

**ORIGINAL**

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SUPREME COURT, U.S.

**IN THE SUPREME COURT OF THE UNITED STATES**

**RICHARD Y. KIM**

**Petitioner/Plaintiff**

**v.**

**STATE OF HAWAII OFFICE OF ELECTIONS, et al**

**Respondent/Defendants**

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**On Election Objection to Supreme Court of Hawaii**

**SCEC-22-0000508**

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**PETITION FOR A WRIT OF CERTIORARI**

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**RECEIVED**

**DEC 13 2022**

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## QUESTION

If this honorable US Supreme Court determines Elections Office of Hawaii (EOH) failed to follow State Rules and Regulations and due process, e.g. failure of or no certification on voting machine test, and Supreme Court of Hawaii (SCH) abused its discretion in this case, should States like Hawaii, who has own rules and regulations in such election process, now adopt or be required to have Federal Rules and Regulations, instead?

**PARTIES TO THE PROCEEDING BELOW**

Richard Y. Kim is Plaintiff/Petitioner in this case, who were a democratic candidate for Governor in 2018 and 2022.

Hawaii State Office of Elections and Chief Elections Officer, Scott T. Nago (Hawaii Office of Elections, et al) are the Defendants/Respondent.

**RULE 29.6 STATEMENT**

Richard Y. Kim is an individual, and does not hold 10% or more of publicly traded company.

### STATEMENT OF RELATED PROCEEDINGS

This case arises from Plaintiff's/Petitioner's filing of Election Complaint against Office of Elections and Chief Election Officer, Scott Nago in Supreme Court of Hawaii. (SCEC-22-0000508)

Although they may be not directly related, my filing of complaints regarding other election matters in 2018 may be related in terms of Supreme Court of Hawaii's decision patterns (i.e. Abuse of Discretion, e.g. not allowing further discoveries). E.g. Kim v. Ige (SCEC-18-0000639). Kim v Office of Elections and Chief Election Officer, Scott Nago. (18-1-0878-06 GWBC).

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## JURISDICTION

The Opinion of Supreme Court of Hawaii (SCH) was entered on August 29, 2022. (SCH's opinion on Petitioner's Election Objection; 47A-62A)

Under US Supreme Court Rule 13.1 and 13.3, petition for a writ of certiorari is currently due on November 28, 2022.

US Supreme Court would have jurisdiction over SCH under US Supreme Court Rule 10 (b) and (c).

## STATEMENT OF CASE

This case is an important election matter of public interests. Elections Office of Hawaii (EOH), or State of Hawaii Office of Elections, violated election process, e.g. no certification on vote counting system, mandated by Hawaii Administrative Rules §3-177-704. Despite such failure by EOH, Supreme Court of Hawaii (SCH) rejected the petitioner's reasonable request of audit, visual inspection of sample sizes

(10 sets of random 1000 votes) of his ballots.

And, it is reasonably suspected and believed there existed election “rigging” of, e.g. computer manipulation(s). And, further discovery is very necessary since, despite Plaintiff (Petitioner)’s prior demand, EOH failed to provide material fact and evidence in their motion to dismiss or summary judgment, even if they bear the burden of showing.

#### DUE PROCESS VIOLATION

Hawaii does not participate or is not required by federal rules and guidelines per such election process. However, even if so, EOH did not properly follow the process prescribed by Hawaii Administrative Rules §3-177-704. Among other things,

- A. It did not make advanced public announcement when they tested and certify voting machines.
- B. It did not allow any other person to observe, regardless such authorization is given or not,

as written in Section (a)(3) of the Administrative Rules.

C. Section (b) of the Administrative Rules clearly stated "The test may include a predetermined number of votes for EACH candidate and for and against each question and a predetermined number of excess or "over" votes and blank votes for EACH candidate or question". Also, Section (b) (4) clearly stated "official observers SHALL sign a certification that the vote counting system was tested, found accurate, and approved."

Furthermore, Section (c) clearly stated "There SHALL be NO FURTHER PROCESSING until the test indicates that the vote counting system is working properly."

However, there is no evidence EOH conducted such tests and certifications. And, EOH failed to provide such evidence in Defendants' (EOH's) motion to dismiss or summary judgment to the petitioner's Election Objection.

Even Hawaii Revised Statues §16-45, shown in Defendants' (EOH's) motion, also

stated similar requirement as in Hawaii  
Administrative Rules §3-177-704.

**LEGISLATORS DICTATE THE RULES, NEITHER  
ELECTIONS OFFICE(R) NOR JUDGES.**

The (Chief) Election Office(r) may not have all the authority in such election process, even if they (or he) may have some discretions, because the Hawaii Administrative Rules §3-177-704 SPECIFICALLY dictates what needs to be done in such process. Likewise, SCH should not misinterpret and/or omit reviewing such election process.

**ELECTION MATTERS ARE OF GREAT PUBLIC  
INTERESTS**

Any and all of the election records should be public and not privileged.

When requested, EOH failed to provide proper information of such election process.

## CONFLICT OF INTEREST

### A. CHIEF ELECTION OFFICER

In 2018 primary election, Chief Election officer, Mr. Scott Nago, had falsely stated about State Attorney General's Opinion No. 86-4 [and State mandate ("Resign to Run"), Article II, Section 7 of State Constitution]. When confronted with truth via Petitioner's written response, Mr. Nago unilaterally cut the communication with Petitioner, and further continued to proceed with the election process, without having to resolve the issue before the primary gubernatorial election in 2018 when Petitioner also ran.

When Petitioner filed complaint to First Circuit Court of Hawaii, Mr. Nago rather falsely accused as if Petitioner did not communicate with him before the filing of the complaint; in fact, Mr. Nago was the one who discontinued communication with Petitioner/Plaintiff. Sadly, Hawaii State Court denied and ruled against Petitioner. The case number is (Hawaii State) Civil Number 18-1-0878-06 GWBC.

## B. MEDIA

Among other things, Petitioner's platform has been "Media Reform" in the gubernatorial race, because he believes Media is (are) a part of corruptions in Hawaii.

There clearly existed conflict of interest between Petitioner and Media.

Even if Media had been present at the voting machine tests and certifications, Defendants, EOH and Mr. Nago could and might have still committed election fraud with or without Media's knowledge and notice.

## MERE ERROR OR ABUSE OF DISCRETION

When there exists clear abuse of discretion, US Supreme Court, the highest court of this country, must review the case to protect and preserve our Constitution. Among other things,

### A. PREMATURE DECISION BY SCH ON DEFENDANTS' MOTION TO DISMISS OR SUMMARY JUDGMENT

Defendants EOH filed Motion to Dismiss or Summary Judgment on Friday, August 26, 2022. (18A-46A) However, SCH decided the case (47A-62A) without giving Petitioner an adequate time to respond to the motion, on Monday, August 29, 2022, or without wanting to see Petitioner's response to the motion (63A – 67A), only 3 days after the motion, only one day after the motion, if Saturday (August 27, 2022) and Sunday (August 28, 2022) are not counted. Sadly, Petitioner received the motion on Monday 29, 2022, and filed the response only after the SCH's decision on the case.

#### B. FLAWS IN MOTION TO DISMISS OR SUMMARY JUDGMENT

##### 1) Summary Judgment Standard(s)

Summary judgment is not appropriate when there are genuine issues of material fact. The party moving for summary judgment bears the burden of demonstrating there are no genuine issues of material fact. [Roberts v. Browning, 610 F.2d 528, 531 (8<sup>th</sup> Cir. 1979)]

Here, a genuine issue in this case, among other things, is "vote machine test and certification". Sadly, SCH's opinion falsely stated as if there is no genuine

issue, even if Defendants EOH bears burden of showing, and in fact they did not show any material facts and evidence in the motion.

Summary Judgment should be cautiously invoked so that no person will be improperly deprived of a trial. [Ripplemeyer v. National Grape Co-op Association, 807 F. Supp. 1439, 1447 (W.D. Ark. 1992)] The courts should not engage in making a choice of inferences, and in fact, the court must view the evidence MOST favorably to the nonmovant, granting all reasonable inferences in the nonmovant's favor. [Fischer v. NWA, Inc., 883 F.2d 594, 598 (8<sup>th</sup> Cir. 1989)] Even SCH's opinion stated "9. On a motion for summary judgment, this court must view the evidence in the light MOST FAVORABLE TO NONMOVING PARTY. [Winfrey, 130 Hawaii at 271, 308 P.3d at 900]

Sadly, SCH speculatively rejected Petitioner's complaint as if many of his reasonable facts, evidence, and possible (probable) inferences are unreasonable.

- 2) SCH's mis and biased interpretation of Petitioner's complaint, Election Objection.

Among other things,

SCH's opinion only stated Petitioner's one possible claim, that he could have been a winner, was unreasonable, but ironically omitted and missed Petitioner's other balanced points in the paragraph 11 of the complaint, as if reasonableness is all about their biased dependence on speculative statistics. (59A) But, reasonableness is a hybrid notion that is partly statistical (e.g. averageness) and partly prescriptive (e.g. welfare maximization). [Alabama Law Review, Vol. 70, 293-359 (2018); How People Judge What is Reasonable.]

Petitioner clearly wrote, in balance, in the paragraph (8A),

"Even if not so, he believes it is impossible to have received only 0.4% (985) of democratic votes, among other reasons, due to many facts and evidence as shown in the next paragraph 12. However, regardless who the winner is, if the result was false and/or intended to appear as if his insignificance in the election, Richard Kim has the right to know the truth and correct it, and also find out where his position should truly be in his effort to reform Hawaii."

Sadly, although Petitioner's claim was possible, reasonable, and balanced, SCH's opinion speculatively stated as if "19. It is also not reasonable to infer that Kim received more votes than Green based on the results of a poll...", without stating why they omitted such balanced statement

in the complaint. SCH's opinion was rather unreasonable, not thinking in balance.

Nevertheless, in such motion to dismiss or summary judgment, the law specifically advised the court not to make such speculative inferences, e.g. based upon a poll, but giving MOST favorably to the nonmovant, granting all reasonable inferences in the nonmovant's favor. [Fischer v. NWA, Inc., 883 F.2d 594, 598 (8<sup>th</sup> Cir. 1989)] If considered so, the court should also have considered plaintiff's inference and claim, that he might have been a winner, as true in such motion.

#### C. OMISSIONS ARE NOT MERE ERRORS.

Among other things,

Both SCH's opinion and Defendants' motion to dismiss or summary judgment omitted and further failed to mention Paragraph 7 of the complaint, Election Objection,

"7. Hawaii Administrative Rules §3:177-704 (b) stated the test may include a **predetermined** number of votes for **EACH** candidate and for against each question and a predetermined number of excess or "over" votes and blank votes for **EACH** candidate or question. There is no evidence if Elections office did such tasks on my test votes. Even if such tasks were

performed, there is no evidence they were done properly. Even if there have been certifications, they could have been easily tampered. What if the certifications were signed only by certain people who had the same interests but against public interests, or without truly independent observers free from any special interests?"

By omitting this paragraph of the complaint in its opinion, SCH decided to ignore or not to review and/or interpret such important election process.

(ANY) SPECIAL RULES COULD HAVE BEEN  
MADE BY SUPREME COURT OF HAWAII,  
ACCORDING TO HRS §11-175 and 11-172

Contrary to and apart from §11-173.5 in Defendants' motion and SCH's decision, but as clearly written in Plaintiff's Complaint paragraph 14, page 7, paragraph 11, HRS §11-175 specifically addresses "the Court may make (such) special rules as it may find necessary or proper", e.g. further discovery and/or allow Plaintiff (Petitioner) to visually audit his ballots, if and when appropriate and necessary.

Nonetheless, according to HRS §11-172, which was

also addressed in SCH's opinion, there should have existed sufficient fact and evidence of "provable" fraud and very clear and necessary reason for further discovery in this case; (despite Plaintiff's demand), when Defendants had not been able to provide ANY "material" facts and evidence, e.g. certification records of voting machine test, and even if they must bear the burden of showing in their Motion to Dismiss or Summary Judgment.

Sadly, the (further and more) truth might (must) have been buried as "mere belief or indefinite information"; since, by dismissing the complaint, the SCH might have kept the whole truth undiscovered and/or have not wanted to allow such or any "discovery process" in this case, which is among the fundamental rights of due process, guaranteed by our Constitution.

#### **CONFLICT BETWEEN HRS §11-173.5 AND HRS § 11-172 IN TERMS OF TIME REQUIREMENTS**

However, SCH's hastily decision in the name of "time requirements", only based on HRS §11-173.5, clearly conflicts with HRS §11-172 in terms of

timeline; if this honorable US Supreme Court determines a necessity for further discovery in this case, due to Defendants' failure to provide ANY MATERIAL fact and evidence as burden of showing in their motion, and despite Plaintiff's demand. Federal Rules of Civil Procedure, Rule 37, also dictates Compelled Discovery, Plaintiff's request and prayer, as in HRS §11-172, which may likely take time to accomplish, differently and apart from hasty time requirements of HRS §11-173.5

Although a different issue, such hasty decision by SCH also happened in similar fashion, in my Election Objection in 2018 (SCEC-18-0000639, filed on August 19, 2018) against (incumbent) Governor Ige regarding his alleged bribing on Korean community in the name of a grant for trying to sway Korean votes toward him (Ige), but away from me (Kim).

Sadly, there has been a repetition of such abuse of discretion by SCH.

#### **JUDICIAL FAIRNESS AND BALANCE**

When there exists the due process violation and the highest court of the State abused its discretion, it is more than likely that there could (should) have existed election fraud. And, the benefits (e.g. discovering election fraud by EOH) would outweigh the risks (e.g. wasting time and money) in public standpoint. And, the risk of possible (probable) continuous election fraud may be too great than a mere cost of Petitioner's considerate request for the audit. (Petitioner's request was reasonable, especially for judicial economy.)

FUTURE DISPUTE AND SUSPICION MUST BE PREVENTED THRU THOROUGH VETTING OF VOTE MACHINE TEST PROCESS BY REQUIRING FEDERAL RULES AND GUIDELINES

If this honorable US Supreme Court allows Petitioner's audit, visual inspection on democratic votes in the random samples, and his reasonable projection(s) turn out to be true, e.g. statistically significantly deviated from the published result, then EOH may likely need to have overhaul their election process.

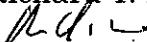
States like Hawaii should now adopt or follow the federal rules and guidelines on the entire election process. Perhaps, one of the most important reasons why Hawaii should rather adopt such federal rules and guidelines may be not because Hawaii may not have good State rules and guidelines for election process, but because the SAME people (including election officers, public attorneys, and judges) who oversee, run, and/or review the system, but who are supposed to protect and preserve our Constitution and public interests, might (tend to) have become (repeatedly) corrupt.

#### CONCLUSION

This honorable US Supreme Court should grant Certiorari.

Respectfully Submitted by

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