

**CHAPTER 11 [OLD]  
VOTER REGISTRATION**

**REPEALED.** L 1970, c 26, §3.

**CHAPTER 11  
ELECTIONS, GENERALLY**

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## Note

L 2011, c 142, §4 provides:

"SECTION 4. The office of elections shall continue to use its existing voter registration application forms where possible until such time as new forms are developed and printed by the office of elections to implement this Act [amending sections 11-15, 11-16, and 15-4]."

### "PART I. GENERAL PROVISIONS

**§11-1 Definitions.** Whenever used in this title, the words and phrases in this title shall, unless the same is inconsistent with the context, be construed as follows:

"Ballot", a ballot including an absentee ballot is a written or printed, or partly written and partly printed paper or papers containing the names of persons to be voted for, the office to be filled, and the questions or issues to be voted on. A ballot may consist of one or more cards or pieces of paper, or one face of a card or piece of paper, or a portion of the face of a card or piece of paper, depending on the number of offices, candidates to be elected thereto, questions or issues to be voted on, and the voting system in use. It shall also include the face of the mechanical voting machine when arranged with cardboard or other material within the ballot frames, containing the names of the candidates and questions to be voted on.

"Chief election officer", the individual appointed by the elections commission pursuant to section 11-1.6 to supervise state elections.

"Clerk", the county clerks of the respective counties.

"County", the counties of Hawaii, Maui, Kauai, and the city and county of Honolulu, as the context may require. For the purposes of this title, the county of Kalawao shall be deemed to be included in the county of Maui.

"Election", all elections, primary, special primary, general, special general, special, or county, unless otherwise specifically stated.

"Election officials", precinct officials and other persons designated as officials by the chief election officer.

"Hawaiian", any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.

"Office", an elective public office.

"Political party" or "party", a political party qualified under part V of this chapter.



"Precinct", the smallest political subdivision established by law.

"Primary", a preliminary election in which the voters nominate candidates for office as provided for in chapter 12.

"Runoff election" means any single election required by county charters preceded by an election that failed to elect a candidate.

"Service bureau" means a firm registered to do business in the State and whose principal business is furnishing data processing services.

"Special election", any single election required by law when not preceded by an election to nominate those candidates whose names appear on the special election ballot.

"Special primary election" and "special general election", elections held only (a) whenever any vacancy occurs in the offices of United States senator, United States representative, state senator, or state representative because of failure to elect a person at an uncontested general election or (b) as specified in county charters.

"Voter", any person duly registered to vote.

"Voter turnout", means the total number of voters at an election as determined by the number of ballot cards tabulated by the computer or of paper ballots counted by the precinct officials. When there is more than one ballot card issued to each voter, "voter turnout" means the total count of the alpha ballot card with the highest number of cards tabulated by the computer. Ballots that are blank or ballots that are rejected for any reason shall be included in the count of the total number of voters.

"Voting system", the use of paper ballots, electronic ballot cards, voting machines, or any system by which votes are cast and counted. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(a); am L 1979, c 196, §3; am L 1980, c 264, §1(a); am L 1987, c 232, §1; am L 1990, c 156, §4; am L Sp 1995, c 27, §§3, 15; am L 1996, c 239, §1; am L 1998, c 22, §1; am L 1999, c 141, §§3, 4; am L 2004, c 57, §7]

" **§11-1.5 Office of elections established.** (a) There is established an office of elections to provide support to the chief election officer. The office shall be placed within the department of accounting and general services for administrative purposes. The chief election officer shall be the administrator of the office of elections. Except for exercising the right to vote, the full-time employees of the office of elections shall not support, advocate, or aid in the election or defeat of any candidate for public office.

(b) The office of elections shall provide staff support to the elections commission, as requested by the elections commission. [L Sp 1995, c 27, pt of §2, §15; am L 1999, c 141, §§3, 5; am L 2003, c 117, §2; am L 2004, c 57, §8]

" **[\$11-1.55] Exemptions.** The office of elections shall be exempt from section [26-35(a)(1), (4), and (5)] and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the office of elections without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The office of elections shall follow all applicable personnel laws. [L 2004, c 57, §2]

" **§11-1.6 Appointment of the chief election officer; requirements; term; restrictions; salary; reappointment; removal.** (a) The chief election officer shall be appointed by the elections commission, without regard to chapter 76. The appointment shall not be subject to the advice and consent of the senate. In the event of a vacancy, the elections commission shall meet expeditiously to select and appoint a new chief election officer to serve the remainder of the unexpired term.

(b) The person appointed to be chief election officer shall be a citizen of the United States, a resident of the State, and a registered voter of the State.

(c) The chief election officer shall serve for a term of four years. The term shall begin on February 1 following the appointment.

(d) The chief election officer shall devote full time to the duties of the office and shall hold no other public office during the individual's term of office. Except for exercising the right to vote, the individual shall not support, advocate, or aid in the election or defeat of any candidate for public office. The chief election officer shall refrain from financial and business dealings that tend to reflect adversely on the individual's impartiality, interfere with the proper performance of election duties, or exploit the individual's position. Subject to the requirements above, the individual may hold and manage investments, including real estate, and engage in other remunerative activity, but shall not serve as an officer, director, manager, advisor, or employee of any business.

(e) The chief election officer shall be paid a salary not to exceed eighty-seven per cent of the salary of the director of human resources development.

(f) The chief election officer may petition the elections commission for reappointment. The elections commission may reappoint an incumbent chief election officer based on the performance of the chief election officer. The elections commission may authorize the chief election officer to hold office until a successor is appointed.

(g) The chief election officer is an at-will employee. The elections commission shall provide written notification of any removal and state the reason for the removal. [L Sp 1995, c 27, pt of §2, §15; am L 1999, c 141, §§3, 6; am L 2000, c 253, §150; am L 2002, c 16, §1; am L 2003, c 117, §1; am L 2004, c 57, §9; am L 2005, c 226, §2; am L 2015, c 173, §1]

" **§11-2 Chief election officer; duties.** (a) The chief election officer shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration, the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which the chief election officer determines registration is lower than desirable. The chief election officer, in carrying out this function, may make surveys, carry on house-to-house canvassing, and assist or direct the clerk in any other area of registration.

(c) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. The chief election officer shall use this data to assist the reapportionment commission provided for under Article IV of the Constitution.

(d) The chief election officer shall be responsible for public education with respect to voter registration and information.

(e) The chief election officer shall adopt rules governing elections in accordance with chapter 91. [L 1970, c 26, pt of §2; am L 1979, c 51, §5; gen ch 1985; am L 1990, c 116, §2; am L Sp 1995, c 27, §§4, 15; am L 1996, c 173, §§2, 3, 8; am L 1997, c 2, §17; am L 1999, c 141, §3; am L 2003, c 8, §2]

#### **Cross References**

Reapportionment commission, see chapter 25.

### **Law Journals and Reviews**

A History of Recent Reapportionment in Hawaii. 22 HBJ 171.

" **§§11-2.5 to 2.7 REPEALED.** L 2004, c 57, §§10 to 12.

" **§11-3 Application of chapter.** This chapter shall apply to all elections, primary, special primary, general, special general, special, or county, held in the State, under all voting systems used within the State, so far as applicable and not inconsistent herewith. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(b)]

" **§11-4 Rules and regulations.** The chief election officer may make, amend, and repeal such rules and regulations governing elections held under this title, election procedures, and the selection, establishment, use, and operation of all voting systems now in use or to be adopted in the State, and all other similar matters relating thereto as in the chief election officer's judgment shall be necessary to carry out this title.

In making, amending, and repealing rules and regulations for voters who cannot vote at the polls in person and all other voters, the chief election officer shall provide for voting by such persons in such manner as to insure secrecy of the ballot and to preclude tampering with the ballots of these voters and other election frauds. Such rules and regulations, when adopted in conformity with chapter 91 and upon approval by the governor, shall have the force and effect of law. [L 1970, c 26, pt of §2; gen ch 1985]

### **Case Notes**

Election officer not authorized to promulgate rule prohibiting poll watchers from recording the names of those who have voted. 54 H. 254, 506 P.2d 13.

" **§11-5 Employees.** (a) Pursuant to section 11-1.55, the chief election officer may employ a staff with or without regard to chapter 76 at the discretion of the chief election officer, and without regard to chapter 89 and section 28-8.3. The office of elections staff may:

- (1) Supervise state elections;
- (2) Maximize registration of eligible voters throughout the State;

(3) Maintain data concerning registered voters, elections, apportionment, and districting; and

(4) Perform other duties as prescribed by law.

The chief election officer or county clerk may employ precinct officials and other election employees as the chief election officer or county clerk may find necessary, none of whom shall be subject to chapters 76 and 89.

(b) Notwithstanding chapters 103 and 103D, the chief election officer may contract with community organizations, school booster clubs, and nonprofit organizations for the provision and compensation of precinct officials and other election related personnel, services, and activities; provided that to be eligible to enter into a contract, the organization or club shall have received a tax clearance certificate from the department of taxation and shall not be a political action committee or organized for a political purpose. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(c); am L 1977, c 199, §2; gen ch 1985; am L 1995, c 71, §1; am L Sp 1995, c 27, §§5, 15; am L 1999, c 141, §3; am L 2000, c 253, §150; am L 2004, c 57, §3; am L 2005, c 201, §1 and c 202, §2]

" **[\$11-6] Petitions; withdrawal of signatures.** Wherever in this chapter the signatures of registered voters are required on a petition, any voter who, after signing a petition, seeks to withdraw the voter's signature may do so by providing notice in writing to the chief election officer any time before the filing of the petition. The notice shall include the name, social security number, address, and birthdate of the voter and must be signed by the voter with the name under which the voter is registered to vote. Upon receipt of that notice containing the information required by this section, the chief election officer shall notify the group or individual to whom the petition was issued and the signature of the individual shall not be counted. [L 1993, c 304, §1]

" **[\$11-7] Elections commission.** (a) There is established an elections commission within the department of accounting and general services for administrative purposes. The elections commission shall consist of nine members who shall be selected as follows:

- (1) The president of the senate shall select two elections commission members;
- (2) The speaker of the house of representatives shall select two elections commission members;
- (3) The senators belonging to a party or parties different from the president of the senate shall designate one senator to select two elections commission members;

- (4) The representatives belonging to a party or parties different from the speaker of the house of representatives shall designate one representative to select two elections commission members; and
- (5) One member, who shall serve as chairperson of the elections commission, shall be selected by the members of the elections commission selected pursuant to paragraphs (1) to (4);

provided that each group of four elections commission members selected by each house shall include one elections commission member from each of the four counties.

(b) The chairperson of the elections commission under subsection (a)(5) shall be selected by a two-thirds vote.

(c) A vacancy in the elections commission shall be filled in the same manner as the original appointment as specified in subsection (a) within fifteen days. A vacancy in the elections commission shall be filled with a person from the same county as the departing elections commission member. Elections commission member vacancies not filled within the times specified shall be filled promptly thereafter by the chief justice of the supreme court.

(d) The elections commission shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law.

(e) Notwithstanding section 26-34, elections commission member appointments shall not be subject to senatorial confirmation.

(f) The term of the elections commissioners shall be four years, except that with respect to the terms of the initial elections commission members, one member selected from each of subsection (a)(1) to (4) shall serve for a term of two years.

(g) The elections commissioners shall serve without compensation, but shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties. [L 2004, c 57, pt of §6]

" **§11-7.5 Duties of the elections commission.** The duties of the elections commission are to:

- (1) Hold public hearings;
- (2) Investigate and hold hearings for receiving evidence of any violations and complaints;
- (3) Adopt rules pursuant to chapter 91;
- (4) Employ, without regard to chapter 76, a full-time chief election officer, pursuant to section 11-1.6;
- (5) Conduct a performance evaluation of the chief election officer within two months after the date a general election is certified;

- (6) Hold a public hearing on the performance of the chief election officer and consider the information gathered at the hearing in deliberations on the chief election officer's reappointment; and
- (7) Advise the chief election officer on matters relating to elections. [L 2004, c 57, pt of §6; am L 2015, c 173, §2]

" **[\$11-8] Elections commission; political activities.** (a) No elections commission member shall take an active part in political management or in political campaigns.

(b) Each elections commission member shall retain the right to:

- (1) Register and vote as the elections commission member chooses in any election;
- (2) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (3) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- (4) Make a financial contribution to a political party or organization;
- (5) Serve as an election judge or clerk or in a similar position to perform nonpartisan election duties, as prescribed by law; and
- (6) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the elections commission member's efficiency or integrity as an elections commission member or the neutrality, efficiency, or integrity of the elections commission.

(c) An elections commission member may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics or this section. [L 2004, c 57, pt of §6]

" **[\$11-8.5] Elections review program.** The elections commission shall develop and implement an elections review program to:

- (1) Review the operation and performance of elections;
- (2) Make recommendations to the chief election officer on methods to improve elections;
- (3) Establish policies for the administration of an elections observer program, to include ensuring the validity and reliability of election results;

- (4) Conduct a biennial evaluation of the operation of elections;
- (5) Submit the findings and recommendations from the biennial evaluation to the legislature, not less than twenty days prior to the convening of each regular session held in odd-numbered years; and
- (6) Adopt rules in accordance with chapter 91 to carry out the purposes of this section. [L 2004, c 57, pt of §6]

" **[\$11-9] Exemptions.** The elections commission shall be exempt from section [26-35(a)(1), (4), and (5)] and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the elections commission without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The elections commission shall follow all applicable personnel laws. [L 2004, c 57, pt of §6]

" **[\$11-10] Candidates for public office; public service announcements; public funds.** (a) No person who is a candidate for public office shall appear in, or lend the person's name, image, or voice to, any public service announcement or any advertisement that is produced on behalf of any state-administered program or paid for with state, county or federal revenues, from the time the candidate files nomination papers until the day after the day of:

- (1) The primary election, in the case of a candidate in a primary election who fails to be nominated to stand in a general election; or
- (2) The general election, in the case of a candidate who is nominated in a primary election and seeks election in a general election.

(b) A candidate who holds public office shall be exempt from the prohibition specified in subsection (a) if the announcement or advertisement is in anticipation of or in response to a disaster or state or national emergency; provided that the announcement or advertisement is reasonably necessary for an official function of the candidate.

(c) This section shall not be construed to prohibit a candidate from appearing in a broadcast of official state, county, or federal proceedings. [L 2007, c 54, §1]



## "PART II. REGISTRATION

**§11-11 Registration.** A person who registers as required by law shall be entitled to vote at any election provided that the person shall have attained the age of eighteen at the time of that election. The county clerk shall be responsible for voter registration in the respective counties and the keeping of the general register and precinct lists within the county. [L 1970, c 26, pt of §2; am L 1976, c 106, §1(1); gen ch 1985]

" **§11-12 Age; place of registering.** (a) Every person who has reached the age of eighteen years or who is seventeen years of age and will be eighteen years of age by the date of the next election, and is otherwise qualified to register may do so for that election. The person shall then be listed upon the appropriate county general register and precinct list. No person shall register or vote in any other precinct than that in which the person resides except as provided in section 11-21.

(b) A person who is otherwise qualified to register and is at least sixteen years of age but will not be eighteen years of age by the date of the next election may preregister upon satisfactory proof of age and shall be automatically registered upon reaching age eighteen. [L 1970, c 26, pt of §2; am L 1972, c 77, §1; am L 1973, c 217, §1(d); am L 1976, c 106, §1(2); am L 1980, c 264, §1(b); gen ch 1985; am L 1993, c 24, §1]

" **§11-13 Rules for determining residency.** For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only:

- (1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return;
- (2) A person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct;
- (3) If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence; but any person having a family, who establishes the person's dwelling place other than with the person's family, with the intention of remaining there shall be considered a resident where the person has established such dwelling place;

- (4) The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish such place as the person's residence;
- (5) A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison;
- (6) No member of the armed forces of the United States, the member's spouse or the member's dependent is a resident of this State solely by reason of being stationed in the State;
- (7) A person loses the person's residence in this State if the person votes in an election held in another state by absentee ballot or in person.

In case of question, final determination of residence shall be made by the clerk, subject to appeal to the board of registration under part III of this chapter. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(1); am L 1977, c 189, §1(1); gen ch 1985]

### **Attorney General Opinions**

Residency of person living temporarily out-of-district. Att. Gen. Op. 86-10.

### **Case Notes**

County board of registration did not err in finding that voter, by changing voter registration to Lahaina, where voter was living and working at the time, lost voter's residency on Lanai; by registering to vote in Lahaina, voter represented that it was voter's place of residence and that statement of intent, together with voter's habitation on Maui, established Maui as voter's residence. 121 H. 297, 219 P.3d 1084 (2009).

County board of registration did not err in finding that voter was a resident of Lahaina rather than Lanai for purposes of voting in the 2008 general election where voter did not abandon voter's residence in Lahaina and relocate voter's permanent residence to Lanai, voter did not own or work for a business on Lanai, did not own or rent a house or keep a car on the island, and substantial evidence supported the inference that voter had not established sufficient physical presence on Lanai where plaintiff had not seen voter at the post office, the store, gas

station or restaurants, or either bank on Lanai. 121 H. 297, 219 P.3d 1084 (2009).

Mentioned: 878 F. Supp. 2d 1124 (2012); 960 F. Supp. 2d 1074 (2013).

" **§11-14 General county register; restrictions in use.** (a) The clerk of each county shall register all the voters in the clerk's county in the general county register. The register shall contain the name and address of each voter unless the voter's address is deemed confidential pursuant to section 11-14.5. Additional information required by section 11-15 may be included in the register at the discretion of the clerk. The general county register shall be available for election or government purposes only in accordance with section 11-97.

(b) The affidavits filed under section 11-15 and the general county register may be copied, and the clerk may release voter lists or data; provided that information furnished in the affidavits shall be copied or released for election or government purposes only in accordance with section 11-97.

(c) Voter registration information that is collected and maintained by the clerk of each county may be transmitted to a central file for the purpose of correlating registration data to prevent or detect duplicate voter registrations and for the compilation of election reports.

(d) Unless authorized under section 11-97, it shall be unlawful for any person to use, print, publish, or distribute any voter registration information acquired directly or indirectly from the voter registration affidavits or any list prepared therefrom. Any person who is designated by the clerk to register voters and collect voter registration affidavits shall be advised of the provisions of this subsection. Any person who violates this subsection shall be guilty of a misdemeanor. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(e); am L 1976, c 106, §1(3); am L 1977, c 189, §1(2); am L 1979, c 139, §2; am L 1982, c 226, §2; gen ch 1985; am L 1990, c 156, §5; am L 1998, c 23, §1; am L 2005, c 201, §2; am L 2012, c 225, §2]

### **Cross References**

Government records, see chapter 92F.

Records open to inspection, see §11-97.

" **§11-14.5 Residence address; confidentiality.** (a) If a life threatening circumstance exists to:

- (1) A law enforcement person;
- (2) The law enforcement person's family; or

(3) Persons otherwise determined by the clerk of the county in which the person is registered, that person may apply to the county clerk in writing to keep confidential the information relating to the residence address and telephone number contained in the affidavit of registration of that person, or any list or register prepared therefrom.

(b) If the disclosure of the residence address or telephone number of a person would result in an unwarranted invasion of personal privacy or expose the person or a member of the person's family to risk of bodily harm, the person may apply to the chief election officer or county clerk to keep confidential the person's residence address and telephone number contained in the person's affidavit of registration, or any list or register prepared therefrom.

(c) Upon good cause shown, the clerk shall determine whether to grant confidentiality in accordance with rules established by the chief election officer, and that decision shall be final.

(d) If the voter registration of a person covered by this section is challenged, the clerk shall release the residence address of that person to the challenger pursuant to rules established by the chief election officer. If an appeal is taken relating to the challenge, the residence address shall also be released to the appropriate appellate body. [L 1990, c 156, §2; am L 1997, c 157, §1]

" **§11-14.6 REPEALED.** L 1997, c 157, §3.

" **§11-15 Application to register.** (a) *[Subsection effective until December 31, 2017. For subsection effective January 1, 2018, see below.]* Any person qualified to and desiring to register as a voter in any county shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

- (1) Name;
- (2) Social security number;
- (3) Date of birth;
- (4) Residence, including mailing address;
- (5) That the residence stated in the affidavit is not simply because of the person's presence in the State, but that the residence was acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein; and
- (6) That the person is a citizen.

An application to register to vote shall include a space to request a permanent absentee ballot.

(a) *[Subsection effective January 1, 2018. For subsection effective until December 31, 2017, see above.]* Any person qualified to and desiring to register as a voter in any county shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

- (1) Name;
- (2) The applicant's Hawaii driver's license number or Hawaii state identification card number; provided that:
  - (A) If no driver's license or identification card has been issued to the applicant, the last four digits of the applicant's social security number; and
  - (B) If no social security number has been issued to the applicant, an election official or county clerk shall assign the applicant a unique identification number for voter registration purposes and enroll the applicant in the State's computerized voter registration list, if any;
- (3) Date of birth;
- (4) Residence, including mailing address;
- (5) That the residence stated in the affidavit is not simply because of the person's presence in the State, but that the residence was acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein; and
- (6) That the person is a citizen.

An application to register to vote shall include a space to request a permanent absentee ballot.

(b) The applicant shall swear to the truth of the allegations by self-subscribing affirmation in the affidavit on application for voter registration or other form prescribed by the chief election officer. Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegation of the applicant in information required in the affidavit in subsection (a)(5). In any other case where the clerk shall so desire or believe the same to be expedient, the clerk may demand that the applicant furnish substantiating evidence to the allegations of the applicant's application.

(c) The applicant shall then affix the applicant's signature to the affidavit. In the case where an applicant is unable to write for the reason of illiteracy, blindness, or other physical disability, the applicant's mark shall be witnessed by another person who shall sign the affidavit in the space provided. A voter having once been registered shall not be required to register again for any succeeding election,

except as provided in this chapter. Affidavits approved by the clerk shall thereupon be numbered appropriately, filed by the clerk, and kept available for election or government purposes in accordance with procedures established by section 11-97. Approved voter registration transactions conducted through the online voter registration system established pursuant to section 11-15.3 shall be assigned a transaction number in a manner that is substantially similar to the numbering of affidavits.

(d) The clerk may designate a subordinate or subordinates to act in the clerk's place in all matters covered by this section, except that no candidate shall be eligible to serve as a subordinate. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(f); am L 1974, c 34, §1(a); am L 1976, c 106, §1(4); am L 1979, c 196, §4; am L 1981, c 107, §1 and c 195, §1; gen ch 1985; am L 1989, c 111, §1; am L 1990, c 45, §§2, 3 and c 156, §6; am L 1998, c 23, §2; am L 2011, c 142, §1; am L 2012, c 225, §3; am L 2016, c 167, §2]

#### **Note**

L 2011, c 142, §4 provides:

"SECTION 4. The office of elections shall continue to use its existing voter registration application forms where possible until such time as new forms are developed and printed by the office of elections to implement this Act [amending this section and sections 11-16 and 15-4]."

#### **Attorney General Opinions**

Clerk may deputize seventeen-year olds as voter registrars, there being no statute imposing age requirement. Att. Gen. Op. 72-2.

#### **Case Notes**

Indictment of section dismissed because did not allege challenge by a qualified voter or that defendant had information contrary to that contained in voter registration affidavits. 67 H. 398, 688 P.2d 1152.

Preclearance under Voting Rights Act not prerequisite for enforcement of this section. 68 H. 516, 722 P.2d 453.

" **[\$11-15.2] Late registration.** [Section effective January 1, 2018.] (a) Notwithstanding the closing of the general county register pursuant to section 11-24, a person who is eligible to vote but is not registered to vote may register by appearing in person:

- (1) Prior to the day of the election, at any absentee polling place established pursuant to section 15-7 in the county associated with the person's residence; or
- (2) On the day of the election, at the polling place in the precinct associated with the person's residence.

(b) The county clerk shall designate a registration clerk, who may be an election official, at each of the absentee polling places in the county established pursuant to section 15-7, prior to the day of the election and at each of the polling places in the county on the day of the election.

(c) The registration clerk shall process applications for any person not registered to vote who submits a signed affidavit in accordance with section 11-15, which shall include a sworn affirmation:

- (1) Of the person's qualification to vote;
- (2) Acknowledging that the person has not voted and will not vote at any other polling place for that election and has not cast and will not cast any absentee ballot pursuant to chapter 15 for that election; and
- (3) Acknowledging that providing false information may result in a class C felony, punishable by a fine not exceeding \$1,000 or imprisonment not exceeding five years, or both.

(d) The registration clerk may accept, as prima facie evidence, the allegation of the person in the application regarding the person's residence in accordance with section 11-15(b), unless the allegation is contested by a qualified voter. The registration clerk may demand that the person furnish substantiating evidence to the other allegations of the person's application in accordance with section 11-15(b).

(e) Registration may be challenged in accordance with section 11-25.

(f) Notwithstanding subsection (a), registration pursuant to this section may also be used by a person who is registered to vote but whose name cannot be found on the precinct list for the polling place associated with the person's residence.

(g) The clerk of each county shall add persons who properly register under this section to the respective general county register. Within thirty days of registration at the polling place, the county clerk shall mail to the person a notice including the person's name, current street address, district and precinct, and date of registration. A notice mailed pursuant to this subsection shall serve as prima facie evidence that the person is a registered voter as of the date of registration. [L 2014, c 166, §1]

" **[\$11-15.3] Application to register electronically.** (a) Notwithstanding any law to the contrary, the clerk of each county may permit a person who has valid government-issued identification that is capable of electronic confirmation to submit an application to register to vote electronically in lieu of a traditional signed application by mail or in person.

(b) The electronic application to register to vote shall be substantially similar in content to the application to register pursuant to section 11-15, and shall require the applicant to provide substantially similar information.

(c) The applicant's use of the electronic application to register shall constitute consent for election officials to obtain confirmatory information regarding the applicant from government databases associated with government-issued identification, including the applicant's signature.

(d) The applicant's signature obtained from the government database may be utilized by election officials to validate and confirm a voter's identity in any election-related matter in which a signature is necessary.

(e) The online application system may require additional information from applicants, such as security questions to authenticate any future voter registration transactions by the applicant. [L 2012, c 225, §1]

" **[\$11-15.5] Duties of all state agencies; voter registration.** Each state agency that deals with the public shall make available to each member of the public eighteen years of age or older an application in the form of an affidavit for voter registration pursuant to section 11-15. The application shall be available by mail or in person depending on the manner in which the agency's services are requested by the person. The form of the application may be identical to that described and found in public telephone directories. [L 1993, c 100, §1]

#### **Cross References**

Election services, provisions, and charges, see §16-3.

" **§11-16 Application when not made in person.** (a) Any qualified person unable for any cause to appear in person before the clerk for registration may register to vote by mail, not later than thirty days prior to a primary or general election, through the affidavit on application for voter registration or other form prescribed by the chief election officer. The form shall include a self-subscribing oath for the applicant to swear to the truth of the allegations in the application. An applicant unable to write for reason of illiteracy, blindness,



or other physical disability shall have the applicant's mark witnessed by a person who shall sign the affidavit in the space provided. Each application form shall also include a space to request a permanent absentee ballot. Application forms shall be made available to any qualified person through community groups, political parties, and other groups prescribed by the chief election officer. Application forms shall be made available to any qualified person at the time of that person's driver's license application or renewal through the examiner of drivers.

(b) Upon receipt of the properly executed application, the clerk shall proceed to number the same and register the name of the voter in the general county register as provided in section 11-15. In registering persons under this section the clerk may accept requests for absentee ballot submitted in accordance with the Federal Voting Assistance Act of 1955 or other similar federal law as being sufficient for registration purposes. [L 1970, c 26, pt of §2; gen ch 1985; am L 1990, c 45, §4; am L 2011, c 142, §2]

" **§11-17 Removal of names from register, when;**

**reregistration.** (a) The clerk, not later than 4:30 p.m. on the sixtieth day after every general election, shall remove the name of any registered voter who did not vote in that general election, and also did not vote in the primary election preceding that general election, and also did not vote in the previous general election, and also did not vote in the primary election preceding that general election, and also did not vote in the regularly scheduled special elections held in conjunction with those primary and general elections, if any, with the exception of:

(1) Those who submitted written requests for absentee ballots as provided in section 15-4; or

(2) Anyone who preregistered pursuant to section 11-12(b). If a person voted, at least once, in any of the above-mentioned elections, the person's name shall remain on the list of registered voters. For this purpose "vote" means the depositing of the ballot in the ballot box whether the ballot is blank or later rejected for any reason. In the case of voting machines "vote" means the voter has activated the proper mechanism and fed the vote into the machine.

(b) The clerk shall also identify or remove the name of any registered voter, if the clerk, after mailing a notice or other correspondence, properly addressed, with postage prepaid, receives the notice or other correspondence as return mail with a postal notation that the notice or other correspondence was not deliverable. On election day, any person identified or removed shall have the person's name corrected or restored in

the register and shall be allowed to vote if the person completes an affidavit or other form prescribed by the chief election officer affirming that the person: claims the person's legal residence at the address listed on the register; changed the person's legal residence after the closing of the register for that election; or, moved to a new residence within the same precinct as the person's residence as listed on the register.

(c) The clerk may remove the name of any registered voter, if the voter so desires and properly notifies the clerk pursuant to the procedures established by the chief election officer.

(d) Any person whose name has been removed from the register, at any time prior to the closing of the register, as provided in section 11-24, may have that person's name restored in the register by presenting oneself to the clerk and reregistering pursuant to section 11-15, or by making application by mail or otherwise pursuant to procedures established by the clerk. The clerk shall require satisfactory evidence to establish the identity of the applicant. The names of all those persons shall be reentered in the register. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(g); am L 1975, c 36, §1(3); am L 1976, c 106, §1(5); am L 1981, c 195, §2; am L 1982, c 226, §1; am L 1983, c 124, §1; am L 1987, c 273, §1; am L 1990, c 45, §5 and c 134, §2; am L 1993, c 24, §2; am L 1994, c 119, §1]

" **§11-18 Transfer of registration on removal from one precinct to another in same county.** A registered voter who changes residence from one precinct to another prior to any election shall notify the clerk and change the registration to the proper precinct by the appropriate registration deadline; provided that no change of registration shall be allowed if the change of residence occurs after the close of registration for an election except pursuant to section 11-21(c). The change of registration due to a change of residence may be challenged as provided in section 11-25. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(h); am L 1985, c 203, §1; am L 1987, c 273, §2; am L 1992, c 129, §1]

" **§11-19 Registration from one county to another.** Whenever a registered voter changes residence from one county to another, the person shall notify the clerk and change the registration to the proper county by the appropriate registration deadline; provided that no change of registration shall be allowed after the close of registration for an election except pursuant to section 11-21(c). Thereupon, if the person applying is legally qualified to register, the clerk shall accept the registration and shall immediately thereafter forward to the clerk of the

county in which the person was formerly registered, a notice that the name of the registered voter is to be removed from the general county register of that county. [L 1970, c 26, pt of §2; am L 1972, c 77, §2; am L 1973, c 217, §1(i); gen ch 1985; am L 1987, c 273, §3; am L 1992, c 129, §2]

### **Attorney General Opinions**

Except in the situation specified in section, voter who moves from one county to another may reregister in second county, so long as register is open. Att. Gen. Op. 70-16.

" **§11-20 Transfers; name changes; initiated by clerk.** (a) The clerks shall use all reliable and pertinent information to keep the general register up to date. The county clerks may request information from, but are not limited to, the following sources:

- (1) The office of the lieutenant governor for any change of name;
- (2) Courts for any changes of name, divorces, separations, or other changes affecting voter status;
- (3) The department of health for marriages, deaths, or other changes affecting voter status;
- (4) Utility companies concerning commencement or changes of service;
- (5) Residential apartments, cooperative apartments, and condominiums as to changes of occupancy.

In requesting the information the clerk shall give reasonable notice and time for furnishing the information.

(b) If the clerk has evidence indicating that a voter's registration should be transferred, the clerk shall notify the person by first-class mail of the intent to transfer registration. The notification shall include:

- (1) Any evidence that the clerk may have indicating why a transfer or change should be made;
- (2) The residence, precinct, and district of the voter according to current registration lists;
- (3) Any alleged new address, precinct, and district;
- (4) A reply form which shall contain a space for the voter's agreement or objection to the transfer, the reasons for the objection and space for the voter's signature;
- (5) Notice that unless the completed form is returned not later than 4:30 p.m. on the fifteenth day after mailing, the transfer shall be processed.

(c) A voter may contest the transfer on or before election day by presenting evidence that the voter actually resides at

the old address which, if found valid by the clerk or the board of registration, shall entitle the voter to be returned to the old voting list.

(d) Notwithstanding section 11-24, the clerk may, at any time, transfer a voter's registration when notice of a change of address is received by registration affidavit or other form or means approved by the chief election officer. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(j); am L 1984, c 64, §1; am L 1994, c 119, §2]

" **§11-21 Change of name, transfer on election day.** (a) The county clerk may designate a registration clerk, who may be an election official, at any of the polling places in the county on the day of the election.

(b) These registration clerks shall take applications for change of name from voters who have been married or who have had their names changed since the last election.

(c) Any person whose name appears on the registered voters list whose residence has changed since the last election, and whom the county clerk has not transferred under section 11-20, may apply on a form prescribed by the chief elections officer at the person's new polling place on the day of the election for transfer of registration to the precinct of the new residence. Any person so transferring voter registration shall be immediately added to the register of the new precinct and may vote only at the new precinct.

(d) Where a person was incorrectly placed on a list of voters of a precinct in which the person does not actually reside, the person may correct the registration.

(e) No person shall be prevented from voting at the election in the precinct in which the person's name appears on the voters list due to a change of name, or other correction made under this section. However, any voter registered in the wrong precinct who shall refuse to make the correction of registration may be challenged in accordance with section 11-25.

(f) Any person changing name or transferring shall receive a copy of the change or transfer form. [L 1970, c 26, pt of §2; am L 1972, c 77, §3; am L 1984, c 64, §2; am L 1985, c 203, §2; am L 1987, c 273, §4; am L 1992, c 129, §§3, 4]

" **§11-22 Changing register; correction of errors.** (a) The clerk shall correct the register if at any time it shall be manifest to the clerk that the name of a person registered has been accidentally misspelled, or that the person has been misnamed therein, or that the person has been accidentally registered under the wrong precinct, or that the person was accidentally removed pursuant to section 11-17(a), or that the

name of the person should be corrected or restored pursuant to section 11-17(b).

(b) In any case where the clerk refuses to correct the register the person may appeal to the board of registration and the register shall be changed upon a written order of the board of registration, setting forth the reasons for the change. The order shall be directed to the clerk or to the precinct officials of the election precinct where the voter is entitled to vote if the register has been closed. The precinct officials shall thereupon correct the list of voters furnished them according to the terms of the order, noting on the list the reasons for the correction, and shall send the original order to the clerk as soon as may be possible after the close of the polls. The clerk, upon receipt of any order from the board of registration or from the precinct officials, as the case may be, shall correct the register according to the terms of the order, making on the register a reference to the order. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(k); gen ch 1985; am L 1990, c 45, §6]

" **§11-23 Changing register; striking names of disqualified voters.** (a) Whenever the clerk receives from the department of health or any informing agency, information of the death, loss of voting rights of a person sentenced for a felony as provided in section 831-2, adjudication as an incapacitated person under the provisions of chapter 560, loss of citizenship, or any other disqualification to vote, of any person registered to vote in that county, or who the clerk has reason to believe may be registered to vote therein, the clerk shall thereupon make such investigation as may be necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation the clerk finds that the person is dead, or incapacitated to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting, or has lost voting rights pursuant to section 831-2, or has lost citizenship, or is disqualified for any other reason to vote, the clerk shall remove the name of the person from the register.

(b) The clerk shall make and keep an index of all information furnished to the clerk under any requirements of law concerning any of the matters in this section. Whenever any person applies to register as a voter, the clerk shall, before registering the person, consult the index for the purpose of ascertaining whether or not the person is in any manner disqualified to vote. Any person whose name is removed from the register of voters under this section may appeal in the manner

provided by sections 11-26 and 11-51, and such proceedings shall be had upon the appeal as in other appeals under these sections. [L 1970, c 26, pt of §2; am L 1980, c 198, §1; am L 1983, c 34, §1; am L 2002, c 15, §2]

" **§11-24 Closing register.** (a) At 4:30 p.m. on the thirtieth day prior to each primary, special primary, or special election, but if the day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter, the general county register shall be closed to registration for persons seeking to vote at the primary, special primary, or special election and remain closed to registration until after the election, subject to change only as provided in sections 11-21(c), 11-22, 11-25, 11-26, and this section.

(b) Notwithstanding the closing of the register for registration to vote at the primary or special primary election, the register shall remain open for the registration of persons seeking to vote at the general or special general election, until 4:30 p.m. on the thirtieth day prior to the general or special general election, but if the day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter, at the end of which period the general county register shall be closed to registration and remain closed until after the general or special general election next following, subject to change only as provided in sections 11-21(c), 11-22, 11-25, and 11-26. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(1); am L 1976, c 106, §1(6); am L 1977, c 189, §1(3); am L 1979, c 139, §3; am L 1990, c 156, §7; am L 1992, c 129, §5; am L 2012, c 225, §4]

" **§11-25 Challenge by voters; grounds; procedure.** (a) Any registered voter may challenge the right of a person to be or to remain registered as a voter in any precinct for any cause not previously decided by the board of registration or the supreme court in respect to the same person; provided that in an election of members of the board of trustees of the office of Hawaiian affairs the voter making the challenge must be registered to vote in that election. The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge. The challenge shall be delivered to the clerk who shall forthwith serve notice thereof on the person challenged. The clerk shall, as soon as possible, investigate and rule on the challenge.

(b) Any voter rightfully in the polling place, including absentee polling places established pursuant to section 15-7, may challenge the right to vote of any person who comes to the precinct officials for voting purposes. The challenge shall be

on the grounds that the voter is not the person the voter alleges to be, or that the voter is not entitled to vote in that precinct; provided that only in an election of members of the board of trustees of the office of Hawaiian affairs, a person registered to vote in that election may also challenge on the grounds that the voter is not Hawaiian. No other or further challenge shall be allowed. Any person thus challenged shall first be given the opportunity to make the relevant correction pursuant to section 11-21. The challenge shall be considered and decided immediately by the precinct officials and the ruling shall be announced.

(c) If neither the challenger nor the challenged voter shall appeal the ruling of the clerk or the precinct officials, then the voter shall either be allowed to vote or be prevented from voting in accordance with the ruling. If an appeal is taken to the board of registration, the challenged voter shall be allowed to vote; provided that ballot is placed in a sealed envelope to be later counted or rejected in accordance with the ruling on appeal. The chief election officer shall adopt rules in accordance with chapter 91 to safeguard the secrecy of the challenged voter's ballot. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(m); am L 1979, c 139, §4 and c 196, §5; am L 1980, c 137, §1; am L 1985, c 203, §3; am L 2014, c 166, §2]

### **Case Notes**

Where county board of registration only ruled on the individual's right to be or remain a registered voter, which was within the scope of its jurisdiction, and did not mention any possible consequences for the individual's candidacy under the provision applicable to a candidate whose nomination papers have been successfully challenged, board did not exceed its jurisdiction in finding that individual was a candidate for the council seat, an undisputed fact that provided background and context for the appeal, and entering conclusions of law containing extraneous information on the county charter and the residency requirement for running for a council seat. 121 H. 297, 219 P.3d 1084 (2009).

Where county clerk acted within the scope of clerk's authority in construing plaintiff's complaint letters as a challenge to individual's residency under this section, and investigating on that basis, the county board of registration therefore did not err in denying individual's motion to dismiss, and had jurisdiction to hear plaintiff's appeal from that aspect of clerk's decision. 121 H. 297, 219 P.3d 1084 (2009).

" **§11-26 Appeal from ruling on challenge; or failure of clerk to act.** (a) In cases where the clerk, or precinct officials, rules on a challenge on election day, the person ruled against may appeal from the ruling to the board of registration of the person's county for review under part III. The appeal shall be brought before the challenger and challenged party leave the polling place. If an appeal is brought, both the challenger and the challenged voter may be parties to the appeal.

(b) In cases where the clerk rules on a challenge, prior to election day, or refuses to register an applicant, or refuses to change the register under section 11-22, the person ruled against may appeal from the ruling to the board of registration of the person's county. The appeal shall be brought within ten days of service of the adverse decision. Service of the decision shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mails, postage prepaid, and addressed to the aggrieved person's last known address. If an appeal from a decision on a challenge prior to election day is brought, both the challenger and the challenged voter may be parties to the appeal.

(c) If the appeal is sustained, the board shall immediately certify that finding to the clerk, who shall thereupon alter the register to correspond to the findings of the board, and when necessary, the clerk shall notify the precinct officials of the change in the register. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(n); am L 1980, c 264, §1(c); gen ch 1985; am L 1990, c 45, §7]

#### **Case Notes**

Where county board of registration only ruled on the individual's right to be or remain a registered voter, which was within the scope of its jurisdiction, and did not mention any possible consequences for the individual's candidacy under the provision applicable to a candidate whose nomination papers have been successfully challenged, board did not exceed its jurisdiction in finding that individual was a candidate for the council seat, an undisputed fact that provided background and context for the appeal, and entering conclusions of law containing extraneous information on the county charter and the residency requirement for running for a council seat. 121 H. 297, 219 P.3d 1084 (2009).

#### **"PART III. BOARDS OF REGISTRATION**



**§11-41 Boards of registration, appointment, tenure.** (a)

There shall be four boards of registration: one for the island of Hawaii; one for the islands of Maui, Molokai, Lanai, and Kahoolawe; one for the island of Oahu; and one for the islands of Kauai and Niihau. The boards, which shall be in the department of accounting and general services for administrative purposes, shall consist of three members each and shall be appointed by the governor by and with the advice and consent of the senate; their terms of office shall be four years.

(b) In no case shall any board consist entirely of members of one political party.

(c) The several boards of registration shall sit in the county seats of their respective counties on election day. The boards shall also sit at such other times as the clerk determines within the various representative districts in their respective counties to hear appeals, provided there are any, from the voters registered within such districts. The boards shall continue their sittings until all appeals have been heard.

(d) Reasonable notices of the sitting of the boards shall be given in their respective districts or counties. [L 1970, c 26, pt of §2; am L 1980, c 264, §1(d); am L 1983, c 34, §2; am L 1998, c 2, §3; am L 2005, c 199, §1]

" **§11-42 Compensation.** Members of the boards of registration shall be compensated pursuant to a schedule established by the chief election officer. The schedule shall be contained in rules adopted pursuant to chapter 91. [L 1970, c 26, pt of §2; am L 1979, c 133, §1; am L 1987, c 210, §1; am L 1998, c 56, §1]

#### **Cross References**

Precinct officials' compensation, see §11-76.

" **§11-43 Powers; procedures.** (a) Each board of registration is given all of the powers and authority for the summoning and examining of witnesses and the maintenance of order, including the power to punish for contempt and award witness fees in accordance with section 621-7, by law given to circuit courts.

(b) Every member of the board of registration may administer oaths in all cases in which oaths are by law authorized.

(c) The procedures for challenges and appeals under sections 11-25 and 11-26 and this part shall be exempt from the provisions of chapter 91 regarding contested case hearings, but

shall be administered according to rules adopted by the chief election officer. [L 1970, c 26, pt of §2; am L 1990, c 45, §8]

" **§11-44 Records of proceedings.** The several boards of registration shall each keep books of record in which full and detailed minutes shall be preserved of all their proceedings. The minutes shall be kept from day to day, and shall contain:

- (1) The date and place of the meeting;
- (2) The names of the members of the board present;
- (3) The name of each person to whom an oath is administered, and, if an examination is held, the names of the witnesses and the substance of the answers of the applicant and of the witnesses;
- (4) The name of any person challenging the right of any applicant to register, the grounds of challenge, the name of the person challenged, and the decision rendered thereon; and
- (5) All other matters of detail which are likely to have a bearing upon any question concerning the action of the board or of any person appearing before it. [L 1970, c 26, pt of §2]

#### "PART IV. APPEAL FROM BOARD OF REGISTRATION

##### Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCPC rule 81(b)(10); appeal to appellate courts, see Hawaii Rules of Appellate Procedure.

**§11-51 Appeal from board.** Any affected person, political party, or any of the county clerks, may appeal to the intermediate appellate court, subject to chapter 602, in the manner provided for civil appeals from the circuit court; provided that the appeal is brought no later than 4:30 p.m. on the tenth day after the board serves its written decision, including findings of fact and conclusions of law, upon the appellant. This written decision of the board shall be a final appealable order. The board shall not consider motions for reconsideration. Service upon the appellant shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mails, postage prepaid, and addressed to the appellant's last known address. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(o); am L 1979, c 111, §25; am L 1990, c 45, §9; am L 2004, c 202, §1]

##### Note

The source note to this section is supplemented by "am L 2006, c 94, §1; am L 2010, c 109, §1".

" **§11-52 Hearing; decision final.** When the appeal is perfected, the court shall hear the appeal as soon thereafter as may be reasonable. [L 1970, c 26, pt of §2; am L 2004, c 202, §2]

#### **Note**

The source note to this section is supplemented by "am L 2006, c 94, §1; am L 2010, c 109, §1".

" **§11-53 Decision, notice; action on.** Immediately upon rendering a final decision upon any appeal, the court shall notify the board of registration from which the appeal was taken; and if the decision reverses the decision of the board, the board shall immediately order the register to be corrected to conform with the decision. [L 1970, c 26, pt of §2; am L 2004, c 202, §3]

#### **Note**

The source note to this section is supplemented by "am L 2006, c 94, §1; am L 2010, c 109, §1".

" **§11-54 Status pending appeal.** In case of an appeal from a decision of any board of registration the name of the person shall be placed or remain upon the register pending the decision of the appellate courts concerning the same. If the person so registered votes at any election before the appeal is decided and acted upon, the ballot of such voter shall be handled in accordance with section 11-25(c). [L 1970, c 26, pt of §2; am L 2004, c 202, §4]

#### **Note**

The source note to this section is supplemented by "am L 2006, c 94, §1; am L 2010, c 109, §1".

### **"PART V. PARTIES**

#### **Case Notes**

State's prohibition on write-in voting, as part of electoral scheme providing constitutionally sufficient ballot access, does

not impose unconstitutional burden on voters' rights under First and Fourteenth Amendments. 504 U.S. 428.

**§11-61 "Political party" defined.** (a) The term "political party" means any party which has qualified as a political party under sections 11-62 and 11-64 and has not been disqualified by this section. A political party shall be an association of voters united for the purpose of promoting a common political end or carrying out a particular line of political policy and which maintains a general organization throughout the State, including a regularly constituted central committee and county committees in each county other than Kalawao.

(b) Any party which does not meet the following requirements or the requirements set forth in sections 11-62 to 11-64, shall be subject to disqualification:

- (1) A party must have had candidates running for election at the last general election for any of the offices listed in paragraph (2) whose terms had expired. This does not include those offices which were vacant because the incumbent had died or resigned before the end of the incumbent's term; and
- (2) The party received at least ten per cent of all votes cast:
  - (A) For any of the offices voted upon by all the voters in the State; or
  - (B) In at least fifty per cent of the congressional districts; or
- (3) The party received at least four per cent of all the votes cast for all the offices of state senator statewide; or
- (4) The party received at least four per cent of all the votes cast for all the offices of state representative statewide; or
- (5) The party received at least two per cent of all the votes cast for all the offices of state senate and all the offices of state representative combined statewide. [L 1970, c 26, pt of §2; am L 1979, c 125, §3(1); am L 1983, c 34, §3; am L 1986, c 323, §1; am L 1997, c 287, §1; am L 1999, c 205, §1]

#### **Attorney General Opinions**

"All votes cast" in determining the qualification of a political party does not include blank ballots. Att. Gen. Op. 81-6.

Change of party name. Att. Gen. Op. 82-1.

General election presidential ballots shall contain the candidate's party or group affiliation along with the candidate's name, regardless of whether the party is qualified under this section and §11-62. Att. Gen. Op. 13-2.

" **§11-62 Qualification of political parties; petition.** (a) Any group of persons hereafter desiring to qualify as a political party for election ballot purposes in the State shall file with the chief election officer a petition as provided in this section. The petition for qualification as a political party shall:

- (1) Be filed not later than 4:30 p.m. on the one hundred seventieth day prior to the next primary;
- (2) Declare as concisely as may be the intention of signers thereof to qualify as a statewide political party in the State and state the name of the new party;
- (3) Contain the name, signature, residence address, date of birth, and other information as determined by the chief election officer of currently registered voters comprising not less than one-tenth of one per cent of the total registered voters of the State as of the last preceding general election;
- (4) Be accompanied by the names and addresses of the officers of the central committee and of the respective county committees of the political party and by the party rules; and
- (5) Be upon the form prescribed and provided by the chief election officer.

(b) The petition shall be subject to hearing under chapter 91, if any objections are raised by the chief election officer or any other political party. All objections shall be made not later than 4:30 p.m. on the twentieth business day after the petition has been filed. The chief election officer may extend the objection period up to an additional ten business days, if the group of persons desiring to qualify as a political party is provided with notice of extension and the reasons therefor. If no objections are raised by 4:30 p.m. on the twentieth business day, or the extension thereof, the petition shall be approved. If an objection is raised, a decision shall be rendered not later than 4:30 p.m. on the thirtieth day after filing of the objection or not later than 4:30 p.m. on the one hundredth day prior to the primary, whichever shall first occur.

(c) The chief election officer may check the names of any persons on the petition to see that they are registered voters and may check the validity of their signatures. The petition shall be public information upon filing.

(d) Each group of persons desiring to qualify as a political party, having first qualified as a political party by petition under this section, and having been qualified as a political party for three consecutive general elections by petition or pursuant to section 11-61(b), shall be deemed a political party for the following ten-year period. The ten-year period shall begin with the next regularly scheduled general election; provided that each party qualified under this section shall continue to field candidates for public office during the ten-year period following qualification. After each ten-year period, the party qualified under this section shall either remain qualified under the standards set forth in section 11-61, or requalify under this section 11-62. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(p); am L 1983, c 34, §4; am L 1986, c 323, §2; am L 1993, c 304, §4; am L 1997, c 287, §2; am L 1998, c 33, §1; am L 1999, c 205, §2]

### **Attorney General Opinions**

General election presidential ballots shall contain the candidate's party or group affiliation along with the candidate's name, regardless of whether the party is qualified under §11-61 and this section. Att. Gen. Op. 13-2.

" **§11-63 Party rules, amendments to be filed.** All parties must file their rules with the chief election officer not later than 4:30 p.m. on the one hundred fiftieth day prior to the next primary. All amendments shall be filed with the chief election officer not later than 4:30 p.m. on the thirtieth day after their adoption. The rules and amendments shall be duly certified to by an authorized officer of the party and upon filing, the rules and amendments thereto shall be a public record. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(q); am L 1983, c 34, §5; am L 1986, c 323, §3]

" **§11-64 Names of party officers to be filed.** All parties shall submit to the chief election officer and the respective county clerks not later than 4:30 p.m. on the ninetieth day prior to the next primary, a list of names and addresses of officers of the central committee and of the respective county committees. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(r); am L 1983, c 34, §6]

" **§11-65 Determination of party disqualification; notice of disqualification.** (a) Not later than 4:30 p.m. on the one hundred twentieth day after a general election, the chief election officer shall determine which parties were qualified to

participate in the last general election, but which have become disqualified to participate in the forthcoming elections. Notice of intention to disqualify shall be served by certified or registered mail on the chairperson of the state central committee or in the absence of the chairperson, any officer of the central committee of the party, as shown by the records of the chief election officer. In addition, public notice of intention to disqualify shall also be given.

(b) If an officer of the party whose name is on file with the chief election officer desires a hearing on the notice of intention to disqualify, the officer of the party shall, not later than 4:30 p.m. on the tenth day after service by mail or not later than 4:30 p.m. on the tenth day after the last day upon which the public notice is given in any county, whichever is later, file an affidavit with the chief election officer setting forth facts showing the reasons why the party should not be disqualified. The chief election officer shall call a hearing not later than twenty days following receipt of the affidavit. The chief election officer shall notify by certified or registered mail the officer of the party who filed the affidavit of the date, time, and place of the hearing. In addition, public notice of the hearing shall be given not later than five days prior to the day of the hearing. The chief election officer shall render the chief election officer's decision not later than 4:30 p.m. on the seventh day following the hearing. If the party does not file the affidavit within the time specified, the notice of intention to disqualify shall constitute final disqualification. A party thus disqualified shall have the right to requalify as a new party by following the procedures of section 11-62. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(5); am L 1977, c 189, §1(4); gen ch 1985, 1993; am L 1998, c 2, §4]

## "PART VI. PRECINCT OFFICIALS AND WATCHERS

**§11-71 Precinct officials; precinct requirements.** There shall be not less than three precinct officials for each precinct one of whom shall be the chairperson; provided that in precincts where more than one voting unit has been established, there shall be three precinct officials for each unit. The chairperson of precinct officials shall have authority in all units of the precinct.

In all precincts, the chief election officer may assign additional precinct officials, at least one of whom may be designated a voter assistance official.

So far as reasonably practicable, excepting the chairperson, not more than fifty per cent of the precinct

officials in any precinct shall be of the same political party.  
[L 1970, c 26, pt of §2; am L 1973, c 217, §1(t); am L 1977, c  
151, §1; gen ch 1993]

" **§11-72 Precinct officials; submission of names and assignment; vacancies.** (a) All qualified political parties shall submit names for precinct officials to the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the close of filing for any primary, special primary, or special election. All precinct officials shall be able to read and write the English language. If any party fails to submit the required names by the above deadline, or names sufficient to fill the positions to which it would be entitled, assignment of positions to which the party would otherwise be entitled pursuant to subsection (b), may be made without regard to party affiliation.

(b) In assigning the precinct officials, the following criteria shall be followed:

- (1) The precinct officials shall be registered voters of the precinct in which they serve; but if qualified persons in the precinct or representative district are not readily available to serve, they may be chosen from without the precinct or representative district, or if qualified persons either in or without the precinct or representative district are not available to serve, the chief election officer may designate precinct officials who are not registered voters if the persons so designated are otherwise qualified and shall have attained the age of sixteen years on or before June 30, of the year of the election in which they are appointed to work;
- (2) The chief election officer may designate more precinct officials than are needed in order to create a pool of qualified precinct officials who may be assigned to fill vacancies or to perform their duties as needed in any precinct;
- (3) No parent, spouse, reciprocal beneficiary, child, or sibling of a candidate shall be eligible to serve as a precinct official in any precinct in which votes may be cast for the candidate; nor shall any candidate for any elective office be eligible to serve as a precinct official in the same election in which the person is a candidate. No candidate who failed to be nominated in the primary or special primary election shall be eligible to serve as a precinct official in the general election next following; and



- (4) The chairperson of the precinct officials shall be the first named precinct official on the list prepared by the chief election officer. The remainder of the precinct officials shall be apportioned as follows:
- (A) The total votes cast, except those cast for nonpartisan candidates, for all of the following offices that were on the ballot in the next preceding general election shall be divided into the total votes cast for all the candidates of each party for these offices: president and vice-president, United States senator, United States representative, governor and lieutenant governor, state senator, and state representative;
  - (B) If a party's proportion of votes cast exceeds fifty per cent, its share shall be one-half of the precinct officials. The remaining one-half shall be divided among the remaining parties in proportion to their respective total of votes cast for the offices set forth in subparagraph (A);
  - (C) In the case of the above division resulting in parties having fractional positions, a whole position shall go to the party with the larger number of votes cast; and
  - (D) Newly qualified parties may be assigned up to ten per cent of the total positions available at the discretion of the chief election officer.

(c) In the recruitment and placement of precinct officials, any or all of the requirements of subsection (b) may be waived by the chief election officer if it is determined that minority language assistance or other special needs warrant such waiver, except as provided in subsection (b)(3).

(d) In case of inability, failure, or refusal of any person so assigned to serve as a precinct official, the chief election officer shall appoint a person to fill the vacancy. [L 1970, c 26, pt of §2; am L 1972, c 77, §4; am L 1973, c 217, §1(u); am L 1977, c 189, §1(5); am L 1979, c 125, §3(2) and c 139, §5; am L 1987, c 209, §1; am L 1988, c 141, §1; am L 1989, c 261, §24; am L 1990, c 124, §2; gen ch 1992; am L 1995, c 71, §2; am L 2005, c 14, §2 and c 201, §3]

" **§11-73 Instruction of precinct officials.** Prior to any election, the chief election officer or clerk in county elections shall conduct a school of instruction, if deemed necessary, for persons designated as prospective precinct officials of precincts. They shall notify the precinct

officials of the time and the place of the school of instruction.

All prospective precinct officials shall attend a school of instruction. The chairperson of the precinct officials shall be required to also attend a refresher course before each election. It shall be at the discretion of the chief election officer or the county clerk in county elections to require those precinct officials with previous training to attend a school of instruction prior to each election.

No precinct official shall serve unless the official has received instruction and has been certified by the authorized instructor to that effect. This section shall not prevent the assignment of a person who has not received such instruction or such certificate but who is otherwise qualified, to fill a vacancy among precinct officials when a qualified certified person is not available. Periodic recertification shall be required. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(v); am L 1979, c 133, §2; gen ch 1985, 1993]

" **§11-74 Meetings of precinct officials; procedure; oaths.**

The chairperson of the precinct officials shall preside at all meetings of the precinct officials. Any decision of the precinct officials shall require a majority vote of the precinct officials in the unit or precinct.

In all cases under this title, where duties are to be performed by the chairperson of the precinct officials, the duties may be performed by one of the other precinct officials, whenever the chairperson is temporarily absent or is otherwise for the time being unable to perform the duties.

Each precinct official may administer any oath in this title provided to be administered by the precinct officials. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(w); gen ch 1993]

" **§11-75 Duties of precinct officials.** The duties of the precinct officials shall vary with the voting system in use in the precinct. The duties for the particular system shall be assigned by the chief election officer by regulations adopted for such purpose. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(x)]

" **§11-76 Compensation.** (a) Electronic ballot and voting machine elections. Precinct officials and related election day nonprofit groups or employees shall be compensated pursuant to a schedule established by the chief election officer. The schedule shall be contained in rules adopted pursuant to chapter 91.

(b) Paper ballot elections. The chairperson of the precinct officials and the precinct officials shall receive the same base amounts as in subsection (a). In addition, all precinct officials shall be paid \$5 for each three hundred ballots or portion thereof cast at that precinct. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(y); am L 1974, c 19, §1; am L 1977, c 151, §2; am L 1982, c 145, §1; am L 1989, c 155, §1; gen ch 1993; am L 1995, c 71, §3]

" **§11-77 Appointment of watchers; service.** (a) Each qualified political party shall be entitled to appoint no more than one watcher who may be present at any time in each precinct and absentee polling place in which the candidates of that political party are on the ballot. Each party shall submit its list of watchers not later than 4:30 p.m. on the tenth day prior to any election to the chief election officer or to the clerk in county elections. All watchers shall serve without expense to the State or county. All watchers so appointed shall be registered voters. No person shall serve as a watcher who could not qualify to serve as a precinct official under section [11-72(b)(3)].

(b) Each watcher shall be provided with identification from the chief election officer, or by the clerk in the case of county elections, stating the watcher's name and the name of the party the watcher represents. On election day the watcher shall present identification to the chairperson of precinct officials of the precinct or precincts where the watcher is to serve.

(c) All watchers for precincts shall be permitted to observe the conduct of the election in the precinct. The watchers may remain in the precinct as long as the precinct is in operation subject to section 19-6. Watchers may review the polling book pursuant to section 11-97.

(d) The watcher shall call the attention of the chairperson to any violations of the election laws that the watcher observes. After the chairperson's attention is called to the violation the chairperson shall make an attempt to correct such violation. If the chairperson fails to correct the violation, the watcher may appeal to the clerk of the county.

(e) The watchers shall be permitted to observe the operations of the absentee polling place. Any violation of the election laws shall be reported to the clerk. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(z); am L 1977, c 189, §1(6); am L 1983, c 34, §7; am L 2005, c 201, §4]

Under authority to observe the conduct of the election, poll watchers may record the names of those who have voted. 54 H. 254, 506 P.2d 13.

## "PART VII. CONDUCT OF ELECTIONS

**§11-91 Proclamation.** Not later than 4:30 p.m. on the tenth day prior to the close of filing in elections involving state offices the chief election officer shall issue an election proclamation. In elections involving only county offices the clerk shall issue the proclamation. In elections involving both state and county offices the proclamation may be issued jointly.

The proclamation shall contain a statement of the time and places where, and the purposes for which, the election is to be held, and a designation of the offices and the terms thereof for which candidates are to be nominated or elected. It may also contain any other relevant matter including an offer of rewards for the detection and conviction of offenders against the election laws. The chief election officer or clerk shall cause the election proclamation to be published at least once in a newspaper of general circulation and not later than on the tenth day prior to the close of filing. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(aa)]

### Case Notes

Nothing in section grants to chief election officer any substantive power to call special election to fill vacancy in Senate resulting from death of candidate. 52 H. 410, 477 P.2d 625.

" **§11-91.5 Federal, state, and county elections by mail.**

(a) Any federal, state, or county election held other than on the date of a regularly scheduled primary or general election may be conducted by mail.

(b) The chief election officer shall determine whether a federal or state election, other than a regularly scheduled primary or general election, may be conducted by mail or at polling places.

(c) The county clerk shall determine whether a county election, held other than on the date of a regularly scheduled primary or general election, may be conducted by mail or at polling places. An election by mail in the county shall be under the supervision of the county clerk.

(d) Any ballot cast by mail under this section shall be subject to the provisions applicable to absentee ballots under sections 11-139 and 15-6.

(e) The chief election officer shall adopt rules pursuant to chapter 91 to provide for uniformity in the conduct of federal, state, and county elections by mail. [L 2003, c 37, §1; am L 2013, c 235, §1]

#### Revision Note

Section was enacted as an addition to part IX but is renumbered to this part pursuant to §23G-15(1).

" **§11-92 REPEALED.** L 1983, c 34, §8.

" **§11-92.1 Election proclamation; establishment of a new precinct.** (a) The chief election officer shall issue a proclamation whenever a new precinct is established in any representative district. The chief election officer shall provide a suitable polling place for each precinct. Schools, recreational halls, park facilities, and other publicly owned or controlled buildings, whenever possible and convenient, shall be used as polling places. The chief election officer shall make arrangements for the rental or erection of suitable shelter for this purpose whenever public buildings are not available and shall cause these polling places to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections on any island. This proclamation may be issued jointly with the proclamation required in section 11-91.

(b) No change shall be made in the boundaries of any precinct later than 4:30 p.m. on the tenth day prior to the close of filing for an election.

(c) Notwithstanding subsection (a), and pursuant to section 15-2.5, the chief election officer is not required to establish polling places for precincts affected by natural disasters, as provided in section 15-2.5. [L 1983, c 34, §9; am L 1984, c 39, §1; am L 1996, c 215, §2]

" **§11-92.2 Multiple polling place sites.** (a) The chief election officer may establish multiple polling place sites for contiguous precincts, notwithstanding district boundaries, when it is convenient and readily accessible for the voters of the precincts involved.

(b) No multiple polling place site shall be established later than 4:30 p.m. on the tenth day prior to the close of filing for an election. [L 1983, c 34, §10; am L 1984, c 39, §2]

" **§11-92.3 Consolidated precincts; natural disasters; postponement; absentee voting required; special elections.** (a) In the event of a flood, tsunami, earthquake, volcanic eruption,

high wind, or other natural disaster, occurring prior to an election, that makes a precinct inaccessible, the chief election officer or county clerk in the case of county elections may consolidate precincts within a representative district. If the extent of damage caused by any natural disaster is such that the ability of voters, in any precinct, district, or county, to exercise their right to vote is substantially impaired, the chief election officer or county clerk in the case of county elections may require the registered voters of the affected precinct to vote by absentee ballot pursuant to section 15-2.5 and may postpone the conducting of an election in the affected precinct for no more than twenty-one days; provided that any such postponement shall not affect the conduct of the election, tabulation, or distribution of results for those precincts, districts, or counties not designated for postponement. The chief election officer or county clerk in the case of county elections shall give notice of the consolidation, postponement, or requirement to vote by absentee ballot, in the affected county or precinct prior to the opening of the precinct polling place by whatever possible news or broadcast media are available. Precinct officials and workers affected by any consolidation shall not forfeit their pay.

(b) In the event the chief election officer or the county clerk in a county election determines that the number of candidates or issues on the ballot in a special, special primary, or special general election does not require the full number of established precincts, the precincts may be consolidated for the purposes of the special, special primary, or special general election into a small number of special, special primary, or special general election precincts.

A special, special primary, or special general election precinct shall be considered the same as an established precinct for all purposes, including precinct official requirements provided in section 11-71. Not later than 4:30 p.m. on the tenth day prior to the special, special primary, or special general election, the chief election officer or the county clerk shall give public notice, in the area in which the special, special primary, or special general election is to be held, of the special, special primary, or special general election precincts and their polling places. Notices of the consolidation also shall be posted on election day at the established precinct polling places, giving the location of the special, special primary, or special general election precinct polling place. [L 1983, c 34, §11; am L 1993, c 304, §5; am L 1996, c 215, §3; am L 1998, c 2, §5]

" **§11-93 Voting units.** Immediately after the close of registration of voters preceding any election, the chief election officer shall establish one or more voting units in each precinct polling place. All voting units shall be in the same precinct polling place. In a precinct having more than one voting unit the chief election officer or the officer's authorized representative shall designate each unit by a uniform identification system. The clerk in preparing the list of registered voters shall divide the list, on an alphabetical basis, as equal as possible between or among the voting units. [L 1970, c 26, pt of §2; am L 1979, c 133, §3; gen ch 1985]

" **§11-94 Exemptions of voters on election day.** Every voter shall be privileged from arrest on election day while at the voter's polling place and in going to and returning therefrom, except in case of breach of the peace then committed, or in case of treason or felony. [L 1970, c 26, pt of §2; gen ch 1985]

" **§11-95 Employees entitled to leave on election day for voting.** (a) Any voter shall on the day of the election be entitled to be absent from any service or employment in which such voter is then engaged or employed for a period of not more than two hours (excluding any lunch or rest periods) between the time of opening and closing the polls to allow two consecutive hours in which to vote. Such voter shall not because of such absence be liable to any penalty, nor shall there be any rescheduling of normal hours or any deduction made, on account of the absence from any usual salary or wages; provided that the foregoing shall not be applicable to any employee whose hours of employment are such that the employee has a period of two consecutive hours (excluding any lunch or rest periods) between the time of opening and closing the polls when the employee is not working for the employer. If, however, any employee fails to vote after taking time off for that purpose the employer, upon verification of that fact, may make appropriate deductions from the salary or wages of the employee for the period during which the employee is hereunder entitled to be absent from employment. Presentation of a voter's receipt by an employee to the employer shall constitute proof of voting by the employee.

(b) Any person, business, or corporation who refuses an employee the privileges conferred by this section, or subjects an employee to a penalty or deduction of wages because of the exercise of the privileges, or who directly or indirectly violates this section, shall be subject to a fine of not less than \$50 nor more than \$300.

(c) Any action taken to impose or collect the fines established in this section shall be a civil action. [L 1970, c

26, pt of §2; am L 1976, c 106, §1(7); am L 1981, c 100, §1(1); am L 1998, c 236, §1]

" **§11-96 Records prima facie evidence.** Every record made pursuant to law by a board of registration of voters, or the precinct officials, shall be a prima facie evidence of the facts therein set forth, and shall be received as such in any court or tribunal in which the same is offered in evidence. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(cc)]

" **§11-97 Records open to inspection.** (a) A voter's full name, district/precinct designation, and voter status shall be public; but all other personal information, as provided on the voter registration affidavit, shall be confidential except for election or government purposes in accordance with rules adopted by the chief election officer, pursuant to chapter 91.

(b) Voted materials shall not be open to the inspection of any voter until after the end of the contest period unless opened upon order of the court. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(dd); am L 1983, c 34, §12; am L 1990, c 156, §8; am L 1997, c 157, §2]

#### **Cross References**

Government records, see chapter 92F.

" **§11-98 Forms and materials used in elections.** Books, blanks, records, certificates, and other forms and materials required by this title shall be of uniform character suitable for the voting system in use and shall be prescribed by the chief election officer after consultation with the clerks involved. [L 1970, c 26, pt of §2]

" **§11-99 Members of Congress, applicability of election laws.** The nomination and election of a senator or representative to Congress shall be in conformity to the laws applicable to the election of members of the state legislature except as expressly otherwise provided or where in conflict with federal law. [L 1970, c 26, pt of §2]

#### **"PART VIII. BALLOTS**

**§11-111 Official and facsimile ballots.** Ballots issued by the chief election officer in state elections and by the clerk in county elections are official ballots. In elections using the paper ballot and electronic voting systems, the chief election officer or clerk in the case of county elections shall



have printed informational posters containing facsimile ballots which depict the official ballots to be used in the election. The precinct officials shall post the informational posters containing the facsimiles of the official ballots near the entrance to the polling place where they may be easily seen by the voters prior to voting. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ee); am L 1975, c 36, §1(4); am L 1980, c 264, §1(f)]

### **Cross References**

Ballot boxes, see §11-134.  
Spoiled ballots, see §11-140.

### **Case Notes**

Constitutional amendment ballot form found defective. 60 H. 324, 590 P.2d 543.

" **§11-112 Contents of ballot.** (a) The ballot shall contain the names of the candidates, their party affiliation or nonpartisanship in partisan election contests, the offices for which they are running, and the district in which the election is being held. In multimember races the ballot shall state that the voter shall not vote for more than the number of seats available or the number of candidates listed where such number is less than the seats available.

(b) The ballot may include questions concerning proposed state constitutional amendments, proposed county charter amendments, or proposed initiative or referendum issues.

(c) At the chief election officer's discretion, the ballot may have a background design imprinted onto it.

(d) When the electronic voting system is used, the ballot may have pre-punched codes and printed information which identify the voting districts, precincts, and ballot sets to facilitate the electronic data processing of these ballots.

(e) The name of the candidate may be printed with the Hawaiian or English equivalent or nickname, if the candidate so requests in writing at the time the candidate's nomination papers are filed. Candidates' names, including the Hawaiian or English equivalent or nickname, shall be set on one line.

(f) The ballot shall bear no word, motto, device, sign, or symbol other than allowed in this title. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(5); am L 1977, c 189, §1(7); am L 1980, c 264, §1(g); am L 1983, c 34, §13; am L 1984, c 62, §1; am L 1996, c 173, §4]

### **Attorney General Opinions**

The "party affiliation" listed on the ballot under this section, for purposes of the presidential election, must include the names of non-qualified parties and groups that otherwise meet the requirements to appear on the presidential ballot. Att. Gen. Op. 13-2.

### Case Notes

Circuit courts may prevent use of ballots not in conformity with law and may compel officials to prepare proper ballots. 50 H. 379, 441 P.2d 138.

" **§11-113 Presidential ballots.** (a) In presidential elections, the names of the candidates for president and vice president shall be used on the ballot in lieu of the names of the presidential electors, and the votes cast for president and vice president of each political party shall be counted for the presidential electors and alternates nominated by each political party.

(b) A "national party" as used in this section shall mean a party established and admitted to the ballot in at least one state other than Hawaii or one which is determined by the chief election officer to be making a bona fide effort to become a national party. If there is no national party or the national and state parties or factions in either the national or state party do not agree on the presidential and vice presidential candidates, the chief election officer may determine which candidates' names shall be placed on the ballot or may leave the candidates' names off the ballot completely.

(c) All candidates for president and vice president of the United States shall be qualified for inclusion on the general election ballot under either of the following procedures:

(1) In the case of candidates of political parties that have been qualified to place candidates on the primary and general election ballots, the appropriate official of those parties shall file a sworn application with the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election, which shall include:

- (A) The name and address of each of the two candidates;
- (B) A statement that each candidate is legally qualified to serve under the provisions of the United States Constitution; and
- (C) A statement that the candidates are the duly chosen candidates of both the state and the

national party, giving the time, place, and manner of the selection; and

- (2) In the case of candidates of parties or groups not qualified to place candidates on the primary or general election ballots, the person desiring to place the names on the general election ballot shall file with the chief election officer not later than 4:30 p.m. on the ninetieth day prior to the general election:
  - (A) A sworn application that shall include the information required under paragraph (1)(A), (B), and (C), where applicable; and
  - (B) A petition that shall be upon the form prescribed and provided by the chief election officer containing the signatures of currently registered voters which constitute not less than one per cent of the votes cast in the State at the last presidential election. The petition shall contain the names of the candidates, a statement that the persons signing intend to support those candidates, the address of each signatory, the date of the signer's signature, and other information as determined by the chief election officer.

Prior to being issued the petition form, the person desiring to place the names on the general election ballot shall submit a notarized statement from each prospective candidate of that prospective candidate's intent to be a candidate for president or vice president of the United States on the general election ballot of the State of Hawaii. The statements by a prospective candidate for vice president may be withdrawn by that prospective candidate and an alternative candidate for vice president may be substituted any time prior to the notification of qualification or disqualification provided in subsection (d). Any substitutions shall be accompanied by a notice of substitution satisfying subparagraph (A), a statement of intent as required by this paragraph, and a letter by the candidate for president endorsing the substitute candidate for vice president. Upon receipt of a notice of substitution and all other required documents, the substitute shall replace the original candidate for vice president on the general election ballot. The petitions issued in the names of the original candidates will remain valid for the purposes of this section.

(d) Each applicant and the candidates named, shall be notified in writing of the applicant's or candidate's eligibility or disqualification for placement on the ballot not later than 4:30 p.m. on the tenth business day after filing. The chief election officer may extend the notification period up to an additional five business days, if the applicants and candidates are provided with notice of the extension and the reasons therefore.

(e) If the applicant, or any other party, individual, or group with a candidate on the presidential ballot, objects to the finding of eligibility or disqualification the person may, not later than 4:30 p.m. on the fifth day after the finding, file a request in writing with the chief election officer for a hearing on the question. A hearing shall be called not later than 4:30 p.m. on the tenth day after the receipt of the request and shall be conducted in accord with chapter 91. A decision shall be issued not later than 4:30 p.m. on the fifth day after the conclusion of the hearing. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ff); am L 1977, c 189, §1(8); am L 1983, c 34, §14; am L 1993, c 304, §6; am L 2011, c 143, §2]

### **Attorney General Opinions**

General election presidential ballots shall contain the candidate's party or group affiliation along with the candidate's name, regardless of whether the party is qualified under §§11-61 and 11-62. Att. Gen. Op. 13-2.

### **Case Notes**

Independent candidates for president denied access to State's ballot for the 2004 election appealed district court's holding that relevant provisions governing access do not violate the First and Fourteenth Amendments or the equal protection clause; district court's holding that the presidential ballot access scheme is constitutional, affirmed. 620 F.3d 1214 (2010).

" **§11-114 Order of offices on ballot.** The order of offices on a ballot shall be arranged substantially as follows: first, president and vice president of the United States; next, United States senators; next, United States house of representatives; next, governor and lieutenant governor; next, state senators; next, state representatives; and next, county offices. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(gg); am L 1980, c 264, §1(h)]

" **§11-115 Arrangement of names on the ballot.** (a) The names of the candidates shall be placed upon the ballot for their respective offices in alphabetical order except:

- (1) As provided in section 11-118;
- (2) For the limitations of the voting system in use; and
- (3) For the case of the candidates for vice president and lieutenant governor in the general election whose names shall be placed immediately below the name of the candidate for president or governor of the same political party.

(b) In elections using the paper ballot or electronic voting systems where the names of the candidates are printed and the voter records the voter's vote on the face of the ballot, the following format shall be used: A horizontal line shall be ruled between each candidate's name and the next name, except between the names of presidential and vice presidential candidates and candidates for governor and lieutenant governor of the same political party in the general election. In such case the horizontal line shall follow the name of the candidates for vice president and lieutenant governor of the same political party, thereby grouping the candidates for president and vice president and governor and lieutenant governor of the same political party within the same pair of horizontal lines.

(c) Immediately to the left of (before) or to the right of (after) the candidate name or names, according to the requirements of the voting system, two vertical lines shall be ruled, so that in conjunction with the horizontal lines, a box shall be formed to the left of or to the right of the name and its equivalent, if any.

(d) In case of the candidates for president and vice president and governor and lieutenant governor of the same political party, only one box shall be formed opposite their set of names. The boxes shall be of sufficient size to give ample room in which to designate the choice of the voter in the manner prescribed for the voting system in use. All of the names upon a ballot shall be placed at a uniform distance from the left edge and close thereto, and shall be of uniform size and print subject to section 11-119. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(hh); am L 1976, c 106, §1(8); am L 1977, c 189, §1(9); gen ch 1985; am L 2000, c 130, §1]

### **Case Notes**

Circuit courts may prevent use of ballots not in conformity with law and may compel officials to prepare proper ballots. 50 H. 379, 441 P.2d 138.

" **§11-116 Checking ballot form by candidates and parties.** Facsimiles of all ballot layouts prior to printing shall be available for viewing by the candidates and the parties at the office of the chief election officer and the county clerk as soon after the close of filing as they are available. Such layout facsimiles shall show the typefaces used, the spelling and placement of names, and other information on the ballot. [L 1970, c 26, pt of §2]

#### Case Notes

Purpose and requirement of section. 61 H. 179, 599 P.2d 286.

" **§11-117 Withdrawal of candidates; disqualification; death; notice.** (a) Any candidate may withdraw in writing not later than 4:30 p.m. on the day immediately following the close of filing for any reason and may withdraw after the close of filing up to 4:30 p.m. on the fiftieth day prior to an election for reasons of ill health. When a candidate withdraws for ill health, the candidate shall give notice in writing to the chief election officer if the candidate was seeking a congressional or state office, or the candidate shall give notice in writing to the county clerk if the candidate was seeking a county office. The notice shall be accompanied by a statement from a licensed physician or physician assistant indicating that such ill health may endanger the candidate's life.

A candidate who withdraws the candidate's own nomination papers prior to the close of filing shall not be considered to have caused a vacancy that may be filled by a party under section 11-118.

(b) On receipt of the notice of death, withdrawal, or upon determination of disqualification, the chief election officer or the clerk shall inform the chairperson of the political party of which the person deceased, withdrawing, or disqualified was a candidate. When a candidate dies, withdraws, or is disqualified after the close of filing and the ballots have been printed, the chief election officer or the clerk may order the candidate's name stricken from the ballot or order that a notice of the death, withdrawal, or disqualification be prominently posted at the appropriate polling places on election day.

(c) In no case shall the filing fee be refunded after filing. [L 1970, c 26, pt of §2; am L 1972, c 77, §5; am L 1973, c 217, §1(ii); am L 1983, c 34, §15; am L 1990, c 7, §2; am L 2009, c 151, §3; am L 2011, c 143, §3 and c 159, §1]

#### Cross References

Convicted persons, see chapter 831.

### **Attorney General Opinions**

After twenty-four hours after the close of filing, a candidate is not entitled to withdraw and to have name dropped from the ballot. Att. Gen. Op. 70-23.

### **Case Notes**

Circuit court erred in concluding that based upon individual's "withdrawal" from the district race, the office of elections was authorized pursuant to this section and/or §11-118 to allow the Republican Party three additional days to identify a "replacement" candidate; individual could not have withdrawn individual's nomination papers as the papers were void and should never have been accepted and filed by the county clerk; therefore, without these additional days, replacement individual's nomination papers were filed after the statutory deadline and individual's name should not have been on the ballot. 126 H. 115 (App.), 267 P.3d 699 (2011).

" **§11-118 Vacancies; new candidates; insertion of names on ballots.** (a) In case of death, withdrawal, or disqualification of any party candidate, the vacancy so caused may be filled by the party. The party shall be notified by the chief election officer or the clerk in the case of a county office immediately after the death, withdrawal, or disqualification.

(b) If the party fills the vacancy, and so notifies the chief election officer or clerk not later than 4:30 p.m. on the third day after the vacancy occurs, but not later than 4:30 p.m. on the fiftieth day prior to a primary or special primary election or not later than 4:30 p.m. on the fortieth day prior to a special, general, or special general election, the name of the replacement shall be printed in an available and appropriate place on the ballot, not necessarily in alphabetical order; provided that the replacement candidate fills out an application for nomination papers, signs the proper certifications on the nomination paper, and takes either an oath or affirmation as provided by law. If the party fails to fill the vacancy pursuant to this subsection, no candidate's name shall be printed on the ballot for the party for that race.

(c) If the ballots have been printed and it is not reasonably possible to insert an alternate's name, the chief election officer shall issue a proclamation informing the public that the votes cast for the vacating candidate shall be counted and the results interpreted as follows:

- (1) In a primary or special primary election:
  - (A) In partisan races, if, but for candidate's vacancy, the vacating candidate would have been nominated pursuant to section 12-41(a), a vacancy shall exist in the party's nomination, to be filled in accordance with subsection (b); and
  - (B) In nonpartisan races, if, but for the candidate's vacancy, the vacating candidate would have qualified as a candidate for the general or special general election ballot pursuant to section 12-41(b), the nonpartisan candidate who received the next highest number of votes shall be placed on the ballot; provided that the candidate also meets the requirements of section 12-41(b);
- (2) In a special, general, or special general election, if, but for the candidate's vacancy, the vacating candidate would have been elected, a vacancy shall exist in the office for which the race in question was being held, to be filled in the manner provided by law for vacancies in office arising from the failure of an elected official to serve the official's full term because of death, withdrawal, or removal; and
- (3) In any other case where, but for the candidate's vacancy, the vacating candidate would have been deemed elected, a vacancy shall exist in the office for which the candidate has filed, to be filled in the manner provided by law for vacancies in office arising from the failure of an elected official to serve the official's full term in office because of death, withdrawal, or removal.

(d) The parties shall adopt rules to comply with this provision, and those rules shall be submitted to the chief election officer.

(e) The chief election officer or county clerk in county elections may waive any or all of the foregoing requirements in special circumstances as provided in the rules adopted by the chief election officer.

(f) For the purposes of this section, "party candidate" means the person or persons who would be the candidate or candidates of the party under section 12-41(a). [L 1970, c 26, pt of §2; am L 1973, c 217, §1(jj); am L 1980, c 247, §1; am L 1983, c 34, §16; am L 1986, c 305, §1; am L 1990, c 7, §3; am L 2000, c 124, §1; am L 2011, c 159, §2]

#### Case Notes



Circuit court erred in concluding that based upon individual's "withdrawal" from the district race, the office of elections was authorized pursuant to §11-117 and/or this section to allow the Republican Party three additional days to identify a "replacement" candidate; individual could not have withdrawn individual's nomination papers as the papers were void and should never have been accepted and filed by the county clerk; therefore, without these additional days, replacement individual's nomination papers were filed after the statutory deadline and individual's name should not have been on the ballot. 126 H. 115 (App.), 267 P.3d 699 (2011).

" **§11-118.5 Constitutional amendments, proposed.** Any constitutional amendment proposed by the legislature shall include in final form the exact constitutional ratification question to be printed on a ballot. The constitutional ratification question shall be phrased in a manner to enable voters to express their choice on the constitutional amendment by providing a "yes" or "no" response. The language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive. [L 1996, c 173, §1; am L 1997, c 2, §17]

" **§11-119 Printing; quantity.** (a) The ballots shall be printed by order of the chief election officer or the clerk in the case of county elections. In any state or county election the chief election officer on agreement with the clerk may consolidate the printing contracts for similar types of ballots where such consolidation will result in lower costs.

(b) Whenever the chief election officer is responsible for the printing of ballots, unless provided otherwise, the exact wording to appear thereon, including questions and issues shall be submitted to the chief election officer not later than 4:30 p.m. on the seventy-fifth calendar day prior to the applicable election.

(c) Based upon clarity and available space, the chief election officer or the clerk in the case of county elections shall determine the style and size of type to be used in printing the ballots. The color, size, weight, shape, and thickness of the ballot shall be determined by the chief election officer.

(d) Each precinct shall receive a sufficient number of ballots based on the number of registered voters and the expected spoilage in the election concerned. A sufficient number of absentee ballots shall be delivered to each clerk not later than 4:30 p.m. on the fifteenth day prior to the date of any election. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(kk);

am L 1975, c 36, §1(6); am L 1976, c 106, §1(9); am L 1979, c 133, §4; am L 1980, c 264, §1(i); am L 1985, c 203, §4; am L 2011, c 143, §4]

" **§11-120 Distribution of ballots; record.** The chief election officer or the county clerk in county elections shall forward the official ballots, specimen ballots, and other materials to the precinct officials of the various precincts. They shall be delivered and kept in a secure fashion in accordance with rules and regulations promulgated by the chief election officer. In no case shall they arrive later than the opening of the polls on election day.

A record of the number of ballots sent to each precinct shall be kept by the chief election officer or the clerk. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(11)]

" **[§11-121] Ballot images.** A voter shall not be prohibited from distributing or sharing an electronic or digital image of the voter's own marked ballot via social media or other means regardless of how the voter acquired the image; provided that this section shall not be a defense for any election offenses under chapter 19 or related offenses under the Penal Code. [L 2016, c 81, §1]

#### **Cross References**

Ballot removal or exhibition; prohibition, see §11-137.

#### **"PART IX. VOTING PROCEDURES**

**§11-131 Hours of voting.** The polls shall be opened by the precinct officials at 7:00 a.m. of the election day and shall be kept open continuously until 6:00 p.m. of that day. If, at the closing hour of voting, any voter desiring to vote is standing in line outside the entrance of the polls with the desire of entering and voting, but due to the polling place being overcrowded has been unable to do so, the voter shall be allowed to vote irrespective of the closing hour of voting. No voter shall be permitted to enter or join the line after the prescribed hour for closing the polls. If all of the registered voters of the precinct have cast their votes prior to the closing time, the polls may be closed earlier but the votes shall not be counted until after closing time unless allowed by the chief election officer. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(mm); gen ch 1985]

#### **Cross References**

Voting systems, see chapter 16.

" **§11-132 Two hundred foot radius; admission within polling place.** (a) The precinct officials shall post in a conspicuous place, prior to the opening of the polls, a map designating an area of two hundred feet from the perimeter of the polling place and its appurtenances. Any person who remains or loiters within an area of two hundred feet from the perimeter of the polling place and its appurtenances for the purpose of campaigning shall be guilty of a misdemeanor. For the purposes of this section, a polling place and its appurtenances shall include:

- (1) The building in which the polling place is located;
- (2) Any parking lot adjacent to the building and routinely used for parking at that building;
- (3) The routes of access between the building and any parking lot; and
- (4) Any route of access between any public thoroughfare (right of way) and the polling place to ensure an open and accessible ingress and egress to and from the polling place for voters.

(b) The chief election officer may regulate other activities within the area specified in subsection (a) pursuant to rules adopted by the chief election officer under chapter 91 in order to ensure the safe and orderly conduct of elections.

(c) Admission within the polling place shall be limited to the following:

- (1) Election officials;
- (2) Watchers, if any, pursuant to section 11-77;
- (3) Candidates;
- (4) Any voters actually engaged in voting, going to vote or returning from voting;
- (5) Any person, designated by a voter who is physically disabled, while the person is assisting the voter;
- (6) Any person or nonvoter group authorized by the chief election officer or the clerk in county elections to observe the election at designated precincts for educational purposes provided that they conduct themselves so that they do not interfere with the election process; and
- (7) A child for the purpose of observing the voting process when accompanied by an adult who is voting provided that this activity does not disrupt or interfere with normal voting procedures.

(d) Within the appropriate boundary as established in subsection (a), and the building in which the polling place is located, the display or distribution of campaign posters, signs,

or other campaign materials for the purpose of soliciting votes for or against any person or political party or position on a question is prohibited. Any voter who displays campaign material in the polling place shall remove or cover that material before entering the polling place. The chief election officer may adopt rules pursuant to chapter 91 to address special circumstances regarding the display of campaign materials. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(nn); am L 1975, c 36, §1(7); am L 1980, c 264, §1(j); gen ch 1985; am L 1993, c 97, §2; am L 1994, c 95, §1]

### **Attorney General Opinions**

Precludes "exit polling" within a polling place and within a thousand-foot radius thereof. Att. Gen. Op. 84-4.

" **§11-133 Voting booths; placement of visual aids.** The precinct officials shall provide sufficient voting booths within the polling place at or in which the voters may conveniently cast their ballots. The booths shall be so arranged that in casting the ballots the voters are screened from the observation of others.

Visual aids shall be posted at or in each voting booth and in conspicuous places outside the polling place before the opening of the polls. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(oo); am L 1975, c 36, §1(7A); am L 1981, c 100, §1(2)]

" **§11-134 Ballot transport containers; ballot boxes.** (a) The seals of the ballot transport containers shall be broken and opened on election day only in the presence of at least two precinct officials not of the same political party.

(b) The chief election officer shall provide suitable ballot boxes for each polling place needed. They shall have a hinged lid fastened securely by a nonreusable seal. In the center of the lid there shall be an aperture of the appropriate size for the voting system used. The ballot boxes shall be placed at a point convenient for the deposit of ballots and where they can be observed by the precinct officials.

(c) At the opening of the polls for election, the chairperson of the precinct officials shall publicly open the ballot boxes and expose them to all persons present to show that they are empty. The ballot boxes shall be closed and sealed; they shall remain sealed until transported to the counting center; provided that, in precincts where the electronic voting system is used, the ballot boxes shall not be opened at the polling places except as provided by rules adopted pursuant to

chapter 91. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(8); am L 1980, c 264, §1(k); am L 1983, c 34, §17]

" **§11-135 Early collection of ballots.** In an electronic ballot system election the chief election officer may authorize collection of voted ballots before the closing of the polls in order to facilitate the counting of ballots; provided that the voted ballots shall be returned to the counting center in sealed ballot boxes. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(pp); am L 1975, c 36, §1(9); am L 1980, c 264, §1(l); am L 1983, c 34, §18]

" **§11-136 Poll book, identification, voting.** Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person.

After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(qq); gen ch 1985, 1993; am L 2003, c 23, §1]

" **§11-137 Secrecy; removal or exhibition of ballot.** No person shall look at or ask to see the contents of the ballot or the choice of party or nonpartisan ballot of any voter, except as provided in section 11-139 and 11-132, nor shall any person within the polling place attempt to influence a voter in regard to whom the voter shall vote for. When a voter is in the voting booth for the purpose of voting, no other person, except as provided in section 11-139 and 11-132, shall be allowed to enter the booth or to be in a position from which the person can observe how the voter votes.

No person shall take a ballot out of the polling place except as provided in sections 11-135 and 11-139. After voting the voter shall leave the voting booth and deliver the voter's ballot to the precinct official in charge of the ballot boxes. The precinct official shall make certain that the precinct official has received the correct ballot and no other and then shall deposit the ballot into the ballot box. No person shall look at or ask to see the contents of the unvoted ballots. If any person having received a ballot leaves the polling place without first delivering the ballot to the precinct official as

provided above, or wilfully exhibits the person's ballot or the person's unvoted ballots in a special primary or primary election, except as provided in section 11-139 and 11-132, after the ballot has been marked, the person shall forfeit the person's right to vote, and the chairperson of the precinct officials shall cause a record to be made of the proceeding. [L 1970, c 26, pt of §2; am L 1972, c 158, §1; am L 1973, c 217, §1(rr); am L 1975, c 36, §1(10); am L 1980, c 264, §1(m); gen ch 1985; am L 1993, c 97, §3]

### **Cross References**

Distribution or sharing of electronic or digital image of a voter's own marked ballot via social media, see §11-121.

### **Attorney General Opinions**

Precludes "exit polling" within a polling place and within a thousand-foot radius thereof. Att. Gen. Op. 84-4.

" **§11-138 Time allowed voters.** A voter shall be allowed to remain in the voting booth for five minutes, and having voted the voter shall at once emerge and leave the voting booth. If the voter refuses to leave when so requested by a majority of precinct officials after the lapse of five minutes, the voter shall be removed by the precinct officials. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ss); am L 1980, c 264, §1(n); gen ch 1985]

" **§11-139 Voting assistance.** (a) Except as otherwise provided, any voter who requires assistance to vote at a polling place or by absentee ballot may be given assistance by a person of the voter's choice. If the voter requires assistance at a polling place, the voter may choose to receive the assistance of two precinct officials who are not of the same political party. Additionally, a voter needing assistance at a polling place may choose to be handed a ballot outside the polling place but within one hundred feet thereof or within the polling place parking lot by the precinct officials and in their presence but in a secret manner, mark and return the same to the precinct officials. The voter's employer or agent of that employer, agent of the voter's labor union, or a candidate for any office that is listed on the ballot shall not provide assistance. Written or oral instructions delivered via telephone, electronic means, or mail shall not be deemed assistance prohibited by this section provided the voter's employer or agent of that employer, agent of the voter's labor union, or a candidate for any office

listed on the ballot is not physically present with the voter when the instructions are delivered.

(b) If assistance is provided pursuant to subsection (a), the precinct officials providing assistance shall enter in writing in the record book the following:

- (1) The voter's name;
- (2) The fact that the voter cannot read the names on the ballot, if that is the reason for requiring assistance, and otherwise, the specific physical disability which requires the voter to receive assistance; and
- (3) The name or names of the person or persons furnishing the assistance.

(c) Violation of this section by an employer or agent of that employer, agent of the voter's labor union, or a candidate shall constitute election fraud as provided under section 19-3. [L 1970, c 26, pt of §2; am L 1972, c 158, §2; am L 1973, c 217, §1(tt); am L 1985, c 203, §5; am L 2002, c 89, §1; am L 2013, c 235, §2]

" **§11-140 Spoiled ballots.** In elections using the paper ballot and electronic voting systems, if a voter spoils a ballot, the voter may obtain another upon returning the spoiled one. Before returning the spoiled ballot, the voter shall conform to the procedure promulgated by the chief election officer to retain the secrecy of the vote. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(uu); am L 1975, c 36, §1(11); am L 1980, c 264, §1(o); am L 1981, c 100, §1(3)]

#### "PART X. VOTE DISPOSITION

**§11-151 Vote count.** Each contest or question on a ballot shall be counted independently as follows:

- (1) If the votes cast in a contest or question are equal to or less than the number to be elected or chosen for that contest or question, the votes for that contest or question shall be counted;
- (2) If the votes cast in a contest or question exceed the number to be elected or chosen for that contest or question, the votes for that contest or question shall not be counted; and
- (3) If a contest or question requires a majority of the votes for passage, any blank, spoiled, or invalid ballot shall not be tallied for passage or as votes cast except that such ballots shall be counted as votes cast in ratification of a constitutional amendment or a question for a constitutional

convention. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(12); am L 1986, c 305, §2; am L 2000, c 54, §1]

" **§11-152 Method of counting.** (a) In an election using the paper ballot voting system, immediately after the close of the polls, the chairperson of the precinct officials shall open the ballot box. The precinct officials at the precinct shall proceed to count the votes as follows:

- (1) The whole number of ballots shall first be counted to see if their number corresponds with the number of ballots cast as recorded by the precinct officials;
- (2) If the number of ballots corresponds with the number of persons recorded by the precinct officials as having voted, the precinct officials shall then proceed to count the vote cast for each candidate;
- (3) If there are more ballots or less ballots than the record calls for the precinct officials shall proceed as directed in section 11-153.

(b) In those precincts using the electronic voting system, the ballots shall be taken in the sealed ballot boxes to the counting center according to the procedure and schedule promulgated by the chief election officer to promote the security of the ballots. In the presence of official observers, counting center employees may start to count the ballots prior to the closing of the polls provided there shall be no printout by the computer or other disclosure of the number of votes cast for a candidate or on a question prior to the closing of the polls. For the purposes of this section, the closing of the polls is that time identified in section 11-131 as the closing hour of voting. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(vv); am L 1975, c 36, §1(13); am L 1977, c 189, §1(10); am L 1980, c 264, §1(p); am L 1993, c 304, §7; gen ch 1993]

" **§11-153 More or less ballots than recorded.** (a) If there are more ballots than the poll book indicates, this shall be an overage and if less ballots, it shall be an underage. The election officials or counting center employees responsible for the tabulation of ballots shall make a note of this fact on a form to be provided by the chief election officer. The form recording the overage or underage shall be sent directly to the chief election officer or the clerk in county elections separate and apart from the other election records.

(b) If the electronic voting system is being used in an election, the overage or underage shall be recorded after the tabulation of the ballots. In an election using the paper ballot voting system, the precinct officials shall proceed to



count the votes cast for each candidate or on a question after recording the overage or underage.

(c) The chief election officer or the clerk shall make a list of all precincts in which an overage or underage occurred and the amount of the overage or underage. This list shall be filed and kept as a public record in the office of the chief election officer or the clerk in county elections and the clerk's office in counties other than the city and county of Honolulu in elections involving state candidates.

An election contest may be brought under part XI, if the overage or underage in any district could affect the outcome of an election. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(14); am L 1997, c 61, §1]

" **§11-154 Records, etc.; disposition.** The final duty of the precinct officials in the operation of the precinct shall be to gather all records and supplies delivered to them and return them to the sending official, either the chief election officer or the county clerk.

The voted ballots shall be kept secure and handled only in the presence of representatives not of the same political party in accordance with regulations promulgated for the various voting systems. After all the ballots have been tabulated they shall be sealed in containers. Thereafter these containers shall be unsealed and resealed only as prescribed by rules and regulations governing the elections.

The ballots and other election records may be destroyed by the chief election officer or county clerk when all elected candidates have been certified by the chief election officer, or in the case of candidates for county offices, by the county clerk. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(wv)]

#### **Cross References**

Records open to inspection, see §11-97.

" **§11-155 Certification of results of election.** On receipt of certified tabulations from the election officials concerned, the chief election officer or county clerk in county elections shall compile, certify, and release the election results after the expiration of the time for bringing an election contest. The certification shall be based on a comparison and reconciliation of the following:

- (1) The results of the canvass of ballots conducted pursuant to chapter 16;
- (2) The audit of pollbooks (and related record books) and resultant overage and underage report;

- (3) The audit results of the manual audit team;
- (4) The results of the absentee ballot reconciliation report compiled by the clerks; and
- (5) All logs, tally sheets, and other documents generated during the election and in the canvass of the election results.

A certificate of election or a certificate of results declaring the results of the election as of election day shall be issued pursuant to section 11-156; provided that in the event of an overage or underage, a list of all precincts in which an overage or underage occurred shall be attached to the certificate. The number of candidates to be elected receiving the highest number of votes in any election district shall be declared to be elected. Unless otherwise provided, the term of office shall begin or end as of the close of polls on election day. The position on the question receiving the appropriate majority of the votes cast shall be reflected in a certificate of results issued pursuant to section 11-156. [L 1970, c 26, pt of §2; am L 1980, c 264, §1(b); am L 1986, c 305, §3; am L 1997, c 61, §2]

**Attorney General Opinions**

When board of education members can assume official duties.  
Att. Gen. Op. 86-21.

" **§11-156 Certificate of election and certificate of results, form.** The chief election officer or county clerk shall deliver certificates of election to the persons elected as determined under section 11-155. The chief election officer or county clerk in county elections shall issue certificates of results where a question has been voted upon. Certificates of election shall be delivered only after the:

- (1) Filing of reports in accordance with sections 11-331 and 11-333; and
- (2) Payment of any fine assessed by the campaign spending commission,

by the person elected in accordance with part XIII and after the expiration of time for bringing an election contest. The certificate of election shall be substantially in the following form:

**CERTIFICATE OF ELECTION**

I,....., chief election officer (county clerk) of Hawaii (county), do hereby certify that ..... was on the ..... day of ..... 20....., duly elected a ..... (name of office) for the

..... district for a term expiring on the  
..... day of ....., A.D. 20.....

Witness my hand this ..... day of .....,  
A.D. 20.....

.....  
Chief Election Officer (County Clerk)

The certificate of results shall be substantially in the  
following form:

**CERTIFICATE OF RESULTS**

I, ....., chief election officer  
(county clerk) of Hawaii (county), do hereby certify that  
..... (question) was on the ..... day of  
..... 20....., duly adopted (rejected) by a majority of  
the votes cast.

.....  
Chief Election Officer (County Clerk)

If there is an election contest these certificates shall be  
delivered only after a final determination in the contest has  
been made and the time for an appeal has expired. [L 1970, c 26,  
pt of §2; am L 1986, c 305, §4; am L 2012, c 34, §1; am L 2014,  
c 139, §1]

" **§11-157 In case of tie.** In case of the failure of an  
election by reason of the equality of vote between two or more  
candidates, the tie shall be decided by the chief election  
officer or county clerk in the case of county elections in  
accordance with the following procedure:

(1) In the case of an election involving a seat for the  
senate, house of representatives, or county council  
where only voters within a specified district are  
allowed to cast a vote, the winner shall be declared  
as follows:

(A) For each precinct in the affected district, an  
election rate point shall be calculated by  
dividing the total voter turnout in that precinct  
by the total voter turnout in the district. For  
the purpose of this subparagraph, the absentee  
votes cast for the affected district shall be  
treated as a precinct. The election rate point  
shall be calculated by dividing the total  
absentee votes cast for the affected district by  
the total voter turnout in that district. All  
election rate points shall be expressed as

- decimal fractions rounded to the nearest hundred thousandth;
- (B) The candidate with the highest number of votes in a precinct shall be allocated the election rate point calculated under subparagraph (A) for that precinct. In the event that two or more persons are tied in receiving the highest number of votes for that precinct, the election rate point shall be equally apportioned among those candidates involved in that precinct tie;
  - (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as provided under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner; and
  - (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the precinct with the largest voter turnout shall be declared the winner;
- (2) In the case of an election involving a federal office or an elective office where the voters in the entire State or in an entire county are allowed to cast a vote, the winner shall be declared as follows:
- (A) For each representative district in the State or county, as the case may be, an election rate point shall be calculated by dividing the total voter turnout in that representative district by the total voter turnout in the state, county, or federal office district, as the case may be; provided that for purposes of this subparagraph:
    - (i) The absentee votes cast for a statewide, countywide, or federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total absentee votes cast for the statewide, countywide, or federal office by the total voter turnout in the state, county, or federal office district, as the case may be; and
    - (ii) The overseas votes cast for any election in the State for a federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total number

of overseas votes cast for the affected federal office by the total voter turnout in the affected federal office district. The term "overseas votes" means those votes cast by absentee ballots for a presidential election as provided in section 15-3.

All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth;

- (B) The candidate with the highest number of votes in a representative district shall be allocated the election rate point calculated under subparagraph (A) for that district. In the event that two or more persons are tied in receiving the highest number of votes for that district, the election rate point shall be equally apportioned among those candidates involved in that district tie;
- (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as prescribed under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner; and
- (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the representative district with the largest voter turnout shall be declared the winner. [L 1970, c 26, pt of §2; gen ch 1985; am L 1990, c 198, §2; am L 1996, c 239, §2; am L 2011, c 5, §3; am L 2012, c 34, §2]

## "PART XI. ELECTION CONTESTS

### Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(b)(10); appeal to appellate courts, see Hawaii Rules of Appellate Procedure.

**§11-171 Applicability of this part.** This part shall apply whenever a contested election is subject to determination by a court of competent jurisdiction in the manner provided by law. [L 1970, c 26, pt of §2]

### Case Notes

The court has jurisdiction to decide election contest involving legislative seat. 51 H. 354, 461 P.2d 221.

Supreme court has jurisdiction to determine validity of the manner of submission and ratification of state constitution amendments. 60 H. 324, 590 P.2d 543.

" **§11-172 Contests for cause; generally.** With respect to any election, any candidate, or qualified political party directly interested, or any thirty voters of any election district, may file a complaint in the supreme court. The complaint shall set forth any cause or causes, such as but not limited to, provable fraud, overages, or underages, that could cause a difference in the election results. The complaint shall also set forth any reasons for reversing, correcting, or changing the decisions of the precinct officials or the officials at a counting center in an election using the electronic voting system. A copy of the complaint shall be delivered to the chief election officer or the clerk in the case of county elections. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(xx); am L 1975, c 36, §1(15); am L 1991, c 9, §2]

#### Case Notes

A candidate's campaign coordinator has no standing to contest election. 56 H. 47, 527 P.2d 236.

Sufficiency of complaint. 56 H. 47, 527 P.2d 236.

Electorate as whole had standing. 61 H. 179, 599 P.2d 286.

Plaintiffs failed to meet burden of demonstrating that irregularities in voting procedures for OHA trustees either could have caused a difference in election outcome or could have precluded the correct result from being ascertained. 84 H. 383, 935 P.2d 98.

Where plaintiff made no showing that defendant was under any obligation to debate plaintiff, the refusal to debate was not an error, mistake, or irregularity that would have changed the results of the election; thus plaintiff failed to meet plaintiff's burden of demonstrating errors, mistakes, or irregularities that could have caused a difference in the election results and the remedy of ordering a new election with televised debates was not authorized by §11-174.5(b). 119 H. 337, 198 P.3d 124.

" **§11-173 REPEALED.** L 1973, c 217, §1(yy).

" **§11-173.5 Contests for cause in primary, special primary elections, and county elections held concurrently with a**

**regularly scheduled primary or special primary election.** (a) In primary and special primary election contests, and county election contests held concurrently with a regularly scheduled primary or special primary election, the complaint shall be filed in the office of the clerk of the supreme court not later than 4:30 p.m. on the sixth day after a primary or special primary election, or county election contests held concurrently with a regularly scheduled primary or special primary election, and shall be accompanied by a deposit for costs of court as established by rules of the supreme court. The clerk shall issue to the defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the fifth day after service thereof.

(b) In primary and special primary election contests, and county election contests held concurrently with a regularly scheduled primary or special primary election, the court shall hear the contest in a summary manner and at the hearing the court shall cause the evidence to be reduced to writing and shall not later than 4:30 p.m. on the fourth day after the return give judgment fully stating all findings of fact and of law. The judgment shall decide what candidate was nominated or elected, as the case may be, in the manner presented by the petition, and a certified copy of the judgment shall forthwith be served on the chief election officer or the county clerk, as the case may be, who shall place the name of the candidate declared to be nominated on the ballot for the forthcoming general, special general, or runoff election. The judgment shall be conclusive of the right of the candidate so declared to be nominated; provided that this subsection shall not operate to amend or repeal section 12-41. [L 1973, c 217, §1(aaa); am L 1974, c 34, §1(c); am L 1979, c 133, §5; am L 1998, c 22, §2]

### **Rules of Court**

Collection of costs and fees by appellate clerk, see HRAP rule 45(e).

" **§11-174 REPEALED.** L 1973, c 217, §1(zz).

" **§11-174.5 Contests for cause in general, special general, special, and runoff elections.** (a) In general, special general, special, or runoff elections, the complaint shall be filed in the office of the clerk of the supreme court not later than 4:30 p.m. on the twentieth day following the general, special general, special, or runoff election and shall be accompanied by a deposit for costs of court as established by rules of the supreme court. The clerk shall issue to the

defendants named in the complaint a summons to appear before the supreme court not later than 4:30 p.m. on the tenth day after service thereof.

(b) In cases involving general, special general, special, or runoff elections the complaint shall be heard by the supreme court in which the complaint was filed as soon as it reasonably may be heard. On the return day, the court, upon its motion or otherwise, may direct summons to be issued to any person who may be interested in the result of the proceedings.

At the hearing, the court shall cause the evidence to be reduced to writing and shall give judgment, stating all findings of fact and of law. The judgment may invalidate the general, special general, special, or runoff election on the grounds that a correct result cannot be ascertained because of a mistake or fraud on the part of the precinct officials; or decide that a certain candidate, or certain candidates, received a majority or plurality of votes cast and were elected. If the judgment should be that the general, special general, special, or runoff election was invalid, a certified copy thereof shall be filed with the governor, and the governor shall duly call a new election to be held not later than one hundred twenty days after the judgment is filed. If the court shall decide which candidate or candidates have been elected, a copy of that judgment shall be served on the chief election officer or county clerk, who shall sign and deliver to the candidate or candidates certificates of election, and the same shall be conclusive of the right of the candidate or candidates to the offices. [L 1973, c 217, §1(bbb); am L 1979, c 133, §6; gen ch 1985; am L 1998, c 22, §3 and c 123, §1]

### **Rules of Court**

Costs, see HRAP rule 39; collection of costs and fees by appellate clerk, see HRAP rule 45(e).

### **Case Notes**

Where plaintiffs had opportunity to correct irregularities in ballot prior to the election, they cannot complain afterward. 61 H. 179, 599 P.2d 286.

Plaintiffs failed to meet burden of demonstrating that irregularities in voting procedures for OHA trustees either could have caused a difference in election outcome or could have precluded the correct result from being ascertained. 84 H. 383, 935 P.2d 98.

The twenty-day provision of subsection (a) is mandatory, and the "no later than 4:30 p.m." provision of subsection (a) is



directory; thus, plaintiff's complaint filed at 4:32 p.m. on November 24, 2008 was filed within the time provisions of subsection (a). 119 H. 337, 198 P.3d 124.

Where plaintiff made no showing that defendant was under any obligation to debate plaintiff, the refusal to debate was not an error, mistake, or irregularity that would have changed the results of the election; thus plaintiff failed to meet plaintiff's burden of demonstrating errors, mistakes, or irregularities that could have caused a difference in the election results and the remedy of ordering a new election with televised debates was not authorized by subsection (b). 119 H. 337, 198 P.3d 124.

" **§11-175 Powers of supreme court; costs.** The supreme court may compel the attendance of witnesses, punish contempts, and do whatsoever else may be necessary fully to determine the proceedings, and enforce its decrees therein. The court may make such special rules as it may find necessary or proper. The costs shall be as provided by the supreme court by rule. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(ccc); am L 1993, c 6, §3]

#### Case Notes

Where it could not be said that defendants engaged in repeated violations of the same matters under the Hawaii constitution, sanctions in the form of attorneys' fees pursuant to this section were not appropriate. 110 H. 327, 132 P.3d 1238.

" **§11-176 REPEALED.** L 1973, c 217, §1(ddd).

#### "PART XII. EXPENSES

##### A. Election Expenses

**§11-181 Capital equipment.** The State shall pay for all voting system capital equipment. This shall include, but not be limited to voting machines, voting devices, and initial computer programs. [L 1970, c 26, pt of §2; am L 1975, c 36, §1(16)]

" **§11-182 Election expenses when no county elections.** All expenses, including expenses attributable to registration of voters by the county clerk, for state elections conducted in any county which do not involve elections for county offices shall be borne by the State and paid out of such appropriations as may be made by the legislature for election purposes. [L 1970, c 26, pt of §2]

## Cross References

Precinct officials' compensation, see §11-76.

" **§11-183 Election expenses when no state elections.** All expenses for county elections which do not involve state offices shall be borne by the county and paid out of such appropriations as may be made by the council for election purposes. [L 1970, c 26, pt of §2]

" **§11-184 Election expenses and responsibilities in combined state and county elections.** Election expenses in elections involving both state and county offices shall be shared as set forth below:

- (1) The State shall pay and be responsible for:
  - (A) Precinct officials;
  - (B) Instruction of precinct officials when initiated or approved by the chief election officer;
  - (C) Boards of registration;
  - (D) Polling place costs other than supplies: installation rentals, ballot boxes, voting booths, custodians, telephones, and maintenance;
  - (E) Other equipment such as ballot transport containers;
  - (F) Temporary election employees hired to do strictly state work; and
  - (G) Extraordinary voter registration and voter education costs when approved by the chief election officer.
- (2) The county shall pay and be responsible for:
  - (A) Normal voter registration, voters list maintenance, and all printing connected with voter registration, including printing of the voters list;
  - (B) Temporary election employees hired to do strictly county work;
  - (C) Maintenance of existing voting machines, including parts, freight, storage, programming, and personnel;
  - (D) Maintenance and storage of voting devices and other equipment; and
  - (E) Employees assigned to conduct absentee polling place functions.
- (3) The remaining election expenses shall be divided in half between the State and the counties. Each county will pay a proration of expenses as a proportion of

the registered voters at the time of the general election. These expenses shall include but not be limited to:

- (A) Polling place supplies;
- (B) All printing, including ballots, but excluding printing connected with voter registration;
- (C) Temporary election employees not including voting machine programmers doing work for both the State and county;
- (D) Ballot preparation and packing; and
- (E) All other costs for which the State or county are not specifically responsible relating to the operation of voting machines, electronic voting systems, and other voting systems except paper ballots to include but not be limited to real property rentals, equipment rentals, personnel, mileage, telephones, supplies, publicity, computer programming, and freight.

The responsibility for the above functions shall be determined by the chief election officer where the responsibility for such functions has not been assigned by the legislature.

Any future expenses not presently incurred under any voting system now in use or to be used shall be assigned to paragraphs (1), (2), or (3) above by the chief election officer upon agreement with the clerks or by the legislature. [L 1970, c 26, pt of §2; am L 1973, c 217, §1(eee); am L 1976, c 106, §1(10)]

"B. Election Campaign Contributions  
and Expenditures--Repealed

**§§11-191 to 11-213 [OLD] REPEALED.** L 1979, c 224.

**§§11-191 to 11-225 REPEALED.** L 2010, c 211, §9.

" **§11-226 REPEALED.** L 2010, c 59, §2 and c 211, §9.

" **§§11-227 to 11-229 REPEALED.** L 2010, c 211, §9.

"[PART XIII.] CAMPAIGN FINANCE

A. GENERAL PROVISIONS

**[§11-301] Purpose.** The purpose of this part is to provide transparency in the campaign finance process. Any ambiguity in the provisions of this part shall be construed to support transparency. [L 2010, c 211, pt of §2]

" **[\$11-302] Definitions.** When used in this part:

"Advertisement" means any communication, excluding sundry items such as bumper stickers, that:

- (1) Identifies a candidate directly or by implication, or identifies an issue or question that will appear on the ballot at the next applicable election; and
- (2) Advocates or supports the nomination, opposition, or election of the candidate, or advocates the passage or defeat of the issue or question on the ballot.

"Ballot issue committee" means a noncandidate committee that has the exclusive purpose of making or receiving contributions, making expenditures, or incurring financial obligations for or against any question or issue appearing on the ballot at the next applicable election.

"Campaign funds" means contributions, interest, rebates, refunds, loans, or advances received by a candidate committee or noncandidate committee.

"Candidate" means an individual who seeks nomination for election or seeks election to office. An individual remains a candidate until the individual's candidate committee terminates registration with the commission. An individual is a candidate if the individual does any of the following:

- (1) Files nomination papers for an office for the individual with the county clerk's office or with the chief election officer's office, whichever is applicable;
- (2) Receives contributions, makes expenditures, or incurs financial obligations of more than \$100 to bring about the individual's nomination for election, or to bring about the individual's election to office;
- (3) Gives consent for any other person to receive contributions, make expenditures, or incur financial obligations to aid the individual's nomination for election, or the individual's election, to office; or
- (4) Is certified to be a candidate by the chief election officer or county clerk.

"Candidate committee" means an organization, association, or individual that receives campaign funds, makes expenditures, or incurs financial obligations on behalf of a candidate with the candidate's authorization.

"Clearly identified" means the inclusion of name, photograph or other similar image, or other unambiguous identification of a candidate.

"Commission" means the campaign spending commission.

"Commissioner" means any person appointed to the commission.

"Contribution" means:

- (1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers, for the purpose of:
  - (A) Influencing the nomination for election, or the election, of any person to office;
  - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
  - (C) Use by any candidate committee or noncandidate committee for the purpose of subparagraph (A) or (B);
- (2) The payment, by any person or party other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee without charge or at an unreasonably low charge for a purpose listed in paragraph (1);
- (3) A contract, promise, or agreement to make a contribution; or
- (4) Any loans or advances that are not documented or disclosed to the commission as provided in section 11-372;

"Contribution" does not include:

- (1) Services voluntarily provided without compensation by individuals to or on behalf of a candidate, candidate committee, or noncandidate committee;
- (2) A candidate's expenditure of the candidate's own funds; provided that this expenditure shall be reportable as other receipts and expenditures;
- (3) Any loans or advances to the candidate committee; provided that these loans or advances shall be reported as loans; or
- (4) An individual, candidate committee, or noncandidate committee engaging in internet activities for the purpose of influencing an election if:
  - (A) The individual, candidate committee, or noncandidate committee is uncompensated for the internet activities; or
  - (B) The individual, candidate committee, or noncandidate committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services.

"Earmarked funds" means contributions received by a candidate committee or noncandidate committee on the condition

that the funds be contributed to or expended on certain candidates, issues, or questions.

"Election" means any election for office or for determining a question or issue provided by law or ordinance.

"Election period" means:

- (1) The two-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a two-year office;
- (2) The four-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a four-year office; or
- (3) For a special election, the period between the day after the general election for that office through the day of the special election.

"Equipment and services" includes computers, software, internet domain names, internet service providers, and any other technology that is used to provide access to or use of the Internet.

"Expenditure" means:

- (1) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution for the purpose of:
  - (A) Influencing the nomination for election, or the election, of any person seeking nomination for election or election to office, whether or not the person has filed the person's nomination papers;
  - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
  - (C) Use by any party for the purposes set out in subparagraph (A) or (B);
- (2) Any payment, by any person other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee for any of the purposes mentioned in paragraph (1)(A); provided that payment under this paragraph shall include provision of services without charge; or
- (3) The expenditure by a candidate of the candidate's own funds for the purposes set out in paragraph (1)(A).

"Expenditure" does not include:

- (1) Services voluntarily provided without compensation by individuals to or on behalf of a candidate, candidate committee, or noncandidate committee;
- (2) Voter registration efforts that are nonpartisan; or
- (3) An individual, candidate committee, or noncandidate committee engaging in internet activities for the purpose of influencing an election if:
  - (A) The individual, candidate committee, or noncandidate committee is uncompensated for internet activities; or
  - (B) The individual, candidate committee, or noncandidate committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services;provided that the internet activity exclusion does not apply to any payment for an advertisement other than a nominal fee; the purchase or rental of an electronic address list made at the direction of a candidate committee or noncandidate committee; or an electronic mail address list that is transferred to a candidate committee or noncandidate committee.

"House bulletin" means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.

"Immediate family" means a candidate's spouse or reciprocal beneficiary, as defined in section 572C-3, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses or reciprocal beneficiaries of such persons.

"Independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate committee, a party, or their agents.

"Individual" means a natural person.

"Internet activities" include:

- (1) Sending or forwarding electronic messages;
- (2) Providing a hyperlink or other direct access to another person's website;
- (3) Blogging;
- (4) Creating, maintaining, or hosting a website;
- (5) Paying a nominal fee for the use of another person's website; and
- (6) Any other form of communication distributed over the Internet.

"Limited liability company" means a business entity that is recognized as a limited liability company under the laws of the state in which it is established.

"Loan" means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time. A loan does not include expenditures made on behalf of a candidate committee or noncandidate committee by a candidate, volunteer, or employee if:

- (1) The candidate, volunteer, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee or noncandidate committee before the candidate committee or noncandidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee or noncandidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made.

"Newspaper" means a publication of general distribution in the State issued once or more per month, which is written and published in the State.

"Noncandidate committee" means an organization, association, party, or individual that has the purpose of making or receiving contributions, making expenditures, or incurring financial obligations to influence the nomination for election, or the election, of any candidate to office, or for or against any question or issue on the ballot; provided that a noncandidate committee does not include:

- (1) A candidate committee;
- (2) Any individual making a contribution or making an expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this part; or
- (3) Any organization that raises or expends funds for the sole purpose of producing and disseminating informational or educational communications that are not made to influence the outcome of an election, question, or issue on a ballot.

"Office" means any Hawaii elective public or constitutional office, excluding county neighborhood board and federal elective offices.

"Other receipts" means the candidate's own funds, interest, rebates, refunds, and any other funds received by a candidate committee or noncandidate committee, but does not include contributions received from other persons or loans.

"Party" means any political party that satisfies the requirements of section 11-61.



"Person" means an individual, a partnership, a candidate committee or noncandidate committee, a party, an association, a corporation, a business entity, an organization, or a labor union and its auxiliary committees.

"Political committees established and maintained by a national political party" means:

- (1) The National Committee;
- (2) The House Campaign Committee; and
- (3) The Senate Campaign Committee.

"Qualifying contribution" means an aggregate monetary contribution of \$100 or less by an individual Hawaii resident during a matching payment period that is received after a candidate files a statement of intent to seek public funds. A qualifying contribution does not include a loan, an in-kind contribution, or the candidate's own funds.

"Special election" means any election other than a primary or general election.

"Treasurer" means a person appointed under section 11-324 and unless expressly indicated otherwise, includes deputy treasurers. [L 2010, c 211, pt of §2]

#### **Case Notes**

The definition of "advertisement" was not unconstitutionally vague, where the court agreed with the campaign spending commission that the definition was sufficiently precise without a limiting construction and therefore declined to adopt one. 786 F.3d 1182 (2015).

The definitions of "expenditure" and "noncandidate committee" were not unconstitutionally vague, where the court adopted the campaign spending commission's proffered construction of the term "influence" in the definitions to refer only to "communications or activities that constitute express advocacy or its functional equivalent". 786 F.3d 1182 (2015).

The "noncandidate committee" definition and accompanying reporting and disclosure requirements were substantially related to Hawaii's important interests in informing the electorate, preventing corruption or its appearance, and avoiding the circumvention of valid campaign finance laws. Because the burden of complying with the disclosure scheme was modest compared to the significance of the interests being served, the court upheld the noncandidate committee reporting and disclosure requirements, as applied to plaintiff, a for-profit corporation. 786 F.3d 1182 (2015).

It was "reasonable and readily apparent" that the court narrowly construed relevant Hawaii campaign provisions and interpreted the terms "to influence" and "for the purpose of

influencing" in the definitions of "noncandidate committee" and "expenditure" in this section as referring to express advocacy or its functional equivalent; so construed, the meaning of "influence" was "considerably more precise", and "ensur[ed] that persons of average intelligence will have reasonable notice of the provisions' coverage" so as not to offend due process. 872 F. Supp. 2d 1023 (2012).

Plaintiff noncandidate committee and government contractor had standing to challenge the "noncandidate committee" and "expenditure" definitions in this section, where plaintiff had a good faith basis for believing it should not have to register as a noncandidate committee, giving rise to an actual controversy; if plaintiff ceased registration, but engaged in campaign related activities, it could have subjected itself to possible fines or actions; moreover, a favorable ruling would have allowed plaintiff to cease registration without violating the law. 872 F. Supp. 2d 1023 (2012).

Plaintiff noncandidate committee and government contractor's as-applied challenge to the definition of "noncandidate committee" in this section failed; plaintiff actively participated in our democracy; it was not unconstitutional to require it to comply with campaign finance laws that are substantially related to important government interests; Hawaii has a substantial interest in imposing noncandidate committee disclosure requirements on an organization--like plaintiff--that actively engages in political activity. 872 F. Supp. 2d 1023 (2012).

Plaintiff noncandidate committee and government contractor's as-applied challenge to the disclaimer requirement in §11-391(a)(2)(B) and the corresponding definition of "advertisement" in this section, which included the "electioneering communications" definitions in §11-341(c), rejected; the court concluded that the plaintiff's advertisements fit within the regulatory "safe harbor"--they were an "advertisement" that was an "electioneering communication" and was the functional equivalent of express advocacy under §11-341(c). 872 F. Supp. 2d 1023 (2012).

Plaintiff noncandidate committee and government contractor's challenge to the definition of "noncandidate committee" in this section failed; the statute was substantially related to important governmental interests as "[i]ts coverage vindicates the government's interest in an informed electorate without imposing on nonpolitical organizations unnecessarily" and was square with the U.S. Supreme Court in Citizens United; thus, Hawaii's noncandidate committee requirements did not facially violate the First Amendment. 872 F. Supp. 2d 1023 (2012).

The definition of "advertisement" in this section, which was narrowly construed by the court and used the wording "advocates or supports the nomination, opposition, or election of the candidate", was not unconstitutionally vague. 872 F. Supp. 2d 1023 (2012).

Cited: 744 F. Supp. 2d 1075 (2010).

"B. Campaign Spending Commission

**[\$11-311] Campaign spending commission established; composition.** (a) There is established a campaign spending commission, which shall be placed within the department of accounting and general services for administrative purposes.

(b) The commission shall consist of five members representing the general public and who are appointed by the governor from a list of ten nominees submitted by the judicial council. A vacancy on the commission shall be filled from the list of nominees or by the reappointment of a commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34. The judicial council shall meet and expeditiously select additional persons for the list of nominees whenever the number of the eligible nominees falls below five. Notwithstanding section 26-34, appointments to the commission shall not be subject to the advice and consent of the senate.

(c) The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper. [L 2010, c 211, pt of §2]

" **[\$11-312] Terms of office.** The term of each commissioner shall be four years. [L 2010, c 211, pt of §2]

" **[\$11-313] No compensation.** The commissioners shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties. [L 2010, c 211, pt of §2]

" **§11-314 Duties of the commission.** The duties of the commission under this part are to:

- (1) Develop and adopt forms required by this part;
- (2) Adopt and publish a manual for all candidates, candidate committees, and noncandidate committees, describing the requirements of this part, including uniform and simple methods of recordkeeping;
- (3) Preserve all reports required by this part for at least ten years from the date of receipt by the commission;

- (4) Permit the inspection, copying, or duplication of any report required by this part pursuant to rules adopted by the commission under chapter 91; provided that this paragraph shall not apply to the sale or use of information under section 11-344;
- (5) Ascertain whether any person has failed to file a report required by this part or has filed a substantially defective or deficient report. The commission shall notify the person by first class mail that a fine may be assessed for the failure to file or the filing of a substantially defective or deficient report, and the defective or deficient report shall be corrected and explained. All fines collected under this section as authorized by sections 11-340 and 11-410 shall be deposited in the general fund of the State;
- (6) Hold public hearings;
- (7) Investigate and hold hearings for receiving evidence of any violations pursuant to subpart I of this part;
- (8) Adopt rules pursuant to chapter 91;
- (9) Request the initiation of prosecution for the violation of this part pursuant to section 11-411;
- (10) Administer and monitor the distribution of public funds under this part;
- (11) Suggest accounting methods for candidates, candidate committees, or noncandidate committees in connection with reports and records required by this part;
- (12) Employ or contract with, without regard to chapters 76, 78, and 89, persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation; provided that the commission shall have the authority, at its discretion, to dismiss persons employed by or contracted with the commission;
- (13) Conduct random audits and field investigations, as necessary; and
- (14) File for injunctive relief when indicated. [L 2010, c 211, pt of §2; am L 2013, c 112, §3]

" **[\$11-315] Advisory opinions.** The commission may render written advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this part, as to whether the facts and circumstances of a particular case constitute or will constitute a violation under this part. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory

opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation under this part. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, any candidate committee or noncandidate committee, or other person or entity subject to this part, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the requester in the request for an advisory opinion. Nothing in this section shall be construed to allow the commission to issue rules through an advisory opinion. [L 2010, c 211, pt of §2]

" **[\$11-316] Political activities prohibited.** (a) No commissioner or employee of the commission shall participate in any political campaign, including making a contribution to a candidate, candidate committee, or noncandidate committee, during the commissioner's term of office or employee's term of employment.

(b) Each commissioner and employee of the commission shall retain the right to:

- (1) Register and vote in any election;
- (2) Participate in the nonpolitical activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (3) Be a member of a political party or other noncandidate political organization and participate in its activities to the extent consistent with law; and
- (4) Otherwise participate fully in public affairs, except as prohibited by law, in a manner that does not materially compromise the commissioner's or the employee's efficiency or integrity as a commissioner or employee or the neutrality, efficiency, or integrity of the commission.

(c) Any commissioner or employee of the commission may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics under part II of chapter 84 or this section. [L 2010, c 211, pt of §2]

" **[\$11-317] Exemptions.** (a) The commission shall be exempt from section 26-35(a)(1), (4), and (5) and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under

the jurisdiction of the commission without the approval of the comptroller; and

(3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

(b) The commission shall follow and be subject to all applicable personnel laws. [L 2010, c 211, pt of §2]

#### "C. Registration

#### Case Notes

The "noncandidate committee" definition and accompanying reporting and disclosure requirements were substantially related to Hawaii's important interests in informing the electorate, preventing corruption or its appearance, and avoiding the circumvention of valid campaign finance laws. Because the burden of complying with the disclosure scheme was modest compared to the significance of the interests being served, the court upheld the noncandidate committee reporting and disclosure requirements, as applied to plaintiff, a for-profit corporation. 786 F.3d 1182 (2015).

**[\$11-321] Registration of candidate committee or noncandidate committee.** (a) Each candidate committee or noncandidate committee shall register with the commission by filing an organizational report as set forth in section 11-322 or 11-323, as applicable.

(b) Before filing the organizational report, each candidate committee or noncandidate committee shall mail or deliver an electronic filing form to the commission.

(c) The electronic filing form shall include a written acceptance of appointment and certification of each report, as follows:

(1) A candidate committee shall file a written acceptance of appointment by the chairperson and treasurer and a certification by the candidate and treasurer of each filed report; or

(2) A noncandidate committee shall file a written acceptance of appointment by the chairperson and treasurer and a certification by the chairperson and treasurer of each filed report.

(d) The organizational report for a candidate committee shall be filed within ten days of the earlier of:

(1) The date the candidate files nomination papers for office; or

(2) The date the candidate or candidate committee receives contributions or makes or incurs expenditures of more

than \$100 in the aggregate during the applicable election period.

(e) An organizational report need not be filed under this section by an elected official who is a candidate for reelection to the same office in successive elections and has not sought election to any other office during the period between elections, unless the candidate is required to report a change in information pursuant to section 11-323.

(f) A candidate shall have only one candidate committee.

(g) The organizational report for a noncandidate committee shall be filed within ten days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period; provided that within the thirty-day period prior to an election, a noncandidate committee shall register by filing an organizational report within two days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period. [L 2010, c 211, pt of §2]

" **[\$11-322] Organizational report, candidate committee.** (a) The candidate committee organizational report shall include:

- (1) The committee's name and address, including web page address, if any;
- (2) The candidate's name, address, and telephone number;
- (3) The office being sought by the candidate, district, and party affiliation;
- (4) The chairperson's name and address and, if appointed, the deputy chairperson's name and address;
- (5) The treasurer's name and address and, if appointed, all deputy treasurers' names and addresses;
- (6) The name and address of each depository institution in which the committee will maintain any of its accounts and the applicable account number;
- (7) A certification by the candidate and treasurer of the statements in the organizational report; and
- (8) The name and address of each contributor who contributed an aggregate amount of more than \$100 to the candidate committee since the last election applicable to the office being sought and the amount and date of deposit of each such contribution.

(b) Any change in information previously reported in the organizational report with the exception of subsection (a)(8) shall be electronically filed with the commission within ten days of the change being brought to the attention of the committee chairperson or treasurer. [L 2010, c 211, pt of §2]

" **§11-323 Organizational report, noncandidate committee.**

(a) The noncandidate committee organizational report shall include:

- (1) The committee's name, which shall incorporate the full name of the sponsoring entity, if any. An acronym or abbreviation may be used in other communications if the acronym or abbreviation is commonly known or clearly recognized by the general public. The committee's name shall not include the name of a candidate;
- (2) The committee's address, including web page address, if any;
- (3) The area, scope, or jurisdiction of the committee;
- (4) The name and address of the committee's sponsoring entity. If the committee does not have a sponsoring entity, the committee shall specify the trade, profession, or primary interest of contributors to the committee;
- (5) The name, address, telephone number, occupation, and principal place of business of the chairperson;
- (6) The name, address, telephone number, occupation, and principal place of business of the treasurer and any other officers;
- (7) An indication as to whether the committee was formed to support or oppose a specific ballot question or candidate and, if so, a brief description of the question or the name of the candidate;
- (8) An indication as to whether the committee is a political party committee;
- (9) The name, address, telephone number, occupation, and principal place of business of the custodian of the books and accounts;
- (10) The name and address of the depository institution in which the committee will maintain its campaign account and each applicable account number;
- (11) A certification by the chairperson and treasurer of the statements in the organizational report; and
- (12) The name, address, employer, and occupation of each contributor who contributed an aggregate amount of more than \$100 to the noncandidate committee since the last election and the amount and date of deposit of each such contribution; provided that, for noncandidate committees making only independent expenditures, if a contribution of more than \$10,000 in the aggregate in an election period is received from an entity other than an individual, for-profit



business entity, or labor union, then the report shall include:

- (A) The internet address where the contributing entity's disclosure report can be publicly accessed, if the contributing entity is subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds;
- (B) The name, address, occupation, and employer of each funding source of \$100 or more in the aggregate in an election period to that contributing entity; or
- (C) An acknowledgment that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds.

(b) Any change in information previously reported in the organizational report, with the exception of subsection (a)(12), shall be electronically filed with the commission within ten days of the change being brought to the attention of the committee chairperson or treasurer. [L 2010, c 211, pt of §2; am L 2015, c 209, §1]

" **[§11-324] Treasurer.** (a) Every candidate committee or noncandidate committee shall appoint a treasurer on or before the day it files an organizational report. The following shall be permissible:

- (1) Up to five deputy treasurers may be appointed;
- (2) A candidate may be appointed as the treasurer or deputy treasurer; and
- (3) An individual who is not an officer or treasurer may be appointed by the candidate, on a fee or voluntary basis, to specifically prepare and file reports with the commission.

(b) A treasurer may resign or be removed at any time.

(c) In case of death, resignation, or removal of the treasurer, the candidate, candidate committee, or noncandidate committee shall promptly appoint a successor. During the period that the office of treasurer is vacant, the candidate, candidate committee, or chairperson, or party chairperson in the case of a party, whichever is applicable, shall serve as treasurer.

(d) Only the treasurer and deputy treasurers shall be authorized to receive contributions or to make or incur expenditures on behalf of the candidate committee or noncandidate committee.

(e) The treasurer shall establish and maintain itemized records showing:

- (1) The amount of each monetary contribution;
- (2) The description and value of each nonmonetary contribution; and
- (3) The name and address of each contributor making a contribution of more than \$25 in value; provided that information regarding the employer and occupation of contributors shall also be collected and maintained for a noncandidate committee.

(f) The treasurer shall maintain detailed accounts, bills, receipts, and other records to establish that reports were properly prepared and filed.

(g) The records shall be retained for at least five years after the report is filed. [L 2010, c 211, pt of §2]

" **[\$11-325] When an individual may not serve as a committee officer.** No candidate committee or noncandidate committee that supports or opposes a candidate shall have an officer who serves as an officer on any other candidate committee or noncandidate committee that supports or opposes the same candidate. [L 2010, c 211, pt of §2]

" **[\$11-326] Termination of candidate committee's or noncandidate committee's registration.** A candidate committee or noncandidate committee may terminate its registration if:

- (1) The candidate committee or noncandidate committee:
  - (A) Files a request for registration termination form;
  - (B) Files a report disclosing contributions and expenditures not previously reported by the committee, and the committee has no surplus or deficit; and
  - (C) Mails or delivers to the commission a copy of the committee's closing bank statement; and
- (2) The request is approved by the commission. [L 2010, c 211, pt of §2]

" **[\$11-327] Ballot issue committee; contributions and expenditures.** (a) A ballot issue committee shall receive contributions or make expenditures only for or against any issue appearing on the ballot at the next applicable election.

(b) A ballot issue committee is prohibited from receiving contributions or making expenditures to influence the nomination or election of a candidate to office.

(c) A ballot issue committee shall return all surplus funds to the contributors or donate funds to a community service, educational, youth, recreational, charitable, scientific, or literary organization within ninety days after

the election for which the issue appeared on the ballot. Surplus funds that are not returned or donated within ninety days after the election for which the issue appeared on the ballot shall escheat to the Hawaii election campaign fund.

(d) Every ballot issue committee shall terminate its registration with the commission by filing a termination report to be approved as provided in section 11-326. The termination report shall be filed within ninety days after the election for which the issue appeared on the ballot. [L 2010, c 211, pt of §2]

"D. Reporting and Filing with the Commission

### Case Notes

The "noncandidate committee" definition and accompanying reporting and disclosure requirements were substantially related to Hawaii's important interests in informing the electorate, preventing corruption or its appearance, and avoiding the circumvention of valid campaign finance laws. Because the burden of complying with the disclosure scheme was modest compared to the significance of the interests being served, the court upheld the noncandidate committee reporting and disclosure requirements, as applied to plaintiff, a for-profit corporation. 786 F.3d 1182 (2015).

**§11-331 Filing of reports, generally.** (a) Every report required to be filed by a candidate or candidate committee shall be certified as complete and accurate by the candidate and treasurer.

(b) Every report required to be filed by a noncandidate committee shall be certified as complete and accurate by the chairperson and treasurer.

(c) All reports required to be filed under this part shall be filed on the commission's electronic filing system.

(d) For purposes of this part, whenever a report is required to be filed with the commission, "filed" means that a report shall be filed with the commission's electronic filing system by the date and time specified for the filing of the report by:

- (1) The candidate or candidate committee of a candidate who is seeking election to the:
  - (A) Office of governor;
  - (B) Office of lieutenant governor;
  - (C) Office of mayor;
  - (D) Office of prosecuting attorney;
  - (E) County council;

- (F) Senate;
- (G) House of representatives; or
- (H) Office of Hawaiian affairs; or
- (2) A noncandidate committee required to be registered with the commission pursuant to section 11-323.
- (e) To be timely filed, a committee's reports shall be filed with the commission's electronic filing system on or before 11:59 p.m. Hawaiian standard time on the filing date specified.
- (f) All reports filed under this part are public records and shall be made available for public inspection on the commission's website in a searchable database. [L 2010, c 211, pt of §2; am L 2011, c 5, §4; am L 2013, c 112, §4]

" **§11-332 REPEALED.** L 2013, c 112, §§11, 15.

" **[§11-333] Candidate committee reports.** (a) The candidate and treasurer shall file preliminary, final, and supplemental reports that shall disclose the following information:

- (1) The candidate committee's name and address;
  - (2) The cash on hand at the beginning of the reporting period and election period;
  - (3) The reporting period and election period aggregate totals for each of the following categories:
    - (A) Contributions;
    - (B) Expenditures;
    - (C) Other receipts; and
    - (D) Loans;
  - (4) The cash on hand at the end of the reporting period; and
  - (5) The surplus or deficit at the end of the reporting period.
- (b) Schedules filed with the reports shall include the following additional information:
- (1) The amount and date of deposit of each contribution and the name and address of each contributor who makes contributions aggregating more than \$100 in an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
  - (2) The amount and date of deposit of each contribution and the name, address, occupation, and employer of each contributor who makes contributions aggregating \$1,000 or more during an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;

- (3) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose;
- (4) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
- (5) Information about each loan received by the committee, together with the names and addresses of the lender and each person liable directly, and the amount of each loan. A copy of the executed loan document shall be received by the commission by mail or delivery on or before the filing date for the report covering the reporting period when the loan was received. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to disclose the loan or to provide documentation of the loan to the commission shall cause the loan to be treated as a contribution, subject to all relevant provisions of this part;
- (6) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
- (7) The date of disposition of each durable asset, value at the time of disposition, the method of disposition, and the name and address of the person receiving the asset.

(c) The candidate committee shall file a late contribution report as provided in section 11-338 if the committee receives late contributions from any person aggregating more than \$500.  
[L 2010, c 211, pt of §2]

" **§11-334 Time for candidate committee to file preliminary, final, and supplemental reports.** (a) The candidate and treasurer of the candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file preliminary, final, and supplemental reports.

- (1) The filing dates for preliminary reports are:
  - (A) Thirty calendar days prior to a primary election;
  - (B) Ten calendar days prior to a primary, each special, or each nonpartisan election; and

(C) Ten calendar days prior to a general election; provided that this preliminary report does not need to be filed by a candidate who is unsuccessful in a primary, special, or nonpartisan election, or a candidate who is elected to office in the primary, initial special, or initial nonpartisan election.

The preliminary report filed by the date required under subparagraph (A) shall be current through June 30, and all other preliminary reports shall be current through the fifth calendar day before the filing deadline of those other preliminary reports.

- (2) The filing date for the final primary report is twenty calendar days after a primary, initial special, or initial nonpartisan election. The report shall be current through the day of the applicable election.
- (3) The filing date for the final election period report is thirty calendar days after a general, subsequent, subsequent special, or subsequent nonpartisan election. The report shall be current through the day of the applicable election. The final election period report shall be filed by a candidate who is unsuccessful in a primary, initial special, or initial nonpartisan election or a candidate who is elected to office in the primary, initial special, or initial nonpartisan election.
- (4) The filing dates for supplemental reports are:
  - (A) January 31 after an election year; and
  - (B) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(b) A candidate and treasurer of the candidate committee of each candidate with a deficit or surplus whose name will not appear on the ballot in the immediately succeeding election shall file a supplemental report every six months on January 31 and July 31 until:

- (1) The candidate's name appears on the ballot and then is subject to the reporting requirements in subsection (a); or
- (2) The committee's registration is terminated as provided in section 11-326.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(c) A candidate and treasurer of the candidate committee of each candidate shall continue to file all required reports

until the committee's registration is terminated as provided in section 11-326. [L 2010, c 211, pt of §2; am L 2012, c 118, §1]

" **§11-335 Noncandidate committee reports.** (a) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file preliminary, final, and supplemental reports that disclose the following information:

- (1) The noncandidate committee's name and address;
- (2) The cash on hand at the beginning of the reporting period and election period;
- (3) The reporting period and election period aggregate totals for each of the following categories:
  - (A) Contributions received;
  - (B) Contributions made;
  - (C) Expenditures; and
  - (D) Other receipts;
- (4) The cash on hand at the end of the reporting period; and
- (5) The surplus or deficit at the end of the reporting period.

(b) Schedules filed with the reports shall include the following additional information:

- (1) The amount and date of deposit of each contribution received and the name, address, occupation, and employer of each contributor making a contribution aggregating more than \$100 during an election period, which was not previously reported; provided that if:
  - (A) All the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit; and
  - (B) A noncandidate committee making only independent expenditures receives a contribution of more than \$10,000 in the aggregate in an election period from an entity other than an individual, for-profit business entity, or labor union, then the schedule shall include:
    - (i) The internet address where the contributing entity's disclosure report can be publicly accessed, if the contributing entity is subject to state or federal disclosure reporting requirements regarding the source of the contributing entity's funds;
    - (ii) The name, address, occupation, and employer of each funding source that contributed \$100 or more in the aggregate in an election period to that contributing entity; or

- (iii) An acknowledgment that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds;
- (2) The amount and date of each contribution made and the name and address of the candidate, candidate committee, or noncandidate committee to which the contribution was made;
- (3) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure; provided that:
  - (A) Expenditures for advertisements or electioneering communications shall include the names of the candidates supported, opposed, or clearly identified;
  - (B) Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose;
  - (C) Independent expenditures shall include the name of any candidate supported, opposed, or clearly identified; and
  - (D) The purpose of an independent expenditure shall include the name of the candidate who is supported or opposed by the expenditure, and whether the expenditure supports or opposes the candidate;
- (4) For noncandidate committees making only independent expenditures, certification that no expenditures have been coordinated with a candidate, candidate committee, or any agent of a candidate or candidate committee;
- (5) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
- (6) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
- (7) The date of disposition of a durable asset, value at the time of disposition, method of disposition, and name and address of the person receiving the asset.
- (c) No loan may be made or received by a noncandidate committee.



(d) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file a late contribution report as provided in section 11-338 if the committee receives late contributions from any person aggregating more than \$500 or makes late contributions aggregating more than \$500.

(e) For purposes of this section, "electioneering communication" means the same as defined in section 11-341. [L 2010, c 211, pt of §2; am L 2013, c 111, §1 and c 112, §5; am L 2015, c 209, §2]

" **§11-336 Time for noncandidate committee to file preliminary, final, and supplemental reports.** (a) The filing dates for preliminary reports are:

- (1) Ten calendar days prior to a primary, special, or nonpartisan election;
- (2) Ten calendar days prior to a general election; and
- (3) October 1 of the year of a general election.

Each preliminary report shall be current through the fifth calendar day prior to the filing of the report.

(b) The filing date for the final primary report is twenty calendar days after the primary, initial special, or initial nonpartisan election. The report shall be current through the day of the applicable election.

(c) The filing date for the final election period report is thirty calendar days after a general, subsequent special, or subsequent nonpartisan election. The report shall be current through the day of the applicable election.

(d) The filing dates for supplemental reports are:

- (1) January 31; and
- (2) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(e) The authorized person in the case of a party, or treasurer in the case of any other noncandidate committee, shall continue to file all reports until the committee's registration is terminated as provided in section 11-326. [L 2010, c 211, pt of §2; am L 2013, c 111, §2; am L 2015, c 79, §1]

" **§11-337 Reporting expenditures.** (a) For purposes of this part, an expenditure is deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period are deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably

allocated between periods in accordance with the time the services or products are actually used.

(b) Any expenditure that is contracted or paid for and that is to be rendered during the last three days prior to an election shall be included in a late expenditure report as provided in section 11-338. [L 2010, c 211, pt of §2; am L 2013, c 112, §6]

" **§11-338 Late contributions; late expenditures; report.**

(a) The candidate, authorized person in the case of a noncandidate committee that is a party, or treasurer in the case of a candidate committee or other noncandidate committee, that, within the period of fourteen calendar days through four calendar days prior to any election, makes contributions aggregating more than \$500, or receives contributions from any person aggregating more than \$500, shall file a late contribution report by means of the commission's electronic filing system on or before the third calendar day prior to the election.

(b) The late contribution report shall include the following information:

- (1) Name, address, occupation, and employer of the contributor;
- (2) Name of the candidate, candidate committee, or noncandidate committee making or receiving the contribution; provided that, for noncandidate committees making only independent expenditures, if a late contribution greater than \$5,000 in the aggregate is received from an entity other than an individual, for-profit business entity, or labor union, then the report shall include:
  - (A) The internet address where the contributing entity's disclosure report can be publicly accessed, if the contributing entity is subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds;
  - (B) The name, address, occupation, and employer of each funding source of more than \$100 in the aggregate to that contributing entity; or
  - (C) An acknowledgment that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds;
- (3) The amount of the contribution received;
- (4) The amount of the contribution made;

- (5) The contributor's aggregate contributions to the candidate, candidate committee, or noncandidate committee; and
- (6) The purpose, if any, to which the contribution will be applied, including, for contributions to a noncandidate committee, the name of any candidate supported, opposed, or clearly identified.

(c) A noncandidate committee that makes independent expenditures in an aggregate amount of more than \$500 within the period between fourteen and four calendar days prior to any election shall file a late expenditure report by means of the commission's electronic filing system on or before the third calendar day prior to the election. The late expenditure report shall include the following information for each expenditure:

- (1) The amount and date made;
- (2) The vendor name, address, and contact information; and
- (3) The purpose, including the name of any candidate supported, opposed, or clearly identified by the expenditure.

(d) A late contribution report or late expenditure report filed pursuant to this section shall be in addition to any other report required to be filed by this part. [L 2010, c 211, pt of §2; am L 2013, c 112, §7; am L 2015, c 209, §3]

" **§11-339 Final election period report for candidate committee or noncandidate committee receiving and expending \$1,000 or less during the election period.** (a) Any provision of law to the contrary notwithstanding, a candidate committee or noncandidate committee whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less, shall electronically file only a final election period report, and need not file a preliminary and final primary report, a preliminary and final general report, or a special election report.

(b) Until the candidate committee's or noncandidate committee's registration is terminated as provided in section 11-326, supplemental reports and other reports required by this part shall be filed. [L 2010, c 211, pt of §2]

" **§11-340 Failure to file report; filing a substantially defective or deficient report.** (a) True and accurate reports shall be filed with the commission on or before the due dates specified in this part. The commission may assess a fine against a person that is required to file a report under this part if the report is not filed by the due date or if the report is substantially defective or deficient, as determined by the commission.

(b) The fine for not filing a report by the due date, if assessed, shall not exceed \$50 per day for the first seven days, beginning with the day after the due date of the report, and shall not exceed \$200 per day thereafter; provided that:

(1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and

(2) The minimum fine for a report filed more than four days after the due date, if assessed, shall be \$200.

(c) Subsection (b) notwithstanding, if a candidate committee does not file the second preliminary primary report or the preliminary general report, or if a noncandidate committee does not file the preliminary primary report or the preliminary general report by the due date, the fine, if assessed, shall not exceed \$300 per day; provided that:

(1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and

(2) The minimum fine, if assessed, shall be \$300.

(d) If the commission determines that a report is substantially defective or deficient, the commission shall notify the candidate committee by first class mail that:

(1) The report is substantially defective or deficient; and

(2) A fine may be assessed.

(e) If the corrected report is not filed with the commission's electronic filing system on or before the fourteenth day after the notice of defect or deficiency has been mailed, the fine, if assessed, for a substantially defective or deficient report shall not exceed \$50 per day for the first seven days, beginning with the fifteenth day after the notice was sent, and shall not exceed \$200 per day thereafter; provided that:

(1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and

(2) The minimum fine for not filing a corrected report more than eighteen days after the notice, if assessed, shall be \$200.

(f) The commission shall publish on its website the names of all candidate committees that have failed to:

(1) File a report; or

(2) Correct a report within the time allowed by the commission.

(g) All fines collected under this section shall be deposited into the general fund. [L 2010, c 211, pt of §2; am L 2013, c 112, §8]

" **§11-341 Electioneering communications; statement of information.** (a) Each person who makes an expenditure for electioneering communications in an aggregate amount of more than \$2,000 during any calendar year shall file with the commission a statement of information within twenty-four hours of each disclosure date provided in this section.

(b) Each statement of information shall contain the following:

- (1) The name of the person making the expenditure, name of any person or entity sharing or exercising discretion or control over the person, and the custodian of the books and accounts of the person making the expenditure;
- (2) The names and titles of the executives or board of directors who authorized the expenditure, if the expenditure was made by a noncandidate committee, business entity, or an organization;
- (3) The state of incorporation or formation and principal address of the noncandidate committee, business entity, or organization or for an individual, the name, address, occupation, and employer of the individual making the expenditure;
- (4) The amount of each expenditure during the period covered by the statement and the identification of the person to whom the expenditure was made;
- (5) The elections to which the electioneering communications pertain and the names of any clearly identifiable candidates and whether those candidates are supported or opposed;
- (6) If the expenditures were made by a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the candidate committee or noncandidate committee for the purpose of publishing or broadcasting the electioneering communications;
- (7) If the expenditures were made by an organization other than a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications;
- (8) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate,

candidate committee, or noncandidate committee, or agent of any candidate if any, and if so, the identification of the candidate, candidate committee, or noncandidate committee, or agent involved; and

- (9) The three top contributors as required under section 11-393, if applicable.

(c) An electioneering communication statement of information filed pursuant to this section shall be in addition to the filing of any other report required under this part.

(d) For purposes of this section:

"Disclosure date" means, for every calendar year, the first date by which a person has made expenditures during that same year of more than \$2,000 in the aggregate for electioneering communications, and the date of any subsequent expenditures by that person for electioneering communications.

"Electioneering communication" means any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper or by electronic means; or sent by mail at a bulk rate, and that:

- (1) Refers to a clearly identifiable candidate;
- (2) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election; and
- (3) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.

"Electioneering communication" shall not include communications:

- (1) In a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by a candidate, candidate committee, or noncandidate committee;
- (2) That constitute expenditures by the expending organization;
- (3) In house bulletins; or
- (4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

(e) For purposes of this section, a person shall be treated as having made an expenditure if the person has executed a contract to make the expenditure. [L 2010, c 211, pt of §2; am L 2013, c 112, §9]

Plaintiff noncandidate committee and government contractor's as-applied challenge to the disclaimer requirement in §11-391(a)(2)(B) and the corresponding definition of "advertisement" in §11-302, which included the "electioneering communications" definitions in subsection (c), rejected; the court concluded that the plaintiff's advertisements fit within the regulatory "safe harbor"--they were an "advertisement" that was an "electioneering communication" and was the functional equivalent of express advocacy under subsection (c). 872 F. Supp. 2d 1023 (2012).

" **[\$11-342] Fundraiser; notice of intent.** (a) No fundraiser shall be held unless a notice of intent to hold the fundraiser is filed with the commission setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the fundraiser, and the method thereof.

(b) The person in charge of the fundraiser shall file the notice with the commission prior to the fundraiser.

(c) As used in this section, "fundraiser" means any function held for the benefit of a candidate, candidate committee, or noncandidate committee that is intended or designed, directly or indirectly, to raise contributions for which the price or suggested contribution for attending the function is more than \$25 per person. [L 2010, c 211, pt of §2]

" **[\$11-343] Reporting deadline.** When any reporting deadline falls on a Saturday, Sunday, or holiday designated in section 8-1, the reporting deadline shall be the next succeeding day that is not a Saturday, Sunday, or holiday. [L 2010, c 211, pt of §2]

" **[\$11-344] Sale or use of information.** No information in the reports or copies of the reports filed with the commission shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose. [L 2010, c 211, pt of §2]

#### "E. Contributions; Prohibitions; Limits

**[\$11-351] Contributions, generally.** (a) Monetary contributions and other campaign funds shall be promptly deposited in a depository institution, as defined by section 412:1-109, duly authorized to do business in the State, including a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration in the

name of the candidate, candidate committee, or noncandidate committee, whichever is applicable.

(b) A candidate, candidate committee, or noncandidate committee, shall not accept a contribution of more than \$100 in cash from a single person without issuing a receipt to the contributor and keeping a record of the contribution.

(c) Each candidate committee or noncandidate committee shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked. [L 2010, c 211, pt of §2]

" **§11-352 False name contributions prohibited.** (a) No person shall make a contribution to any candidate, candidate committee, or noncandidate committee in any name other than that of the person who owns the money, property, or service.

(b) All contributions made in the name of a person other than the owner of the money, property, or service shall escheat to the Hawaii election campaign fund. [L 2010, c 211, pt of §2]

" **§11-353 Anonymous contributions prohibited.** (a) Except as provided in subsection (d), no person shall make an anonymous contribution to any candidate, candidate committee, or noncandidate committee.

(b) A candidate, candidate committee, or noncandidate committee shall not knowingly receive, accept, or retain an anonymous contribution, or report such contribution as an anonymous contribution, except as provided in this section.

(c) An anonymous contribution shall not be used or expended by the candidate, candidate committee, or noncandidate committee, but shall be returned to the contributor. If the contributor cannot be identified, the contribution shall escheat to the Hawaii election campaign fund.

(d) This section shall not apply to amounts that aggregate to less than \$100 that are received from ten or more persons at the same political function. The receipt of these contributions shall be disclosed in a report filed pursuant to sections 11-333 and 11-335. [L 2010, c 211, pt of §2; am L 2015, c 78, §1]

" **§11-354 Fundraising on state or county property prohibited.** (a) Except as provided in subsection (b), no person shall solicit a contribution in a government facility that is used for the discharge of official duties by an officer or employee of the State or county.

(b) The prohibition in subsection (a) shall not apply to any government facility that permits use by nongovernmental organizations for a fee or with reservations; provided that the government facility's use rules do not prohibit political



activities on the premises. Government facilities that permit use for political activities shall be available to a candidate, candidate committee, or noncandidate committee for fundraising activities pursuant to the same terms and conditions that would otherwise apply to use by nongovernmental organizations.

(c) A person who violates the prohibition of fundraising on state or county property shall be guilty of a misdemeanor. [L 2010, c 211, pt of §2]

" **[\$11-355] Contributions by state and county contractors prohibited.** (a) It shall be unlawful for any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of the counties, any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or
- (2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final. [L 2010, c 211, pt of §2]

Hawaii's government contractor contribution ban under §11-355 satisfies closely drawn scrutiny; it serves sufficiently important governmental interests by combating both actual and the appearance of quid pro quo corruption, and it is closely drawn because it targets direct contributions from contractors to officeholders and candidates, the contributions most closely linked to actual and perceived quid pro quo corruption. The ban survives closely drawn scrutiny even as applied to plaintiff's proposed contributions to candidates who neither decide whether plaintiff receives contracts nor oversee plaintiff's contracts. 786 F.3d 1182 (2015).

Hawaii's government-contractor ban on direct campaign contributions set forth in this section was constitutional as applied to plaintiff noncandidate committee and government contractor's proposed contributions; given the public role of legislators and the power (or perceived power) they can have in contractual matters, applying the contribution ban was closely connected to the government interest in refuting at least the perception of corruption in the electoral process; it functions to alleviate even the appearance of a connection (a quid pro quo) between a government contractor and a candidate for public office. 872 F. Supp. 2d 1023 (2012).

Plaintiff noncandidate committee and government contractor had standing to challenge the contribution restrictions on government contractors in this section, given that plaintiff was a government contractor, had made substantial contributions to candidates in the past, and sought to make future contributions while it was a contractor; moreover, plaintiff did not have to violate the statute to challenge its terms, and a favorable ruling would have allowed plaintiff to make contributions as a contractor without violating the law. 872 F. Supp. 2d 1023 (2012).

" **[§11-356] Contributions by foreign national or foreign corporation prohibited.** (a) Except as provided in subsection (b), no contributions or expenditures shall be made to or on behalf of a candidate, candidate committee, or noncandidate committee, by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations section 110.20, as amended.

(b) A foreign-owned domestic corporation may make contributions if:

- (1) Foreign national individuals do not participate in election-related activities, including decisions concerning contributions or the administration of a candidate committee or noncandidate committee; or
- (2) The contributions are domestically-derived. [L 2010, c 211, pt of §2]

" **[\$11-357] Contributions to candidate committees; limits.**

(a) No person shall make contributions to:

- (1) A candidate seeking nomination or election to a two-year office or to a candidate committee in an aggregate amount greater than \$2,000 during an election period;
- (2) A candidate seeking nomination or election to a four-year nonstatewide office or to a candidate committee in an aggregate amount greater than \$4,000 during an election period; or
- (3) A candidate seeking nomination or election to a four-year statewide office or to a candidate committee in an aggregate amount greater than \$6,000 during an election period.

(b) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of the office the candidate is seeking to be less than the usual length of term of that office. [L 2010, c 211, pt of §2]

" **[\$11-358] Contributions to noncandidate committees; limits.** No person shall make contributions to a noncandidate committee in an aggregate amount greater than \$1,000 in an election. This section shall not apply to ballot issue committees. [L 2010, c 211, pt of §2]

### Case Notes

Contribution limit in this section is unconstitutional as applied to plaintiffs' proposed contributions to an entity that engages in solely independent expenditures in excess of the statutory limit; plaintiffs' motion for preliminary injunction granted. 744 F. Supp. 2d 1075 (2010).

Plaintiffs, who sought a declaration stating that this section was facially unconstitutional at the preliminary injunction stage, would not likely succeed on the merits; this section's limitation appears to be valid as applied to contributions to a noncandidate committee that does not engage solely in independent expenditures; plaintiff's motion for preliminary

injunction denied as to this issue. 744 F. Supp. 2d 1075 (2010).

Plaintiff donors to political action committee had standing to challenge this section; they desired to and eventually made contributions that exceeded the statutory limitations, giving rise to an actual controversy; further, if this section was constitutional as applied, they could have been subject to administrative fines or criminal prosecution; moreover, they indicated a legitimate desire to make similar contributions in 2012, and thus a favorable ruling would have allowed them to make further contributions in 2012 without violating the law. 872 F. Supp. 2d 1023 (2012).

This section limits the amount of contributions a person can make to a noncandidate committee ("committee"); if the committee makes only independent expenditures, then pursuant to the U.S. Supreme Court in Citizens United, Hawaii cannot limit those expenditures; plaintiff donors' contributions to a committee could only lead to independent expenditures; therefore, this section was unconstitutional as applied to plaintiffs' contributions to a committee and defendant campaign spending commission was permanently enjoined from enforcing this section's contribution limitation in that situation. 872 F. Supp. 2d 1023 (2012).

" **§11-359 Family contributions.** (a) A contribution by a dependent minor shall be reported in the name of the minor but included in the aggregate contributions of the minor's parent or guardian.

(b) A contribution by the candidate's immediate family shall be exempt from section 11-357, but shall be limited in the aggregate to \$50,000 in any election period; provided that the aggregate amount of loans and contributions received from the candidate's immediate family does not exceed \$50,000 during an election period. [L 2010, c 211, pt of §2; am L 2014, c 48, §1]

" **[§11-360] Contributions to a party.** (a) No person shall make contributions to a party in an aggregate amount greater than \$25,000 in any two-year election period, except as provided in subsection (b).

(b) No political committee established and maintained by a national political party shall make contributions to a party in an aggregate amount greater than \$50,000 in any two-year election period.

(c) If a person makes a contribution to a party that is earmarked for a candidate or candidates, the contribution shall be deemed to be a contribution from both the original contributor and the party distributing such funds to a candidate

or candidates. The earmarked funds shall be promptly distributed by the party to the candidate.

(d) This section shall not prohibit a candidate from making contributions to the candidate's party if contributions are not earmarked for another candidate. [L 2010, c 211, pt of §2]

" **[\$11-361] Aggregation of contributions and expenditures.**

(a) All contributions and expenditures of a person whose contributions or expenditures are financed, maintained, or controlled by any corporation, labor organization, association, party, or any other person, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, party, political committees established and maintained by a national political party, or by any group of those persons shall be considered to be made by a single person.

(b) A contribution by a partnership shall not exceed the limitations in this section and shall be attributed to the partnership and to each partner in direct proportion to the partner's share of the partnership profits, according to instructions that shall be provided by the partnership to the party, candidate, or committee receiving the contribution.

(c) A contribution by a limited liability company shall be treated as follows:

- (1) A contribution by a limited liability company that is treated as a partnership by the Internal Revenue Service shall be considered a contribution from a partnership;
- (2) A contribution by a limited liability company that is treated as a corporation by the Internal Revenue Service shall be considered a contribution from a corporation;
- (3) A contribution by a limited liability company with a single individual member that is not treated as a corporation by the Internal Revenue Service shall be attributed only to that single individual member; and
- (4) A limited liability company that makes a contribution shall, at the time the limited liability company makes the contribution, provide information to the party, committee, or candidate receiving the contribution specifying how the contribution is to be attributed.

(d) A person's contribution to a party that is earmarked for a candidate or candidates shall be included in the aggregate contributions of both the person and the party. The earmarked funds shall be promptly distributed by the party to the candidate.

(e) A contribution by a dependent minor shall be reported in the name of the minor but included in the aggregate contributions of the minor's parent or guardian. [L 2010, c 211, pt of §2]

" **[\$11-362] Contributions limited from nonresident persons.**

(a) Contributions from all persons who are not residents of the State at the time the contributions are made shall not exceed thirty per cent of the total contributions received by a candidate or candidate committee for each election period.

(b) This section shall not be applicable to contributions from the candidate's immediate family. [L 2010, c 211, pt of §2]

" **[\$11-363] Other contributions and expenditures.** (a)

Expenditures or disbursements for electioneering communications as defined in section 11-341, or any other coordinated activity made by any person for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate committee, or their agents, shall be considered to be a contribution to the candidate and expenditure by the candidate.

The financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, candidate committee, or agents shall be considered to be a contribution to the candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election.

(b) "Coordinated activity" means:

- (1) The payment by any person in cooperation, consultation, or concert with, at the request of, or pursuant to, any general or particular understanding with a candidate, candidate committee, the party of a candidate, or an agent of a candidate, candidate committee, or the party of a candidate;
- (2) The payment by any person for the production, dissemination, distribution, or republication of any written, graphic, or other form of campaign material, in whole or in part, prepared by a candidate, candidate committee, or noncandidate committee, or an agent of a candidate, candidate committee, or noncandidate committee; or
- (3) Any payment by any person or contract for any electioneering communication, as defined in section 11-341, where the payment is coordinated with a candidate, candidate committee, the party of the

candidate, or an agent of a candidate, candidate committee, or the party of the candidate.

(c) No expenditure for a candidate who files an affidavit with the commission agreeing to limit aggregate expenditures by the candidate, including coordinated activity by any person, shall be made or incurred by a candidate committee or noncandidate committee without authorization of the candidate or the candidate's authorized representative. Every expenditure so authorized and made or incurred shall be attributed to the candidate with whom the candidate committee or noncandidate committee is directly associated for the purpose of imposing the expenditure limitations set forth in section 11-423. [L 2010, c 211, pt of §2]

" **[\$11-364] Excess contribution; return; escheat.** (a) Any candidate, candidate committee, or noncandidate committee that receives in the aggregate more than the applicable contribution limit in section 11-357, 11-358, 11-359, or 11-360 shall return any excess contribution to the contributor within thirty days of receipt of the excess contribution. Any excess contribution not returned to the contributor within thirty days shall escheat to the Hawaii election campaign fund.

(b) A candidate, candidate committee, or noncandidate committee that complies with this section prior to the initiation of administrative action shall not be subject to any fine under section 11-410. [L 2010, c 211, pt of §2]

#### "F. Loans

**[\$11-371] Loan to candidate committee.** (a) A candidate or candidate committee may receive a loan from any or all of the following:

- (1) The candidate's own funds;
- (2) A financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business;
- (3) The candidate's immediate family in an aggregate amount not to exceed \$50,000 during an election period; provided that the aggregate amount of loans and contributions received from the immediate family shall not exceed \$50,000 during an election period; and
- (4) Persons other than the candidate, a financial institution described in paragraph (2), or the candidate's immediate family, in an aggregate amount

not to exceed \$10,000 during an election period; provided that:

- (A) If the \$10,000 limit for loans from persons other than the immediate family is reached, the candidate and candidate committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full; and
- (B) If a loan from persons other than the candidate's immediate family is not repaid within one year of the date that the loan is made, the candidate and candidate committee shall be prohibited from accepting any other loans. All campaign funds, including contributions subsequently received, shall be used to repay the outstanding loan in full.

(b) For purposes of this section, a "loan" does not include expenditures made on behalf of a candidate committee by a candidate, volunteer, or employee if:

- (1) The candidate's, volunteer's, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee before the candidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditures being made. [L 2010, c 211, pt of §2]

" **[\$11-372] Reporting loan; written loan agreement.** (a) Every loan shall be reported as provided in section 11-333.

(b) Every loan in excess of \$100 shall be documented as provided in section 11-333.

(c) A loan shall be treated as a contribution, subject to all relevant provisions of this part, if the loan is not reported or documented as provided in section 11-333. [L 2010, c 211, pt of §2]

" **[\$11-373] Noncandidate committee loan prohibited.** A noncandidate committee shall not receive or make a loan. [L 2010, c 211, pt of §2]

"G. Expenditures



**§11-381 Campaign funds only used for certain purposes.**

- (a) Campaign funds may be used by a candidate, treasurer, or candidate committee:
- (1) For any purpose directly related:
    - (A) In the case of the candidate, to the candidate's own campaign; or
    - (B) In the case of a candidate committee or treasurer of a candidate committee, to the campaign of the candidate, question, or issue with which they are directly associated;
  - (2) To purchase or lease consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate. The candidate, however, shall reimburse the candidate's candidate committee for the candidate's personal use of these items unless the personal use is de minimis;
  - (3) To make donations to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election period, the total amount of all donations shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that no contributions shall be made from the date the candidate files nomination papers to the date of the general election;
  - (4) To make donations to any public school or public library; provided that in any election period, the total amount of all contributions shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that any donation under this paragraph shall not be aggregated with or imputed toward any limitation on donations pursuant to paragraph (3);
  - (5) To award scholarships to full-time students attending an institution of higher education or a vocational education school in a program leading to a degree, certificate, or other recognized educational credential; provided that in any election period, the total amount of all scholarships awarded shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that no awards shall be made from the filing deadline for nomination papers to the date of the general election;

- (6) To purchase not more than two tickets for each event held by another candidate or committee, whether or not the event constitutes a fundraiser as defined in section 11-342;
- (7) To make contributions to the candidate's party so long as the contributions are not earmarked for another candidate; or
- (8) To pay for ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an office, including expenses incurred for memberships in civic or community groups.

(b) Campaign funds may be used for the candidate's next subsequent election upon registration for the election pursuant to section 11-321. [L 2010, c 211, pt of §2; am L 2012, c 20, §2; am L 2016, c 247, §1]

" **[\$11-382] Prohibited uses of campaign funds.** Campaign funds shall not be used:

- (1) To support the campaigns of candidates other than the candidate with which they are directly associated;
- (2) To campaign against any other candidate not directly opposing the candidate with which they are directly associated; or
- (3) For personal expenses. [L 2010, c 211, pt of §2]

" **[\$11-383] Exceptions.** Notwithstanding sections 11-381 and 11-382:

- (1) A party may support more than one candidate; and
- (2) A candidate for the office of governor or lieutenant governor may support a co-candidate in the general election. [L 2010, c 211, pt of §2]

" **[\$11-384] Disposition of campaign funds; termination of registration.** (a) The candidate committee and candidate who receives contributions for an election but fails to file nomination papers for that election shall return residual funds to the contributors no later than ninety days after the date on which nominations for that election shall be filed. Funds not returned to contributors shall escheat to the Hawaii election campaign fund.

(b) The candidate committee and candidate who withdraws or ceases to be a candidate for the election because of death, disqualification, or other reasons shall return residual funds to the contributors no later than ninety days after the candidate ceases to be a candidate. Funds not returned to contributors shall escheat to the Hawaii election campaign fund.

(c) A candidate who is elected to office, including a candidate subject to term limits and a candidate who resigned before the end of the term of office and the candidate committee of such a candidate, may use campaign funds as provided in section 11-381 or return funds to contributors until four years from the date of the election for which the campaign funds were received. Funds that are not used or returned to contributors shall escheat to the Hawaii election campaign fund.

(d) A candidate who loses an election and the candidate committee of such a candidate may use campaign funds as provided in section 11-381 or return funds to contributors until one year from the date of the election for which the campaign funds were received. Funds that are not used or returned to contributors shall escheat to the Hawaii election campaign fund.

(e) A candidate committee that disposes of campaign funds pursuant to this section shall terminate its registration with the commission as provided in section 11-326.

(f) Notwithstanding any of the foregoing, campaign funds may be used for the candidate's next subsequent election as provided in section 11-381 upon registration for the election pursuant to section 11-321.

(g) The commission shall adopt rules pursuant to chapter 91 to carry out the purposes of this section. [L 2010, c 211, pt of §2]

#### "H. Advertisements

**§11-391 Advertisements.** (a) Any advertisement that is broadcast, televised, circulated, published, distributed, or otherwise communicated, including by electronic means, shall:

- (1) Contain the name and address of the candidate, candidate committee, noncandidate committee, or other person paying for the advertisement;
- (2) Contain a notice in a prominent location stating either that:
  - (A) The advertisement has the approval and authority of the candidate; provided that an advertisement paid for by a candidate, candidate committee, or ballot issue committee does not need to include the notice; or
  - (B) The advertisement has not been approved by the candidate; and
- (3) Not contain false information about the time, date, place, or means of voting.

(b) The fine for violation of this section, if assessed by the commission, shall not exceed \$25 for each advertisement that lacks the information required by this section or provides

prohibited information, and shall not exceed an aggregate amount of \$5,000. [L 2010, c 211, pt of §2; am L 2013, c 112, §10; am L 2014, c 128, §§2, 4]

### Case Notes

The disclaimer requirement under subsection (a)(2) did not violate the First Amendment as applied to plaintiff's political advertisements. 786 F.3d 1182 (2015).

Plaintiff noncandidate committee and government contractor had standing to challenge the "advertising" disclaimer requirements in subsection (a)(2)(B); first, even if plaintiff had already published advertisements with the disclaimers, it did not mean that it faced no injury; second, plaintiff sought a declaration that it need not include disclaimers in the future and challenged those statutes facially; third, plaintiff did not have to publish the advertisements without the disclaimers to have standing; finally, a favorable ruling would have enabled plaintiff to publish its advertisements without the disclaimers and fear of violating the law. 872 F. Supp. 2d 1023 (2012).

Plaintiff noncandidate committee and government contractor's as-applied challenge to the disclaimer requirement in subsection (a)(2)(B) and the corresponding definition of "advertisement" in §11-302, which included the "electioneering communications" definitions in §11-341(c), rejected; the court concluded that the plaintiff's advertisements fit within the regulatory "safe harbor"--they were an "advertisement" that was an "electioneering communication" and was the functional equivalent of express advocacy under §11-341(c). 872 F. Supp. 2d 1023 (2012).

Plaintiff noncandidate committee and government contractor's facial challenge to the disclaimer requirement in subsection (a)(2)(B) failed; disclosure requirements could apply to issue advocacy, so long as the exacting scrutiny test was otherwise met, and disclosure and disclaimer requirements--such as requiring a disclaimer under federal law that a communication "was not authorized by any candidate or candidate's committee"--satisfied the exacting scrutiny test; in effect, the U.S. Supreme Court in "Citizens United had effectively disposed of any attack on ... attribution and disclaimer requirements". 872 F. Supp. 2d 1023 (2012).

" **[§11-392] House bulletins.** The costs of preparing, printing, and circulating house bulletins and the writings, drawings, and photographs contained therein, except for paid political advertisements, shall be exempt from the provisions of this part. [L 2010, c 211, pt of §2]

" **[\$11-393] Identification of certain top contributors to noncandidate committees making only independent expenditures.**

(a) An advertisement shall contain an additional notice in a prominent location immediately after or below the notices required by section 11-391, if the advertisement is broadcast, televised, circulated, or published, including by electronic means, and is paid for by a noncandidate committee that certifies to the commission that it makes only independent expenditures. This additional notice shall start with the words, "The three top contributors for this advertisement are", followed by the names of the three top contributors, as defined in subsection (e), who made the highest aggregate contributions to the noncandidate committee for the purpose of funding the advertisement; provided that:

- (1) If a noncandidate committee is only able to identify two top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The two top contributors for this advertisement are", followed by the names of the two top contributors;
- (2) If a noncandidate committee is able to identify only one top contributor who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The top contributor for this advertisement is", followed by the name of the top contributor;
- (3) If a noncandidate committee is unable to identify any top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The three top contributors for this noncandidate committee are", followed by the names of the three top contributors who made the highest aggregate contributions to the noncandidate committee; and
- (4) If there are no top contributors to the noncandidate committee, the noncandidate committee shall not be subject to this section.

In no case shall a noncandidate committee be required to identify more than three top contributors pursuant to this section.

(b) If a noncandidate committee has more than three top contributors who contributed in equal amounts, the noncandidate committee may select which of the top contributors to identify in the advertisement; provided that the top contributors not identified in the advertisement did not make a higher aggregate contribution than those top contributors who are identified in

the advertisement. The additional notice required for noncandidate committees described under this subsection shall start with the words "Three of the top contributors for this advertisement are" or "Three of the top contributors to this noncandidate committee are", as appropriate, followed by the names of the three top contributors.

(c) This section shall not apply to advertisements broadcast by radio or television of such short duration that including a list of top contributors in the advertisement would constitute a hardship to the noncandidate committee paying for the advertisement. A noncandidate committee shall be subject to all other requirements under this part regardless of whether a hardship exists pursuant to this subsection. The commission shall adopt rules pursuant to chapter 91 to establish criteria to determine when including a list of top contributors in an advertisement of short duration constitutes a hardship to a noncandidate committee under this subsection.

(d) Any noncandidate committee that violates this section shall be subject to a fine under section 11-410.

(e) For purposes of this part, "top contributor" means a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement. [L 2013, c 112, §2]

#### "I. Enforcement

**[\$11-401] Subpoena powers.** (a) The commission may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects to the commission office or at any place in the State whether or not the subpoena is in connection with any hearing; provided that the person or documents subpoenaed shall be relevant to a matter under study or investigation by the commission.

(b) The books, papers, documents, or objects may be retained by the commission for a reasonable period of time for examination, audit, copying, testing, and photographing.

(c) The subpoena power shall be exercised by the chairperson of the commission, or the chairperson's designee.

(d) Upon application of the commission, obedience to the subpoena shall be enforced by the circuit court in the county in which the person subpoenaed resides or is found, in the same manner as a subpoena issued by a circuit court. [L 2010, c 211, pt of §2]

**[\$11-402] Filing of complaint.** (a) A person alleging violations of this part shall file a complaint with the commission.

(b) A complaint initiated by the commission shall be in writing and signed by the executive director.

(c) A complaint by a person other than the executive director shall be in writing, signed by the person filing the complaint, and notarized. [L 2010, c 211, pt of §2]

" **[\$11-403] Notice of complaint; opportunity to explain or respond to complaint.** (a) The commission shall give notice of receipt of the complaint and a copy of the complaint to the respondent.

(b) The respondent may explain or otherwise respond in writing to the complaint and explain or otherwise respond to the complaint at a meeting promptly noticed by the commission and conducted under chapter 92. [L 2010, c 211, pt of §2]

" **[\$11-404] Initial determination by the commission.** The commission shall promptly determine, without regard to chapter 91, to:

- (1) Summarily dismiss the complaint;
- (2) Investigate further;
- (3) Make a preliminary determination; or
- (4) Refer the complaint to an appropriate prosecuting attorney for prosecution under section 11-411. [L 2010, c 211, pt of §2]

" **[\$11-405] Preliminary determination regarding probable cause.** (a) Upon hearing the response, if the respondent explains or otherwise responds to the complaint, and upon completion of any investigation, the commission may make a prompt preliminary determination as to whether probable cause exists that a violation of this part has been committed. The preliminary determination with findings of fact and conclusions of law shall be served upon the respondent by certified mail.

(b) The respondent shall be afforded an opportunity to contest the commission's preliminary determination of probable cause by making a request for a contested case hearing under chapter 91 within twenty days of receipt of the preliminary determination. Failure to request a contested case hearing shall render the commission's preliminary determination final. [L 2010, c 211, pt of §2]

" **[\$11-406] Waiver of further proceedings.** The commission may waive further proceedings due to action the respondent takes to remedy or correct the alleged violation, including the payment of any administrative fine. The commission shall make the remedial or corrective action taken by the respondent, the commission's decision in light of the action to waive further

proceedings, and the commission's justification for its decision a part of the public record. [L 2010, c 211, pt of §2]

" **[\$11-407] Contested case hearing.** (a) A contested case hearing shall be conducted pursuant to chapter 91 and any rules adopted by the commission, except as provided in this section.

(b) If a hearing is held before the commission, the commission shall not be bound by strict rules of evidence when conducting a hearing to determine whether a violation of this part has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.

(c) The commission or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party or is otherwise not conducive to the ends of justice.

(d) A record shall be made of the proceeding.

(e) All parties shall be afforded full opportunity to present evidence and argument on all issues involved.

(f) Any person who appears before the commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission or hearings officer shall receive reimbursements as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding before the commission and who may be adversely affected thereby may appear or file a written statement for incorporation into the record of the proceeding.

(g) If a hearing is held before a hearings officer, the hearings officer shall render a recommended decision for the commission's consideration. Any party adversely affected by the decision may file written exceptions with the commission within fifteen days after receipt of a copy of the decision by certified mail.

(h) The commission, as expeditiously as possible after the close of the commission's hearing, shall issue its final determination of violation together with separate findings of fact and conclusions of law regarding whether a violation of this part has been committed. [L 2010, c 211, pt of §2]

" **[\$11-408] Dismissal.** The complaint shall be dismissed if the commission makes a final determination that there is no violation of this part. [L 2010, c 211, pt of §2]

" **[\$11-409] Final determination of violation; order.** If the commission makes a final determination of a violation of this



part, its written decision with findings of fact and conclusions of law may order any of the following:

- (1) The return of any contribution;
- (2) The reimbursement of any unauthorized expenditure;
- (3) The payment of any administrative fine to the general fund of the State;
- (4) The respondent to cease and desist violations of this part; or
- (5) Any report, statement, or other information to be filed that may be required by this part. [L 2010, c 211, pt of §2]

" **[\$11-410] Administrative fines; relief.** (a) The commission may make a decision or issue an order affecting any person violating any provision of this part or section 281-22 that may provide for the assessment of an administrative fine as follows:

- (1) If an individual, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure; or
- (2) If a corporation, organization, association, or labor union, an amount not to exceed \$1,000 for each occurrence;

provided that whenever a corporation, organization, association, or labor union violates this part, the violation may be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Any order for the assessment of an administrative fine shall not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91. A person may waive these rights by written stipulation or consent.

(c) If an administrative fine is imposed upon a candidate, the commission may order that the fine, or any portion, be paid from the candidate's personal funds.

(d) If the person to whom the commission's order is directed does not comply with the order, the first circuit court, upon application of the commission, shall issue an order requiring the person to comply with the commission's order. Failure to obey such a court order shall be punished as contempt.

(e) Any administrative fine collected by the commission shall be deposited in the general fund of the State.

(f) Any person or the commission may sue for injunctive relief to compel compliance with this part.

(g) The provisions of this section shall not prohibit prosecution under any appropriate provision of the Hawaii Penal Code or section 11-412.

(h) This section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the fines prescribed by sections 11-340 and 11-391(b). [L 2010, c 211, pt of §2]

" **[\$11-411] Criminal referral.** In lieu of an administrative determination that a violation of this part has been committed, the commission may refer the complaint to the attorney general or county prosecutor at any time it believes the respondent may have recklessly, knowingly, or intentionally committed a violation. [L 2010, c 211, pt of §2]

" **[\$11-412] Criminal prosecution.** (a) Any person who recklessly, knowingly, or intentionally violates any provision of this part shall be guilty of a misdemeanor.

(b) Any person who knowingly or intentionally falsifies any report required by this part with the intent to circumvent the law or deceive the commission or who violates section 11-352 or 11-353 shall be guilty of a class C felony. A person charged with a class C felony shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.

(c) A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.

(d) For purposes of prosecution for violation of this part, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

- (1) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court; provided that prosecution may commence prior to any proceeding initiated by the commission or final determination;
- (2) In the case of statewide offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and
- (3) In the case of all other offices, parties, or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

In the commission's choice of prosecuting agency, it shall be guided by whether any conflicting interest exists between the agency and its appointive authority.

(e) The court shall give priority to the expeditious processing of prosecutions under this section.

(f) Prosecution for violations of this part shall not commence after five years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

(g) This section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the fines prescribed by sections 11-340 and 11-391(b). [L 2010, c 211, pt of §2]

### Case Notes

Cited: 744 F. Supp. 2d 1075 (2010).

"J. Partial Public Financing

**[\$11-421] Hawaii election campaign fund; creation.** (a) The Hawaii election campaign fund is created as a trust fund within the state treasury.

(b) The fund shall consist of:

(1) All moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5(a);

(2) Any general fund appropriations; and

(3) Other moneys collected pursuant to this part.

(c) Moneys in the fund shall be paid to candidates by the comptroller as prescribed in section 11-431 and may be used for the commission's operating expenses, including staff salaries and fringe benefits. [L 2010, c 211, pt of §2]

" **[\$11-422] Depletion of fund.** (a) The commission shall be under no obligation to provide moneys to candidates if, in the partial public funding program or comprehensive public funding for elections to the county of Hawaii council, moneys in the Hawaii election campaign fund are near depletion.

(b) For the purpose of the partial funding program, if the Hawaii election campaign fund is close to depletion as determined by the commission, the commission shall determine the amounts available to eligible candidates based on their order of eligibility in qualifying for partial public funds, as determined by the date of filing of an application for public funds with the commission pursuant to section 11-428; provided that the application has been accepted by the commission.

(c) For the purpose of the comprehensive public funding for elections to the county councils, if the Hawaii [election] campaign fund is close to depletion, the commission shall determine whether the program shall be operative in accordance with this part. [L 2010, c 211, pt of §2]

" **§11-423 Voluntary expenditure limits; filing affidavit.**

(a) Any candidate may voluntarily agree to limit the candidate's expenditures and those of the candidate's candidate committee or committees and the candidate's party on the candidate's behalf by filing an affidavit with the campaign spending commission.

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in this part and that the candidate is voluntarily agreeing to limit the candidate's expenditures and those made on the candidate's behalf by the amount set by law. The affidavit shall be subscribed to by the candidate and notarized and filed no later than the time of filing nomination papers with the chief election officer or county clerk.

(c) The affidavit shall remain effective until the termination of the candidate committee or the opening of filing of nomination papers for the next succeeding election, whichever occurs first. An affidavit filed under this section may not be rescinded.

(d) From January 1 of the year of any primary, special, or general election, the aggregate expenditures for each election by a candidate who voluntarily agrees to limit campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone, all treasurers, the candidate committee, and noncandidate committees on the candidate's behalf, shall not exceed the following amounts expressed, respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor - \$2.50;
- (2) For the office of lieutenant governor - \$1.40;
- (3) For the office of mayor - \$2.00;
- (4) For the offices of state senator, state representative, county council member, and prosecuting attorney - \$1.40; and
- (5) For all other offices - 20 cents. [L 2010, c 211, pt of §2; am L 2011, c 5, §5; am L 2013, c 63, §1]

" **§11-424 REPEALED.** L 2014, c 140, §2.

" **§11-425 Maximum amount of public funds available to candidate.** (a) The maximum amount of public funds available in

each election to a candidate for the office of governor, lieutenant governor, or mayor shall not exceed ten per cent of the expenditure limit established in section 11-423(d) for each election.

(b) The maximum amount of public funds available in each election to a candidate for the office of state senator, state representative, county council member, and prosecuting attorney shall not exceed fifteen per cent of the expenditure limit established in section 11-423(d) for each election.

(c) For the office of Hawaiian affairs, the maximum amount of public funds available to a candidate shall not exceed \$1,500 in any election year.

(d) For all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.

(e) Each candidate who qualified for the maximum amount of public funding in any primary election and who is a candidate for a subsequent general election shall apply with the commission to be qualified to receive the maximum amount of public funds as provided in this section for the respective general election. For purposes of this section, "qualified" means meeting the qualifying campaign contribution requirements of section 11-429. [L 2010, c 211, pt of §2; am L 2011, c 5, §6]

" **§11-426 Candidate exceeds voluntary expenditure limit.** A candidate who files the affidavit agreeing to limit expenditures and who exceeds the expenditure limit for that election shall:

- (1) Notify all opponents, the office of elections, and the commission by telephone and writing on the day the expenditure limit is exceeded;
- (2) Pay the balance of the full filing fee; and
- (3) Provide reasonable notice to all contributors within thirty days of exceeding the limit that the expenditure limit was exceeded. [L 2010, c 211, pt of §2; am L 2014, c 140, §1]

" **[§11-427] Reserving use of contributions.** A candidate who files the affidavit voluntarily agreeing to limit expenditures and who receives contributions that in aggregate exceed the expenditure limit for an election shall reserve use of any contributions that exceed the limit until after the applicable election. [L 2010, c 211, pt of §2]

" **[§11-428] Eligibility requirements for public funds.** In order to be eligible to receive public funds for an election, a candidate shall certify that the candidate will meet all the following requirements:

- (1) The candidate and any candidate committee authorized by the candidate shall not incur campaign expenses in excess of the expenditure limitations imposed by section 11-423;
- (2) The candidate has qualified to be on the election ballot in a primary or general election;
- (3) The candidate has filed a statement of intent to seek qualifying contributions. A contribution received before the filing of a statement of intent to seek public funds shall not be considered a qualifying contribution;
- (4) The candidate or candidate committee authorized by the candidate has received the minimum qualifying contribution amounts for the office sought by the candidate as set forth in section 11-429;
- (5) The aggregate of contributions certified with respect to any person under paragraph (4) does not exceed \$100;
- (6) The candidate agrees to obtain and furnish any evidence relating to expenditures that the commission may request;
- (7) The candidate agrees to keep and furnish records, books, and other information that the commission may request;
- (8) The candidate agrees to an audit and examination by the commission pursuant to section 11-434 and to pay any amounts required to be paid pursuant to that section; and
- (9) Each candidate and candidate committee in receipt of qualifying contributions that may be taken into account for purposes of public funding shall maintain, on a form prescribed by the commission, records that show the date and amount of each qualifying contribution and the full name and mailing address of the person making the contribution. The candidate and the candidate committee authorized by the candidate shall transmit to the commission all reports with respect to these contributions that the commission may require. [L 2010, c 211, pt of §2]

" **[§11-429] Minimum qualifying contribution amounts; qualifying contribution statement.** (a) As a condition of receiving public funds for a primary or general election, a candidate shall not be unopposed in any election for which public funds are sought, shall have filed an affidavit with the commission pursuant to section 11-423 to voluntarily limit the candidate's campaign expenditures, and shall be in receipt of

the following sum of qualifying contributions from individual residents of Hawaii:

- (1) For the office of governor – qualifying contributions that in the aggregate exceed \$100,000;
  - (2) For the office of lieutenant governor – qualifying contributions that in the aggregate exceed \$50,000;
  - (3) For the office of mayor for each respective county:
    - (A) County of Honolulu – qualifying contributions that in the aggregate exceed \$50,000;
    - (B) County of Hawaii – qualifying contributions that in the aggregate exceed \$15,000;
    - (C) County of Maui – qualifying contributions that in the aggregate exceed \$10,000; and
    - (D) County of Kauai – qualifying contributions that in the aggregate exceed \$5,000;
  - (4) For the office of prosecuting attorney for each respective county:
    - (A) County of Honolulu – qualifying contributions that in the aggregate exceed \$30,000;
    - (B) County of Hawaii – qualifying contributions that in the aggregate exceed \$10,000; and
    - (C) County of Kauai – qualifying contributions that in the aggregate exceed \$5,000;
  - (5) For the office of county council – for each respective county:
    - (A) County of Honolulu – qualifying contributions that in the aggregate exceed \$5,000;
    - (B) County of Hawaii – qualifying contributions that in the aggregate exceed \$1,500;
    - (C) County of Maui – qualifying contributions that in the aggregate exceed \$5,000; and
    - (D) County of Kauai – qualifying contributions that in the aggregate exceed \$3,000;
  - (6) For the office of state senator – qualifying contributions that, in the aggregate exceed \$2,500;
  - (7) For the office of state representative – qualifying contributions that, in the aggregate, exceed \$1,500;
  - (8) For the office of Hawaiian affairs – qualifying contributions that, in the aggregate, exceed \$1,500; and
  - (9) For all other offices, qualifying contributions that, in the aggregate, exceed \$500.
- (b) A candidate shall obtain the minimum qualifying contribution amount set forth in subsection (a) once for the election period.

- (1) If the candidate obtains the minimum qualifying contribution amount, the candidate is eligible to receive:
  - (A) The minimum payment in an amount equal to the minimum qualifying contribution amounts; and
  - (B) Payments of \$1 for each \$1 of qualifying contributions in excess of the minimum qualifying contribution amounts; and
- (2) A candidate shall have at least one other qualified candidate as an opponent for the primary or general election to receive public funds for that election.
- (c) The candidate shall not receive more than the maximum amount of public funds available to a candidate pursuant to section 11-425; provided that the candidate shall not receive public funds for a primary election if the candidate does not obtain the minimum qualifying contribution amounts before the date of the primary election. [L 2010, c 211, pt of §2]

" **[\$11-430] Application for public funds.** (a) Each application for public funds shall be signed by the candidate and notarized, and accompanied by the qualifying campaign contribution statement or statements.

(b) The application shall be mailed or delivered to the commission and shall not be valid unless received by the commission no later than thirty days after the general election.

(c) Each candidate in receipt of the minimum qualifying contribution amount established for the office that the candidate seeks may apply to the commission for public funding after the candidate has become a candidate in a primary or general election. [L 2010, c 211, pt of §2]

" **[\$11-431] Payment to candidate.** (a) Upon the commission's approval of the application and statement of qualifying contributions, the commission shall direct the comptroller to distribute matching public funds up to the maximum amount of public funds allowed by section 11-425. Public funds shall be distributed to the candidate within twenty days from the date that the candidate's initial application and qualifying contribution statement is approved by the commission.

(b) The commission shall make additional determinations within fourteen days after receiving a complete application and supplemental statement of qualifying contributions from a candidate.

(c) All determinations made by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 11-434. [L 2010, c 211, pt of §2]



" **[\$11-432] Use of public funds.** (a) Public funds shall be deposited in a depository institution, as defined in section 412:1-109, duly authorized to do business in the State, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(b) No expenditures of any public funds shall be made except by checks drawn on such checking account.

(c) Public funds shall be only used to:

(1) Defray expenditures of the candidate or the candidate committee authorized by the candidate; and

(2) Repay loans, the proceeds of which were used to defray expenditures.

(d) Public funds shall not be transferred to another candidate for any election.

(e) Unexpended public funds shall be returned to the commission by the deadline for filing the final report for the election for which the funds were received. [L 2010, c 211, pt of §2]

" **[\$11-433] Post-election report required.** The treasurer shall electronically submit an expenditure of public funds report to the commission no later than twenty days after a primary election and no later than thirty days after a general election certifying that all public funds paid to the candidate have been used as required by this part.

Should the commission determine that any portion of the public funds have been used for noncampaign or other improper expenses, it shall report such finding to the attorney general and shall order the candidate to return all or part of the funds paid to that candidate for a primary or general election. When public funds are returned, the funds shall be deposited into the Hawaii election campaign fund. [L 2010, c 211, pt of §2]

" **[\$11-434] Post-election examination and audit; return of funds.** (a) The commission shall examine and audit the public funds received by all candidates, qualifying contributions, and the expenditures made by all candidates within sixty days after each general election.

(b) The commission shall adopt rules, pursuant to chapter 91, prior to the payment of public money, regarding expenditures which qualify under section 11-432.

(c) If the commission determines that any payment of public funds to a candidate exceeded the aggregate amount to

which the candidate was entitled, the commission shall notify the candidate within two years of the payment of the public funds and the candidate shall repay the excess amount to the Hawaii election campaign fund.

(d) If the commission determines that any public funds were used for any improper purpose, the commission shall notify the candidate, and the candidate shall pay to the Hawaii election campaign fund an amount equal to three hundred per cent of such amount in addition to any fines under section 11-410 and section 11-412. [L 2010, c 211, pt of §2]

" **[\$11-435] Report and recommendation.** In January of each year, the commission shall submit to the legislature:

- (1) A study and recommendations of reasonable campaign expenditure and contribution limits and the factors which may be relevant in their establishment; and
- (2) A report concerning the status of the Hawaii election [campaign] fund. [L 2010, c 211, pt of §2]