

**Electronically Filed
Supreme Court
SCPW-11-0000741
20-JAN-2012
11:56 AM**

NO. SCPW-11-0000741

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL J. MATSUKAWA, Petitioner,

vs.

STATE OF HAWAII 2011 REAPPORTIONMENT COMMISSION; and
SCOTT NAGO, CHIEF ELECTION OFFICER, STATE OF HAWAII,
Respondents.

ORIGINAL PROCEEDING

ORDER

(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

Upon consideration of respondents 2011 Reapportionment Commission and Chief Election Officer's motion for reconsideration and/or clarification of the January 4, 2012 order and the January 6, 2012 opinion granting the petition for a writ of mandamus, the papers in support and the record, it appears that the lack of complete information about the non-permanent status and location of Hawaii's non-residents is no basis for disregarding the express mandate of the Hawai'i Constitution, article IV, section 4, that only permanent residents be counted in the population base for the purpose of reapportionment of the

state legislature.

It further appears that the January 6, 2012 opinion discussed and disposed of the sole issue presented in petitioner's petition as to whether the inclusion of non-permanent residents in the population base for the 2011 Final Reapportionment Plan constituted an error in the Reapportionment Plan. How the Commission identifies the non-permanent resident population for apportionment under article IV, section 4 and whether the Commission must follow the procedures set forth in HRS § 25-2 in preparing and filing a new reapportionment plan were not issues in petitioner's mandamus proceeding.

It finally appears that the January 6, 2012 opinion advises the Commission that apportionment under article IV, section 6 requires the Commission to "make an honest and good faith effort to construct districts as nearly of equal population as is practicable. . . . [M]athematical exactness or precision [is not a] constitutional requirement." Accordingly,

IT IS HEREBY ORDERED that the motion for reconsideration and/or clarification is denied.

DATED: Honolulu, Hawai'i, January 20, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

