

NO. 25384

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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BENJAMIN J. CAYETANO, GOVERNOR, STATE OF HAWAI'I,  
Petitioner,

vs.

DWAYNE D. YOSHINA, CHIEF ELECTION OFFICER,  
STATE OF HAWAI'I, Respondent.

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ORIGINAL PROCEEDING  
(Petition for a Writ Directed to a Public Official)

ORDER DENYING PETITION FOR A WRIT DIRECTED TO A PUBLIC OFFICIAL

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

We have reviewed the petition submitted by Petitioner, Governor Benjamin J. Cayetano, against Respondent, Chief Election Officer Dwayne D. Yoshina. The Petitioner seeks a writ directing Respondent to waive statutory time limits for substitution of a candidate on the November 2002 election ballot. Pursuant to section 11-118(e) of the Hawai'i Revised Statutes (HRS), it appears Respondent has discretion to "waive any or all" of the HRS § 11-118 requirements "in special circumstances as provided in the rules adopted by the chief election officer."<sup>1</sup> However, mandamus will not lie to control the discretion vested in a public officer. See, e.g., Bugbee v. Kimich, 42 Haw. 122 (1957); In re Hoopii, 40 Haw. 452 (1954); cf. State v. Quitog, 85 Hawai'i

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<sup>1</sup> Although Hawai'i Administrative Rules § 2-51-70 appears to be the applicable administrative rule, it does not address "special circumstances" in which the statutory time limits may be waived by the Chief Election Officer.

128, 146 n.27, 938 P.2d 559, 577 n.27 (1997) (acknowledging limitations on judicial authority to mandate discretionary executive decisions). Therefore,

IT IS HEREBY ORDERED, pursuant to Rule 21(c) of the Hawai'i Rules of Appellate Procedure, that the petition is denied.

DATED: Honolulu, Hawai'i, October 9, 2002.