



HAWAII

Court Rules Against Elections Office In Ballot Shortage Case

The Hawaii Supreme Court partly overturned a case from 2012 when the state ran out of ballots at two dozen precincts.

JULY 19, 2016 · By Nathan Eagle   

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The Hawaii Supreme Court ruled Tuesday that the the method the state Elections Office used to order an insufficient number of ballots in the 2012 general election should have undergone an official rule-making process instead of just being an internal management decision.

The Green Party of Hawaii [sued Chief Elections Officer Scott Nago](#) and the state in December 2012, asking the courts to stop him from conducting another election until there were new rules in place to prevent the type of voter disenfranchisement that occurred that November.

In all, 24 precincts ran out of ballots on Election Day, leading to long lines and some voters abandoning the effort. The lawsuit says 57 voters were denied the right to vote, and ballots had to be rushed to dozens of other precincts that ran low.



Nathan Eagle/Civil Beat

Lance Collins, center, is seen here in 2012 with Lisa Jacobs, left, who's part of the legal team, and Keiko Bonk, a Green Party candidate.

Maui attorney Lance Collins filed the case on behalf of the Green Party and seven individual plaintiffs from around the state.

“This clarification strongly supports the purpose and intent of the Hawaii Administrative Procedure Act – which is to provide openness and transparency in government,” he said in a statement Tuesday.

Instead of using the number of registered voters as a base and multiplying it by a percentage of around 80 percent, the 2012 ballot order method used the voter turnout for the 2012 primary election and multiplied it by 125 percent, the justices explained in their order.

Because the method used to order the number of ballots can lead to voter disenfranchisement, the court found that it should be subject to the public rule-making

process provided under HAPA.

Nago argued that the formulas and procedures were part of the “internal management of the agency” and therefore not subject to the rule-making requirements.



Hawaii Election Chief Scott Nago talks to reporters, Aug. 22, 2014.

The trial court and Intermediate Court of Appeals agreed, but the Supreme Court found that the exception to those rules was very limited and doesn't apply when the regulations “affect private rights or public procedures.”

It's unclear how the ruling will affect how elections are conducted in the future.

A spokeswoman at the Elections Office said that the state Attorney General's office is reviewing the Supreme Court's order, and declined to comment.

The state Elections Commission [investigated Nago's handling of the 2012 election](#), but decided he should keep his job.

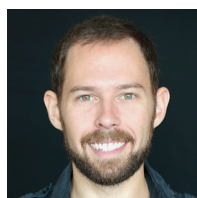
Two years later, the commission [investigated his handling of the 2014 election](#), which involved counting glitches, but again let him continue in his position.

Read the full court order below.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.

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 **Frank DeGiacomo**
14 hours ago

Mahalo to Attorney Collins, the Green Party of Hawaii, and the rest of the plaintiffs!

**Rick Tubania***18 hours ago*

nago has always been arrogant and unyielding. he believes that he knows best and no one else does and does things that he feels is right. he should be fired.

1

**Bryant Paul***17 hours ago*

Rick, sometimes overconfidence is confused with arrogance. Either way you parse it out it still ends up the same “ he’s too big for his britches”. It took Judge Pollock 38 pages to wrap his hand around the issue. It would have taken you seven words to describe Scott Nago had you opted to use a capital letter to begin your first sentence. I thought you were on point, Rick.

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