



**STATE OF HAWAII  
OFFICE OF ELECTIONS**

802 LEHUA AVENUE  
PEARL CITY, HAWAII 96782  
[www.hawaii.gov/elections](http://www.hawaii.gov/elections)

SCOTT T. NAGO  
CHIEF ELECTION OFFICER

TESTIMONY OF THE  
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS  
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR  
ON SENATE BILL NO. 223 SD 1 PROPOSED  
RELATING TO ELECTIONS

February 15, 2013

Chair Hee and members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to provide comments on Senate Bill No. 223 SD 1 Proposed. The purpose of this bill is to provide that the chairperson of a political party may object and disqualify a candidate from running as a member of the political party. The chairperson would be made aware of who is running as a political party candidate by reviewing a list of candidates published by election officials on their website within twenty four hours after the close of filing. The objection would not be subject to judicial review or review by an election officer. Additionally, the candidate would be able to run as an independent candidate if disqualified from running as a party candidate.

The timeline for a political party chair to object to a political party candidate and to subsequently withdraw the objection raises issues over the ability of the Office of Elections to meet its obligations to print and mail out ballots in a timely manner to our military and overseas voters, as well as, in-state voters. Specifically, state and federal law requires absentee ballots to be mailed out to uniformed and overseas voters no later than 45 days prior to an election. This time requirement created a ripple effect, in which the various statutes regarding election deadlines have had to be moved, in order to ensure that overseas and military ballots are printed and prepared to be mailed out by this deadline. The proposed deadline of seven business days for a political party chairperson to file an objection and then an additional 14 calendar days to decide if the objection will be withdrawn does not permit the Office of Election to move forward with ballot design, printing of ballots, and mailing for over three weeks.

To the extent, the time provisions could be reduced to seven calendar days for the objection to be made by the political party chairperson and the decision to withdraw the objection within seven calendar days of the date of the initial objection, it would facilitate the ability of the Office of Elections to meet its obligations in terms of printing and mailing out ballots. Additionally, in order to account for the delays that may occur in the physical receipt of a notice of objection or a withdrawal of objection mailed to the Office of Elections, we would ask that the political party chairperson also be required to immediately send by electronic transmission the notice of objection or withdrawal of objection directly to the Office of Elections.

In regard to the last three sentences in the proposed version of HRS § 12-8(c), we would note that the reference to "withdrawal of the election" could be clarified by changing it to "withdrawal of the objection" and that for consistency purposes, we would ask that the reference to "run as an independent candidate if the objection is not withdrawn" be changed to "run as a nonpartisan candidate if the objection is not withdrawn."

We wish to additionally comment on the specific consequences of the political party disqualifying an individual from running as a candidate of the political party.

Specifically, the law provides that when a candidate circulates his or her nomination papers for signature, the nomination paper will contain "the candidate's party affiliation or nonpartisanship." HRS § 12-3(a)(4). In addition, the nomination paper includes a "self-subscribing oath by a party candidate that the candidate is a member of the party." HRS § 12-3(a)(7).

In the event that a candidate switches parties, the signatures on the original nomination paper are not treated as being counted toward the signature requirement to be a candidate of a different political party or a different office. We would require the candidate to be issued new nomination papers indicating the new political party or nonpartisanship designation and the candidate would need to obtain new signatures and file the nomination papers by the filing deadline.

The present bill appears to automatically allow the candidate to be a nonpartisan candidate, even if the original signatories may not have signed the nomination papers, if they knew that the candidate was not going to run as a member of the political party noted on the nomination paper, which includes the oath by the candidate that the candidate is a member of the political party. To the extent the purpose of the bill is to allow disqualified political party candidates

to automatically qualify as nonpartisan candidates, we can implement the provisions of the bill.

The disqualification of a political party candidate and the lack of judicial review, also raises an issue as to what impact, if any, it would have on the prosecution of the candidate for fraud as it relates to the "self-subscribing oath by a party candidate that the candidate is a member of the party," to the extent the disqualification by the political party chairperson states that the candidate is not a member of the political party. HRS §§ 12-3(a)(7) & 19-3.5(3).

If a conviction under HRS § 19-3.5 occurs, it would constitute a class C felony, and the individual could not "become a candidate for or hold public office" from sentencing until final discharge of the sentence. HRS § 831-2(a)(2). We would defer to the Department of the Attorney General as to whether they see any legal problems with these provisions.

A related issue is the constitutionality of the basis of disqualification by the political party chairperson. Specifically, the proposed bill makes reference to the "political party under whose governing documents the candidate claims to be an eligible candidate for public office." HRS § 12-8(c) Proposed. We understand these governing documents to include the rules that political parties are required to file by the one hundred fiftieth day prior to the Primary Election and that are considered public records. HRS § 11-63.

If a candidate is disqualified due to not complying with an internal requirement of the political party for candidacy, such as a durational membership requirement, approval by a candidate committee, or some other requirement, the proposed law would make the disqualification by the political party chairperson not subject to judicial review. It is not clear how this would impact candidates who contend the rules unconstitutionally deny the candidate access to the ballot and seek a legal forum to resolve the matter. Such constitutional questions are beyond the ability of the Office of Elections to comment on and we would defer to the Department of the Attorney General as to whether they see any legal problems with these provisions.

Finally, the Office of Elections notes that it currently publishes a list of candidates on its website. As such, it sees no administrative problem with the publication requirement provision of the bill.

Thank you for the opportunity to testify on Senate Bill No. 223 SD 1 Proposed.

**RICKY R. WATANABE**  
County Clerk

Telephone: (808) 241-4800  
TTY: (808) 241-5116



**JADE K. FOUNTAIN-TANIGAWA**  
Deputy County Clerk

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**ELECTIONS DIVISION**  
**OFFICE OF THE COUNTY CLERK**  
4386 RICE STREET, SUITE 101  
LĪHU'Ē, KAUA'I, HAWAII 96766-1819

**TESTIMONY OF RICKY R. WATANABE**  
**COUNTY CLERK, COUNTY OF KAUA'I**  
**TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**ON SENATE BILL NO. 223 SD 1 PROPOSED**  
**RELATING TO ELECTIONS**  
February 15, 2013

Chair Hee and Committee Members:

Thank you for the opportunity to testify on Senate Bill No. 223 SD 1 Proposed. This Bill clarifies that the chairperson of a political party, and not an officer of the party, may make an objection to the validity of nomination papers; requires publication on state or county websites of a list of all candidates within twenty-four hours of the close of the filing deadline; establishes requirements for notice to the candidate of objections and any withdrawal of objections; and deletes requirements for political party to file a complaint in circuit court for prompt determination of the objection.

We take no position on the Bill but offer comments concerning its impact to our office and operations.

The proposed candidate objection timeline consisting of a seven day objection period followed by a fourteen day objection withdrawal period will delay ballot production by approximately three weeks. This will hinder our ability to meet federally mandated ballot mailing deadlines for uniformed and overseas voters which requires ballots to be mailed out no later than 45 days prior to an election.

The provision which automatically allows the objected candidate to run as a non-partisan candidate appears to contradict current candidate filing law since it assumes that signatories would sign the candidate's nomination papers regardless of the candidate's party affiliation. Presently, if a candidate changes political parties, we are required to issue the candidate new nomination papers reflecting the candidate's new party affiliation and not count any signatures on the candidate's original nomination papers.

Thank you for this opportunity to testify on Senate Bill No. 223 SD 1 Proposed.

**RICKY R. WATANABE**  
County Clerk



HAWAII STATE SENATE  
THE TWENTY-SEVENTH LEGISLATURE  
COMMITTEE ON JUDICIARY AND LABOR

10:00 AM; Friday, February 15, 2013; Conference Rm. 016

SB223 - Proposed SD1: RELATING TO ELECTIONS

Chair Sen. Clayton Hee, V. C. Sen. Maile S. L. Shimabukuro and Committee Members:

Good Morning, my name is Dante K. Carpenter, Chairman of the Democratic Party of Hawai'i (DPH). The DPH is strongly in support of this measure which will put the responsibility for determination of eligibility of partisan candidates for public office in the hands of the governmental agency responsible for the conduct of Federal, State and County elections in Hawai'i. The DPH will be a willing partner in this relationship to assure comporting with all applicable laws and its Constitution and Bylaws, as well!

My experience(s) in the two general election periods just past, i. e., gubernatorial election of 2010 and Presidential Election of 2012, shows there were several candidates whose affiliations and/or eligibility as bona fide registered/eligible members of the DPH were questionable and/or unqualified in accordance with the Democratic Party Constitution and Bylaws.

At the conclusion of the partisan candidate filing deadline(s) for the Primary Elections in 2012, there were individuals cited by yours truly, as Chair of the DPH, in written correspondence delivered directly to the Office of Elections, as being ineligible for the reasons indicated.

[Refer to attached letters. Names of the individuals have been redacted for purposes of confidentiality.]

The response by the Office of Elections was to cite HRS, Sec. 12-3, relating to "other certifications, signatures, and requirements" submitted by candidates and further stating that "the nomination papers for these individuals were accepted for filing." Further, as noted by the Chief Elections Officer, Scott T. Nago, "any objection regarding party membership, pursuant to HRS article 12-8 (f) would need to be filed directly in Circuit court by the DPH." Finally, "absent a court order to the contrary," certain individuals, "will remain on the ballot for the 2012 Elections."

We strongly recommend passage of SB223, SD1. That will assure all partisan candidates for public offices are indeed, eligible and supported by the respective political parties without the need for unnecessary expense and time consuming delays in a mandated court action.

Mahalo a nui loa! DKC

DEMOCRATIC PARTY OF HAWAII





OFFICE OF ELECTIONS

JUN 13 P 4:34

Scott T. Nago  
Chief Election Officer  
State of Hawai'i Office of Elections  
802 Lehua Ave.  
Pearl City, HI 96782

June 13, 2012

Dear Mr. Nago.

I'm writing to inform you that three (3) more individuals who filed for office are ineligible. They are 1) M [REDACTED] who was not a member of Democratic Party of Hawai'i as of June 6, 2012; 2) M [REDACTED] and 3) [REDACTED] (see below).

Please be advised that while [REDACTED] is a member, in accordance with the Democratic Party of Hawai'i Constitution and Bylaws, he has not met the eligibility requirements for Democratic candidates for elective office. [REDACTED] filing did not become actionable until his nomination filing was determined by newspaper publication on June 6, 2012.

Also, please be advised that in the matter of [REDACTED], our records indicate that he was a Democrat prior to filing to run as a Republican for the office of Congressional Representative in District 1 on July 22, 2008. Therefore, he has not met the eligibility requirements for Democratic candidates for elective office in accordance with the Democratic Party Constitution and Bylaws Article I, Sec. 8(A) which relates to automatic expulsion for a mandatory period of five years. Therefore, [REDACTED] will not be qualified to run again as a Democratic candidate until at least July 22, 2013.

Respectfully submitted,

Dante Carpenter  
Chairman

DEMOCRATIC PARTY OF HAWAII

1050 Ala Moana Blvd., Suite #2660 • Honolulu, HI 96814 • Phone: (808) 596-2980 • Fax: (808) 596-2985





**STATE OF HAWAII  
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PEARL CITY, HAWAII 96782  
[www.hawaii.gov/elections](http://www.hawaii.gov/elections)

SCOTT T. NAGO  
CHIEF ELECTION OFFICER

June 13, 2012

Dante K. Carpenter, Chair  
Democratic Party of Hawaii  
1050 Ala Moana Blvd., Suite #2150  
Honolulu, Hawaii 96814

Dear Mr. Carpenter:

This is in response to your email dated June 12, 2012, regarding candidates that have not met the eligibility requirements for Democratic candidates for elective office.

Specifically, you allege that [REDACTED] was not a member of your party, as of June 6, 2012, and that [REDACTED] while a member of your party, did not meet your party's internal eligibility requirements for candidates for elective office.

Our records reflect that nomination papers were issued to [REDACTED] on March 27, 2012 and were filed on May 30, 2012. Additionally, nomination papers were issued to [REDACTED] on April 12, 2012 and were filed on June 5, 2012. The Statewide Candidate Filing Report was continuously updated and available on our website throughout the candidate filing process and indicated the political party affiliation of each individual who was issued nomination papers.

As previously noted to you, in regards to the candidacy of [REDACTED] the nomination papers include "[a] sworn certification by self-subscribing oath by a party candidate that the candidate is a member of the party." HRS § 12-3(a)(7). The nomination papers for [REDACTED] and [REDACTED] similarly, include the certification of membership in the Democratic Party and all of the other certifications, signatures, and requirements of HRS § 12-3. As such, the nomination papers for these individuals were accepted for filing.

Also, as we noted in prior correspondence, regarding [REDACTED] any objection regarding party membership, pursuant to HRS § 12-8(f) would need to be filed directly in Circuit Court by the Democratic Party of Hawaii.

Dante Carpenter  
June 13, 2012  
Page 2

As our position has not changed, absent a court order to the contrary, [REDACTED]  
[REDACTED] and [REDACTED] will remain on the ballot for the 2012 Elections.

If you have any questions, please feel free to contact us at 453-VOTE  
(8683).

Very truly yours,



SCOTT T. NAGO  
Chief Election Officer

STN:AHS:cr  
OE-174-12

CC: [REDACTED]  
[REDACTED]



**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 12, 2013 11:20 AM  
**To:** JDLTestimony  
**Cc:** 573efe5c@opayq.com  
**Subject:** \*Submitted testimony for SB223 on Feb 15, 2013 10:00AM\*

**SB223**

Submitted on: 2/12/2013

Testimony for JDL on Feb 15, 2013 10:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy Abraham	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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)