

No. SCPW-22-0000078

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IN THE SUPREME COURT OF THE STATE OF HAWAII

WILLIAM M. HICKS; RALPH BOYEA;  
MADGE SCHAEFER; MICHAELA  
IKEUCHI; KIMEONA KANE; MAKI  
MORINOUE; ROBERTA MAYOR;  
DEBORAH WARD; JENNIFER  
LIENHART-TSUJI; LARRY S. VERAY; and  
PHILIP BARNES,

Petitioners,

vs.

THE 2021 HAWAII REAPPORTIONMENT  
COMMISSION AND ITS MEMBERS; THE  
STATE OF HAWAII OFFICE OF  
ELECTIONS; and SCOTT NAGO, in his  
official capacity as Chief Elections Officer,  
State of Hawai'i,

Respondents.

ORIGINAL PROCEEDING

DECLARATION OF DAVID J.  
ROSENBROCK

DECLARATION OF DAVID J. ROSENBROCK

I, DAVID J. ROSENBROCK, declare that:

1. I am a resident of the City and County of Honolulu, State of Hawai'i, and am the Project Manager for the 2021 Reapportionment Commission.
2. I also served as the Project Manager for the 2001 and 2011 Reapportionment Commissions.
3. The Hawaii State Constitution provides that "the chief election officer shall be the secretary of the commission without vote and, under the direction of the commission, shall furnish all necessary technical services." Article IV, Section 2.

4. The Reapportionment Project Office and my position as Project Manager was created to provide said administrative support and technical services to the Reapportionment Commission on behalf of the Chief Election Officer.

5. The Reapportionment Project Office is composed of myself and Secretary Carolyn Roldan.

6. I was selected by the members of the Reapportionment Commission to serve in this position.

7. Additionally, the Reapportionment Project Office received geographic information systems professional services from Environmental Systems Research Institute (ESRI) and GDSI Hawaii.

8. As in 2001 and 2011, these types of professional services were required to develop a database and spatial data structure that supports the redistricting efforts of the Reapportionment Commission.

9. Specifically, it consisted of the integration of U.S. Census 2020 block level population data and Census 2020 TIGER/Line files into an Arc/Info (software developed by Environmental Systems Research Institute) GIS system that could be connected or integrated with the existing Statewide GIS maintained by the Office of Planning.

10. Among the duties of the professional services vendors and myself were the following: (1) Prepare data (spatial and tabular) the Commission will use to develop redistricting plans based on prescribed redistricting rules; (2) Provide the Commission with tools and training to accomplish the redistricting tasks within the prescribed rules and timeline; (3) Provide support in the creation of the permanent resident population

base; (4) Develop data products (e.g. reports and maps) the Commission needs to document redistricting plans; (5) Provide an online environment to publish redistricting plans for review and comment by the public; (6) Provide technical support to the Commission as they present plans during the official review periods; and (7) Provide support activities related to precincting and the creation of new election maps.

### Overview

11. In performing my duties, it was my understanding that the 2021 Reapportionment Commission had three basic tasks: (1) redraw the U.S. Congressional Districts of the State of Hawaii based on the population count from the last U.S. Census ; (2) reapportion and redistrict the Senate and House of Representative districts of the State of Hawaii Legislature based on the permanent resident population that involved the extraction of non-permanent residents from the U.S. Census population count; and (3) designate twelve of the twenty-five State Senate district seats that would have two-year terms in the election immediately following the reapportionment.

12. These tasks were to be conducted within a constitutional and statutory framework that outlined the process that was to be followed. This included the development of proposed plans by the Reapportionment Commission, a subsequent public hearing process, and an eventual adoption of final reapportionment plans.

13. As it relates to documenting the work of the Reapportionment Commission, a reapportionment webpage was established that the public could access through a link at [elections.hawaii.gov](https://elections.hawaii.gov) or directly at <https://elections.hawaii.gov/about-us/boards-and-commissions/reapportionment/>.

14. This webpage included a virtual library of information concerning the work of the Reapportionment Commission.

15. In regard to Commission meetings, the webpage included agendas, the ability to upload testimony, and a link to attend and participate in all meetings. Additionally, prior to every meeting the meeting materials provided to the Commissioners in advance of the meeting were posted. These materials included testimony and presentations to be made by the Reapportionment Project Office to the Commissioners. After each meeting, any supplemental materials were likewise posted to the webpage. This included any last second testimony or the actual presentations presented, to the extent revisions had been made by the time they were presented at the meeting. Finally, as every meeting was recorded, video of the meeting, along with a written summary of the video with time stamps, was posted subsequently that same day.

16. As required by the state constitution, there was an advisory council for each of the four basic island units to advise to the Reapportionment Commission. Given this, the webpage included similar information to that which was provided for meeting of the Reapportionment Commission (e.g. agendas, testimony, and meeting videos).

17. As for the public hearings, the webpage included the public notice, the ability to upload testimony, and a link to attend and participate in all hearings. The testimony that was presented was posted on the webpage after the time frame for public hearings was completed.

18. In regard to drafting plans, the webpage included a link to the Hawaii Redistricting Online Application that permitted members of the public to draw plans that could be submitted to the Reapportionment Commission for its consideration.

19. The final report to the Legislature was likewise posted to the webpage following the meeting of the Reapportionment Commission in which it finalized its plans.

20. The report, which was approved of by the Reapportionment Commission, went over the procedure followed, principal tasks, legal constraints and districting criteria, staggering of state senate district seats, and recommendations. It additionally included the following appendices: (1) written summaries of video recordings and minutes of the regular meetings of the 2021 Reapportionment Commission; (2) selected presentations to 2021 Reapportionment Commission: (3) financial report as of February 17, 2022; (4) district boundary descriptions of the 2021 reapportionment plans; and (5) maps of the 2021 reapportionment plans.

21. While the Reapportionment Project Office provided technical support to the Reapportionment Commission, including its technical committee permitted interaction group, it is important to note what was not considered to be within the scope of such support by either the Reapportionment Commission or the Reapportionment Project Office. Specifically, given the nature of the guiding criteria in Article IV, Section 6 and HRS § 25-2 concerning redistricting, the Reapportionment Project Office did not interject itself into the Reapportionment Commission or the technical committee's discussions regarding where to draw district lines for state legislative or congressional districts.

#### Delays

22. This 2021 reapportionment process experienced some significant delays in obtaining material to even begin our reapportionment process. For example, although we had been preparing for the 2021 Reapportionment since 2019, a six-month delay in

receiving the Census data due to the pandemic, pushed our timeframes back to the point where we needed to reach out to the Court for an extension of time to complete the 2021 Reapportionment Plan. Thankfully, the Court granted an extension.

23. We also experienced significant delays in obtaining residency status information from the military. Back in 2019, the Hawaii Congressional Delegation put us in contact with the military department in charge of providing military members' mailing addresses (INDOPACOM). We received these military addresses in May 2020 and anticipated that the Census data would arrive in March 2021. Unfortunately, as previously stated, due to the pandemic the Census data did not arrive until August 12, 2021. Upon arrival of that data, the Reapportionment office staff performed a non-permanent resident extraction to remove non-permanent resident military (64,415) and non-permanent resident students (7,250) from the Census total population, and they were also removed from the Census block level count.

24. These numbers still appeared lower than we expected based on our prior reapportionment experience. We then contacted the military again about the low numbers, but we did not receive any immediate responses from the military to supplement its data.

25. One of the commissioners, Robin Kennedy, then inquired with INDOPACOM about the deficient military data. As a result of Commissioner Kennedy's inquiry, we finally received additional military mailing address data on November 8, 2021.

26. However, this data also appeared deficient. Therefore, on December 1, 2021, the Hawaii Congressional Delegation again assisted the Reapportionment

Commission by contacting INDOPACOM and requested confirmation of the prior mailing address data.

27. Through this effort, we finally received the additional mailing address data on New Year's Eve, December 31, 2021. The new numbers resulted in a revised extraction of 107,217 non-permanent resident military (99,967) and students (7,250) from the Census total population, and they were also removed from the Census block level count.

28. In addition to following the required Constitutional guidelines, on September 9, 2021, the Reapportionment Commission voted to follow its own guidelines and criteria on redistricting standards, including using existing boundaries of legislative districts as starting points for its analysis. Starting at existing legislative boundaries is a common practice because it makes it easier to track changes and was previously followed in preparing the 2001 and 2011 plans as well as the current 2022 plans.

#### Technical Committee

29. In 2001 and 2011, the Reapportionment Commission established two committees. One committee was responsible for establishing the rules for the Commission and the other committee was responsible for preparing plans. I worked with the committee that prepared the plans.

30. As it did in 2001 and 2011, the 2021 Reapportionment Commission established two technical committees. One committee established rules for the Commission and the other prepared proposed reapportionment and re-districting plans.

31. Except for the initial training meeting on August 5, 2021, which was attended virtually, the remainder of the Reapportionment Committee's technical

permitted interactive group's ("Technical Committee") 12 subsequent meetings were held in person at the State Capitol:

September 2, 3, 20, 26, 17, 22, 24, 2021  
October 8, 2021  
November 3, 2021  
December 1, 15, 2021  
January 3, 2022

32. At each meeting, consultant Royce Jones and I made presentations to the Technical Committee on proposed redistricting plans. The Technical Committee then discussed their proposals and upon agreement, authorized Mr. Jones, myself, and the Technical Committee itself to make a presentation of the proposed plans at the next full Reapportionment Commission meeting, where it was also presented to the public. A vote on that meeting's Technical Committee proposals was then taken at a subsequent meeting after the public had a chance to submit its comments.

#### Redistricting

33. There are many ways to create a redistricting plan and many iterations that can satisfy the redistricting criteria. There is not one standard method to creating a plan. The creator of a re-districting plan sets his or her own criteria and decides where the redistricting plan should start. Where the plan starts will impact the outcome of a redistricting plan.

34. The Technical Committee members began the process with adjusting the Congressional District boundary. The committee members looked at the existing boundary and its deviation of 0.6%. Because the congressional plan must be based the total population counted in the U.S. Census (as opposed to a "permanent resident" base), and because the existing boundary was below a 1% deviation, the Technical Committee



was able to develop two alternative proposed congressional reapportionment plans for the 2021 Commission's review and consideration: (1) a plan which maintained the existing congressional district lines, with a deviation of 0.6%; and (2) a plan which moved portions of Ko Olina from existing Congressional District 1 to Congressional District 2, thereby lowering the deviation to 0.34%.

35. The Technical Committee looked at two anchor points: Makapuu lighthouse on the east and Kaena Point on the west using the existing district boundary. The committee could not find census block(s) on the Makapuu side of Oahu to move from Congressional District 1 to Congressional District 2 and get less than 1% deviation. The Technical Committee looked at the southwest corner of Oahu and moved lines back and forth until they were able to agree to a solution which reduced the deviation to 0.34%.

36. The plans were presented at the September 9, 2021 meeting and disseminated for public review and comment, including online. No public comments were submitted in opposition to either of the proposed congressional reapportionment plans.

37. The Technical Committee began their Oahu state legislative redistricting activity by trying to hold two anchor points. Makapuu lighthouse on the east and Kaena Point on the west and using the existing district boundaries. The Technical Committee tried different scenarios which used Makapuu lighthouse on the east and adjusting the existing district boundaries proceeded Northwesterly along the Windward side of Oahu to the intersection of the central plain and the north shore.

38. Throughout the entire process, the public was invited to prepare their own proposed plans. On Maui, the existing House districts and Senate districts were already aligned. However, the Technical Committee changed the plans to in response to public testimony.

39. After other public hearings, the Technical Committee considered the public comment received and adjusted the House map to not allow the House District 51 seat to extend from Waimanalo past Makapuu Point. Makapuu Point became the starting point (and the dividing line between Hawaii Kai and Waimanalo). House District 51 would then start at Makapuu Point going North up through Kailua to the North Shore and back down through Central Oahu, thereby expanding the district to gain the targeted population.

40. This resulted in separating Hawaii Kai from Waimanalo and boundary changes in Mililani. It appeared that testifiers from Hawaii Kai and Waimanalo were satisfied with this change and that a few testifiers from Mililani were not. This is the balancing act that the process undertakes.

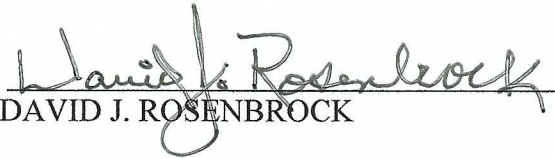
41. Separately, based on public testimony that Manoa and Kalihi not be split within their respective districts as initially proposed, the Technical Committee kept these districts whole. It appeared that the public was generally happy with this change based on subsequent positive public testimony and also the lack of negative comments from these areas after the changes were made.

42. The Commission invited Advisory Councils to submit reports throughout the process and a technical committee member was always present to listen in on the Oahu, Maui, Kauai, Hawaii Advisory Council meetings. As a result, some modifications

to the Maui, Kauai, and Hawaii island districts were made. For example, on Kauai the Technical Committee initially wanted to keep the Kauai plans the same as in 2012. But, after discussion arose at an Advisory Council meeting to change a boundary between House District 15 and 16, the Technical Committee did so.

I, DAVID J. ROSENBROCK, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, March 11, 2022.

  
DAVID J. ROSENBROCK