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Hawaii News

Election officials erred on procedure, court finds

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The Hawaii Supreme Court has decided that state election officials erred four years ago when they used a new procedure for calculating the number of ballots that were distributed to polling places for the 2012 general election without formally adopting that procedure as an official election “rule.”

The highly technical court decision in a lawsuit filed on Maui by the Hawaii Green Party revolves around a series of problems in the election that led to 24 precincts running out of paper ballots.

Elections officials say the problems did not affect the final outcome of any of the races.

However, Chief Election Officer Scott Nago told the state Elections Commission in a Nov. 9, 2012, letter that the problems with that election were “clearly unacceptable. Having been entrusted with the integrity of our elections, our voters deserved better. We will be taking steps to ensure this never happens again.”

The lawsuit will now be sent back to Maui Circuit Court for further proceedings. A spokeswoman for the state Office of Elections said Tuesday’s court decision was referred to the state attorney general’s office, and declined further comment while the case is being reviewed.

Lance D. Collins, lawyer for the Green Party, said in a written statement that the decision “strongly supports the purpose and intent of the Hawaii Administrative Procedure Act — which is to provide openness and transparency in government.”

According to the decision, election officials traditionally calculated the number of ballots to order for each precinct based on 85 percent of the registered voters in that precinct. Officials also reviewed historic voter turnouts and the number of absentee ballots cast in the precincts before Election Day and adjusted their estimates of the number of ballots needed in each precinct accordingly.

Elections officials changed those procedures in the 2012 general election and instead opted to multiply the number of voters in the 2012 primary by 125 percent to calculate the number of voters expected to participate in the general election, according to the court decision.

On general election day that year, 51 polling places reported they were running low on ballots, and 24 ran out. Voters were offered the option of using electronic voting machines or non-English ballots, but there were "significant delays" at some precincts and some voters reportedly left without casting ballots.

In the rush to deliver reserve ballots to the precincts that ran out, election officials accidentally delivered the wrong ballots to two precincts, and vote-counting machines in those precincts would not accept the wrong ballots. A total of 57 ballots at Waialae and Hokulani elementary schools had to be set aside in "emergency ballot bins" for scanning later.

In some cases those voters who were given the wrong ballots were unable to vote in specific races because the races were not listed on the incorrect ballots they had been given.

The lawsuit over those problems was filed on Maui in 2012 by the Green Party, which alleged that election officials should have used a formal rule-making process to adopt the procedures used for calculating the number of ballots distributed to each precinct and for counting ballots that were cast in the wrong precinct.

The court agreed that those procedures should have been adopted through a formal rule-making process that included an opportunity for public input.