

NO. 23916

IN THE SUPREME COURT OF THE STATE OF HAWAII

KAUI JOCHANAN AMSTERDAM, Plaintiff

vs.

ELECTIONS OFFICE OF THE STATE OF HAWAII;
DWAYNE YOSHINA, in his official capacity as
Chief Elections Officer of the State of Hawaii;
BENJAMIN CAYETANO, in his official capacity as
Chief Executive Officer of the State of Hawaii;
and appropriate Officer(s) of the State of Hawaii
associated with items herein, Defendants

ORIGINAL PROCEEDING

ORDER DISMISSING COMPLAINT

(By: Levinson, Acting C.J., Ramil, Acoba, JJ., and
Intermediate Court of Appeals Chief Judge Burns,
in place of Moon, C.J., recused; Circuit Judge
Wong, in place of Nakayama, J., absent)

Upon consideration of the complaint filed by Plaintiff
Kauai Jochanan Amsterdam and the motion to dismiss filed by
Defendants Elections Office of the State of Hawaii, Chief
Elections Officer Dwayne Yoshina, and Governor Benjamin Cayetano,
and with notice of the United States Supreme Courts' decision in
Rice v. Cayetano, ___ U.S. ___, 120 S. Ct. 1044 (2000)
(concluding that race based restrictions on voting for Trustees
of the Office of Hawaiian Affairs are unconstitutional), we
conclude that Plaintiff's complaint fails to state an election
contest claim under HRS §§ 11-172 and 11-174.5 because the

complaint fails to set forth any cause "that could cause a difference in the election results," HRS § 11-172, or "change the outcome of the election . . . [or] . . . demonstrate that the correct result cannot be ascertained," *Akaka v. Yoshina*, 84 Hawai'i 383, 387-388, 935 P.2d 98, 102-103 (1997). Therefore,

IT IS HEREBY ORDERED that Defendants' motion to dismiss is granted and Plaintiff's "Complain[t] [C]ontesting OHA Election Results for Cause" is dismissed for failure to state a claim upon which relief can be granted. See HRAP 2.1, HRCP 12(b)(6).

DATED: Honolulu, Hawai'i,