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October 30, 2009

Sent via e-mail to keoff@co.hawaii.hi.us; no hard copy will follow

Honorable Edmund Haitzuka and Members of the
County of Hawai'i Charter Commission
c/o Hawai'i County Council
25 Aupuni Street
Hilo, Hawai'i 96720

RE: Comments about Charter Amendment Proposal CA-7

Dear Chairman Haitzuka and Commission Members:

Thank you for the opportunity to comment on proposed Charter amendment CA-7 which would amend sections 12-1.1, 12-1.2, 12-1.5 and 12-1.6 of Article XII "Removal of Elected Officers" of the current Charter.

My office, which includes the Office of Elections, provides no comment on the changes to sections 12-1.1 and 12-1.6, as election officials must remain neutral on purely policy questions beyond the purview of our election responsibilities. Our comments on sections 12-1.2 and 12-1.5 are as follows:

Petition Requirements (Section 12-1.2)

Charter amendment CA-7 reads:

Section 2. Article XII, Chapter 1, section 12-1.2, Hawai'i County Charter, is amended to read as follows, with added language underscored and deleted language bracketed:

“Section 12-1.2. Petitions.

Signers of a recall petition shall print their [names and their signature, their residence address, and the date of signing on said petition] name, which shall be reasonably similar to their name as it appears on the general county register for the County of Hawai'i and add their signature, month and day of their birth date, and the last four digits of their social security number on said petition. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition and that each signature of the person whose name it purports to be, and that each signer understood the nature of the recall petition.”

The primary concern I have with this amendment is that it removes the requirement that signers of a petition must provide a residence address.

Charter section 12-1.1(a) requires that petitions be signed by **qualified** voters. Our office interprets this to mean that the person signing the petition be registered to vote and actually be a resident in the appropriate district or county as the case may be. Hawai'i Revised Statutes (“HRS”) § 11-15 requires a person registering to vote to make an affidavit that contains a statement that the person's “residence was acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein.” HRS § 11-17(b) also states:

The clerk shall also identify or remove the name of any registered voter, if the clerk, after mailing a notice or other correspondence, properly addressed, with postage prepaid receives the notice or other correspondence as return mail with a postal notation that the notice or other correspondence was not deliverable. On election day, any person identified or removed shall have the person's name corrected or restored in the register and shall be allowed to vote if the person completes an affidavit or other form prescribed by the chief election officer affirming that the person: claims the person's legal residence at the address listed on the register; changed the person's legal residence after the closing of the register for that election; or, moved to a new residence within the same precinct as the person's residence as listed on the register.

Clearly, simply being registered to vote at a certain residence does not entitle a voter to vote if they no longer reside there. At the poll book station on Election Day, voters are asked to verify their information in the poll book, which includes residence address. If the address is incorrect, the voter

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must complete a Re-registration Application Form (RAF) before being allowed to vote. If based on their new residence address, they are at the incorrect precinct, they must take a copy of the RAF to the new precinct and the voter's name will be added to the poll book by correction order.

Without a residence address listed on a recall petition, there is no way of knowing if a person is a qualified voter. As recall petitions may be specific to one council district, this information is important to verify that a person is qualified to vote in a particular council district.

In addition to deleting the requirement that a residence address be provided, CA-7 amends section 12-1.2 by requiring persons signing a petition to add their birth date and the last four digits of their social security number. While not very difficult, it would require our office to verify this additional information. Also, if this amendment were to pass, it is our interpretation of the charter to require all items called for in the Charter, i.e., if a person listed an incorrect date of birth or the last four digits of their social security number, or left the space for this information blank, their name would not be counted in determining whether the petition contained a sufficient number of signatures. In my opinion, providing a date of birth or the last four digits of a social security number is not necessary. While it might be argued that having the last four digits of a social security number may assist our office in cases of an illegibly printed name, this has not been a common issue in the past. We have no objection to stating that the name listed on a petition be reasonably similar to their name as it appears on the general county register.

Examination of Supplemental Petitions (Section 12-1.5)

This Amendment would provide the county clerk ten, as opposed to five, working days to examine supplemental petitions and determine if a petition contains sufficient signatures and prepare a certificate showing the result of such an examination. The Office of the County Clerk supports this amendment to the Charter.

If I can provide further information or assistance, please do not hesitate to contact me at 961-8271.

Yours, very truly,



KENNETH G. GOODENOW
County Clerk