
NO. 25487

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

A. JORIS WATLAND, ERIC GENE SCHNEIDER, DAVID ATKIN,
GEORGE ATKINS, SHERRIE AUSTIN, NORMAN VERNON BODE,
GENE BRIDGES, RICHARD BURNHAM, HEATHER CONAHAN, MIMI
DESJARDINS, MARK EWALD, TOM FAUGHT, JANINE HEARNE,
JOHN HEARNE, MEL R. HERTZ, HOLLY HUBER, WENDY HUDSON,
ROBERT W. JACKSON, MITCH KAHLE, RONETTE M. KAWAKAMI,
MICHELLE LAU, PAMELA LICHTY, PHILIP LOWENTHAL, ANDREA
HAKSOON-LOW, LEILANI V. LUJAN, LYNN LUNDQUIST, GRAHAM
MOTTOLA, KATE MURPHY, PAULA F. MYERS, SUSAN NAKAMA,
EMANUEL B. OCHA, WILFRED MITSUJI OKA, DANIEL W. PETERSEN,
BARRY PORTER, CATHERINE E. PRUETT, ELEANOR C. QUEMADO,
BOB REES, LOUIS ROSOF, JERRY ROTHSTEIN, STEPHEN SAWYER,
MARY ANNE SCHEELE, RAYMOND L. SCHEELE, PATRICK Y. TAOMAE,
MARY LEE TSUFFIS, CHRISTOPHER A. VERLEYE, DAVID S.
WILTSE, and BRENDA WHITMARSH, Plaintiffs,

vs.

LINDA LINGLE, GOVERNOR OF THE STATE OF HAWAI'I, in
her official capacity; DWAYNE D. YOSHINA, CHIEF ELECTION
OFFICER FOR THE STATE OF HAWAI'I, in his official capacity;
and KEN H. TAKAYAMA, ACTING DIRECTOR OF THE STATE OF
HAWAI'I LEGISLATIVE REFERENCE BUREAU, in his official
capacity, Defendants.

ORIGINAL PROCEEDING

ORDER GRANTING IN PART AND DENYING IN PART MOTION
TO CLARIFY, TO STAY FILING OF JUDGMENT, FOR
EXPEDITED CONSIDERATION, AND FOR ORAL ARGUMENT

(By: Moon, C. J., Levinson, and Nakayama, JJ., and
Intermediate Court of Appeals Chief Judge Burns, assigned
by reason of vacancy; Acoba, J., concurring separately)

In Watland v. Lingle, No. 25487, the plaintiffs,
forty-six residents and registered voters in the State of
Hawai'i, challenged in an original proceeding the validity of a

constitutional amendment authorizing the initiation of felony prosecutions by written information [hereinafter, the amendment], which was presented to and approved by a majority of voters in the November 5, 2002 general election [hereinafter, the general election]. The plaintiffs contended that: (1) the ratification process was procedurally invalid inasmuch as the State defendants [hereinafter, the defendants] failed to comply with requirements set forth in the Hawai'i Constitution regarding publication and disclosure of the text of the amendment; and (2) the ratification process was fundamentally flawed (a) inasmuch as the defendants provided voters with misinformation regarding the amendment and (b) due to knowing misconduct by election officials.

On February 24, 2004, this court filed a published opinion in Watland, finding merit in the plaintiffs' first contention and holding that the amendment was not validly ratified in accordance with the mandate of article XVII, sections 2 and 3 of the Hawai'i Constitution. Watland v. Lingle, No. 25487, slip op. at 2 (Haw. Feb. 24, 2004). On March 3, 2004, State defendants¹ [hereinafter, the defendants] filed a "Motion to Clarify, to Stay Filing of Judgment, for Expedited

¹ Following the automatic substitution of various parties during the pendency of this case pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 43(c)(1) (2000), the current State defendants are Governor Linda Lingle, Dwayne D. Yoshina, in his official capacity as Chief Election Officer for the State of Hawai'i, and Ken H. Takayama, in his official capacity as Acting Director of the State of Hawai'i Legislative Reference Bureau.

Consideration, and for Oral Argument" [hereinafter, motion for clarification], requesting:

an order which:

(1) Clarifies that because "this court has clearly characterized the instant action as an election contest, albeit not a typical election contest customarily governed by [Hawai'i Revised Statutes (HRS)] § 11-172," rather than a challenge to the process the Legislature used to propose an amendment to Article I, Section 10 of the State Constitution, Watland v. Lingle, 2004 WL 335159 at 8 (Hawaii), the ensuing remedy is publication of the full text of the proposed amendment and a redux of the 2002 general election on the ballot question that was placed before the voters -- Ballot Question 3 --through the special election called-for in Haw. Rev. Stat. § 11-174.5, or one ordered pursuant to the inherent power of this Court to make orders "for the promotion of justice," under Haw. Rev. Stat. § 602-5(7); and

(2) Stays the filing of the judgment in this election contest until at least July 7, 2004, so that the special election that is held "to redux" the 2002 general election on Ballot Question 3 may be held in conjunction with the 2004 presidential and general election to minimize costs and place the proposed constitutional amendment before the largest group of voters.

We initially viewed defendants' motion as one seeking reconsideration of this court's opinion; however, upon further review, we agree that the motion is proper pursuant to HRAP Rule 27. Therefore,

IT IS HEREBY ORDERED that defendants' motion to clarify is granted as follows:

HRS § 11-174.5(b) does not apply to the present case. See Watland, slip op. at 13 ("This is not a typical election contest wherein a complainant challenges the results of an election pursuant to HRS § 11-172 (1993).") (Emphasis added.); Watland, slip op. at 18 (repeating that the instant case "is not a typical election contest customarily governed by HRS § 11-172" (emphasis added)). Although this court based its jurisdiction

over this election contest in relevant part on HRS chapter 11, Part XI,¹ and HRS §§ 602-5(6) and 602-5(7) (1993), this court, as in Kahalekai v. Doi, 60 Haw. 324, 590 P.2d 549 (1979), did not apply HRS § 11-172 or any other provision of HRS chapter 11, Part XI, in reaching the merits of the plaintiffs' claims. See Watland, slip op. at 14, 22-30. Additionally: (1) article XVII, section 3 of the Hawai'i Constitution clearly and unambiguously provides that proposed amendments must be adopted

in the manner required for legislation, by a two-thirds vote of each house on final reading at any session, after either or both houses shall have given the governor at least ten days' written notice of the final form of the proposed amendment, or, with or without such notice, by a majority vote of each house on final reading at each of two successive sessions.

[And,] [u]pon such adoption, the proposed amendments shall be entered upon the journals, with the ayes and noes, and published once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district wherein such a newspaper is published, within the two months' period immediately preceding the next general election[;]

and (2) the general provisions of HRS § 11-174.5(b) mandating that a special election be held within 120 days after judgment in an election contest conflict on their face with the specific mandate of the Hawai'i Constitution regarding proposed amendments being considered in a general election. (Emphases added.) Accordingly, HRS § 11-174.5(b) cannot apply in the present matter. See Blair v. Cayetano, 73 Haw. 536, 543, 836 P.2d 1066, 1070, reconsideration denied, 74 Haw. 650, 843 P.2d 144 (1992)

¹ This court did not, as the defendants erroneously state, base its jurisdiction over the instant matter on the specific provisions of HRS § 11-174.5.

(In interpreting constitutional provisions, "[t]he general rule is that, if the words used in a constitutional provision . . . are clear and unambiguous, they are to be construed as they are written." (Quoting Spears v. Honda, 51 Haw. 1, 6, 449 P.2d 130, 134 (1968)); State v. Coney, 45 Haw. 650, 662, 372 P.2d 348, 354 (1962) overruled in part on other grounds, 54 Haw. 385 (1973) ("[W]here general provisions, terms or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part, the particular provisions must govern or control.").

Finally, the remainder of defendants' motion is denied. Plaintiffs are directed to submit a proposed judgment forthwith.

DATED: Honolulu, Hawai'i,

Charlene M. Aina,
Deputy Attorney General,
for State Defendants,
on the motion

Susan K. Dorsey and
Lunsford Dole Phillips (of
American Civil Liberties
Union of Hawaii), for
plaintiffs, in response