

STAND. COM. REP. NO.

3227

Honolulu, Hawaii

APR 22 2010

RE: GOV. MSG. NO. 379

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2010
State of Hawaii

Madam:

Your Committee on Higher Education, to which was referred Governor's Message No. 379, submitting for study and consideration the nomination of:

BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII

G.M. No. 379 RONALD D. MONTGOMERY,
for a term to expire 6-30-2015,

begs leave to report as follows:

Testimony in support of the nominee was provided by seven individuals. The Women's Caucus of the Democratic Party of Hawaii provided testimony in opposition to the nomination. The Hawaii Women's Political Caucus and the University of Hawaii Professional Assembly provided comments. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Mr. Montgomery earned a Master of Science in Forestry/Wildlife Management from Stephen F. Austin State University and a Bachelor of Arts in Zoology from the University of California, Los Angeles. He is currently an Instructor at the University of Phoenix and has over seven years of teaching experience at various levels. Mr. Montgomery has also worked previously as Director of Marketing at Silicon Graphics in California and Director of Operations at Villa Montage Systems in California.

Mr. Montgomery has served as Co-Chair of People United in Support of Superior Healthcare, Vice-President of the Board of Directors of the Kula Community Association and Chair of its Water



and Sustainability Committee, and Co-Founder of Upcountry Sustainability and Chair of its Renewable Energy Committee.

Your Committee finds that a position on the Board of Regents of the University of Hawaii is an important and high-profile office. Regents make critical decisions that guide the direction of the University of Hawaii System and are sometimes provided opportunities to comment publicly regarding decisions made by the Board. Pursuant to section 304A-104.5, Hawaii Revised Statutes, the Regents Candidate Advisory Council has developed a description of the responsibilities and duties of members of the Board of Regents. These responsibilities and duties include:

- (1) Strategic planning;
- (2) Policymaking to guide the University of Hawaii System;
- (3) Fiduciary oversight;
- (4) Serving as ambassadors to the community;
- (5) Protecting the University of Hawaii System from undue influence;
- (6) Setting an example of integrity, inquiry, and service;
- (7) Considering community interests; and
- (8) Acting as a unit.

Your Committee has reviewed the background information and testimony submitted and finds that Mr. Montgomery is a skilled manager and teacher who has contributed to the Maui community, especially in the area of environmental sustainability. However, your Committee has serious concerns about whether Mr. Montgomery is the best nominee to fulfill the responsibilities and duties of a Regent. Your Committee's concerns are further specified below.

CREDIBILITY AND TRUSTWORTHINESS

Your Committee is troubled by an incident involving Mr. Montgomery's representation of an exchange between himself and the current Chair of the Board of Regents. As the details of the exchange came to light, it appears to your Committee that Mr. Montgomery may have misrepresented this exchange as an endorsement



by the Chair of Mr. Montgomery's nomination despite the fact that the Chair has indicated that he made no such endorsement.

In addition, Mr. Montgomery represented that following his testimony before your Committee, the Chair told him that he was "pleased" with the nominee's responses. The Chair has indicated that he made no such statement.

There can be no doubt that the credibility of Regents and the reliability of their statements are matters of grave concern, both as to public perception of the Board of Regents and relations between the Regents themselves. Having a nominee misstate the content and meaning of conversations in order to support his own nomination is troubling.

Your Committee finds that these incidents cast a shadow of doubt as to Mr. Montgomery's credibility and trustworthiness, which are essential to acting with transparency and integrity and developing a positive climate for collaboration and debate amongst Regents.

TEMPERAMENT AND CONDUCT

Your Committee finds that Mr. Montgomery has not displayed the measure of professionalism, maturity, and restraint becoming a Regent. The Board of Regents acts as a unit; although there is a proper time, place, and avenue for expressing opinions and disagreement, Regents should support the decisions of the Board once a decision is made.

When Mr. Montgomery had an opportunity to exhibit proper temperament and positive leadership in the midst of intense community discussions regarding the Malulani Hospital, a proposed private health care facility on Maui, he chose instead to resort to divisive comments that did nothing to help resolve the conflict.

Mr. Montgomery has himself admitted that his comments "can be sarcastic," and that he tends to "irritate people." The question remains why, recognizing the effect of his comments, he was unable to restrain himself and act in a more respectful and productive way.

While Mr. Montgomery has the right to speak his mind, he has demonstrated no appreciation for the fact that leadership requires



that he exercise that right in an appropriate and productive manner. Publicly and among themselves, Regents should be expected to conduct themselves with a sense of respect and decorum. Mr. Montgomery has shown neither.

While Mr. Montgomery has testified that he would refrain from similar behavior if appointed as a Regent, given your Committee's aforementioned concerns about his credibility, your Committee is not adequately assured that Mr. Montgomery's manner of expressing his opinions as a private citizen would be significantly different from his conduct as a Regent.

Your Committee cannot recommend with full confidence a nominee who, based on previous conduct, may cause disruption and divisiveness among the body that acts as a unit to make critical decisions that affect the entire University of Hawaii System and much of the State.

POTENTIAL OR PERCEIVED CONFLICT OF INTEREST

Your Committee also finds that Mr. Montgomery's employment with the University of Phoenix, a competing institution of higher education to the University of Hawaii, poses a potential or perceived conflict of interest. As outlined in the responsibilities and duties of the Board of Regents, a Regent is involved in strategic planning, policymaking, fiduciary oversight, and protection from undue influence of the University of Hawaii System. Actions taken by the University of Hawaii regarding tuition rates, enrollment qualifications, and programs can affect its competitive stance with regard to private colleges within the State, including the University of Phoenix.

As a Regent of the University of Hawaii, Mr. Montgomery would be required to adhere to the same requirements and duties that are applicable to directors and officers of corporations; he would be expected to act in good faith and in the best interests of the University at all times.

The University of Hawaii and the University of Phoenix are competitors in the field of higher education. Their program offerings overlap, and each would benefit from attracting students from the same pool of applicants. In short, Mr. Montgomery, acting as a Regent, would make decisions that may directly impact his employer. The nominee has given no indication of how he expects to address this potential conflict, or how he can offer



the University of Hawaii the highest level of loyalty while serving two competing entities.

Your Committee feels that regardless of whether actual conflicts of interest would exist, the mere perception of a conflict of interest may generate questions about the impartiality of decisions made by the Board of Regents. One may argue that nearly every decision that Mr. Montgomery would make as a Regent could be perceived as a conflict of interest, given his association with the University of Phoenix. Furthermore, if Mr. Montgomery were to recuse himself from participation in proceedings that may generate a conflict of interest, your Committee is concerned to what extent he would then be able to effectively perform his responsibilities and duties as a Regent.

COMMUNITY INTERESTS

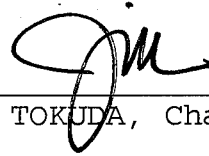
Finally, your Committee has concerns about Mr. Montgomery's ability to consider a wide variety of community interests and needs when formulating policies, such as revenue generation methods for the University of Hawaii. His responses to questions posed by your Committee propose significant tuition rate increases and major changes to the structure of the University of Hawaii System as options to be considered. Your Committee finds that while innovation and creative solutions to problems are generally positive, Mr. Montgomery's responses do not also reflect sensitivity to the negative impact on accessibility that those options may have on those who cannot afford increased tuition rates and therefore may not be able to pursue higher education within the State.

Your Committee finds that a Regent's duties to serve as an ambassador to the community and consider the community's interests rely in part upon an accurate understanding of the needs of the community. Your Committee further finds that Mr. Montgomery has not demonstrated a sufficient level of understanding and consideration of important community needs.



As affirmed by the record of votes of the members of your Committee on Higher Education that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the nominee, recommends that the Senate not advise and consent to the nomination.

Respectfully submitted on
behalf of the members of the
Committee on Higher Education,



JILL TOKUDA, Chair



