

2. This Court has jurisdiction over this matter pursuant to HRS 603-21.5 and HRS 12-8. Venue is proper in this circuit.

3. Plaintiff, Steven Nishimura is the Chairman of the Kauai County Committee of the Democratic Party of Hawaii.

4. Defendant, Harry E. Williams (Williams) is a nominee in the Republican primary election for the 14th District.

5. Scott T. Nago (Nago) is the State of Hawaii's Chief Election Officer.

6. HRS 12-3. Nomination papers; format; limitations. states in part:

(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:

. . . .

(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;

. . . .

(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. (Emphasis added).

7. HRS 12-7. Filing of oath., states in part:

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 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. (Emphasis added).

8. Williams' nomination papers for the 14th District were filed after the statutory filing deadline of 4:30 p.m., Tuesday, July 20, 2010. (See HRS 12-6; Exhibits "A"- "B").

9. Williams nomination papers were allowed to be filed after the statutory filing deadline by Nago based upon David R. Hamman's (Hamman) July 19, 2010 alleged "withdrawal" as a "candidate" for the 14th District.

10. On or about July 20, 2010, Nago allowed the Republican Party three (3) additional days until 4:30 p.m. on July 22, 2010 to file nomination papers for a "replacement" nominee for the 14th District due to Hamman's "withdrawal" on July 19, 2010 from the 14th District Primary election.

11. On July 21, 2010 Williams obtained an Application for Nomination Papers for the 14th District. (Exhibit "A").

12. On July 22, 2010 at 8:15 a.m., Williams filed his nomination papers to run in the Republican primary election for the 14th District. (Exhibit "B").

13. Williams' nomination papers were filed on July 22, 2010 after the 4:30 p.m. July 20, 2010 statutory deadline, pursuant to Nago's erroneous application and interpretation of HRS 12-1, et seq. and HRS 11-117 and HRS 11-118.

14. Nago's reliance on HRS 11-117 and HRS 11-118 to allow the Republican Party three (3) additional days to find a "replacement" candidate for Hamman is wrong as a matter of law.

15. HAR 3-172-1 defines a "candidate" as follows:

"Candidate means an individual who has qualified for placement on the ballot." (Emphasis added).

16. Hamman was never a "candidate" for the 14th District as defined by HAR 3-172-1, and therefore could not "withdraw", as Hamman never "qualified for placement on the ballot".

17. On or about July 13, 2010, David R. Hamman obtained an Application For Nomination Papers for the 14th District. (Exhibit "C").

18. On July 19, 2010 at approximately 11:00 a.m. Hamman filed with the County of Kauai, Office of the County Clerk, Elections Division (County Clerk), unsigned nomination papers to run in the Primary election for the 14th District. (Exhibit "D").

19. By letter dated "7/19/10" and containing the time of "11:32 a.m.", which letter was received by the County Clerk, Elections Division, on July 19, 2010, at 12:05 p.m., Hamman "withdrew" his unsigned nomination papers for the 14th District. (Exhibit "E").

20. Hamman's nomination papers for the 14th District filed July 19, 2010 at 11:00 were incomplete as a matter of law, as Hamman did not sign the "Certification by the Partisan Candidate" as required by HRS 12-3(a)(7). (See Exhibit "D").

21. Hamman's nomination papers for the 14th District were incomplete as a matter of law, as Hamman did not sign the Oath of Loyalty or Affirmation as required by HRS 12-7. (See Exhibit "D").

22. Hamman's nomination papers filed on July 19, 2010 at 11:00 a.m. for the 14th District were incomplete, as the nomination papers did not contain all of the certifications, signatures and requirements of HRS 12-3 and HRS 12-7, and therefore are void as a matter of law pursuant to HRS 12-3(f) and HRS 12-7. (See Exhibit "C").

23. Hamman's nomination papers for the 14th District should not have been "accepted" for filing by the County Clerk on July 19, 2010 as pursuant to HRS 12-3(f) and HRS 12-7 the nomination papers were incomplete and void as a matter of law.

24. On July 19, 2010 Hamman did not qualify as a "candidate" and therefore could not "withdraw" his incomplete nomination papers which were null and void as a matter of law.

25. At the time Hamman filed his nomination papers for the 14th District, on July 19, 2010 at 11:00 a.m. Hamman had no intention of running in the Republican primary election for the 14 District.

26. At the time Hamman filed his nomination papers for the 14th District, Hamman's only intent and purpose was to attempt to create the appearance of a "vacancy" by his "withdrawal" from the 14th District race, in an intentional effort to create additional time to nominate a Republican candidate for the primary election for the 14th District.

27. On July 19, 2010 at 12:05 p.m. Hamman obtained an Application For Nomination Papers for the Republican primary election for the State of Hawaii's Senate, Island of Kauai, 7th District. (Exhibit "F").

28. On July 19, 2010 at 12:31 p.m. Hamman filed his signed nomination papers to run in the Republican Primary election for the State Senate, 7th District. (Exhibit "G").

WHEREFORE, the Plaintiff, Steven Nishimura, in his official capacity, requests that this Court enter Judgment as follows:

A. Declare that David R. Hamman's incomplete nomination papers should not have been "accepted" for filing on July 19, 2010 at 11:00 a.m. by the County of Kauai, Office of the County Clerk, Elections Division, and in accordance with HRS 12-3(f) and HRS 12-7 are void as a matter of law;

B. Declare that Hamman was never a candidate for the 14th District, and therefore could not "withdraw", as Hamman never qualified for "placement on the ballot";


C. Declare that at the time of the statutory close of filing for the primary election on Tuesday, July 20, 2010 at 4:30 p.m. there were no valid nomination papers filed for any person in the Republican Party for the 14th District;

D. Declare that the Chief election officer's decision to allow an additional three (3) days for the Republican Party to find a "replacement" due to David R. Hamman's "withdrawal" on July 19, 2010 is wrong as a matter of law, as Hamman's nomination papers should not have been "accepted" for filing on July 19, 2010, and were void as a matter of law;

E. Declare that Harry E. Williams' nomination papers filed on July 22, 2010 after the statutory filing deadline of 4:30 p.m. on July 20, 2010 for the primary election are null and void, and Harry E. Williams shall not be a candidate in the District 14 Republican Primary Election; and

F. Such other and further relief necessary to effectuate the Court's Judgment.

DATED: Lihue, Hawaii, August 18, 2010.



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Attorney for Plaintiff