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SCEC-26-0000598

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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.

ORIGINAL PROCEEDING

DISSENT TO ORDER DENYING MOTION FOR RECONSIDERATION
(By: Eddins, J., with whom McKenna, Acting C.J., joins)

We dissent.

Souza has a point. Her motion asks this court to change
the ballot label from "Republican Party Voters Only" to
"Republican Primary Election." "Republican Primary Election" is
the accurate label. The trouble is when the vote is held.

On the November 3 general-election ballot, no heading
restricts the electorate. The ballot goes to all registered

District 43 voters. Each may vote in every race on it. Whether the header reads "Republican Party Voters Only" or Souza's "Republican Primary Election," every District 43 voter can vote in District 43's unfinished Republican primary.

On a standalone ballot after November 3, "Republican Primary Election" describes the vote. A separate trip to the polls for a single legislative contest draws an electorate closer to the voters the August 8 primary was meant to hear from. Souza asks for the right label. Move the election, and it fits.

The order's main work is a response to our Amended Separate Opinion. A reconsideration order's main job is engaging the movant's arguments.

The order dubs our amended remedy a "new position." It describes our amended opinion as one that "now concurs in part and dissents in part" with the Findings, Conclusions, and Judgment. Neither tracks. Both filings are separate opinions - the captions say so. The amended opinion added an express non-joinder line: "We did not join the court's Findings of Fact, Conclusions of Law, and Judgment." It also set out the completion we would order in place of the court's general-election completion.

The chronology is brief. The court crafted a remedy that placed the completed primary on the November 3 general ballot.

Our September 4 opinion agreed with the court on the Hawai‘i Revised Statutes § 11-175 power to return the primary to the voters. No party briefed the majority’s approach – or any approach – to a completion that functions as a Republican primary. The September 4 opinion left the question open.

On September 9, Medeiros filed her motion for reconsideration and flagged the flaw in the court’s remedy:

A label on the ballot does not close the electorate. Article II, section 4, as the Judgment itself invokes it, forbids requiring a party declaration. Any registered voter in District 43 may therefore mark the Medeiros/Souza contest in November. The Office of Elections has no mechanism to limit that contest to persons who selected a Republican ballot on August 8. Chief Election Officer Nago has already indicated that the office cannot enforce a Republican-only limit inside a general-election ballot. The heading “Republican Party Voters Only” on a general ballot is therefore not a legal restriction. It is a source of voter confusion. If the heading is read as an invitation, it misleads. If it is read as a restriction, it cannot be enforced. Either way the November contest is not a Republican primary.

On September 10, dissenting from the order denying Medeiros’ motion, we said we would vacate Judgment paragraph A and complete the primary after the November 3, 2026 general election, with the winner deemed elected under Article III, Section 4 – “[f]or the reasons set out in our amended separate opinion to be filed tomorrow” Order Denying Motion for Reconsideration, at 2 (Sep. 10, 2026) (McKenna, Acting C.J., and Eddins, J., dissenting). As promised, we filed the amended opinion the next day.

None of this is new. Medeiros identified what the September 4 opinion had left open. Our September 10 dissent answered, and the September 11 amended opinion set out the reasoning that dissent previewed. Amended opinions are what recons are for.

From our Amended Separate Opinion, pages 27 through 31:

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-supremecourt-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-supremecourt-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.

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.

DATED: Honolulu, Hawai'i, September 16, 2026.

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

