1ST CIRCUIT COURT
STATE OF HAWAII
FILED
2008 AUG 22 PM 3:25
J. KUBO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

WILLES LEE, IN HIS CAPACITY AS CHAIRMAN OF THE HAWAI'I REPUBLICAN PARTY, Plaintiff, vs. KEVIN CRONIN, IN HIS CAPACITY AS CHIEF ELECTION OFFICER FOR THE STATE OF HAWAI'I; STATE OF HAWAI'I OFFICE OF ELECTIONS, Defendant.	CIVIL NO. 08-1-1609 (BIA) (Other Civil Action) FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER Hearing Date: August 22, 2008 Time: 10:00 a.m. Judge: Bert I. Ayabe

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On August 22, 2008, the Court held a hearing on Defendant's Motion for Summary Judgment. Terry E. Thomason and Nelson B. Befitel appeared for Plaintiff Willes Lee, in his capacity as Chairman of the Hawai'i Republican Party and Charlene Aina appeared for Defendants Kevin B. Cronin, in his capacity as Chief Election Officer for the State of Hawai'i and the State of Hawai'i Office of Election. The Court having heard the arguments of counsel, and based on the file and record herein, now finds, concludes, and orders as follows:

FINDINGS OF FACT

1) Plaintiff is Willes Lee, in his capacity as Chairman of the Hawai'i Republican Party (hereinafter "Plaintiff").

I do hereby certify that the foregoing is a true copy of the original
Clerk, Circuit Court

2) Defendants are Kevin Cronin, in his capacity as the Chief Election Officer for the State of Hawai'i (hereinafter "Defendant Cronin") and the State of Hawai'i Office of Elections.

3) Representative Kirk Caldwell was a candidate for the State House, District 24.

4) Correspondence took place between Denise DeCosta of the City Clerk's Office and Lori Tomczyk of Defendant Office of Elections on July 22, 2008 regarding Representative Caldwell's intent to withdraw his candidacy for the State House seat in order for Representative Caldwell to become a candidate for the Honolulu City Council, District 5 contest.

5) Representative Caldwell did not have any direct communication regarding his intent to withdraw with anyone from the Office of Elections on July 22, 2008.

6) Representative Caldwell spoke with Ms. Tomczyk and submitted written notice to the Elections Office of his intent to withdraw his candidacy for the State House on July 23, 2008.

7) Defendant Cronin made a determination that a vacancy occurred for Representative Caldwell's House seat on July 23, 2008.

8) Defendant Cronin informed the Democratic Party that the Democratic Party's deadline to submit a candidate to fill the House District 24 vacancy was July 26, 2008, no later than 4:30 p.m.

9) The vacancy for the House District 24 seat was filled on July 26, 2008 at 4:09 p.m., when the Democratic Party named Isaac Choy as its candidate.

10) If it should be determined that any of these Findings of Fact should have been set forth herein as Conclusions of Law, the court so concludes as to such issues.

CONCLUSIONS OF LAW

1) The Court has jurisdiction over this matter pursuant to HRS §12-8 and venue is proper pursuant to HRS § 603-36(5).

2) An actual controversy exists between the parties pursuant to HRS § 632-1 and § 603-21.5.

3) HRS §11-117 does not require that withdrawals of candidacy be made in writing except when a candidate withdraws for ill health. Representative Caldwell was not in ill health.

4) HRS §11-118 states that a party has three days after a vacancy occurs to fill the vacancy of a withdrawing candidate. In this instance, based on the determination made by Defendant Cronin that the vacancy occurred on July 23, 2008, the third day fell on July 26, 2008.

5) Neither Representative Caldwell, nor an authorized agent on his behalf notified the Elections Office of Representative Caldwell's intent to withdraw on July 22, 2008. Ms. DeCosta was not an agent authorized to act on behalf of Representative Caldwell.

6) July 23, 2008 was the first day that the Elections Office received communication from Representative Caldwell or an authorized agent that Representative Caldwell was withdrawing as a candidate for the House District 24 seat.

7) The Democratic Party's reliance upon the July 26, 2008 deadline to fill the vacancy for the House District 24 seat was reasonable in light of Defendant Cronin's decision that the vacancy occurred on July 23, 2008.

8) The Democratic Party's nomination of a replacement candidate was timely as Isaac Choy was named on July 26, 2008 before the 4:30 p.m. deadline.

9) If it should be determined that any of these Conclusions of Law should have been set forth as Findings of Fact, the court so finds as to such matters.

Based on the above Findings and Conclusions, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows,

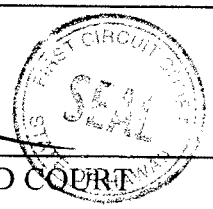
1) Judgment shall enter in favor of Defendants.

2) Any and all remaining claims, if any, are hereby dismissed with prejudice.

3) Each party to bear its own attorney's fees and costs.

~~4) Counsel for Defendants are respectfully requested to prepare an appropriate Judgment in accordance with the foregoing.~~ BIA

DATED: Honolulu, Hawai'i, AUG 22 2008.



JUDGE OF THE ABOVE-ENTITLED COURT

NOTICE OF ENTRY

The foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER has been entered and copies thereof served on parties by placing the same in either the attorney's court jacket or by placing the same in the United States mail, postage prepaid.

DATED: Honolulu, HI , August 22, 2008.

Clerk, Twenty-first Division

1ST CIRCUIT COURT
STATE OF HAWAII
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J. KUBO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

WILLES LEE, IN HIS CAPACITY AS CHAIRMAN OF THE HAWAI'I REPUBLICAN PARTY, Plaintiff, vs. KEVIN CRONIN, IN HIS CAPACITY AS CHIEF ELECTION OFFICER FOR THE STATE OF HAWAI'I; STATE OF HAWAI'I OFFICE OF ELECTIONS, Defendant.	CIVIL NO. 08-1-1609 (BIA) (Other Civil Action) JUDGMENT Hearing Date: August 22, 2008 Time: 10:00 a.m. Judge: Bert I. Ayabe

JUDGMENT

This matter came on for hearing on August 22, 2008. Pursuant to the Findings of Fact, Conclusions of Law and Order filed herein on August 22, 2008, judgment is hereby entered in favor of Defendant and against Plaintiff. Entry of Judgment resolves all claims of all parties and issues in this case. Each party is to bear his or her own attorney's fees and costs. Any and all remaining claims, if any, are hereby dismissed with prejudice.

DATED: Honolulu, Hawai'i, August 22, 2008

Bert O. Aya

JUDGE OF THE ABOVE-ENTITLED COURT

I do hereby certify that this is a true and correct copy of the original on file in this office.

Clerk, Circuit Court, First Circuit