

NO. SCPW-11-0000732

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IN THE SUPREME COURT OF THE STATE OF HAWAII

THE HON. MALAMA SOLOMON, Ph.D.,  
State Senator, 1<sup>st</sup> Senatorial District; LOUIS  
HAO; PATRICIA A. COOK; AND STEVEN  
G. PAVAO,

Petitioners,

vs.

NEIL ABERCROMBIE, in his official capacity  
as Governor and Chief Executive Officer of the  
State of Hawaii; THE STATE OF HAWAII  
OFFICE OF ELECTIONS; THE 2011 HAWAII  
REAPPORTIONMENT COMMISSION AND  
ITS MEMBERS; THE HONORABLE  
VICTORIA MARKS, Circuit Court Judge of  
the First Circuit (Ret.), CHAIRMAN; LORRIE  
LEE STONE, ANTHONY TAKITANI,  
CALVERT CHIPCHASE IV, ELIZABETH  
MOORE; CLARICE Y. HASHIMOTO,  
HAROLD S. MASUMOTO, DYLAN  
NONAKA, and TERRY E. THOMASON, in  
their official capacities; and SCOTT NAGO, in  
his official capacity as Chief Elections Officer,  
State of Hawaii,

Respondents.

ORIGINAL PROCEEDING

PETITION OF THE HON. MALAMA  
SOLOMON, Ph. D, State Senator, 1<sup>st</sup>  
Senatorial District; LOUIS HAO; PATRICIA  
A. COOK and STEVEN G. PAVAO'S FOR:

- 1) ORIGINAL JUDICIAL REVIEW  
REGARDING THE  
CONSTITUTIONALITY OF THE FINAL  
REAPPORTIONMENT PLAN APPROVED  
AND ADOPTED BY THE 2011 HAWAII  
REAPPORTIONMENT COMMISSION
- 2) DECLARATORY JUDGMENT FILED  
ON SEPTEMBER 26, 2011, IS INVALID
- 3) AN ORDER DIRECTED TO SCOTT  
NAGO, CHIEF ELECTIONS OFFICER,  
STATE OF HAWAII FILED ON  
SEPTEMBER 26, 2011
- 4) AN ORDER THAT DIRECTS THE  
RESPONDENTS STATE OF HAWAII 2011  
REAPPORTIONMENT COMMISISON TO  
PREPARE AND TO FILE A NEW  
LEGISLATIVE REAPPORTIONMENT  
PLAN FOR THE SENATE OF THE STATE  
LEGISLATURE THAT COMPLIES WITH  
THE REQUIREMENTS OF ARTICLE 4,  
§§4,6 OF THE HAWAII STATE  
CONSTITUTION
- 5) AN ORDER THAT RESPONDENT  
REAPPORTIONMENT COMMISSION  
PAY PETITIONERS' REASONABLE FEES  
AND COSTS

RESPONDENTS THE STATE OF HAWAII OFFICE OF ELECTIONS; THE 2011 HAWAII REAPPORTIONMENT COMMISSION AND ITS MEMBERS; THE HONORABLE VICTORIA MARKS, Circuit Court Judge of the First Circuit Court (Ret.), CHAIRMAN; LORRIE LEE STONE, ANTHONY TAKITANI, CALVERT CHIPCHASE IV, ELIZABETH MOORE; CLARICE Y. HASHIMOTO, HAROLD S. MASUMOTO, DYLAN NONAKA, and TERRY E. THOMASON, in their official capacities and SCOTT NAGO, in his official capacity Chief Elections Officer, State of Hawaii's ANSWER TO PETITION FILED ON OCTOBER 10, 2011

CERTIFICATE OF SERVICE

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MEMBERS; THE HONORABLE VICTORIA  
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IV, ELIZABETH MOORE; CLARICE Y.  
HASHIMOTO, HAROLD S. MASUMOTO, DYLAN  
NONAKA, and TERRY E. THOMASON, in their  
official capacities; and SCOTT NAGO, in his official  
capacity as Chief Elections Officer, State of Hawaii

RESPONDENTS THE STATE OF HAWAII OFFICE OF ELECTIONS; THE 2011 HAWAII REAPPORTIONMENT COMMISSION AND ITS MEMBERS; THE HONORABLE VICTORIA MARKS, Circuit Court Judge of the First Circuit Court (Ret.), CHAIRMAN; LORRIE LEE STONE, ANTHONY TAKITANI, CALVERT CHIPCHASE IV, ELIZABETH MOORE; CLARICE Y. HASHIMOTO, HAROLD S. MASUMOTO, DYLAN NONAKA, and TERRY E. THOMASON, in their official capacities and SCOTT NAGO, in his official capacity Chief Elections Officer, State of Hawaii's ANSWER TO PETITION FILED ON OCTOBER 10, 2011

Respondents the State of Hawaii Office of Elections, the 2011

Reapportionment Commission and its Members, in their official capacities and the Chief Elections Officer, in his official capacity (collectively, the "Commission") pursuant to the Supreme Court's Order filed on October 31, 2011 and Rule 16, Hawaii Rules of Appellate Procedure, hereby answer the Petition filed herein on October 10, 2011 by Petitioners the Honorable Malama Solomon, Ph.D., Louis Hao, Patricia A. Cook and Steven G. Pavao (collectively, "Petitioners") as follows:

I. The Petition Fails to State a Claim Upon which Relief Can be Granted

II. General Denial of Allegations of Wrongdoing

The Commission hereby enters a general denial as to all allegations of their wrongful acts or omissions asserted in the Petition.

III. Specific Denial of Petitioners' Request for Relief

Further, the Commission specifically denies that Petitioners are entitled to the relief they have requested on the grounds that the Commission properly followed the mandate of Art. IV, sec. 4 of the Hawaii State Constitution. Petitioners are not therefore entitled to a declaratory judgment that the 2011 Reapportionment Plan is invalid or to an injunction enjoining: (i) the Chief Elections Officer to rescind public notice of the reapportionment plan; and (ii) the Commission to prepare a new legislative reapportionment plan or to an order awarding Petitioners their attorneys' fees and costs.

Article IV, section 4 of the Hawaii Constitution provides:

#### APPORTIONMENT AMONG BASIC ISLAND UNITS

Section 4. The commission shall allocate the total number of members of each house of the state legislature being reapportioned among the four basic island units, namely: (1) the island of Hawaii, (2) the islands of Maui, Lanai, Molokai and Kahoolawe, (3) the island of Oahu and all other islands not specifically enumerated, and (4) the islands of Kauai and Niihau, using the total number of permanent residents in each of the basic island units and computed by the method known as the method of equal proportions; except that no basic island unit shall receive less than one member in each house.

Thus, the Commission is mandated to allocate or apportion the total number of members of each house of the state legislature among the basic island units using the “total number of permanent residents” in each basic island unit and the method of equal proportions.

The Commission complied with Article IV, section 4 of the state Constitution by first determining the permanent resident population and then using the method of equal proportions, allocating the seats in each house of the legislature among the 4 basic island units. More specifically, the Commission:

- A. Obtained the total statewide population, by census block from 2010 U.S. Census
- B. Identified and located (by census block) the non-[permanent] residents to be excluded or extracted (active-duty military members living in group quarters on base and non-resident students attending a university in Hawaii)
- C. Subtracted B. from A. = difference is the total statewide permanent resident population
- D. Subtracted the total non-permanent resident population in a basic island unit (“BIU”) from the total statewide U.S. census population in the same BIU = the total permanent resident population in that BIU
- E. Used the total permanent resident population in a BIU and the method of equal proportions, to determine or calculate the number of Senate seats and House seats to which that BIU is entitled

F. Divided the permanent resident population in a BIU by the number of seats in each house of the legislature. For example, if a BIU is entitled to 3 Senate seats under the calculation in subsection E. above, then divide the permanent resident population by 3; the result is the target population or size of each of the senatorial districts for that BIU.

After allocating or apportioning the members of each house of the legislature among the four basic island units, the Commission then used the permanent resident population residing in census blocks in each basic island unit to divide each basic island unit into the corresponding number of districts for each house, trying to make the districts as close to the target population as possible.

Insofar as the Commission complied with Article IV, section 4 of the Hawaii Constitution in apportioning the members of the legislature among the 4 basic island units, the Petition fails to state a claim upon which relief may be granted. The Commission therefore urges this Honorable Court to:

1. Dismiss the Petition with prejudice.
2. Award the Commission its attorneys' fees and costs incurred herein; and
3. Grant the Commission such further relief as may be just and equitable.

DATED: Honolulu, Hawaii, November 18, 2011.

/s/Robyn B. Chun  
RUSSELL A. SUZUKI  
ROBYN B. CHUN  
Deputy Attorneys General

Attorneys for Respondents  
State of Hawaii Office of Elections,  
the 2011 Reapportionment  
Commission and its Members, in  
their official capacities, and the  
Chief Elections Officer, in his  
official capacity

IN THE SUPREME COURT OF THE STATE OF HAWAII

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DYLAN NONAKA, and TERRY E.  
THOMASON, in their official capacities and  
SCOTT NAGO, in his official capacity Chief  
Elections Officer, State of Hawaii,

Respondents.

ORIGINAL PROCEEDING

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served electronically (through the Court's JEFS system), or conventionally Hand Delivered, upon the following persons:

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DATED: Honolulu, Hawaii, November 18, 2011.

/s/Robyn B. Chun  
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THE 2011 HAWAII REAPPORTIONMENT  
COMMISSION AND ITS MEMBERS; THE  
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NAGO, in his official capacity as Chief Elections  
Officer, State of Hawaii