

**Electronically Filed
Supreme Court
SCPW-11-0000732
04-JAN-2012
03:00 PM**

NO. SCPW-11-0000732

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MALAMA SOLOMON, STATE SENATOR, 1ST SENATORIAL DISTRICT;
LOUIS HAO; PATRICIA A. COOK; and STEVEN G. PAVAO,
Petitioners,

vs.

NEIL ABERCROMBIE, GOVERNOR, STATE OF HAWAI'I;
SCOTT NAGO, CHIEF ELECTION OFFICER, STATE OF HAWAI'I;
STATE OF HAWAI'I 2011 REAPPORTIONMENT COMMISSION;
VICTORIA MARKS; LORRIE LEE STONE; ANTHONY TAKITANI;
CALVERT CHIPCHASE IV; ELIZABETH MOORE; CLARICE Y. HASHIMOTO;
HAROLD S. MASUMOTO; DYLAN NONAKA; and TERRY E. THOMASON,
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 petitioners Malama Solomon, Louis Hao, Patricia A. Cook and Steven G. Pavao, the answers by respondent Governor Neil Abercrombie, the Chief Election Officer, and the 2011 State of Hawai'i Reapportionment Commission, 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) apports 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

