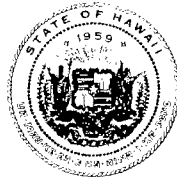


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GOVERNOR



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June 2, 2011

The Honorable Victoria S. Marks (Ret.)  
Chairperson  
Reapportionment Commission  
802 Lehua Avenue  
Pearl City, Hawaii 96782

Dear Judge Marks:

This responds to your letter to Attorney General David Louie dated May 10, 2011 in which you inquire about the constitutionality of single- and multi-member districts. Specifically, you have asked:

- (1) Are multi-member districts allowable under the Constitution of the State of Hawaii and/or under the United States Constitution; and
- (2) Can the State of Hawaii have both multi-member districts and single member districts?

See letter dated May 10, 2011 to Attorney General David M. Louie from the Honorable Victoria S. Marks, copy enclosed.

As explained below, for congressional reapportionment, Hawaii law requires that the Reapportionment Commission apportion the State's congressional members "among single member districts". See Haw. Rev. Stat. § 25-2(b). However, for purposes of legislative reapportionment, multi-member districts are not unconstitutional per se. Burns v. Richardson, 384 U.S. 73 (1966). Accordingly, the State is not constitutionally prohibited from using single-member and multi-member districts for state legislative representation but the State may use only single-member districts for representation in Congress.

I. Hawaii's Congressional Districts

Equal representation for equal numbers of people is the fundamental goal (Wesberry v. Sanders, 376 U.S., 1 (1964)) and more stringent standards are to be applied

to congressional reapportionments than are applied to state and local ones. Travis v. King, 552 F.Supp. 554, 569 (1982). Thus, pursuant to Haw. Rev. Stat. § 25-2(b), the Reapportionment Commission is to apportion Hawaii's Congressional delegation "among single member districts" so that the average number of persons counted in the last federal census in each district shall be as nearly equal as possible. See Travis, 552 F. Supp. at 571 (" . . . pursuant to article I, § 2 of the Constitution states must depend on total federal census figures to apportion congressional districts within their boundaries").

## II. Hawaii's Legislative Districts

Multi-member districts are not unconstitutional per se. Burns v. Richardson, 384 U.S. 73, 88 (1966). Rather, according to the Supreme Court,

[w]here the requirements of Reynolds v. Sims are met<sup>1</sup>, apportionment schemes including multi-member districts will constitute an invidious discrimination only if it can be shown that 'designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.'

Id. at 88. Thus, multi-member districts are not unconstitutional unless, by design or as a practical matter, they dilute or cancel votes of a racial or political group within the voting population. According to the Court, evidence of such invidious discrimination may be shown where: (1) districts are large in relation to the total number of legislators; (2) districts are not subdistricted to ensure distribution of legislators over the entire district; or (3) districts characterize both houses of the legislature rather than one. Id. at 88.

Based on Burns, for purposes of legislative apportionment, multi-member districts are not necessarily unconstitutional. The Commission is not therefore constitutionally prohibited from dividing the State into both single- and multi-member

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<sup>1</sup> In Reynolds v. Sims, 377 U.S. 533 (1964), the Supreme Court held that "as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis" and that States must make an "honest and good faith effort" to construct districts in both houses of their legislatures that are as nearly equal in population as practicable. Id. at 568, 577. Further, while a state may legitimately choose to deviate from a strict population standard to effectuate a rational state policy, the "overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." Id. at 579.

The Honorable Victoria S. Marks (Ret.)  
June 2, 2011  
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districts as long as the multi-member districts do not, by design or in practice, act to dilute or cancel the racial or political groups within the voting population.

If you have any questions about this matter, please contact me at 586-0618.

Very truly yours,

  
Robyn B. Chun  
Deputy Attorney General

Enclosure

Approved:



David M. Louie  
Attorney General

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May 10, 2011

The Honorable David M. Louie  
Attorney General, State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813

RE: Reapportionment Commission

Dear General Louie,

I write in my capacity as Chair of the Reapportionment Commission. The Commission would like a legal opinion on the following matters:

1. Are multi-member districts allowable under the Constitution of the State of Hawaii and/or under the United States Constitution?
2. Can the State of Hawaii have both multi-member districts and single-member districts?

In addition, the Commission received an email from the Office of Information Practices dated May 9, 2011. We request your assistance in responding to this email, which I have attached.

Thank you for your attention to these matters.

Very truly yours,

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Chair, Reapportionment Commission  
Judge Victoria S. Marks (ret.)

c: Reapportionment Commission members  
Robyn Chun, Esq. (via email)