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SCEC-26-0000599

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

BLESSINGS DE LA CRUZ,
Plaintiff,

vs.

STATE OF HAWAI‘I, OFFICE OF ELECTIONS;
SCOTT T. NAGO, Chief Election Officer, State of Hawai‘i,
Defendants.

ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT
(By: Devens, C.J., McKenna, Eddins, and Ginoza, JJ.,
and Intermediate Court of Appeals Judge Hiraoka,
assigned by reason of vacancy)

On August 24, 2026, Plaintiff Blessings De La Cruz
(Plaintiff) filed an election contest complaint (Complaint). On
August 28, 2022, Defendants State of Hawai‘i Office of Elections
and Scott T. Nago, Chief Election Officer, State of Hawai‘i
(collectively, the State) filed a motion to dismiss Plaintiff’s
Complaint or, in the alternative, for summary judgment.

Upon consideration of the Complaint, the motion to dismiss
or for summary judgment, the documents attached and submitted in

support of the Complaint and motion, and having heard this matter without oral argument, we enter the following findings of fact, conclusions of law, and judgment.

FINDINGS OF FACT

1. On August 8, 2026, a primary election was held for District 44 State Representative, State of Hawai'i (District 44).

2. The final results for the August 8, 2026 primary election for District 44 were:

	<u>Non-Partisan</u>	<u>Votes</u>
DE LA CRUZ, Blessings		41
Blank Votes:		13
Over Votes:		0
	<u>Republican</u>	<u>Votes</u>
WEAVER, Charla (Kahealani)		900
Blank Votes:		85
Over Votes:		0
	<u>Democratic</u>	<u>Votes</u>
KILA, DARIUS K.		1760
KAHIKINA, Michael P.		228
Blank Votes:		75
Over Votes:		1

3. The total votes cast for the candidates in the primary election for District 44 was 2,929, and ten percent of that total is 292 votes.

4. On August 24, 2026, Plaintiff, the unsuccessful nonpartisan candidate in the primary election for District 44, filed the Complaint contesting the decision that "she will not

advance to the 2026 General Election ballot” pursuant to Hawai‘i Revised Statutes (HRS) § 12-41(b) (2009).

5. Plaintiff’s Complaint sets forth five counts for relief. Briefly summarized, Plaintiff’s Complaint, including these five counts, assert that the different treatment between partisan and nonpartisan candidates in HRS § 12-41 is unconstitutional on equal protection grounds. Because HRS § 12-41(b) is unconstitutional, Plaintiff asserts that this results in an error, mistake, or irregularity that could have caused a difference in the primary election results for District 44 because Plaintiff ran unopposed as a nonpartisan candidate. Plaintiff thus seeks a declaration in this primary election contest that HRS § 12-41(b) is unconstitutional and, based on this declaration, asks this court to determine which candidates advance to the general election for District 44.

6. Plaintiff also asserts that Article II, Section 4 of the Hawai‘i Constitution should be considered as “constitutional support” based on the manner that nonpartisan candidates appear on the ballot with partisan candidates.

7. We construe all of Plaintiff’s requests for relief in the Complaint as being connected to Plaintiff’s equal protection argument.

8. On August 28, 2026, the State filed a motion to dismiss the Complaint or for summary judgment.

CONCLUSIONS OF LAW

1. Hawai‘i Revised Statutes (HRS) § 11-172 (Supp. 2021) states that an election 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.” See Dicks v. Office of Elections, 155 Hawai‘i 102, 106, 557 P.3d 831, 835 (2024) (“To state a claim under HRS § 11-172, the election contest complaint, at the bare minimum, must plead that the conduct in question by the election official could cause a difference in the election results.”).

2. HRS § 11-172’s requirements for an election complaint are viewed in context with the relief allowed in a primary election contest, which is that this court’s judgment “shall decide what candidate was nominated or elected.” HRS § 11-173.5(b) (2009).

3. The plaintiff bears the burden of showing actual information of mistakes or errors sufficient to change the result, and “[i]n the absence of facts showing that irregularities exceed the reported margin between the candidates, the complaint is legally insufficient.” Akaka v. Yoshina, 84 Hawai‘i 383, 388, 935 P.2d 98, 103 (1997). “An election contest cannot be based upon mere belief or indefinite information.” Id.

4. For a primary election contest, the “court shall hear the contest in a summary manner” and “[t]he judgment shall decide what candidate was nominated or elected.” HRS § 11-173.5(b).

5. When reviewing a request to dismiss a complaint, the court’s review “is based on the contents of the complaint, the allegations of which [the court] accept[s] as true and construe[s] in the light most favorable to the plaintiff. Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Casumpang v. ILWU, Local 142, 94 Hawai‘i 330, 337, 13 P.3d 1235, 1242 (2000) (quotation marks and citation omitted).

6. The court’s consideration of matters outside the pleadings converts a motion to dismiss into one for summary judgment. Foytik v. Chandler, 88 Hawai‘i 307, 313, 966 P.2d 619, 625 (1998).

7. Because we consider the total votes cast for the candidates in the August 8, 2026 primary election for District 44, application of the summary judgment standard is appropriate. See id.

8. Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Estate of Doe v. Paul

Revere Ins. Group, 86 Hawai‘i 262, 269-70, 948 P.2d 1103, 1110-11 (1997).

9. A fact is material if proof of that fact would have the effect of establishing or refuting an essential element of a cause of action asserted by one of the parties. Winfrey v. GGP Ala Moana LLC, 130 Hawai‘i 262, 271, 308 P.3d 891, 900 (2013).

10. On a motion for summary judgment, this court must view the evidence in the light most favorable to the nonmoving party. Id.

11. However, this “court is permitted to draw only those inferences of which the evidence is reasonably susceptible and it may not resort to speculation.” Id. (quoting Pioneer Mill Co. v. Dow, 90 Hawai‘i 289, 295, 978 P.2d 727, 733 (1999)).

12. HRS § 12-41(b) (2009) provides:

(b) Any nonpartisan candidate receiving at least ten per cent of the total votes cast for the office for which the person is a candidate at the primary or special primary, or a vote equal to the lowest vote received by the partisan candidate who was nominated in the primary or special primary, shall also be a candidate at the following election; provided that when more nonpartisan candidates qualify for nomination than there are offices to be voted for at the general or special general election, there shall be certified as candidates for the following election those receiving the highest number of votes, but not more candidates than are to be elected.

(Emphases added.)

13. When viewed in context with the second HRS § 12-41(b) alternative that allows a nonpartisan candidate to advance to the general election, blank and overvotes are not included in

the calculation of the “ten per cent of the total votes cast for the office for which the person is a candidate” at the primary election. See HRS § 12-41(b) (“[O]r a vote equal to the lowest vote received by the partisan candidate who was nominated in the primary or special primary[.]”); Jijun Yin v. Aguiar, 146 Hawai‘i 254, 264, 463 P.3d 911, 921 (2020) (“In construing each individual part of a statute, the court must consider the statute as a whole to ensure that all parts produce a sensible and harmonious whole.”).

14. Plaintiff received 41 votes, which is less than ten percent of the total votes cast for District 44 (292), and is not equal to the lowest number of votes received by a partisan candidate who was nominated (Charla (Kahealani) Weaver, 900 total votes).

15. The constitutional arguments in Plaintiff’s Complaint lack merit. Plaintiff asserts that HRS § 12-41’s alternative routes for partisan and nonpartisan candidates to advance to the general election are unfair and denies her equal protection under the law. This court previously considered and rejected this argument in Hustace v. Doi, 60 Haw. 282, 588 P.2d 915 (1978).

16. In Hustace, we recognized that HRS § 12-41 mandates a minimum number of votes needed for a nonpartisan candidate to advance to the general election, and this minimum number of

votes can never be more than the lowest number of votes that a partisan candidate received in order to advance to the general election. Id. at 290, 588 P.2d at 920. This means that a nonpartisan candidate will advance to the general election if the total number of votes cast for the nonpartisan candidate is equal to or greater than the least-popular partisan candidate that will also advance to the general election. See HRS § 12-41(b) (“[O]r a vote equal to the lowest vote received by the partisan candidate who was nominated in the primary or special primary, shall also be a candidate at the following election[.]”).

17. And as recognized in Hustace, 60 Haw. at 292, 588 P.2d at 922, HRS § 12-41(b)’s alternative requirement of a nonpartisan candidate receiving at least ten per cent of the total votes cast is similarly required for a partisan candidate’s party to appear on a primary election ballot. See HRS § 11-61(b)(2)(A) (2009).

18. In other words, a nonpartisan candidate is not required to satisfy HRS § 11-61 in order to be placed on the ballot for the primary election. See HRS § 12-21 (2009) (“The names of the candidates of each party qualifying under section 11-61 or 11-62 and of nonpartisan candidates may be printed on separate ballots, or on a single ballot.”). But HRS § 11-61

applies to partisan candidates who want to be placed on the same ballot. See id.

19. Recognizing the foregoing, this court held that the appellant was not deprived of equal protection under the law. Hustace, 60 Haw. at 293, 588 P.2d at 922.

20. In holding as such, this court also considered Hawai'i's interest in the different routes that partisan and nonpartisan candidates take to the general election pursuant to HRS § 12-41. For example, this court recognized: "The purpose of providing and protecting an effective direct primary system is clearly a vital state objective, in pursuit of which a state may require a nonpartisan candidate to demonstrate substantial public support as an alternative to being nominated in one of the direct party primaries." Id. at 290-91, 588 P.2d at 921 (citing Storer v. Brown, 415 U.S. 724, 733 (1974)).

21. We apply Hustace here and conclude that HRS § 12-41 did not deny Plaintiff equal protection under Article I, Section 5 of the Hawai'i Constitution and the Fourteenth Amendment to the United States Constitution.

22. Accordingly, HRS § 12-41's different treatment of partisan and nonpartisan candidates does not constitute an error, mistake, or irregularity that could have caused a difference in the election results. See HRS § 11-172.

23. Article II, Section 4 of the Hawai'i Constitution states in its entirety:

The legislature shall provide for the registration of voters and for absentee voting and shall prescribe the method of voting at all elections. Secrecy of voting shall be preserved; provided that no person shall be required to declare a party preference or nonpartisanship as a condition of voting in any primary or special primary election. Secrecy of voting and choice of political party affiliation or nonpartisanship shall be preserved.

24. Article II, Section 4 of the Hawai'i Constitution does not require election officials to set aside the requirements of HRS § 12-41(b) and allow Plaintiff to appear on the general election ballot as a nonpartisan candidate.

25. Also, this court recently said that the prohibition on declaring a party preference in Article II, Section 4 of the Hawai'i Constitution was meant to change elections in Hawai'i from a closed primary system to an open primary system. Dicks, 155 Hawai'i at 107, 557 P.3d at 836. As such, Article II, Section 4 of the Hawai'i Constitution does not support Plaintiff's argument that nonpartisan candidates' eligibility for the general election should be treated in the same manner as partisan candidates under HRS § 12-41.

26. Based on the above, Plaintiff's Complaint fails to establish any viable claim to relief under HRS § 11-172.

27. The complaint also fails to establish any conduct by election officials that could cause a difference in the election results. See Dicks, 155 Hawai‘i at 106, 557 P.3d at 835.

28. We conclude that Plaintiff did not receive the minimum number of votes required under HRS § 12-41(b) to advance to the November 3, 2026 general election.

29. Accordingly, based on the above conclusions of law and there being no genuine issue of material fact in Plaintiff’s election contest, we find and conclude in favor of the State as a matter of law.

30. Also, to the extent not already addressed above or in the Judgment below, any remaining claims for relief in Plaintiff’s Complaint are denied.

JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, judgment is entered in favor of the State and against Plaintiff. Darius K. Kila and Charla (Kahealani) Weaver shall be placed on the ballot for the general election for District 44 State Representative, State of Hawai‘i. Plaintiff shall not be placed on the general election ballot for District 44.

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

DATED: Honolulu, Hawai'i, September 1, 2026.

/s/ Vladimir P. Devens

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Keith K. Hiraoka

