

No. SCPW-22-0000078

Electronically Filed  
Supreme Court  
SCPW-22-0000078  
11-MAR-2022  
11:58 AM  
Dkt 52 DEC

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 DYLAN NONAKA

DECLARATION OF DYLAN NONAKA

I, DYLAN NONAKA, declare that:

1. I am a resident of the County of Hawai'i, State of Hawai'i, and am one of the Vice-Chairs of the 2021 Reapportionment Commission ("Commission"). Unless otherwise stated, I make this declaration based on my personal knowledge.

2. By letter dated March 30, 2021, I was appointed to the Commission by House Minority Leader Val Okimoto.

3. This was not the first time I had served on the Reapportionment Commission; I was previously appointed by the House Minority Leader to serve on the 2011 Commission.

4. In addition to my two terms on the Commission, I also gained an in-depth knowledge of the political geography of the State by virtue of my past experience in the political field as the executive director of the Hawai‘i Republican Party and as the East Hawaii liaison for Governor Linda Lingle’s administration. I have personally visited every island and most of the communities affected by the reapportionment plans. Of the island units, I have the most extensive knowledge of the political geographies of O’ahu and the Big Island.

5. On May 17, 2021, I was assigned to serve on the Commission’s Technical Committee, along with three other Commissioners: Diane Ono, Charlotte Nekota, and Kevin Rathbun.

6. On August 26, 2021, I was elected as one of two Vice-Chairs for the Commission. The other Vice-Chair is Diane Ono.

7. The primary task of the Technical Committee was to propose, for the full Commission’s review and consideration, two sets of plans: (1) a legislative reapportionment plan based on the permanent resident base adopted by the Commission; and (2) a congressional reapportionment plan based on the total population counted in the 2020 United States Census.

8. In developing the Plans, the Technical Committee considered constitutional and statutory guidelines (including Article I, Section 2 of the United States Constitution, Article IV of the Hawai‘i Constitution, and Hawaii Revised Statutes (“HRS”) § 25-2) and the Standards and Criteria Governing the 2021 Reapportionment and Redistricting Process (“Standards”) adopted by the Commission at its September 9, 2021 meeting. The Technical Committee also carefully considered oral and written public testimony and maps submitted by members of the public, as described in more detail below, and as further evidenced by revised proposed maps presented on December 22, 2021, January 13, and 26, 2022 after having received public comments.

9. In discharging my duties as a member of the Technical Committee and as a member of the Commission, my belief was that the overarching objective was to ensure voter equality by constructing districts with substantial equality of population among the various districts, while taking into account constitutional and statutory guidelines and the Standards.

10. After the August 12, 2021 release of 2020 United States Census redistricting data, the Technical Committee had an initial meeting via remote conferencing technology to work on a congressional reapportionment plan to recommend to the Commission. The Technical Committee met remotely due to COVID-19 concerns, but it became readily apparent that attempting to redraw congressional district lines via remote conferencing technology was too difficult. This is because redrawing lines which coincide with census tract boundaries and easily recognizable features and geographical features required the Technical Committee members to be able to focus on the same area of the map at the same time, oftentimes zooming in and out. Thereafter, the Technical Committee agreed to meet in-person.

11. The Commission and the Technical Committee were cognizant that HRS § 92-2.5(b)(1)(B) requires that all resulting findings and recommendations of a permitted interaction group must be presented to the board at the meeting of the board and HRS § 92-2.5(b)(1)(C) requires that the board's deliberation and decision making on the matter investigated by the permitted interaction group can only occur at a duly noticed meeting of the board held subsequent to the meeting at which the group's findings and recommendations are presented.

12. Therefore, each time the Technical Committee was ready to propose a new version of its reapportionment plans, the Technical Committee would first present its proposed plan to the public and the Commission at a regularly noticed Commission meeting for discussion. However, the Commission did not take action on any of the Technical Committee's

proposed plans until a meeting subsequent to the meeting at which the Technical Committee's proposed plan was first presented.

13. The following is a true and correct chart of the dates each of the Technical Committee's proposed plans were presented for discussion at a Commission meeting and the date of the meeting when any action on the proposed plan took place.

Proposed Plan	Date Presented for Discussion at a Commission Meeting	Date of Action by the Commission
Proposed Congressional Reapportionment Plan	September 9, 2021 (Agenda Item IX)	October 14, 2021 (Agenda Item VI – plan approved unanimously)
Proposed Legislative Redistricting Plans	October 14, 2021 (Agenda Item VII)	October 28, 2021 (Agenda Item VII – plan approved unanimously; public hearings on the plans could commence)
Proposed Final Legislative and Congressional Reapportionment Plans	December 22, 2021 (Agenda Item VIII)  January 3, 2022 (Agenda Item VII – further discussion)	January 6, 2022 (Agenda Item VII – motion to modify plans based on the revised permanent resident base – approved unanimously)
Modified Proposed Final Legislative and Congressional Reapportionment Plans	January 13, 2022 (Agenda Item V)  January 20, 21, 22, 2022 (Agenda Item IV – Consideration of public testimony)	
Further Modified Proposed Final Legislative and Congressional Reapportionment Plans	January 26, 2022 (Agenda Items IX (presentation) and X (discussion))	January 28, 2022 (Agenda Item VI – final plans approved by a vote of eight to one)

14. As mentioned, the Technical Committee was guided by the applicable constitutional and statutory provisions, including the eight (8) criteria listed in Article IV, Section 6 of the Hawai‘i Constitution. We considered the criteria to comply with the Constitution while striving to produce plans that would best serve the State as a whole. The Technical Committee also did its best to be responsive to public testimony while following the criteria.

15. Deciding where to begin drawing the redistricting lines for any given island is also a discretionary decision, but one which has a dramatic effect on the rest of the island. Once each district is drawn, there is only so much land area and so many residents left with which to create the remaining districts. Similarly, changing the boundary line for one district can have cascading effects throughout the entire island, as the remaining district boundaries must be re-evaluated to ensure that the applicable criteria are still being met, and readjusted if necessary. Thus, what may appear to be a small change for a single district may actually not be best for the entire island.

16. The redistricting process therefore requires the exercise of discretion, community input, and considering different criteria. It is not something that can or should be reduced to a mathematical formula.

17. The Technical Committee’s decision to choose Kaena Point as a starting point for drawing the O‘ahu Senate and House districts demonstrates why the “starting point” decision is important and why the Commission must take into consideration both the applicable criteria and community input when making their decisions. Kaena Point was chosen because it is an easily identifiable and fixed geographic point that physically separates communities on either side – indeed, to get from Mokuleia on the north side of Kaena Point to Makua on the south, one would

have to drive through central O‘ahu. However, when the Technical Committee was tasked with fitting thirty-five House districts on O‘ahu, starting at Kaena Point resulted in a district that wrapped around Makapu‘u Point from Hawaii Kai and Portlock to Waimanalo. While we were aware that some members of the public would rather have the Commission use Makapu‘u as a starting point, we decided that Kaena Point was preferable. Unlike Kaena Point, the communities on either side of Makapu‘u point are connected by Kalaniana‘ole Highway. Thus, the plans we presented at the December 22, 2021 meeting included this “wrap-around” district.

18. At the December 22, 2021 meeting, the Technical Committee explained that keeping Hawaii Kai, Portlock, and Waimanalo in one district would actually be beneficial because it would give Waimanalo more representation within its district than it would have if it were joined with Kailua. We also explained that the west and central areas of O‘ahu had experienced greater population growth than east O‘ahu, where growth had stagnated. Thus, there was a need to create more representation in west and central O‘ahu than in east O‘ahu.

19. However, we heard and considered the public testimony against keeping Waimanalo in the same district as Hawaii Kai and Portlock. Thus, after a House district was moved from O‘ahu to the Big Island, we found a way to keep these communities in separate districts that avoided wrapping around Makapu‘u Point.

20. Indeed, moving a House district from O‘ahu to the Big Island caused ripple effects on both islands. On O‘ahu, the removal of non-permanent military residents from east O‘ahu meant that districts in east, north, and central O‘ahu had to expand and become larger in area to take in more residents and lessen the statistical deviation between the number of residents in each district. The Technical Committee was also able to respond to public testimony by

keeping Manoa valley within one district and keeping McCully-Moili‘ili together in a district as well.

21. On the Big Island, the existing House districts had to contract and consolidate around population centers to allow a new House district to be created. However, we did not believe that changes to the Big Island Senate districts were warranted.

22. The Technical Committee received and reviewed the Boyea map (Petitioner’s Exhibit F) for the Big Island but decided not to adopt it. The Boyea map is a good illustration of why strictly following the guideline that House districts should be fully contained within Senate districts is not always practicable in light of other criteria. The Boyea map creates a large House District 8 which extends from just above North Hilo all the way to Hawi. Not only is this district not compact (one of the eight constitutional criteria), but it also puts the northwestern Hawai‘i community of Hawi into the same district as the east Hawai‘i community of the Hamakua Coast, even though these are historically disparate communities that are geographically separated by the Kohala mountains. By contrast, the final map adopted by the Commission keeps the Hawi and Hamakua Coast communities in separate, compact districts with like communities, and also creates compact districts around the more populated Hilo areas.

23. However, the Technical Committee did not mechanically weigh compactness as the most important criteria. While the Commission was able to keep House Districts 1-4 and 6-8 relatively compact, House District 5, which comprises the sparsely populated southern part of the Big Island, had to become very large in area. However, rather than making House District 5 smaller by enlarging the other districts, the Technical Committee decided to keep rural communities together in House District 5 rather than diluting their vote by simply making them

part of more densely populated districts. In contrast, the Boyea map combines some of those rural communities in the same district as a more densely populated area of south Kona.

24. The Boyea map also demonstrates why it is not wise or preferable to have a map drawn by a single person or interest group. I understand that Boyea lives in Puna, and his map reflects his ideal district lines for the Puna and Hilo districts. However, his map reflects a lack of attention to the needs of the communities in west or north Hawai'i. For instance, the Commission's final map carefully keeps the resort and condominium communities of Kailua-Kona and the Waikoloa coast together in House District 7, while the Boyea map divides them between House Districts 6 and 7. And as discussed, the Boyea map forces Hawi into the same district as dissimilar northeast communities, while the Commission's map keeps Hawi with other North Kona communities. Also, the Boyea map creates five districts which are primarily on the east side of the island and only three districts on the west side, while the Commission's final map is more balanced. Equal representation in the House has long been one of the concerns vocally expressed by west Hawai'i communities. The Technical Committee was of the opinion that the Boyea map did not present the best balance of interests for the entire island of Hawai'i.

25. The guidelines that (a) State House and Senate districts be kept wholly within U.S. Congressional districts as much as practicable, and (b) that State House districts be kept within State Senate districts as much as practicable were considered by the Technical Committee, along with the other criteria, when the Committee drafted its proposed plans. With respect to keeping State House and Senate districts wholly within Congressional districts, the Technical Committee did not find it possible, let alone practicable, to do so in its final plan. The Congressional districts and the State House and Senate districts are based on dramatically different population bases because, under the Hawai'i Supreme Court's *Soloman* decision, State



House and Senate districts must be based only on the non-permanent resident population. Most of the non-permanent residents in the State were extracted from Congressional District 1. Therefore, the population base used to draw Congressional District 1 was vastly different than the non-permanent resident population base which had to be used to draw the State districts within Congressional District 1.

26. With respect to keeping State House districts wholly within State Senate districts, it would be extremely difficult to consider other criteria if that one principle was used as a guiding factor. The Commission would have to prioritize drawing arbitrary lines without regard for community input.

27. With respect to community input, the Commission heard from many people who did not want their historical district lines changed very much. While we heard from some people who wanted the “district-within-district” guideline more strictly applied, we also heard from others that they were fine with their communities being represented by more than just one senator and one representative.

28. To my knowledge, none of the members of the Technical Committee ever proposed a plan with the goal of giving an advantage to incumbent candidates. That goal was never discussed at any of our meetings. Our guiding principle was always to create districts which would fairly represent the people of Hawai‘i.

29. It is my belief that the final reapportionment plans recommended by the Technical Committee on January 13, 2022 and adopted on January 28, 2022 not only achieve the overriding objective of voter equality, but best represent the balancing of the redistricting criteria.

//

I, DYLAN NONAKA, declare under penalty of law that the foregoing is true and correct.

DATED: Kailua-Kona, Hawai'i, March 11, 2022.



---

DYLAN NONAKA