

CHAPTER 12 [NEW]
PRIMARY ELECTIONS

Part I. Nomination; Determination of Candidates

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Attorney General Opinions

County charter providing for nonpartisan election of prosecutor does not conflict with this chapter. Att. Gen. Op. 85-7.

Law Journals and Reviews

Burdick v. Takushi: Yes to Equal Voice in Voting, No to a Fundamental Right to Vote for Any Particular Candidate. 14 UH L. Rev. 715.

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.

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PART I. NOMINATION; DETERMINATION OF CANDIDATES

§12-1 Application of chapter. All candidates for elective office, except as provided in section 14-21, shall be nominated in accordance with this chapter and not otherwise. [L 1970, c 26, pt of §2]

Law Journals and Reviews

The Protection of Individual Rights Under Hawai'i's Constitution. 14 UH L. Rev. 311.

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§12-1.5 REPEALED. L 1980, c 139, §1.

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§12-2 Primary held when; candidates only those nominated.

The primary shall be held at the polling place for each precinct on the second to the last Saturday of September in every even numbered year; provided that in no case shall any primary election precede a general election by less than forty-five days.

No person shall be a candidate for any general or special general election unless the person has been nominated in the immediately preceding primary or special primary. [L 1970, c 26, pt of §2; am L 1973, c 217, §2(a); am L 1975, c 36, §2(1); am L 1976, c 106, §2(1); am L 1979, c 122, §2; gen ch 1985]

Case Notes

Court abstained from deciding whether Hawaii statute bans write-in voting. 846 F.2d 587.

Casting of write-in votes not permitted. 70 H. 498, 776 P.2d 824.

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§12-2.5 Nomination papers; when available. Nomination papers shall be made available from the first working day of February in every even-numbered year; provided that in the case of a special primary or special election, nomination papers shall be made available at least ten days prior to the close of filing. [L 1979, c 133, §7; am L 1990, c 35, §6]

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§12-3 Nomination paper; format; limitations. (a) No candidate's name shall be printed upon any official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed in the candidate's behalf and in the name by which the candidate is commonly known. The nomination paper shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

(1) A statement by the registered voters signing the form that they are eligible to vote for the candidate;

(2) A statement by the registered voters signing the form that they nominate the candidate for the office identified on the nomination paper issued to the candidate;

(3) The residence address and county in which the candidate resides;

(4) The legal name of the candidate, the name by which the candidate is commonly known, if different, the office for which the candidate is running, and the candidate's party affiliation or nonpartisanship; all of which are to be placed on the nomination paper by the chief election officer or the clerk prior to releasing the form to the candidate;

(5) Space for the name, signature, date of birth, last four digits of the social security number, and residence address of each registered voter signing the form, and other information as determined by the chief election officer; provided that no more than the last four digits of a voter's social security number shall be required;

(6) A sworn certification by self-subscribing oath by the candidate that the candidate qualifies under the law for the office the candidate is seeking and that the candidate has determined that, except for the information provided by the registered voters signing the nomination papers, all of the information on the nomination papers is true and correct;

(7) A sworn certification by self-subscribing oath by a party candidate that the candidate is a member of

the party;

(8) A sworn certification by self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of article II, section 7, of the Constitution of the State of Hawaii;

(9) A sworn certification by self-subscribing oath by the candidate that the candidate is in compliance with section 831-2, dealing with felons, and is eligible to run for office; and

(10) The name the candidate wishes printed on the ballot and the mailing address of the candidate.

(b) Signatures of registered voters shall not be counted, unless they are upon the nomination paper having the format set forth above, written or printed thereon, and if there are separate sheets to be attached to the nomination paper, the sheets shall have the name of the candidate, the candidate's party affiliation or nonpartisanship, and the office and district for which the candidate is running placed thereon by the chief election officer or the clerk. The nomination paper and separate sheets shall be provided by the chief election officer or the clerk.

(c) Nomination papers shall not be filed in behalf of any person for more than one party or for more than one office; nor shall any person file nomination papers both as a party candidate and as a nonpartisan candidate.

(d) The office and district for which the candidate is running, the candidate's name, and the candidate's party affiliation or nonpartisanship may not be changed from that indicated on the nomination paper and separate sheets. If the candidate wishes to run for an office or district different from that for which the nomination paper states or under a different party affiliation or nonpartisanship, the candidate may request the appropriate nomination paper from the chief election officer or clerk and have it signed by the required number of registered voters.

(e) Nomination papers that contain alterations or changes made by anyone other than the chief election officer or the clerk to the candidate's information, the candidate's party affiliation or nonpartisanship, the office to which the

candidate seeks nomination, or the oath of loyalty or affirmation, after the nomination paper was issued by the chief election officer or clerk, shall be void and will not be accepted for filing by the chief election officer or clerk.

(f) Nomination papers which are incomplete and do not contain all of the certifications, signatures, and requirements of this section shall be void and will not be accepted for filing by the chief election officer or clerk. [L 1970, c 26, pt of §2; am L 1973, c 217, §2(b); am L 1975, c 36, §2(2); am L 1979, c 139, §6; am L 1980, c 264, §2; am L 1983, c 34, §19; am L 1997, c 288, §1; am L 2005, c 13, §1]

Attorney General Opinions

Candidate who fails to file the certificate required by par. (6) may not be placed upon the ballots. Att. Gen. Op. 70-15.

A person who is moving and will change election district in September is eligible to file nomination papers as candidate from the district to which the person will move. Att. Gen. Op. 74-15.

Candidate could seek election to public office and constitutional convention even though elections concurrent. Att. Gen. Op. 75-12.

Enforces article II, section 7, with respect to candidates for state or county but not federal offices. Att. Gen. Op. 86-4.

Law Journals and Reviews

Fasi v. Cayetano: Challenging Hawaii's "Resign-to-Run" Amendment. 13 UH L. Rev. 327.

Case Notes

Par. (6): Candidate must certify that candidate will qualify by the next general election; provision not unconstitutional. 52 H. 251, 473 P.2d 872.

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§12-4 Nomination papers; qualifications of signers. (a)

No person shall sign the nomination papers of more than one candidate, partisan or nonpartisan, for the same office, unless there is more than one office in a class in which case no person shall sign papers for more than the actual number of offices in a class. Nomination papers shall be construed in this regard according to priority of filing, and the name of any person appearing thereon shall be counted only so long as this provision is not violated, and not thereafter.

(b) Names on nomination papers shall not be counted, unless the signer is a registered voter and is eligible to vote for the candidate. The chief election officer or clerk shall use the most currently compiled general county register available at the time the nomination paper is presented for filing to determine the eligibility of the registered voters to sign for the candidate. Voter registration affidavits that have not been entered into the voter register by the clerk shall not be considered or accepted for this check. At the time of filing, the chief election officer or clerk may reject the candidate's nomination paper for lack of sufficient signers who are eligible to vote for the candidate.

(c) Any registered voter who, after signing a nomination paper, seeks to withdraw the voter's signature shall do so by providing written notice to the chief election officer, or clerk in the case of a county office, any time before the filing of the candidate's nomination paper; provided that the notice is received by the chief election officer, or clerk in the case of a county office, no later than 4:30 p.m. on the fourth business day prior to the close of filing pursuant to section 12-6. The written notice shall include the voter's name, social security number, residence address, date of birth, the voter's signature, the name of the candidate, and a statement that the voter wishes to remove the voter's signature from the candidate's nomination paper. Any request by a registered voter to remove the voter's signature from a candidate's nomination paper that is received by the chief election officer, or clerk in the case of a county office, after the candidate's nomination paper has been filed or after 4:30 p.m. on the fourth business day prior to the close of filing shall not be accepted.

(d) Within twenty-four hours upon receipt of a written

notice pursuant to subsection (c), the chief election officer, or clerk in the case of a county office, shall send written notice via registered mail to the candidate that the voter requested to have the voter's signature removed from the candidate's nomination paper and that the signature of the voter shall not be counted. [L 1970, c 26, pt of §2; am L 1974, c 34, §2(a); am L 1996, c 173, §5; am L 1997, c 288, §2]

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§12-5 Nomination papers: number of signers. (a)

Nomination papers for candidates for members of Congress, governor, lieutenant governor, and the board of education shall be signed by not less than twenty-five registered voters of the State or of the Congressional district or school board district from which the candidates are running in the case of candidates for the United States House of Representatives or for the board of education.

(b) Nomination papers for candidates for either branch of the legislature and for county office shall be signed by not less than fifteen registered voters of the district or county or subdivision thereof for which the person nominated is a candidate.

(c) Nomination papers for candidates for members of the board of trustees of the office of Hawaiian affairs shall be signed by not less than twenty-five persons registered as prescribed under section 11-15(b).

(d) No signatures shall be required on nomination papers for candidates filing to run in a special primary or special election to fill a vacancy. [L 1970, c 26, pt of §2; am L 1979, c 196, §6; am L 1990, c 35, §7]

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§12-6 Nomination papers: time for filing; fees. (a)

Nomination papers shall be filed as follows:

(1) For members of Congress, state, and county offices, nomination papers shall be filed with the chief election officer, or clerk in case of county offices, not later than 4:30 p.m. on the sixtieth calendar day prior to the primary, special primary, or special election provided that if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding. A state candidate from the counties of Hawaii, Maui, and Kauai may file the declaration of candidacy with the respective clerk. The clerk shall transmit to the office of the chief election officer the state candidate's declaration of candidacy without delay. However, if a special primary or special election is to be held by a county and the county charter requires that the council shall issue a proclamation calling for the election to be held within a specified period of time, and if that requirement would not allow the filing of nomination papers with the appropriate office by the sixtieth calendar day prior to the day for holding the special primary or special election, the council shall establish the deadline for the filing of nomination papers in the proclamation calling for the election; and

(2) For the board of trustees for the office of Hawaiian affairs, nomination papers shall be filed with the chief election officer, not later than 4:30 p.m. on the sixtieth calendar day prior to the primary election referred to in paragraph (1); provided that if that day is a Saturday, Sunday, or holiday, then not later than 4:30 p.m. on the first working day immediately preceding.

[(b)] If after the close of filing there are no candidates who have filed nomination papers for an elective office for the primary, special primary, or any special election held in conjunction with the primary election, the chief election officer or clerk, in the case of a county election, shall accept nomination papers for that office not later than 4:30 p.m. on the fiftieth day prior to the primary, special primary, or special election.

[(c)] There shall be deposited with each nomination paper a filing fee on account of the expenses attending the holding of the primary, special primary, or special election which shall be paid into the treasury of the State, or county, as the case may be, as a realization:

- (1) For United States senators and United States representatives--\$75;
- (2) For governor and lieutenant governor--\$750;
- (3) For mayor--\$500; and
- (4) For all other offices--\$250.

[(d)] Upon the receipt by the chief election officer or the clerk of the nomination paper of a candidate, the day, hour, and minute when it was received shall be endorsed thereon.

[(e)] Upon the showing of a certified copy of an affidavit which has been filed with the campaign spending commission pursuant to section 11-208 by a candidate who has voluntarily agreed to abide by spending limits, the chief election officer or clerk shall discount the filing fee of the candidate by the following amounts:

- (1) For the office of governor and lieutenant governor--\$675;
- (2) For the office of mayor--\$450; and
- (3) For all other offices--\$225.

[(f)] The chief election officer or clerk shall waive the filing fee in the case of a person who declares, by affidavit, that the person is indigent and who has filed a petition signed by currently registered voters who constitute at least one-half of one per cent of the total voters registered at the last preceding general election in the respective district or districts which correspond to the specific office for which the indigent person is a candidate. This petition shall be submitted on the form prescribed and provided by the chief election officer together with the nomination paper required by this chapter. [L 1970, c 26, pt of §2; am L 1973, c 217, §2(c); am L 1974, c 34, §2(b); am L 1975, c 36, §2(3); am L 1976, c 106, §2(2); am L 1977, c 189, §2(1); am L 1979, c 196, §7 and c 224, §5; am L 1983, c 34, §20; am L 1990, c 35, §8; am L 1991, c 10, §2; am L 2000, c 129, §1; am L 2002, c 30, §1]

Revision Note

Subsection (b) was enacted as a new section but is codified to this section pursuant to §23G-15.

Attorney General Opinions

Time for filing nomination papers is mandatory and may not be extended. Att. Gen. Op. 78-4.

When elected official must resign to run for federal office. Att. Gen. Op. 86-4.

Case Notes

Provisions prescribing requirements for indigent candidates do not violate the equal protection or due process clauses. 59 H. 430, 583 P.2d 955.

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§12-7 Filing of oath. The name of no candidate for any office shall be printed upon any official ballot, in any election, unless the candidate shall have taken and subscribed to the following written oath or affirmation, and filed the oath with the candidate's nomination papers.

The written oath or affirmation shall be in the following form:

"I,....., do solemnly swear and declare, on oath that if elected to office I will support and defend the Constitution and laws of the United States of America, and the Constitution and laws of the State of Hawaii, and will bear true faith and allegiance to the same; that if elected I will faithfully discharge my duties as.....(name of office).....to the best of my ability; that I take this obligation freely, without any mental reservation or purpose of evasion; So help me God."

Upon being satisfied as to the sincerity of any person claiming that the person is unwilling to take the above prescribed oath only because the person is unwilling to be sworn, the person may be permitted, in lieu of the oath, to make the person's solemn affirmation which shall be in the same form as the oath except that the words "sincerely and truly affirm" shall be substituted for the word "swear" and the phrases "on oath" and "So help me God" shall be omitted. Such affirmation shall be of the same force and effect as the prescribed oath.

The oath or affirmation shall be subscribed before the officer administering the same, who shall endorse thereon the fact that the oath was subscribed and sworn to or the affirmation was made together with the date thereof and affix the seal of the officer's office or of the court of which the officer is a judge or clerk.

It shall be the duty of every notary public or other public officer by law authorized to administer oaths to administer the oath or affirmation prescribed by this section and to furnish the required endorsement and authentication. [L 1970, c 26, pt of §2; gen ch 1985]

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§12-8 Nomination papers; challenge; evidentiary hearings and decisions. (a) All nomination papers filed in conformity with section 12-3 shall be deemed valid unless objection is made thereto by a registered voter, an officer of a political party whose name is on file with the chief election officer, the chief election officer, or the county clerk in the case of a county office. All objections shall be filed in writing not later than 4:30 p.m. on the thirtieth day or the next earliest working day prior to the primary or special election.

(b) If an objection is made by a registered voter, the candidate objected thereto shall be notified of the objection by the chief election officer or the clerk in the case of county offices by registered or certified mail.

(c) If an objection is filed by an officer of a political party with the circuit court, the candidate objected thereto shall be notified of the objection by an officer of the political party by registered or certified mail.

(d) Except for objections by an officer of a political party filed directly with the circuit court, the chief election officer or the clerk in the case of county offices shall have the necessary powers and authority to reach a preliminary decision on the merits of the objection; provided that nothing in this subsection shall be construed to extend to the candidate a right to an administrative contested case hearing as defined in section 91-1(5). The chief election officer or the clerk in the case of county offices shall render a preliminary decision not later than five working days after the objection is filed.

(e) If the chief election officer or clerk in the case of county offices determines that the objection may warrant the disqualification of the candidate, the chief election officer or clerk shall file a complaint in the circuit court for a determination of the objection; provided that such complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the seventh working day after the objection was filed.

(f) If a political party objects to the nomination paper filed by a candidate because the candidate is not a member of the party pursuant to the party's rules filed in conformance with section 11-63, an officer of the party whose name appears on file with the chief election officer shall file a complaint

in the circuit court for a prompt determination of the objection; provided that the complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the thirtieth working day or the next earliest working day prior to that election day.

(g) If an officer of a political party whose name appears on file with the chief election officer, the chief election officer, or clerk in the case of county offices files a complaint in the circuit court, the circuit court clerk shall issue to the defendants named in the complaint a summons to appear before the court not later than 4:30 p.m. on the fifth day after service thereof.

(h) The circuit court shall hear the complaint 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 the objection presented in the complaint, and a certified copy of the judgment shall forthwith be served on the chief election officer or the clerk, as the case may be.

(i) If the judgment disqualifies the candidate, the chief election officer or the clerk shall follow the procedures set forth in sections 11-117 and 11-118 regarding the disqualifications of candidates. [L 1970, c 26, pt of §2; am L 1973, c 217, §2(d); am L 1975, c 36, §2(4); am L 1977, c 189, §2(2); am L 1990, c 125, §1; am L Sp 1995, c 27, §§8, 15; am L 1997, c 288, §3; am L 1999, c 141, §3]

Attorney General Opinions

Nomination papers of a party candidate may be challenged if candidate is not a party member. Att. Gen. Op. 72-1.

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§12-9 List of candidates. As soon as possible but not later than 4:30 p.m. on the fifth day after the close of filing the chief election officer shall transmit to each county clerk and the county clerk shall transmit to the chief election officer certified lists containing the names of all persons, the office for which each is a candidate, and their party designation, or designation of nonpartisanship, as the case may be, for whom nomination papers have been duly filed in his office and who are entitled to be voted for at the primary, special primary or special election. [L 1970, c 26, pt of §2; am L 1973, c 217, §2(e)]

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PART II. BALLOTS

§12-21 Official party ballots. The primary or special primary ballot shall be clearly designated as such. The names of the candidates of each party qualifying under section 11-61 or 11-62 and of nonpartisan candidates may be printed on separate ballots, or on a single ballot. The name of each party and the nonpartisan designation shall be distinctly printed and sufficiently separate from each other. The names of all candidates shall be printed on the ballot as provided in section 11-115. When the names of all candidates of the same party for the same office exceed the maximum number of voting positions on a single side of a ballot card, the excess names may be arranged and listed on both sides of the ballot card and additional ballot cards if necessary. When separate ballots for each party are not used, the order in which parties appear on the ballot, including nonpartisan, shall be determined by lot.

The chief election officer or the county clerk, in the case of county elections, shall approve printed samples or proofs of the respective party ballots as to uniformity of size, weight, shape, and thickness prior to final printing of the official ballots. [L 1970, c 26, pt of §2; am L 1973, c 217, §2(f); am L 1979, c 139, §7; am L 1981, c 214, §1; am L 1987, c 232, §2]

Attorney General Opinions

Each party's ballot should be separate and severable from the other parties' ballot, and it is impermissible to place candidates of two minor parties on opposite faces of a ballot card. Att. Gen. Op. 80-7.

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§12-22 REPEALED. L 1987, c 232, §3.

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§12-23 REPEALED. L 1979, c 125, §4.

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PART III. BALLOT SELECTION

§12-31 Selection of party ballot; voting. No person eligible to vote in any primary or special primary election shall be required to state a party preference or nonpartisanship as a condition of voting. Each voter shall be issued the primary or special primary ballot for each party and the nonpartisan primary or special primary ballot. A voter shall be entitled to vote only for candidates of one party or only for nonpartisan candidates. If the primary or special primary ballot is marked contrary to this paragraph, the ballot shall not be counted.

In any primary or special primary election in the year 1979 and thereafter, a voter shall be entitled to select and to vote the ballot of any one party or nonpartisan, regardless of which ballot the voter voted in any preceding primary or special primary election. [L 1970, c 26, pt of §2; am L 1973, c 217, §2 (i); am L 1974, c 34, §2(c); am L 1979, c 139, §9; gen ch 1985]

Cross References

Constitutional provision, see Const. art. II, §4.

Case Notes

Selection of a party's ballot does not automatically make voter a party member. 56 H. 519, 542 P.2d 1272.

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PART IV. ELECTION RESULTS

§12-41 Result of election. (a) The person or persons receiving the greatest number of votes at the primary or special primary as a candidate of a party for an office shall be the candidate of the party at the following general or special general election but not more candidates for a party than there are offices to be elected; provided that any candidate for any county office who is the sole candidate for that office at the primary or special primary election, or who would not be opposed in the general or special general election by any candidate running on any other ticket, nonpartisan or otherwise, and who is nominated at the primary or special primary election shall, after the primary or special primary election, be declared to be duly and legally elected to the office for which the person was a candidate regardless of the number of votes received by that candidate.

(b) Any nonpartisan candidate receiving at least ten per cent of the total votes cast for the office for which the person is a candidate at the primary or special primary, or a vote equal to the lowest vote received by the partisan candidate who was nominated in the primary or special primary, shall also be a candidate at the following election; provided that when more nonpartisan candidates qualify for nomination than there are offices to be voted for at the general or special general election, there shall be certified as candidates for the following election those receiving the highest number of votes, but not more candidates than are to be elected. [L 1970, c 26, pt of §2; am L 1973, c 217, §2(j); am L 1979, c 139, §10; am L 1983, c 34, §21]

Cross References

Election contests, see chapter 11, pt XI.

Attorney General Opinions

For nonpartisan candidate to qualify for placement on the general election ballot, candidate must receive the quantum of vote prescribed, and the provision relating to certification of

the candidate with the highest number of votes does not eliminate this requirement. Att. Gen. Op. 78-3.

Case Notes

Nonpartisan candidate's constitutional rights were not violated. 881 F.2d 689.

Distinction between partisan and nonpartisan candidates held not in violation of equal protection. 60 H. 282, 588 P.2d 915.

Requirement that nonpartisan candidate obtain ten per cent upheld. 60 H. 282, 588 P.2d 915.

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§12-42 Unopposed candidates declared elected. (a) Any candidate running for any office in the State of Hawaii in a special election or special primary election who is the sole candidate for that office shall, after the close of filing of nomination papers, be deemed and declared to be duly and legally elected to the office for which the person is a candidate. The term of office for a candidate elected under this subsection shall begin respectively on the day of the special election or on the day of the immediately succeeding special general election.

(b) Any candidate running for any office in the State of Hawaii in a special general election who was only opposed by a candidate or candidates running on the same ticket in the special primary election and is not opposed by any candidate running on any other ticket, nonpartisan or otherwise, and is nominated at the special primary election shall, after the special primary, be deemed and declared to be duly and legally elected to the office for which the person is a candidate at the special primary election regardless of the number of votes received. The term of office for a candidate elected under this subsection shall begin on the day of the special general election. [L 1974, c 34, §2(d); am L 1985, c 203, §6]

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