

Honolulu, Hawaii

FEB 28 2013

RE: S.B. No. 223
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 223 entitled:

"A BILL FOR AN ACT RELATING TO ELECTIONS,"

begs leave to report as follows:

The purpose and intent of this measure is to allow voters to vote for declared candidates other than those listed on the preprinted ballot through a write-in voting procedure.

Prior to the hearing on this measure, your Committee posted a proposed S.D. 1 for review and comment. The proposed S.D. 1 amends this measure by deleting its contents and inserting language to:

- (1) Clarify that the chairperson of a political party, and not an officer of the party, may make an objection to the validity of nomination papers;
- (2) Require the publication on state or county websites of a list of all candidates within twenty-four hours of the close of the filing deadline for nomination papers;
- (3) Establish requirements for notice to the candidate of any objections and withdrawal of objections;
- (4) Establish that an objection is not subject to judicial review or review by an election officer and that a



candidate may run as an independent candidate if the objection is not withdrawn; and

- (5) Delete the requirement for a political party to file a complaint in circuit court for prompt determination of an objection regarding a candidate who is not a member of that political party.

Your Committee received testimony in support of the proposed S.D. 1 from the Democratic Party of Hawaii, Gay, Lesbian, Bisexual and Transgender Caucus of the Democratic Party of Hawaii, and one individual. Testimony in opposition to this measure was submitted by the Department of the Attorney General. The Office of Elections and Office of the County Clerk, County of Kauai submitted comments on this measure.

Your Committee finds that under existing law, if an officer of a political party objects to a candidate because the candidate is not a member of the party pursuant to that party's rules, an officer of that party is required to file a complaint in circuit court for a judge to render a decision on the objection. The Democratic Party of Hawaii testified that during the previous two general election periods, the party encountered several situations where candidates' affiliation or eligibility as bona fide registered members of the Democratic Party were questionable or deemed unqualified in accordance with the constitution and bylaws of the Democratic Party. The Chairperson of the Democratic Party of Hawaii testified that seeking court action on these matters as required by law is expensive and time consuming. Thus, the Party decided not to seek court action regarding their objection to these candidates. The Chairperson added that the required court action does not authorize the award of attorney's fees and costs to the prevailing party, which would offset the costs for filing an objection with the circuit court. This proposed S.D. 1 will help to ensure partisan candidates for public offices are eligible and supported by their respective political parties without incurring legal expenses and delays caused by a mandated court action.

Your Committee notes the following comments and concerns submitted by the Office of Elections and Department of the Attorney General regarding the proposed S.D. 1. First, the Office of Elections testified that the proposed deadline of seven business days for a political party chairperson to file an objection and the additional fourteen calendar days to decide if



the objection will be withdrawn does not permit the Office of Elections sufficient time to meet its obligations to print and mail out ballots in a timely manner to military and overseas voters as well as in-state voters. The Office of Elections requested that the time provisions be reduced to seven calendar days for the objection to be made by the political party chairperson and the decision to withdraw the objection be made within seven calendar days of the date of the initial objection. Furthermore, the Office requested that the political party chairperson be required to immediately send by electronic transmission the notice of objection or withdrawal of objection directly to the Office of Elections.

Second, the Office of Elections indicated in its testimony that the proposed S.D. 1 appeared to automatically allow a candidate to be an independent candidate. The Department of the Attorney General testified that it is unclear whether this means that a candidate may run as an independent party candidate or as a candidate for any other political party of the candidate's choosing. If it means that the candidate may only run as an independent party candidate, the Department indicated that this proposed S.D. 1 may violate the First Amendment right to free association and therefore be unconstitutional.

Lastly, the Office of Elections and Department of the Attorney General testified regarding their concerns of lack of judicial review or review by an election officer when a political party files an objection.

Accordingly, your Committee has amended this measure by adopting the proposed S.D. 1 and amending it further by:

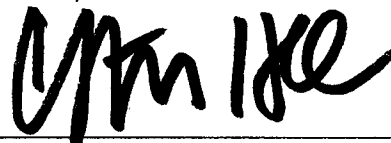
- (1) Deleting the deadline of seven business days for a political party chairperson to file an objection and then an additional fourteen calendar days to decide if the objection will be withdrawn and inserting language that:
 - (A) Requires the objection by the political party chairperson to be made within seven calendar days and the decision to withdraw the objection to be made within seven calendar days of the date of the initial objection; and



- (B) Requires the political party chairperson to immediately send by electronic transmission the notice of objection or withdrawal of objection directly to the Chief Election Officer or county clerk;
- (2) Requiring that the objection be subject to judicial review or review by the Chief Election Officer;
- (3) Deleting the language that allows a candidate to run as an independent candidate;
- (4) Allowing the prevailing party in a judicial review of the objection to be entitled to attorney's fees and costs; and
- (5) Inserting an effective date of July 1, 2050, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 223, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 223, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Seventh Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 223	Committee Referral: JDL	Date: 2-15-13		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile S.L. (VC)				✓
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam	✓			
TOTAL	4	—	—	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes