

Electronically Filed
Supreme Court
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SCEC-20-0000517

IN THE SUPREME COURT OF THE STATE OF HAWAII

BANNER S. FANENE, Plaintiff,

vs.

STATE OF HAWAII OFFICE OF ELECTIONS, Defendant.

ORIGINAL PROCEEDING

ORDER DISMISSING ELECTION COMPLAINT

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

Upon consideration of Plaintiff Banner S. Fanene's
election contest complaint filed on August 20, 2020, Defendant
State of Hawaii 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.

DATED: Honolulu, Hawai'i, August 27, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Christine E. Kuriyama

