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Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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KRISTEN K. SOUZA, also known as KANANI SOUZA,
Plaintiff,

vs.

SCOTT T. NAGO, in his official capacity as Chief Elections
Officer, Office of Elections, State of Hawai'i; STATE OF HAWAI'I
OFFICE OF ELECTIONS; CHADD KADOTA, in his official capacity as
Acting City Clerk, City and County of Honolulu;
REX QUIDILLA, in his official capacity as the Elections
Administrator, City and County of Honolulu; and SHEILA MEDEIROS,
Defendants.

SCEC-26-0000598

ORIGINAL PROCEEDING

SEPTEMBER 11, 2026

AMENDED SEPARATE OPINION OF EDDINS, J.,
IN WHICH McKENNA, ACTING C.J., JOINS

I.

842-842.

The 2026 Republican primary for State Representative, District 43 tied. Sheila Medeiros and Kanani Souza each received 842 votes.

Hawai'i law breaks a tie "by lot." Hawai'i Revised Statutes (HRS) § 11-157 (Supp. 2019).

So on August 15, 2026, the Chief Election Officer settled a legislative election by choosing between two plastic capsules in a lau hala basket, each half orange and half clear, the kind that holds candy in a plastic Easter egg. An election office administrator had written Medeiros' and Souza's names on cards, folded them several times, and sealed one name inside each capsule. He shook the closed basket, with enthusiasm. Then opened it. The Chief Election Officer looked away, reached in, and drew an egg. See State of Hawai'i Office of Elections, Candidate Drawing, at 7:51 (Aug. 15, 2026), <https://www.youtube.com/watch?v=Uq2-f7YmCts> [<https://perma.cc/LTT5-SQJ2>].

Medeiros' egg was picked from the lau hala basket. She won District 43 outright. No Democrat and no one from any other party had filed for the seat.

A tie must be real before it can be broken. Two ballots from outside the district put this one in doubt.

The Office of Elections' Over/Under Report shows two more ballots counted in Precinct 43-03 than voters were credited as

casting. Those excess ballots are an overage. The count exceeds documented usage. HRS § 11-153(a) (Supp. 2021).

Two District 40 voters were handed District 43 ballots by mistake and cast them. Their ballots entered the count all the same, in a race they had no right to decide. Whether either voted in it, the record does not say.

At 842-842, two ballots are enough to decide the race. Or to show it was never decided.

Three conclusions follow.

First, the two-ballot overage could affect the result of a tie. The burden of showing the two ballots were lawfully cast falls on the election officials, not on Souza. Their own records place the ballots outside the district. Whether either counted in this race, those records do not say. At the hearing, the officials confirmed it: there is no way to know whether the two ballots were counted, or for whom. Oral Argument at 48:10-24, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>]. On any view, Souza has shown by a preponderance that the overage unsettles the outcome. HRS §§ 11-153, 11-172 (Supp. 2021).

Second, the method the Chief Election Officer improvised to break the tie was a rule. He adopted the egg-in-basket procedure without the rulemaking HRS Chapter 91 requires. The rule is invalid, and the selection it produced falls with it.

HRS § 91-1 (Supp. 2017); see Green Party of Haw. v. Nago, 138 Hawai'i 228, 378 P.3d 944 (2016).

Third, because no candidate was validly nominated, the primary is not pau. The remedy is to let the voters finish it.

II.

Hawai'i votes mostly by mail. Since 2020 every registered voter is sent a ballot. HRS §§ 11-101 (Supp. 2021), 11-102 (Supp. 2022). A voter may still vote in person at a voter service center or in limited circumstances by electronic transmission. HRS §§ 11-107 (Supp. 2021), 11-109 (Supp. 2021). In-person voting at a service center is what the Office of Elections (Office) calls early voting. It is where the discrepancy in this case arose.

Two offices run the election, the State and the county, each with its own tasks. The State, through the Chief Election Officer, prints and counts the ballots. HRS § 11-110(b)(1)(B) (Supp. 2019). The county clerk registers voters, mails the ballots, staffs the voter service centers, receives the ballots, and checks the signature on each returned mail-in ballot. HRS § 11-110(b)(1)(A); see HRS §§ 11-106 (Supp. 2021), 11-108 (Supp. 2025).

At a service center, the clerk's officials confirm the voter's eligibility through an application, record that a ballot was issued, and let the voter cast it. The ballots are then

secured and delivered to the State's counting center. Hawai'i Administrative Rules (HAR) §§ 3-177-502, 3-177-550. At the close of each day the clerk reconciles the service-center records against one another and shares this reconciliation report with the Office. HAR § 3-177-769. The reconciliation report is what flagged the error here.

On August 8, 2026, the voters of State Representative District 43 went to the polls in the primary. Two candidates vied for the seat, both Republicans. Sheila Medeiros and Kanani Souza. No candidate of any other party, and no nonpartisan candidate, filed for the office.

The race was close enough to trigger a recount. On August 11, 2026, the Office recounted the District 43 ballots. HRS § 11-158 (Supp. 2025). The recount showed Souza ahead by one.

Then, on August 14, 2026, the Office published its Final Summary Report. It announced a tie:

State Representative, Dist 43 - R		
MEDEIROS, Sheila	842	45.8%
SOUZA, Kanani	842	45.8%
Blank Votes:	35	1.9%
Over Votes:	3	0.2%

Primary Election 2026 Summary Report Final, State of Hawai'i, 1, 3 (Aug. 14, 2026, at 18:33:21 HT),
<https://elections.hawaii.gov/wp->

content/results/2026%20Primary/histatewide.pdf
[https://perma.cc/Q27D-SE2F].

HRS § 11-157 provides that “[i]n case of the failure of an election by reason of the equality of vote between two or more candidates, the tie shall be decided by the chief election officer . . . by lot.”

Acting under that statute, Chief Election Officer Scott Nago conducted a drawing on August 15, 2026, at the State Capitol, one of two that day. The Office also had to break a tie in the Senate District 20 Republican primary, where the candidates had each received 1,212 votes.

One method decided both ties. The candidates’ names were sealed in plastic egg capsules, dropped into a lau hala basket, and one was drawn. In District 43, Medeiros’ name came out. Nago declared that “the candidate selected through this drawing will serve as the Representative for this district.” The drawing was recorded and later posted online. See State of Hawai‘i Office of Elections, Candidate Drawing, at 7:51 (Aug. 15, 2026), <https://www.youtube.com/watch?v=Uq2-f7YmCts> [https://perma.cc/LTT5-SQJ2].

Nago explained the Office had tried to mimic its party-order drawing, a procedure it had used since 2020.

Souza sought records. On August 17, 2026, she wrote to Nago and to the City’s Elections Administrator, Rex Quidilla,

requesting information about the overages and underages reported for the race, the signature-verification process, ballot accounting under HAR § 3-177-453, and the method of the lot. Neither office gave her a substantive answer before she filed.

On August 20, 2026, Souza received the Office's Over/Under Report for Honolulu. It listed every precinct in District 43:

D/P	EV Voted	Prec. Detail Report	Over/Under
43-01	56	56	0
43-02	36	36	0
43-03	54	56	2
43-04	52	52	0

Fifty-four voters were credited with early votes (EV) in Precinct 43-03. Fifty-six ballots were counted there. An overage of two. Every other precinct in the district reconciled.

Souza filed this contest on August 24, 2026. She pleads five counts: that the overage could affect the outcome (Count I); that the drawing was not a true "lot" (Count II); that the tie-break method was an unpromulgated rule (Count III); that the method denied due process and equal protection as applied (Count IV); and that HRS § 11-157 facially violates Article III, Section 4 of the Hawai'i Constitution (Count V).

On August 26, 2026, Medeiros was joined as a defendant, and she filed a brief.

On August 31, 2026, the Office moved to dismiss the contest, or alternatively, for summary judgment. The motion

relies on a declaration from Nago. He conceded the two-ballot overage. He could not account for it. He offered only that it "could be the result of the accidental issuance of two DP 43-03 ballots to voters in a different precinct."

The county could account for it. That same day, its elections administrator, Rex Quidilla, filed a declaration attaching the daily reconciliation report for the Kapolei Hale service center. The report traced the overage to its source. Two District 40 voters were issued District 43 ballots and cast them. Whether either ballot carried a vote in the race, and for whom, the record does not reveal.

We heard the contest in the summary manner the statute prescribes. See HRS § 11-173.5(b) (2009 & Supp. 2024). Nago, Kadota, and Quidilla testified.

HRS § 11-173.5(b) directs this court, within days, to give judgment fully stating all findings of fact and conclusions of law. It sets no form. Stating the law in full is the work of an opinion. And the work we should do in a consequential case. See Iwasa v. Nago, ____ P.3d ____, No. SCEC-26-0000585, 2026 WL 2547017 (Haw. Aug. 28, 2026). The findings run through this opinion and the conclusions with them.

The contest here raises questions this court has not had to answer. Who must account for an overage that could decide a tied race. Whether a tie-break built without rulemaking can

stand. The offices that run our elections, and the voters who rely on them, deserve the law reasoned through in full.

III.

A challenger, the party contesting the election result, may set that result aside two ways. First, by showing an irregularity that could change who won. Second, by showing that the correct result "cannot be ascertained because of a mistake or fraud on the part of the precinct officials." Waters v. Nago, 148 Hawai'i 46, 60, 468 P.3d 60, 74 (2019) (per curiam) (emphasis added).

Here, two ballots were counted in District 43 that were cast by District 40 voters. The officials' own records establish it. Those two ballots answer both tests. In a tie, two ballots that do not belong could change who won. And because the record cannot say how those voters voted, the correct result cannot be determined.

A. A Tie Leaves No Margin For Error

The first test is met. The Legislature made an overage a ground for contest. A challenge "may be brought under part XI, if the overage or underage in any precinct could affect the outcome of an election." HRS § 11-153. Part XI supplies the standard, and it isn't limited to overages. A result may be set aside whenever an irregularity "could cause a difference in the election results." HRS § 11-172; see Dicks v. Office of

Elections, 155 Hawai'i 102, 106, 557 P.3d 831, 835 (2024) (per curiam). We have read "a difference in the election results" to mean "a difference sufficient to overturn the nomination of any particular candidate." Elkins v. Ariyoshi, 56 Haw. 47, 49, 527 P.2d 236, 237 (1974) (per curiam).

The challenger has the burden; she must provide information to demonstrate an irregularity sufficient to change the election result. Waters, 148 Hawai'i at 60, 468 P.3d at 74.

The State turns this against Souza. She cannot say how the two District 40 voters marked their ballots, the argument goes, so she cannot prove the overage changed who won. But that standard is set against the margin. A challenger who trails must produce enough improper votes to overcome the lead. At a tie, there is no lead. Souza doesn't need to show which way the two ballots broke - only that there were two unaccounted-for ballots in a tie race.

Nago concedes as much. He agrees the two ballot overages could have caused a difference in the race. Oral Argument at 20:35-52, 33:07-26, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>].

The margin is the filter.

Ordinarily it screens out claims too small to matter. When an election challenger trails by more votes than her proof could

ever overcome, the contest never clears the threshold. Even if she proved every allegation, the outcome would hold. See Elkins, 56 Haw. at 49, 527 P.2d at 237.

Here, zero is the margin. When two candidates tie, any one ballot counted that should not have been, or not counted that should have been, is enough to foil the result.

The two ballots in District 43 are more than enough. There is no math to do. A tie has no margin to argue about.

This is what separates Souza's case from the two overage decisions the State relies on. Each challenger there was behind with ground to make up. In the 2014 Waters contest, the challenger trailed by forty-one votes. He pointed to eleven overages and thirty-nine underages, but never showed they were invalid votes or added to his count. Waters v. Nago, No. SCEC-14-0001317, 2014 WL 7334915, at *1-2, *7 (Haw. Dec. 24, 2014). In Cushnie, the contestants trailed by 108 votes and identified twenty-five overage mail ballots, too few to alter the result. Cushnie v. Nago, No. SCEC-24-0000797, 2024 WL 5183213, at *2, *7 (Haw. Dec. 20, 2024). Neither court confronted the question that this case forces: whether an overage that clears the margin, and is shown to be invalid, can change who won.

With no margin, nothing keeps the two ballots from view. Their validity is no longer a side question. It's the case.

Someone must show they were lawfully cast. That someone is not Souza.

B. The Burden Is On the Office of Elections

The two ballots came from District 40. Whether the ballots changed the result depends on how those voters voted. No record shows it.

The missing fact is not Souza's to supply. How two voters she cannot name marked ballots she never saw is something she has no way to run down. She asked the offices for their records. What they gave her came after the drawing had already picked a winner, and it did not show how the two voted. The proof sits with the officials who hold the count.

The State's own filing makes the point. Asked to account for the overage, the Chief Election Officer deferred to the county clerk. He could say only that the two ballots might have come from voters in another precinct. He could not confirm the two ballots were valid, and under oath agreed that the overage could have affected the outcome. Oral Argument at 20:35-52, 33:07-26, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>]. He also testified that it was impossible to know who those two voters were, or how they voted. Id. at 52:29-40. Souza, with no access to the records, cannot prove the ballots valid when the Office itself couldn't.

The ordinary standard points the same way. Souza pleads no fraud, so preponderance is enough. See Kekona v. Abastillas, 113 Hawai'i 174, 180, 150 P.3d 823, 829 (2006). The report shows an overage in a tied race, traced to two ballots cast from outside the district. That makes it more likely than not the result is unreliable. The Office offers nothing to the contrary. Souza has carried her burden.

The rules of evidence confirm what the burden already settles. A statute that makes a fact "prima facie evidence of another fact" establishes a presumption. Hawai'i Rules of Evidence (HRE) Rule 305. HRS § 11-96 (2009) is such a statute. It makes the records election officials create by law prima facie evidence of the facts set out in them. The Over/Under Report is one of those records. Its numbers are the precinct officials' own - voters checked in and ballots issued, set against the ballots counted. The officials must compile it, HRS § 11-153(a), and reconcile it before certifying any result, HRS § 11-155 (Supp. 2022).

The presumption HRS § 11-96 raises is not the minor kind, the sort that just shifts the burden of producing evidence. It rests on public policy. Under HRE Rule 304(a), a presumption that implements a public policy "imposes on the party against whom it is directed the burden of proof."

The public policy is written across the election code. Officials must record every overage and underage. HRS § 11-153. Before certifying a result, they must reconcile those figures and attach to the certificate a list of every precinct where a discrepancy occurred. HRS § 11-155. The Legislature made those discrepancies a ground for contest. HRS §§ 11-153, 11-172.

The reconciliation requirement was enacted for a stated purpose. The Legislature meant to formalize the procedures "that must be followed in determining the accuracy of elections results" and to "alleviate any public concerns about the process of certifying election results." S. Stand. Comm. Rep. No. 1546, in 1997 Senate Journal, at 1478.

A framework built to reassure the public that counted ballots were cast by eligible voters is a public policy HRE Rule 304 intends.

It follows that the election officials bear the burden of proof. Under HRE Rule 304(b), courts "assume the existence of the presumed fact unless and until evidence is introduced sufficient to convince the trier of fact of the nonexistence of the presumed fact."

The presumed fact here is the overage. Two more ballots than voters credited with casting them. The report is prima facie proof of a result-changing overage, and nothing in the record rebuts it. In a tie, an overage of two can change the

outcome, and the presumption carries that far. To rebut it, the officials must come forward with evidence that the overage could not have affected the result. They have not. And they conceded they cannot. Oral Argument at 48:10-24, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>].

The Office answers with a presumption of its own. Under HRE Rule 304(c)(2), "official duty has been regularly performed." Take the presumption at full strength. That clerk reconciled the service-center records as the rules require, and the reconciliation caught the error.

This presumption still does not help. It speaks to how the officials did their work. Whether two District 40 ballots can stand in a District 43 tie is another question, and regular performance does not answer it. Here, the safeguard that guards the count is the one that exposed the error. Their diligence is Souza's proof.

The burden is the Office's. Under the ordinary standard and the statute's presumption alike. The Office has not carried it.

C. The Result Cannot Be Known

The second test is met too. An overage is not always an invalid vote. That is why, in Waters, the officials' explanation carried. Waters, 2014 WL 7334915, at *5, *8. The

State reads that decision for a broader rule: that overages and underages "occur[] in the ordinary course of an election" and, without more, prove nothing. Id. at *7.

That reading claims too much. Waters did not hold overages are always harmless. The record explained them. Nago came forward with evidence that no irregularity had occurred: the distribution across District IV showed no pattern of fraud; a manual audit confirmed the accuracy of the computer results; every precinct on the Over/Under Report lay within the contested council race, so a ballot issued for the wrong precinct would still have been validly cast; and the underages produced no counted ballot at all – a voter issued a ballot may walk away without voting. Id. at *2, *5, *7.

The record here explains the overage too. The explanation is two District 40 ballots in a District 43 tie.

Whether the two ballots here are harmless or fatal turns on how they arrived. A service-center voter is verified through an application, issued a ballot, and casts it into the count. An overage means one more ballot was counted than the records show issued. Sometimes that gap is inconsequential. A voter signs in, votes, and is counted, but the official never records the signature; the ballot is valid, and only the paperwork lagged. Or a voter is handed a ballot for the wrong precinct in the same district; the vote still counts in the race it belongs to, the

overage offset by an underage next door. The race is unaffected.

This overage is the other kind. District 43 is a single representative district. The two ballots were cast by voters registered in District 40, handed District 43 ballots by mistake. A voter from another district has no vote to cast in this race. These two ballots do not belong.

The record forecloses the harmless reading. Had the two been District 43 voters misrouted within the district, their home precinct would show the offsetting underage. It does not. The underage sits in Precinct 40-03. Another district. Nago's declaration suggests the overage "could be the result of the accidental issuance of two DP 43-03 ballots to voters in a different precinct." The two ballots do not net out within District 43. The shortfall shows up a few districts away.

The cause is known. Not the effect. Whether either ballot carried a vote in the Republican race, and for whom, the record doesn't say. At a tie, that's enough. Two ballots that do not belong, in a race decided by none, put the true result beyond recovery.

Not every overage unsettles an election. This one does. When officials themselves drop two out-of-district ballots into a tied race, and no one can say how those voters voted, the correct result cannot be ascertained. That's what happened

here. Service-center staff handed District 43 ballots to District 40 voters. The fault is the officials', not the voters'. That is the mistake Waters requires, and it leaves the true result beyond recovery. The second test is met.

The two tests converge. Whether the overage could change a tied result, or the result can no longer be known, the answer runs one way. Two ballots from outside the district decide it, and nothing shows those ballots belonged in the race.

Souza wins on Count I.

IV.

Count I shows there was no reliable tie to break. Count III shows that even if the tie were reliable, the Office of Elections broke it by a method the law did not permit. We consider Count III because it stands on its own, whatever the two ballots showed. And it will recur. A tie is a freak event. The 2026 primary produced two.

A. What the Chief Election Officer Improvised Was a Rule

HRS § 11-157 commands that a tie "be decided . . . by lot." It does not say how the lot is conducted. Into that silence the Chief Election Officer supplied a method: names sealed in plastic Easter-egg capsules, orange on half and clear on the other, dropped into a lau hala basket, shaken, and drawn.

The procedure was modeled on the drawing the Office uses to set the order of political parties on the ballot. The Chief

Election Officer described it as an established practice. He explained that the Office "know[s] that works and we've done it before."

The Hawai'i Administrative Procedures Act (HAPA) defines a "rule" as an "agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency." HRS § 91-1.

The method fits. It is a statement of general applicability and future effect, and it prescribes the procedure the agency follows to carry out a statutory command. See Green Party of Haw., 138 Hawai'i at 237, 378 P.3d at 953. It has future effect because it is the procedure the agency used before and will use again, for the next tie and the one after, until it is changed.

B. A Rule Applied Once Is Still a Rule

The State's answer is that a single drawing between two named candidates is an adjudication, not a rule. It operated on Medeiros and Souza in their individual capacities, resolved a concrete dispute, and touched no one else.

The line between rulemaking and adjudication turns on what the agency's statement does, not on how many times it has run. Rulemaking "affects the rights of individuals in the abstract"; adjudication "operates concretely upon individuals in their

individual capacity." In re Surface Water Use Permit Applications, 154 Hawai'i 309, 356, 550 P.3d 1167, 1214 (2024) (cleaned up). Rulemaking is legislative and looks forward. Adjudication resolves "past and present rights and liabilities" on "sharply controverted" facts. Id. (cleaned up).

Measured that way, the tie-break method is a rule. There were no facts to adjudicate. The votes were equal. Nothing about Medeiros or Souza as individuals mattered to how the tie should be resolved.

The Chief Election Officer settled how any tie gets broken with a general rule that governs every future candidate whose race ends in a deadlock. Applying that rule to these two candidates was the rule at work, one instance of it.

The record puts the point beyond argument. The Chief Election Officer testified that he built and adopted the method before he knew either race had tied. Oral Argument at 12:14-34, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>]. A procedure fixed in advance, for whatever tie may come, is the very thing HAPA calls a rule. He then ran the drawing twice that afternoon, breaking the Senate District 20 tie minutes before the District 43 tie, the same way. A method the Office turns to whenever a tie appears is a rule at work.

The distinction the State urges would undercut HAPA. Every unpromulgated rule is enforced, at some point, against specific parties. If applying a rule to the parties before the agency were enough to convert the rule into an adjudication, no unpromulgated rule could ever be challenged.

Green Party forecloses that move. There, the practice of directing wrong-precinct voters came to our court in a single election. Yet this court looked past that single episode to the practice behind it and held the practice a rule. 138 Hawai'i at 237-38, 378 P.3d at 953-54. So must we here.

C. The Rule Is Invalid, and the Selection Falls With It

A rule adopted without the notice, public hearing, and opportunity to be heard that Chapter 91 requires is invalid. Id. at 237, 378 P.3d at 953; see HAR § 3-177-4 (public hearing on proposed rules).

The tie-break method was adopted without any of that. It is therefore invalid. Thus, the selection of Medeiros, the method's product, is void.

Our remedial authority is broad. Where an agency prejudices substantial rights by failing to follow the law that governs its rules, a court fashions relief that remedies the prejudice. See Nakamine v. Bd. of Trs., Emps.' Ret. Sys., 65 Haw. 251, 255, 649 P.2d 1162, 1165 (1982); accord Martell v. Emp. Ret. Sys., 158 Hawai'i 139, 146, 588 P.3d 1152, 1159 (2026).

The relief here is to set aside the drawing and the selection it produced.

Counts I and III arrive at the same place by different roads. Count I shows the count that produced the tie was never reliable. Count III shows the tie, even if reliable, was broken unlawfully. Either way, District 43 has no validly nominated candidate.

Souza pleads three further counts we do not take up - Count II (whether the drawing was not a true "lot") and Counts IV and V (constitutional).

V.

HRS § 11-173.5(b) directs judgment deciding "what candidate was nominated or elected." On this record there is only one answer, and it is not the name of a candidate.

A. No Candidate Was Nominated

The power to decide who was nominated includes the power to decide that no one was. This court said so long ago. Construing this same statute, we observed that "[w]hile it is not expressly so provided . . . the power to decide which candidate was nominated implies a power to determine that no candidate was selected." Elkins, 56 Haw. at 49 n.3, 527 P.2d at 238 n.3.

That is the judgment this record requires. The overage leaves the correct result in doubt, and the tie-break that stood

in for a result was unlawful. Neither Medeiros nor Souza can be declared the nominee, because the primary produced no reliable result.

B. Funakoshi Does Not Stand in the Way

The State invokes Funakoshi v. King. We address it directly.

Funakoshi read HRS § 11-173.5(b) to withhold from this court the power to invalidate a primary and order a new one. Reasoning from the contrast with the general-election statute, HRS § 11-174.5 (2009 & Supp. 2021), which expressly allows invalidation and a new election, the court concluded that “[b]y 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 . . . was the statutory remedy of having this Court decide which candidate was nominated or elected.” Funakoshi v. King, 65 Haw. 312, 316, 651 P.2d 912, 914 (1982) (per curiam).

Funakoshi does not touch this case. For four reasons.

First, Funakoshi decided what may be done with a completed primary. Its challenger had lost a race that produced a winner; unable to overcome the margin, she asked the court to set that result aside and place four candidates on the general-election ballot. Id. at 314, 317, 651 P.2d at 913, 915. The question was whether the court could nullify a valid result and start

over. That is the power § 11-173.5(b) withholds, and it is not the power at issue here. This primary produced no result to nullify. We are asked to recognize what the record shows: no nomination was made.

Second, the distinction tracks the statute's own design. HRS § 11-173.5(b) presupposes a nominee. It directs the Chief Election Officer to place that nominee's name "on the ballot for the forthcoming general . . . election." Where the primary yields no nominee, that command cannot be carried out, and the primary is, in the statute's own terms, unfinished. Completing an unfinished primary is a different act from invalidating a finished one, something Funakoshi forbade.

Third, the means of completion lie in a provision Funakoshi never considered. HRS § 11-175 (2009) empowers this court to "do whatsoever else may be necessary fully to determine the proceedings, and enforce its decrees therein." This includes the power to order a new election. The State conceded so at oral argument. Oral Argument at 1:54:12-15, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>]. Read with § 11-173.5(b), and consistent with Elkins, that authority lets this court return a primary that yielded no nominee to the voters.

Fourth, Funakoshi never addressed the situation Elkins anticipated. And it had no reason to because a winner was ready to be declared. Elkins reserved the case where "cause exists for invalidating the election process." 56 Haw. at 49, 527 P.2d at 238.

This is that case. Between them, the two decisions sort every contest. Funakoshi governs where a winner can be declared. Elkins where the process has failed and no winner can be.

C. The Voters Should Finish the Primary After the General Election

The primary remains unfinished. It's not for us to declare the winner. That's up to the people.

Some rights sit above the rest. Like the right to vote.

The right to vote is perhaps the most basic and fundamental of all the rights guaranteed by our democratic form of government. Implicit in that right is the right to have one's vote count and the right to have as nearly perfect an election proceeding as can be provided. The result we reach must be consistent with these principles.

Akizaki v. Fong, 51 Haw. 354, 356, 461 P.2d 221, 223-24 (1969).

Two commitments live inside Chief Justice Richardson's passage. Every vote, once cast, must be counted. And the election that gathers them must come as near to perfect as it can.

This record honors neither commitment. Two ballots from outside the district entered a tied race, and no one can say for

whom. The tie was then broken by a method the law does not allow. When the count cannot say who the voters chose, the most basic right our government secures is promised in name and defeated in fact. Our duty is to uphold the promise. The choice belongs to the voters.

The primary must be completed by a vote. That leaves the question of how.

The court orders a primary election on the November 3 general ballot. See Souza v. Nago, No. SCEC-26-0000598, 2026 WL 2654175, at *5 (Haw. Sept. 4, 2026) (Findings of Fact, Conclusions of Law, and Judgment) (Judgment). The power to order it is HRS § 11-175. This court may "do whatsoever else may be necessary fully to determine the proceedings, and enforce its decrees therein."

The Legislature could not foresee every way an election might go wrong. That is why it wrote a power broad enough to meet the unexpected.

That reading of HRS § 11-175 fits HRS § 11-173.5(b). It aligns with Elkins. This court is empowered to do what is necessary when a primary returns no nominee. Even the State concedes it: HRS § 11-175 authorizes putting the choice to the voters. Oral Argument at 1:54:12-15, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>].

An overage does not call this power into play in every election. This one does, because the margin is zero and cannot absorb even one extra ballot. Two ballots whose votes no one can trace, in a race that ended in a tie. The statute lets this court answer with an election.

We did not join the court's Findings of Fact, Conclusions of Law, and Judgment.

The court's remedy replaces the Republican primary. It puts the nomination on the November 3 general election ballot under a "Republican Party Voters Only" heading. See Souza, 2026 WL 2654175, at *5.

The August 8 contest was a party primary. HRS § 12-31 (2009) gives each voter the right "to vote only for candidates of one party." That right lives at the primary and nowhere else. Only Republican-ballot voters chose the nominee for District 43.

On a general-election ballot, District 43's primary sits with every other race a District 43 voter gets. As Nago put it, "it would be another contest on the ballot that all voters who receive that ballot can vote on, not just Republican voters." Oral Argument at 2:21:40-21:55, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>].

Article II, Section 4 of the Hawai'i Constitution forbids requiring a party declaration. Hawai'i does not register voters by party. No step in general-election voting distinguishes a Republican voter from a Democratic, Libertarian, Green, Nonpartisan, or unaffiliated voter. A "Republican Party Voters Only" caption on a general ballot restricts nothing.

1,684 Republican voters voted in this race. The court's remedy takes the nomination from them and gives it to anyone in the district.

Reinstatement is unavailable. The August 15 certification collapsed under Counts I and III.

HRS § 11-175 is broad enough to sustain a different form of completion. Finishing the primary after the general election, in a District 43-only contest, comes closer to what the Legislature protected. It stays a primary.

The electorates differ. HRS § 12-31 turns on ballot choice at the primary, and neither a general-election ballot nor a standalone vote offers the multiparty choice that engages the statute. A general-election ballot bundles the District 43 race with Congress and all other races. A post-general completion asks a voter to make a separate trip for a single legislative contest. Self-selection tilts the electorate toward the party voters the August 8 primary was meant to hear from.

This case is unusual. Medeiros and Souza drew no general-election opponent. That absence is why a November option was even on the table. The ordinary sequence has two elections: the primary chooses a party's nominee, and the general decides between the parties. A single ballot cannot do both jobs. The primary is one election. The general is another. A post-general completion, followed by any further general contest when one is needed, keeps the primary-general sequence intact.

The Chief Election Officer testified that a primary could not be held before the November 3 general election because the general election ballots needed to be printed by September 11. Oral Argument at 2:21:07-17, <https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scec-26-0000598> [<https://perma.cc/3B6A-XFT4>]. Article II, Section 8 also poses a barrier to a primary before this year's general. That provision states that "in no case shall any primary election precede a general election by less than forty-five days." Forty-five days before November 3 would be September 19. A pre-general completion was neither operationally nor constitutionally available.

Our approach is the closest approximation the law allows.

Whoever wins this election is District 43's unopposed Republican nominee. Only Republicans filed. "If a candidate nominated for a seat at a primary election is unopposed for that

seat at the general election, the candidate shall be deemed elected at the primary election.” Haw. Const. art. III, § 4. The seat is filled in one step, by the voters, once the primary the officials left unfinished is finished.

Article III, Section 4 accommodates the remedy. It sets the term of a house member elected at a primary to begin on the day of the general election immediately following the primary. It was drafted for the ordinary primary-general sequence. See S. Stand. Comm. Rep. No. 1440, in 1987 Senate Journal, at 1519-20; H. Stand. Comm. Rep. No. 551, in 1987 House Journal, at 1360.

Applied literally to a primary completed *after* the general election tied to it, Section 4 would leave District 43 without an elected representative until the next general election. The winner never seated. The seat would sit vacant for the whole two-year term.

Read for its purpose, Section 4’s core rule is preserved: the term follows the vote that decides it. The term begins when the primary that elects the member is certified. See Hilo Bay Marina, LLC v. State, 156 Hawai‘i 478, 511, 575 P.3d 568, 601 (2025) (Eddins, J., concurring) (identifying “purpose and consequences relative to purpose” among this court’s classic canons of constitutional interpretation). The text serves the purpose. Where the ordinary sequence produces the ordinary

result, the text and purpose speak as one. Where they split, the purpose controls.

The District 43 winner is deemed elected under Article III, Section 4. HRS § 11-175 gives this court the authority to return the primary to the voters.

VI.

The voters of District 43 cast 842 ballots for each candidate. The margin is zero. The count that produced that tie cannot account for two ballots. One would have been enough. The voters answer a deadlock like this. Not a lau hala basket.

On this record no candidate was validly nominated in the 2026 primary for State Representative, District 43. The tie-break drawing and the selection of Sheila Medeiros fall. The choice returns to the voters.

The court has ordered that choice completed on the November 3, 2026 general election ballot. See Souza, 2026 WL 2654175, at *5.

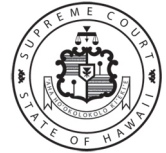
We would complete it after the general election has run, on a standalone ballot for the District 43 race. The winner of the completed District 43 primary is then deemed elected under Article III, Section 4. She takes office on the day the primary election result is certified.

The right to vote means little if the result cannot be trusted. Here it could not. So the voters will settle it.

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