morning) were reportedly crumpled up and others folded, and where the precinct captain oversaw poll workers physically alter and manipulate the paper ballots (presumably to "flatten them out" for counting) during which alterations to ballots could have easily been made with a simple pen but the captain didn't sound like she closely oversaw the process at all the way she told me about it, and whereas the individual charged with overseeing this precinct admitted to me that if she were in my shoes she would certainly ask for a recount of the votes – demonstrating that she had doubts about the accurate counting of ballots and doubts about how her own precinct handled with very unusual situation of having poll workers physically manipulate ballots.

The majority of the information just above was ascertained from conversations with the precinct captain for 41-02 and Office of Elections officials. The information about the voter being turned away from the voter tabulation machine and about one of the poll workers who has openly and publicly engaged in a vendetta against me was reported to me from an eye witness on election day (and caused some doubt and consternation which lead to me start to ask questions after election day) the information about the vote counting machines not working at all in the morning was brought to my attention after the election by two other constituents who reached out to me to let me know about their voting experience and how upset suspicious they were of what was going on at that precinct location in particular.

The poll worker at the 41-02 precinct who had openly advocated for my defeat and spread misinformation about me was Michele Golojuch. Her and her entire immediate family has been participating in and in some ways leading a public misinformation campaign to conduct a character assassination against me for months before the general election and she and her immediate family also participated in filing a bizarre and recklessly fabricated slanderous complaint against me trying to remove me from the Democratic Party of the State of Hawaii. The complaint, as I understand it, was dismissed but the damage was done by spreading slander and misinformation on social media to thousands and thousands of voters to cause

numerous democrats to not vote for me. These consistent and repeated actions based on a personal and political vendetta to ruthlessly slander me by this group and others perpetrated its own fraud on the voters in my district and pursuant to HRS section 11-172 may have itself influenced some to vote against me. If only 58 voters, approximately 0.45% of voters, voted differently because of this and other slanders or were miscounted or mishandled by her or anyone else, that would affect the outcome of the election, but to have learned that one of them was actually engaged in the counting, handling and/or physically altering and manipulating ballots as described by the precinct captain, well, that that disturbing fact alone is enough in itself to throw the entire election results into doubt.

The reason is that having someone who has a clear motive to harm me politically and not have me win, who also happened to work at a polling location where fishy things occurred, who also participated in some kind of action where ballots were initially not counted, set aside, crumpled up and then physically altered and manipulated further by polling officials after the polling place was closed jeopardizes the integrity of votes cast that day at that precinct. So, it is demonstrably true that someone who had a clear motive to act against me and my candidacy also had the opportunity to physically alter ballots because of unanticipated circumstance, and it is possible that this person's bias may have affected her behavior and thus the integrity of the election itself.

What is in some ways even more disturbing is that when I spoke with the precinct captain the last time (I believe we spoke over the phone 2 or 3 times) I asked her point blank if she were in my shoes and knew what she knew about the whole process and the recounting and manipulating of ballots at the precinct she oversaw, would she ask for a recount. Without hesitation she said she absolutely would ask for a recount. This above all else was the deciding factor for me to file this election objection. If the person in charge of the official recording or counting of ballots that initially were set aside was telling me in no uncertain terms that she doesn't even trust the integrity of the election results from her own precinct (and perhaps the others as well), given the weird ballot alterations that occurred, then perhaps there was even more that she either wasn't telling me or couldn't tell me about things that went on at that polling place on election day. Again, if only 58 ballots, approximately 0.45% of ballots, were miscounted or mishandled by poll workers, that would affect the outcome of the election.

Also disturbing was the fact that before I ever spoke with the precinct captain I spoke with Office of Election officials who finally began to respond to me (only after days of calling and leaving messages and being told they would get back to me tomorrow and then tomorrow and then tomorrow) I was informed that it was falsely reported by precinct officials at 41-02 that I myself was present at some point during the day investigating these goings on. The fact is, I was at work most of the day in town teaching classes with dozens of witnesses and had no knowledge about any of these things (except for knowing that one voter was turned away from the tabulating machine and that a person hostile to my candidacy was working the polling station) until several days after the election. Also, I never once stepped foot in any precinct on election day as I voted early at Honolulu Hale, and yet these precinct officials had already cooked up and apparently filed a false report with the elections office about me making

inquiries about the goings on at that precinct before I ever knew anything was awry. Clearly, they assumed I would have been casting a suspicious eye on their actions that day if I knew what they were up to and this may demonstrate forethought by someone about trying to hide or cover up what was actually done that day. This also warrants further inquiry by the court to ascertain why false precinct reports were made about how they handled the broken machine, the set aside votes, the crumpled-up votes, the physical alteration of ballots, etc. Did the other precincts in the Senate district race also have false precinct reports filed? Who filed these reports? As of now, do not know. I do know that after I informed them that the report was false and that I never stepped foot in that or any precinct on election day, their tone changed in responding to my questions much more seriously and they began to be much more thorough in some of their responses. What else had they uncovered after learning the precinct report was false? Did they conduct an internal investigation? It seems that they did do this to some extent in order to answer my many questions posed to them. Did they also do a recount on their own? The Office of Elections must make these findings from their own internal investigation and any and all related information public to protect the integrity of the election.

It is also the plaintiff's understanding that the Hawaii State Office of Elections is aware of a margin of error with regard to the results of their automated counting machines, but reportedly refuses to make this margin of error number public. For all anyone else knows this and others election results, which are less than 1% difference between the top two candidates, is well within this margin of error. This would seem to indicate that the onus is on the defendants to conduct a hand recount themselves anyway to ensure the public of the integrity of the election results. I ask that the court require the defendants to also reveal the margin of error in these machines so that the public and the legislature can craft future legislation to further ensure the integrity of our elections and bolster the public's faith in the process.

For all of these above reasons I ask the court to reverse, correct, or change the decisions of the precinct officials or the officials at a counting center where they used an electronic voting system and issue a hand recount of the results to determine, if possible, who the winner may in fact be, and also ask that the court consider ruling, if appropriate, that the election was invalid because the answer to that question may be indeterminate based on the causes and reasons given in this complaint.

Section II.

If all of the above does not in the court's view meet the standards for a valid election objection or challenge, then I argue that the current law, as written or interpreted makes it logically impossible and therefore legally impossible to ever meet these standards without the government itself providing at a minimum, an accurate hand count of close races (e.g., races where the initial results indicate merely a percentage point difference between the top two candidates). Without this information provided to any plaintiff one cannot ever hope to possibly meet the standard of proving that a different electoral outcome would have occurred

or demonstrate that anything a plaintiff cites as problematic would have had such an effect. Therefore, it seems logically impossible to meet this standard.

Since laws are based themselves on the laws of reason to make sense, to be enforced, and to be adjudicated with regard to one another, the law allowing for election challenges must also reasonably allow for the possibility of making successful challenges, but it would then seem that one cannot practically meet these standards without the Hawaii State Supreme Court requiring the government to provide an accurate hand recount of close elections – otherwise, I argue, the Hawaii State law that is meant to assure free and fair elections via an ability to meaningfully challenge election results is itself invalid and therefore unconstitutional as it would violate citizens' fundamental rights. I respectfully submit that the Hawaii State Supreme Court has the authority and responsibility to rectify this injustice and at a minimum require a recount in any close election result that is challenged in this state, thus providing plaintiffs with the genuine possibility of making a meaningful challenge. As the plaintiff, I ask the court to do just that and consider determining the victor based on a hand recount. Additionally, I ask the court to also consider ruling, if appropriate, that this State Senate, District 19 election itself (and potentially all other challenged elections with similarly close results) was invalid (especially if the current law is ruled to be unconstitutional), thus requiring a new election be held. Hopefully within that time and before the requisite 120 days, then the legislature may introduce and pass into law a new bill that addresses the shortcomings of the current law, thus ensuring the possibility for free and fair elections and election challenges.

Given that there is a law that is meant to allow for the possibility of challenging election outcomes, it should also be that the legislative intent behind the law is not to set a nearly impossible standard but a reasonable standard for plaintiffs to challenge election results and ensure the integrity of our elections. That is to say, the fact that there is a law allowing challenges must also be accompanied with a meaningful ability to challenge election outcomes as well.

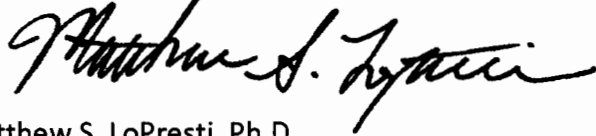
Section III.

In conclusion, as I am not an attorney, but merely a humble citizen, it is my hope that the justices will look upon my attempt at legal arguments and interpret my meanings with charity, and perhaps consider taking these meanings to be those that would be more in line with the common parlance of jurisprudence, where appropriate.

In the end, on behalf of the over 12,000 voters who voted, the over 6,000 who voted for me, and the rest of my community as well, I simply want to ensure that the election was fair, the votes were properly counted, and the ballots were not tampered with; given the evidence and recounting of the events provided to me by precinct officials, the Office of Elections and constituents through numerous conversations, I do not believe it was a fair election, nor that the votes were properly counted, and it is an incontrovertible fact there was cause, motive, and opportunity to tamper with the ballots by those who have ill will towards me and my candidacy.

Thank you for your time and studious attention to this very important and potentially far reaching election objection. If it is necessary to provide further information or evidence, please do not hesitate to let me know and please allow me the opportunity to meet your gracious expectations. Aloha.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Matthew S. LoPresti". The signature is written in a cursive, flowing style with a large initial 'M' and 'L'.

Matthew S. LoPresti, Ph.D.