

NO. 26839

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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HAWAII STATE REPUBLICAN PARTY, Plaintiff

vs.

LOUIS CORTEZ GALLUP, as an individual, AND  
DWAYNE D. YOSHINA, CHIEF ELECTION OFFICER FOR THE  
STATE OF HAWAI'I, in his official capacity, Defendants

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ORIGINAL PROCEEDING

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

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

Upon consideration of: (1) the Hawaii Republican Party's complaint challenging the eligibility of Defendant Louis Cortez Gallup to be a registered voter and his qualification to be a candidate for state office; (2) the answer filed by Defendant Chief Election Officer Dwayne Yoshina; and (3) the answer filed by Defendant Louis Cortez Gallup, it appears HRS § 11-173.5(b) (Supp. 2003) requires the court to issue findings of fact and law and judgment. Oral argument being unnecessary, this matter has been heard on the pleadings and exhibits submitted by the parties. Accordingly, we set forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On September 18, 2004, Defendant Gallup was elected in the democratic primary as the democratic nominee for the office of State Representative for District 11 of the State House of Representatives.

2. Defendant Gallup's name will appear on the November 2, 2004 ballot as the democratic nominee for District 11 of the State House of Representatives.

3. On September 22, 2004, the Attorney General of the State of Hawaii, sent to the Republican Party of Hawaii, the Democratic Party of Hawaii, Defendant Yoshina, Defendant Gallup, and the Honorable Chris Halford a letter received from U.S. Immigration and Customs indicating that an anonymous source reported Defendant Gallup is not a U.S. Citizen.

4. The AG's office stated that it would take no further action with regard to attempting to remove Defendant Gallup's name from the ballot.

5. On September 24, 2004, the Hawaii Republican Party filed a complaint in the supreme court pursuant to HRS §§ 11-172 and 11.173.5 alleging that Defendant Gallup is not a U.S. citizen.

6. The Hawaii Republican Party seeks the following relief: (1) a judgment that Defendant Gallup is not eligible to vote and an order directing Defendant Yoshina to remove Defendant Gallup's name from the registrar of eligible voters; (2) a judgment that Defendant Gallup is not eligible to serve as a State Representative in the House of Representatives of the State of Hawaii and an order directing Defendant Yoshina to strike Defendant Gallup's name from the ballot of candidates in the

November 2, 2004 election; and (3) for such other judicial determination and orders necessary to effectuate Defendant Gallup's disqualification to vote and be a candidate for election to the office of State Representative, District 11.

7. The complaint does not challenge the result of the District 11 democratic primary election.

8. In his answer, Defendant Yoshina states that the State is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegation regarding Defendant Gallup's lack of U. S. Citizenship.

9. In his answer and affidavit, Defendant Gallup maintains he is a U.S. citizen.

10. Both Defendant Yoshina and Defendant Gallup contend this court lacks jurisdiction to grant the requested relief.

11. Defendant Gallup further contends the complaint was not properly served because it was served by mail and was not accompanied by a summons.

#### CONCLUSIONS OF LAW

1. Disposition of a complaint challenging the result of a primary election is governed by HRS §§ 11-172 and 11.173.5.

2. Pursuant to Rule 81 of the Hawaii Rules of Civil Procedure (HRCP), the rules of civil procedure govern proceedings concerning voter registration and elections.

3. HRCP Rule 4 governs service of process. HRCP Rule 4(c) requires the party serving a complaint to serve the summons and complaint together and required service on Defendant Gallup personally.

4. HRS § 11-25 and related provisions sets forth the procedure to challenge the right of a person to be or to remain registered as a voter.

5. HRS chapter 12 sets forth the procedure to challenge the qualification of a candidate.

6. Filing a complaint in the supreme court pursuant to HRS § 11-172 and HRS § 11-173.5 is the improper method to challenge the eligibility of an individual to vote and to challenge the qualifications of an individual to be a candidate for elected office in the first instance.

#### JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, it is hereby adjudged that this complaint is dismissed. Dismissal of this complaint does not preclude any party from seeking further relief in accordance with the relevant statutes. The clerk of the supreme court shall forthwith serve a certified copy of the findings of fact, conclusions of law and judgment of dismissal on the chief election officer in accordance with HRS § 11-173.5(b).

IT IS FURTHER ORDERED that the requests for fees and costs are denied.

DATED: Honolulu, Hawai'i, October 8, 2004.

Terry E. Thomason  
for plaintiff  
on the complaint

Bonnie E. McFadden  
for defendant  
Louis Cortes Gallup  
in answer

Aaron H. Schulaner  
and Holly T. Shikada,  
Deputy Attorneys  
General, for defendant  
Dwayne D. Yoshina  
in answer