OPINION OF ACOBA, J.
CONCURRING IN PART AND DISSENTING IN PART

I believe that (1) the circuit court's decision must be reversed, but on the analysis set forth herein, (2) the resignation requirement of article II, section 7 applies before the filing of nomination papers rather than after such filing, for the reasons stated herein, and (3) in the public interest, oral argument should have been convened in this case.

I.

In construing our constitution, we must give words their ordinary meaning. "'[T]he settled rule is that in the construction of a constitutional provision the words are presumed to be used in their natural sense unless the context furnishes some ground to control, qualify, or enlarge them.'" Hawaii State AFL-CIO v. Yoshina, 84 Hawai'i 374, 376, 935 P.2d 89, 91 (1997) (quoting Pray v. Judicial Selection Comm'n, 75 Haw. 333, 342, 861 P.2d 723, 727 (1993)). This well-established rule for construction of state constitutions requires that we look to the plain language of the constitution, rather than "any . . . abstruse meaning in the words employed." 1 T.M. Cooley & W. Carrington, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union 143 (8th ed. 1927). The rule of plain language construction is even more crucial when construing constitutions

than it is for interpreting statutes, for, when ascertaining the intent of the drafters, it is also the intent of the people ratifying the constitution that must be found. See id.

> For as the constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any . . . abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.

Id. (emphasis added). In the instant case, then, the question is what meaning to give the words "eligible as a candidate" in article II, section 7 of the Hawai'i Constitution,[1] applying the plain language canon of statutory construction.

It cannot be seriously disputed that "eligible" denotes the status of being qualified to serve, to be chosen, to be elected.[2] A candidate plainly includes one who seeks office.[3] Thus, "eligible as a candidate" in the context of article II, section 7 means that one has attained the status to serve, to be chosen, to be elected to an office he or she seeks. In that regard, there is, therefore, only one manner in which one can become "eligible as a candidate," and that is to officially file

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[1] Article II, section 7 mandates that "[a]ny elected public officer shall resign from that office before being eligible as a candidate for another public office, if the term of the office sought begins before the end of the term of the office held."

[2] "Eligible" is defined as "[f]it and proper to be chosen; qualified to be elected[; c]apable of serving, legally qualified to serve[; c]apable of being chosen, as a candidate for office[; a]lso, qualified and capable of holding office." Black's Law Dictionary 457 (5th ed. 1979).

[3] Black's Law Dictionary defines "candidate" as "[o]ne who seeks or offers himself [or herself], or is put forward by others, for an office, privilege, or honor[; a] nominee." Id. at 187.

nomination papers for the office chosen.[4] See Hawai‘i Revised Statutes (HRS) §§ 12-1 (1993)[5] & -3 (Supp. 2001).[6] And as article II, section 7 states, one "must resign" before that status may be realized.

II.

In connection with article II, section 7's directive that one "shall resign . . . before being eligible," (emphasis added), HRS § 12-3(a)(8) plainly requires a candidate to submit "a sworn certification by self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of article II, section 7[.]" (Emphasis added.)

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[4] Notably, Hawaii's election laws do not allow for write-in votes. See Burdick v. Takushi, 504 U.S. 428, 437 (1992).

[5] HRS § 12-1 reads, "All candidates for elective office, except as provided in section 14-21 [regarding the nomination of presidential electors], shall be nominated in accordance with this chapter and not otherwise."

[6] HRS § 12-3 (Supp. 2001) states in part:

> (a) No candidate's name shall be printed upon any official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed in the candidate's behalf and in the name by which the candidate is commonly known. The nomination paper shall be in a form prescribed and provided by the chief election officer containing substantially the following information:
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> . . . .
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> (8) A sworn certification by self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of article II, section 7, of the Constitution of the State of Hawaii;
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> . . . .
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> (f) Nomination papers which are incomplete and do not contain all of the certifications, signatures, and requirements of this section shall be void and will not be accepted for filing by the chief election officer or clerk.

(Emphases added.)

Consequently, the legislature also conditions candidacy on the prior resignation of an officeholder who comes within the terms of article II, section 7's resign to run provisions. Eligibility to become a candidate, defined as one who has filed nomination papers, then, hinges on the prior resignation of an officeholder whose term of office overlaps with the office he or she seeks. Therefore, I believe that resignation is required at any time before the filing of the papers. Because the nomination papers themselves must verify that a candidate has complied with article II, section 7, it would be incorrect to hold that the resignation requirement arises after the filing of such papers.

III.

To confirm the plain language interpretation of the phrase at issue, we may consider the debates and reports of the 1978 Constitutional Convention. In that connection, I conclude that a plain language interpretation would not clash with the sense of the proceedings. First, the standing committee report regarding the "resign to run" provision in article II, section 7 does not establish the precise stage at which an officeholder must resign to run for another office. See Stand. Comm. Rep. No. 72 in I Proceedings of the Constitutional Convention of Hawai'i of 1978 678 (1980) [hereinafter Stand. Comm. Rep. No. 72]. This report discusses the provision in broad terms, but was expressly concerned with preventing a candidate who runs for another office

and loses the race, from returning to the duties of the first office.[7] See id. In the report, the converse situation, in which the official retains the first office while running for a second office which is ultimately won, was discussed, but primarily with respect to excluding constitutional convention delegates themselves from such a provision.[8]

Nevertheless, the committee report is very clear that such a public official must resign at some point prior to the election in order to avoid a situation where the official either (1) wins and then abandons the first position, or (2) loses and returns to the first position, even though it may be presumed that he or she "no longer wishes to fulfill the responsibilities of the office to which he [or she] was elected." Stand. Comm. Rep. No. 72, supra, at 678. When such "forced resignation"

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[7] The standing committee report states:

> By running for another office, the person is in effect saying that he [or she] no longer wishes to fulfill the responsibilities of the office to which he [or she] was elected, and accordingly he [or she] should resign from that office. The voters should not be saddled with an elected public official who no longer wishes to fulfill the duties of the office to which he [or she] was elected and will do so only if he [or she] fails to win election to the other office. This is not fair to the voters, who elected him [or her] to serve a full term, and is a violation of the public trust.

Stand. Comm. Rep. No. 72, supra, at 678.

[8] The committee distinguished elected officials from convention delegates, inasmuch as "[t]he convention is a transient body of short duration and as such the elected public official will return to his duties, and your Committee feels that this situation is not akin to the usual one where, if elected, the public official will never return to the duties of his original office." Id.

should take place is not identified in the standing committee report.

Second, it is evident that a common interpretation of the language of article II, section 7 was not reached by the delegates. Delegate Hale explained that "the language and the wording of [the proposed article II, section 7] were never agreed upon in committee and it's one of my complaints against the committee proposal and the committee report." Comm. of the Whole Debates, September 11, 1978, in II Proceedings of the Constitutional Convention of Hawai'i of 1978 711 (1980) [hereinafter Debates] (statement by Delegate Hale). The delegates appeared to agree on a "concept" of resignation, but not necessarily on the details of a resign to run provision.[9] At least two delegates discussed the "concept" of requiring resignation. Delegate Hale explained, "I am for the concept of resignation[.]" Id. Delegate Weatherwax, as chairperson of the committee, expounded that,

> we've heard here from individuals who feel that the language is clear and sufficient for them, and in other instances, from perhaps one . . . who can foresee all sorts of problems. . . . I would think that the language in and of itself would not be a barrier here, except to look if the language here sufficiently meets the desires of the concept[.]

Debates, supra, at 715 (statement by Delegate Weatherwax) (emphasis added). Delegate Weatherwax suggested that "the

[9] Apparently, while it was the "concept" of resignation, rather than the specific language of article II, section 7 that was voted on in committee, "each member [of the committee] had an opportunity . . . to examine [the language] at that time and to express any reservations[.]" Debates, supra, at 701.

language is still broad enough for the concept and yet can be clarified, perhaps at a later time or by the courts, for an exact determination." Id. at 716 (emphasis added). Thus, there was no unanimity amongst the delegates as to whether article II, section 7 designated a specific point of resignation.

While delegates spoke of resignation as required when a person "ran" for another office, see id. at 708 (statement by Delegate Campbell) ("some of those who favor the measure in the proposal assert that the public is at a disadvantage when an incumbent decides to run for an office"), or sought a different office, see id. at 710 (statement by Delegate Tamayori) ("[w]hen an elected official seeks another office"), those benchmarks were not incorporated into the text of section 7. Obviously, they could have been. As Delegate Burgess argued, the "shall resign" clause was not specific and did not describe a point at which resignation is required:

> [The language of the resignation clause] says that any elected official "shall resign from that office before being eligible as a candidate for another public office . . . ." It doesn't say he has to resign if he's seeking that other public office, it doesn't say he has to resign only when he files nomination papers; it simply says he has to resign before being eligible. As I read that, if any person in any public office -- for example, to be governor you have to be 35 years of age before you can be eligible to run for the office of governor. Now if that wording means what it seems to mean, it would mean that any elected public officer has to resign before he becomes 35 years of age if he ever wants to seek the office of governor. . . . [I]f this is intended to cover the situation where somebody who is seeking election to a higher office has to resign, then I believe it should be appropriately amended to state exactly that, and it does not state that at this time.

Id. at 713 (statement by Delegate Burgess) (emphases added). I cannot agree with the circuit court, then, that "it appears that

the framers understood that the provision would require resignation when an elected official began to seek or run for higher office, not when the elected official officially files nomination papers[.]" The convention's history demonstrates that what the delegates agreed to agree to was a unifying concept.

IV.

A plain language interpretation also would not conflict with the understanding of the voters ratifying this provision. Contrary to the circuit court's decision, the voter information booklet does not support an alternative view to that of a plain language construction. An informational booklet was part of the Official Ballot presented to voters on November 7, 1978, which "brief[ly] descri[bed] each of the proposed amendments[.]" State of Hawai'i, Amendments to the State Constitution Proposed by the 1978 Constitutional Convention 1 (1978) [hereinafter Voter Information Booklet]. Proposal 16, describing the section at issue, stated that "resignation of candidates for public office . . . makes any elected public officer who wants to run for another office quit before running for any other office if the terms of office are not the same." Id. at 2. The circuit court relied upon this abbreviated description in concluding that "the intent of the framers and the voters was to require a person to resign before 'running' for another public office, and not to require resignation at the potentially late stage of filing

nomination papers." However, the term "running" connotes a multitude of acts and does not, on its face, suggest any particular time for "quit[ting.]" Id. at 2.

Although voters were given these booklets as part of their ballots, the full text of all proposed constitutional amendments was made "available for [the voters'] inspection in [their] voting unit[s]." Id. at 1. Accordingly, voters were, at a minimum, given access to the full text of the amendments at their voting units, and were thus not limited to the language of the voter information booklet in approving or disapproving the amendment.

V.

Not surprisingly, in light of the varying views of the delegates and as suggested by the committee chair, the exact details of the general resignation concept were apparently (and perhaps by default), left to a more definitive construction by the courts or the legislature. Hence, employing the ordinary meaning of the term "eligible" does not contradict the sense of the convention proceedings or the will of the voters. In establishing that an officeholder is "eligible" as a candidate for a second office before nomination papers are filed, I do not believe there is any breach of faith with those delegates who labored hard to adopt a resignation provision, or the voters who ratified it.

VI.

A.

Although the circuit court set the eligibility status as of the time when an officeholder files organization papers with the Campaign Spending Commission pursuant to HRS § 11-194 (2001),[10] the framers plainly could not have contemplated such a deadline because that statute was not passed until 1979 -- after the Constitutional Convention proceedings.[11] Consequently, it cannot be said that the intent of the delegates was that the filing of such a report would require an office seeker to resign. In Cobb v. State, 68 Haw. 564, 722 P.2d 1032 (1986), this court determined that

> [i]t is beyond dispute that every "resign to run" provision carries a disability that impinges to some degree on the rights of voters and candidates to choose and be chosen. For this reason, we are extremely reluctant to read into article II, section 7 any resignation requirement that was not clearly intended.

Id. at 565-66, 722 P.2d at 1034 (citations omitted). Because the requirement that a potential candidate for office resign his or her current elected position at the time of the filing of the organizational report "was not clearly intended" by the delegates

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[10] HRS § 11-194(a) reads, in part, that "[e]ach candidate, committee, or party shall file an organizational report as set forth in section 11-196, within ten days from the date the committee receives any contribution, the aggregate amount of which is more than $100 or makes any expenditure[.]"

[11] While it is true that in 1978 the framers also ratified those portions of the constitution addressing campaign spending, to wit, article II, sections 5 and 6, the delegates could not have known the details of the legislation implementing these amendments, including any deadlines for any type of reports, as those amendments simply required the establishment of "a campaign fund," that "[t]he legislature shall provide a limit on the campaign spending of candidates[,]" article II, section 5, and that "[l]imitations on campaign contributions to any political candidate . . . shall be provided by law[,]" article II, section 6.

to the Constitutional Convention, I am "extremely reluctant to read into article II, section 7" such a requirement. Id.

B.

I note, also, that the filing of an organizational report pursuant to HRS § 11-194 does not provide reasonable certitude that an elected official will in fact "run" for the second office. The resignation threshold set by the circuit court defines the "triggering event" as the filing of an organization report under HRS § 11-194, which is required once one performs an act falling within the definition of a "candidate" under HRS § 11-191 (Supp. 2001). This leads to a variable application of the threshold, in that the point of resignation would vary from candidate to candidate.

HRS § 11-191 defines a "candidate" for the purposes of campaign spending requirements as an individual who alternatively (1) files nomination papers, (2) receives contributions in an aggregate of more than $100, or makes or incurs any expenditures of more than $100, to bring about the individual's nomination for election or election to office, (3) gives consent for any other person to receive contributions or make disbursements to aid in the nomination for election or the election itself, or (4) is certified to be a candidate by the chief election officer or county clerk.

However, these criteria governing the filing of an organizational report do not necessarily indicate that the officeholder "is in effect saying that he [or she] no longer wishes to fulfill the responsibilities of the office to which he [or she] was elected[.]" Stand. Comm. Rep. No. 72, supra, at 678. Initial forays to "test the political waters" are common, as evidenced by Hawai'i Administrative Rules § 2-14.1-12 (2002), which specifically provides for distribution of surplus contributions when a potential campaign languishes due to inactivity, or withdrawal for some other reason.[12] As a result, the threshold adopted by the circuit court would not furnish the people or the courts with any dependable indication that a prospective candidate will in fact relinquish the first office to pursue the second.

VII.

For the foregoing reasons, I continue to adhere to the view expressed in In re Application of Arthur Batey for an Order

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[12] Hawai'i Administrative Rule § 2-14.1-12 states in relevant part:

> Excess; residual; surplus contributions.
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> (f) All contributions received by candidates who have withdrawn or ceased to be candidates because of illness, inactivity or other, or committees directly associated with those candidates, individuals who received contributions but did not file for nomination, or committees or parties which discontinue their activities shall be considered residual and the candidate or committee shall return all residual private campaign contributions within four years to the original donors if their identities are known. Whenever the original donor cannot be found the residual private campaign contributions may be disbursed to organizations provided under section 2-14.1-14 or escheat to the Hawaii election campaign fund.

(Emphases added.)

of Quo Warranto Against Marilyn Bornhorst, S.P. No. 87-0448 (1st Cir. Haw., Feb. 10, 1988), and In re Application of Ricardo Labez for an Order of Quo Warranto Against Marilyn Bornhorst, S.P. No. 87-0452 (1st Cir. Haw., Feb. 10, 1988), cited to by the parties: "Setting the time for resigning and setting the point of eligibility as a candidate as that term is used in [a]rticle II[,] [s]ection 7 at the point of the nomination papers being filed sets forth a clear[,] definite[,] and ascertainable line and comports with the common sense and reasonable interpretation of [a]rticle II[,] [s]ection 7." In light of the text of section 7 and its convention and ratification history, the construction that would best comport with common understanding is that, in order for an elected public officer to become "eligible as a candidate for another public office[,]" article II, section 7, and file nomination papers pursuant to HRS § 12-3, that person must first resign his or her prior position.

VIII.

I also take this opportunity to express my concern that oral argument was not heard in the instant case.[13] The significance of this case cannot be overstated: not only does the outcome affect the parties before us and the constituencies of every elected public official who seeks another office, but

[13] Hawai'i Rules of Appellate Procedure (HRAP) Rule 34 governs the hearing of oral argument in the appellate courts of this state. HRAP Rule 34(a) states that "[o]ral argument shall be had in all cases except those in which the appellate court before which the case is pending enters an order providing for consideration of the case without oral argument."

also the public's interest in the impact of our decision on the election process.

A.

In deciding cases such as this one, the benefit of oral argument is evident. "Oral arguments can assist judges in understanding issues, facts, and arguments of the parties, thereby helping judges decide cases appropriately." R.J. Martineau, The Value of Appellate Oral Argument: A Challenge to the Conventional Wisdom, 72 Iowa L. Rev. 1, 4 (1986) [hereinafter The Value of Appellate Oral Argument]. A dialogue among the members of the court and counsel, which is the essence of oral argument, enlivens the written briefs, heightens our awareness of what is significant to the parties, and invigorates our analytical senses.

In my view, we, as justices, better understand the practical ramifications of our decisions when we hold oral argument. As Stanley Mosk, a justice of the California Supreme Court, has explained, "skillful interrogation of counsel from the bench may reveal how a proposed legislative or judicial rule will actually perform in day-to-day practice." S. Mosk, In Defense of Oral Argument, 1 J. App. Prac. & Process 25, 27 (1999) [hereinafter In Defense of Oral Argument]. Moreover, such argument also "helps judges avoid becoming too isolated, and serves to remind them that they are not the only participants in the judicial process, and that their decisions directly affect

individual lives." The Value of Appellate Oral Argument, supra, at 5.

The foregoing benefits of oral argument, particularly in cases like this one, outweigh any perceived disadvantage. In light of the expedited procedure granted by this court, oral argument could have been had without in any way compromising the parties' and the public's interest in a speedy, but deliberate, resolution of this case. Inasmuch as I believe the parties should be entitled to employ oral advocacy in their efforts to persuade us, and we are considering the decision of a circuit court judge who plainly worked earnestly and purposefully in rendering her ruling, I believe oral argument was warranted. In any event, we should take part in a complete deliberative process, for the impact of our decision extends beyond the facts and parties involved in this case.

B.

As significant, oral advocacy engages the public in understanding the varying points of view of the parties. In this way, oral argument plays an educational function, informing the public as to fundamental legal issues which can, and will, impact our community. Related to that function is the public's perception of our own relationship as an institution of government to the resolution of this dispute. I do not believe it engenders public confidence in our decision when we forego an open and visible airing of the issues.

Finally, I agree, as Justice Mosk contended, that oral argument is in the public interest:

> First, I believe oral argument to an appellate tribunal serves the public interest. Primarily it enables the client -- a member of the public -- to have his point of view presented out in the open to the reviewing court. He believes it is his right, and for that purpose he engages an attorney to make his voice heard. In addition, the argument and subsequent reporting in the media enable members of the public to hear and understand the contentions of the conflicting litigants. Ordinary observers cannot be expected to see the respective [written] briefs[.]

In Defense of Oral Argument, supra, at 26 (emphases added). It has been observed that "the principal purpose of the argument before the [United States Supreme Court] Justices is . . . to communicate to the country that the Court has given each side an open opportunity to be heard [and, t]hus[,] not only is justice done, but it is publicly seen to be done." B. Schwartz & J.A. Thomson, Inside the Supreme Court: A Sanctum Sanctorium, 66 Miss. L.J. 177, 196 (1996). This consideration -- that justice should always be seen to be done -- is applicable to all appellate courts. It is our duty as the court of last resort in this state to foster and maintain this hallmark of American judicial process.