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TESTIMONY OF THE

CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS

TO THE HOUSE COMMITTEE ON JUDICIARY

ON HOUSE BILL NO. 1590

RELATING TO ELECTIONS

January 28, 2016

Chair Rhoads and members of the House Committee on Judiciary, thank you for the opportunity to provide comments regarding House Bill No. 1590. The purpose of this bill is to require the Chief Election Officer to establish procedures to select a letter of the alphabet by lot and arrange candidate names on ballots in alphabetical order, beginning with the randomly selected letter.

The current bill's provision of randomly selecting a letter of the alphabet and then arranging names in alphabetical order of the last names, beginning with the selected letter, appears to work as follows:

1.  The letter Z is randomly selected.

2.  The name ZIEGLER, Thomas would come first, then ZIFF, John.

3.  After the Z's were exhausted, we would go to the A's and organize the names alphabetically (i.e., ABE, Timothy, then ADAMS, Lindsay, and so on).

4.  We would then proceed to B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, and Y.

However, we would note that we understand that the bill could be interpreted to require us to continue to use the new modified alphabet order

throughout the candidate's name. For example, if the lottery letter is "K", the last name "Tanaka" would appear before "Tanabe". Similarly, if two people have the same surname, the selected letter of the alphabet would impact the order of names, based on the first name (i.e., Anderson, Kyle would come before Anderson, Corey, if the letter "K" was selected).  We recommend that the alphabetical order revert to the traditional "A" through "Z" order, as opposed to continuing with the new modified alphabetical order (e.g., "K through "J").

We would note that the bill makes reference to determining the new modified alphabet prior to the "election cycle," which is undefined by the bill. Our office generally considers an election cycle to run from the first day in January of a non-election year to the last day in December of an election year. For purposes of this bill, we would recommend defining an "election cycle" to cover that same period for consistency purposes. Additionally, we would recommend the lottery for selecting the order of ballot names be allowed to occur within an election cycle, as opposed to being required to occur before the election cycle. Furthermore, we suggest amending the effective date to July 1, 2017 as ballots will already have been printed for the 2016 Primary Election.

Given the above noted items, we would recommend the following language for subsection (a) of section 11-115, Hawaii Revised Statutes.

(1)     No later than the sixtieth day prior to the first election held during an election cycle or the second Tuesday in June of election cycle, whichever comes first, the office of elections shall select a letter of the alphabet by lot;

(2)     For primary, general, and special elections, including county only elections, during each election cycle, candidates whose last names begin with the letter selected pursuant to paragraph (1) shall be placed first upon the ballot and the names of other candidates shall follow in alphabetical order, beginning with the letter that follows the letter selected by lot. To the extent two or more candidates' last names begins with the same letter, the alphabetical ordering of their names will based on the subsequent letters following the traditional alphabet as opposed to the letter selected pursuant to paragraph (1).

(3)     For purposes of this subsection, an election cycle is defined as constituting the first day in January of a non-election year through to and including the last day in December of an election year.

The chief election officer or the county clerk in county only elections, shall inform voters, by a method suited for the voting system,

that the candidates may not necessarily be listed on the ballot in alphabetical order.

Thank you for the opportunity to testify on House Bill No. 1590.

COMMITTEE ON JUDICIARY

January 28, 2016, 2:00 p.m., Room 325

HB 1590, RELATING TO ELECTIONS

**TESTIMONY**
Janet Mason, Legislative Co-Chair, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair San Buenaventura, and Committee Members:

**The League of Women Voters of Hawaii offers comments on HB1590,** which would require the Chief Elections Officer to establish procedures to select a letter of the alphabet by lot and arrange candidate names on the ballot in alphabetical order by last name, beginning with the randomly selected letter.  Our reading of the bill is that the proposed letter selection followed by alphabetic ordering would be the same throughout the State, without differences among legislative districts.

The League applauds the fact that this bill recognizes ballot design is important in producing a fair election, but the main purpose of the bill appears to be addressing the well-known problem that coming first on the ballot increases a candidate's total vote count.[1]  This phenomenon is well documented in political science and psychology research.  Estimates of the typical average advantage are varied, from two to three percentage points, depending on whether major or minor party candidates are involved, whether it is a nonpartisan race or whether it is a primary or general election.[2]

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[1] Krosnick, Jon A. and Joanne M. Miller, *The Public Opinion Quarterly,* Vol. 62, No. 3 (Autumn, 1998), pp. 291-330

[2] Ho, Daniel E. and Kosuke, Imai, "Estimating the Causal Effects of Ballot Order from a Randomized Natural Experiment: the California Alphabet Lottery, 1978-2002,  *The Public Opinion Quarterly*, *(2008) 72 (2): 216-240.*

This is not trivial theoretical research. In 2000 in California, George W. Bush got nine percent more votes in the assembly districts where he was listed first than in the assembly districts where he was listed last. This occurred in California even though California was also rotating the name order across assembly districts. The nine percent advantage was present even when researchers took into account the fact that certain districts tend to vote Democratic and others tend to vote Republican.  The authors concluded that although name order cannot swing the votes of decided voters, in a close race similar to this one the winner can (and in this race was), decided by the order of candidates' names on the ballot.[3]

HB1590 proposes a simple rotation scheme to mitigate this positional problem.  Choosing a letter of the alphabet would introduce a small amount of randomization, but not much. [4] Using the procedure described in the bill wouldn't eliminate the problem – it would only lead to greater success for the candidate who was lucky enough to get selected first in the draw. I am also saying "simple" rotation because the bill does not propose to rotate the order of names across the State, as many states such as Ohio and California already do. In an ideal world, you would want each possible ordering of candidates to be represented equally on our ballots.  This is not accomplished with the alphabet drawing approach in this bill.  For example, if there were 4 candidates for the Democratic primary election in House District 42, there would be 24 possible orders of candidates.[5]   Even with extremely careful printing and distribution by the Office of Elections and the proposed statement on the ballot that candidate names may not be listed in alphabetical order, it would be impractical and

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[3] Jon A. Krosnik, Joanne M. Miller, and Michael P. Tichy, "An unrecognized need for ballot reform,'" in Ann N. Crigler, Marion R. Just, and Edward J. McCaffery (eds.), Rethinking the Vote:The Politics and Prospects of American Election Reform  (New York: Oxford University Press, 2004), pp. 52, 53, 63

[4] One problem is that the letters of the alphabet are not equally like to be used at the beginning of last names.  I know only one person in Hawaii whose last names begins with X," but I know many people whose last names begin with "L."
[5] (4 factorial, i.e. 4x3x2x1)).

confuse voters to print and distribute 24 different ballot orderings in this district.   The Office of Elections currently makes sample ballots available for voters in advance of elections, and this "best practice" would be infeasible.  With 24 different orderings how could voters feel assured they had received the correct ballot?

Coming up with a fairer approach to ballot ordering is definitely possible in Hawaii elections, when there are a limited number of candidates (e.g. the presidential candidates in a general election) for a relatively large number of districts.  Ohio, for example, tries hard to optimize fairness and accountability by varying the name order across the state so that each possible order permutation appears an equal number of times, and observers can inspect ballots on Election Day to be sure the rotation was done properly. Idaho, North Dakota, Wyoming and a few other states use versions of this system. [6]  But the larger the field of candidates the more difficult it is to use this approach.

The League concludes that the intent of the proposed bill is good, but the methodology and implementation are very imperfect.   Under these circumstances, there is no compelling reason to spend the money required to implement the proposed complex ballot order system rather than using the current approach of ordering names alphabetically.  Thank you for the opportunity to submit testimony.

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[6] Krosnick, Jon A. "In the Voting Booth, Bias Starts at the Top," **New York Times**, November 4, 2006.