



# Sierra Club Hawai'i Chapter

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**LATE**

## HOUSE COMMITTEE ON JUDICIARY

March 12, 2013, 10:00 A.M.  
(Testimony is 1 page long)

## TESTIMONY IN SUPPORT OF SB 858

Aloha Chair Rhoads and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 10,000 dues-paying members and supporters, **supports** SB 858 SD1. This measure corrects a mistaken decision made by the Intermediate Court of Appeals by clarifying that individual who is rejected to a second term by the Senate is “disqualified” under section 26-34 from serving up to two years as a holdover member.<sup>1</sup>

On August 24, 2012, the Intermediate Court of Appeals mistakenly held that Hawaii Revised Statutes § 26-34 is “clear that the sole disqualification is that ‘[n] person shall be appointed consecutively to more than two terms as a member of the same board or commission; provided that membership on any board or commission shall not exceed eight consecutive years.’” *Sierra Club v Castle & Cooke Homes Hawai'i, Inc.*, Civ. No. 10-1-2424 (August 24, 2012).

This Legislature deliberately choose to use the broad term “disqualify” in section 26-34 rather than a more narrow or restrictive phrase. Plainly, the failure to receive advice and consent by the Senate for a second term is a rationale basis for being disqualified from serving as a holdover member. The Senate had the opportunity to review the applicant’s record of service, interview the applicant, and consider public input. After going through this process, the Senate is in the best position to determine whether an individual is qualified or not to serve. Any other interpretation would allow an individual -- found not qualified to serve by the Senate -- to continue to serve regardless. This flouts the importance of the advice and consent obligations and calls into question the checks and balances established in our Constitution.

The Sierra Club respectfully asks that this committee advance this measure. Mahalo for the opportunity to testify.

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<sup>1</sup> This matter is currently under review by the Hawaii Supreme Court.