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SCEC-26-0000585

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

NATALIE IWASA, PHYLLIS TAKARA, DANNY LOUI, CHELSEA LOUI,
SARA CHINEN, JOHN M. OTTO, JUANITA LIU, REBECCA GARDNER,
ORION IWASA, SHAWN CAVACO, OLIVIA MANAYAN, LEONARD PARESA,
MICHELLE RIOS, CHRIS CHWASTYK, LORRAINE MANAYAN, WINSTON WELCH,
NANCI KREIDMAN, ROBERT FINLEY, CALVIN HARA, JEANNINE JOHNSON,
THOMAS COOPER, DONNA HOSHIDE, DOMINIC MARQUEZ, GAREN DEWEESE,
BRADFORD COLE, KEVIN IMANAKA, YVETTE IMANAKA, GUY MATSUNAGA,
BART DAME, KATHLEEN STANLEY, JOEY MANAHAN, RICHARD SING,
ZOE SING, ERIC HAMAKAWA, PETER SAVASTA, TAMMIE TORRES,
ANGELA CORREA-PEI, NOLA LEWIS, GAIL AWAYA-FUJII, and
WAIPAKAWIWAO'OLE PARKER,
Plaintiffs,

vs.

SCOTT NAGO, CHIEF ELECTIONS OFFICER;
STATE OF HAWAI'I OFFICE OF ELECTIONS; CHADD KADOTA, in his
official capacity as Acting City Clerk, City and County of
Honolulu; TREVOR OZAWA; and TARA MALIA GREGORY,
Defendants.

ORIGINAL PROCEEDING

AUGUST 28, 2026

GINOZA, J., CIRCUIT JUDGE CAHILL,
IN PLACE OF EDDINS, J., RECUSED, AND
CIRCUIT JUDGE KUBOTA, ASSIGNED BY REASON OF VACANCY;
WITH MCKENNA, ACTING C.J., CONCURRING AND DISSENTING SEPARATELY,
AND WITH WHOM CIRCUIT JUDGE SOONG,
IN PLACE OF DEVENS, C.J., RECUSED, JOINS

OPINION OF THE COURT BY GINOZA, J., IN WHICH
CIRCUIT JUDGE CAHILL AND CIRCUIT JUDGE KUBOTA JOIN

This election contest challenges the result of the City and County of Honolulu (City) first special election for the office of councilmember, District IV, City and County of Honolulu (District IV), held on August 8, 2026. The main issue before this court is whether the term limit provision in § 3-102 in the Revised Charter of the City and County of Honolulu (Revised Charter) - which states that "[n]o person shall be elected to the office of councilmember for more than two consecutive four-year terms" - prohibits District IV councilmember Thomas Waters, also known as Tommy Waters (Waters), from being re-elected for the 2027-2031 term. This case also raises the question as to the proper procedures to challenge a candidate's eligibility.

The present dispute traces back to the November 2018 election, in which Waters and Trevor Ozawa (Ozawa) were the two candidates on the ballot to be elected District IV councilmember for a four-year term beginning January 2, 2019. Waters v. Nago, 148 Hawai'i 46, 49, 468 P.3d 60, 63 (2019). The results from the November 2018 election indicated that Ozawa had 22 more votes than Waters. Id. at 50, 468 P.3d at 64. Two election challenges were filed in this court, one by Waters, challenging the results of the November 2018 election. Id. at 51-52, 468 P.3d at 65-66. In an opinion issued on January 25, 2019, this

court invalidated the November 2018 election for District IV councilmember because 350 absentee ballots had been invalidly received and a recount to exclude the invalid ballots was not possible. Id. at 65-66, 468 P.3d at 79-80. The judgment of this court required that it be filed with the Governor, under Hawai'i Revised Statutes (HRS) § 11-174.5(b) (2009), triggering a renewed election only between Waters and Ozawa in April 2019. Id. at 66, 468 P.3d at 80. This court did not order a new election under Revised Charter § 3-105 for filling a vacancy. Waters prevailed over Ozawa in the April 2019 election and was sworn in on or around May 8, 2019.

Subsequently, Waters was re-elected in 2022 for the 2023-2027 term.

In March 2026, Waters filed nomination papers to be re-elected again for the 2027-2031 term. Ozawa objected to Waters' nomination under HRS § 12-8 (2009 & Supp. 2025), asserting that Revised Charter § 3-102's term limit barred Waters from being re-elected. After the City Clerk rejected Ozawa's objection, Ozawa filed a declaratory judgment action in the Circuit Court of the First Circuit (Circuit Court)¹. The Circuit Court declared Waters ineligible. Because ballots had already been printed and distributed, city election officials issued a press

¹ The Honorable James H. Ashford presided.

release advising voters that although Waters' name appeared on the ballot, he was ineligible and votes for him would count only toward determining whether an eligible candidate received a majority.

On August 8, 2026, in the first special election for District IV councilmember, Ozawa received 12,252 votes, Waters received 8,654 votes, Tara Malia Gregory (Gregory) received 4,212 votes, and Jason Liang received 2,674 votes. Because no candidate received a majority of the votes, and election officials declared Waters ineligible, Ozawa and Gregory would advance to the second special election in November unless we rule otherwise.

We conclude under the circumstances of this case, and due to an exception in the declaratory judgment statute HRS § 632-1 (2016), Ozawa's declaratory judgment action should have been dismissed as procedurally improper because HRS § 12-8's objection provisions and HRS Chapter 11 statutes governing election contests provide special forms of remedy to address such disputes.

Under HRS § 11-172 (Supp. 2025) and § 11-173.5 (2009 & Supp. 2025), however, we can address the merits of Waters' eligibility in the election challenge brought by Plaintiffs Natalie Iwasa, et al. (40 voters) in this case, SCEC-26-0000585. That is, whether Waters is eligible for another term as

councilmember could cause a difference in the results of the August 8, 2026 election regarding who qualifies to be on the ballot for the second special election in November.

We conclude under a plain reading of § 3-102 of the Revised Charter that Waters was "elected to" the 2019-2023 four-year term. Determining whether Waters or Ozawa was elected to that term was delayed due to the challenges to the November 2018 election. But it was the same four-year term to which Waters was ultimately elected. The term limit provision in Revised Charter § 3-102 is not based on the amount of time "served" or when a councilmember is sworn into office. Further, Waters was not elected as a successor to fill a vacancy. Our reading of the Revised Charter is consistent with the purpose of the term limit expressed by the Honolulu Charter Commission in 1992, which proposed a term limit to encourage citizen legislators who would sit out a term after being elected to two consecutive terms.

Therefore, because Waters was also elected to the 2023-2027 four-year term, Waters is ineligible for re-election to the office of District IV councilmember for the 2027-2031 term.²

² No voters have been disenfranchised, as argued by the 40 voters. The number of votes received does not render a candidate eligible for office. Rather, under the term limit provision of Revised Charter § 3-102, adopted by voters in 1998, we conclude Waters is not eligible to run for councilmember for the 2027-2031 term. Further, the sentiment that any dispute about Waters' eligibility should default to allowing him to run and let voters decide, misses the point. The plain reading of the term limit precludes such

For this county election contest, this court's judgment "shall decide what candidate was nominated or elected, as the case may be[.]" HRS § 11-173.5(b) (2009).

Accordingly, the names of Ozawa and Gregory shall be placed on the ballot for the 2026 second special election for District IV councilmember.

Having heard this matter with oral argument and in accordance with HRS § 11-173.5, we enter the following findings of fact, conclusions of law and judgment.

FINDINGS OF FACT

2018 Second Special Election for the District IV Council Seat

1. Pursuant to the Revised Charter, nonpartisan special elections for City and County of Honolulu elective officers are held in conjunction with the State of Hawai'i's (the State) primary and general elections except as otherwise provided. Revised Charter § 13-116 (2025).

2. On November 6, 2018, in conjunction with the State's general election, the City held a nonpartisan second special election for the District IV councilmember seat. Waters, 148 Hawai'i at 49, 468 P.3d at 63.

3. Waters and Ozawa were the nonpartisan candidates for the District IV seat. Id.

a run. Such a default would also ignore the votes in favor of Gregory. Here, we must interpret the provisions of the Revised Charter's term limit.

4. The State of Hawai'i Office of Elections (Office of Elections) reported that Ozawa had 22 more votes than Waters in the second special election. Id. at 50, 468 P.3d at 64.

5. On November 26, 2018, Waters and a group of 39 voters who reside and are registered to vote in District IV each filed complaints contesting the District IV election results. Id. at 51-52, 468 P.3d at 65-66.

6. On January 25, 2019, this court entered a published opinion invalidating the District IV election results because 350 absentee ballots had been improperly received, and a recount to exclude the invalid votes was not possible. Id. at 65-66, 468 P.3d at 79-80. This court's judgment ordered that it be filed with the Governor of the State of Hawai'i in accordance with HRS § 11-174.5(b). Id. at 66, 468 P.3d at 80. This court did not order a new election to fill a vacancy under Revised Charter § 3-105.

7. On January 29, 2019, then-Governor David Y. Ige issued a proclamation that "there will be a special election for the Councilmember for District IV, City and County of Honolulu, to be conducted by the City Clerk and to be held not later than one hundred twenty days after the judgment was filed."

8. On February 4, 2019, the Honolulu City Council (Council) adopted Resolution 19-12, stating that this court's January 25, 2019 judgment invalidating the second special

election for the District IV seat "creat[ed] a vacancy on the City Council . . . on that date," and called a special election "to fill the vacancy" for the District IV seat, citing Revised Charter § 3-105(b).

9. Revised Charter § 3-105 provides:

Section 3-105. Vacancy in Office -

A vacancy in the office of any councilmember shall be filled in the following manner:

- (a) If the unexpired term is less than one year, the remaining members of the council shall elect a successor with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall be filled only at a meeting of the council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the council by the presiding officer. Should the council fail to fill any vacancy within thirty days after its occurrence, the mayor shall appoint a successor to fill the vacancy for the unexpired term.
- (b) If the unexpired term is for one year or more, the vacancy shall be filled by special election to be called by the council within ten days and to be held within one hundred twenty days after the occurrence of the vacancy. At such time, the electors of the district shall elect a successor to fill the vacancy for the remainder of the term. If any special or general election is to be held in the city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election. Pending the election, the remaining members of the council shall make a temporary appointment with requisite qualifications to fill the vacancy until a successor is duly elected. The vacancy shall be filled only at a meeting of the council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the council by the presiding officer. Should the council fail to fill the vacancy within thirty days after its occurrence, the mayor shall make the temporary appointment to fill the vacancy until a successor is duly elected.

10. On February 5, 2019, the Council adopted a resolution to temporarily appoint Michael D. Formby to fill the "vacancy" in Council District IV, citing Revised Charter § 3-105(b).

11. By Special Election Proclamation dated February 7, 2019, then-City Clerk Glen Takahashi proclaimed that the special election for the District IV seat would be held on April 13, 2019, "consistent with and pursuant to the Hawaii Supreme Court's decision . . . which invalidated the second special election for councilmember for District IV held on November 6, 2018." The proclamation declared that the special election ballot would only include Ozawa and Waters, and that no candidate nomination process would be held. The proclamation also said: "The term of the office for the councilmember elected will end at 12 o'clock noon, January 2, 2023."

12. Waters received the highest number of votes in the April 13, 2019 special election.

13. Waters was sworn in as District IV councilmember on or around May 8, 2019.

2022 Election for the District IV Council Seat

14. In 2022, Waters was re-elected as District IV councilmember for a term ending at noon on January 2, 2027.

15. On January 3, 2023, Waters took the oath of office as District IV councilmember.

**2026 Objections and Preliminary Determination Letters Pursuant
to HRS § 12-8**

16. HRS § 12-8 sets forth the procedure and timeline for registered voters and others to object to nomination papers, and explains how those objections must be resolved:

§12-8. Nomination papers; challenge; evidentiary hearings and decisions.

(a) All nomination papers filed in conformity with section 12-3 shall be deemed valid unless objection is made thereto by a registered voter, an officer of a political party whose name is on file with the chief election officer, the chief election officer, or the county clerk in the case of a county office. All objections shall be filed in writing not later than 4:30 p.m. on the sixtieth day or the next earliest working day prior to the primary or special election.

(b) If an objection is made by a registered voter, the candidate objected thereto shall be notified of the objection by the chief election officer or the clerk in the case of county offices by registered or certified mail.

(c) If an objection is filed by an officer of a political party with the circuit court, the candidate objected thereto shall be notified of the objection by an officer of the political party by registered or certified mail.

(d) Except for objections by an officer of a political party filed directly with the circuit court, the chief election officer or the clerk in the case of county offices shall have the necessary powers and authority to reach a preliminary decision on the merits of the objection; provided that nothing in this subsection shall be construed to extend to the candidate a right to an administrative contested case hearing as defined in section 91-1(5). The chief election officer or the clerk in the case of county offices shall render a preliminary decision not later than five working days after the objection is filed.

(e) If the chief election officer or clerk in the case of county offices determines that the objection warrants the disqualification of the candidate, the chief election officer or clerk shall file a complaint in the circuit court for a determination of the objection; provided that the complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the seventh working day after the objection was filed.

(f) If a political party objects to the nomination paper filed by a candidate because the candidate is not a member of the party pursuant to the party's rules filed in conformance with section 11-63, an officer of the party whose name appears on file with the chief election officer shall file a complaint in the circuit court for a prompt determination of the objection; provided that the complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the sixtieth day or the next earliest working day prior to that election day.

(g) If an officer of a political party whose name appears on file with the chief election officer, the chief election officer, or clerk in the case of county offices files a complaint in the circuit court, the circuit court clerk shall issue to the defendants named in the complaint a summons to appear before the court not later than 4:30 p.m. on the fifth day after service thereof.

(h) The circuit court shall hear the complaint 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 of law. The judgment shall decide the objection presented in the complaint, and a certified copy of the judgment shall forthwith be served on the chief election officer or the clerk, as the case may be.

(i) If the judgment disqualifies the candidate, the chief election officer or the clerk shall follow the procedures set forth in sections 11-117 and 11-118 regarding the disqualifications of candidates.

(Emphases added.)

17. On March 17, 2026, Waters filed nomination papers for the District IV seat with the City Clerk's office.

18. As alleged in the first amended complaint, on March 25, 2026, District IV voter Christian Butt (Butt) filed a written objection to Waters' candidacy with the City Clerk pursuant to HRS § 12-8, questioning whether Waters' 2019 term counted toward the Revised Charter's two-consecutive-term limit in Revised Charter § 3-102.

19. Revised Charter § 3-102 provides:

Section 3-102. Number, Election and Terms of Office of Councilmembers --

The council shall consist of nine members. One member shall be elected from each of the nine districts hereinafter provided. Except as provided in Section 16-122, the regular terms of office of councilmembers shall be four years beginning at twelve o'clock meridian on the second day of January following their election. The terms shall be staggered in accordance with Section 16-122. No person shall be elected to the office of councilmember for more than two consecutive four-year terms.

20. In a letter dated April 7, 2026, Acting City Clerk Chadd Kadota (Kadota) responded to Butt's objection with a "Preliminary Determination" that the provisions of Revised Charter § 3-102 "that prohibit a person from being elected to the office of councilmember for more than two consecutive four-year terms has not been triggered." Kadota stated it was his preliminary determination that the objection does not warrant seeking a disqualification determination in the Circuit Court of the State of Hawai'i, and that no further action would be taken.

21. On June 5, 2026, Ozawa submitted to the City Clerk a written objection to Waters' candidacy, asserting that Waters is ineligible to seek election to "a third consecutive four-year term" in District IV under Revised Charter § 3-102.

22. By letter dated June 12, 2026, Kadota responded to Ozawa's June 5, 2026 objection with a preliminary determination stating that Ozawa's objection did not warrant seeking a judicial determination of disqualification and that no further action would be taken.

Ozawa's Circuit Court Complaint (1CCV-26-0000889)

23. On June 16, 2026, Ozawa filed a lawsuit in the Circuit Court of the First Circuit, Ozawa v. Kadota, et. al., 1CCV-26-0000889, seeking a declaratory judgment pursuant to HRS Chapter 632, that Waters is ineligible under Revised Charter § 3-102 to be elected to the District IV seat for the 2027-2031 term, "by virtue of his having already been elected to that office for two consecutive four-year terms (2019-2023 and 2023-2027)[.]" The lawsuit named Kadota, State Chief Election Officer Scott T. Nago (Nago), and Waters as defendants. Ozawa also sought an injunction enjoining Kadota from certifying Waters' nomination paper for the 2026 election for District IV and enjoining Nago from printing and distributing ballots for the "2026 general election" that includes Waters' name as a candidate for District IV.

24. On June 19, 2026, Ozawa filed a motion for preliminary injunction.

25. On June 22, 2026, Waters filed a motion to dismiss Ozawa's complaint, arguing in part that under Revised Charter § 3-102, he is eligible for re-election in 2026 because his first term following the April 13, 2019 election was not a full four-year term. Waters also argued that Ozawa's Circuit Court complaint improperly sought to circumvent HRS § 12-8's "specific process where a registered voter can object to nomination

papers" and that HRS § 12-8 did not provide Ozawa a private right of action to pursue his objection to Waters' eligibility.

26. On July 8, 2026, Ozawa filed a motion for summary judgment, arguing that Revised Charter § 3-102 limits the consecutive four-year terms to which a person may be elected, not how long a person may serve. Ozawa argued that the only circumstance in which the Revised Charter contemplates electing a person to less than a four-year term is Revised Charter § 3-105, which provides for a special election to elect a successor to fill a vacancy for the remainder of an unexpired term of one year or more. Ozawa contended that the April 2019 election was a "re-run" of the invalidated 2018 election, not an election to an unexpired term under Revised Charter § 3-105, and that therefore Waters has been elected, in 2019 and 2022, to two full four-year terms.

27. The Circuit Court held a hearing on the motion to dismiss and motion for summary judgment on July 27, 2026. During the hearing, Ozawa withdrew his requests for injunctive relief, and the Circuit Court confirmed that the only remaining relief Ozawa sought was a declaratory ruling that Waters is ineligible under Revised Charter § 3-102 for the upcoming councilmember District IV election.

28. During the hearing, the Circuit Court denied the motion to dismiss, stating that Waters had not shown that the

complaint fails to state a claim upon which relief can be granted, "if for no other reason than because the complaint alleges that Mr. Waters has already been elected to two consecutive four-year terms."

29. The Circuit Court also rejected Waters' argument that HRS § 12-8 does not provide a private right of action, stating that Ozawa's complaint did not rely on HRS § 12-8 and that the complaint instead stated that HRS § 12-8 does not provide an adequate remedy and affords no further administrative or judicial avenue to a registered voter seeking review before the election. The Circuit Court stated that Ozawa asserted a controversy between himself and the Circuit Court defendants regarding Revised Charter § 3-102, Ozawa has a private cause of action to seek enforcement of that section, and the dispute is the type that the declaratory judgment statute, HRS § 632-1, is intended to cover.

30. With regard to Ozawa's motion for summary judgment and the interpretation of Revised Charter § 3-102, the Circuit Court preliminarily stated that the Revised Charter contemplates only two types of councilmember terms: a regular term under § 3-102, and a vacancy term under § 3-105. The Circuit Court stated that Waters' first term "clearly was not a vacancy term" because Revised Charter § 3-105 is triggered by a vacancy "such as the departure of a sitting council member, a death, et cetera,"

which did not occur. The Circuit Court stated that, instead, the term to which Waters was elected in 2019 was "always a regular four-year term." In particular, the Circuit Court stated that in 2018, Waters and Ozawa ran for election to a regular four-year term, and neither was elected in 2018 because the Hawai'i Supreme Court invalidated the 2018 election, triggering a new election in 2019 for that same term. The Circuit Court stated that Waters and Ozawa then continued to run in 2019 for "the very same term they both ran for in 2018[.]" The Circuit Court further stated that the fact that Waters was not elected until 2019 and was not able to serve the entire four-year term "does not alter the term he ran for and was elected to[,]" which was a "regular four-year term." The Circuit Court further stated that "any other result would be absurd" and that if Waters was elected to and served a 2027-2031 term, he would end up serving as District IV councilmember for more than eleven and a half consecutive years, which is "clearly and undeniably contrary to the obvious intent of Revised Charter § 3-102, which intends to allow any person a maximum of eight consecutive years in the same council member seat." The Circuit Court further stated that allowing a councilmember to serve for more than eight years "is exactly what the voters rejected in 2016." The Circuit Court therefore granted the motion for

summary judgment to the extent that it found Waters ineligible to be elected to the District IV seat for the 2027-2031 term.

31. On July 28, 2026, Ozawa filed a withdrawal of his June 19, 2026 motion for preliminary injunction.

32. On July 29, 2026, the Circuit Court entered an order and judgment declaring that Waters is ineligible to be elected as District IV councilmember for the 2027-2031 term.

33. Waters timely appealed from the order and judgment.

34. On August 12, 2026, Ozawa filed an application to transfer the appeal to this court, which this court granted.

2026 First Special Election

35. In the meantime, as alleged in the 40 voters' first amended complaint, on July 17, 2026, election officials mailed ballots containing Waters' name to District IV voters.

36. On August 1, 2026, following the Circuit Court's ruling, the Honolulu Elections Division, Office of the City Clerk (Honolulu Elections Division), issued a public release advising voters that Waters is ineligible to be elected to the District IV councilmember seat for the 2027-2031 term. The release stated that because ballots had already been printed before the Circuit Court's ruling, Waters' name would continue to appear on ballots for the District IV contest, and that votes cast for Waters would be counted only for the purpose of

determining whether an eligible candidate has received a majority of the votes counted in the first special election.

37. On August 8, 2026, in conjunction with the State's primary election, the City held a nonpartisan first special election for the District IV councilmember seat.

38. As indicated in the first amended complaint, the result of this District IV race in the first special election was as follows:

OZAWA, Trevor	12,252	39.9%
WATERS, Tommy	8,654	28.2%
GREGORY, Tara Malia	4,212	13.7%
LIANG, Jason K.	2,674	8.7%
Blank Votes	2,734	8.9%
Over Votes	210	0.7%

39. Pursuant to Revised Charter § 13-116(2)(c), because no candidate received a majority of votes cast in the first special election, "the names of the two candidates receiving the highest number of votes cast for that office shall be placed on the ballot for the second special election."

The Election Contest Filed by 40 Voters Who Reside and Are Registered to Vote in District IV

40. On August 14, 2026, 40 voters who reside and are registered to vote in District IV filed a first amended complaint contesting the election for District IV.

41. The 40 voters assert one count: "By declaring Waters ineligible, the Honolulu Elections Division changed the primary election results and disenfranchised voters by declaring Gregory

as the candidate advancing over Waters, despite Waters receiving the second-highest votes."

42. The 40 voters assert in part that HRS § 12-8 is the exclusive means in which a citizen can challenge an election nomination, and that challengers who disagree with the City Clerk's determination are not authorized to further challenge a nomination through a declaratory judgment action.

43. The 40 voters also allege that because the Circuit Court's July 29, 2026 judgment did not direct elections officials to "take action" or stay the Circuit Court's ruling pending appeal, the Honolulu Elections Division should not have taken any action and "interfered with the primary election by declaring to the public that Waters was ineligible."

44. The 40 voters also assert that the Revised Charter does not bar Waters from running for the District IV seat for the 2027-2031 term. They contend that Waters has not served the maximum allowable two consecutive four-year terms because his first term following the 2019 election "lasted 3 years, 7 months, and 25 days."

45. The 40 voters ask the court to (1) determine that Waters is an eligible candidate for the general election against Ozawa for the District IV councilmember seat; (2) direct that Waters be placed on the ballot for the general election on November 3, 2026; and (3) direct the Honolulu Elections Division

and other officials to withdraw or remove any contrary notices, postings, or declarations regarding Waters' eligibility.

The August 19, 2026 Order

46. On August 19, 2026, this court issued an order directing that Kadota, Ozawa, and Gregory be made defendants to the election contest.

47. This court also consolidated the election contest, SCEC-26-0000585, with Waters' appeal, SCAP-26-0000550, for purposes of oral argument, and took judicial notice of the records and files in the appeal, SCAP-26-0000550, and underlying records in the Intermediate Court of Appeals case (CAAP-26-0000550) and Circuit Court case (1CCV-26-0000889).

State Election Officer Nago's Answer to the First Amended Complaint

48. On August 24, 2026, Nago and the Office of Elections filed a response, stating that they take no position on the first amended complaint, and that the first amended complaint challenges actions taken by the Honolulu Elections Division - which is part of the Office of the City Clerk - not Nago or the Office of Elections.

49. Nago and the Office of Elections also state that they take no position on the interpretation of the Revised Charter or whether the Circuit Court correctly determined Waters' eligibility. The Office of Elections requests that the

candidates for District IV councilmember, City and County of Honolulu, be determined no later than September 4, 2026, in order to avoid additional delay and ensure the State can meet the September 18, 2026 deadline for transmitting military and overseas ballots.

Acting City Clerk Kadota's Answer to the First Amended Complaint

50. On August 24, 2026, Kadota filed a response, asserting that the first amended complaint is legally insufficient under HRS § 11-172 because it does not allege "actual information" showing that any action by the City Clerk had the effect of changing the results of the election. In other words, Kadota asserts that it was the Circuit Court's decision, and not the City Clerk's decision, to declare Waters ineligible.

51. Kadota asserts that the City Clerk's actions in announcing that Gregory would advance over Waters to the 2026 second special election were correct because: (1) the Circuit Court's Order and Final Judgment were not stayed; (2) HRS 11-117(b)³ (Supp. 2025) allows the City Clerk to notify the public

³ HRS § 11-117(b) states:

(b) On receipt of the notice of death, withdrawal, or upon determination of disqualification, the chief election officer or the clerk shall inform the chairperson of the political party of which the person deceased, withdrawing, or disqualified was a candidate. When a candidate dies, withdraws, or is disqualified after the close of filing and the ballots have been printed, the chief election officer or the clerk may order the candidate's name stricken from the ballot or order

of a candidate's disqualification after receiving a determination of disqualification; and (3) the Circuit Court declared Waters was ineligible, and the City Clerk properly notified the public of the impact of Waters' disqualification under State and City election laws, particularly in the absence of a stay of the Circuit Court's ruling.

52. Kadota also asserts that the 40 voters could have intervened in the Circuit Court case, but did not, and that the first amended complaint is an attempt to overturn the Circuit Court's Order and Final Judgment.

53. Kadota states that the City Clerk takes no position on the Circuit Court's decision to disqualify Waters.

Ozawa's Answer to the First Amended Complaint

54. On August 24, 2026, Ozawa filed a response to the first amended complaint, asserting that the first amended complaint: (1) fails to state a claim upon which relief can be granted under HRS § 11-172 and § 11-173.5; (2) does not assert a basis that could cause a difference in the election results within the meaning of HRS § 11-172; and (3) is an impermissible collateral attack on the final judgment entered in 1CCV-26-0000889, which is on appeal in SCAP-26-0000550.

that a notice of the death, withdrawal, or disqualification be prominently posted at the appropriate voter service centers on election day.

55. Ozawa asserts that should this court affirm the Circuit Court's ruling that Waters is ineligible to be elected for the 2027-2031 term, the relief that the 40 voters seek is inconsistent with HRS § 11-173.5(b), which does not contemplate placing the name of an ineligible candidate on the ballot for the 2026 second special election.

56. Ozawa does not ask this court to declare him elected, and requests that the second special election proceed on November 3, 2026, between him and Gregory.

57. Ozawa contends that the 40 voters' disagreement with the Circuit Court's ruling and the City Clerk's decision to follow that ruling are not bases for an election contest under HRS § 11-172 because a judicial declaration that a candidate is ineligible to be elected to an office is not fraud, an overage, an underage, or any error of that kind. According to Ozawa, an election contest is meant to address errors in the processing of ballots or other similar procedural errors, and not to collaterally attack a judgment that is pending on direct appeal. Ozawa asserts that the appeal is the better vehicle to address Waters' eligibility issue.

58. Ozawa further asserts that Waters is ineligible to be elected to the District IV seat for the 2027-2031 term. Among other things, Ozawa asserts that Revised Charter § 3-102's term limit does not turn on how long a councilmember serves, and that

it instead contemplates a "term" to be a "fixed legal period with a start and end fixed by law, determinable in advance, and independent of when a particular person is sworn in."

59. Ozawa asserts that the April 2019 election was the completion of the 2018 regular election, not a vacancy election. He states that when this court invalidated the 2018 second special election in Waters, the April 2019 election followed pursuant to HRS § 11-174.5(b), which directs that a certified copy of the judgment be filed with the governor, who shall then call a new election to be held. See Waters, 148 Hawai'i at 66, 468 P.3d at 80.

60. Ozawa also asserts that the 40 voters' reading of Revised Charter § 3-102 produces a result that was rejected by the voters in 2016, when a majority of voters declined to extend the term limit in Revised Charter § 3-102 to three terms instead of two terms.

61. Ozawa also asserts that he properly brought a declaratory judgment action in the Circuit Court, as confirmed by this court's own precedent in Clark v. Arakaki, 118 Hawai'i 355, 191 P.3d 176 (2008).

62. As to disenfranchised voters, Ozawa asserts that none of the choices that resulted in Waters being declared ineligible were made by election officials that the 40 voters now blame. Ozawa points out that Waters opposed Ozawa's efforts to have the

eligibility question decided on an expedited basis before ballots were printed, arguing that post-election remedies would suffice. Additionally, Waters neither sought a stay of the Circuit Court's decision pending appeal, nor moved to expedite his own appeal.

63. Ozawa requests that this court: (1) deny the relief requested in the first amended complaint and dismiss the first amended complaint; (2) determine in the appeal that Waters is not eligible to be elected to the 2027-2031 term for District IV councilmember; and (3) confirm that the 2026 second special election will proceed between Ozawa and Gregory.

Gregory's Answer to the First Amended Complaint

64. On August 24, 2026, Gregory filed a response, opposing the relief sought by the 40 voters that would effectively replace her with Waters on the ballot for the 2026 second special election.

65. As to disenfranchising voters, Gregory asserts that the disenfranchisement concern began when voters were presented with an ineligible candidate as a choice and were permitted to cast ballots without the eligibility question being timely resolved. Gregory contends that she asked election officials to determine Waters' eligibility months before ballots were mailed. She expresses concern for the voters that were presented with a

ballot containing the name of an ineligible candidate, and for those people that voted for Waters prior to the Circuit Court's decision that Waters was ineligible to be elected to the 2027-2031 term. Gregory asserts that the 40 voters' "disenfranchisement theory does not resolve what Waters' voters, or the electorate as a whole, would have done had [his] eligibility been definitively resolved before voting began."

66. As to the merits of Waters' eligibility, Gregory relies on the Circuit Court's order and judgment and points out that the voters rejected a 2016 proposed amendment to the Revised Charter that would have allowed councilmembers to serve three consecutive four-year terms. Gregory asserts that HRS § 11-173.5 requires this court to determine which candidate was legally nominated or elected, and the reported vote totals for Waters does not answer the question about whether Waters was legally eligible to receive the nomination. Gregory asserts that the burden is on the 40 voters to establish that Waters was legally eligible to be elected to serve the 2027-2031 term.

67. Gregory also asserts that the 40 voters must establish a verifiable evidentiary foundation for the reported results before replacing Gregory's name with Waters' name on the ballot for the 2026 second special election for District IV councilmember. According to Gregory, the reported total amount of votes for each candidate should not, standing alone, be

treated as complying with ballot accounting and reconciliation requirements governing the election. In asserting as such, Gregory states that she does not ask this court to presume that the reported totals are false merely because she has questioned their verification. Rather, Gregory asks this court not to treat the reported vote totals as self-proving where the 40 voters seek to use those totals to remove her name from the ballot for the 2026 second special election.

68. Gregory requests that this court: (1) deny the 40 voters' request to determine that Waters is eligible to advance to the 2026 second special election; (2) deny the 40 voters' request to remove Gregory's name from the ballot for the 2026 second special election; (3) decline to treat the reported vote totals, standing alone, as establishing the 40 voters' entitlement to the relief requested; and (4) preserve Gregory's status as a candidate advancing to the 2026 second special election.

Oral Argument

69. Oral argument was held on August 25, 2026. The court heard arguments from counsel for the 40 voters, Waters, Ozawa, Kadota, the Office of Elections and Nago, and heard arguments from Gregory as a self-represented party to the election contest.

CONCLUSIONS OF LAW

Election Challenges

1. The 40 voters bring their challenge under HRS § 11-172, which 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.

(Emphases added.)

2. A complaint challenging the results of a primary election or a county election held concurrently with a regularly scheduled 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; Funakoshi v. King, 65 Haw. 312, 316-17, 651 P.2d 912, 915 (1982).

3. A judgment deciding which candidate was nominated or elected is the only remedy that can be given in a challenge contesting a primary or a county election held concurrently with a regularly scheduled primary election. Funakoshi, 65 Haw. at 315-16, 651 P.2d at 914. In other words, the "only statutory relief to which plaintiff is entitled under HRS § 11-173.5(b) would be to have this Court declare the name[s] of the

candidate[s] to be nominated or elected.” Id. at 315, 651 P.2d at 914.

4. After the Circuit Court’s July 29, 2026 judgment declaring Waters ineligible, the Honolulu Elections Division declared Waters ineligible. The 40 voters seek to overturn the Honolulu Elections Division’s ineligibility ruling, and thus their first amended complaint could cause a difference in the election results declaring Ozawa and Gregory the candidates to be placed on the ballot as candidates for District IV councilmember in the City’s second special election to be held concurrently with the general election.

5. We first address whether the Circuit Court properly entertained the declaratory judgment action. In 1CCV-26-0000889, Ozawa sought declaratory relief under HRS § 632-1, which provides in relevant part:

§632-1 Jurisdiction; controversies subject to. [(a)] In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for; provided that declaratory relief may not be obtained in any district court, or in any controversy with respect to taxes, or in any case where a divorce or annulment of marriage is sought. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances, and other governmental regulations may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.

[(b)] Relief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties. . . . **Where, however, a statute provides a special form of remedy for a specific type of**

case, that statutory remedy shall be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, a remedy equitable in nature, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment in any case where the other essentials to such relief are present.

(Emphasis added.)

6. The declaratory judgment action was litigated and decided in the Circuit Court before the August 8, 2026 first special election was held. In the Circuit Court, Waters filed a motion to dismiss that case because HRS § 12-8 did not provide Ozawa a private right of action to pursue his objection to Waters' eligibility in the Circuit Court. The Circuit Court denied the motion to dismiss. We agree with Waters that the declaratory judgment action brought in the Circuit Court should have been dismissed because, in those circumstances, HRS § 12-8 "provides a special form of remedy for a specific type of case," that is, determining within a mandated time period the eligibility of candidates after nominating papers are filed. See Punohu v. Sunn, 66 Haw. 485, 487, 666 P.2d 1133, 1134 (1983) (quoting the "special form of remedy" language in HRS § 632-1 and stating "We have held that where such a statutory remedy exists, declaratory judgment does not lie." (citation omitted)). Thus, under the exception set out in HRS § 632-1, a declaratory action was not the proper manner of determining the candidates for the August 8, 2026 first special election.

7. HRS § 12-8 mandates strict time limits when there is a proper objection to a candidate's eligibility. When a registered voter's objection is to a candidate to a county office, the county clerk "shall have the necessary powers and authority to reach a preliminary decision on the merits of the objection[,]" and "shall render a preliminary decision not later than five working days after the objection is filed." HRS § 12-8(d).

8. If the county clerk determines that the objection warrants *disqualification* of the candidate, the clerk "shall file a complaint in the circuit court for a determination of the objection[,]" which must be filed "not later than 4:30 p.m. on the seventh working day after the objection was filed." HRS § 12-8(e). The circuit court clerk must then issue a summons to the defendants in the complaint to appear before the court no later than 4:30 p.m. on the fifth day after service of the summons. HRS § 12-8(g). Then, the circuit court must, among other things, "hear the complaint in a summary manner" and give judgment "not later than 4:30 p.m. on the fourth day after the return[.]" HRS § 12-8(h). Further, if the circuit court's judgment "disqualifies the candidate, . . . the clerk shall follow the procedures set forth in sections 11-117 and 11-118 regarding the disqualifications of candidates." HRS § 12-8(i).

9. Importantly, HRS § 12-8 does not authorize the county clerk to file a complaint in circuit court when the clerk's preliminary decision is that an objection does not warrant disqualification. In this case, Acting City Clerk Kadota made a "preliminary determination" that the objections to Waters' eligibility did not warrant disqualification or seeking Circuit Court action.

10. We thus hold that, under the circumstances of this case, the Circuit Court should have dismissed the declaratory judgment action because HRS § 12-8 provided a special form of remedy to address, prior to the August 8, 2026 election, the objections to the nomination papers of Waters, which challenged his eligibility to run again for councilmember of District IV.

11. Clark, 118 Hawai'i 355, 191 P.3d 176, which Ozawa argued allows for HRS § 632-1 declaratory relief in election challenges, is distinguishable. There is no indication that the HRS § 632-1 "special remedy" provision was asserted in that case, or that any party asserted that HRS § 12-8 precluded the declaratory action in that case. Thus, the issue as to whether HRS § 12-8 should have applied was apparently waived in that case. Further, the circuit court there did not rule until after the election had taken place. Id. at 359, 191 P.3d at 180.

12. Here, although the declaratory judgment action should have been dismissed, it does not mean there is no means for a

court to decide whether Waters is eligible for another term as councilmember for District IV.

13. HRS § 11-172 provides in relevant part that:

§11-172. Contests for cause; generally. 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.**

(Emphases added.)

14. The August 8, 2026 election was a "county election contest held concurrently with a regularly scheduled primary . . . election" and is governed by HRS § 11-173.5, which provides in relevant part:

§11-173.5 Contests for cause in primary, special primary elections, and county elections held concurrently with a regularly scheduled primary or special primary election. (a) In a . . . county election contest held concurrently with a regularly scheduled . . . primary election, the complaint shall be filed in the office of the clerk of the supreme court no later than 4:30 p.m. on the thirteenth day after . . . a county election contest held concurrently with a regularly scheduled primary . . . election The clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court no later than 4:30 p.m. on the fifth day after service of the summons.

(b) In . . . county election contests held concurrently with a regularly scheduled 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 of 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 . . . county clerk, . . . who shall place the name of the candidate declared to be nominated on the ballot for

the forthcoming general, special general, or runoff election.

(Emphasis added.)

15. This election challenge by the 40 voters is the proper method for voters to challenge a primary election or a county election contest held concurrently with a regularly scheduled primary election.

16. HRS § 11-171 (2009) provides: "This part [Part XI governing Election Contests] shall apply whenever a contested election is subject to determination by a court of competent jurisdiction in the manner provided by law."

17. HRS §§ 11-172 and 11-173.5 are within Part XI of HRS Chapter 11. Pursuant to HRS § 11-171, they are the statutes that govern when voters seek to challenge a county election contest held concurrently with a regularly scheduled primary election. They provide "a special form of remedy" as delineated in HRS § 632-1(b).

18. Here, the 40 voters have brought a proper HRS §§ 11-172 and 11-173.5 election challenge.

Interpretation of the Revised Charter

19. We now turn to whether, under Revised Charter § 3-102, Waters is eligible to be elected to the District IV councilmember seat for the 2027-2031 term.

20. "The interpretation of the charter is similar to the interpretation of a statute." Citizens for Equitable and Responsible Gov't v. County of Hawai'i, 108 Hawai'i 318, 323, 120 P.3d 217, 222 (2005) (citing Maui County Council v. Thompson, 84 Hawai'i 105, 106, 929 P.2d 1355, 1356 (1996)). When interpreting a statute,

our foremost obligation is to ascertain and give effect to the intention of the legislature[,] which is to be obtained primarily from the language contained in the statute itself. *And where the language of the statute is plain and unambiguous, our only duty is to give effect to its plain and obvious meaning.*

Id. Further, when interpreting provisions of a county charter, "we must 'give effect to the intention of the framers and the people adopting' the provision in the county charter." Clark, 118 Hawai'i at 361, 191 P.3d at 182.

21. "Courts are bound to give effect to all parts of a statute, and no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." Dejetley v. Kaho'ohalahala, 122 Hawai'i 251, 263, 226 P.3d 421, 433 (2010) (citation, quotation marks, and ellipses omitted).

22. A term limit for councilmembers was first adopted as part of Revised Charter § 3-102 in 1992. The Honolulu Charter Commission, as the framer proposing a term limit, explained the purpose as follows:

This proposal would encourage "citizen legislators," who would serve in elected office for a limited number of terms, then return to their lives in the community. These "citizen legislators" would be an integral part of the community, experiencing the same kinds of needs and problems as their neighbors. Since they would be sensitive to the community, they would be inclined to address relevant issues while in office. These "citizen legislators" would assume elected office as a public service.

Final Report of the Charter Commission, City and County of Honolulu 1991-1992 at 26 (Dec. 8, 1992),
https://www4.honolulu.gov/docushare/dsweb/Get/Document-186411/199212_final%20report%20of%201991-1992%20hnl%20charter%20comm_hcc.pdf [<https://perma.cc/E4HL-WGZF>].

23. In 1998, amendments to Revised Charter § 3-102 were adopted. This 1998 version of the provision is applicable here and provides:

Section 3-102. Number, Election and Terms of Office of Councilmembers -

The council shall consist of nine members. One member shall be elected from each of the nine districts hereinafter provided. Except as provided in Section 16-122, the regular terms of office of councilmembers shall be four years beginning at twelve o'clock meridian on the second day of January following their election. The terms shall be staggered in accordance with Section 16-122. No person shall be elected to the office of councilmember for more than two consecutive four-year terms.

(Emphases added.)

24. Critically, the plain language of Revised Charter § 3-102 prohibits a person from being "elected to" more than two consecutive four-year terms. In other words, the term limit hinges on the type of term a councilmember is "elected to," not on the actual amount of time the councilmember serves within that elected term.

25. The Revised Charter describes three types of councilmember terms. First, as noted above, Revised Charter § 3-102 provides that "[e]xcept as provided in Section 16-122, the regular terms of office of councilmembers shall be four years beginning at twelve o'clock meridian on the second day of January following their election." This provision establishes a regular term as a fixed, predetermined period defined by a specific start and end point, regardless of when a councilmember is sworn into office.

26. Second, Revised Charter § 16-122, adopted in 1998, established "Transitional Provisions" to stagger councilmember terms beginning in 2003 and temporarily set two-year terms. Specifically, it provided that councilmembers for certain districts would be elected to "four-year regular terms" commencing January 2, 2003, and other councilmembers would be elected to "two-year regular terms" commencing on the same date:

Section 16-122. Transitional Provisions on the Staggering of Councilmembers' Terms -

1. The staggering of the terms of councilmembers shall commence on January 2, 2003 and be implemented in accordance with this section.

2. On January 3, 2001, the city clerk shall certify the total votes counted for all mayoral candidates in the special election at which the mayor was elected for the regular term commencing January 2, 2001. The city clerk shall transmit the certificate to the council chair and maintain in the clerk's office a copy available for public inspection during normal business hours.

- (a) If the total votes counted, as certified by the city clerk, is an odd number, the councilmembers for council districts I, III, V, VII, and IX

shall be elected to four-year regular terms commencing on January 2, 2003. Councilmembers for other districts shall be elected to two-year regular terms commencing on the same date.

- (b) If the total votes counted, as certified by the city clerk, is an even number, the councilmembers for council districts II, IV, VI, and VIII shall be elected to four-year regular terms commencing on January 2, 2003. Councilmembers for other districts shall be elected to two-year regular terms commencing on the same date.

For the purpose of this subsection, a "vote counted" for a mayoral candidate shall not include ballots which are blank, spoiled or otherwise invalid in connection with the mayoral contest. "Special election at which the mayor was elected for the regular term commencing January 2, 2001" means either the first or second special election, held in conjunction with the 2000 primary or general election, at which a candidate for mayor was elected for the term commencing January 2, 2001. The phrase does not mean both the first and second special elections if a second special election was held.

3. After the expiration of the two-year regular terms established by this section, the subsequent regular terms of the pertinent councilmembers shall be subject to Section 3-102.

4. Except as provided in the next paragraph, a person elected as councilmember to a two-year regular term in 2002 shall be eligible for election to two more consecutive four-year terms as councilmember.

A person elected as councilmember to a four-year regular term in 1998 and a two-year regular term in 2002 shall be eligible for election in 2004 to a four-year regular term as councilmember. Such a person, however, shall not be eligible for election in 2008 to a four-year regular term as councilmember.

A person elected as councilmember to two consecutive four-year regular terms in 1994 and 1998 shall not be eligible in 2002 for election as councilmember.

(Emphases added.)

27. Third, Revised Charter § 3-105 describes an "unexpired term" resulting from a vacancy for which a "successor" is elected:

Section 3-105. Vacancy in Office -

A vacancy in the office of any councilmember shall be filled in the following manner:

- (a) If the unexpired term is less than one year, the remaining members of the council shall elect a successor with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall be filled only at a meeting of the council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the council by the presiding officer. Should the council fail to fill any vacancy within thirty days after its occurrence, the mayor shall appoint a successor to fill the vacancy for the unexpired term.
- (b) If the unexpired term is for one year or more, the vacancy shall be filled by special election to be called by the council within ten days and to be held within one hundred twenty days after the occurrence of the vacancy. At such time, the electors of the district shall elect a successor to fill the vacancy for the remainder of the term. If any special or general election is to be held in the city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election. Pending the election, the remaining members of the council shall make a temporary appointment with requisite qualifications to fill the vacancy until a successor is duly elected. The vacancy shall be filled only at a meeting of the council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the council by the presiding officer. Should the council fail to fill the vacancy within thirty days after its occurrence, the mayor shall make the temporary appointment to fill the vacancy until a successor is duly elected.

(Emphases added.)

28. With the foregoing terms established, we turn to the term that Waters was "elected to" in April 2019. Waters was plainly "elected to" a four-year term at that time. In the November 6, 2018 second special election, Waters and Ozawa were on the ballot to be "elected to" a regular four-year term as

District IV councilmember, to commence January 2, 2019. See Revised Charter § 3-102. In January 2019, based on two election challenges under HRS § 11-174.5 (one filed by Waters), this court invalidated the November 2018 election results for that race and directed that "[a] certified copy of this judgment shall be filed with the Governor of the State of Hawai'i in accordance with HRS § 11-174.5(b)." Waters, 148 Hawai'i at 66, 468 P.3d at 80. HRS § 11-174.5(b) states, in relevant part: "If the judgment should be that the . . . special . . . election was invalid, a certified copy thereof shall be filed with the governor, and the governor shall duly call a new election to be held not later than one hundred twenty days after the judgment is filed." (Emphasis added.) As HRS § 11-174.5(b) requires, the Governor then issued a proclamation calling for a special election for the District IV seat. The result was a repeat election only between Waters and Ozawa in April 2019. The April 2019 election thus concluded the electoral process for the District IV councilmember term that the November 2018 election was intended to resolve. Therefore, by prevailing in the April 2019 election, Waters was "elected to" the same four-year term for which he and Ozawa were candidates in November 2018.

29. The 40 voters contend that Revised Charter § 3-102 does not bar Waters' candidacy because he "has not served 'two consecutive four-year terms'" since his first term following the

April 2019 election "lasted 3 years, 7 months, and 25 days." This argument is flawed in at least two respects. First, it impermissibly attempts to import the word "served" into Revised Charter § 3-102's term-limit provision. Based on its plain language, Revised Charter § 3-102's term limit is not determined by the amount of time that a councilmember actually serves upon being sworn into office. Rather, the term limit turns on the type of term that the councilmember was "elected to." Second, the claim that Waters' first term was 3 years, 7 months, and 25 days incorrectly presumes that the type of term a councilmember is elected to turns on when they are sworn into office. Nothing in the Revised Charter links the definition of a four-year term to a councilmember's swearing-in date. Rather, as discussed above, the regular four-year term established in Revised Charter § 3-102 is a fixed, predetermined period of time.

30. The 40 voters' contention that Waters "was elected to a 3-year-7-month-and-25-day term, not a four-year term" is similarly flawed. (Emphasis added.) The fact that Waters was ultimately elected in April 2019, after the regular four-year term began on January 2, 2019, is not dispositive. Again, the April 2019 election - which resulted from election challenges and this court's invalidation of the November 2018 election - completed the objective of the November 2018 election; that is, to elect a District IV councilmember to the 2019-2023 four-year

term. The April 2019 election did not and cannot retroactively change the fixed, four-year term to which Waters was elected.

31. The 40 voters also suggest that Waters' first term filled a vacancy under Revised Charter § 3-105(b). Specifically, they rely on the City Council's Resolution 19-12, adopted February 4, 2019, which stated that this court's January 25, 2019 invalidation of the November 6, 2018 second special election for District IV "creat[ed] a vacancy on the City Council" and, citing Revised Charter § 3-105(b), called a special election to be held April 13, 2019 "to fill the vacancy[.]" The 40 voters state that the City Council "itself understood the April 2019 election as a vacancy-filling election under Section 3-105(b), not a regular election under Section 3-102."

32. We are not bound by the City Council's characterization of the April 2019 election as filling a vacancy. Rather, we must render our interpretation of the provision, and we conclude that Waters' first term did not fill a "vacancy" under § 3-105(b).

Section 3-105(b) provides:

Section 3-105. Vacancy in Office --

A vacancy in the office of any councilmember shall be filled in the following manner:

. . . .

- (b) If the unexpired term is for one year or more, the vacancy shall be filled by special election to be called by the council within ten days and to be held within one hundred twenty days after the occurrence of the vacancy. At such time, the electors of the district shall elect a **successor** to fill the vacancy for the remainder of the term. If any special or general election is to be held in the city after thirty days and within one hundred eighty days after the occurrence of the vacancy, then the election shall be held in conjunction with such other election. Pending the election, the remaining members of the council shall make a temporary appointment with requisite qualifications to fill the vacancy until a **successor** is duly elected. The vacancy shall be filled only at a meeting of the council after reasonable notice of intent to fill the vacancy has been given to all remaining members of the council by the presiding officer. Should the council fail to fill the vacancy within thirty days after its occurrence, the mayor shall make the temporary appointment to fill the vacancy until a successor is duly elected.

(Emphases added.)

33. Waters' first term was not a vacancy term. First, Revised Charter § 3-105(b) provides for "the filling of any vacancy, whether resulting from death, disability, resignation, recall, impeachment or because the council[member] has moved out of [their] district." Mink v. Pua, 68 Haw. 263, 264-65, 711 P.2d 723, 725 (1985). Here, the April 2019 election for the District IV seat was not triggered by the departure of a sitting District IV councilmember. Rather, the April 2019 election directly resulted from this court's judgment that

(1) invalidated the November 2018 election results for the District IV councilmember four-year term, and (2) ordered that

the judgment be filed with the governor to call a new election in accordance with HRS § 11-174.5(b).

34. Second, when the April 2019 election was called, no person had yet been elected to the District IV councilmember term due to this court's invalidation of the 2018 election results. The April 2019 election therefore did not elect a "successor" to fill the vacancy for an unfinished "remainder" of the term. See Mink, 68 Haw. at 265, 711 P.2d at 725 (examining Revised Charter Section 3-105(b) and stating that "the usual meaning of the word 'successor' is one who takes the place of another").

35. Third, the April 2019 election was not administered as a vacancy election. The April 2019 election was never subject to the standard nomination process provided in HRS Chapter 12. See Revised Charter § 13-116(1) (requiring city elections to be conducted in accordance with state election laws insofar as applicable); HRS § 12-1 (providing that all candidates for elective office except for presidential electors to be nominated in accordance with HRS chapter 12). Rather, the April 2019 election was limited to Ozawa and Waters – the same candidates in the November 2018 election. Indeed, the then-City Clerk's proclamation calling the April 2019 election expressly stated that the candidates would be Ozawa and Waters, and that no candidate nomination process would be held. This is because the

April 2019 election completed the 2018 election for the regular four-year District IV councilmember term.

36. The 40 voters cite to three Florida cases for the proposition that other courts "recognize that partial terms—particularly those resulting from special elections—should not count toward consecutive term limits." These cases are not precedent here, are based on different Florida law, and in any event, are clearly distinguishable from this case.

37. Specifically, the 40 voters rely on Martinez v. Hernandez, but that case concerned an initial partial term that arose from a vacancy election triggered by the then-mayor's resignation. 227 So. 3d 1257, 1259-60 (Fla. Dist. Ct. App. 2017). Similarly, in Ervin v. Collins, 85 So. 2d 852, 853, 858 (Fla. 1956), the governor was deemed eligible to run for re-election, where he was first elected to complete the unexpired term of the prior governor who died. Both situations are akin to electing a "successor" for an unfinished, "unexpired term" under the vacancy provision of the Revised Charter. See Revised Charter § 3-105. Here, in contrast, Waters was not elected in 2019 to complete an unexpired term of an elected official who vacated office.

38. The 40 voters' reliance on Vieira v. Slaughter, 318 So. 2d 490, 492 (Fla. Dist. Ct. App. 1975), is also unavailing insofar as the mayor in that case was eligible to seek

reelection because his first, "short term of two years, nine months was required by [the charter] only to serve an interim and transitional purpose."

39. Critically, the 40 voters do not cite to any provision in the Revised Charter that could be read as supplanting the fixed terms established in Revised Charter § 3-102 and § 16-122 with a councilmember's length of service. Instead, the 40 voters cite Waters, 148 Hawai'i at 65, 468 P.3d at 79, and State v. Nago, 148 Hawai'i 297, 304, 473 P.3d 758, 765 (App. 2020), to assert the proposition that it "is a foundational principle of election law that disputes regarding eligibility requirements must be resolved in favor of preserving the right of voters to choose their representatives – a right that forms 'the basis of our democratic society.'"

40. Those cases do not adopt that principle. Moreover, any suggestion that a candidate-eligibility dispute should simply default to allowing voters to vote on the candidate in question misses the point. It ignores the right of the voters to choose how they are governed, as reflected by the Revised Charter's term-limit provision adopted by voters in 1998.

41. Neither should the court abdicate its duty to "give effect to the intention of the framers and the people adopting" county charter provisions. Clark, 118 Hawai'i at 361, 191 P.3d at 182 (citation omitted). Indeed, we have well-established

rules of construction for county charter provisions, and none require a court to resolve disputes in favor of a candidate being deemed eligible. See id. at 361-62, 191 P.3d at 182-83.⁴ Relevant here, the Revised Charter provides: "No amendment or revision of this charter shall be effective unless approved by a majority of the voters voting thereon." Revised Charter § 15-103.

42. A majority of voters approved staggered four-year terms in 1998. See Revised Charter § 16-122. In 1998, a majority of voters also approved amending the term limit in Revised Charter § 3-102 so that a person could not be elected to more than two consecutive "four-year terms." A majority of voters did not approve time of service (e.g., three years, seven months, and twenty-five days) to be the measuring yardstick to

⁴ This court in Clark stated:

Provisions in a county charter that affect the organization and government of the county are construed pursuant to fundamental principles of construction relating to constitutional provisions. As such, we must give effect to the intention of the framers and the people adopting the provision in the county charter.

The general rule is that, if the words used in a constitutional provision . . . are clear and unambiguous, they are to be construed as written. In this regard, the words are presumed to be used in their natural sense unless the context furnishes some ground to control, qualify, or enlarge them.

118 Hawai'i at 361-62, 191 P.3d at 182-83 (internal citations, quotation marks and brackets omitted).

determine whether a term counts toward the voter-approved term limit of being elected to "two consecutive four-year terms." See id.; see also Clark, 118 Hawai'i at 361-62, 191 P.3d at 182-83. If time of service was the determining factor for term limits, any councilmember not immediately sworn into office at the beginning of a four-year term, for whatever reason, would be able to assert that particular term does not count for their term limit. This would subvert the intent of the voters who adopted the term limit.

43. Similar absurdities could result if terms for term limit purposes were defined or altered by remedial elections triggered by successful election challenges. Allowing such challenges to alter established fixed terms of office and thereby evade term limits could enable a councilmember to serve multiple back-to-back terms on the theory that they never served a "four-year" term. For example, if an election between an incumbent councilmember and a challenger is invalidated, triggering a post-January 2 remedial election, and the incumbent ultimately prevails in that remedial election, the incumbent would still be eligible to immediately seek two more four-year terms. This would similarly undermine the intent of the voters who adopted the term limit.

44. Based on the foregoing, we conclude that Waters was elected to two consecutive four-year terms in 2019 and 2022. He

is therefore ineligible under Revised Charter § 3-102 to be elected to the office of District IV councilmember for the 2027-2031 term. We further conclude that Trevor Ozawa and Tara Malia Gregory shall be placed on the ballot for the 2026 second special election for District IV councilmember. See HRS § 11-118(c); Revised Charter § 13-116(2)(c).

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, judgment is entered in favor of Defendants Nago, the Office of Elections, Kadota, Ozawa, and Gregory, and against the 40 voters. Trevor Ozawa and Tara Malia Gregory are the two eligible candidates who received the highest number of votes in the August 8, 2026 first special election for District IV councilmember. As a result, Trevor Ozawa and Tara Malia Gregory shall be placed on the ballot for the 2026 second special election for District IV councilmember, City and County of Honolulu.

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

DATED: Honolulu, Hawai'i, August 28, 2026.

/s/ Lisa M. Ginoza

/s/ Peter T. Cahill

/s/ Peter K. Kubota



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Tara Malia Gregory
Defendant, Self-Represented