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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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Attorneys for Plaintiff
Democratic Party of Hawaii

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DEMOCRATIC PARTY OF HAWAII,)	CIVIL NO. <u>16 - 1 - 1740 - 09</u> K K S .
)	
Plaintiff,)	COMPLAINT FOR DECLARATORY
)	AND INJUNCTIVE RELIEF;
ANGELA AULANI KAAIHUE; and)	DECLARATION OF TIM VANDEVEER;
SCOTT T. NAGO, in his official)	SUMMONS
capacity as Chief Election Officer of the)	
State of Hawaii,)	
)	
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW PLAINTIFF DEMOCRATIC PARTY OF HAWAII, by and through
its counsel undersigned, and for its complaint against Defendants, states as follows:

INTRODUCTION

This is an action pursuant to H.R.S. § 12-8 and related statutes, to declare a
candidate ineligible for listing on the Special Election ballot as a Democrat.

X-COPY

PARTIES

1. Plaintiff Democratic Party of Hawaii (hereinafter “DPH”) is a “qualified political party”, within the meaning of HRS § 11-61, organized within the State of Hawaii. Its headquarters is within the First Circuit. The current Chairperson of the DPH is Tim Vandever. Mr. Vandever is a citizen and resident of the State of Hawaii, and resides within the First Circuit. The current Secretary of the DPH is Tania Kehau Cortez-Camero. Ms. Cortez-Camero is a citizen and resident of the State of Hawaii, and resides within the First Circuit.

2. Defendant Angela Aulani Kaaihue (hereinafter “KAAIHUE”) is a resident of the First Circuit, at 98-673 Kilinoe Street Aiea 96701, and a candidate for election to the United States House of Representatives.

3. Defendant Scott Nago (hereinafter “NAGO”) is a citizen of the State of Hawaii and Chief Election Officer of the Office of Elections of the State of Hawaii. The Chief Election Officer is responsible for administering and managing the Office of Elections. The Office of Elections plans, manages, and conducts elections in Hawaii, including supervision and preparation of ballots. NAGO is sued in his official capacity.

JURISDICTION AND VENUE

4. The Circuit Court has jurisdiction of this matter under H.R.S. § 12-8 and related statutes.

5. All parties are located within the First Circuit. Facts pertinent to this matter arose within the First Circuit.

BACKGROUND FACTS

6. The DPH By-Laws, along with the DPH Constitution, are a governing document of the DPH.

7. The DPH By-Laws provide, at Article I, Section 8A. (1) (b), that any member of the DPH who files for office as a member of another party is automatically expelled.

8. The DPH By-Laws provide at Article I, Section 8C. (1), that the expulsion shall be for a minimum of five years.

9. At some point in the past, KAAIHUE joined the DPH.

10. On information and belief, KAAIHUE sought the Republican nomination for the United States House of Representatives, from the Second Congressional District, by filing nomination papers with the Office of Elections, on or about, June 7, 2016.

11. On information and belief, as part of the process of filing, KAAIHUE affirmed, by self-subscribed oath, that she was a member of the Republican Party.

12. KAAIHUE was placed on the primary election ballot for the Second Congressional District, by the Office of Elections, as a Republican.

13. According to the Final Summary Report of the Primary Election 2016, accessible on the Office of Elections website, KAAIHUE won the Republican nomination for the Second Congressional District. She received 7,449 votes, and her Republican opponent, Eric Hafner, received 5,876 votes.

14. According to the State Certified list of 2016 General Election Candidates, accessible on the Office of Elections website, KAAIHUE is the Republican candidate for the Second Congressional District. She will oppose the DPH candidate, the Hon. Tulsi Gabbard.

15. Therefore, KAAIHUE is the current Republican nominee for the Second Congressional seat.

16. The Office of Elections publishes information concerning candidacies on its official State website, which may be judicially-noticed by this Court pursuant to Rule 201, H.R.E.

COUNT I

Declaratory Judgment and/or Injunction against listing KAAIHUE on the special election ballot as a Democrat. Items 1. through 16. are reasserted.

17. On August 16, 2016, DPH, through its Secretary, notified KAAIHUE by letter that, as a result of her running for office as a member of another party, she was expelled from DPH.

18. On information and belief, on August 25, 2016, KAAIHUE filed nomination papers with the Office of Elections, seeking, in the Special Election to be held in November, 2016, on the same day as the General Election, to fill the First Congressional District seat in the U.S. House of Representatives that had been vacated by the death of the Hon. Mark Takai.

19. KAAIHUE, in spite of the expulsion notice of August 16, filed the aforesaid Special Election papers, claiming to be a Democrat.

20. KAAIHUE's false representation to the Office of Elections that she is a Democrat:

- a. Misleads or confuses the public as to her party affiliation;
- b. Arrogates to herself the imprimatur of the DPH, to which she is not entitled;
- c. Abuses the self-subscribed oath prerequisite to any filing.

21. KAAIHUE has taken no steps to rectify the situation, and, on information and belief, maintains she is a Democrat.

22. On information and belief, in the absence of a declaratory judgment or injunction to the effect that KAAIHUE is not to be listed as a Democrat on the Special Election ballot, the Office of Elections will list KAAIHUE on the Special Election Ballot as a Democrat, and on the General Election ballot as a Republican, to the detriment of DPH and the public.

COUNT II

Declaratory judgment regarding authority of Office of Elections. Items 1. through 22. are reasserted.

23. On or about September 9, 2016, DPH, through its Secretary, attempted to lodge a letter with the Office of Elections, at its main office, requesting that KAAIHUE be barred from appearing on the ballot as a Democrat.

24. The Office of Elections declined to accept the letter, and indicated that DPH had no recourse through the Office of Elections, which would neither investigate nor act on the representations of DPH.

25. The Office of Elections indicated that DPH only had recourse through the Circuit Court.

26. In conformity with the opinion of the Office of Elections, DPH withdrew the letter, and then lodged the same letter with the First Circuit Court, which time-stamped it on September 9, 2016.

27. Proceedings concerning elections are not subject to the Hawaii Rules of Civil Procedure. Findings of Fact, Conclusions of Law, and Order, Civil No. 16-1-1137-06 JHC. This Complaint reasserts and expands the contentions of the time-stamped letter.

28. Under H.R.S. § 12-8 (a) *et seq.*, the Office of Elections has the authority and duty to investigate and determine the party membership of a candidate, upon complaint of a political party, prior to the party's resort to this Court.

29. Under H.R.S. § 12-8 (a) *et seq.* and related statutes, the Office of Elections is without authority to accept a candidate as a member of one party, when the Office has already certified the candidate as a member of another party in the same election. In the alternative, the Office of Elections is without authority to certify a candidate as a member of two or more opposing parties in the same election.

30. On information and belief, the Office of Elections contends to the contrary, and would defer such matters to this Court.

31. The foregoing constitutes an unsettled point of law, which is capable of repetition, yet evades relief, due to the short timeline of any election-related issue, and

the prudence of recourse to this Court. Notwithstanding DPH's recourse to this Court, the issue is not moot, and the authority of the Office of Elections should be declared, in the public interest, and as a guide in future situations of this type.

PRAYER FOR RELIEF

Plaintiff DPH prays for relief as follows:

32. On Count I,

a. Declaratory judgment that KAAIHUE is not a member of DPH and is not entitled to appear on the Special Election ballot as a Democrat.

b. Should it appear necessary to the Court, an injunction prohibiting Defendant NAGO and the Office of Elections from listing Defendant KAAIHUE on the November special election ballot as Democrat.

c. An award of fees and costs.

d. Such other and further relief as may be just and equitable under the circumstances.

33. On Count II,

a. Declaratory judgment that the Office of Elections, pursuant to HRS X, has jurisdiction to investigate and determine whether a candidate is a member of a political party; and that the Office of Elections should accept, investigate, and reach

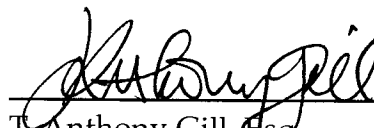
conclusions on complaint letters from political parties to the effect that a candidate is not a member of the political party.

b. Declaratory judgment that the Office of Elections cannot certify a candidate as representing one political party when it has previously certified that candidate as representing an opposing political party; or in the alternative, cannot certify a candidate as representing opposing political parties in a single election.

c. An award of court fees and costs

d. Such other and further relief as may be just and equitable under the circumstances.

DATED: Honolulu, Hawaii, 9/14/16


T. Anthony Gill, Esq.
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