

**Electronically Filed
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SCEC-20-0000721

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

EMIL SVRCINA; KARL DICKS; and BANNER FANENE, Plaintiffs,

vs.

SCOTT T. NAGO, in his capacity as Chief Election Officer
for the State of Hawai'i; STATE OF HAWAI'I OFFICE OF ELECTIONS;
and GLEN TAKAHASHI, in his capacity as City Clerk
of the City and County of Honolulu, Defendants.

ORIGINAL PROCEEDING

ORDER DISMISSING ELECTION COMPLAINT

(By: Recktenwald, C.J., Nakayama, McKenna, and Wilson, JJ.,
and Circuit Judge To'oto'o, assigned by reason of vacancy)

Upon consideration of plaintiffs Emil Svrcina, Karl Dicks, and Banner Fanene's election complaint, filed on November 23, 2020, defendants Chief Election Officer Scott T. Nago and the State of Hawai'i Office of Elections' motion to dismiss, filed on November 27, 2020, defendant City Clerk of the City and County of Honolulu Glen Takahashi's joinder to the motion to dismiss, filed on November 30, 2020, Plaintiffs' response to the motion to dismiss, filed on December 2, 2020, the respective supporting documents, and the records and files herein, it appears that:

(1) any request for relief with regards to the August 8, 2020 Primary Election is untimely, see HRS § 11-173.5 (election contests of a primary election shall be filed no later than the

thirteenth day after the primary election); (2) Plaintiffs lack standing to challenge the results of all federal, state, and county races for the August 8, 2020 Primary Election and the November 3, 2020 General Election, see HRS § 11-172 (an election contest shall be filed by “any candidate, or qualified political party directly interested, or any thirty voters of any election district”); and (3) even if Plaintiffs had standing, they can prove no set of facts in support of their claims that would entitle them to relief, see HRS § 11-172 (“The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results.”); Tataii v. Cronin, 119 Hawai‘i 337, 339, 198 P.3d 124, 126 (2008); Akaka v. Yoshina, 84 Hawai‘i 383, 935 P.2d 98 (1997); Funakoshi v. King, 65 Haw. 312, 317-18, 651 P.2d 912, 915 (1982). Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss is granted and the complaint is dismissed.

IT IS HEREBY FURTHER ORDERED that all pending motions are dismissed.

DATED: Honolulu, Hawai‘i, December 8, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Fa‘auuga To‘oto‘o

