

FEDERAL LAWS:

Help America Vote Act

Equal Protection under 14th Amendment

Amdt14.S1.4.3.3.3.1.2 Partisan Gerrymandering

Amdt14.S1.4.3.3.3.1.1 Dilution of the Right to Vote

Public Law 111 – 274 – Plain Writing Act of 2010

EXHIBITS:

- **Exhibit A:** (thumb drive) Violation of Act 136 as per link of Office of Elections
- **Exhibit B:** (photo) Violation of HRS§12-21, 16-1(1),16-41 (Signature cards with no security verifications, no ID required, no witness)
- **Exhibit C:** (photo) Violation of HRS§11-17 (Extra ballots sent to dead or moved voters)
- **Exhibit D:** (photo) Violation of HRS 16-43 (Only one observer instead of 2 or more officials)
- **Exhibit E:** Violation of HRS 16-43 (Only one observer instead of 2 officials)
- **Exhibit F:** (photo) Violation of HRS§12-21, 16-41. Non-working barcodes with no linkage to actual ballots, no paper trail. No chain of custody.
- **Exhibit G:** (photo) Extra Primary ballots
- **Exhibit H:** Confusing primary ballot, HRS§12-41(b) Organization of parties and nonpartisan.
- **Exhibit I:** (Video clip – thumb drive) Ballot collection at Kane’ohe District Park
- **Exhibit J:** (Video clip - thumb drive) August 11, 2020 Scott Nago has admitted on video meeting 100,000 ballots went to dead voters, wrong addresses, people that moved. They are still on the voter registration rolls.
- **Exhibit K:** Printouts 2,3,4 General election. Vote trend is for Trump. Printout 1 is missing.
- **Exhibit L:** Data gathered from Office of Elections “Final Report” 11/19/2020 10:18:14 am.
- **Exhibit M:** Certified mail receipts for Klean House Hawaii complaint for violations mailed to Agencies.
- **Exhibit N:** Klean House Hawaii complaint for violations, signed copy

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SCEC-20-0000721

IN THE SUPREME COURT OF THE STATE OF HAWAII

EMIL SVRCINA; KARL DICKS; and BANNER FANENE, Plaintiffs,

vs.

SCOTT T. NAGO, in his capacity as Chief Election Officer
for the State of Hawai'i; STATE OF HAWAII OFFICE OF ELECTIONS;
and GLEN TAKAHASHI, in his capacity as City Clerk
of the City and County of Honolulu, Defendants.

ORIGINAL PROCEEDING

ORDER DISMISSING ELECTION COMPLAINT

(By: Recktenwald, C.J., Nakayama, McKenna, and Wilson, JJ.,
and Circuit Judge To'oto'o, assigned by reason of vacancy)

Upon consideration of plaintiffs Emil Svrcina, Karl Dicks, and Banner Fanene's election complaint, filed on November 23, 2020, defendants Chief Election Officer Scott T. Nago and the State of Hawai'i Office of Elections' motion to dismiss, filed on November 27, 2020, defendant City Clerk of the City and County of Honolulu Glen Takahashi's joinder to the motion to dismiss, filed on November 30, 2020, Plaintiffs' response to the motion to dismiss, filed on December 2, 2020, the respective supporting documents, and the records and files herein, it appears that:

(1) any request for relief with regards to the August 8, 2020 Primary Election is untimely, see HRS § 11-173.5 (election contests of a primary election shall be filed no later than the

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thirteenth day after the primary election); (2) Plaintiffs lack standing to challenge the results of all federal, state, and county races for the August 8, 2020 Primary Election and the November 3, 2020 General Election, see HRS § 11-172 (an election contest shall be filed by "any candidate, or qualified political party directly interested, or any thirty voters of any election district"); and (3) even if Plaintiffs had standing, they can prove no set of facts in support of their claims that would entitle them to relief, see HRS § 11-172 ("The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results."); Tataii v. Cronin, 119 Hawai'i 337, 339, 198 P.3d 124, 126 (2008); Akaka v. Yoshina, 84 Hawai'i 383, 935 P.2d 98 (1997); Funakoshi v. King, 65 Haw. 312, 317-18, 651 P.2d 912, 915 (1982). Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss is granted and the complaint is dismissed.

IT IS HEREBY FURTHER ORDERED that all pending motions are dismissed.

DATED: Honolulu, Hawai'i, December 8, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Fa'auuga To'oto'o



2020 WL 4784674

Only the Westlaw citation is currently available.

Unpublished opinion. See HI R RAP Rule 35 before citing.

Supreme Court of Hawai'i.

Karl O. DICKS, Plaintiff,

v.

State of Hawai'i, OFFICE OF ELECTIONS, Defendant.

SCEC-20-0000505

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August 18, 2020

ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

(By: Recktenwald, C.J., Nakayama, McKenna, and Wilson, JJ., and Circuit Judge To'oto'o, assigned by reason of vacancy)

*1 We have considered the August 10, 2020 election complaint filed by Plaintiff Karl O. Dicks and the August 14, 2020 motion to dismiss filed by Defendant State of Hawai'i, Office of Elections. Having heard this matter without oral argument and in accordance with HRS § 11-173.5(b) (requiring the supreme court to "give judgment fully stating all findings of fact and of law"), we set forth the following findings of fact and conclusions of law and enter the following judgment.

FINDINGS OF FACT

1. Plaintiff Karl O. Dicks ("Dicks") was one of fifteen candidates for the City and County of Honolulu mayoral seat in the August 8, 2020 primary election.

2. According to the primary election summary printout, the election results for the City and County of Honolulu mayoral seat were:

Rick Blangiardi	69,510 (25.3%)
Keith Amemiya	55,002 (20.0%)
Colleen Hanabusa	50,120 (18.2%)
Kym Marcos Pine	40,008 (14.5%)
Mufi Hannemann	26,975 (9.8%)
William (Bud) Stonebraker	17,710 (6.4%)
Choon James	5,520 (2.0%)
John Carroll	2,005 (0.7%)
Ho Yin (Jason) Wong	1,434 (0.5%)
Ernest Caravalho	1,136 (0.4%)
Audrey Keesing	822 (0.3%)
Micah Laakea Mussell	538 (0.2%)
David (Duke) Bourgoin	367 (0.1%)
Karl O. Dicks	358 (0.1%)

APPENDIX A

Tim Garry	311 (0.1%)
Over Votes	3,046 (0.1%)
Over Votes	249 (0.1%)

3. Rick Blangiardi and Keith Amemiya received the highest number of votes.

4. On August 10, 2020, Dicks filed a document entitled “Notice of Appeal” in which he seeks to “object” and “protest” the results of the 2020 primary election. Dicks alleges, among other things, that there were “multiple irregularities” with the primary election, because it was “poorly planned,” “poorly managed,” and there was a “lack of proper security for ballots.”

5. Dicks asks this court to nullify the results of the primary election and allow all candidates who choose to continue to the November general election to have their names appear on the ballot.

6. Defendant State of Hawai‘i, Office of Elections Nago moves to dismiss the complaint on the grounds that the complaint does not fall within this court’s jurisdiction for original proceedings to determine the results of a primary election and fails to state a claim upon which relief can be granted.

CONCLUSIONS OF LAW

1. HRS § 11-172 provides that a copy of the complaint for an election contest “shall be delivered to the chief election officer or the clerk in the case of county elections.”

2. An election for mayor for the City and County of Honolulu is a county election administered by the city clerk for the City and County of Honolulu. The city clerk for the City and County of Honolulu, therefore, is a necessary and indispensable party who should have been named as a defendant and served with a copy of the complaint. The record, however, is devoid of any evidence that the city clerk for the City and County of Honolulu was named a defendant or served with a copy of the complaint and summons.

3. Even if the city clerk for the City and County of Honolulu was named or joined as a defendant and served with a copy of

the complaint, the complaint fails to state claims upon which relief can be granted.

*2 4. When reviewing a motion to dismiss a complaint for failure to state a claim upon which relief can be granted, the court must accept the plaintiff’s allegations as true and view them in the light most favorable to the plaintiff; dismissal is proper only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief. AFL Hotel & Restaurant Workers Health & Welfare Trust Fund v. Bosque, 110 Hawai‘i 318, 321, 132 P.3d 1229, 1232 (2006).

5. A complaint challenging the results of a primary election, special primary election, or county election fails to state a claim unless the plaintiff demonstrates errors, mistakes or irregularities that would change the outcome of the election.

See HRS § 11-172 (2009); Tataii v. Cronin, 119 Hawai‘i 337, 339, 198 P.3d 124, 126 (2008); Akaka v. Yoshina, 84 Hawai‘i 383, 387, 935 P.2d 98, 102 (1997); Funakoshi v. King, 65 Haw. 312, 317, 651 P.2d 912, 915 (1982); Elkins v. Ariyoshi, 56 Haw. 47, 48, 527 P.2d 236, 237 (1974).

6. A plaintiff contesting such an election must show that he or she has actual information of mistakes or errors sufficient to change the result. Tataii, 119 Hawai‘i at 339, 198 P.3d at 126; Akaka, 84 Hawai‘i at 388, 935 P.2d at 103; Funakoshi, 65 Haw. at 316-317, 651 P.2d at 915.

7. It is not sufficient for a plaintiff challenging an election to allege a poorly run and inadequately supervised election process that evinces room for abuse or possibilities of fraud. An election contest cannot be based upon mere belief or indefinite information. Tataii v. Cronin, 119 Hawai‘i at 339, 198 P.3d at 126; Akaka v. Yoshina, 84 Hawai‘i at 387-388, 935 P.2d at 102-103.

8. Taking Dicks’s allegations as true and viewing them in the light most favorable to him, it appears that Dicks can prove no set of facts that would entitle him to relief. Dicks does

not present specific acts or “actual information of mistakes or error sufficient to change the results of the election.”

9. In a primary election, special primary election, or county election challenge, HRS § 11-173.5(b) authorizes the supreme court to “decide what candidate was nominated or elected.”

10. The remedy provided by HRS § 11-173.5(b) of having the court decide which candidate was nominated or elected is the only remedy that can be given for primary election irregularities challenged pursuant to HRS § 11-173.5. *Funakoshi v. King*, 65 Haw. at 316, 651 P.2d at 914.

11. None of the remedies requested by Dicks are authorized by HRS § 11-173.5(b).

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, the judgment is entered dismissing the complaint. Rick Blangiardi and Keith Amemiya are the two candidates who received the highest number of votes, and their names shall be placed on the ballot for the November 2020 general election.

The clerk of the supreme court shall also forthwith serve a certified copy of this judgment on the chief election officer and the county clerk of the City and County of Honolulu in accordance with HRS § 11-173.5(b).

All Citations

Not Reported in Pac. Rptr., 2020 WL 4784674

End of Document

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Only the Westlaw citation is currently available.

Unpublished opinion. See HI
R RAP Rule 35 before citing.

Supreme Court of Hawai'i.

Banner S. FANENE, Plaintiff,

v.

STATE of Hawai'i OFFICE
OF ELECTIONS, Defendant.

SCEC-20-0000517

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August 27, 2020

ORIGINAL PROCEEDING

(By: Recktenwald, C.J., Nakayama, McKenna and Wilson,
JJ., and Circuit Judge Kuriyama, assigned by reason by
vacancy)

ORDER DISMISSING ELECTION COMPLAINT

*1 Upon consideration of Plaintiff Banner S. Fanene's
election contest complaint filed on August 20, 2020,
Defendant State of Hawai'i Office of Elections' motion to
dismiss the complaint, and the records and files herein,

It appears that:

1. In the election contest complaint, Plaintiff asks that all
candidates listed on the primary election ballot be listed on
the general election ballot; and that the Chief Election Officer
be asked to submit his resignation.

2. HRS § 11-173.5, which governs primary election
contests, provides in relevant part that:

[T]he court shall cause the evidence
to be reduced to writing and shall
not later than 4:30 p.m. on the fourth
day after the return give judgment
fully stating all findings of fact and of
law. The judgment shall decide what
candidate was nominated or elected[.]

3. Pursuant to the plain language of HRS § 11-173.5, the
only remedy this court can provide is to give a judgment as to
who was nominated or elected; and

4. The court cannot invalidate the primary election and move
everyone on the primary election ballot to the general election
ballot. Nor can the court ask the Chief Election Officer to
resign. See Funakoshi v. King, 65 Haw. 312, 314, 651 P.2d
912, 913 (1982) (the only relief to which a plaintiff is entitled
under HRS § 11-173.5 is to have the court declare the name
of the candidate to be nominated or elected).

Therefore,

IT IS HEREBY ORDERED that the motion to dismiss is
granted, and the complaint is dismissed.

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IN THE SUPREME COURT OF THE STATE OF HAWAII

EMIL SVRCINA; KARL DICKS; and BANNER FANENE, Plaintiffs,

vs.

SCOTT T. NAGO, in his capacity as Chief Election Officer
for the State of Hawai'i; STATE OF HAWAII OFFICE OF ELECTIONS;
and GLEN TAKAHASHI, in his capacity as City Clerk
of the City and County of Honolulu, Defendants.

ORIGINAL PROCEEDING

ORDER DENYING MOTIONS FOR RECONSIDERATION

(By: Recktenwald, C.J., Nakayama, McKenna, and Wilson, JJ.,
and Circuit Judge To'oto'o, assigned by reason of vacancy)

Upon consideration of plaintiffs Emil Svrcina, Karl
Dicks, and Banner Fanene's four motions for reconsideration,
filed on December 17, 2020 and December 18, 2020, respectively,
the documents submitted in support thereof, and the record,

IT IS HEREBY ORDERED that the motions for
reconsideration are denied.

DATED: Honolulu, Hawai'i, December 22, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Fa'auuga To'oto'o



APPENDIX E

**Additional material
from this filing is
available in the
Clerk's Office.**