



September 13, 2010

To: William Marston, Chairperson
Elections Commission
c/o Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Fm: Larry Geller / Disappeared News
larry@disappearednews.com
1515 Nuuanu Ave. #153
Honolulu, HI 96817

Subj: Request to investigate possible wrongdoing on the part of the Chief Elections Officer

This is to request that the Elections Commission investigate the actions taken by the Chief Elections Officer pursuant to its powers under HRS 11-7.5(2) that raise questions about his compliance with the section of HRS 11-1.6 highlighted below:

§11-1.6 Appointment of the chief election officer; requirements; term; restrictions; salary; reappointment; removal....

(d) The chief election officer shall devote full time to the duties of the office and shall hold no other public office during the individual's term of office. **Except for exercising the right to vote, the individual shall not support, advocate, or aid in the election or defeat of any candidate for public office.**

On August 4, 2010, I requested from the Senate President's office, the Senate Clerk's office and the Office of Elections copies of the letters of resignation of Senator Robert Bunda and Senator Gary Hooser. On August 6, 2010, I received responses to my requests and posted these government records on my blog.

The Office of Elections responded to the request with one letter addressed to the Senate President by Senator Robert Bunda expressing his "intention" to resign, dated July 14, 2010. Because it appeared that Senator Bunda's intention to resign letter was not a resignation letter, I asked the Office of Elections on August 6, 2010 if they had any other documents related to Senator Bunda's purported resignation. Lori Tomczyk responded on August 9 that the July 14 letter was all that they have on file. The Senate Clerk's office also responded with the same documents I received from the Office of Elections.

I have attached these two documents to this letter. Please note the Office of Elections date stamp on the Hooser resignation letter.

After intervention by the Office of Information Practices, Linda Menda from the Senate President's office responded on September 9, 2010 to my request forwarding to me the same letters I had previously received from the Senate Clerk and the Office of Elections. In addition, I also received another letter dated July 16, 2010, without a date stamp, from Senator Bunda to the Chief Elections Officer resigning from his office. Linda Menda indicated that this letter was received by her office after my record request was made.

A copy of the new letter is attached. Note that the letter is addressed to the Chief Elections Officer, not to the Senate President.

On August 12, 2010, a Maui resident named Michael Howden filed objections to Bunda's nomination papers requesting that the Chief Elections Officer file a complaint with circuit court to determine if the nomination papers of Senator Robert Bunda are invalid because he had not resigned from his Senate office and so his oath or affirmation, pursuant to §12-3(8), was not validly made, and he was barred from running for Lt. Governor.

Here is part of Mr. Howden's letter recapitulating the role of the Chief Elections Officer in this event:

My name is Michael Howden and I am a registered voter. I submit pursuant to Section 12-8, Haw. Rev. Stat., and Section 91-8, Haw. Rev. Stat., to you for a declaratory ruling that Mr. Robert Bunda's nomination papers for the office of the lieutenant governor, are invalid. This objection is made within the time limitations contemplated by Section 12-8, Haw. Rev. Stat.

Nature of an Objection to Nomination Papers; Chief Elections Officer's Role

The Chief Elections Officer is required to file a complaint with the circuit court if an objection filed under Section 12-8, Haw. Rev. Stat. may warrant disqualification. The Chief Elections Officer's role is not to make a legal decision but, after review, file the matter with the circuit court for proper legal decision unless there is not possibility of disqualification.

At the time of Howden's filing, Senator Bunda and the Senate Democrat spokesperson indicated that Bunda had returned the keys to his State Capitol office and filled out his retirement forms and that, together with his "intention to resign" letter, was sufficient to constitute a resignation.

The Chief Elections Officer did not file the matter with the court, thereby sparing Sen. Bunda the possibility of disqualification in his effort to be elected Lt. Governor.

Because of these facts, it is possible that the Office of Elections simply violated the Uniform Information Practices Act (Chapter 92F, HRS). However, given the consistency among all concerned parties including the Office of Elections to the Howden challenge, it is my conclusion that the Chief Elections Officer likely did not have in his possession a letter of resignation from Senator Bunda. I do not believe the staff member of the Office of Elections violated Chapter 92F, HRS by lying to me on August 9 that they had no other documents related to Senator Bunda's purported resignation.

Rather, the new “resignation” letter from Bunda to Nago was supplied to the Office of Elections subsequent to their response to me and their e-mail confirmation that there was no other letter. This is consistent with the Senate President's office noting that they received the new “resignation” letter after my request.


It is possible that with the budget cuts to the office and the upcoming election, failing to confirm Bunda's resignation when he filed his nomination papers was an honest oversight by the Chief Elections Officer. However, when it was brought to the attention of the Chief Elections Officer through the formal objection process, the time to rectify the mistake was at hand. Rather, the objection was denied. Then, a letter without the customary file date stamp on it, addressed to the Office of Elections and not the Senate President, appears after the formal objection is filed and distributed to the Senate President's office.

The “resignation” letter from Bunda to Nago could not have properly served as the basis for Mr. Nago's decision not to have a court determine whether Bunda's papers were in order because the letter did not exist when his nomination papers were filed (and likely did not exist at the time Howden filed his objections).

Mr. Nago's inaction supported and aided the candidacy of Sen. Bunda in that Sen. Bunda was spared the potentially adverse ruling by the circuit court disqualifying him from the race. This assistance would be a violation of HRS 11-1.6 (d). An antedated resignation letter proffered as timely by the Office of Elections to the Senate President is problematic for additional reasons.

Accordingly, I request that the Office of Elections conduct an inquiry to establish if the Chief Elections Officer violated §11-1.6 (d), and the role of the Chief Elections Officer in including an apparent pre-dated letter in the record as having been timely filed pursuant to the Commission's authority in HRS 11-7.5(2) and abusing his discretion in denying the objection to Bunda's nomination papers. If such an investigation finds laws were violated, refer the matter to the Attorney General's office for disposition.

Sincerely,


Larry Geller



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

July 16, 2010

Senator Colleen Hanabusa
Senate President
Hawaii State Capitol
Honolulu, HI 96813

Dear Senate President Hanabusa,

As required by law in order to file and run for election to the Office of Lieutenant Governor, I hereby submit my resignation from the Hawaii State Senate effective immediately.

It has been an honor and a privilege to serve.

Sincerely,

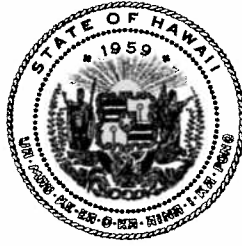
Gary L. Hooser
Senator
7th Senatorial District of Kaua'i & Ni'ihau

GLH:CM

CC: Senate Clerk Carol Taniguchi
The Governor Linda Lingle
State Chief Elections Officer Scott Nago ✓
County of Kauai Clerk Peter Nakamura
Chair of Hawaii Democratic Party- Dante Carpenter
Chair of the Kauai Democratic Party- Steve Nishimura

OFFICE OF ELECTIONS

10 JUL 16 AM 04:45



July 14, 2010

The Colleen Hanabusa
President
Hawaii State Senate
State Capitol, room 409
Honolulu, Hawaii 96813

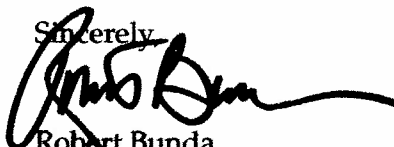
Dear Senator Hanabusa:

I am writing to inform you of my intent to resign my seat in the State Senate on July 16, 2010 and to file for the office of Lieutenant Governor.

It has been a pleasure to have served in the legislature for the past 28 years. Throughout my career, I have served in various capacities which include Chair of the House Committees on Health, Ocean Resources, and Consumer Protection & Commerce. I was the sole legislative member of the Governor's Task Force on Educational Governance and in the Senate, I served as Chair of the Committee on Housing and Co-Chair of the Committee on Government Operations and Housing. I was fortunate to have served as President of the Senate for six years, a seat which you yourself may be leaving in your own pursuit of higher office. I wish you all the best. I would like to also express my appreciation for the courtesies you have extended to me and my staff during your tenure as President.

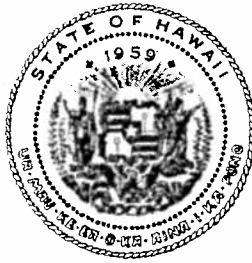
I will definitely miss the people who I have served with over the years. However, and more importantly, I will miss all the people who serve the legislature as staff. They are truly the backbone of the legislative branch, who give of themselves selflessly and with passion to the cause of serving the people of Hawaii.

Sincerely,



Robert Bunda
Senate President Emeritus

c: Senate Clerk



July 16, 2010

Mr. Scott T. Nago
Chief Elections Officer
Office of Elections
802 Lehua Avenue
Pearl City, Hawaii 96782

Dear Mr. Nago:

I am hereby officially submitting my resignation as the Senator representing State Senate District 22 effective today, July 16, 2010 as a prerequisite to my filing for the office of Lieutenant Governor before the July 20, 2010 deadline.

It has been my pleasure to serve in the legislature for the past 28 years. Thank you for the courtesies extended to me by your office over the years.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Bunda", with a long, sweeping horizontal line extending to the right.

Robert Bunda
Senate President Emeritus