



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 269, H.D. 1, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII RELATING TO RESIDENCY REQUIREMENTS FOR MEMBERS OF THE LEGISLATURE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, March 19, 2013 **TIME:** 10:05 a.m.
LOCATION: State Capitol, Room 016
TESTIFIER(S): David M. Louie, Attorney General, or
Robyn B. Chun, Deputy Attorney General

Chair Hee and Members of the Committee:

The Attorney General would like to make the following comments on this bill:

Article III, section 6, of the Hawaii State Constitution currently requires that candidates for the state Senate and state House of Representatives have resided in the State for three years and that they reside in the district they intend to represent prior to filing nomination papers. Similarly, article V, section 1, of the State Constitution provides that “[n]o person shall be eligible for the office of governor unless the person shall be a qualified voter, have attained the age of thirty years and have been a resident of this State for five years immediately preceding the person’s election.”

House Draft 1 of this bill proposes that article III, section 6, of the State Constitution be amended to require that a candidate for either the state Senate and the state House of Representatives reside in the district they seek to represent for not less than twelve months before the general election rather than that the candidate reside in the district prior to filing nomination papers as is now required.

While jurisdictions are divided about the constitutionality of durational residency requirements for candidacy for state elective office,¹ such requirements have been upheld by the

¹ See, e.g., Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978) (court struck down ten-year residency requirement for state auditor on grounds that requirement was not rationally related to state’s objective); Howlett v. Salish and Kootenai, Tribes of Flathead Reservation, Montana, et al., 529 F.2d 233 (9th Cir. 1976) (court applied strict scrutiny and upheld 1-year residency

Hawaii Supreme Court and the U.S. District Court for the District of Hawaii. See *Hankins v. State of Hawaii*, 639 F. Supp. 1552 (D. Haw. 1986); *Hayes v. Gill*, 52 Haw. 251, 473 P.2d 872 (1970). Accordingly, the amendment proposed by this bill does not appear to be unconstitutional on its face and assuming there are state interests or objectives that justify one year of district residency, based on *Hayes* and *Hankins*, it is likely that the proposed amendments will be upheld by the Hawaii Supreme Court and the U.S. District Court for the District of Hawaii. As the bill is currently drafted, however, it is unclear why the district residency requirement should be imposed or, more specifically, what legitimate state interest or purpose is served by this requirement. We, therefore, strongly recommend that the Legislature state its reasons for imposing the one-year district residency requirement.

Thank you for the opportunity to make these comments.

requirement for candidates for tribal council); *Robertson v. Bartels*, 150 F. Supp. 2d 691 (D. N.J. 2001) (court applied strict scrutiny to strike down one-year residency requirement for state senator and general assembly seats); *Sununu v. Stark*, 383 F. Supp. 1287 (D. N.H. 1974), aff'd 420 U.S. 958 (1975) (court applied strict scrutiny and upheld seven-year residency requirement for state senator).



Committee: Committee on Judiciary and Labor
Hearing Date/Time: March 19, 2013, 10:05 am
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii with Comments on HB 269, proposing a Constitutional Amendment relating to residency requirements

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes with comments on H.B. 269, which seeks a constitutional amendment on in-district residency requirements on candidates for elected office.

The ACLU of Hawaii agrees that the in-state residency requirement for legislators need not be extended beyond the three (3) year requirement as set forth in article III, § 6 of the Hawaii Constitution.

Additionally, article III, § 6 explicitly recognizes the right of legislators to move out-of-district during his or her term without forfeiting his or her seat in state government. The Hawaii Constitution also currently provides that a candidate may run for office in a district to which s/he recently moved, assuming s/he has lived in the State for the preceding three years. The absence of an in-district durational residency requirement fosters the most expansive candidate pool. This maximizes voter choice and, potentially, allows for talented candidates to run where they would otherwise be excluded.

Should the Committee be inclined to pass the proposed constitutional amendment, the ACLU of Hawaii also respectfully suggests that the Committee consider a proposed amendment to allow for exceptions to the 12-month in-district residency requirement during and immediately following re-districting years. As we saw in the last election, re-districting sometimes results in candidates themselves residing outside of (perhaps across the street from) the district they previously represented. A candidate may decide that she would like to continue representing her former constituents, even if it means moving residences into a "new" district.

Alternatively, the Committee may wish to consider shortening significantly the residency requirement so that it does not pose an undue burden on voters or candidates. The overall goal of this measure should be to ensure that the voters have the widest array of options of qualified candidates, and the 12-month requirement may unnecessarily exclude candidates who do understand the district and who could adequately represent the voters therein.

American Civil Liberties Union of Hawaii
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Chair Hee and Committee Members
March 19, 2013
Page 2 of 2

Thank you for this opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "D. M. Gluck".

Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

The American Civil Liberties Union ("ACLU") is our nation's guardian of liberty working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.

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IRON WORKERS STABILIZATION FUND

Fax No. – 586-7334

Clayton Hee, Chair
Senate Committee on Judiciary and Labor
Room 407 - State Capitol
Honolulu, HI 96813

Re: **H.B. No. 269, H.D. 1, Proposing an amendment to the constitution of the
the State of Hawaii relating to residency requirements for members of the
legislature**
Hearing Date – March 19, 2013 – 10:05 a.m.
Conference Room 16

Chair Hee and Members of the Committee:

Under the present statutory scheme, any candidate seeking a seat in the house or senate does not have to reside for a single day in the district from which he or she seeks office. Such a candidate would have very little awareness of the issues that confront the district.

For this vary reason, we would suggest that a minimum requirement of 1-year residency in the district from which the candidate wishes to seek office be established. The candidate would then be able to ascertain the issues facing that district by speaking to constituents most knowledgeable about said issues.

Some concerns have been expressed about elections held during a reapportionment year. Enclosed please find language that we have drafted which we believe addresses these concerns.

We respectfully request that your committee pass HB269, HD1, with the amendment that we seek, and, send it to the entire senate for passage.

Ironworkers Stabilization Fund
94-497 Ukee Street
Waipahu, HI 96797

94-497 UKEE STREET ■ WAIPAHU, HAWAII 96797 ■ (808) 671-4344



SECTION 1. The purpose of this Act is to propose an amendment to article III, section 6, of the Constitution of the State of Hawaii to increase the residency requirements for candidates for the office of state senate or house of representatives by requiring the candidates to be residents of the State for not less than three years and residents of the district from which they seek to be elected for not less than twelve consecutive months prior to the next succeeding general election. This proposed constitutional amendment would bring the residency requirements for candidates for the office of state senate or house of representatives into conformity with the residency requirements for candidates for the office of the governor.

SECTION 2. Article III, section 6, of the Constitution of the State of Hawaii is amended to read as follows:

"QUALIFICATIONS OF MEMBERS

Section 6. No person shall be eligible to serve as a member of the senate unless the person has been a resident of the State for not less than three years, and a resident of the senatorial district from which the person seeks to be elected for not less than twelve consecutive months prior to the next succeeding general election; however, in a reapportionment year, a resident must reside in the district for only one month prior to filing deadline, has attained the age of majority and is, prior to filing nomination papers and thereafter continues to

be, a qualified voter of the senatorial district from which the person seeks to be elected; except that in the year of the first general election following reapportionment, but prior to the primary election, an incumbent senator may move to a new district without being disqualified from completing the remainder of the incumbent senator's term. No person shall be eligible to serve as a member of the house of representatives unless the person has been a resident of the State for not less than three years, and a resident of the representative district from which the person seeks to be elected for not less than twelve consecutive months prior to the next succeeding general election; however,; in a reapportionment year, a resident must reside in the district for only one month prior to filing deadline, has attained the age of majority and is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected; except that in the year of the first general election following reapportionment, but prior to the primary election, an incumbent representative may move to a new district without being disqualified from completing the remainder of the incumbent representative's term."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall candidate(s) for the state senate and house of representatives be required to be a resident of the State for not less than five years and a resident of the legislative district from which the person seeks to be elected for not less than twelve consecutive months prior to the next succeeding general election, unless in a reapportionment year where the candidate(s) must be residing in the district for one month prior to the filing deadline?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

THE LIBERTARIAN PARTY OF HAWAII

C/O 1658 LIHOLIHO ST #205

HONOLULU, HI 96822

TESTIMONY

To: The Senate Committee on Judiciary and Labor

RE: HB 269, HD 1

To be heard Tuesday, March 19, at 10:05 AM in room #016

OPPOSE

Dear Senators:

We oppose this measure that aims to compel voters in the various legislative districts to abide by a candidate residency rule inflexibly set by the State Constitution. The choice to elect, or not elect, a resident of a specific district is one that we feel **voters are competent to make** on their own.

District lines are often arbitrary and subject to change. Further erosion of the pool of potential candidates competing for legislative seats is only likely to increase the number of incumbents who run unopposed. This may be desirable to current legislators, but it is not in the best interests of democracy.

Very Truly Yours:



Tracy Ryan

Vice Chair, The Libertarian Party of Hawaii

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Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S. L. Shimabukuro, Vice Chair

Tuesday, March 19, 2013, 10:05 AM, State Capitol, Room 016

H.B. 269, HD 1 Proposing an Amendment to the Constitution of the State of Hawaii Relating to Residency Requirements for Members of the Legislature

TESTIMONY

Chair Hee, Vice Chair Shimabukuro, members of the Committee:

The League of Women Voters of Hawaii supports HB269, HD1 which requires twelve consecutive months as the minimum time a candidate must reside in the legislative district from which the person is a candidate, especially since the law makes exceptions for displacements caused by redistricting after the national census.

One should feel comfortably a member of the community, sharing the community's dreams and hopes for making the community and the state a better place for themselves and their children, before daring to represent the district at the legislature.

We are pleased to see that the House Judiciary Committee amended the original bill to eliminate the proposed increase from 3 to 5 years as the minimum time candidates must reside in this State to serve in the State House of Representatives and State Senate. There was no good rationale for this provision, and the intent of the current measure is now clear. Thank you for the opportunity to testify on this measure.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 16, 2013 8:57 AM
To: JDLTestimony
Cc: joseph.heaukulani@gmail.com
Subject: *Submitted testimony for HB269 on Mar 19, 2013 10:05AM*

HB269

Submitted on: 3/16/2013

Testimony for JDL on Mar 19, 2013 10:05AM in Conference Room 16

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Heaukulani	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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