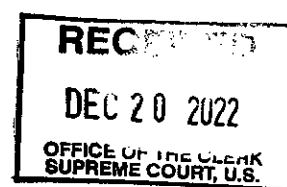


APPENDIX



NO: __SCEC-22-0000508__
IN THE SUPREME COURT OF
THE STATE OF HAWAII

Richard Y. Kim,)
Plaintiff,)
vs.)
Office of Elections,)
Chief Election Officer, Scott T. Nago)
Defendants)

ELECTION OBJECTION

Richard Y. Kim
95-1050 Makaikai St. #8K
Mililani, Hawaii 96789
Email: richkmililani@gmail.com

808 347 4632

Plaintiff, Pro Se

Pursuant to HRS §11-172, 11-175, (and 11-173.5), Richard Y. Kim, a democratic candidate for Governor, files objection of the primary election, which was held on August 13, 2022, to the Supreme Court of Hawaii.

1. Plaintiff Richard Kim is one of seven democratic candidates for Governor.
2. As a citizen of Hawaii and USA as well as a candidate for public office, Richard Kim has all due process rights, including right to inspect records of all election process and materials.
3. This Objection is regarding due process violation of Hawaii Administrative Rules §3-177-704 [EXHIBIT A] by Elections Office of Hawaii, that, before testing the voting machines, they did not provide proper advanced notice to general public, and even if the notice was given, not sufficient enough; so any public and "interested" persons like me, a citizen as well as a candidate, could not properly apply and receive such authorization

to observe and inspect the voting process like testing voting machines, regardless the authorization to be granted or not.

4. Hawaii Administrative Rules §3-177-704 [EXHIBIT A] did not specify a candidate cannot be allowed to observe and inspect, (although it's also fundamental basic right as a citizen); but rather broadly stated "other (authorized) interested" persons other than (1) The chief election officer, clerk, or designated representative; (2) official observers.

Even if candidate is not allowed, he or she can always send his or her representative to do such observation and inspection.

And, this is due process violation, since not given with proper advanced notice for voting machine testing.

What did they want to hide, by not wanting to give proper advanced notice to public?

5. Elections Office shared such information (of conducting such tests) only with certain people including Media.

Even if Media were present, they could and

might still commit election fraud with or without their knowledge and notice, if it involves internal program or computer manipulation.

Besides, Candidate Richard Kim and Media have CLEAR **conflict of interests**, since his platform includes Media Reform.

6. Due to such lack of notice, any public and interested persons lost chances to ask, among other things, why they did not allow any interested public to inspect and observe, why only certain number of people were allowed to observe, and also why they did two sets of tests, rather than just one test at the same time.

Till today, Elections office has failed to answer why they have done two tests at different dates, except stating what they did in the two different tests in their response to my email on August 1, 2022. [EXHIBIT B] Furthermore, despite phone conversations with Plaintiff, Elections Office failed to respond and/or provide ANY records, and also failed to allow Richard Kim to inspect such records of the primary election, especially about voting machines testing and other relevant records.

7. Hawaii Administrative Rules §3-177-704 (b) [EXHIBIT A] 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?
8. Anyone can implement a simple computer program on any targeted candidate(s) to rig the vote counting. And, even in recounting with the same rigged computer may likely end up in the same results. Therefore, it is imperative that **VISUAL** inspection of the ballots may be very necessary if such ill intended computer manipulation may possibly exist or be possible.
9. Richard Kim received 985 votes on this

current election, which is mere 0.4% of the democratic votes. [EXHIBIT C] It was even lower than what he received in 2018, when he was also suspected of rigging by the possibly similar computer manipulation, especially due to his conflict of interests with Chief Election Officer, Scott Nago.

10. This Objection is also about Conflict of Interest between Plaintiff Richard Kim and Mr. Scott Nago, Chief Election Officer, who unilaterally cut the communication with Plaintiff, and further continued to proceed with the election process, without having to resolve the issue in court before the last primary gubernatorial election in 2018, when Richard Kim also ran.

On June 4, 2018, Plaintiff brought his Complaint to First Circuit Court, Civil Number 18-1-0878-06 GWBC. (Please, refer to the entire court documents.)

The case was about Ms. Hanabusa's (a democratic gubernatorial candidate's) violation of State mandate, "resign to run", Article II, Section 7 of State Constitution. It was very simple case since we may need to

deal with only one sentence in Article II, Section 7 of State Constitution.

Despite the court filing of the complaint, Mr. Nago, Chief Election Officer, had unilaterally proceeded the election process without having to resolve the issue, even if Plaintiff exhausted all necessary administrative process, related to this action; although State Supreme Court also dismissed the case (election objection) later.

11. Richard Kim strongly suspects and believes the vote counting by the computer must have been compromised due to such simple computer programming manipulation on his name on the democratic ballots, for example, by having moved the decimal to 0.01 or 1/100 and only counted as if he received 1% of the actual votes that he received on the ballots. And with further manipulation, he believes those 99% of his votes must have been transferred to the Josh Green, who received 60.6% of the democratic votes.

If so, Richard Kim should have been winner, democratic nominee, since he should have received 98500 votes, 38.7% of the democratic

votes, 23.2% for Josh Green, respectively. Even if not so, he believes it is impossible to have received only 0.4% (985) of the 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 truth and correct it, and also find out where his position should truly be in his effort to reform Hawaii.

12. Richard Kim's facts and evidence. Among others,

A. My campaign site, Richard Kim for Governor, richardkimhawaii.com, has attracted 8,967 people, with over 32,000 views on my 706 posts, since 2017.
[EXHIBIT D]

B. For several years, Richard Kim has constantly pursued grassroot campaign by personally encountering many of his constituents as well as on Facebook. His followers in Facebook, Richard Kim for Governor, are 1.4K (almost 1,500)

[EXHIBIT E3], consistently way more than that (recently, 1.1K) of Vicky Cayetano, another democratic candidate for Governor, since start and throughout her campaign. And, Richard Kim's personal facebook has been in public domain for multiple years, and the friends are around 4,900, not to mention another around 740 followers. [EXHIBIT E2]

- C. Richard Kim is a dentist, a graduate of Columbia University in New York, could have been first and only medical professional in Hawaii, who had warned Hawaii officials to tighten our ports with more screening and tests, prior to delta variant invasion. Sadly, despite and against my such advice, Lt Gov Josh Green, who is also a medical professional as well as liaison for Covid 19, had willingly demanded Gov. Ige to relax and remove the travel restrictions (at that time), having allowed such dangerous delta variant to freely infect the innocent Hawaii people. (See news on June 21, 2021.)

Josh Green should (must) have known his such irresponsible action would likely

cause mass casualties since the delta variant was about 6-7 times stronger than the original strain at that time and there have also been breakthrough infections among the vaccinated. And in fact, as a result, Hawaii UNNECESSARILY suffered high surge of delta infections and deaths for 4-5 months later part of 2021, not to mention about Omicron invasion. (Nevertheless, the focus of my claim is rather on delta invasion.) Basically, the officials have given up in fighting the virus, only in the name of economy. Since then, Richard Kim has demanded Gov Ige's and Lt Gov Green's resignations (on Facebook and also by contacting constituents in person).

Sadly, Media have been silent but rather in cahoots especially with Josh Green, e.g. covering up and not reporting the important facts.

- D. Main Media never included Richard Kim in all of their polls, but they have only supported and conducted the polls on three candidates among democrats, Josh Green, Vicky Cayetano, and Kai Kahele.

Had Richard Kim been included in the polls, the poll numbers Media have claimed should (must) have been different.

- E. An independent political site, "isidewith.com" [EXHIBIT F1] has conducted polls for Hawaii gubernatorial race, including Richard Kim's poll numbers twice, 3.23% (on May 13, 2022) [EXHIBIT F2, F3], 4.07% [EXHIBIT F3] (if I remembered correctly, since I did not capture at that time, around beginning of July, 2022; but it had been visible on the site). [EXHIBIT F4]. Then, Richard Kim's polls have not been conducted, and further suddenly disappeared, before the election date (August 13, 2022), but only after August 4, 2022, when Kai Kahele's poll number started to show up with 2.37% [EXHIBIT F3, F4] (and 5.37% on August 8 [EXHIBIT F4]).

Although parameters of the polling are unknown, this may be only way to compare the four democratic candidates who appeared on this polling. Although Josh Green's number may look consistent with the election results, but Cayetano's and

Kahele's were at 9.2% on August 5, 2022 [EXHIBIT F4], 2.37% on August 4, 2022 [EXHIBIT F3] respectively, as compared to Cayetano's at 20.1%, Kahele's at 14.4% in the actual election [EXHIBIT C]. (Both Cayetano and Kahele gained, in the actual election, at least twice of their poll numbers on the site.)

If with the similar logic, Richard Kim's poll numbers should have increased at least twice of his previous numbers. Then, Richard Kim should have received at least $4.07 \text{ [EXHIBIT F3]} \times 2 = 8.14\%$ in the actual election results. But, we also need to consider Richard Kim's last poll was done many weeks prior to the election and it was never done at all in August 2022, as compared to those of Cayetano and Kahele. Therefore, Richard Kim's actual votes in the election could (might) have been much higher, and possibly even higher than that of Kahele or Cayetano.

Richard Kim received only 0.4% of the democratic votes in the election results [EXHIBIT C]. This is **10 times LESS** than the poll numbers that he received on the

site, before having disappeared only after Kahele's first poll number, 2.37%, showed up on the site on August 4, 2022 [EXHIBIT F3] (and 5.37% on August 8 [EXHIBIT F4]).

Why did Richard Kim's votes shrink to less than 10% in the actual election, while both Cayetano's and Kahele's increased to more than 200% ? This is a clear discrepancy, (even if the parameters in this polling might have been different), because the parameters must have been equally and consistently applied to all the candidates.

- F. Richard Kim had heavily invested his campaign in sign waving in the last two months of the primary election, since June 2022. He believes he has thrown "Shaka" blessings to tens of thousands passing cars, probably at more than 100,000 people. Each time, he received roughly 5-30% honking (on average), and many more numerous hands waving, Shakas back, and head lights turned on and off, from the passing cars. He had often recorded such responses on his Facebook posts. [EXHIBIT G]

G. Voter Suppressions had repeatedly happened. [EXHIBIT H] **Among other things**, 1) Chamber of Commerce had initially scheduled forum including Richard Kim for May 4, 2022, but Josh Green avoided to attend it probably due to Richard Kim's attendance. But, they canceled the forum after having rescheduled for June 30, 2022. [EXHIBIT H1-H10] Instead later, Josh Green had his own meeting with some of Chamber of Commerce members. [EXHIBIT H4-H10] 2) Josh Green blocked and unblocked me for several times from his official Lt Gov page in Facebook. [EXHIBIT H4-H6] 3) Star Advertiser blocked me from commenting on their live program, "Spotlight Hawaii". [EXHIBIT H11-H12]

13. As shown in the above, Plaintiff Richard Kim has shown and set forth sufficient reasons for triggering the inspection of voting records and election process including voting machines testing, and further, if necessary, for correcting, and/or changing decisions in democratic gubernatorial primary election in 2022.

14.HRS §11-175 states that the Supreme Court may compel the attendance of witnesses, punish contempts, and do whatsoever else may be necessary fully to determine the proceedings, and enforce its decrees therein. The court may make such special rules as it may find necessary or proper. The costs shall be as provided by the supreme court by rule.

WHEREFORE, Richard Y. Kim, a democratic gubernatorial candidate, respectfully requests this honorable Supreme Court:

15. Due to due process violations and Richard Kim's conflicts of interests, especially with Media and Chief Election Officer Scott Nago, the honorable Supreme Court of Hawaii should order Richard Kim's **INSPECTION** of (some of) democratic ballots of his **random** choices and selections, and further recounting all the democratic votes, if necessary, **ONLY** after recalibration and retesting the machines in presence of also other independent observers and court representatives.

First, in order to **minimize and save time and money**, Elections office should allow Richard Kim to **VISUALLY** inspect **ten (10) sets of one**

thousand (1,000) democratic votes, (total of 10,000 democratic ballots), of his **RANDOM** choices and selections, and **count them thru voting machine to confirm**, or vice versa.

[Why 10 random sets of 1,000 random democratic ballots? It will give us a general idea of percentage of each candidate's votes just like polling, and we may easily see if the voting machines might have been tampered or malfunctioned or not.]

This inspection may not take much time and money, since it may only (first) require some random samples to verify discrepancies. It may **likely take less than a few hours with minimum number of individuals' involvement** in the process. Richard Kim can always and quickly ask them to stop counting if he sees the relevancy and consistency of the voting results or at mutual convenience.

If consistent and/or much discrepancy is found, e.g. if Richard Kim, in his inspection, received **statistically significant votes** or many more than 4 in every 1000 democratic ballots of his random selections (since his votes were mere 0.4% of the democratic ballots), then continue

to count all votes in Oahu, in bigger increments, if and only after the Court's verification of such discrepancies is necessary.

Then, also upon the Court's approval, Elections office should (must) complete recounting all of democratic votes in all other islands and all others' as well, ONLY after recalibration and properly retesting the machines in presence of sufficient number of independent observers, and/or further, hand counting them all, if such discrepancies continue.

16. The honorable Supreme Court orders any other actions deemed just, necessary, and appropriate.

17. I (Richard Kim) also declare, under penalty of perjury, the above facts and evidence are true to best of my knowledge and belief.

Respectfully submitted.

Date: August 22, 2022

Richard Kim

Democratic Candidate for Governor, Pro Se

Electronically Filed Supreme Court
SCEC-22-0000508, 26-AUG-2022 04:03PM
Dkt. 10 MD

NO: __SCEC-22-0000508__
IN THE SUPREME COURT OF
THE STATE OF HAWAII

Richard Y. Kim,)
Plaintiff,)
vs.)
Office of Elections,)
Chief Election Officer, Scott T. Nago)
Defendants)

DEFENDANT OFFICE OF ELECTIONS AND
CHIEF ELECTION OFFICER, SCOTT T. NAGO'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT
FILED ON AUGUST 23, 2022, OR IN THE
ALTERNATIVE, DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

MEMORANDUM IN SUPPORT OF MOTION

DECLARATION OF REESE R. NAKAMURA;
EXHIBIT A

CERTIFICATE OF SERVICE

HOLLY T. SHIKADA 4017

Attorney General of Hawaii

Patricia Ohara 3124

Reese R. Nakamura 4822

Deputy Attorneys General

425 Queen Street

Honolulu, Hawaii 96813

Telephone: (808) 586-0618

Facsimile: (808) 586 -1372

Attorneys for Defendants

OFFICE OF ELECTIONS,

CHIEF ELECTION OFFICER, SCOTT T. NAGO

DEFENDANT OFFICE OF ELECTIONS AND
CHIEF ELECTION OFFICER, SCOTT T. NAGO'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT
FILED ON AUGUST 23, 2022, OR IN THE
ALTERNATIVE, DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

Defendant OFFICE OF ELECTIONS and
CHIEF ELCTION OFFICER, SCOTT T. NAGO
(hereinafter collectively referred to as "Defendants"),
by and through their attorneys HOLLY T. SHIKADA,
Attorney General of Hawaii, and Deputy Attorneys
General PATRICIA OHARA and REESE R.
NAKAMURA, hereby respectfully move this
Honorable Court for an order dismissing with
prejudice the Election Complaint filed herein by

Plaintiff RICHARD Y. KIM ("Plaintiff") on August 23, 2022. Alternatively, should this Honorable Court find that matters outside the pleadings are presented to and not excluded by this Court, Defendants respectfully request that this motion be treated as one for summary judgment and disposed of as provided by Rule 56(a) of the Hawaii Rules of Civil Procedure ("HRCP").

This Motion is brought pursuant to Rules 12(b)(6) and 56(a) of the HRCP, and is based upon the Memorandum in Support of Motion, Declaration of Reese R. Nakamura, and Exhibit A, all of which are attached hereto and are incorporated by reference herein.

DATED: Honolulu, Hawaii, August 26, 2022.

HOLLY T. SHIKADTA

Attorney General of Hawaii

/s/ REESE R. NAKAMURA

PATRICIA OHARA

REESE R. NAKAMURA

Deputy Attorneys General

Attorneys for Defendants
Office of Elections,
Chief Election Officer, Scott T. Nago

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	23A
I. INTRODUCTION.....	25A
II. BACKGROUND.....	27A
A. ELECTION OBSERVERS AND TESTING OF VOTE COUNTING SYSTEMS.....	27A
B. PLAINTIFF'S COMPLAINT.....	29A
III. STANDARDS OF REVIEW.....	30A
A. ELECTION CONTESTS UNDER §§11-172 AND 11-173.5(b).....	30A
B. FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED	

UNDER HRCP RULE 12(b)(6).....	32A
IV. ARGUMENT.....	33A
A. THE APPLICABLE LAW DOES NOT PROVIDE FOR THE RELIEF PLAINTIFF SEEKS.....	33A
B. DEFENDANTS DID NOT VIOLATE THE STATUTORY AND ADMINISTRATIVE REQUIREMENTS CONCERNING ELECTION OBSERVERS.....	34A
V. CONCLUSION.....	36A

TABLE OF AUTHORITIES

Federal Cases

<i>Bellavia Blatt & Crossett, P. C. v. Kel & Partners LLC</i> , 151 F.Supp.3d 287 (E.D.N.Y. 2015).....	33A
---	-----

State Cases

<i>AFL Hotel & Restaurant Workers Health & Welfare</i>	
--	--

Trust Fund v. Bosque,

110 Hawaii 318, 132 P.3d 1229 (2006)33A

Akaka v. Yoshina,

84 Hawaii 383, 935 P.2d 98 (1997).....32A

Andrade v. Cnty. of Hawaii,

145 Hawaii 265, 451 P.3d 1 (App. 2019).....33A

Funakoshi v. King,

878 F.Supp.2d 1124, 1147 (D. Haw. 2012)....32A, 34A

Tataii v. Cronin,

119 Hawaii 337,198 P.3d 124 (2008).....32A

Hawaii Revised Statues (HRS)

HRS §11-172.....30A,31A,32A

HRS §11-173.5.....31A

HRS §11-173.5(b).....30A,31A,32A,33A,34A

HRS §16-45.....27A,28A,35A

Hawaii Rules of Civil Procedure (HRCP)

HRCP R. 12(b)(6).....32A

HRCP R. 56(a).....37A

Hawaii Administrative Rules (HAR)

HAR § 3-177-704.....26A,28A,29A,34A,35A

HAR § 3-177-704(a).....28A,35A

HAR § 3-177-704(b).....28A

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

On August 23, 2022, Plaintiff RICHARD Y. KIM (“Plaintiff”) filed an Election Complaint (“Complaint”) against Defendant OFFICE OF ELECTIONS and CHIEF ELECTION OFFICER, SCOTT T. NAGO (hereinafter collectively referred to as “Defendants”) with this Honorable Court. Plaintiff, a democratic

gubernatorial candidate in the 2022 Primary Election, alleges, among other things, that Defendants violated Hawaii Administrative Rules ("HAR") § 3-177-704 by not providing proper notice to the public to observe and inspect the vote counting process. Plaintiff also alleges that the electronic system used to count election ballots was compromised due to his receipt of less than 0.4% of all democratic votes casted.

Defendants understand that in his Complaint's prayer for relief, Plaintiff requests that this Honorable Court issue an order granting Plaintiff the opportunity to inspect and count 10,000 election ballots at random and order that Defendants complete a full recounting of all democratic votes within the State. On August 24, 2022, KARL O. DICKS filed a Motion for Permissive Joinder of Parties.¹

1. Defendants take no position to the joinder of Mr. Dicks to this action. Defendants note that Mr. Dicks inappropriately places his name in the caption box of his motion.

For the reasons discussed below, Defendants respectfully request this Honorable Court to dismiss Plaintiff's Complaint with prejudice for failure to state a claim because the relief that Plaintiff seeks is

not available under the applicable law and Defendants did not violate the statutory and administrative requirements concerning election observers.

II. BACKGROUND

A. ELECTION OBSERVERS AND TESTING OF VOTE COUNTING SYSTEMS

Hawaii Revised Statutes ("HRS") § 16-45 governs official observers and provides that:

[o]fficial observers shall be designated by the chief election officer or the clerk in county elections to be present at the counting centers and selected in the following manner:

- (1) No less than one official observer designated by each political party;
- (2) No less than one official observer from the news media;
- (3) Additional official observers as space and facilities permit designated by the chief election officer in state elections and the clerk in county elections.

The chief election officer or clerk shall give all official observers reasonable notice of the time and place where the ballots shall be counted. No person shall be permitted in the counting center without the written authorization of the

chief election officer or clerk.

HRS § 16-45. The applicable administrative rule concerning the testing of vote counting systems and electronic voting systems is HAR § 3-177-704. *See* HAR § 3-177-704. HAR § 3-177-704(a) states that “[p]rior to election day, the vote counting system prepared for counting and tabulating the votes shall be tested in the presence of the following persons: (1) The chief election officer, clerk, designated representative; (2) Official observers; and (3) Other authorized interested persons, as space permits.” *Id* HAR § 3-177-704(a).

As to the procedure for testing vote counting systems or electronic voting systems, subsection (b) provides:

[t]he 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.

- (1) Each official observer and other authorized persons may prepare test ballots for the test of the vote counting system;
- (2) The vote counting system shall not be approved unless it produces the exact count of all votes, rejects all improper votes, and meets all other test criteria;
- (3) After the test has been satisfactorily conducted, all test

ballots, test results, and the vote counting system shall be secured and shall not be subsequently open except in the presence of not less than two official observers who are of different political party or organizational affiliations. Notwithstanding this, voting equipment that has been initially secured under this rule for subsequent delivery to another location, such as a voter service center, counting center, or similar location, may be opened by the election officials present at that subsequent location:

(4) Official observers shall sign a certification that the vote counting system was tested, found accurate, and approved.

Id. § 3-177-704

B. PLAINTIFF'S COMPLAINT

Plaintiff filed this Complaint before this Honorable Court on August 23, 2022, alleging, among other things, that Defendants violated HAR § 3-177-704 because "they did not provide proper advanced notice to the general public" such that the public "could not properly apply and receive such authorization to observe and inspect the the vote voting process like testing voting machines[.]" Plaintiff further alleges that "the vote counting by the computer must have been compromised due to such simple computer programming manipulation on his name on the democratic ballots" and that "he believes those 99% of his votes must have been transferred to Josh Green,

who received 60.6% of the democratic votes.” Plaintiff asserts that he “should have been winner, democratic nominee” because “he believes it is impossible to have received only 0.4% (985) of the democratic votes[.]” In support of his allegations, Plaintiff states that he has more Facebook followers than democratic gubernatorial candidate Vicky Cayetano and that “he believes he has thrown “Shaka” blessings to tens of thousands passing cars” and “received roughly 5-30% honking (on average)[.]” Plaintiff’s Complaint requests that this Honorable Court order his inspection of “democratic ballots of his random choices and selections, and further recounting all the democratic votes” by Defendants.

III. STANDARDS OF REVIEW

A. ELECTION CONTESTS UNDER HRS § § 11-172 AND 11-173.5(b)

HRS § 11-172 governs election contests and states in pertinent part:

[w]ith respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file complaint in the supreme court. 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.

HRS § 11-172. The legal standard for election contests concerning a primary election can be found in HRS § 11-173.5. *See id.* HRS § 11-173.5. Subsection (b) provides:

In primary and special primary election contests, and county election contests held concurrently with a regularly scheduled primary or special primary election, the court shall hear the contest in a summary manner and at the hearing the 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 law. The judgment shall decide what candidate was nominated or elected, as the case may be, in the manner presented by the petition, and a certified copy of the judgment shall forthwith be served on the chief electn officer or the county clerk, as the case may be, who shall place the name of the candidate declared to be nominated on the ballot for the forthcoming general, special general, or runoff election. The judgment shall be conclusive of the right of the candidate so declared to be nominated; provided that this subsection shall not operate to amend or repeal section 12 -41.

See id. § 11-173.5 (b) (emphases added). Furthermore, this Honorable Court has held in

Funakoshi v. King,

[b]y the omission of language providing for the invalidation of an election and the allowance of a new election in § 11-173.5 (b), the legislature clearly intended that the only remedy that could be given for primary election irregularities was the statutory remedy of having this Court decide which candidate was nominated or elected.

65 Haw. 312, 316, 651 P.2d 912, 914 (1982) (emphasis added).

B. FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED
UNDER HRCP RULE 12(b)(6)

Rule 12(b)(6) of the HRCP addresses the dismissal of a claim for failure to state a claim upon which relief can be granted. HRCP R. 12(b)(6). “A complaint challenging the results of [a general] election pursuant to HRS § 11-172 fails to state a claim unless the plaintiffs demonstrate errors that would change the outcome of the election[.]” *Tataii v. Cronin*, 119 Hawaii 337, 198 P.3d 124 (2008) (citing *Akaka v. Yoshina*, 84 Hawaii 383, 935 P.2d 98 (1997)) (internal citations omitted). Additionally, a

Court must accept 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.

Id. At 341, 198, P.3d at 127 (citing *AFL Hotel & Restaurant Workers Health & Welfare Trust Fund v. Bosque*, 110 Hawaii 318, 132 P.3d 1229 (2006)). Moreover, “[w]hen matters outside the pleadings are presented in connection with an HRCP 12(b)(6) motion to dismiss, the trial court has discretion to either exclude the material or to convert the motion to dismiss into a motion for summary judgment.” *Andrade v. Cnty. of Hawaii*, 145 Hawaii 265, 451 P.3d 1, 4n.3 (App. 2019) (citing *Bellavia Blatt & Crossett, P. C. v. Kel & Partners LLC*, 151 F.Supp.3d 287 (E.D.N.Y. 2015)).

IV. ARGUMENT

A. THE APPLICABLE LAW DOES NOT PROVIDE FOR THE RELIEF PLAINTIFF SEEKS

Plaintiff’s Complaint requests that this Honorable Court order his inspection of “democratic ballots of his random choices and selections, and further recounting all the democratic votes” by Defendants. However, HRS § 11-173.5 (b) does not provide for such relief and Plaintiff cites no authority that would authorize such relief. *See* HRS § 11-173.5 (b). The only statutory remedy available is for this

Honorable Court to determine "which candidate was nominated or elected." *See Funakoshi*, 65 at Haw. at 316, 651 P.2d at 914. This Honorable Court has already dismissed a recent election complaint because the remedies sought were not provided by HRS § 11-173.5 (b). *See* Ex. A, attached hereto and Declaration of Reese R. Nakamura ("Nakamura Decl.") at para.2. Accordingly, this Complaint should be dismissed with prejudice.

B. DEFENDANTS DID NOT VIOLATE THE
STATUTORY AND ADMINISTRATIVE
REQUIREMENTS CONCERNING
ELECTION OBSERVERS

Defendants reiterate that Plaintiff's claims regarding election observers also are outside the scope of remedies that are available under HRS § 11-173.5 (b). *See* HRS § 11-173.5 (b).

Plaintiff claims Defendants violated HAR § 3-177-704 because there was no notice provided to the general public to participate in the observation and inspection of testing for vote counting systems and electronic voting systems.

However, a plain reading of HAR § 3-177-704

clearly indicates the rule does not require Defendants to provide notice to the general public of such testing. *See* HAR § 3-177-704.

HAR § 3-177-704 only requires that a test of a vote counting system be conducted prior to election day within the presence of : (1) the chief election officer, clerk, or designated representative; (2) official observers; and (3) other authorized interested persons, as space permits. *Id.* § 3-177-704(a). HRS § 16-45, further sets forth the notice requirement and prescribes the minimum number of individuals required to participate as official observers. *See* HRS § 16-45.

Defendants deny that there were any statutory and administrative violations concerning election observer procedures. The interests of political parties and the general public are represented in the testing of vote counting systems process because official observers are to be made up of no less than one of observer from each political party and the news media. *See id.*; § 3-177-704. HRS § 16-45 does not require that every interested individual be allowed to participate. *See* HRS § 16-45. In fact, the statute expressly provides that the chief election officer has the discretion to designate additional observers as space and facilities permit. *See id.*

Plaintiff further surmises that a computer programming error resulted in gubernatorial candidate Josh Green receiving 60.06% of the total democratic votes. Plaintiff asserts that he "should have been winner, democratic nominee" because "he believes it is impossible to have received only 0.4% (985) of the democratic votes[.]" However, Plaintiff's assertions are unfounded and unsupported. Plaintiff mistakenly concludes that the number of Facebook likes and horn honks in response to "Shaka" blessings is evidence he should have been the democratic nominee for the 2022 Primary Election. This evidence is speculative as Facebook likes and horn honks in response to "Shaka" blessings are not indicative of anything more than likes and honks, and are not representative of the actual number of votes a candidate receives. Accordingly, Plaintiff's Complaint should be dismissed.

V. CONCLUSION

For the forgoing reasons, Defendants respectfully request that this Honorable Court dismiss this Complaint with prejudice. Alternatively, should this Honorable Court find that matters outside the pleadings are presented to and not excluded by this Court, Defendants respectfully request that this motion be treated as one for

summary judgment and disposed of in accordance with Rule 56(a) of the HRCF.

DATED: Honolulu, Hawaii, August 26, 2022.

HOLLY T. SHIKADA

Attorney General of Hawaii

/s/ REESE R. NAKAMURA

PATRICIA OHARA

Deputy Attorneys General

Attorneys for Defendants Office of Elections,

Chief Election Office, Scott T. Nago

DECLARATION OF REESE R. NAKAMURA

I, REESE R. NAKAMURA, declare as follows:

1. I am a Deputy Attorney General in the Department of the Attorney General for the State of Hawaii, counsel to Defendant STATE OF HAWAII, OFFICE OF ELECTIONS. Unless otherwise indicated below, I have personal and first-hand knowledge of the facts set forth herein and, if called upon to do so, I

would and could testify under oath regarding them.

2. Attached hereto as Exhibit A is a true and correct copy of the Hawaii Supreme Court's finding of Fact, Conclusions of Law, and Judgment in *Dicks et al. V. State of Hawaii office of Elections et al.*, case number SCEC-22-0000490, filed on August 22, 2022.

I DECLARE UNDER PENALTY OF PERJURY
UNDER THE LAWS OF THE STATE OF HAWAII
THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Honolulu, Hawaii, August 26, 2022.

/s/ REESE R. NAKAMURA

REESE R. NAKAMURA

EXHIBIT A

Electronically Filed Supreme Court SCEC-22-
0000490 10:46AM Dkt. 11 FFCL

SCEC-22-0000490

IN THE SUPREME COURT OF THE STATE OF
HAWAII

KARL O. DICKS; JAMES RYAN MALISH; ROBERT
SANTILLAN; and CHARLOTTE ROSECRANS,
Plaintiffs,

Vs.

STATE OF HAWAII OFFICE OF ELECTIONS,
Defendant

ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND JUDGMENT (By: Recktenwald, C.J.,
Nakayama, McKenna, Wilson, and Eddins, JJ.)

On August 12, 2022, Plaintiffs Karl Orlando Dicks, James Ryan Malish, Robert Santillan, and Charlotte Rosecrans (collectively,) submitted a document entitled “Election Complaint; Motion for Preliminary Injunction Rule 65 HRCP” (complaint), which was filed as an election contest complaint. On August 17, 2022, Defendant State of Hawaii Office of Elections (Defendant) filed a memorandum in opposition. Upon consideration of the complaint and memorandum in opposition, and having heard this

matter without oral argument, we enter the following findings of fact, conclusions of law, and judgment.

FINDINGS OF FACT

1. On August 12, 2022, the court received a document from Plaintiffs that was filed as an election contest complaint.
2. In the document, Plaintiffs assert that, based on an August 10, 2022 email received from Defendant, Defendant “failed to properly apply the qualification process, as per statute, upon the Hawaii Republican Party...for the year 2022 Primary Election.” Plaintiffs assert that the Hawaii Republican Party “should not have been placed on the 2022 Primary ballot, and should have been disqualified as an active party that is not in compliance and is not in good standing as a ‘Party’”.
3. Plaintiffs request the following relief:
 - (a) The Hawaii Republican Party name be barred from appearing on the 2022 general election ballot;

- (b) Nullification of the primary election and results; and
 - (c) That this court “accommodate all Legally Qualified Candidates that have registered as ‘Republicans’” by listing them as nonpartisan on the 2022 general election ballot.
4. Plaintiffs cite Hawaii Revised Statutes (HRS) § § 11-173.5 and 11-174.5 as conferring the court with jurisdiction over this matter.
 5. Plaintiffs also cite to HRS § § 11-63 through 11-65 and HRS § § 12-2, 12-8, and 831-2, as well as the United States Constitution and Hawaii Administrative Rules.
 6. Defendant moved to dismiss the complaint for lack of jurisdiction.

CONCLUSIONS OF LAW

1. When reviewing a motion to dismiss a complaint for lack of jurisdiction, the court’s review “is based on the contents of the complaint, the allegations of which [the court] accept[s] as true and construe[s] in the light most favorable to the plaintiff. Dismissal is

improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Casumpang v. ILWU, Local 142, 94 Hawaii 330, 337 13 P.3d 1235, 1242 (2000) (quotation marks and citation omitted).

2. When considering a motion to dismiss for lack of jurisdiction, the court need not accept conclusory or formulaic recitations on Kealoha v. Machado, 131 Hawaii 62, 74, 315 P.3d 213, 225 (2013).
3. HRS § 11-172 (Supp. 2021) governs election contests and provides in relevant part: “With respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in the supreme court. 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.”
4. HRS § 11-173.5 (2009 & Supp. 2021) provides for contest for cause to be filed in the supreme court involving primary elections, special primary elections, and county elections held

concurrent with a regularly scheduled primary or special primary election.

5. HRS § 11-174.5 (2009 & Supp. 2021) provides for contests for cause to be filed in the supreme court involving general elections, special general elections, special elections, or runoff elections.
6. HRS § 602-5 (2016) sets forth the jurisdiction and powers of the supreme court.
7. HRS §§11-62 through 11-65 (2009) address political parties, which include qualification requirements and determinations of party disqualification.
8. HRS §§12-2 (Supp. 2010) and 12-8 (2009 & Supps. 2011, 2012) address when the primary election is to be held and candidates, as well as objections to nomination papers.
9. Taking Plaintiffs' allegations as true and viewing them in the light most favorable to them, Plaintiffs fail to demonstrate that this court has jurisdiction over their complaint or the relief they seek. See Tataii v. Cronin, 119 Hawaii 337, 339, 198 P.3d 124, 126 (2008) ("A complaint challenging the results of [a general]

election pursuant to HRS § 11-172 fails to state a claim unless the plaintiffs demonstrate errors that would change the outcome of the election.” (Quoting Akaka v. Yoshina, 84 Hawaii 383, 387, 935 P.2d 98, 102 (1997)); Funakoshi v. King, 65 Haw. 312, 316, 651 P.2d 912, 914 (1982) (“By the omission of language providing for the invalidation of an election and the allowance of a new election in HRS § 11-173.5(b), the legislature clearly intended that the only remedy that could be given for primary election irregularities was the statutory remedy of having this Court decide which candidate was nominated or elected.”)

10. Barring the Hawaii Republican Party name from appearing on the 2022 general election ballot, nullifying the 2022 primary election and results, and requiring all qualified candidates who have registered as Republicans to be listed as nonpartisan on the 2022 general election ballot are not remedies provided by HRS § 11-173.5(b) (“The judgment shall decide what candidate was nominated or elected[.]”) or HRS § 11-174.5(b) (“The judgment may invalidate the general...election on the grounds that a correct

result cannot be ascertained because of a mistake or fraud on the part of the voter service center officials; or decide that a certain candidate, or certain candidates, received a majority or plurality of votes cast and were elected.”)

11. The complaint thus fails to state a claim upon which relief can be granted.

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, judgment is entered dismissing the complaint.

DATED: Honolulu, Hawaii, August 22, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document will be served on the following either through the Judiciary Election Filing System (JEFS) or via United States mail, postage prepaid, as indicated as follows:

RICHARD Y. KIM (U.S. MAIL)

95-1050 Makaikai Street #8K

Mililani, Hawaii 96789

Plaintiff, *Pro Se*

DATED: Honolulu, Hawaii, August 26, 2022

/s/ REESE R. NAKAMURA

REESE R. NAKAMURA

Deputy Attorney General

Attorney for Defendants

Office of Elections,

Chief Election Officer, Scott T. Nago

Electronically Filed

Supreme Court SCEC-22-0000508

29-AUG-2022 02:02 PM

Dkt. 14 FFCL

NO: __SCEC-22-0000508__

IN THE SUPREME COURT OF

THE STATE OF HAWAII

Richard Y. Kim,)

Plaintiff,)

vs.)

Office of Elections,)

Chief Election Officer, Scott T. Nago)

Defendants)

ORIGINAL PROCEEDING

FINDING OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT (By: Recktenwald, C.J., Nakayama, McKenna, Wilson, and Eddins, JJ.)

On August 23, 2022, Plaintiff Richard Y. Kim (Kim) submitted a document entitled "Election Objection" (complaint), which was filed as an election contest complaint. On August 26, 2022, Defendants State of Hawaii Office of Elections (Office of Elections) and Scott T. Nago, Chief Election Officer (Chief Election Officer) (collectively, Defendants) filed a motion to dismiss Kim's complaint or, in the alternative, for summary judgment. Upon consideration of the complaint, the documents attached and submitted in support, and motion to dismiss or for summary judgment, and having heard this matter without oral argument, we enter the following findings of fact, conclusions of law, and judgment.

FINDINGS OF FACT

1. Kim was one of seven Democratic Party candidates for the Office of Governor in the 2022 General Election.
2. The Primary Election was held on August 13,

2022.

3. As provided by the complaint, the result of this primary election race was , as follows:

Green, Josh	157,476 (60.6%)
Cayetano, Vicky	52,237 (20.1%)
Kahele, Kai	37,540 (14.4%)
Tanabe, Van	1,232 (0.5%)
Kim, Richard	985 (0.4%)
Bourgin, David L. (Duke)	589 (0.2%)
Lewman, Clyde McClain (Mac)	246 (0.1%)
Blank votes	3,673 (1.4%)
Over votes	342 (0.1%)

4. On August 23, 2022, Kim filed a complaint asserting "a due process violation of Hawaii Administrative Rules (HAR) §3-177-704 because the Office of Elections did not provide proper advanced notice to the public and interested persons to observe and inspect the voting process, including the voting machines.

5. Kim also asserts:
 - a. A visual inspection of the ballots is necessary due to possible “rigg[ing]” of the vote count because he received 985 votes, or 0.4% of the democratic votes, which is less than his total received in 2018;
 - b. Seemingly related to his vote count rigging assertion, a conflict of interest exists between himself and the Chief Election Officer due to his 2018 complaint filed in Civil No. 18-1-0878-06 GWBC; and
 - c. Vote counting by the computer must have been compromised by (a) moving a decimal such that he received only 1% of the actual votes he received on the ballots or (b) improperly transferring 99% of his votes to Lieutenant Governor Josh Green (Green).
6. Kim appears to assert he “should have been the winner” if such compromised vote counting occurred, or at least be deemed to have more votes than the 985 he received during the 2022 Primary Election. According to Kim, he “should have received 985[,]000 votes, 38.7% of the democratic votes, 23.2% for Josh Green respectively.” In support, he points to the

following evidence:

- a. His campaign website attracted 8,967 people, with over 32,000 views on his 706 posts since 2017.
- b. His follower count on Facebook of 1,400 is higher than Democratic Party Governor candidate Vicky Cayetano's follower count.
- c. His approach to addressing the COVID-19 pandemic is different from Green's approach.
- d. Media poll numbers should have been different if Kim included in those polls.
- e. Other polls indicate he should have had more than 0.4% of the primary election vote in his race.
- f. He has thrown "shaka blessings" to "tens of thousands of passing cars" while sign waving and each time he received "roughly 5-30% honking (on average)" and other feedback he perceives to be a positive response to him.
- g. Voter suppression "repeatedly happened" because a scheduled forum that included Kim was cancelled when Green would not attend, he was blocked and unblocked from Facebook

page for Lieutenant Governor allegedly by Green, and the Star-Advertiser blocked him from commenting on the live program, "Spotlight Hawaii."

7. Kim also asserts he has "shown and set forth sufficient reasons for triggering the inspection of voting records and election process[es] including voting machines testing," and, if necessary, for correcting and/or changing decisions in the 2022 Democratic Gubernatorial Primary Election. He thus requests an order allowing him to inspect ten sets of one thousand democratic votes of his random choice and selection, and count them through a voting machine to confirm, or vice versa. Kim claims this inspection "may likely take less than a few hours with minimum number of individuals' involvement in the process[.]" but then adds that if "his inspection" shows that he received "many more than 4 in every 1000 democratic ballots of his random selections[.]" then all votes on Oahu be counted "if any only after the Court's verification of such discrepancies is necessary." He then requests that, upon this court's approval, the Office of Elections must

complete recounting of all of the democratic votes in all other islands "only after recalibration and properly retesting the machines in presence of sufficient number of independent observers and/or further[] hand counting them all if such discrepancies occur."

8. Defendants assert that the complaint should be dismissed with prejudice or summary judgment be granted.

CONCLUSIONS OF LAW

1. When reviewing a request to dismiss a complaint, the court's review "is based on the contents of the complaint, the allegations of which [the court] accept[s] as true and construe[s] in the light most favorable to the plaintiff.

Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Casumpang v. ILWU, local 142, 94, Hawaii 330, 337, 13, P.3d 1235, 1242 (2000) (quotation marks and citation omitted).

2. A complaint challenging the results of a primary 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 (Supp. 2021); Funakoshi v. King, 65 Haw. 3112, 317, 651 P.2d 912, 915 (1982).
3. A plaintiff challenging a primary election must show that he or she has actual information of mistakes or errors sufficient to change the election result. Funakoshi, 65 Haw. 3112, 317, 651 P.2d 912, 915.
4. In order for a complaint to be legally sufficient, it must "show[] that the specific acts and conduct of which they complain would have had the effect of changing the results of the primary election[.] Elkins v. Ariyoshi, 56 Haw. 47, 49, 527 P.2d 236, 237 (1974).
5. When considering a request to dismiss a complaint, the court need not accept conclusory or formulaic recitations on the legal effects of the events alleged. Kealoha v. Machado, 131 Hawaii 62, 74, 315 P.3d 213, 225 (2013).

6. The court's consideration of matters outside the pleadings converts a motion to dismiss into one for summary judgment. Foytik v. Chandler, 88 Hawaii 307, 313, 966 P.2d 619, 625 (1998).
7. Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Estate of Doe v. Paul Revere Ins. Group, 86 Hawaii 262, 269-70, 948 P.2d 1103, 1110-11 (1997).
8. A fact is material if proof of that fact would have the effect of establishing or refuting an essential element of a cause of action asserted by one of the parties. Winfrey v. GGP Ala Moana LLC, 130 Hawaii 262, 271, 308 P.3d 891, 900 (2013).
9. On a motion for summary judgment, this court must view the evidence in the light most favorable to the nonmoving party. Winfrey, 130 Hawaii 262, 271, 308 P.3d at 900.
10. However, this "court is permitted to draw only those inferences of which the evidence is reasonably susceptible and it may not resort to speculation." Id. (quoting Pioneer Mill Co. v. Dow, 90 Hawaii 289, 295, 978 P.2d 727, 733

(1999)); see Jenkins v. Liberty Newspapers Ltd. P'ship, 89 Hawaii 254, 269, 971 P.3d 1089, 1104 (1999) ("Accordingly, there being no factual basis, other than speculation, upon which a jury could have found that the alleged defamation was the legal cause of any claimed loss, we hold that the circuit court properly granted [the] motion for summary judgment as to the negligence count of [the] complaint." (Brackets added)).

11. An election contest cannot be based upon mere belief or indefinite information. Tatai v. Cronin, 119 Hawaii 337, 339, 198 P.3d 124, 126 (2008); Akaka v. Yoshina, 84 Hawaii 383, 387-88, 935 P.2d 98, 102-03 (1997). For example, it is not sufficient that a plaintiff points to a "poorly run and inadequately supervised election process" that suggests "room for abuse" or "possibilities of fraud". Akaka, 84 Hawaii at 388, 935 P.2d at 103.
12. HRS §11-172 governs election contests and provides in relevant part: "With respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in

the supreme court. The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause in the election results.”

13. HRS §11-173.5 (2009 & Supp. 2021) provides for, among other matters, time requirements for primary election contests for cause to be filed in the supreme court, as well as the remedy allowed to be provided in primary election contests.
14. 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 contests. Funakoshi, 65 Haw. At 316, 651 P.2d at 914.
15. As such, allowing Kim to visually inspect primary election ballots is not a remedy authorized by HRS §11-173.5(b). See Funakoshi, 65 Haw. At 316, 651 P.2d at 914; Elkins, 56 Haw. At 49, 527 P.2d at 237.
16. Based on this court’s review of the evidence submitted in support of his complaint, there is no evidence or reasonable inference drawn

from the evidence submitted that there was computer programming manipulation on his name on the democratic ballots such that he received only 1% of the actual votes he should have had. This claim thus amounts to speculation and does not support his assertion that he should be declared the winner. See Winfrey, 130 Hawaii 262, 271, 308 P.3d at 900.

17. It is similarly speculative to construe (1) Kim's different approach to the COVID-19 pandemic, (2) media poll numbers without him, (3) a cancelled forum (4) being blocked from commenting on the Star-Advertiser's "Spotlight Hawaii", and (5) being blocked and unblocked from Lieutenant Governor's Facebook page to mean Kim received more votes than reported by the Office of Elections, let alone enough votes to overcome the amount of votes that Green received. See Winfrey, 130 Hawaii 262, 271, 308 P.3d at 900; Akaka, 84 Hawaii at 388, 935 P.2d at 103.
18. It is not reasonable to infer that Kim's (1) campaign website statistics, (2) Facebook follower count, and (3) throwing "shaka blessings" to passing cars while sign waving

shows that Kim received more votes than Green in the primary election because none of the evidence submitted supports an inference that any visitor to his campaign website, Facebook follower, or person he waved to while sign waving represents a person who is registered to vote in the State of Hawaii's 2022 primary election and voted for Kim. See Winfrey, 130 Hawaii 262, 271, 308 P.3d at 900; Akaka, 84 Hawaii at 388, 935 P.2d at 103.

19. It is also not reasonable to infer that Kim received more votes than Green based on the results of a poll attached to Kim's complaint because the poll itself shows Green with a higher percentage of voters than Kim. See Winfrey, 130 Hawaii 262, 271, 308 P.3d at 900; Akaka, 84 Hawaii at 388, 935 P.2d at 103.
20. Kim's assertion that he should be declared the winner is thus based on speculation or unreasonable inferences from the evidence submitted in support of his complaint (i.e., the exhibits attached to the complaint). See HRS §11-173.5(b) (requiring this court to hear the primary election contest "in a summary manner" and "shall cause the evidence to be reduced to writing").

21. Accordingly, there being no genuine issue of material fact related to Kim's election contest, we find and conclude in favor of Defendants as a matter of law.

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, judgment is entered in favor of Defendants. Josh Green received the highest number of votes and his name shall be placed on the ballot as the Democratic Party candidate for the Office of Governor in the 2022 General Election.

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

DATED: Honolulu, Hawaii, August 29, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

Electronically Filed

Supreme Court SCEC-22-0000508

29-AUG-2022 01:53 PM

Dkt. 12 ORD

NO: __SCEC-22-0000508__

IN THE SUPREME COURT OF
THE STATE OF HAWAII

Richard Y. Kim,)

Plaintiff,)

vs.)

Office of Elections,)

Chief Election Officer, Scott T. Nago)

Defendants)

ORIGINAL PROCEEDING

**ORDER DENYING MOTION FOR PERMISSIVE
JOINDER** (By: Recktenwald, C.J., Nakayama,
McKenna, Wilson, and Eddins, JJ.)

Upon consideration of the Motion for Permissive Joinder of Parties (Motion) filed by Karl Orlando Dicks on August 24, 2022, and the record, it is ordered that the Motion is denied.

DATED: Honolulu, Hawaii, August 29, 2022.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Todd W. Eddins

Electronically Filed, Supreme Court

SCEC-22-0000508, 30-AUG-2022 09:49AM

Dkt. 16 MR

NO: __SCEC-22-0000508__

IN THE SUPREME COURT OF
THE STATE OF HAWAII

Richard Y. Kim,)
Plaintiff,)
vs.)
Office of Elections,)
Chief Election Officer, Scott T. Nago)
Defendants)

Richard Kim's Opposition to Defendant's Motion to
Dismiss or In the alternative, Defendant's Motion for
Summary Judgment

Richard Y. Kim

95-1050 Makaikai St. #8K

Mililani, Hawaii 96789

Email: richkmililani@gmail.com

808 347 4632

Plaintiff, Pro Se

Plaintiff, Richard Y. Kim, a democratic candidate for Governor, files Opposition to Defendant's Motion to Dismiss or In the alternative, Defendant's Motion for Summary Judgment

In their motion page 5, B., Defendant Elections Office agreed the "court must accept plaintiff's allegations as true and view them in the light **most favorable to the plaintiff**". Id. At 341, 198 P.3d at 127 (citing AFL Hotel & Rest. Workers Health & Welfare Tr. Fund v. Bosque, 110 Hawaii 318, 321, 132P.3d 1229, 1232 (2006))

However, Defendant failed to mention, (according to Hawaii Administrative Rules 3-177-704), among other things, if they provided sufficient public notice regarding vote machine tests. But, in their argument in page 6, line 23, they rather claimed as if they "don't

require to provide notice to the general public of such thing". If they don't require such public notice, among other things, how and when can "other (authorized) interested person", as written in the rule, apply to observe whether such authorization to be granted or not? Without knowing (in advance) when such machine tests should be done? Randomly? Or, Secretly?

Furthermore, (even if they don't require such public notice as they falsely claim), Elections Office also failed to state if the vote machine testing was properly performed or not, especially on the plaintiff's predetermined votes, and further, if such certifications have been correctly done or not. Defendant Elections Office failed to provide such records, and even if such records exist, the validity of the records are still doubtful.

In fact, **Defendant Elections Office did not provide ANY fact and evidence, in support of their motion.** Their attached declaration, the court's decision about other party's complaint, has nothing to do with plaintiff's current claim.

And, Plaintiff Richard Kim clearly and specifically stated what relief he was looking for, among other things, as written in his paragraphs 13 and 15 in the

complaint. (Plaintiff seeks such relief, mainly pursuant to HRS §11-172, 11-175, although the election result may need to be changed, after proper inspections and recounting of the votes.)

Furthermore, by failure to mentioning, Defendant passively admitted the facts and evidence on the independent political site, "isidewith.com", especially the facts and question why Richard Kim's votes shrunk to less than 10% in the actual election, while both Cayetano's and Kahele's increased to more than 200%. Also, Defendant further failed to mention and passively admitted the facts and evidence about voter suppressions and Conflicts of Interests, among other things.

This honorable court should note plaintiff's such facts and evidence and Conflicts of Interest, that Defendant especially failed to mention in their motion. Above all, this complaint is simply about Plaintiff's basic Due Process right (as a citizen as well as a candidate for public office), that Defendant Elections Office had CLEARLY violated.

Respectfully submitted.

67A

Date: August 30, 2022

Richard Kim

Democratic Candidate for Governor

Pro Se