

**Electronically Filed
Supreme Court
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NO. SCPW-11-0000741

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

MICHAEL J. MATSUKAWA, Petitioner,

vs.

STATE OF HAWAI‘I 2011 REAPPORTIONMENT COMMISSION; and
SCOTT NAGO, CHIEF ELECTION OFFICER, STATE OF HAWAI‘I,
Respondents.

ORIGINAL PROCEEDING

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS
AND JUDICIAL REVIEW

(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

Upon consideration of the petition for a writ of mandamus and judicial review filed by petitioner Michael J. Matsukawa, the answer by respondents 2011 State of Hawai‘i Reapportionment Commission and the Chief Election Officer, and oral argument, we conclude that the 2011 Final Reapportionment Plan is constitutionally invalid. The Hawai‘i Constitution, article IV, section 4, expressly mandates that only permanent residents be counted in the population base for the purpose of reapportionment. The 2011 Final Reapportionment Plan disregards this constitutional mandate by including non-permanent residents

in the population base that the Reapportionment Commission used to allocate the members of the state legislature among the basic island units. Therefore, pursuant to our power under the Hawai'i Constitution, article IV, section 10, to correct any error in a reapportionment plan,

IT IS HEREBY ORDERED that the petition for a writ of mandamus and judicial review is granted. The 2011 Final Reapportionment Plan for the state legislature is hereby invalidated. The 2011 State of Hawai'i Reapportionment Commission shall prepare and file a new reapportionment plan that: (1) allocates the members of the state legislature among the basic island units by using a permanent resident population base, and then (2) apportions the members among the districts therein as provided by article IV, section 6. The Chief Election Officer shall rescind the publication of the 2011 Final Reapportionment Plan for the state legislature. An opinion will follow.

DATED: Honolulu, Hawai'i, January 4, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

