



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

ON THE FOLLOWING MEASURE:

S.B. NO. 223, Proposed S.D. 1, RELATING TO ELECTIONS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, February 15, 2013 **TIME:** 10:00 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 opposes this proposed draft.

This proposed draft amends the process used by a political party to object to a nominee who wants to run as a party candidate. (It does not, however, change the process used by a registered voter or the chief election officer or a county clerk to object to a candidate.) Under the current law, if an officer of a political party objects to a candidate because the candidate is not a member of the party pursuant to the party's rules, an officer of the party must file a complaint in circuit court and a judge shall make a decision on the objection. Haw. Rev. Stat. § 12-8.

This proposed draft allows the chair of a political party for which a candidate claims to be a candidate for public office to object to the candidate. The proposed draft does not provide the grounds for the objection. The candidate and the chief election officer (or the county clerk in the case of a county office) shall be given notice of the objection. If the objection is mailed to the candidate within seven day after the close of candidate filing, the candidate is ineligible to run as a party candidate in the primary election unless within fourteen days after mailing the objection, the party withdraws its objection. This objection by an officer of a political party is not subject to judicial review or review by an election officer. The candidate may, however, run as an "independent candidate".

This proposed draft therefore allows the chair of a political party to remove a party candidate for any reason without recourse for the candidate other than to run as an independent candidate whereas under the present law, assuming the candidate is a member of the political party, the electorate decides who, among the primary candidates, will be the party's candidate to run in the General Election. We believe the current process has been recognized as

constitutional. See Alaska Independence Party, et al., v. State of Alaska, et al., 545 F.3d 1173 (9th Cir. 2008).

In addition, as stated above, this proposed draft provides that, in the event the chair of a political party objects to a candidate, that candidate “may run as an independent candidate if the objection is not withdrawn”. It is unclear whether this phrase means that a candidate may run as an independent party candidate or as a candidate for any other political party of his or her choosing. If it means that the candidate may only run as an independent party candidate, this bill is likely to violate the First Amendment right of free association and would therefore be unconstitutional.

Thank you for the opportunity to testify in opposition to this bill.

**GAY LESBIAN
BISEXUAL AND
TRANSGENDER
CAUCUS**



**DEMOCRATIC
PARTY OF
HAWAII**

Thursday, February 14, 2013

Testimony in STRONG SUPPORT of SB 223 Proposed SD 1

To: Chairperson Clayton Hee, Vice Chair Maile S.L. Shimabukuro, &
Members of the Senate Committee on Judiciary and Labor

From: Michael Golojuch, Jr., Chair
Gay Lesbian Bisexual and Transgender Caucus
Democratic Party of Hawaii'i

The Gay, Lesbian, Bisexual and Transgender Caucus of the Democratic Party of Hawaii'i strongly supports the proposed SD 1 for SB 223, this bill would require the chairs of all political parties to sign off on all candidates that want to run under their political party's banner for all partisan elections.

This bill would allow for every political party the ability to decide for themselves who can run under their parties banner and ensure that those candidates meet their party's requirements.

We ask that you all support this important bill. SB 223 SD 1 would protect all political parties so they can control their brand and who runs under their party's banner. This bill does not dictate what each party must require to run under their respective banners, SB 223 SD 1 leaves that up to each party.

Mahalo for the opportunity to testify.