



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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SCOTT T. NAGO
CHIEF ELECTION OFFICER

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON HUMAN SERVICES
ON SENATE BILL NO. 534

RELATING TO ELECTRONIC TRANSMISSION OF BALLOTS

February 16, 2021

Chair San Buenaventura and members of the Senate Committee on Human Services, thank you for the opportunity to testify in support of Senate Bill No. 534. This bill provides that a voter with special needs shall be provided a means of electronic authentication of an electronic transmission of replacement ballot that does not include the voter's handwritten signature or a waiver of secrecy.

The Office of Elections supports this measure as it ensures accessibility. Election officials implemented an HTML ballot in 2018 that allowed uniform and overseas voters and mail voters within five days of the election to receive and vote a ballot that could be marked on a personal device – phone, tablet, or computer. After marking the HTML ballot, the voter would print it, sign a waiver of secrecy, and return it by mail or electronically. The secrecy waiver is a standard document associated with voting by electronic transmission across the country as any form of electronic transmission does not permit election officials to make a categorical representation that one's ballot is secret.

The current language of the bill refers to "electronic authentication that does not include the voter's handwritten signature or a waiver of secrecy." We would ask that the bill include a definition of "electronic authentication," as the definition may impact the security, design, implementation, and cost of such a system.

Thank you for the opportunity to testify in support of Senate Bill No. 534.



DISABILITY AND COMMUNICATION ACCESS BOARD

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FEBRUARY 16, 2021

TESTIMONY TO THE SENATE COMMITTEE ON HUMAN SERVICES

Senate Bill 534 – Relating to Electronic Transmission of Ballots

The Disability and Communication Access Board (DCAB) supports Senate Bill 534 relating to Electronic Transmission of Ballots, which provides that a voter with special needs shall be provided a means of electronic authentication of an electronic transmission of replacement ballot that does not include the voter's handwritten signature or a waiver of secrecy.

DCAB supports legislation for the provision of reasonable modification of policies, practices and procedures in state government programs and services to provide for equal access for persons with disabilities. According to the Help America Vote Act of 2002 (HAVA), accessible voting systems must provide voters with disabilities the same opportunity for access and participation, including privacy and independence, that other voters receive. SB 534 will be an important step in ensuring that the voting process is equally accessible to the full spectrum of persons with disabilities. We strongly urge that you move this bill forward.

Thank you for this opportunity to offer testimony.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kirby L. Shaw".

KIRBY L. SHAW
Executive Director

Statement Before The
SENATE COMMITTEE ON HUMAN SERVICES

Tuesday, February 16, 2021

3:00 PM

Conference Room 225 & Videoconference

in consideration of

SB 534**RELATING TO ELECTRONIC TRANSMISSION OF BALLOTS.**

Chair SAN BUENAVENTURA, Vice Chair IHARA, and Members of the Senate Human Services Committee

Common Cause Hawaii provides comments in opposition to SB 534, which states that a voter with special needs shall be provided a means of electronic authentication of an electronic transmission of replacement ballot that does not include the voter's handwritten signature or a waiver of secrecy.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through voting modernization and election security.

Common Cause Hawaii is concerned with the security of any completed ballot that is permitted to be returned by electronic transmission. "Electronic ballot return faces significant security risks to the confidentiality, integrity, and availability of voted ballots. These risks can ultimately affect the tabulation and results and can occur at scale." See https://s.wsj.net/public/resources/documents/Final_%20Risk_Management_for_Electronic-Ballot_05082020.pdf?mod=article_inline at page 1.

SB 534 permits, at page 3, lines 3-13, voters with special needs to request a ballot to be provided by electronic transmission and then also returned, once completed by electronic transmission, by personal delivery to a drop box or voter service center, or by mail so long as it is received by closing time on election day.

Common Cause Hawaii wants to ensure that all voters are able to vote safely and securely and all voters properly cast ballots count, including voters with disability. However, returning voted ballots by electronic means poses a high security risk. Hawaii should not permit anyone to return electronic ballots via the internet. See attached Election Security and an Accessible Vote By Mail Option by Common Cause and Verified Voting dated May 21, 2020.

Hawaii should allow voters to:

- Receive an electronic ballot via the internet
- Download the ballot on a computer or other assistive device
- Mark the ballot on a computer, tablet or other assistive device without internet or remote server connectivity to protect the voters' choices and identity
- Print the paper ballot at home
- Place the paper ballot in a privacy envelope and then in a mailing envelope
- Cast a ballot by mail or by placing it in a secure drop box or other drop off location

Common Cause Hawaii suggests amending SB 534 by deleting lines 1-5 on page 2 for election security.

Thank you for the opportunity to provide comments in opposition to SB 534 with suggested amendments. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



Election Security and an Accessible Vote By Mail Option

May 21, 2020

During the COVID 19 pandemic, policymakers and elections officials are working to make voting safe, secure and accessible. As many jurisdictions expand vote by mail options, members of the disability community have pointed out that traditional vote by mail programs are not accessible to all voters. Some have [urged that Congress adopt options for online voting](#) to accommodate people with disabilities.

It is paramount that jurisdictions accommodate all voters with a *secure* and safe voting option during the pandemic, including voters with disabilities. Online voting is not secure. The Federal Bureau of Investigation (FBI), the National Institute of Standards and Technology (NIST), the Election Assistance Commission (EAC) and the Department of Homeland Security all agree that no practically proven method exists to securely, verifiably, or privately return voted materials over the internet. In a recently released document entitled Risk Management for Electronic Ballot Delivery, Marking and Return, all four agencies stated, “Electronic ballot return faces significant security risks to the confidentiality, integrity, and availability of voted ballots. These risks can ultimately affect the tabulation and **results** and can occur at scale.” In other words, [the security risk is high](#). Despite what vendors may say, voting by email or via web portals jeopardizes the integrity of the election results; votes can be manipulated or deleted without the voter’s knowledge and the voter’s selections could be traced back to the individual voter.

There are systems that are currently in use that give voters with disabilities a safe, secure, and accessible voting system. California, a state that has rigorous security standards, has certified three systems¹ [to provide a remote accessible vote by mail \(RAVBM\) option](#).

In summary, these systems allow voters to:

- Receive an electronic ballot via the internet
- Download the ballot on a computer or other assistive device
- Mark the ballot on a computer, tablet or other assistive device without internet or remote server connectivity to protect the voters’ choices and identity

¹ Democracy Live Secure Select 1.2.2, Five Cedars Group Alternate Format Ballot (AFB) v5.2.1 and Dominion ImageCast Remote 5.2

- Print the paper ballot at home
- Place the paper ballot in a privacy envelope and then in a mailing envelope
- Cast a ballot by mail or by placing it in a secure drop box or other drop off location

The elements of a secure remote accessible vote by mail option are outlined in CA Election Code Sec 19295. For RAVBM systems to be secure they must be prohibited from allowing the following capabilities, even optionally:

- to use a remote server to mark a voter's selections transmitted to the server from the voter's computer via the Internet
- to store any voter identifiable selections on any remote server
- to tabulate votes
- to return the ballot via the internet to the local election office

Without meeting such parameters, a remote voting system is insecure. If state election officials decide to implement one of these RAVBM systems, they should consider the following to support their efforts:

- Collaborate with disability rights groups to educate the public
- Include voter education materials with the absentee ballot application and mail-in ballot packet
- Send all voters who request to use a remote accessible vote by mail method [a well-designed privacy envelope and a pre-paid envelope](#) so that voters may mail the ballot or drop it off in one of the drop off locations

To reiterate, states should not turn to other insecure methods such as [blockchain voting](#) or [internet voting](#) during the COVID-19 pandemic. Remote accessible vote by mail options that keep voters' choices private and secure already exist and should be made available to voters with disabilities as states increase access to vote by mail. In addition, states should continue to have accessible polling locations open for voters who need or prefer to vote in person during early voting as well as on Election Day.

NATIONAL FEDERATION OF THE BLIND OF HAWAII

Testimony before the Committee on Human Services (HMS)
Hawaii State Senate
Thirty-First Legislature, Regular Session of 2021
February 16, 2021, 3:00 PM, hearing on SB534

Good afternoon Madam Chair, Vice Chair, and committee members. I am James Gashel, testifying for the National Federation of the Blind of Hawaii (NFBH), strongly supporting sb534.

If enacted this bill would direct the Office of Elections to develop and implement a means of electronic authentication for voters with special needs when returning a ballot by electronic transmission, already allowed by law. Sb534 would amend HRS11-107, relating to electronic transmission of ballots under certain circumstances. This is part of our vote by mail law, Act 136, enacted in 2019.

NFBH definitely supports the vote by mail law, but the issue we have is needing a means for blind people to vote with the same amount of privacy and independence all other voters have as a matter of right and as a matter of law. At this point in Hawaii, with current section HRS11-107, I would say we are far more than halfway toward achieving full privacy and independence, which would be achieved completely with enactment of SB534.

I should mention that the Senate Judiciary committee has recently approved SB548 to make a large number of changes in the vote by mail law. Section 20 of SB548 incorporates SB534, into this bill. Both SB534 and SB548 have been introduced by Senator Karl Rhoads, chairman of the Judiciary committee.

Current law, HRS11-107, allows special needs voters the option of receiving, marking, and returning their ballots by electronic means. For this purpose, special needs voters are voters unable to read and mark a standard printed paper ballot due to a disability, as with people who are blind, unable to see the printed ballot.

For ballots sent electronically, the Office of Elections uses the term "alternate format ballots." The county clerks' offices send these ballots out as HTML files attached to an email message sent to the special needs voter. This process works quite well as long as the special needs voter is persistent in requesting the alternate format ballot, often taking several phone calls to the county.

Under current law, two documents are sent as email attachments. One is the voter's unique ballot, showing only the races and candidate choices based on where the voter lives. The other attachment is a Waiver of Secrecy and Affirmation Statement form, containing instructions for completing and returning the marked HTML ballot. This form also includes a waiver of Secrecy which the voter must sign. Instructions in the email sent to the voter say the marked ballot will

not be counted unless accompanied by the waiver of secrecy bearing the voter's handwritten signature. Both the ballot and the waiver of secrecy may be returned electronically. Although the instructions don't say so, voters may print, and return completed alternate format ballots in the return envelope sent with all paper ballot packages. If returned by mail or placed in a drop box, the voter's handwritten signature must appear on the outside of the return envelope.

That's all-current law, HRS11-107. SB534 would make two important changes. First, the Office of Elections would be directed to have in place an electronic means to authenticate the voter to be used instead of the voter's handwritten signature. The second important change would be to discontinue use of the waiver of secrecy form. Both changes would only apply to special needs voters.

The alternative to authentication by handwritten signature is essential. This is particularly so for voters with disabilities which limit handwriting. For example, voters who are blind may not be able to write by hand so their signatures can be recognized as a match from one time to another. This is especially so when many months or years have elapsed between signatures being compared. Equally important, SB534 would disallow use of the waiver of secrecy form, thereby assuring voter's with special needs the rights all other voters have by law.

In its present form, current law, HRS11-107, is great, but allowed electronic transmission of ballots requires printing, signing, and scanning the waiver of secrecy form bearing the voter's handwritten signature. Five states, Maine, Massachusetts, Nevada, North Carolina, and West Virginia permit electronic ballot return that does not require the voter's handwritten signature. Hawaii should join this trend.

Please pass SB534 to give special needs voters the full right to privacy and independence when we vote. Current law allows privacy and independence when voting electronically but requires printing, signing, and scanning a waiver of secrecy form. Voters who complete printed paper ballots are granted secrecy as a matter of law. SB534 would assure the same right for special needs voters. Mahalo for your consideration and approval of this bill.

SB-534

Submitted on: 2/13/2021 9:18:27 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Comments	No

Comments:

Dear Chair San Buenaventura, Vice Chair Ihara and Committee on Human Services,

I am submitting comments in opposition to SB534.

After working in an Information Security unit, I learned that there are so many ways for an individual's computer to be hacked. Data could be easily tampered with when the information is not encrypted or not sent through a secure website. There is no way to ensure that all eligible voters are constantly updating their operating system, maintaining regular virus scans with up to date virus definitions, using a secure firewall and adhering to recommended personal information security and privacy practices everyday. This is an impossible task because there is no way to physically and electronically secure all eligible voters' personal computers.

I am concerned with the security of any completed ballot that is permitted to be returned by electronic transmission. "Electronic ballot return faces significant security risks to the confidentiality, integrity, and availability of voted ballots. These risks can ultimately affect the tabulation and results and can occur at scale." See https://s.wsj.net/public/resources/documents/Final_%20Risk_Management_for_Electronic-Ballot_05082020.pdf?mod=article_inline at page 1.

SB 534 permits, at page 3, lines 3-13, voters with special needs to request a ballot to be provided by electronic transmission and then also returned, once completed by electronic transmission, by personal delivery to a drop box or voter service center, or by mail so long as it is received by closing time on election day.

I want to ensure that all voters are able to vote safely and securely and all voters properly cast ballots count, including voters with disability. However, returning voted ballots by electronic means poses a high security risk. Hawaii should not permit anyone to return electronic ballots via the internet.

- Hawaii should allow voters to:
 - Receive an electronic ballot via the internet
 - Download the ballot on a computer or other assistive device

- Mark the ballot on a computer, tablet or other assistive device without internet or remote server connectivity to protect the voters' choices and identity
- Print the paper ballot at home
- Place the paper ballot in a privacy envelope and then in a mailing envelope
- Cast a ballot by mail or by placing it in a secure drop box or other drop off location
- I suggest amending SB 534 by deleting lines 1-5 on page 2 for election security

Thank you for your time on this issue. I appreciate the opportunity to provide comments in opposition to SB534.

Mahalo,

Caroline Kunitake

SB-534

Submitted on: 2/14/2021 4:51:14 AM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward B Hanel Jr	Individual	Oppose	No

Comments:

Ongoing allegations of fraudulent voting processes must be met with safe and transparent methods for handling votes. Concur with Common Cause Hawaii that SB534, however well intended, offers a means for submitting votes that cannot be verified for proper handling. Concur with Common Cause comments opposing passage of this bill.

SB-534

Submitted on: 2/14/2021 8:22:53 AM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Anderson	Individual	Comments	No

Comments:

There are concerns with the security of any completed ballot that is permitted to be returned by electronic transmission. A Wall Street Journal article stated: "Electronic ballot return faces significant security risks to the confidentiality, integrity, and availability of voted ballots. These risks can ultimately affect the tabulation and results and can occur at scale."

SB 534 permits, at page 3, lines 3-13, voters with special needs to request a ballot to be provided by electronic transmission and then also returned, once completed by electronic transmission, by personal delivery to a drop box or voter service center, or by mail so long as it is received by closing time on election day.

It should be ensured that all voters are able to vote safely and securely and all voters properly cast ballots count, including voters with disability. However, returning voted ballots by electronic means poses a high security risk. Hawaii should not permit anyone to return electronic ballots via the internet. Instead, Hawaii should allow voters to:

- Receive an electronic ballot via the internet
- Download the ballot on a computer or other assistive device
- Mark the ballot on a computer, tablet or other assistive device without internet or remote server connectivity to protect the voters' choices and identity
- Print the paper ballot at home
- Place the paper ballot in a privacy envelope and then in a mailing envelope
- Cast a ballot by mail or by placing it in a secure drop box or other drop off location

Suggest amending SB 534 by deleting lines 1-5 on page 2 for election security.

Thank you for the opportunity to submit comments on this bill.

SB-534

Submitted on: 2/14/2021 10:04:55 AM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Oppose	No

Comments:

There is no guaranty these electronic ballots submtted through the internet cannot be hacked. Given the hacking of US. government sites and private businesses (there are new reports almost daily), like the Solar Winds fiasco, we should not endanger our elections by allowing ballots to be submitted electronically. This is an idea whose time has not yet come and should be deferred.

SB-534

Submitted on: 2/14/2021 3:50:05 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Best	Individual	Oppose	No

Comments:

For security, please amend by deleting lines 1-5 pn page 2

SB-534

Submitted on: 2/14/2021 5:04:55 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Ambrose	Individual	Oppose	No

Comments:

Electronic ballot return could unlock a Pandora's box of security problem, including voter privacy and election integrity. These risks can affect election results in a big way. Please scrap this bill or amend it to allow for only receiving and printing ballots electronically, which must then be mailed or placed in a secure drop box. Mahalo

SB-534

Submitted on: 2/14/2021 5:29:40 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ann Lemke	Individual	Support	No

Comments:

I support SB534 or its incorporation into SB548. As a blind person (print-disabled) I want to support wording that improves the process of voting by mail. Specifically, I want to be able to receive and submit my ballot securely and privately in an electronic manner that can be authenticated without my actual physical signature. Since technology I already have can allow me to know what is written on computer screens or my iPhone's screen, I should not need to print out a ballot or sign any document waiving my right to privacy and secrecy. If this were implemented, I could independently retrieve, review, mark, and submit my ballot independently without any human assistance. I required human assistance in both the primary and general election in 2020. A trusted friend assisted me in marking my ballot and showing me where to sign the envelope. I had to firmly caution my friend not to comment on my selections on some local issues; so much for true secrecy...

I know that voting during the pandemic has been challenging for everyone, and I strongly encourage the Hawaii senate to promote secure, yet fair, disability-accessible voting practices.

Brandon G. Young

980 Maunawili Rd.

Kailua, HI 96734

Phone: (808) 351-6676

Email: young.brandon4@gmail.com

31st Session of the State Legislature of the State of Hawaii

Senate Committee on Human Services

Hearing on SB 534 on Tuesday, February 16, 2021 at 3:00 P.M.

Dear Chair and Vice-Chair,

My name is Brandon Young, and I am a member of the National Federation of the Blind of Hawaii. I am writing to you to submit testimony in support of this bill. I am a blind person and would love to support the creation of this task force to help with the transition to the voting process in our state.

I am grateful that your committee has decided to hear this bill. I would support the passage of this bill. However, I along with the other members of the blindness and other disability groups would support adding the language of this bill into SB 548. This bill was sponsored by the Chair of the Judiciary committee, Carl Rhodes. I believe that that committee is going to make SB 548 the bill to better the election process going forward here in the State of Hawaii. As our state continues down the path of having an election by mail process, it needs to include those with disabilities. We take part in the election process like everyone else in this state. However, we can not submit a independent and secret ballot under the mail-in process that was established under the last election cycle. SB 548 would include a electronic method for the blind to vote independently. It would also include other measures to improve the voting process along with more in-person voting sites. Thank you for taking the time to consider my testimony for this measure.

SB-534

Submitted on: 2/15/2021 6:27:14 AM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Morgan	Individual	Oppose	No

Comments:

I am concerned about the potential for voter fraud if SB534 is passed as written. The bill should be amended as follows:

- Hawaii should allow voters to:
 - Receive an electronic ballot via the internet
 - Download the ballot on a computer or other assistive device
 - Mark the ballot on a computer, tablet or other assistive device without internet or remote server connectivity to protect the voters' choices and identity
 - Print the paper ballot at home
 - Place the paper ballot in a privacy envelope and then in a mailing envelope
 - Cast a ballot by mail or by placing it in a secure drop box or other drop off location
- We suggest amending SB 534 by deleting lines 1-5 on page 2 for election security.

SB-534

Submitted on: 2/15/2021 8:41:03 AM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
laurie boyle	Individual	Oppose	No

Comments:

I Oppose SB534 for the simple reason that returning a ballot electronically is not secure at this point. All citizens, including disabled, elderly should be able to receive their ballots electronically, but must be printed and posted to usps, a drop box or vsc. All those unable to drive to said locations should be provided a secure pickup, delivery method to ensure her/his vote is counted.

Mahalo for your attention.

SB-534

Submitted on: 2/15/2021 2:20:44 PM

Testimony for HMS on 2/16/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Stacie M Burke	Individual	Oppose	No

Comments:

I am opposed to SB 534 solely based on the issue of security. Electronic ballot return may pose a risk to election integrity.

I agree with Common Cause Hawaii's suggestion to amend SB 5334 by deleting lines 1-5 on page 2 for election security.

Mahalo for your time

Stacie Burke