

NO. 25353

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STEVE TATAII, Plaintiff,

vs.

DWAYNE D. YOSHINA, in his capacity as  
Hawai'i Chief Election Officer, State of Hawai'i,  
Defendant.

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ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

(By: Moon, C.J., Levinson, Nakayama,  
Ramil, and Acoba, JJ.)

We have considered Plaintiff Steve Tataii's Election Complaint, Defendant Dwayne Yoshina's Motion to Dismiss, and the affidavits, declarations, and exhibits appended to each. Having heard this matter without oral argument and in accordance with Section 11-173.5(b) (Supp. 2001) (requiring this court to "give judgment fully stating all findings of fact and of law " and "decide what candidate was nominate or elected"), we set forth the following findings of fact and conclusions of law and enter the following judgment.

FINDINGS OF FACT

1. Plaintiff Steve Tataii was one of two candidates in the primary election held on September 21, 2002 seeking the Democratic nomination to represent Hawaii's second congressional district.
2. Patsy Takemoto Mink was the other candidate in the primary election held on September 21, 2002 seeking the Democratic nomination to represent Hawaii's second congressional district.

3. The election results of the primary election pertaining to the contested Democratic nomination to represent Hawaii's second congressional district were:

Mink	67,246	72.6%
Tataii	14,178	15.3%
Blank votes	11,256	12.1%
Over votes	9	0.0%.

4. Citing HRS § 11-117, Plaintiff Tataii alleges, in sum, that candidate Mink was ill, that she was obligated to withdraw from the contest, that election officials or Democratic party officials were obligated to disqualify candidate Mink, and that, had Candidate Mink withdrawn or been disqualified, he would have won the primary election and become the Democratic nominee.

#### CONCLUSIONS OF LAW

1. Section 11-117 of the Hawai'i Revised Statutes allows, but does not mandate, a candidate to withdraw from an election and allows, but does not mandate, the Chief Election Officer to seek a candidate's disqualification. Section 11-117 of the Hawai'i Revised Statutes does not require a political party to seek a candidate's disqualification.
2. Plaintiff Steve Tataii has failed to show mistakes or errors that could change the result of the contested primary election. See *Akaka v. Yoshina*, 84 Hawai'i 383, 388, 935 P.2d 98, 103 (1997).

JUDGMENT

This action was heard by the court upon the pleadings, exhibits, affidavits, and declarations of the parties, and it is the judgment of this court that Patsy Takemoto Mink was elected as the Democratic party nominee for Hawaii's second congressional district in Hawaii's September 21, 2002 primary election. The Clerk of the supreme court shall forthwith serve a certified copy of this judgment on the Chief Election Officer.

DATED: Honolulu, Hawai'i, October 3, 2002.