



KOBAYASHI SUGITA & GODA, LLP
Attorneys at Law

Bert T. Kobayashi, Jr.*
Kenneth Y. Sugita*
Alan M. Goda*

John R. Aube*
Wendell H. Fujii*
Charles W. Gall*
Clifford K. Higa*
Robert K. Ichikawa*
Christopher T. Kobayashi*
Jan M. L. Y. Kutsunai*

Burt T. Lau*
Jonathan S. Moore*
Bruce A. Nakamura*
Kenneth M. Nakasone*
Gregory M. Sato*
Jesse W. Schiel*
Craig K. Shikuma*
Lex R. Smith*
Joseph A. Stewart*
David B. Tongg*

*A Law Corporation

Yuko Funaki
Neal T. Gota
Caycie K. Gusman
Charles D. Hunter
Nicholas R. Monlux
Aaron Mun
Gabriele V. Provenza
Anthony Suetsugu
Brian D. Tongg
Thao T. Tran
Maria Y.Y. Wang

Of Counsel:
John F. Lezak
Larry L. Myers

February 11, 2015

VIA EMAIL AND HAND DELIVERY

Special Committee to Consider Miscellaneous Communication No. 1003
Attn: Representative Karl Rhoads, Committee Chair
House of Representatives, Twenty-Eighth Legislature
State of Hawaii
415 S. Beretania Street, Room 302
Honolulu, Hawaii 96813

Re: Rep. Calvin K.Y. Say's Submission Regarding His Qualifications
to Represent the Twentieth Representative District

Dear Representative Rhoads and Members of the Special Committee:

I have the honor of representing Representative Say before this Special Committee ("Committee"), established by the House of Representatives, State of Hawaii ("House") to Consider Miscellaneous Communication No. 1003, submitted by Ramona Hussey, M. Ka'imila Nicholson, Natalia Antonia Hussey-Burdick, Brent S. Dupuis, Marvin D. Heskett and Joel L. Merchant ("Petitioners"). The specific issue before the Committee is **whether Say is a qualified voter of the twentieth representative district as required by Article III, Section 6 of the Hawaii State Constitution.**

Please accept this letter as Rep. Say's written submission to the Special Committee regarding his status as a qualified voter of the twentieth representative district. Given that we have twenty minutes to make our presentation to this Committee and even though the deadline for our written submission is not until February 17, 2015, I believe that it makes more sense to provide each of the Committee members with this summary in advance of the hearing. Other than to have a short five minute summary of these points, I will not repeat this in the hearing but will be available to answer any questions of the Committee at the scheduled hearing on Friday, February 13, 2015. I am aware that this document is a public document and we have no objection.

This submission is organized as follows:

- **SECTION I** sets forth the applicable law regarding Say's qualifications to hold office and the House's authority to investigate such qualifications, specifically:

- HAW. CONST. Art. III, §6, requiring that representatives be qualified voters of the districts they represent;
 - HAW. CONST. Art. II, §1, stating that Hawaii residents over the age of 18 who are registered to vote are qualified to vote;
 - Haw. Rev. Stat. §11-15, proving that only qualified voters may register to vote;
 - Haw. Rev. Stat. §11-13, setting forth the rules for determining residency for election purposes, including for purposes of determining voter registration;
 - Haw. Rev. Stat. §§11-25, 11-26 and 11-51, setting forth procedures for voter registration challenges; and
 - HAW. CONST. Art. III, §12, authorizing the House to determine whether its members meet Constitutional qualifications
- **SECTION II** sets forth the factual background regarding Say's residency and challenges to his residency for purposes of voter registration and election. The facts in this section are supported by the attached exhibits and declarations of Say and Say's wife, Cora; and
 - **SECTION III** discusses Say's status as a qualified voter of the twentieth representative district as required under HAW. CONST. Art. III, §6. Under Hawaii law, **Say is necessarily qualified to vote in the twentieth representative district by virtue of the fact that he is a registered voter of the district.** Say's registration as a voter of the twentieth representative district has been challenged on three prior occasions. Each challenge was unsuccessful because Say is a resident of the district under Hawaii law – that is where his habitation is fixed and where he intends to return whenever he is absent. The House's inquiry ought not to extend beyond ascertaining that Say is a registered voter of the twentieth representative district, which Say is and will continue to be absent a ruling from the City Clerk's office, Board of Registration, or the Hawaii appellate courts stating otherwise.

However, before addressing the substance of the challenge, Say wishes to advise the Special Committee that two of the six Petitioners are not entitled to challenge Say's qualifications. Rule 1 of the February 4, 2015 memorandum ("Re: Establishment of a Special Committee to Consider Miscellaneous Communication No. 1003") states that "Any registered voter who lives in the member's district may file a challenge." Natalia A. Hussey-Burdick is registered to vote in the thirty-fourth representative district, and Ramona Hussey is registered to

vote in the twenty-third representative district. *See* Voter Records as of 2/5/15, attached as Exhibits “1” and “2”. Mss. Hussey-Burdick and Hussey are therefore precluded from challenging Say’s qualifications and from involvement in any further proceedings with regards to Miscellaneous Communication No. 1003.

I. APPLICABLE LAW

A. THE HOUSE’S REVIEW IS SPECIFICALLY SUBJECT TO APPLYING THE PROVISIONS OF THE HAWAII CONSTITUTION

The oath of office of members of the House is set forth in Article XVI, Section 4 of the Hawaii Constitution, and provides:

Section 4. All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, **and the Constitution of the State of Hawaii**, and that I will faithfully discharge my duties as to best of my ability.” (emphasis adde)

As used in this section, “eligible public officers” means the governor, the lieutenant governor, **the members of both houses of the legislature**, the members of the board of education, the members of the national guard, State or county employees who possess police powers, district court judges, and all those whose appointment requires the consent of the senate.

The word “qualifications” as set forth in HAW. CONST. Art. III, §12, of the Hawaii State Constitution, which is subject of this Committee’s investigation, is not defined. Under federal law, as adopted by Hawaii, the House’s authority to judge the qualifications of its own members is expressly limited to those qualifications set out in the Constitution. In *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)), the United State Supreme Court considered the extent of the House’s authority under U.S. CONST. Art. I, §5, which states in pertinent part:

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide. (Emphasis added.)

The Court ruled that the House’s authority to investigate the qualifications of its members under the foregoing section “**is limited to the standing qualifications prescribed in the Constitution.**” *Id.* at 550, 89 S.Ct. at 1979. **The “standing qualifications” referred to by the**

Court were those set forth in Art. I, §2 of the U.S. Constitution, which provides in pertinent part: “No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.” *Id.* at 520, n. 41, 89 S.Ct. at 1963, n. 41.

The Hawaii Supreme Court adopted this interpretation in *Akizaki v. Fong*, 51 Haw. 358, 357-58, 461 P.2d 332, 223, ruling that the House’s authority to investigate the “qualifications” of its members is limited to **“the specific membership requirements set out in the Constitution.”** *See Akizaki v. Fong*, 51 Haw. 358, 357-58, 461 P.2d 332, 223 (discussing the Supreme Court’s decision in *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)) (emphasis added). As with the United States Constitution, the only specific membership requirements set forth in the constitution with regards to a House member’s qualifications are found in a single section – Haw. Const. Art. III, §6.¹

Haw. Rev. Stat. Chapter 21 establishes the procedures by which a legislative investigative committee (defined to include a special committee of either house of the legislature) may be created and may operate. Haw. Rev. Stat. §21-1 states:

The purpose of this chapter is to establish procedures governing legislative investigating committees to provide for the creation and operation of legislative investigating committees **in a manner which will enable them to perform properly the powers and duties vested in them,** including the conduct of hearings, in a fair and impartial manner, consistent with protection of the constitutional rights of persons called to testify at such hearings and preservation of the public good. (Emphasis added.)

A legislative committee is further required to “adopt rules, **not inconsistent with law** or any applicable rules of the legislature, governing its procedures, including the conduct of hearings.” *See* Haw. Rev. Stat. §21-4 (emphasis added). **Further, the laws currently in effect “are obligatory upon all persons and property with the jurisdiction of the State,” including House members.** *See* Haw. Rev. Stat. §1-4. **Therefore, the House Committee is subject to the applicable sections of the Hawaii Revised Statutes.**

What we provide hereinafter is are the relevant facts and the applicable sections of the Hawaii Revised Statutes and the Hawaii Constitution.

B. **HAW. CONST. Art. III, §6 (qualifications for state representatives)**

The Hawaii State Constitution sets forth the qualifications an individual must possess in order to hold office as a state representative:

...No person shall be eligible to serve as a member of the house of representatives unless the person has been a resident of the State for not less than three years, has attained the age of majority and **is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected;** except that in the year of the first general election following reapportionment, but prior to the primary election, an incumbent representative may move to a new district without being disqualified from completing the remainder of the incumbent representative's term.

See HAW. CONST. Art. III, §6 (emphasis added).

C. HAW. CONST. Art. II, §1 (qualifications to vote)

Under the Hawaii constitution, there are three requirements an individual must meet in order to be "qualified to vote":

Every citizen of the United States who shall have attained the age of eighteen years, have been a resident of this State not less than one year next preceding the election and **be a voter registered as provided by law, shall be qualified to vote** in any state or local election.

See HAW. CONST. Art. III, §6 (emphasis added).

D. Haw. Rev. Stat. §11-15 (procedures for registering to vote)

Under Hawaii election laws, only persons who are qualified to vote may register to vote. Haw. Rev. Stat. §11-15 states in relevant part:

(a) Any person qualified to and desiring to register as a voter in any county shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

...

(4) Residence, including mailing address;

(5) That the residence stated in the affidavit is not simply because of the person's presence in the State, but that the residence was

acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein; and

...

(b) The applicant shall swear to the truth of the allegations by self-subscribing affirmation in the affidavit on application for voter registration or other form prescribed by the chief election officer. **Unless contested by a qualified voter, the clerk may accept,** as prima facie evidence, the allegation of the applicant in information required in the affidavit in subsection (a)(5). ...

See Haw. Rev. Stat. §11-15 (emphasis added).

E. Haw. Rev. Stat. §11-13 (rules for determining residency)

The following rules apply to determining residency for election purposes, including for the purpose of voter registration. **Keep in mind that these rules have been in effect in this exact form since 1985.** Also note that under the HRS: (i) a person may have a residence separate from his spouse, (ii) a person may have a residence separate from his family, (iii) a person need to sleep in his residence every night, and (iv) the issue that determines residence is that place a person selects as his **“habitation and to which, whenever the person is absent, the person has the intention to return”**. The HRS states as follows:

For the purpose of this title, there can be only one residence for an individual, but **in determining residency, a person may treat oneself separate from the person's spouse.** The following rules shall determine residency for election purposes only:

(1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return;

(2) A person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct;

(3) If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence; but any person having a family, who establishes the person's dwelling place other than with the person's family, with the intention of remaining there shall be considered a resident where the person has established such dwelling place;

...

In case of question, **final determination of residence shall be made by the clerk, subject to appeal to the board of registration under part III of this chapter. [referring to Haw. Rev. Stat. §§11-41 – 11-44, which set forth the powers and procedures of the board of registration].**

See Haw. Rev. Stat. §11-13 (emphasis added).

F. Haw. Rev. Stat. §§11-25, 11-26 and 11-51 (challenges to voter registration)

A registered voter may challenge another person's voter registration by submitting a challenge to the clerks of the respective counties:

(a) Any registered voter may challenge the right of a person to be or to remain registered as a voter in any precinct **for any cause not previously decided by the board of registration or the supreme court in respect to the same person;** provided that in an election of members of the board of trustees of the office of Hawaiian affairs the voter making the challenge must be registered to vote in that election. The challenge shall be in writing, setting forth the grounds upon which it is based, and be signed by the person making the challenge. **The challenge shall be delivered to the clerk who shall forthwith serve notice thereof on the person challenged. The clerk shall, as soon as possible, investigate and rule on the challenge.**

See Haw. Rev. Stat. §11-25 (emphasis added). **This section likewise has been in effect in this exact same form since 1985.**

The clerk's determination on a voter registration challenge may be appealed to the boards of registration for the respective counties:

(b) In cases where the clerk rules on a challenge, prior to election day, or refuses to register an applicant, or refuses to change the register under section 11-22, **the person ruled against may appeal from the ruling to the board of registration of the person's county. The appeal shall be brought within ten days of service of the adverse decision.** ...

See Haw. Rev. Stat. §11-26. –the above language allowing appeal to board of registration has been in effect since 1985 (however, in not the exact form as the language was amended for stylistic purposes in 1990). Since 1990 this language has been in the exact same form.
1 A party aggrieved by a decision issued by the board of registration may appeal to the intermediate appellate court pursuant to Haw. Rev. Stat. §11-51.

II. FACTUAL BACKGROUND

A. Facts Regarding Say's Residency

1. Say's residence is located at 1822 10th Avenue, Honolulu, Hawaii 96816, in the twentieth representative district. *See* Declaration of Calvin K.Y. Say ("Calvin Say Dec.") at ¶2; Declaration of Cora Say ("Cora Say Dec.") at ¶3, attached.

2. 1822 10th Avenue has been Say's residence since he purchased the property with his wife, Cora, in 1980. *See* Calvin Say Dec. at ¶3.

3. Say is registered to vote in the twentieth representative district, and has been registered to vote in the district without interruption since 1980. *See* Calvin Say Dec. at ¶4; Voter Records for Calvin K.Y. Say from <http://hivoter.com>, attached as Exhibit "3".

4. Starting in 1995, Say's wife, Cora, and the Says' two sons began providing live-in care to Cora's father and mother, who live at 2247 Star Road, Honolulu, Hawaii 96813, which is located in the twenty-sixth representative district. *See* Calvin Say Dec. at ¶5; Cora Say Dec. at ¶5.

5. After Cora Say's parents passed away, the Says' adult sons wish to remain at 2247 Star Road because they consider 2247 Star Road their "home." Cora Say stayed with them and plans to do so until the Says' sons move out on their own. *See* Calvin Say Dec. at ¶6; Cora Say Dec. at ¶8.

6. Cora Say was registered to vote in the twentieth representative district until 2006, when her registration was challenged by Mr. Micahel G. Palcic. *See* Cora Say Dec. at ¶10; August 17, 2006 letter from Michael G. Palcic to Denise DeCosta, attached as Exhibit "6".

7. The Office of the City Clerk, City and County of Honolulu ("Clerk"), denied Mr. Palcic's challenge and found that both Calvin and Cora Say were properly registered to vote in the Twentieth Representative District. *See* Cora Say Dec. at ¶11; Calvin Say Dec. at ¶14; August 22, 2006 decision regarding Palcic challenge, attached as Exhibit "7".

8. Mr. Palcic appealed the Clerk's decision. Say contested the appeal, but Cora Say did not because she wanted to avoid continued stress and being in the limelight. *See* Calvin Say Dec. at ¶15; Cora Say Dec. at ¶12

9. Say spends time at 2247 Star Road to be with his family and eat meals with them. *See* Calvin Say Dec. at ¶7; Cora Say Dec. at ¶6.

10. While serving as House Speaker and Finance Committee Chair, Say frequently worked until midnight or later. On such occasions, Say would sleep at 2247 Star Road because 2247 Star Road is closer to the Capitol than 1822 10th Avenue. *See* Calvin Say Dec. at ¶9; Cora Say Dec. at ¶7.

11. Say continues to visit 2247 Star Road to spend time with his family and eat meals with them. However, since stepping down as House Speaker, Say has slept almost every night at 1822 10th Avenue. *See* Calvin Say Dec. at ¶10; Cora Say Dec. at ¶14.

12. Say is not at 2247 Star Road every time he is not at 1822 10th Avenue. Among other things, Say:

- a. Spends the majority of his time at the Capitol;
- b. Personally attends neighborhood board and association meetings;
- c. Is regularly asked to give speeches, make presentations and attend events;
- d. Serves as president of the United Chinese Society; and
- e. Runs Kotake Shokai, the business started by Cora Say's family.

See Calvin Say Dec. at ¶8; Cora Say Dec. at ¶13.

13. Say's parents lived in the twentieth representative district; he grew up in the district; and his home is in the district. *See* Calvin Say Dec. at ¶22; Cora Say Dec. at ¶15.

14. The Says are currently renovating their home at 1822 10th Avenue. *See* Calvin Say Dec. at ¶23; Cora Say Dec. at ¶16.

15. Say's intention is, and, since 1980 has been, to reside at 1822 10th Avenue and to return there when he is absent. *See* Calvin Say Dec. at ¶24; Cora Say Dec. at ¶16.

16. Say has never intended to establish a permanent dwelling place in any district outside of the twentieth representative district. *See* Calvin Say Dec. at ¶25.

B. Prior Challenges to Say's Voter Registration

Consistent with the applicable HRS, the residency has been challenged many times in the past, in each occasion, **Rep. Say has prevailed because the law is consistent with his**

situation. This leads to two obvious conclusions: (i) that Rep. Say has the right to rely upon the Hawaii Revised Statutes and the rulings received in the past as the rules defining residency have not changed since 1985; and (ii) the Committee is likewise bound by the Hawaii Revised Statutes. The prior challenges date back to 2006 and are discussed below:

1. On **May 4, 2006**, Walter John Kelly submitted a challenge to Say's voter registration with the Clerk pursuant to HRS §11-25. Mr. Kelly claimed that "Representative Say's permanent dwelling is ... 2247 Star Road." *See* May 4, 2006 Letter from Walter John Kelley to City Clerk, City and County of Honolulu, attached as Exhibit "4."

2. The clerk (who was at that time Denise DeCosta) rejected Mr. Kelly's challenge, and affirmed that 1822 10th Avenue is Say's residence address:

After reviewing various personal and governmental records, information obtained from site visits, and in the absence of evidence to suggest otherwise, it is my determination that 10th Avenue is Mr. Say's residence address.

The preponderance of documentary evidence suggests that 10th Avenue is the address used by Mr. Say for much of his personal matters. ...

I also find no evidence to conclude that Mr. Say has ever relinquished his 10th Avenue residence[.]

See June 22, 2006 Letter from Denise C. De Costa to Mr. Walter John Kelley, attached as Exhibit "5".

3. On August 17, 2006, Mr. Michael G. Palcic filed a challenge to the voter registrations of both Say and his wife again pursuant to HRS, §11-25. Mr. Palcic claimed his challenge was supported by the "precise log" of his visits to the Says' residence, during which Mr. Palcic recorded his "observations" regarding cars in the garage, whether there were lights on, and whether a business card Mr. Palcic left at the Say's front door had been retrieved. *See* August 17, 2007 Letter from G. Michael Palcic to Denise De Costa, attached as Exhibit "6."

4. The decisions as to the challenges submitted by Messrs. Kelly and Palcic were made pursuant to Haw. Rev. Stat. §11-13. (Note that the statute was specifically cited only in the Clerk's decision denying the Calasicas/Van Law challenge and in the Board of Registration's findings of facts, conclusions of law and order as to the Palcic challenge.

5. The clerk (DeCosta) rejected the challenge:

For your information, we received a similar voter challenge to Mr. Calvin K. Y. Say's voter registration brought forth on May 4, 2006.

As a result of our investigation at that time, we subsequently issued a determination on June 22, 2006 that the voter registration does not warrant a correction. I have thoroughly reviewed all the information you presented with regard to Mr. Say's voter registration in your complaint of Aug. 17, 2006, and find no relevant new information that would persuade me to adjust my earlier finding [regarding Mr. Kelly's challenge].

See August 22, 2006 Letter from Denise C. De Costa to Mr. Michael Palcic, attached as Exhibit "7".

6. Mr. Palcic appealed the clerk's determination to the Board of Registration, City and County of Honolulu pursuant to Haw. Rev. Stat. §§11-22 and 11-26.

7. Calvin Say contested Mr. Palcic's appeal. Cora Say decided not to, however. Although she maintained that her residence address was 1822 10th Avenue, she wished to avoid further stress and having to appear and testify at the board's hearing on the appeal. *See Cora Say Dec.* (Note that Haw. Rev. Stat. §11-13 expressly states that "in determining residency, a person may treat oneself separate from the person's spouse.")

8. On appeal, the Board affirmed the clerk's decision regarding Mr. Palcic's challenge, specifically holding that **"the home located at 1822 10th Avenue, Honolulu, Hawaii 96816 is where Mr. Say's dwelling place is fixed and where, when he is absent, he intends to return."** *See October 13, 2006 Findings of Facts, Conclusions of Law and Decision, attached as Exhibit "8".*

9. On July 29, 2010, Messrs. Van Law and Julius Calasicas filed yet another challenge to Say's voter registration pursuant to Haw. Rev. Stat. §11-25. *See July 29, 2010 Letter from Van Law and Julius Calasicas to Bernice K.N. Mau* (then the city clerk who had replaced DeCosta), attached as Exhibit "9". A true and correct copy of the Van Law Challenge is enclosed.

10. The Clerk (Mau) rejected the Van Law challenge, finding:

1. Pursuant to Haw. Rev. Stat. § 11-13(1) for election purposes, **"[t]he residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return."**

2. Pursuant to Haw. Rev. Stat. § 11-13(2) "[a] person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct."

3. Pursuant to Haw. Rev. Stat. § 11-13(4) **“[t]he mere physical presence without the concurrent present intention to establish such place as the person’s residence,” does not establish residency.**

4. Pursuant to Haw. Admin. R. § 3-172-25(a)(2)(A), where a person has more than one dwelling, “[i]f a person maintains a homeowners property tax exemption on one of the dwellings, that shall be a rebuttable presumption that the dwelling subject to the homeowner’s property tax exemption is that person’s residence.”

5. Attorney General Opinion No. 86-10 states in relevant part:

“To relinquish one’s domicile or residence there must be an intent to remain permanently at the new place where one is physically present and to simultaneously abandon the previous permanent place of abode. Acquisition of the new domicile must have been completed and the animus to remain in the new location fixed, before the former domicile can be considered lost. (citations omitted). Residence is not lost by a temporary absence or by maintenance of a temporary home elsewhere.” (citation omitted).

6. This voter registration challenge presents questions, issues, and evidence very similar to the two voter registration challenges filed in 2006 in which the City Clerk determined that 10th Avenue is Mr. Say’s residence address. **The Oahu Board of Registration affirmed the ruling of the City Clerk in Palcic v. Say, BOR 06-01.**

DECISION

After reviewing various personal and governmental records, information obtained from site visits and in the absence of any changes to Haw. Rev. Stat. § 11-13 (Rules for determining residency) since BOR 06-01 was issued, as well of the lack of evidence indicating that Mr. Say has abandoned his residence, **it is my determination that 1822 10th Avenue continues to be Mr. Say’s voter registration residence.**

See September 7, 2010 Letter from Bernice K.N. Mau to Mr. Van Law and Mr. Julius Calasicas, attached as Exhibit “10” (emphasis added).

11. The decisions as to the three challenges described above were made pursuant to Haw. Rev. Stat. §11-13. (Note that the statute was specifically cited only in the Clerk's decision denying the Calasicas/Van Law challenge and in the Board of Registration's findings of facts, conclusions of law and order as to the Palcic challenge. It is apparent that the three challengers were not familiar with the law as to a person's residency for election purposes.

12. Apparently realizing that the Hawaii Revised Statutes sections applicable to "residency" were in favor of Rep. Say's situation, and knowing the Clerk had applied the laws in Say's favor on three prior occasions, two of the Petitioners herein on June 9, 2014, challenged Say's nomination papers, claiming Say is "not qualified under the Hawaii State Constitution" to hold office as representative of the twentieth representative district because he does not "reside[] legally or physically within the Twentieth House District." See June 9, 2014 Letters from M. Ka'imila Nicholson and Marvin Heskett to Scott Nago, attached as Exhibit "11".

13. This action was brought pursuant to Haw. Rev. Stat. §12-8 which reads as follows:

§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 sixtieth 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.

* * *

(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. ... (Emphasis added.)

14. Pursuant to the authority granted him under Haw. Rev. Stat. §12-8, Chief Elections Officer Scott Nago rejected Mr. Heskett's and Ms. Nicholson's challenge, stating:

...Your objection is based on the contention that Mr. Say is not a registered voter of the representative district that he seeks to represent.

Pursuant to Article III, Section 6 of the Hawaii State Constitution, a candidate for state representative must be a qualified voter of the representative district from which the person seeks to be elected prior to filing nomination papers and thereafter. **At the time Mr. Say was issued nomination papers, his voter registration reflected his 10th Avenue address.**

We have confirmed with the Office of the City Clerk that Mr. Say is a registered voter at the address indicated on his nomination paper. ...

See June 16, 2014 Letters from Chief Election Officer Scott T. Nago to M. Ka'imila Nicholson and Marvin Heskett, attached as Exhibit "12".

III. SAY IS QUALIFIED TO HOLD OFFICE.

A. Say's Qualification To Vote In The Twentieth Representative District Is Demonstrated By His Registration To Vote In The District.

A registered voter is a qualified voter under the Hawaii state constitution and the laws of this state, and an individual cannot be a registered voter in a particular district unless the individual is not qualified to vote in the district. The Hawaii constitution states that any Hawaii resident who is both a U.S. citizen of this country and 18 or older is "**qualified to vote** in any state or local election" provided that he or she is "**a voter registered as provided by law.**" See HAW. CONST. Art. II, §1 (emphasis added). Further, a person cannot register to vote unless he or she is "**qualified**" to do so. See Haw. Rev. Stat. §11-15 (emphasis added).

Numerous courts have recognized that a registered voter is necessarily a qualified voter. See e.g. *City of San Diego v. Shapiro*, 228 Cal.App.4th 756, 774 n. 13, 175 Cal.Rptr.3d 670, 684 n. 13 (Cal. App. 4 Dist. 2014) ("**the ordinary manner of determining those who are qualified to vote is through voter registration.**") (emphasis added); *Mooneyhan v. Husted*, No. 3:12-cv-379, 2012 WL 5834232 (Nov. 16, 2012) at *4 ("**There is no question ...that, as a registered voter, she is qualified to vote**") (emphasis added); *In re Nomination of Nader*, 580 Pa. 134, 141-42, 860 A.2d 1, 5-6 (Pa. 2004) ("historically, the concept of qualification to vote was a matter that preceded the advent of voter registries; **such registries were put in place, through**

legislation, to provide prima facie evidence that the voter retained such qualifications.”
(emphasis added).

That a registered voter is a qualified voter is demonstrated by the Hawaii State Office of Elections’ determination as to the challenge to Say’s 2014 nomination papers. The challenges asserted that “Say is not qualified under the Hawaii State Constitution for the office of representative for the Twentieth House District” because “Say resides at 2247 Star Road with his wife and adult children[.]” *See* Exhibit “11”. **The elections office rejected the challenges, finding that Say met the constitutional requirement that he be a qualified voter of the twentieth representative district by virtue of his registration to vote in the district:**

Pursuant to Article III, Section 6 of the Hawaii State Constitution, **a candidate for state representative must be a qualified voter of the representative district from which the person seeks to be elected** prior to filing nomination papers and thereafter. At the time Mr. Say was issued nomination papers, his voter registration reflected his 10th Avenue address.

We have confirmed with the Office of the City Clerk that Mr. Say is a registered voter at the address indicated on his nomination paper.

See Exhibit “12” (emphasis added).

The House is authorized to “be the judge of the ... qualifications of its own members[.]” *See* HAW. CONST. Art. III, §12. The Hawaii Supreme Court has specified that this authority is limited to those qualifications which are “**expressly prescribed in the Constitution** itself.” *See Akizaki v. Fong*, 51 Haw. 354, 358, 461 P.2d 221, 223 (Haw. 1969) (*citing Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)) (emphasis added). Here, the Petitioners challenge whether Say possesses the constitutional requirement that a representative “is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected[.]” *See* HAW. CONST. Art. III, §6. The House’s sole inquiry is whether Say is “qualified” to vote in the twentieth representative district.

Say submits that his qualification to vote in the twentieth representative district is proved by his registration to vote in the district. His registration has remained and will continue to remain intact unless Say himself transfers his registration under Haw. Rev. Stat. §11-18; the clerk initiates a transfer *sua sponte* under Haw. Rev. Stat. §11-20; or Say’s right to remain a registered voter of the district is successfully challenged under Haw. Rev. Stat. §11-25. Unless Say’s voter registration is transferred – which at this point it has not – Say submits the House’s determination need not (and should not) extend beyond ascertaining Say’s registration to vote in the twentieth representative district.

B. Say Is A Resident Of The Twentieth Representative District And Is Properly Registered To Vote In The District.

Say is properly registered to vote in the twentieth representative district. **The applicable HRS as to residency has now been reviewed and ruled upon in favor of Rep. Say by two City Clerks over three challenges, the Board of Registration of the City and County of Honolulu and the Hawaii State Chief Elections Officer.** Each of these challenges was based on claims regarding Say's frequent presence at his in-laws' residence at 2247 Star Road, which is located in the twenty-sixth representative district, and the fact that Say's wife and children live at 2247 Star Road.

The challenges have failed because the law is clear that a person's residency is based on a person's intent:

(1) The residence of a person is that place in which the person's habitation is fixed, **and to which, whenever the person is absent, the person has the intention to return;**

(2) A person does not gain residence in any precinct into which the person comes **without the present intention of establishing the person's permanent dwelling place within such precinct;**

See Haw. Rev. Stat. §11-13 (emphasis added). In addressing HRS § 11-13, the Attorney General has stated:

Paragraphs (1), (2) and (4) ...point[] out that physical presence or absence from the particular places which one regards as his residence is not material. What must be ascertained instead is where "his habitation is fixed," where he always intends to return, and where his present "permanent dwelling place" is. **Under section 11-13, one's state of mind determines one's place of residence.**

Haw. Att'y Gen. Op. 86-10 (emphasis added); see also *Dupree v. Hiraga*, 121 Haw. 297, 322, 219 P.3d 1084, 1109 (Haw. 2009) (noting that "**someone who has established residency in a place can maintain that residency despite being physically absent as long as he or she intends to return.**") (emphasis added). The law is equally clear that a person "may treat oneself separate from one's spouse" and maintain a residence different than the person's family. See Haw. Rev. Stat. §11-13.

Say often stayed at the Capitol until midnight or later while he was serving as House Speaker and the legislature was in session. See Calvin Say. Dec. On these occasions, he would sleep at 2247 Star Road because it is closer to the Capitol than 1822 10th Avenue. *Id.* Say also visited his wife and sons at 2247 Star Road. However, Say's intention has always been to reside

Representative Karl Rhoads
February 11, 2015
Page 17

at 1822 10th Avenue, and to return there when he is absent. Say's intentions to maintain his 1822 10th Avenue residence are demonstrated by the fact that Say has returned to sleep at 1822 10th Avenue almost every night since sleeping down as House Speaker. *Id.*

Further, Cora Say's residency for purposes of voter registration has no bearing on the determination of Say's residency for the same purpose. Haw. Rev. Stat. §11-13 makes clear that "in determining residency, a person may treat oneself separate from the person's spouse." It is also important to note that Cora Say remained registered to vote in the twentieth representative district until 2006. Her decision to relinquish her registration in the district was based on a desire to avoid the stress and burden of contesting Mr. Palcic's appeal of the clerk's determination. *See* Exhibits "6" and "7"; Declaration of Cora Say.

Based on the foregoing, Say requests that the Special Committee issue a report finding that Say possesses the constitutional qualification of being a qualified voter of the twentieth representative district Please do not hesitate to contact the undersigned should you have any additional questions.

Very truly yours,



BERT T. KOBAYASHI, JR.
MARIA Y. WANG

for
KOBAYASHI, SUGITA & GODA

Enclosures: Declaration of Calvin K.Y. Say; Declaration of Cora Say; Exhibits "1" – "12"

DECLARATION OF CALVIN K. Y. SAY

I, CALVIN K. Y. SAY, declare the following facts to be true and correct, based on my personal knowledge:

1. I am over the age of twenty-one and am competent to testify regarding the matters set forth herein.
2. My residence is located at 1822 10th Avenue, Honolulu, Hawaii 96816, which is in the twentieth representative district
3. I have resided at 1822 10th Avenue since I purchased the property with my wife, Cora, in 1980.
4. I am currently registered to vote in the twentieth representative district, and have been registered to vote in the district without interruption since 1980. A true and correct copy of my voter records from <http://hivoter.com> (obtained February 5, 2015) is attached as Exhibit "3".
5. In 1995, my wife and two sons began providing live-in care to my father- and mother-in-law at my in-laws' home located at 2247 Star Road, Honolulu, Hawaii 96813, which is in the twenty-sixth representative district.
6. My in-laws have since passed away. However, my wife and two sons remain at 2247 Star Road and plan to do so until my sons move out on their own.
7. I spend time at 2247 Star Road to be with my family and eat meals with them.
8. However, I am not always at 2247 Star Road whenever I am not at 1822 10th Avenue. I spend the majority of my time at the Capitol while the legislature is in session. I run Kotake Shokai, the business started by my wife's family. I also

regularly give speeches or make presentations, attend events and neighborhood board and association meetings, and serve as president of the United Chinese Society.

9. In the past, while serving as House Speaker and Finance Committee Chair, I frequently did not leave the Capitol until midnight or later. On these nights, I slept at 2247 Star Road because it is closer to the Capitol than 1822 10th Avenue.

10. However, I have returned to sleep at 1822 10th Avenue almost every single night since stepping down as House Speaker.

11. On May 4, 2006, an individual named Walter John Kelly submitted a challenge to my voter registration with the Office of the City Clerk, City and County of Honolulu. Mr. Kelly's challenge, a copy of which is attached as Exhibit "4".

12. The clerk denied Mr. Kelly's challenge by letter dated June 22, 2006, a copy of which is attached as Exhibit "5".

13. On August 17, 2006, an individual named Michael G. Palcic submitted a challenge to my voter registration and that of my wife. A copy of Mr. Palcic's challenge is attached as Exhibit "6".

14. The clerk denied Mr. Palcic's challenge by letter dated August 22, 2006, a copy of which is enclosed as Exhibit "7".

15. Mr. Palcic appealed the clerk's decision. I contested the appeal, but my wife did not contest the appeal based on her desire to avoid the stress of participating in the hearing on Mr. Palcic's appeal.

16. The board of registration affirmed the clerk's decision, as set forth in its October 13, 2006 Findings of Facts, Conclusions of Law and Decision, a copy of which is attached as Exhibit "8".

17. My voter registration was again challenged on July 29, 2010, by Messrs. Van Law and Julius Calasicas. A copy of their challenge is attached as Exhibit "9".

18. The clerk rejected Messrs. Law and Calasicas' challenge in a decision dated September 7, 2010, a copy of which is enclosed as Exhibit "10".

19. On June 9, 2014, Marvin Heskett and M. Ka'imila Nicholson – two of the Petitioners herein – challenged my nomination papers on the grounds that I am "not qualified under the Hawaii State Constitution" to hold office as representative of the twentieth representative district because he does not "reside[] legally or physically within the Twentieth House District." A copy of Mr. Heskett and Ms. Nicholson's challenge is attached as Exhibit "11".

20. Chief Elections Officer Scott Nago rejected Mr. Heskett's and Ms. Nicholson's challenge by letter dated June 16, 2014, upon confirming that I am registered to vote in the twentieth representative district. A copy of Mr. Nago's letter is attached as Exhibit "12".

21. Natalia A. Hussey-Burdick and Ramona Hussey – two of the Petitioners herein – are not registered to vote in the twentieth representative district. Ms. Hussey is registered to vote in the twenty-third representative district challenge, and Ms. Hussey-Burdick is registered to vote in the thirty-fourth representative district, as

demonstrated by their voter records from <http://hivoter.com> (obtained February 5, 2015), copies of which are attached as Exhibits "1" and "2".

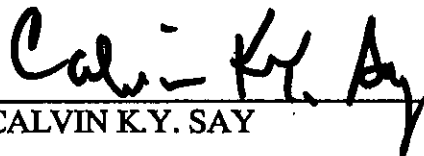
22. My parents lived in the twentieth representative district, I grew up in the district, and my home is in the district.

23. I am currently renovating my 1822 10th Avenue home.

24. My intention is, and, since 1980 has been, to reside at the 1822 10th Avenue, and to return there when I am absent.

25. I have never intended to establish a permanent dwelling place in any district outside of the twentieth representative district.

I declare under penalty of law that the foregoing is true and correct.


CALVIN K.Y. SAY

DECLARATION OF CORA SAY

I, CORA SAY, declare the following facts to be true and correct, based on my personal knowledge:

1. I am over the age of twenty-one and am competent to testify regarding the matters set forth herein.
2. I have been married to Calvin K.Y. Say, who currently holds office as Representative of the Twentieth Representative District, State of Hawaii, since 1981.
3. In 1980, my husband and I purchased a home located at 1822 10th Avenue, Honolulu, Hawaii 96816, located in Palolo in the twentieth representative district.
4. I lived with Calvin at 1822 10th Avenue until 1995, when both of my parents developed medical issues.
5. Calvin's and my sons and I started spending more and more time at my parents' home, located at 2247 Star Road, Honolulu, Hawaii 96813, in the Twenty-Sixth Representative District, to provide my parents with assistance and care. Ultimately, we moved in with them to care for them full-time.
6. During this time, Calvin spent more time at 2247 Star Road to visit me and our children and share meals with us.
7. He also regularly spent the night at 2247 Star Road while serving as Finance Committee Chair and House Speaker. Calvin frequently worked until midnight or later while he held these positions. On such occasions, Calvin would sleep at 2247 Star Road because it was closer to the Capitol than 1822 10th Avenue.

8. After both of my parents passed away, my sons and I remained in their house at 2247 Star Road because our sons (who are now adults) consider their grandparents' house to be their "home."

9. I intend to return to live in Palolo. However, I plan on staying with our sons at 2247 Star Road until they move out on their own.

10. I was registered to vote in the Twentieth Representative District until 2006, when my registration was challenged by Mr. Michael G. Palcic.

11. The Office of the City Clerk, City and County of Honolulu, denied Mr. Palcic's challenge and found that I was properly registered to vote in the Twentieth Representative District.

12. Mr. Palcic appealed this determination. I am a private person, and chose not to contest his appeal because I wanted to avoid being in the limelight.

13. Calvin continues to have dinner with our sons and me at 2247 Star Road. However, it is wrong to assume that Calvin is at 2247 Star Road every time he is not at 1822 10th Avenue. Among other things, Calvin:

- Spends the majority of his time at the Capitol;
- Personally attends neighborhood board and association meetings;
- Is regularly asked to give speeches, make presentations and attend events;
- Serves as president of the United Chinese Society; and
- Runs Kotake Shokai, the business started by my family.

In the past, Calvin also spent time at his parents' home in Palolo to have dinner with them and assist them as I assisted my parents.

14. Calvin has slept at 1822 10th Avenue almost every night since stepping down as House Speaker.

15. Calvin's parents lived in the Twentieth Representative District, he grew up in the district, we met in the district, and our home is in the district.

16. We are currently renovating our 1822 10th Avenue home because Calvin's intent is, and since 1980 has been, to reside there and to return there when he is absent.

I declare under penalty of law that the foregoing is true and correct.



CORA SAY

[Menu](#) | [Voter Search](#) | [My List \(0\)](#) | [History](#) | [New Address](#) | [Preferences](#) | [Logout](#)

Voter Records

Search Results

Active voters, Last Name 'hussey-burdick%'

Select A Different Output: [Update My List](#)

<< < 2 Records > >>

Voting History: p - primary absentee g - general absentee FV - failed to vote
P - primary in-person G - general in-person Add to Voter List

[Add Results to My List](#)

| Name | FV ¹² / ₁₀ | Residence | Mailing Address | US | CC | Sen | House |
|---|----------------------------------|--|-----------------|------|--------|--------|--------------------------|
| 1. [REDACTED] | | [REDACTED] | [REDACTED] | | | | |
| 2. <u>Natalia A. Hussey-Burdick</u> (D) Female, 12/13/07, P, 0728319, SO, Caucasian, 692172, 595389, SL | | pg [REDACTED] Kina St ps Kailua, HI 96734 [REDACTED] UA AN SR SM PQ (2) | [REDACTED] | (1)2 | (06)03 | (13)25 | (27)51-04 R9 NB:31-02 |

<< < 2 Records > >>
[Back](#)

Select A Different Output: [Update My List](#)

Statewide

CLEAR Only first part necessary for First Name, Last Name, House Number, Street.
Search includes inactive records. Excludes only those marked bad address.

M F
Voted in 2012 or registered since.

Statewide Voter Turnout and Ethnicity (by precinct): [Precincts.csv](#)

[Menu](#) | [Voter Search](#) | [My List \(0\)](#) | [History](#) | [New Address](#) | [Preferences](#) | [Logout](#)

-Karl Rhoads-

103-64-15-129-231 (1)
searchCountResults.atm

Exhibit 1

[Menu](#) | [Voter Search](#) | [My List \(0\)](#) | [History](#) | [New Address](#) | [Preferences](#) | [Logout](#)

Voter Records

Search Results

Active voters, First Name 'ramona%', Last Name 'hussey'

Select A Different Output: [Update MyList](#)

<< < 1 Records > >>

Voting History: p - primary absentee g - general absentee FV - failed to vote
P - primary in-person G - general in-person Add to Voter List

[Add Results to My List](#)

| Name | FV | Residence | Mailing Address | US | CC | Sen | House |
|--|----------|--|--------------------------------------|----|--------|-----------------------------------|--------------------------|
| 1. Ramona Hussey Female, 7/14/10, P, 1035827, SB, Caucasian, ██████████, 855430, 570326, 4L | 12 10 | pg 2 ██████████ Liloa Rise s Honolulu, HI 96822 | ██████████ ██████████ | 1 | (06)05 | (13)11 | (27)23-04 R2 NB:07-03 |
| | | UA AN SR SM PQ (1) | <input type="checkbox"/> Bad Address | | | <input type="checkbox"/> Deceased | |

<< < 1 Records > >>

[Back](#)

Select A Different Output: [Update MyList](#)

| | | | | | | | |
|----------|-------------|-----------|---------------|-----|-------|-----------|---|
| First MI | Last Name > | House # > | Street Name > | Apt | Zip > | Dist-Prec | <input checked="" type="checkbox"/> Statewide Search |
| ramona | % hussey | % | % | | % | | <input type="checkbox"/> M <input type="checkbox"/> F Voted in 2012 or registered since. |

CLEAR Only first part necessary for First Name, Last Name, House Number, Street. Search includes inactive records. Excludes only those marked bad address.

Statewide Voter Turnout and Ethnicity (by precinct): [Precincts.csv](#)

[Menu](#) | [Voter Search](#) | [My List \(0\)](#) | [History](#) | [New Address](#) | [Preferences](#) | [Logout](#)

-Karl Rhoads-

103-64-15-129-231 (2)
searchCountResults.atm

Exhibit 2

[Menu](#) | [Voter Search](#) | [My List \(0\)](#) | [History](#) | [New Address](#) | [Preferences](#) | [Logout](#)

Voter Records

Search Results

Active voters, First Name 'calvin%', Last Name 'say%'

Select A Different Output: [Update MyList](#)

<<- <- 1 Records -> ->>

Voting History: p - primary absentee g - general absentee FV - failed to vote
P - primary in-person G - general in-person Add to Voter List

[Add Results to My List](#)

| Name | FV ¹² ₁₀ | Residence | Mailing Address | US | CC | Sen | House |
|---|--------------------------------|--|---|----|----|--------|-----------------------------------|
| 1. <u>Calvin K. Y. Say</u> (DO) Male, 5/3/74, P, 7401485, \$160*3D, SO, Hispanic, 667123, 408741, >L calvinsay@hotmail.com Precinct Secretary, District Treasurer, 2012 Super Delegate | | pg 1822 10th Ave Honolulu, HI 96816 UA AN SR SA PQ (1) | Calvin K. Y. Say 1822 10th Ave Honolulu, HI 96816 <input type="checkbox"/> Bad Address | 1 | 05 | (09)10 | 20-03 R1 NB:06-03 |
| | | | | | | | <input type="checkbox"/> Deceased |

<<- <- 1 Records -> ->>

[Back](#)

Select A Different Output: [Update MyList](#)

| | | | | | | | |
|----------|-------------|-----------|---------------|-----|-------|-----------|--|
| First MI | Last Name > | House # > | Street Name > | Apt | Zip > | Dist-Prec | <input checked="" type="checkbox"/> Statewide <input type="button" value="Search"/> |
| calvin | say | | | | | | <input type="checkbox"/> M <input type="checkbox"/> F Voted in 2012 or registered since. |

CLEAR Only first part necessary for First Name, Last Name, House Number, Street.
Search includes inactive records. Excludes only those marked bad address.

Statewide Voter Turnout and Ethnicity (by precinct): [Precincts.csv](#)

[Menu](#) | [Voter Search](#) | [My List \(0\)](#) | [History](#) | [New Address](#) | [Preferences](#) | [Logout](#)

-Karl Rhoads-

103-64-15-129-231 (2)
searchCountResults.atm

Exhibit 3



DENISE C. DE COSTA
CITY CLERK

OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4352

CERTIFICATE

I, DENISE C. DE COSTA, the duly qualified City Clerk of the City and County of Honolulu, State of Hawaii, do hereby certify that attached hereto is a true and correct copy from Walter John Kelly, of his fax transmittal and challenge to the residency and qualifications of Representative Calvin Say to serve as a State Representative.

The original of said communication is on file and of record in the Office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City and County of Honolulu to be affixed this 26th day of September 2006.

A handwritten signature in cursive script that reads "Denise C. De Costa".

DENISE C. DE COSTA
City Clerk
City and County of Honolulu
State of Hawaii

EXHIBIT 1

Exhibit 4

FAX COVER

Date: May 4, 2006

To: City Clerk, City and County of Honolulu, 808-527-6888

From: Walter John Kelly, 808-345-9229

RE: Complaint

808-345-9229
MAY 4 11 09 AM '06

Walter John Kelly
P.O. Box 917
Captain Cook, Hawaii 96704

May 4, 2008

City Clerk
City and County of Honolulu
530 S. King Street
Honolulu, Hawaii 96813

MAY 11 11 09 AM '08

Re: **Challenge to the Residency and Qualifications of Representative Calvin Say to Serve as a State Representative**

Dear Clerk:

I am a registered voter in the State of Hawaii. Pursuant to Hawaii Revised Statutes § 11-25(a), I am formally filing an objection to the right of Representative Calvin Say to be or to remain registered as a voter of District 20 of the State of Hawaii House of Representatives. Based on the facts described below, Representative Say does not meet the qualifications of residency as required by Article III, section 6 of the Hawaii Constitution, and as such is ineligible to serve as a state representative pursuant to HRS § 19-4.

I. **FACTUAL BACKGROUND**

For voter registration purposes, Representative Say lists his residence address as "1822 10th Avenue, Honolulu, Hawaii 96816." This address is located within House District 20. However, Representative Say has resided at 2247 Star Road, Honolulu, Hawaii 96813, for at least the past 15 years with his wife and two sons. This address is located in House District 26. Representative Say maintains a home at 1822 10th Avenue, but it is not his fixed and permanent dwelling place.

II. **LAW**

Article III, section 6 of the Hawaii Constitution provides in part as follows:

No person shall be eligible to serve as a member of the house of representatives unless the person has been a resident of the State for not less than three years, has attained the age of majority and is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected; but prior to the primary election, an incumbent representative may move to a new district without being

disqualified from completing the remainder of the incumbents representative term. [Emphasis added.]

Pursuant to HRS § 11-12, to qualify to vote in a particular representative district, a person must be a resident of a precinct within the district. Section 11-12 provides in pertinent part that: "no person shall register or vote in any other precinct than that in which he resides except as provided in 11-21." Section 11-21 accounts for situations where registered voters change their names or addresses between elections.

HRS § 11-13 prescribes various tests to determine whether an individual is a resident in any particular district for election purposes. The following parts of § 11-13 are pertinent to this challenge:

§ 11-13. Rules for determining residency.

For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only:

(1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return;

(2) A person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct;

(3) [Omitted];

(4) The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish such place as the person's residence; . . . [Emphasis added.]

On March 21, 1986, the Attorney General submitted Attorney General Opinion No. 86-10. In regards to paragraphs (1), (2) and (4), the Attorney General opined the following:

Each points out that physical residence or absence from

the particular places which one regards as his residence is not material. What must be ascertained instead is where "his habitation is fixed," where he always intends to return, and where his present "permanent dwelling place" is.

It further opines:

"Residence" when used in defining electoral rights has been said to be essentially synonymous with "domicile," which denotes a permanent, as distinguished from a temporary, dwelling place. It means "the place where a man establishes his abode, makes the seat of his property, and exercises his civil and political rights." In re Appeal of Irving, 13 Hawaii 22, 24 (1900), quoting from Chase v. Miller, 41 Pa. 420. A "house of stone or brick or even of wood is not essential to enable one to become a resident of a precinct and a qualified voter therein . . . there must be some definite and permanent place designated and occupied . . ." *Id.* at 25.

The question before the City Clerk is: "Where does Representative Say reside for electoral purposes?" The facts will show that Representative Say is maintaining a simulated residence in House District 20 for voter registration purposes, and not to establish a permanent dwelling as is required by law. Instead, Representative Say's permanent dwelling is (and has been for over 15 years) 2247 Star Road.

The ultimate question is whether and where Representative Say has a permanent, fixed residence. Even if Representative Say claims that he is merely "absent" from 1822 10th Avenue and "intends" to return there (pursuant to § 11-13(1)), this would make the constitutional and statutory requirements for voter residency a nullity. When the Legislature enacted § 11-13(1), it could not have intended to allow an individual to claim residency at an address from which he has been absent for more than 15 years, on the basis that he "intends" to return to that address. In fact, Attorney General Opinion No. 86-10 supports the conclusion that one's "absence" from his residence only applies to temporary absences which occur under extraordinary circumstances, i.e., a home renovation. Nowhere does Hawaii law state that one can be absent for a prolonged period of time, yet claim residency on the guise of his "intent to return."

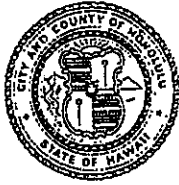
An investigation will show that Representative Say has clearly established a permanent and fixed residence outside of House District 20. (Please provide me with the name(s) of your staff members who will be responsible for conducting this investigation.) The mere act of maintaining a residence in District 20 does not constitute residency for electoral purposes.

III. CONCLUSION

Pursuant to HRS §11-25(a), I request that the City Clerk determine Representative Say is not a legal resident of House District 20. I further request that the City Clerk remove Representative Say's name from the voter registration list and refer this matter to the Attorney General or City Prosecutor to determine whether any offense was committed under HRS Chapter 19 (voter fraud).

Thank you for your attention to this matter.

A handwritten signature in black ink, appearing to read "W. L. J. King", is written over a horizontal line.



DENISE C. De COSTA
City Clerk

ELECTIONS
OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4293

CERTIFIED MAIL
RETURN RECEIPT

June 22, 2006

Mr. Walter John Kelly
P.O. Box 917
Captain Cook, Hawaii 96704

Dear Mr. Kelly:

RE: CHALLENGE TO VOTER REGISTRATION OF CALVIN K.Y. SAY

On May 4, 2006 my office received from you a challenge to the voter registration residence of Mr. Calvin K.Y. Say via facsimile. By copy of this letter, I am informing both you and Mr. Say of my ruling pursuant to §11-25, Hawaii Revised Statutes.

Due to the public nature of this document and to limit further disclosure of Mr. Say's personal information, I am omitting references to the house number of Mr. Say's voter registration address on 10th Avenue.

CHALLENGED VOTER OPPORTUNITY TO RESPOND

On May 5, 2006, Mr. Say was provided the opportunity to respond to the challenge by May 31, 2006. Mr. Say replied on May 11, 2006 and requested two additional days to respond due to professional commitments. An extension was granted until June 2, 2006 and Mr. Say provided a response that included an explanation and copies of various personal documents.

CHALLENGER OPPORTUNITY TO PROVIDE ADDITIONAL INFORMATION

On May 10, 2006, my staff made telephone contact with to provide an opportunity for you to submit additional information pertaining to the voter challenge which could assist in our investigation. In a subsequent conversation on May 11, 2006, no additional information was provided. However, you mentioned retaining a private investigator and attorney with whom consultation would be made regarding releasing information.

Kelly
Page 2
RE: Voter Registration Challenge

A final written opportunity to provide additional information was sent on June 7, 2006 giving a deadline of June 16, 2006 to respond. A response was received on June 13, 2006 and was reviewed for any additional information that would support the challenge. No additional information was provided, however, in the letter you confirmed that you had retained a private investigator and attorney. No other information was received by the deadline of June 16, 2006.

INVESTIGATION/FINDINGS

1. A review of the voter registry reveals that only Mr. Say and his wife are registered at 10th Avenue and that no other persons are registered to vote at that address.
2. A review of the voter registry does not indicate the return of the Notice of Voter Registration and Address Confirmation Postcard by the United States Postal Service (that was mailed to Mr. Say) as would normally occur if the resident had moved with or without leaving a forwarding address.
3. A review of real property records indicates Mr. Say's ownership of the 10th Avenue property and ownership of no other properties.
4. A review of real property permitting information reveals the issuance of building permits for the 10th Avenue property in March 2002.
5. A review of City driver license records reveals Mr. Say's address listed as 10th Avenue.
6. A review of motor vehicle records for two vehicles reveals Mr. Say's address listed as 10th Avenue.
7. Documents provided in Mr. Say's response were reviewed and list 10th Avenue as the address. Documents included: cable bill, water bill, bank statement, telephone bill, credit union account statement, financial manager account statement, copy of drivers license, and a letter from State Department of Taxation.
8. A site visit was conducted to the area of 10th Avenue address on June 14, 2006 to confirm the existence of a domicile and to interview neighbors in the proximity. Two neighbors near the 10th Avenue property who provided information acknowledged the 10th Avenue home as owned by Mr. Say. This information was obtained without prompting Mr. Say's name. One neighbor attests to not observing Mr. Say's physical presence at 10th Avenue on a frequent basis. The second neighbor attests to frequently observing Mr. Say's physical presence at 10th Avenue.

Kelly
Page 3
RE: Voter Registration Challenge

9. A site visit was made on June 14, 2006 to Star Road to confirm information provided by Mr. Say that the address is that of a family member. A neighbor confirmed the residence of that family member. Voter registration records corroborate the address as that of the family member. Driver license records do not reveal a drivers license for that family member.

RULING/DETERMINATION

After reviewing various personal and governmental records, information obtained from site visits, and in the absence of evidence to suggest otherwise, it is my determination that 10th Avenue is Mr. Say's residence address.

The preponderance of documentary evidence suggests that 10th Avenue is the address used by Mr. Say for much of his personal matters. I am also satisfied with Mr. Say's explanation that his absence from his 10th Avenue home is due to extraordinary circumstances relating to the provision of health and living assistance for a member of his family.

I also find no evidence to conclude that Mr. Say has ever relinquished his 10th Avenue residence and am satisfied with his explanation that the absence is temporary with intention to return to that permanent domicile.

NOTIFICATION OF RIGHT TO APPEAL

Pursuant to Hawaii Revised Statutes §11-26 and Hawaii Administrative Rules §2-51-42 you are hereby notified of this decision and your right to appeal this decision to the Board of Registration within ten days of service of this decision.

Sincerely,



DENISE C. DE COSTA
City Clerk

DCD:

c: Mr. Calvin K.Y. Say

OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4352

DENISE C. DE COSTA
CITY CLERK

CERTIFICATE

I, DENISE C. DE COSTA, the duly qualified City Clerk of the City and County of Honolulu, State of Hawaii, do hereby certify that attached hereto is a true and correct copy of my certified letter to Walter John Kelly responding to his challenge of voter registration of Calvin K.Y. Say and informing him of my ruling and determination.

The original of said communication is on file and of record in the Office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City and County of Honolulu to be affixed this 26th day of September 2006.



DENISE C. DE COSTA
City Clerk
City and County of Honolulu
State of Hawaii

EXHIBIT 3

August 17, 2006

Denise De Costa
City Clerk, City & County of Honolulu
Honolulu Hale
Honolulu, HI 96813

AUG 17 12 35 PM '06

RE: Challenge to the right of Calvin K. Y. Say and his wife, Cora K. Say, to remain registered as voters in the 5th Precinct, 20th Representative District, State of Hawaii.

Dear Ms. De Costa,

I am Michael G. Palcic, a registered voter of the 6th Precinct, 20th Representative District, State of Hawaii. I am formally filing a challenge to the right of Calvin K. Y. Say and Cora K. Say to remain registered as voters in the 5th Precinct, 20th Representative District, State of Hawaii.

This challenge is based upon my personal observations and evaluation of evidence presented to me that the Says do not reside at 1822 10th Avenue as they represent in their respective voter registrations. Their fixed habitation and permanent dwelling place, where they reside with other family members, is at 2247 Star Road, Honolulu, located in the 26th Representative District, State of Hawaii.

How have I become convinced that this is true and how might you determine the veracity of this claim?

1.) By simple observation: The house at 1822 10th Avenue appears to be vacant, not lived in. The drapes are drawn. Almost always, in the evening, the premises are completely dark. The garage is empty. There are no personal items around the exterior of the house, no slippers at the door, no gardening implements, no signs of life. In marked contrast, the Say's home at 2247 Star Road is clearly occupied by them. Over the course of the last two to three months I have taken to stopping by 1822 10th Avenue and have driven by 2247 Star Road to make these observations. Since August 6, 2006, I have kept a precise log of these visits which is attached as Exhibit 1. I have also made photographs of the premises at 1822 10th Avenue, attached as Exhibit 2.

2.) The Says own the house at 1822 10th Avenue and receive a homeowners exemption on property tax assessments for the house, but the property tax assessments and property tax bills from the City & County of Honolulu are mailed to the Says at their home, 2247 Star Road, the seat of their property. See Exhibit 3.

3.) You can seek to obtain, voluntarily or by subpoena, the utility bills for the house at 1822 10th Avenue. I believe that unusually low electrical power consumption, for example, in what is purported to be a family home, will bolster the challenge I make here. You can examine other records such as school enrollments for evidence of contradictory claims of residency.

4.) You can speak to neighbors, as I have done, who will candidly tell you that the Says do not reside at 1822 10th Avenue. Similarly, you can inquire of neighbors at 2247 Star Road as to the comings and goings there.

5.) You can obtain sworn statements of Calvin K. Y. Say and Cora Say, individually, as to their residence over the last 15 years. I believe that initially the Says did temporarily vacate the house at 1822 10th Avenue with the intention of returning but that, over the course of time, their fixed residence, their permanent dwelling has become 2247 Star Road. I believe that the house at 1822 10th Avenue is maintained only as a shell, for the purpose of maintaining their voter registration in the 20th Representative District. The Says have a vital interest in maintaining this voter registration, to wit: Calvin K. Y. Say has, over the years, repeatedly filed nomination papers, been elected and served as Representative of the 20th District in the Hawaii State Legislature. By law, no person shall be eligible to serve as a member of the House of Representatives unless the person is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected. The transparent falsehood of any claim by the Says that they are merely absent from 1822 10th Avenue and intend to return there is evident due to the length of time of their absence, now as much as 15 years, or longer. Nor do the occasional visits to the property at 1822 10th Avenue by Mr. Say in any way constitute establishment of residence there. Property

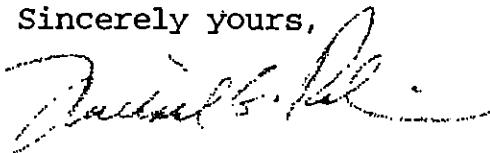
owners commonly check the condition, maintenance and repair of real property with visits to the property, for example, but in no way does this constitute residency for electoral purposes.

It is true that during the "election season" Calvin K. Y. Say spends more time at 1822 10th Avenue than at other times during the year or during off-election years. Perhaps, this makes early morning sign-waving more convenient. Perhaps it is to deflect possible challenges like the one I make today that he does not reside there. Apparently, neither Mrs. Say nor their sons join him in these brief stays.

I have been elected to multiple terms to Neighborhood Board #5 and, in 1992, was Say's opponent in the general election. During these forays into the public service realm, dating back at least 14 years, I have been approached by persons who reported to me that Say does not live in our district and should therefore be disqualified from holding office as its representative. I have decided upon my own initiative to examine the veracity of these claims and make my own determination.

I have no doubt that a thorough investigation by your office will clearly establish that the Says, individually, and as a family have made permanent and fixed their residence outside of the boundaries of Representative District 20 and that your ruling will be that the Says have no right to remain registered as voters of the 20th Representative District.

Sincerely yours,



Michael G. Palcic
1907 St. Louis Drive
Honolulu, HI 96816
(808) 255-5633

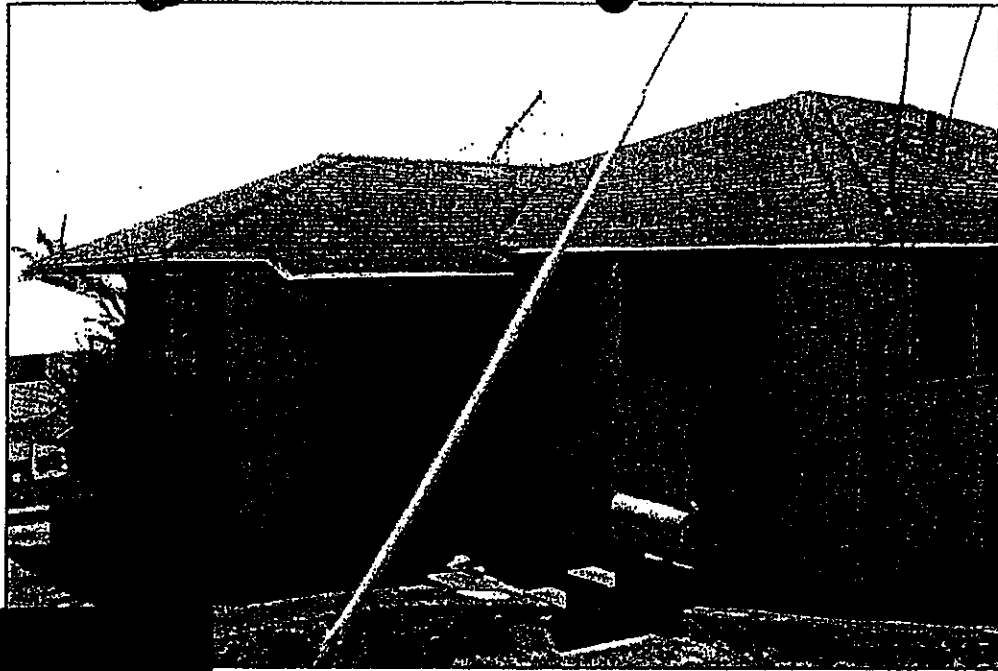
"Be always sure you are right, then go ahead."

-- Davy Crockett 1786-1836

Exhibit 1.

Michael Palcic's LOG of visits to 1822 10th Avenue,
alleged residence of Calvin K. Y. and Cora K. Say

- Aug 6. 8:18p -- House is completely dark, no car in garage, I left a business card at the front door.
- Aug 7. 9:06a -- No car in garage, card still there.
8:16p -- House is dark, no car in garage.
- Aug 8. 8:04a -- No car in garage, card still there.
- Aug 9. 12:45p -- No car in garage, card still there.
10:02p -- Lights on inside, car in garage.
- Aug 10. 9:10a -- No car in garage, left another card.
- Aug 11. 9:16a -- No car in garage, card still there.
- Aug 13. 12:15p -- No car in garage, card still there, left another card.
6:52p -- House is dark, no car in garage.
- Aug 14. 8:40a -- No car in garage, cards still there.
8:23p -- House is dark, no car in garage.
- Aug 15. 8:17p -- House is dark, no car in garage.
- Aug 16. 8:30a -- No car in garage, cards still there, left a third card.
7:07p -- House is dark, no car in garage.
9:30p -- Light on in house, Makai side.
- Aug 17. 5:58a -- Car in garage.



The residence in question at 1822 10th Avenue, claimed to be the permanent, fixed domicile of Calvin K. Y. Say and Cora K. Say.

Left, business cards left for the Says at the front door.

Below, the empty garage at the house.

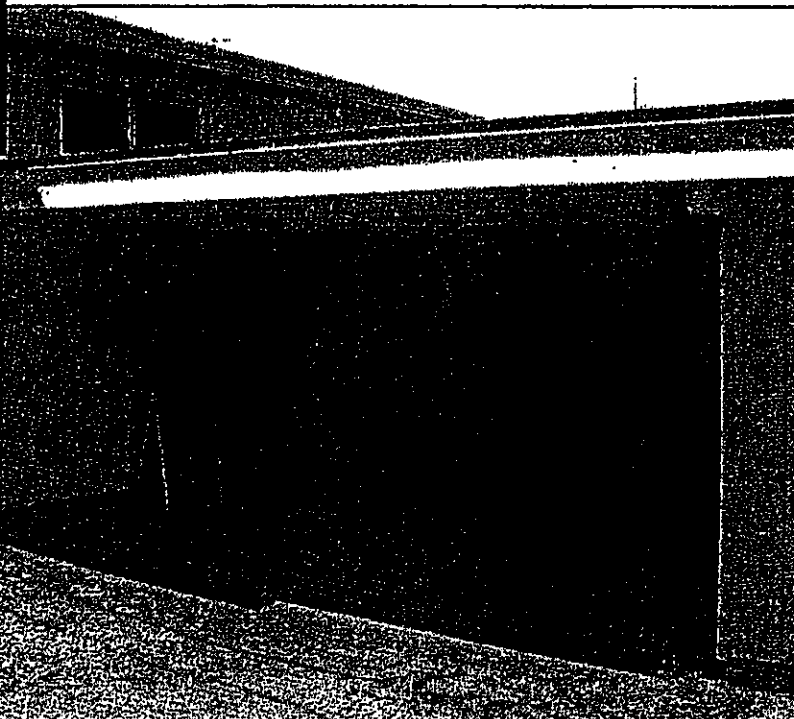
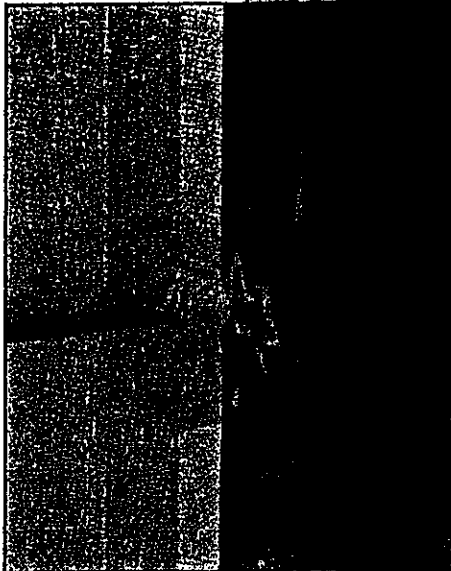
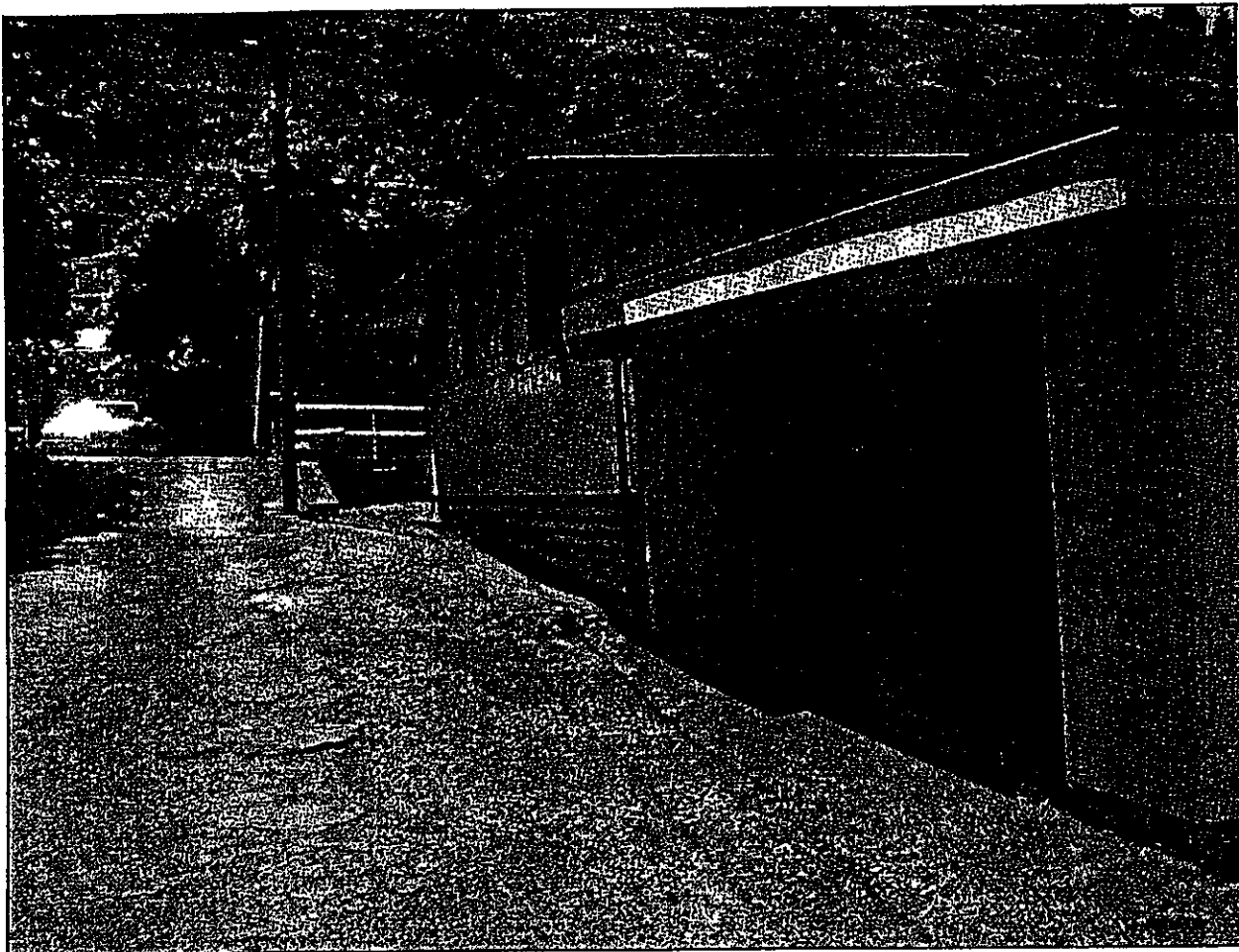
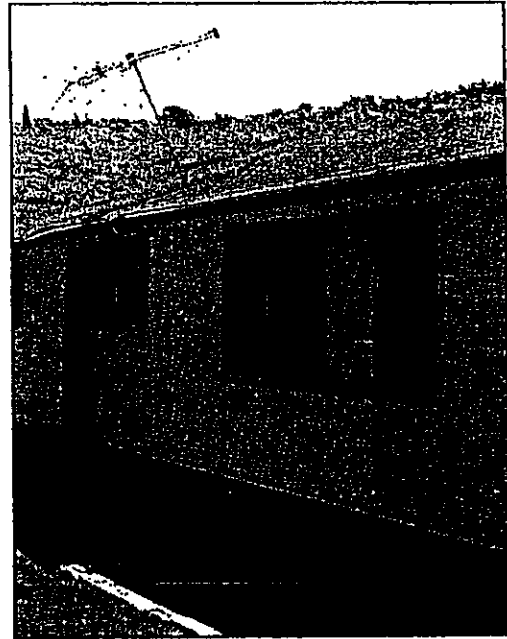


Exhibit 2, page 2.

Right, the Says' antenna on the Makai side of the house

Below, the driveway on the Mauka side of the house is in need of repair.





Home Property Search
Address Parcel ID Advanced

RECORD DETAILS

- ▶ Parcel Data
- Permits
- Land Details
- Assessed Values
- Sales History
- Residential
- Commercial
- Other Improvements
- Sketch
- Tax Bill
- Tax Details 2006
- Tax Details 2005
- Tax Details 2004
- Tax Details 2003
- Tax Details 2002
- Tax Details 2001
- Parcel Map

330380230000
1822 10TH AVE SAY,CALVIN K Y

Parcel Data
 TMK 330380230000
 Site Address 1822 10TH AVE
 Apartment No.
 Property Class Please select the Land Details tab.
 Neighborhood Code 3364-1
 Neighborhood Name
 Total Parcel Area .0936 Acres
 Zoning U/05/00

Ownership

| Owner | Address | City | State | Country | Zip Code | Owner Type |
|----------------|--------------|-------------|-------|---------|----------|------------|
| SAY,CALVIN K Y | 2247 STAR RD | HONOLULU HI | | | 96813 | Fee Owner |
| SAY,CORA K | | | | | | Fee Owner |

CURRENT RECORD
 1 of 3
 Return To Search Results

Print This
 Email This

Data Last Updated : 8/6/2006

Disclaimer

The City and County of Honolulu Real Property Assessment & Treasury Divisions make every possible effort to produce and publish the most current and accurate information. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

Data Copyright City and County of Honolulu Public Access [Disclaimer] Last Updated: 8/6/2006
 Site Design Copyright 1999-2004 Akanda Group LLC. All rights reserved.

Exhibit 3.

OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4352

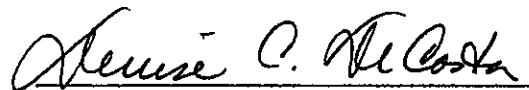
DENISE C. DE COSTA
CITY CLERK

CERTIFICATE

I, DENISE C. DE COSTA, the duly qualified City Clerk of the City and County of Honolulu, State of Hawaii, do hereby certify that attached hereto is a true and correct copy of the challenge by Michael G. Paicic to the right of Calvin K.Y. Say and his wife, Cora K. Say, to remain registered as voters in the 5th Precinct, 20th Representative District, State of Hawaii.

The original of said communication is on file and of record in the Office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City and County of Honolulu to be affixed this 26th day of September 2006.



DENISE C. DE COSTA
City Clerk
City and County of Honolulu
State of Hawaii

EXHIBIT 4

OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE (808) 523-4291

CERTIFIED/RETURN RECEIPT

DENISE C. De COSTA
City Clerk

August 22, 2006

 COPY

Mr. Michael Palcic
1907 St. Louis Drive
Honolulu, Hawaii 96816

Dear Mr. Palcic:

RE: Voter Challenge to Calvin K.Y. Say

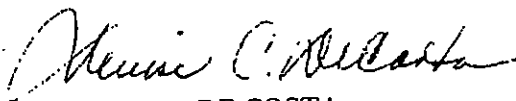
We are in receipt of your letter seeking to challenge the voter registration of Mr. Calvin K.Y. Say and Ms. Cora K. Say to remain registered voters in the 20th Representative District, Precinct 5. The challenge to the voter registration for Ms. Cora K. Say will be addressed separately.

For your information, we received a similar voter challenge to Mr. Calvin K.Y. Say's voter registration brought forth on May 4, 2006. As a result of our investigation at that time, we subsequently issued a determination on June 22, 2006 that the voter register does not warrant a correction. I have thoroughly reviewed all the information you presented with regard to Mr. Say's voter registration in your complaint of Aug. 17, 2006, and find no relevant new information that would persuade me to adjust my earlier finding.

We always welcome and appreciate information that will enable us to keep our voter registration records as current as possible, and appreciate your efforts toward this end.

Pursuant to Hawaii Revised Statutes §11-22 and §11-26 you may appeal this decision to the Board of Registration within ten days service of this decision as evidenced by the statement of mailing.

Sincerely,



DENISE C. DE COSTA
City Clerk

DD:sa

c. Mr. Calvin K.Y. Say

7002 9000 0010 2000 0550 4016

| U.S. Postal Service | |
|--|---------|
| CERTIFIED MAIL RECEIPT | |
| For delivery information visit our website at www.usps.com | |
| Postage | \$ 1.39 |
| Certified Fee | 2.40 |
| Return Receipt Fee (Enclosure Required) | 1.75 |
| Restricted Delivery Fee (Enclosure Required) | |
| Total Postage & Fees | \$ 4.54 |

Postmark Here

Send To
MR. CALVIN SAY
Street, Apt. No.
or PO Box No. 1822 10th Avenue
City, State, ZIP+4
Honolulu, HI 96816

Exhibit 7

OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4352

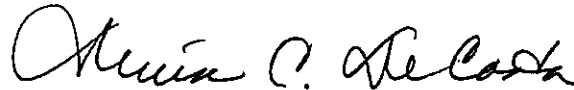
DENISE C. DE COSTA
CITY CLERK

CERTIFICATE

I, DENISE C. DE COSTA, the duly qualified City Clerk of the City and County of Honolulu, State of Hawaii, do hereby certify that attached hereto is a true and correct copy of my certified letter dated August 22, 2006 to Michael Palcic responding to his voter challenge to Calvin K.Y. Say.

The original of said communication is on file and of record in the Office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City and County of Honolulu to be affixed this 26th day of September 2006.



DENISE C. DE COSTA
City Clerk
City and County of Honolulu
State of Hawaii

EXHIBIT 5

BEFORE THE BOARD OF REGISTRATION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

Attachment

MICHAEL G. PALCIC,
Appellant,

vs.

CALVIN SAY,
Appellee.

) CASE NO. BOR-~~W-01~~
) (Administrative Appeal)

) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION

By letter dated August 31, 2006, Mr. Michael G. Palcic filed an appeal of the decision of the City Clerk for the City & County of Honolulu dated August 22, 2006 that Mr. Calvin K. Y. Say is a registered voter in the 20th Representative District, Precinct 5. A hearing on Mr. Palcic's appeal was held on October 6, 2006 before the Board of Registration for the City & County of Honolulu. At the hearing, Mr. Palcic appeared pro se, Bert T. Kobayashi, Jr., Esq. and Brendan Bailey, Esq. appeared on behalf of Mr. and Mrs. Calvin K. Y. Say, who were also present, Reid M. Yamashiro, Esq. and Diane T. Kawauchi, Esq., Deputies Corporation Counsel, appeared on behalf of City Clerk Denise C. DeCosta, who was also present.

A further hearing was held on October 12, 2006 for the limited purpose of allowing the members of the Board of Registration to ask Mr. Say additional questions that were not asked during the October 6 hearing and to allow the parties to ask Mr. Say questions based on the Board's questions. At the further hearing held on October 12,

2006, Mr. Palcic was present, Bert T. Kobayashi, Esq. appeared on behalf of Mr. Say, who was also present and Reid M. Yamashiro, Esq. and Diane T. Kawauchi, Esq., Deputies Corporation Counsel, appeared on behalf of City Clerk Denise C. DeCosta, who was also present.

The Board of Registration, having heard and considered the evidence adduced at the hearing and, based on the credible evidence and good cause appearing therefore, hereby makes the following Findings of Fact and Conclusions of Law and Decision.

FINDINGS OF FACT

1. If it should be determined that any of these Findings of Fact should have been set forth herein as Conclusions of Law, the Board so concludes as to such findings.
2. Appellant Michael G. Palcic, who resides at 1907 St. Louis Drive, Honolulu, Hawaii 96816, is registered voter in the 6th Precinct, 20th Representative District, State of Hawaii.
3. Respondent Calvin K. Y. Say, the duly elected State Representative for the 20th Representative District, is running for re-election for the same seat that he currently holds.
4. By letter to Ms. Denise DeCosta, City Clerk for the City & County of Honolulu dated August 17, 2006, Mr. Palcic challenged the registration of Mr. Say as a voter in the 5th Precinct, 20th Representative District.
5. Mr. Palcic contends that Mr. Say is not a resident of 1822 10th Avenue, Honolulu, Hawaii 96816 (the "10th Avenue home") which is located in the 20th Representative District but instead, resides with his wife, their sons and his mother-in-law at 2247 Star

Road, Honolulu, Hawaii 96813 (the "Star Road home") in the 26th Representative District.

6. On May 4, 2006, Ms. DeCosta received a challenge of Mr. Say's residency from Mr. Walter John Kelly and in response, asked her staff to conduct an investigation.

7. Based on the results of her staff's investigation of Mr. Kelly's challenge, which included: (a) interviews with the neighbors on both 10th Avenue and Star Road; (b) a statement by Mr. Say in which he explained his absence from the 10th Avenue home as necessitated by his wife's care of her parents in their home on Star Road as well as, his intent to return to 10th Avenue as soon as his wife no longer needs to care for her mother; and (c) copies of utility bills addressed to him for the 10th Avenue home, Ms. DeCosta concluded that Mr. Say is a resident of 1822 10th Avenue, Honolulu, Hawaii 96816.

8. To investigate Mr. Palcic's subsequent challenge of Mrs. Say's residency, Ms. DeCosta reviewed all of the additional information submitted by Mr. Palcic, including: (a) photographs of the 10th Avenue home that show that at various times, there were no cars in the garage and no one appeared to be present in the home; and (b) a handwritten log that lists dates in August 2006, times and statements indicating that no one was present at the 10th Avenue home.

9. After considering the additional information submitted by Mr. Palcic, Ms. Decosta found there was insufficient evidence to depart from the conclusion she had reached earlier in response to Mr. Kelly's challenge.

10. By letter dated August 22, 2006, Ms. DeCosta informed Mr. Palcic of her decision.

11. By letter dated August 31, 2006, Mr. Palcic appealed Ms. DeCosta's decision to the Board of Registration for the City & County of Honolulu.
12. As Mr. Palcic and witness Jaynel Hirakawa testified, and as is documented more specifically for the month of August 2006 by the photographs and handwritten log submitted by Mr. Palcic, Mr. Say and his family do not reside full-time at the 10th Avenue home.
13. Beginning in 1995, Mrs. Say and the Says' sons began to stay more regularly with Mrs. Say's parents at their home located at 2247 Star Road, Honolulu, Hawaii 96813 so that Mrs. Say could help to care for her father who was in poor health.
14. After her father passed away in 2001, Mrs. Say and her sons stayed on in the Star Road home to care for her mother who is not well and they continue to reside there to care for her at the present time.
15. From 1995 to the present, Mr. Say has not lived full-time at the 10th Avenue home and instead, shuttles back and forth between the Star Road home and the 10th Avenue home.
16. With the exception of evenings when he has community meetings or other engagements and during the legislative session, Mr. Say usually has dinner with his family at the Star Road home and then goes to the 10th Avenue home to go to sleep at about 10:00 p.m. In the morning, Mr. Say wakes up at about 5:00 a.m., takes a shower and leaves for work at about 7:00 a.m.
17. Mr. Say estimates that he currently spends about 60% of his time during the week at the 10th Avenue home and this has been his schedule during the work week since 1995.

18. On the weekends, Mr. Say usually works at his wife's family's business on Saturday mornings and may spend time with his sons at baseball games or fishing in the afternoons. On Sundays, Mr. Say is usually at the 10th Avenue home doing yard work or other work around the house or he may walk through the neighborhood.
19. Other than the time he is working at his wife's family's business or out with his sons or participating in community activities, Mr. Say spends most of his time during the weekends at the 10th Avenue home.
20. Bills for water, electricity and cable television service for the 10th Avenue home as well as, Mrs. Say's cellular telephone bill are sent to the Says at the 10th Avenue home.
The utility bills for the 10th Avenue home are extremely low.
21. In addition to the utility bills, bank statements for accounts at Hawaii State Employees Federal Credit Union, Bank of Hawaii and Central Pacific Bank are sent to the Says at the 10th Avenue home.
22. Mr. Say claims a homeowner's real property tax exemption for the 10th Avenue home and he does not claim a real property tax exemption for any other property.
23. Mr. Say intends to return to live full-time at the 10th Avenue home as soon as his wife no longer needs to care for her mother.

CONCLUSIONS OF LAW

1. If it should be determined that any of these Conclusions of Law should have been set forth herein as Findings of Fact, the Board so finds as to such conclusions.
2. The Board of Registration for the City & County of Honolulu has jurisdiction over the parties in, and the subject matter of, this appeal.

3. Appellant Michael G. Palcic has standing to bring this appeal of City Clerk Denise DeCosta's decision regarding Mr. Palcic's challenge of Mr. Say's residency for election purposes.
4. Pursuant to Haw. Rev. Stat. § 11-13(1), for election purposes, Mr. Say's residence is that place in which his habitation is fixed, and to which, whenever he is absent, he intends to return.
5. Pursuant to Haw. Rev. Stat. § 11-13(2), "[a] person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct".
6. Pursuant to Haw. Admin. R. § 2-51-25(2)(A), where a person has more than one residence, "[i]f a person maintains a homeowner's property tax exemption on the dwelling of one of the residences, there shall be a rebuttable presumption that the residence subject to the homeowner's property tax exemption is that person's residence".

DECISION

While the rules for determining residency for election purposes set forth in Haw. Rev. Stat. § 11-13 are not as clear or straightforward as they could be and the evidence presented at the hearings made the Board's decision a difficult one, the Board, by a vote of 2 to 1, concludes that Appellant Michael G. Palcic did not present sufficient credible evidence to rebut the presumption that 1822 10th Avenue, Honolulu, Hawaii 96816, which is the property for which Mr. Say claims a homeowner's real property tax exemption, is Mr. Say's residence. The Board therefore upholds Ms. DeCosta's decision that the home located at 1822 10th Avenue, Honolulu, Hawaii 96816 is where Mr. Say's dwelling place is fixed and where, when he is absent, he intends to return.

Pursuant to Haw. Rev. Stat. §11-51, as amended, and Haw. Admin. R. §2-51-43(k), the Board hereby gives Appellant Michael G. Palcic notice that he has the right to appeal this decision to the Intermediate Court of Appeals of Hawai'i within 10 days of service of this decision. A copy of Part IV of Haw. Rev. Stat. Chap. 11, "Appeal from Board of Registration" is attached as Exhibit "A" hereto.

DATED: Honolulu, Hawaii, October 13, 2006

Board of Registration for the City &
County of Honolulu

Maureen Muraoka
Maureen Muraoka, Chairperson

Lisa Keala Carter
Lisa Keala Carter, Member

Roberta Chong Kee
Roberta Chong Kee, Member

Attachment

RECEIVED
CITY CLERK
C & C OF HONOLULU

July 29, 2010

2010 AUG -2 PM 2: 33

The Honorable Bernice K.N. Mau, City Clerk
City & County of Honolulu
530 South King Street, Room 100
Honolulu, HI 96813

Re: Challenge to Calvin K. Y. Say to remain as a registered voter in the
5th Precinct, 20th Representative District, State of Hawaii

Dear Ms. Mau,

According to the Hawaii Revised Statute§11-25, any registered voter may challenge the right of a person to be or to remain registered as a voter. HRS§11-25 reads in pertinent part:

Any registered voter may challenge the right of a person to be or to remain registered as a voter in any precinct for any cause not previously decided by the board of registration or the supreme court in respect to the same person.

We, the undersigned, are registered voters in the State of Hawaii. Both of us are registered to vote in the City and County of Honolulu; both of us are registered voters in the 20th Representative District, currently represented by Calvin K. Y. Say.

We are formally challenging the right of Calvin K. Y. Say to remain registered as a voter in the 5th Precinct, 20th Representative District, State of Hawaii, because Calvin K. Y. Say does not live in the 20th Representative District. Hawaii Revised Statute§11-12 requires that a voter be a resident of their precinct; Hawaii Revised Statute§11-12 reads in pertinent part:

No person shall register or vote in any other precinct than that in which the person resides except as provided in section 11-21.

[Note: The exceptions listed in HRS§11-21 do not apply: a person has changed their residence §11-21(c); a person was incorrectly placed in the wrong precinct §11-21(d); change of name or other correction §11-21(e).]

**BACKGROUND: PREVIOUS CLAIMS HAVE BEEN MADE THAT
CALVIN K. Y. SAY DOES NOT LIVE IN THE DISTRICT**

This is the third challenge brought by registered voters to the residence of Calvin K. Y. Say.

The first challenge was filed May 4, 2006, by Walter John Kelly, resident of Captain Cook in the County of Hawaii. Kelly claimed that Calvin K. Y. Say lived at 2477 Star Rd. (*hereinafter* "Star Rd"). [See EXHIBIT 1 KELLY COMPLAINT].

The second challenge was brought on August 24, 2006 by Michael Palcic, a resident of the district. [See EXHIBIT 2 PALCIC COMPLAINT]. Palcic claimed that Calvin K. Y. Say lived at Star Rd with his wife, Cora K. Say, and his wife's mother.

The owners of record for Star Rd are Haruyo M. Kotake and Stephen T. Kotake as Trustees. [See EXHIBIT 3, CITY AND COUNTY OF HONOLULU OWNERSHIP RECORDS FOR STAR RD]¹ Note: the social security death index reports that Stephen T. Kotake died March 26, 2001. [See EXHIBIT 4, SOCIAL SECURITY DEATH INDEX FOR STEPHEN T. KOTAKE]² This corresponds to the date of death reported by the Honolulu Advertiser and confirms that this is Cora Say's father. [See EXHIBIT 5 HONOLULU STAR-BULLETIN OBITUARY]³

In response to the Palcic complaint, Calvin K. Y. Say made a declaration under penalty of law. [See EXHIBIT 6, DECLARATION OF CALVIN K. Y. SAY] In his initial declaration, Calvin K. Y. Say claimed that 1822 10th Avenue (*hereinafter* "10th Ave"), Palolo, Honolulu, Hawaii is his "permanent fixed residence for all intents and purposes". He claimed that his wife has become the live-in caretaker for her mother at 2247 Star Road. Then he describes an implausible scenario that after dining every evening he can with his family that at least 60% of the time he abandons his family; he shuttles between the "10th Avenue home in Palolo and the Kotake home." Calvin K. Y. Say offers no explanation why he abandons his wife and minor children to sleep across town in an otherwise empty home.

Calvin K. Y. Say's wife, Cora K. Say, made a declaration under penalty of law. [See EXHIBIT 7, DECLARATION OF CORA K. SAY] In statement 4, she claims, "I have resided at our 10th Avenue Home consistently and uninterrupted since 1980 when my husband and I purchased the home." In statement 11, she claims, "Needless to say, I frequently shuttle between my mother's home and our 10th Avenue Home. However, our 10th Avenue Home is my permanent, fixed place of residence and, whenever I am absent, it is the home which I always intent to return to." Finally in statement 12, she claims, "Even though I am frequently required to be absent from the 10th Avenue Home in order to care for my mother, I have never intended to change my residency." So, which is the true and accurate description, does she reside consistently and uninterrupted at 10th Ave, or does she frequently shuttle between her mother's home and the 10th Avenue home, or is she frequently absent from the 10th Avenue Home? More importantly where does she return each time she is absent?

Based on this evidence, presented by Palcic, on October 13, 2006 the Board of Registration for the City and County of Honolulu voted 2-1, and concluded that Palcic did not present sufficient credible evidence to rebut the presumption that 1822 10th Avenue, Honolulu, Hawaii is Calvin K. Y. Say's residence. [See EXHIBIT 8, FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION]

¹ <http://www.honolulupropertytax.com/Search/PrintSearch.aspx?PrintAll=1&type=ADDRESS&sIndex=1>

² <http://ssdi.rootsweb.ancestry.com/cgi-bin/ssdi.cgi>

³ <http://archives.starbulletin.com/2001/03/29/news/obits.html>

**NEW EVIDENCE BOLSTERS CLAIM THAT
CALVIN K. Y. SAY DOES NOT LIVE AT 10TH AVE**

After determining that Calvin K. Y. Say's residence is 1822 10th Avenue, Honolulu, Hawaii, the appeal of Cora K. Say was next to be addressed. Less than three weeks after the Board issued its decision that Calvin K. Y. Say resides at 10th Ave, Cora K. Say's attorneys wrote to the Department of the Attorney General indicating that she will not contest Palcic's challenge to her residence:

This was a difficult decision for Ms. Say, nonetheless, she has chosen this course of action in order to put this matter behind her and her family with the understanding that her decision will have no effect on Mr. Say's residence pursuant to HRS § 11-13 which provides that "a person may treat oneself separate from the person's spouse to purposes of determining residence under HRS Chapter 11.

[See EXHIBIT 9, LETTER TO ATTORNEY GENERAL]

While Cora K. Say's letter may not affect Mr. Say's residence, it certainly resolves the inconsistencies raised hereinabove: does she reside consistently and uninterrupted at 10th Ave, or does she frequently shuttle between her mother's home and the 10th Avenue home, or is she frequently absent from the 10th Avenue Home? Apparently she does not reside consistently and uninterrupted at 10th Ave, she lives at Star Rd. Needless to say, Cora K. Say's letter abandoning her appeal calls into question the veracity of the conflicting statements she made under penalty of law regarding the 10th Ave property being her residence. This in turn calls into question the veracity of Calvin K. Y. Say's description of his daily life: he comes home every evening to dine with his family when he was in town and not involved in the session or business; then he abandons his wife and minor children to sleep alone at the 10th Ave.

In 2006 Calvin K. Y. Say claimed that lived at 10th Ave at least 60% of the time. Therefore, his utility usage should reflect that the home is being used. The utility bills continue to reflect that the home is not being used, much less 60% of the time. Attached are reports from the Board of Water Supply showing that there is no consumption at 10th Ave since November 19, 2009; however, there was consistent usage at Star Rd. since November 12, 2009. The results of the queries faxed by the Board of Water Supply are inconsistent with Calvin K. Y. Say's claim that he spends 60% of his time at the Palolo address. **[See EXHIBIT 10, BOARD OF WATER SUPPLY QUERIES]** If Calvin K. Y. Say spent 60% of his time at 10th Ave, there would be at least some usage. Granted, his wife has admitted that she does not live at 10th Ave, so he may be living at 10th Ave alone. Therefore, there may be only one resident at 10th Ave rather than the three residents at Star Rd (Calvin K. Y. Say, Cora K. Say and Haruyo Kotake, Cora's mother). The house at 10th Ave is a smaller house: 925 square feet rather than 1680 square feet (57%). The yard at 10th Ave is slightly smaller: 4073 square feet rather than 4995 square feet (82%). However, even adjusting for the difference in the number of occupants, the size of the home, and the size of the yard, it does not explain why the consumption at Star Rd averages 186 gallons per day and consumption at 10th Ave is zero.

A review of the property tax statements show that 10th Ave was granted a non-homeowner's tax credit for three years. Copies of the property tax statements for tax years 2006, 2007 and 2008⁴ show a "Tax Credit for Non-Homeowner" in the amount of \$200 for tax years 2006 and 2007 and in the amount of \$100 for tax year 2008. A non-homeowner tax credit is issued when an owner fails to apply for a Homeowner's Exemption. [See EXHIBIT 11, PROPERTY TAX BILL SUMMARY]⁵

The house continues to look "vacant" when compared to other homes in the neighborhood. The challenge to Calvin Say's residency is also based on the personal observation by Van Law. The carport was completely bare. There were no slippers on the porch or any other signs that persons had been entering or leaving. There were no potted plants. There was no garden hose attached to an outdoor faucet. [See EXHIBIT 12, AFFIDAVIT OF VAN LAW.]

Jaynel Hirakawa, a neighbor who lives across the street from 1822 10th Ave., continues to report that no one lives in the home. [See EXHIBIT 13, AFFIDAVIT OF JAYNEL HIRAKAWA.]

Apparently it is common knowledge among the elected officials and staff that Calvin K. Y. Say's "home" is Star Rd, not 10th Ave. When he talks about "home", it is the home on Star Rd. When people take him "home", they take him to his home on Star Rd. When people follow him "home" to make sure he arrives safely, they follow him to his home on Star Rd. The Board of Registration in 2006 apparently did not make inquiries among the colleagues of Calvin K. Y. Say.

The Board erred when it relied on the mailing address of various documents to determine the residence for Calvin K. Y. Say. A residence is not determined by where you receive your mail. Further the Board failed to realize that "intent to return" is a legal concept which does not apply to the scenario described by Calvin and Cora Say.

USING THE RULES FOR DETERMINING RESIDENCE,
CALVIN K. Y. SAY LIVES AT 2477 STAR RD.

The rules for determining residency are set forth in Hawaii Revised Statute §11-13. The plain language of the first sentence in this statute is unambiguous:

For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only

...

⁴ <http://www.honolulupropertytax.com/Forms/PrintDatalet.aspx?pin=220190110000&gsp=TDALL&taxyear=2011&jur=000&ownseq=1&card=1&State=1&item=1&items=-1&all=undefined&ranks=Datalet>

⁵ http://www.honolulupropertytax.com/Forms/PrintDatalet.aspx?pin=330380230000&gsp=TDALL_10&taxyear=2011&jur=000&ownseq=1&card=1&State=1&item=1&items=-1&all=all&ranks=Datalet

[Underlining added]

The plain language is further supported by an Attorney General Opinion that for voter registration purposes, a residence is a "domicile". Whereas a person can have more than one residence, a person can have only one domicile.

Calvin K. Y. Say can only reside at one of the two addresses. Either he resides at Star Rd., or he resides at 10th Ave. He cannot be domiciled at one address and claim that he shuttles to another domicile. The determination as to which address is his residence must be made by the clerk using the seven criteria set forth in Hawaii Revised Statute §11-13. Of those seven criteria, only three are applicable in determining the residence of Calvin K. Y. Say:

- (1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return;
- (3) If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence; but any person having a family, who establishes the person's dwelling place other than with the person's family, with the intention of remaining there shall be considered a resident where the person has established such dwelling place;
- (5) A person does not gain or lose a residence solely by reason of the person's presence or absence while employed in the service of the United States or of this State, or while a student of an institution of learning, or while kept in an institution or asylum, or while confined in a prison.

Intent to return. Subsection 1 makes it clear that a residence is the fixed address of habitation. It also is clear that the "residence" is the place to which one intends to return "whenever the person is absent".

- When Calvin K. Y. Say goes to work at the Capitol, where does he return? By his own admission, he returns to Star Rd. – for dinner.
- When colleagues take him home or follow him home, where does he return? Based on the statements of various representatives, he returns to Star Rd.
- When he goes on trips abroad, does he return to Star Rd or 10th Ave?
- When he goes to the grocery store or runs other errands, does he return to Star Rd or 10th Ave?

Living with family. Subsection 3 states in pertinent part, "If a person resides with the person's family in one place, and does business in another, the former is the person's place of residence ...". [Underlining added.]

- Based on the Declarations made in 2006 by the Says, they live together at 10th Ave.

- Now that Cora K. Say has surrendered her voter registration and votes based on her residence at Star Rd, Calvin K. Y. Say's claim that he resides at 10th Ave is inconsistent with his claim he made under penalty of law that he lives with his wife.
- When Calvin K. Y. Say leaves Star Rd to shuttle to 10th Ave, does he stay at this alleged residence, a vacant house on 10th Ave, or does he return to Star Rd? The Board of Water Supply statements show that he must return to Star Rd, because there is zero water consumption at 10th Ave. The only other interpretation is that 60% of the time he has dinner with his wife, he shuttles to 10th Ave and while there they never showers, never washes the dishes, never washes clothes, never flushes the toilet, never waters the yard, and never has a drink of water. A residence is not where you receive your mail and brush your teeth; it's where you and your family reside.
- Calvin K. Y. Say works at the Capitol. His wife and mother-in-law live at Star Rd. None of his family lives at 10th Ave. By his own admission, he returns from work to Star Rd to have dinner with his family.
- Subsection 3 is quite specific. If you live with your family and do business elsewhere, your residence is where your family lives; if you establish a residence other than with your family, it is with the intent to remain there, not intent to return there. Calvin K. Y. Say's shuttling back and forth is an unequivocal admission that he does not "remain" at 10th Avenue.

What constitutes an acceptable "absence"? Subsection 1 states that a residence is a place one intends to return whenever a person is absent. There are times, however, when a person can return to a place other than one's residence, and yet that does not constitute a change in residence. There are only four situations identified in the Hawaii Revised Statutes; they are set forth in Subsection 5. By identifying these four situations, Subsection 5 gives a precise description when "intent to return" applies:

- While employed in the service of the United States or of this State;
- While a student of an institution of learning;
- While kept in an institution or asylum;
- While confined in a prison.

Taken together, these four examples mean that one does not lose one's residency when one is a student in an institution of learning not located in the district or is held in an institution, asylum or prison. It is important to fully understand these three examples before evaluating the first. It becomes clear when in reviewing the last three examples that the "employed in the service of the United States or of this State" does not mean that every federal or state employee is exempt from this provision. It applies when the United States or the State of Hawaii requires that you work or live elsewhere "in the service of the United States or of this State". This subsection most frequently applies to members of the armed forces. It does not apply to a Speaker of the State House of Representatives. The duties of Speaker of the House do not require that Calvin K. Y. Say live at Star Rd or preclude him from living at 10th Ave. To the contrary, Hawaii Revised Statute §40 requires that Calvin K. Y. Say be a qualified voter in the district he represents; if he represents the 20th Representative District, he must live in the 20th Representative District.

For nearly the last two decades, Calvin K. Y. Say and his wife have resided at Star Rd. They originally claim that they moved to take care of Cora's ailing father, but her father passed away on March 26, 2001, that was nearly a decade ago. If tending for an aging parent is so important to the SAYS that they moved from 10th Ave to Star Rd to tend to Cora's ailing father, one would think that they would have moved back to 10th Ave when Calvin's father, Hugh Sun Chung Say, was ailing prior to his demise on April 14, 2007. [See EXHIBIT 14, SOCIAL SECURITY DEATH INDEX FOR HUGH SUN CHUNG SAY]⁶ Hugh Sun Chung Say lived at 1984 10th Ave, less than two blocks from Calvin K. Y. Say's property on 10th Ave. [See EXHIBIT 15, CITY AND COUNTY OF HONOLULU REAL PROPERTY RECORDS FOR 1984 10TH AVE]⁷

Apparently the 10th Ave property is kept for voter registration purposes only. For the last 34 years, Calvin K. Y. Say has repeatedly filed nomination papers, been elected and served as Representative of the 20th District in the Hawaii State Legislature. For the last 19 of those 34 years, Calvin K. Y. Say has resided at Star Rd, which is outside the district. Say's occasional visits to 10th Ave do not transform a vacant house into a residence. Shuttling to a second house, whether it is 10% of the time or 90% of the time, does not make a house a residence. What matters is where you return. The pattern described by Calvin and Cora Say is that Calvin K. Y. Say goes to work, he returns to his family at Star Rd for dinner, sometimes Calvin K. Y. Say shuttles to 10th Ave. The lack of water consumption is inconsistent with his claims that he shuttles to 10th Ave 60% of the time. Star Rd is Calvin K. Y. Say's residence: that's where he habituates; that's where he lives with his wife; that's where they have lived for nearly two decades. They moved there when her father was ailing; they have not returned, even when his father was ailing.

It is common knowledge at the Capitol that Calvin K. Y. Say lives on Star Rd. Since his neighbors give wildly conflicting statements about where he lives, perhaps it is time to ask his colleagues.

The Hawaii Revised Statutes requires an elected official to live in the district so that they know the current problems of the district. In 2006 the Board of Registration made the following finding in statement 16:

With the exception of evenings when he has community meetings or other engagements and during the legislative session, Mr. Say usually has dinner with his family at the Star Road home and then goes to the 10th Avenue home to go to sleep at 10:00 p.m. In the morning, Mr. Say wakes up at about 5:00 a.m., takes a shower and leaves for work at about 7:00 a.m.

According to Hawaii Revised Statutes §11-13, Calvin K. Y. Say can only have one residence. He has to choose. Is he a devoted husband and family man, dining with his wife (and children when they were younger) every evening, helping his wife care for her mother, or does he abandon his family 60% of the time to sleep and shower (using no water) in an otherwise vacant house so he can maintain the charade that he lives in the district he represents?

⁶ <http://ssdi.rootsweb.ancestry.com/cgi-bin/ssdi.cgi>


⁷ <http://www.honolulupropertytax.com/Forms/Datalets.aspx?mode=PROFILEALL&sIndex=3&idx=7&LMparent=20>

We have no doubt that a thorough investigation by your office will establish that Calvin K. Y. Say lives with his wife and has fixed his residence at 2247 Star Rd not 1822 10th Ave. Star Rd is outside of the boundaries of Representative District 20. Therefore, Calvin K. Y. Say has no right to remain registered as a voter in the 20th Representative District.

Sincerely yours,



Van Law



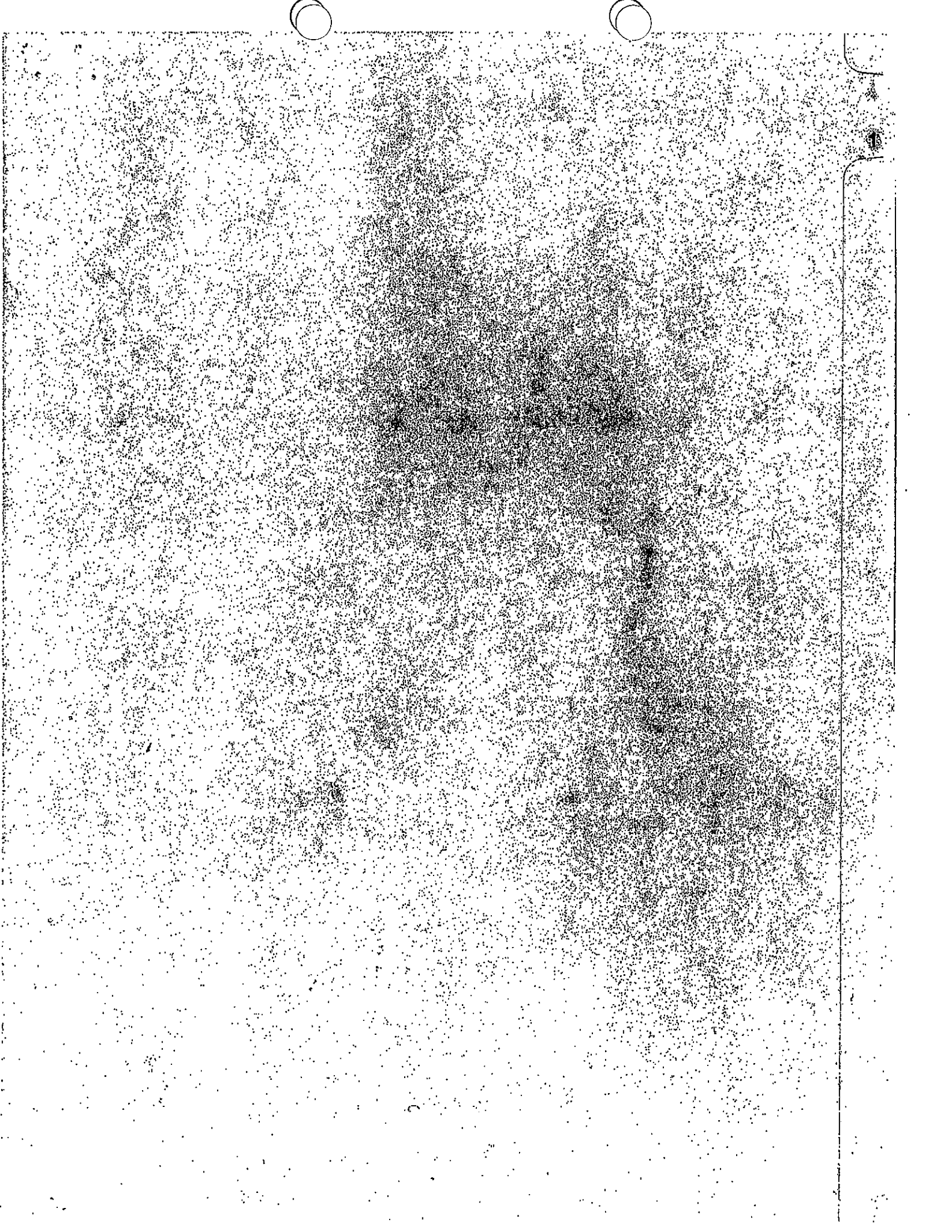
Julius Calasicas

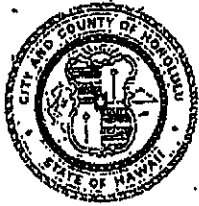
TABLE OF CONTENTS

| | |
|---|----|
| KELLY COMPLAINT | 1 |
| PALCIC COMPLAINT | 2 |
| CITY & COUNTY OF HONOLULU OWNERSHIP RECORDS FOR 2247 STAR RD | 3 |
| SOCIAL SECURITY DEATH INDEX FOR STEPHEN KOTAKE | 4 |
| HONOLULU STAR-BULLETIN OBITUARY | 5 |
| DECLARATION OF CALVIN K. Y. SAY | 6 |
| DECLARATION OF CORA K. SAY | 7 |
| FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISIONS | 8 |
| LETTER TO ATTORNEY GENERAL | 9 |
| BOARD OF WATER SUPPLY QUERIES | 10 |
| PROPERTY TAX BILL SUMMARY | 11 |
| AFFIDAVIT OF VAN LAW | 12 |
| AFFIDAVIT OF JAYNEL HIRAKAWA | 13 |
| SOCIAL SECURITY DEATH INDEX FOR HUGH SUN CHUNG SAY | 14 |
| CITY & COUNTY OF HONOLULU OWNERSHIP RECORDS FOR 1984 10 TH AVE | 15 |

TABLE OF CONTENTS FOR EXHIBITS

Challenge to Calvin K. Y. Say to
Remain as a Registered Voter in the
5th Precinct, 20th Representative District,
State of Hawaii





DENISE C. De COSTA
City Clerk

ELECTIONS

OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4293

CERTIFIED MAIL
RETURN RECEIPT

June 22, 2006

Mr. Walter John Kelly
P.O. Box 917
Captain Cook, Hawaii 96704

Dear Mr. Kelly:

RE: CHALLENGE TO VOTER REGISTRATION OF CALVIN K.Y. SAY

On May 4, 2006 my office received from you a challenge to the voter registration residence of Mr. Calvin K.Y. Say via facsimile. By copy of this letter, I am informing both you and Mr. Say of my ruling pursuant to §11-25, Hawaii Revised Statutes.

Due to the public nature of this document and to limit further disclosure of Mr. Say's personal information, I am omitting references to the house number of Mr. Say's voter registration address on 10th Avenue.

CHALLENGED VOTER OPPORTUNITY TO RESPOND

On May 5, 2006, Mr. Say was provided the opportunity to respond to the challenge by May 31, 2006. Mr. Say replied on May 11, 2006 and requested two additional days to respond due to professional commitments. An extension was granted until June 2, 2006 and Mr. Say provided a response that included an explanation and copies of various personal documents.

CHALLENGER OPPORTUNITY TO PROVIDE ADDITIONAL INFORMATION

On May 10, 2006, my staff made telephone contact with to provide an opportunity for you to submit additional information pertaining to the voter challenge which could assist in our investigation. In a subsequent conversation on May 11, 2006, no additional information was provided. However, you mentioned retaining a private investigator and attorney with whom consultation would be made regarding releasing information.

A final written opportunity to provide additional information was sent on June 7, 2006 giving a deadline of June 16, 2006 to respond. A response was received on June 13, 2006 and was reviewed for any additional information that would support the challenge. No additional information was provided, however, in the letter you confirmed that you had retained a private investigator and attorney. No other information was received by the deadline of June 16, 2006.

INVESTIGATION/FINDINGS

1. A review of the voter registry reveals that only Mr. Say and his wife are registered at 10th Avenue and that no other persons are registered to vote at that address.
2. A review of the voter registry does not indicate the return of the Notice of Voter Registration and Address Confirmation Postcard by the United States Postal Service (that was mailed to Mr. Say) as would normally occur if the resident had moved with or without leaving a forwarding address.
3. A review of real property records indicates Mr. Say's ownership of the 10th Avenue property and ownership of no other properties.
4. A review of real property permitting information reveals the issuance of building permits for the 10th Avenue property in March 2002.
5. A review of City driver license records reveals Mr. Say's address listed as 10th Avenue.
6. A review of motor vehicle records for two vehicles reveals Mr. Say's address listed as 10th Avenue.
7. Documents provided in Mr. Say's response were reviewed and list 10th Avenue as the address. Documents included: cable bill, water bill, bank statement, telephone bill, credit union account statement, financial manager account statement, copy of drivers license, and a letter from State Department of Taxation.
8. A site visit was conducted to the area of 10th Avenue address on June 14, 2006 to confirm the existence of a domicile and to interview neighbors in the proximity. Two neighbors near the 10th Avenue property who provided information acknowledged the 10th Avenue home as owned by Mr. Say. This information was obtained without prompting Mr. Say's name. One neighbor attests to not observing Mr. Say's physical presence at 10th Avenue on a frequent basis. The second neighbor attests to frequently observing Mr. Say's physical presence at 10th Avenue.

Kelly
Page 3
RE: Voter Registration Challenge

9. A site visit was made on June 14, 2006 to Star Road to confirm information provided by Mr. Say that the address is that of a family member. A neighbor confirmed the residence of that family member. Voter registration records corroborate the address as that of the family member. Driver license records do not reveal a drivers license for that family member.

RULING/DETERMINATION

After reviewing various personal and governmental records, information obtained from site visits, and in the absence of evidence to suggest otherwise, it is my determination that 10th Avenue is Mr. Say's residence address.

The preponderance of documentary evidence suggests that 10th Avenue is the address used by Mr. Say for much of his personal matters. I am also satisfied with Mr. Say's explanation that his absence from his 10th Avenue home is due to extraordinary circumstances relating to the provision of health and living assistance for a member of his family.

I also find no evidence to conclude that Mr. Say has ever relinquished his 10th Avenue residence and am satisfied with his explanation that the absence is temporary with intention to return to that permanent domicile.

NOTIFICATION OF RIGHT TO APPEAL

Pursuant to Hawaii Revised Statutes §11-26 and Hawaii Administrative Rules §2-51-42 you are hereby notified of this decision and your right to appeal this decision to the Board of Registration within ten days of service of this decision.

Sincerely,



DENISE C. DE COSTA
City Clerk

DCD:

c. Mr. Calvin K.Y. Say

Walter John Kelly
P.O. Box 917
Captain Cook, Hawaii 96704

44-5544-A
Middle Keel Rd
Capt. Cook 96704

May 4, 2006

City Clerk
City and County of Honolulu
530 S. King Street
Honolulu, Hawaii 96813

**Re: Challenge to the Residency and Qualifications of
Representative Calvin Say to Serve as a State
Representative**

Dear Clerk:

I am a registered voter in the State of Hawaii. Pursuant to Hawaii Revised Statutes § 11-25(a), I am formally filing an objection to the right of Representative Calvin Say to be or to remain registered as a voter of District 20 of the State of Hawaii House of Representatives. Based on the facts described below, Representative Say does not meet the qualifications of residency as required by Article III, section 6 of the Hawaii Constitution, and as such is ineligible to serve as a state representative pursuant to HRS § 19-4.

I. FACTUAL BACKGROUND

For voter registration purposes, Representative Say lists his residence address as "1822 10th Avenue, Honolulu, Hawaii 96816." This address is located within House District 20. However, Representative Say has resided at 2247 Star Road, Honolulu, Hawaii 96813, for at least the past 15 years with his wife and two sons. This address is located in House District 26. Representative Say maintains a home at 1822 10th Avenue, but it is not his fixed and permanent dwelling place.

II. LAW

Article III, section 6 of the Hawaii Constitution provides in part as follows:

No person shall be eligible to serve as a member of the house of representatives unless the person has been a resident of the State for not less than three years, has attained the age of majority and is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected; but prior to the primary election, an incumbent representative may move to a new district without being

disqualified from completing the remainder of the incumbent's representative term. [Emphasis added.]

Pursuant to HRS § 11-12, to qualify to vote in a particular representative district, a person must be a resident of a precinct within the district. Section 11-12 provides in pertinent part that: "no person shall register or vote in any other precinct than that in which he resides except as provided in 11-21." Section 11-21 accounts for situations where registered voters change their names or addresses between elections.

HRS § 11-13 prescribes various tests to determine whether an individual is a resident in any particular district for election purposes. The following parts of § 11-13 are pertinent to this challenge:

§ 11-13. Rules for determining residency.

For the purpose of this title, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse. The following rules shall determine residency for election purposes only:

(1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return;

(2) A person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct;

(3) [Omitted];

(4) The mere intention to acquire a new residence without physical presence at such place, does not establish residency, neither does mere physical presence without the concurrent present intention to establish such place as the person's residence; . . . [Emphasis added.]

On March 21, 1986, the Attorney General submitted Attorney General Opinion No. 86-10. In regards to paragraphs (1), (2) and (4), the Attorney General opined the following:

Each points out that physical residence or absence from

the particular places which one regards as his residence is not material. What must be ascertained instead is where "his habitation is fixed," where he always intends to return, and where his present "permanent dwelling place" is.

It further opines:

"Residence" when used in defining electoral rights has been said to be essentially synonymous with "domicile," which denotes a permanent, as distinguished from a temporary, dwelling place. It means "the place where a man establishes his abode, makes the seat of his property, and exercises his civil and political rights." *In re Appeal of Irving*, 13 Hawaii 22, 24 (1900), quoting from *Chase v. Miller*, 41 Pa. 420. A "house of stone or brick or even of wood is not essential to enable one to become a resident of a precinct and a qualified voter therein . . . there must be some definite and permanent place designated and occupied . . ." *Id.* at 25.

The question before the City Clerk is: "Where does Representative Say reside for electoral purposes?" The facts will show that Representative Say is maintaining a simulated residence in House District 20 for voter registration purposes, and not to establish a permanent dwelling as is required by law. Instead, Representative Say's permanent dwelling is (and has been for over 15 years) 2247 Star Road.

The ultimate question is whether and where Representative Say has a permanent, fixed residence. Even if Representative Say claims that he is merely "absent" from 1822 10th Avenue and "intends" to return there (pursuant to § 11-13(1)), this would make the constitutional and statutory requirements for voter residency a nullity. When the Legislature enacted § 11-13(1), it could not have intended to allow an individual to claim residency at an address from which he has been absent for more than 15 years, on the basis that he "intends" to return to that address. In fact, Attorney General Opinion No. 88-10 supports the conclusion that one's "absence" from his residence only applies to temporary absences which occur under extraordinary circumstances, i.e., a home renovation. Nowhere does Hawaii law state that one can be absent for a prolonged period of time, yet claim residency on the guise of his "intent to return."

An investigation will show that Representative Say has clearly established a permanent and fixed residence outside of House District 20. (Please provide me with the name(s) of your staff members who will be responsible for conducting this investigation.) The mere act of maintaining a residence in District 20 does not constitute residency for electoral purposes.

III. CONCLUSION

Pursuant to HRS §11-25(a), I request that the City Clerk determine Representative Say is not a legal resident of House District 20. I further request that the City Clerk remove Representative Say's name from the voter registration list and refer this matter to the Attorney General or City Prosecutor to determine whether any offense was committed under HRS Chapter 19 (voter fraud).

Thank you for your attention to this matter.





Dwayne D. Yoshina
Chief Elections Officer
OFFICE OF ELECTIONS
802 Lehua Avenue
Pearl City, HI 96782

August 24, 2006
VIA e-mail

Dear Mr. Yoshina,

Pursuant to HRS §12-8 I, Michael G. Palcic, a registered voter of the 6th Precinct, 20th Representative District, State of Hawaii, formally challenge the validity of the nomination papers of Calvin K. Y. Say as a candidate for the Hawaii State House of Representatives, 20th District.

This objection is based upon what has become common knowledge to many persons in our district and upon my personal observations and evaluation of evidence presented to me that Calvin K. Y. Say has no right to remain a qualified voter of the 20th Representative District, State of Hawaii as he claims in his nomination papers. Calvin K. Y. Say does not reside at 1822 10th Avenue as he represents in his voter registration. His fixed habitation and permanent dwelling place, where he resides with other family members and has done so for over 15 years, is at 2247 Star Road, Honolulu, located in the 26th Representative District, State of Hawaii.

How have I become convinced that this is true and how might you determine the veracity of this claim?

1.) By simple observation: The house at 1822 10th Avenue appears to be vacant, not lived in. The drapes are drawn. Almost always, in the evening, the premises are completely dark. The garage is empty. There are no personal items around the exterior of the house, no slippers at the door, no gardening implements, no signs of life. In marked contrast, Say's home at 2247 Star Road is clearly

occupied by his family. Over the course of the last two to three months I have taken to stopping by 1822 10th Avenue and have driven by 2247 Star Road to make these observations. From August 6 to August 16, 2006, I have kept a precise log of these visits. I have also made photographs of the premises at 1822 10th Avenue.

2.) Calvin K. Y. Say owns the house at 1822 10th Avenue and receives a homeowners exemption on property tax assessments for the house, but the property tax assessments and property tax bills from the City & County of Honolulu are mailed to the him at his home, 2247 Star Road, the seat of his property.

3.) You can seek to obtain, voluntarily or by subpoena, the the utility bills for the house at 1822 10th Avenue.

I believe that unusually low electrical power consumption, for example, in what is purported to be a family home, will bolster the challenge I make here. You can examine other records such as school enrollments for evidence of contradictory claims of residency.

4.) You can speak to neighbors, as I have done, who will candidly tell you that the Says do not reside at 1822 10th Avenue, that Say's parents come over to water the lawn and retrieve mail. Similarly, you can inquire of neighbors at 2247 Star Road as to the comings and goings there. Some of Say's Palolo neighbors have told me that he is there reliably every night, while by Say's own public statements he has been away for extended periods, thus contradicting this neighborly support. Say has stated publicly that his wife has not resided at the Palolo address for 15 years. Yet she, too, has maintained voter registration and voted in District 20 elections during all of that interval.

5.) You can obtain sworn statements of Calvin K. Y. Say and Cora Say, individually, as to their residence over the last 15 years. I believe that initially the Says did temporarily vacate the house at 1822 10th Avenue with the intention of returning but that, over the course of time, their fixed residence, their permanent dwelling has become 2247 Star Road. I believe that the house at 1822 10th Avenue is maintained only as a shell, for the purpose of maintaining their voter registration in the 20th Representative District. The Says have a vital interest in maintaining this voter registration, to wit: Calvin K. Y. Say has, over the years, repeatedly filed nomination papers, been elected and served as Representative of the 20th District in the Hawaii State Legislature. By law, no person shall be eligible to serve as a member of the House of Representatives unless the person is, prior to filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected. The transparent falsehood of any claim by the Says that they are merely absent from 1822 10th Avenue and intend to return there is evident due to the length of time of their absence. Nor do the occasional visits to the property at 1822 10th Avenue by Mr. Say in any way constitute continuity of residence there. Property owners commonly check the condition, maintenance and repair of real property with visits to the property, for example, but in no way does this constitute residency for electoral purposes.

It is true that during the "election season" Calvin K. Y. Say spends more time at 1822 10th Avenue than at other times during the year or during off-election years. Perhaps, this makes early morning sign-waving more convenient. Perhaps it is to deflect possible challenges like the one I make today that he does not reside there. Apparently,

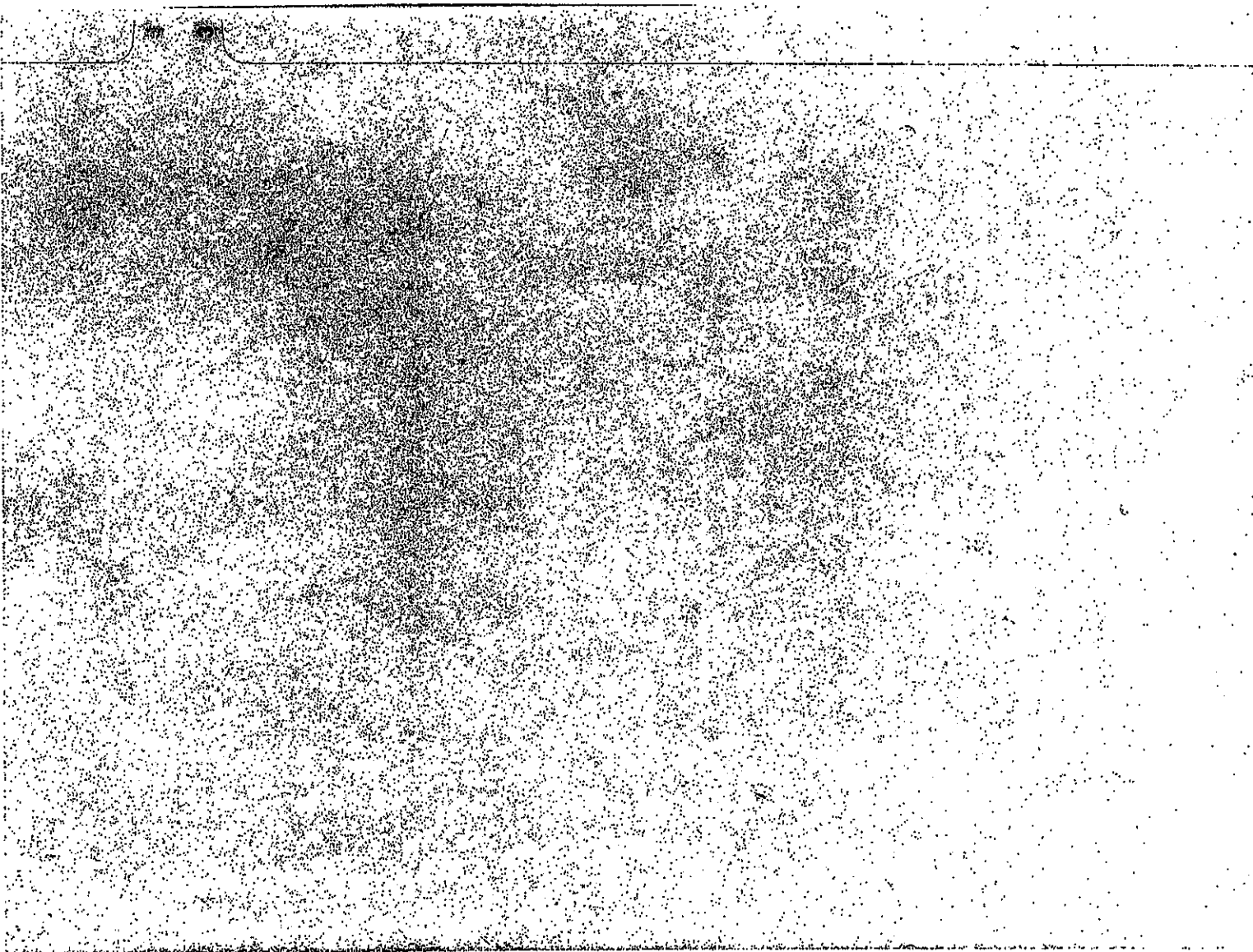
neither Mrs. Say nor their sons join him in these brief stays, and convenience is not residency.

I have been elected to multiple terms to Neighborhood Board #5 and, in 1992, was Say's opponent in the general election. During these forays into the public service realm, dating back at least 14 years, I have been approached by persons who reported to me that Say does not live in our district and should therefore be disqualified from holding office as its representative. I have decided upon my own initiative to examine the veracity of these claims and make my own determination.

I have no doubt that an initial investigation by your office will establish that Calvin K. Y. Say has likely made permanent and fixed his residence outside of the boundaries of Representative District 20, that your determination will be that my objection may warrant the disqualification of the candidate and that you will file a complaint in the circuit court for a determination of the objection.

Sincerely yours,

(s) Michael G. Palcic
1907 St. Louis Drive
Honolulu, HI 96816
(808) 255-5633



Search for: Tax Year: ANY

Results 1 - 2 of 2

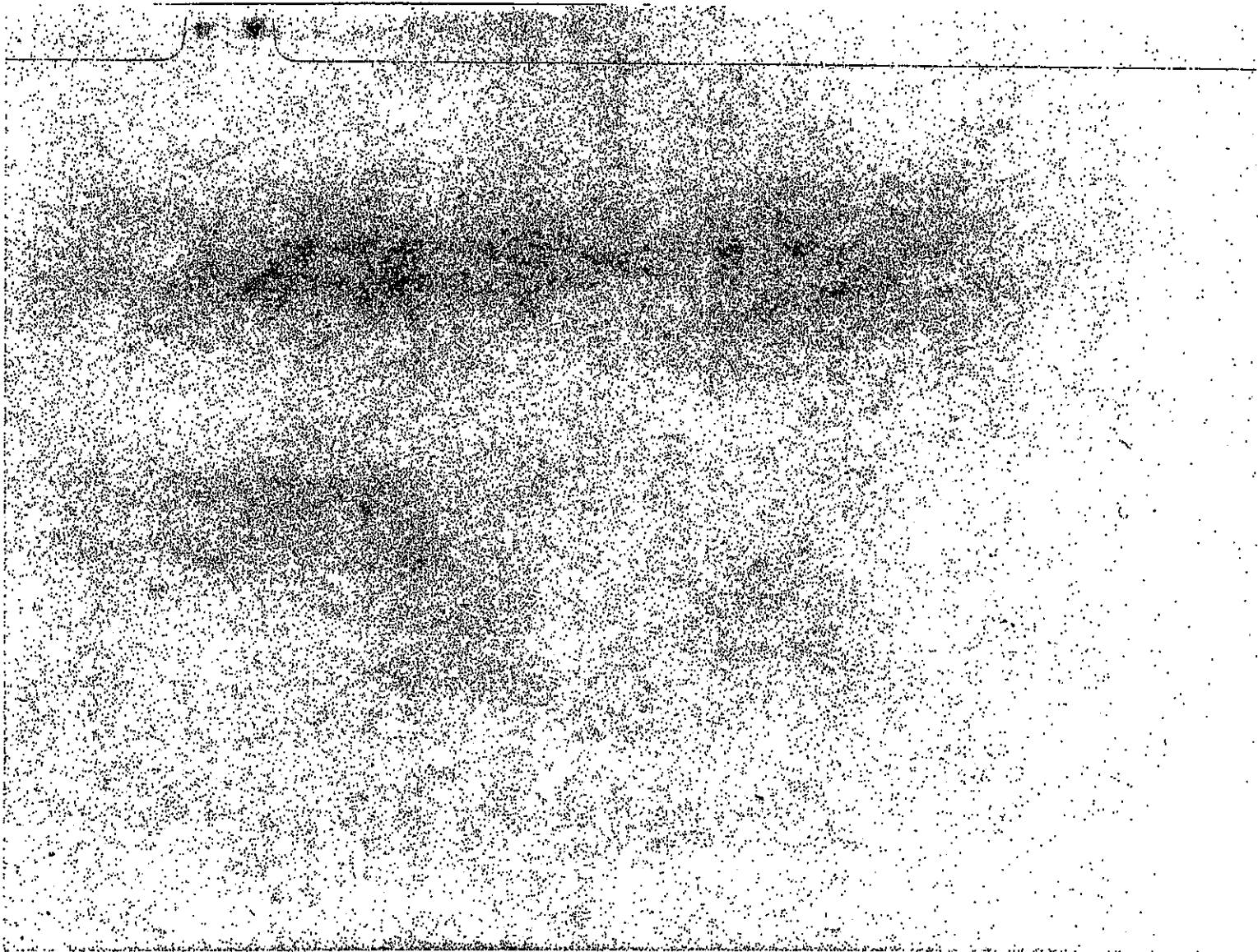
| Parcel ID | Owner | Situs Address |
|--------------|---------------------|---------------|
| 220190110000 | KOTAKE,HARUYO MTR | 2247 STAR RD |
| 220190110000 | KOTAKE,STEPHEN T TR | 2247 STAR RD |

Data Last Updated : 12 Jul 2010**Disclaimer**

The City and County of Honolulu Real Property Assessment & Treasury Divisions make every possible effort to produce and publish the most current and accurate information. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

Data Copyright City and County of Honolulu Public Access [Disclaimer] Last Updated: 12 Jul 2010

Site Design Copyright 1999-2007 Akanda Group LLC. All rights reserved.



First Name Last Name Age

Viewing 1-1 of 1

| Name | Birth | Death | Age | Last Address of Record | Last Benefit | Issued By | SSN | Tools | Order Record? |
|------------------|-------------|-----------------|-----|--------------------------------|------------------|-----------|-------------|-------|---------------|
| STEPHEN T KOTAKE | 08 Apr 1913 | 26 Mar 2001 (V) | 87 | 96812 (Honolulu, Honolulu, HI) | (none specified) | Hawaii | 575-03-0916 | | |

Viewing 1-1 of 1

(V)=(Verified) Report verified with a family member or someone acting on behalf of a family member.
(P)=(Proof) Death Certificate Observed.

You can now order the SS-5 Form for deceased individuals directly from the Social Security Administration online at <https://secure.ssa.gov/apps9/eFOIA-FEWeb/internet/main.jsp>

Search
Hundreds of
Thousands
of
Family
Trees

First Name:

Last Name:

Search

One Family

Social Security Death Index

87,267,729 Records
last updated on 7-30-2010

| Name | Last | Exact | First | Middle (initial) |
|----------------|--------|-------|---------|------------------|
| | KOTAKE | | STEPHEN | |
| Birth | Year | Exact | Month | Day |
| | | | Any | Any |
| Death | | Exact | Any | Any |
| Last Residence | Zip | City | County | State |
| | or | | | |
| Last Benefit | | or | | |
| SSN | | | | |
| Issued by | Any | | | |
| Age at Death | Exact | | | |

For more info about the SSDI, see <http://www.rootsweb.ancestry.com/~rwguide/lesson10.htm>
For help using the SSDI search, see [Problem solving](#)

CPU seconds used 0

RootsWeb is funded and supported by [Ancestry.com](#) and our loyal RootsWeb community. [Learn more.](#)

[About Us](#) | [Contact Us](#) | [Acceptable Use Policy](#) | [PRIVACY STATEMENT](#) | [Copyright](#)
© 2010 Ancestry.com



Obituaries

Thursday, March 29, 2001

Asterio Gacuscus Alconcel Jr., 44, of Honolulu, died March 8 in Straub Hospital. He was born in Honolulu. He is survived by parents Asterio Sr. and Francisca; and siblings Estrelita, Edward and Arnold Alconcel, Hilario Martin, Carolann Hernandez and Wesley Santos. Private services.

Shinobu Joan Amaral, 72, of Kamuela, Hawaii, who died March 19 in Hale Hoola Hamakua, is survived by sister Sumi Ito. Incorrect information was published for an obituary Tuesday.

Pascual Manuel Andres, 69, of Ewa Beach, a retired employee for Tropicana Villages Phase Two and Three, died March 10. He was born in the Philippines. He is survived by wife Fermina "Emmin," sons Jesus and Gino, daughter Norma Cauilan, sisters Maximina Andres and Joaquina Pascual, and five grandchildren. Services: 7 p.m. Sunday at Mililani Mortuary, mauka chapel. Call after 6 p.m. Additional services: noon Monday at the mortuary. Call after 10 a.m. Burial: 12:30 p.m. Monday at Mililani Memorial Park. Casual attire.

Miriam Kulamanu "Darling" Apana, 74, of Nanakuli, a homemaker, died Saturday. She was born in Honolulu. She is survived by hanai sons Douglas Mahoe and Peter Mahoe; sons James "Butchie" and Morris; daughters Imaikalani Bertelmann, Kulamanu Kikila, Kaipoleimanu Brown, NakooOkalani Apana, Piliua Apana-Oki and Kalauokealoha Payne; 37 grandchildren and 76 great-grandchildren. Services: 10 a.m. Saturday at Kaumakapili Church. Call after 9 a.m. Scattering of ashes: 10 a.m. Sunday at Nanakuli Beach Park. Casual attire.

David George Backen, 64, of Kula, Maui, a retired heavy-equipment mechanic for Kiewit Pacific Construction, died Monday. He was born in Great Falls, Mont. He is survived by wife Louise M.; sons David, Raymond and George; daughter Charlotte Ost; stepdaughter Debbie Shirai; stepson Guy Freitas; brothers Rodney, Gerald, Dan, Jack and Joe; sister Teddy Hyde; six grandchildren and two great-grandchildren. Services: 11:30 a.m. tomorrow at Holy Ghost Catholic Church. Call after 9:30 a.m. Inurnment to follow at a later date in Montana. Aloha attire. Leis only.

Virginia Cabral, 71, of Kalaheo, Kauai, a homemaker, died Tuesday at home. She was born in Wailua Homesteads, Kauai. She is survived by sons Daniel and Hartwell, daughter Michelle Gushiken, brother Louie Pontes, sister Rose Kurtie and 10 grandchildren. Services: 11 a.m. Tuesday at Holy Cross Catholic Church. Call after 9 a.m. Burial: Kauai Veterans Cemetery, Hanapepe. Casual attire.

Francis Philip "Buster" Carvalho, 78, of Hilo, a retired purchasing agent for C. Brewer Co., died Tuesday in Hilo Medical Center. He was born in Hilo. He is survived by wife Marguerite; daughter Ethel M. Peroff; brothers William R. and Clement; sisters Geraldine Shuman, Mary J. Abbey and Patricia Silva; and two grandchildren. Services: 10 a.m. Friday at St. Joseph Catholic Church. Call after 9 a.m. Burial: Homelani Memorial Park, Hilo. Casual attire.

Verna Reece DeBoer, 71, of Keauhou Uka, Hawaii, a homemaker, died Tuesday in Kona Community Hospital. She was born in Sedro Woolley, Wash. She is survived by sons David and Steve, sister Velma Moore and one grandchild. Services: 3 p.m. tomorrow at the DeBoer

residence, 75-355 Nohealani St. Casual attire. Donations suggested to West Hawaii Home Health Services.

Randolph R. "Randy" Freitas, 41, of Honolulu, who died March 24 in St. Francis Medical Center, will be buried in graveside services at 10 a.m. Saturday at Valley of the Temples. The mortuary provided incorrect information for an obituary published yesterday.

Akitomi "Peter" Hamasaki, 81, of Honolulu, a retiree, died Friday. He was born in Wainaku, Hawaii. He is survived by wife Melina "Rita"; daughters Eva Jones and Rosa Hamasaki; son Peter; sisters Nancy Torigoe, Sally Crum and Sue Nakamura; brothers James and Goichi; and five grandchildren. Services: 2 p.m. Sunday at Soto Mission, 1708 Nuuanu Ave. Burial: 1 p.m. Monday at the National Memorial Cemetery of the Pacific, Punchbowl. Casual attire.

Stephen Toshiichi Kotake, 87, of Honolulu, president of Kotake Shokai, died Monday in Straub Clinic and Hospital. He was born in Honolulu. He is survived by wife Haruyo, son Dr. John, daughters Vera Hu and Cora Say, sister Jane K. Nishimoto, four grandchildren and three great-grandchildren. Services: 4 p.m. Sunday at Hosoi Garden Mortuary. Casual attire.

Manuel Henry Lara, 62, of Kaneohe, died Friday at home. He is survived by brothers Joe Brito and Ernest Brito; sisters Gloria Magdaleno, Esperanza Directo, Artie Sueda, Valerie Lopez and Brenda Magdaleno; daughter Delann Kelii and one grandchild. Graveside services: 10 a.m. Monday at Hawaii State Veterans Cemetery, Kaneohe.

Rose Kawehiwehi Muller McCarty, 91, of Honolulu, died Sunday at home. She is survived by daughters Pam Barton and Winona Aina, sister Annabelle Fyfe, nine grandchildren, 11 great-grandchildren and 10 great-great-grandchildren. Services: 2 p.m. Sunday at Hawaiian Memorial Park Mortuary. Call after noon. Private inurnment to follow.

Ruby Geneva Nesnow, 92, of Hauula, a retired print shop administrator, died Tuesday in Kapunawai Ola. She was born in North Dakota. She is survived by sons Maurice, Joseph and David; brother Ole Synoground Jr.; sisters Mable Beavers and Laura Swenson; four grandchildren and eight great-grandchildren. Private services.

Joyce Yvonne Nobriga, 64, of Kaimuki, a foster mother, died March 21. She was born in Honolulu. She is survived by sons George Jr., Chris and Matthew; daughters Barbara Holmes, Jackie Toilolo and Lori Tufaga; sister Lynn Rondiak and 17 grandchildren. Services: 11:30 a.m. Monday at Hawaiian Memorial Park Mortuary. Call after 9:30 a.m. Burial to follow at Hawaii State Veterans Cemetery. Aloha attire.

Jenny Marie Nycek, 40, of Honolulu, died Monday in St. Francis Hospice. She was born in Michigan. She is survived by daughter Leilani Perez, brother Stanley and sisters Jackie Nycek and Sandy Pelletier. Services: 2 p.m. tomorrow at Nuuanu Mortuary, east chapel. Call after 1 p.m.

Paulino Saholan, 72, of Makakilo, a retired cook for Hale Koa Hotel, died March 14 in Honolulu. He was born in Hawi, Hawaii. He is survived by wife Shizuko; daughters Christine Plumberg, Josephine Koriath and Kitty Burgess; brothers Santo, Theodore and Alfred Sajolan; sisters Connie Kehano and Rose Hipolito; and four grandchildren. Services: 10:30 a.m. Friday at Hawaiian Memorial Park Mortuary. Call after 9:30 a.m. Burial: 1 p.m. Friday at Hawaii State Veterans Cemetery.

Sadako Tanaka, 75, of Hilo, a retired accounting clerk for Mauna Loa Macadamia Nut Corp., died March 18 at home. She was born in Hilo. She is survived by brothers Yoshito and Jiro, and sisters Mitsue and Miyoko. Private services. No koden.

Lynn K. Waters, 69, of Maui, a social services caseworker for the ARC of Maui, died Tuesday in Hale Makua, Kahului. He was born in South Dakota. He is survived by sons Richard and Sean, daughters Jacquelyn Waters and Camille Woodworth, brother Gene Baldwin, sister Shirley Grant, 12 grandchildren and one great-grandchild. No services.

Yue Woo, 80, of Kaneohe died March 14 in Castle Medical Center. He was born in China. He is survived by wife Chui F.L. Woo; sons Kwok K., Eric Y.K., Wai K. and Francis; daughter Maria Arriaga and 14 grandchildren. Visitation: 8:30 a.m. Monday at Borthwick Mortuary. No services. Burial: 11 a.m. Monday at Hawaiian Memorial Park.

You can also search the Hawaii State Library System's
Hawaii Newspaper Index online for older obituaries at
<http://www.hcc.hawaii.edu/education/hcc/library/hiindex.html>

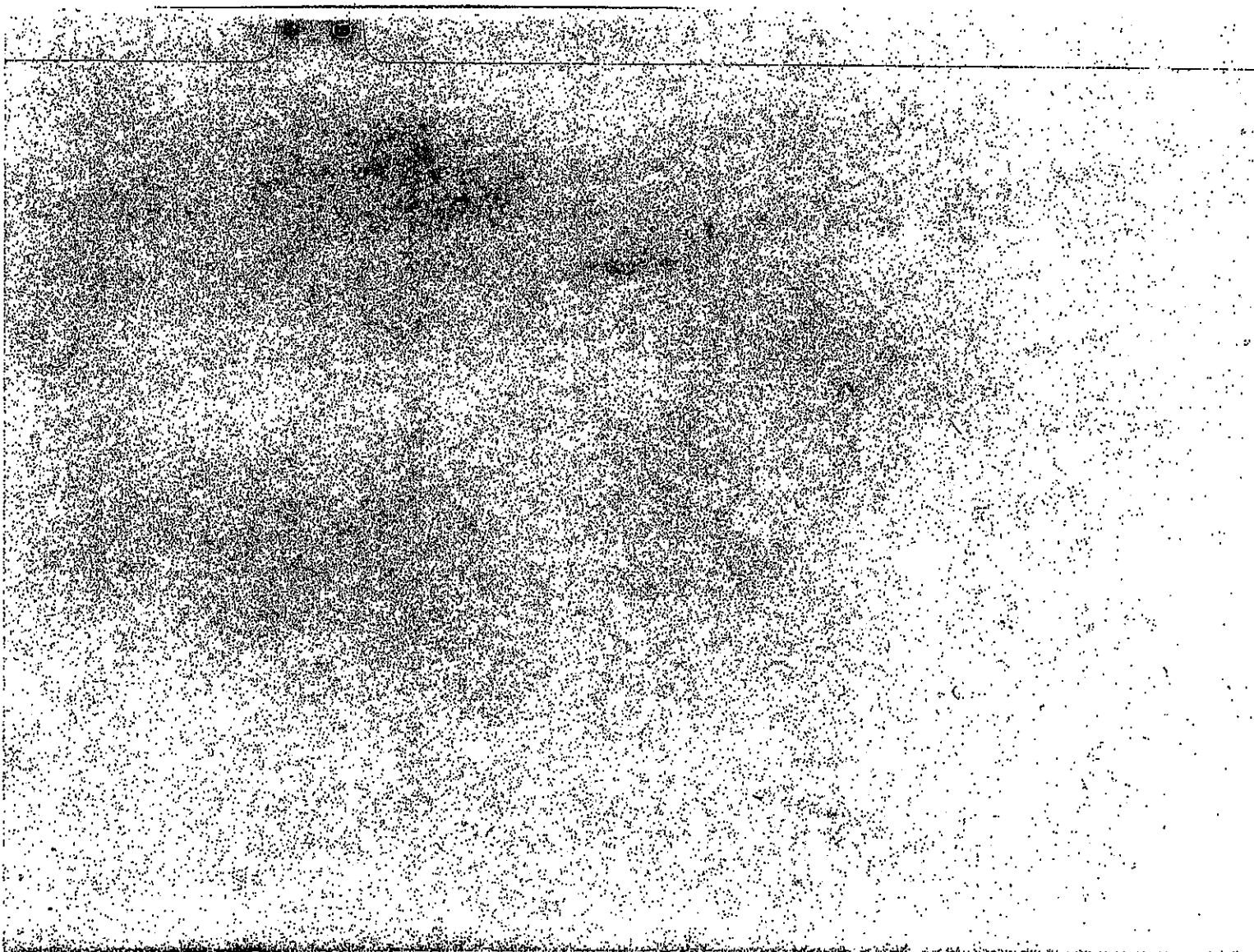
The index, which goes back several decades,
is available via Telnet software.

E-mail to City Desk

Text Site Directory:

[\[News\]](#) [\[Business\]](#) [\[Features\]](#) [\[Sports\]](#) [\[Editorial\]](#) [\[Do It Electric!\]](#)
[\[Classified Ads\]](#) [\[Search\]](#) [\[Subscribe\]](#) [\[Info\]](#) [\[Letter to Editor\]](#)
[\[Feedback\]](#)

© 2001 Honolulu Star-Bulletin
<http://archives.starbulletin.com>



CALVIN K. Y. SAY
1822 10TH Ave.
Honolulu, HI 96816

Chief Election Officer
Office of Elections
802 Lehua Ave.
Pearl City, HI 96782

RE: Declaration of Calvin K.Y. Say

I have personal knowledge of the matters stated in this declaration.

I am a resident of 1822 10th Avenue, Palolo, Honolulu, Hawaii and the owner of this residence, along with my wife Cora Say. I have been a resident at this address since 1980 when I purchased this home. Since the purchase of this home, I have made it my permanent fixed residence for all intents and purposes. It is the home that I return to whenever I am temporarily absent. I have no present intention of changing my residence from 10th Avenue.

2247 Star Road is the home of my wife's mother, Haruyo Kotake, who is the owner of this property. My wife has been a long term caregiver for both her mother and father before his death. Their health conditions were serious enough to demand Cora's commitment for quite a while. Over the last few years, Cora has been a live-in caretaker while maintaining her teaching job and our 10th Avenue home. This situation has caused me to shuttle between our 10th Avenue home in Palolo and the Kotake home so that I can help my wife and be supportive of our families. However, I never intended to change my residency from 10th Avenue.

When I filed my candidate nomination papers, my residence was, and remains at, 1822 10th Avenue, Palolo, Honolulu, which is in House District 20. The City Clerk for the City and County of Honolulu ruled on June 22, 2006 that the 10th Avenue home was my residence.

I, Calvin K.Y. Say, do declare under penalty of law that the foregoing is true and correct.

Dated: 8/28/06 Signed: Calvin K.Y. Say

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU } ss.

Subscribed and sworn to before me
this 28 day of AUG 28 2006
by Calvin K.Y. Say

Joan T. Yamamoto
Notary Public, State of Hawaii
My commission expires: 2-16-08



DECLARATION OF CORA K. SAY

I, CORA K. SAY, hereby declare as follows:

1. I submit this declaration in response to Mr. Michael G. Palcic's August 17, 2006 letter challenging my voter registration.
2. Unless otherwise indicated, I make this declaration based upon my personal knowledge.
3. I am a resident of 1822 10th Avenue, Honolulu, Hawaii ("10th Avenue Home") and the owner of the residence located at that address, along with my husband Calvin Say.
4. I have resided at our 10th Avenue Home consistently and uninterrupted since 1980 when my husband and I purchased the home.
5. Other than my immediate family, no other individuals reside at the 10th Avenue Home. As evidence of my residency at the 10th Avenue Home, please find attached hereto as Exhibit "A" copies my utility bills, driver's license, mortgage payment statement, bank statements and investment statements; all of which are addressed and delivered to our 10th Avenue Home.
6. As will be more fully discussed herein, over the past few years, I have been a live-in caregiver for both my mother and my father before his death.
7. More specifically, my mother's name is Mrs. Haruyo Kotake. She is 86 years old and resides at her home at 2247 Star Road, Honolulu, Hawaii.
8. For several years my mother has been plagued by multiple physical ailments which make it dangerous for her to be alone. Specifically, she suffers from diverticulosis which has hemorrhaged on occasion, irritable bowel and fecal incontinence

DECLARATION OF CORA K. SAY

I, CORA K. SAY, hereby declare as follows:

1. I submit this declaration in response to Mr. Michael G. Palcic's August 17, 2006 letter challenging my voter registration.
2. Unless otherwise indicated, I make this declaration based upon my personal knowledge.
3. I am a resident of 1822 10th Avenue, Honolulu, Hawaii ("10th Avenue Home") and the owner of the residence located at that address, along with my husband Calvin Say.
4. I have resided at our 10th Avenue Home consistently and uninterrupted since 1980 when my husband and I purchased the home.
5. Other than my immediate family, no other individuals reside at the 10th Avenue Home. As evidence of my residency at the 10th Avenue Home, please find attached hereto as Exhibit "A" copies my utility bills, driver's license, mortgage payment statement, bank statements and investment statements; all of which are addressed and delivered to our 10th Avenue Home.
6. As will be more fully discussed herein, over the past few years, I have been a live-in caregiver for both my mother and my father before his death.
7. More specifically, my mother's name is Mrs. Haruyo Kotake. She is 86 years old and resides at her home at 2247 Star Road, Honolulu, Hawaii.
8. For several years my mother has been plagued by multiple physical ailments which make it dangerous for her to be alone. Specifically, she suffers from diverticulosis which has hemorrhaged on occasion, irritable bowel and fecal incontinence

which often requires her to stay in bed with abdominal and hemorrhoidal pain. My mother also experiences much pain in her toes and feet due to rheumatic arthritis and poor circulation. The most severe and debilitating ailment is her osteoporotic condition which often affects her ability to move about safely without my assistance.

9. As a caregiver for my mother, I assist her in much of the household chores around her home including cooking, cleaning, accompanying my mother to doctor appointments and generally supporting her needs, especially at night when we are most concerned of her falling and hurting herself. I am also responsible for administering my mother's daily bone strengthening injections.

10. Please find attached hereto as Exhibit "B" reports from my mother's physician which will hopefully give you: (1) additional insight as to my mother's physical limitations and health; and (2) a better understanding of why it is important for me to provide my mother with the care and support she requires.

11. Needless to say, I frequently shuttle between my mother's home, and our 10th Avenue Home. However, our 10th Avenue Home is my permanent, fixed place of residence and, whenever I am absent, it is the home which I always intend to return to.

12. Even though I am frequently required to be absent from the 10th Avenue Home in order to care for my mother, I have never intended to change my residency from our 10th Avenue Home.

13. As to the other issues raised in Mr. Pačić's letter, I provide you with the following information:

which often requires her to stay in bed with abdominal and hemorrhoidal pain. My mother also experiences much pain in her toes and feet due to rheumatic arthritis and poor circulation. The most severe and debilitating ailment is her osteoporotic condition which often affects her ability to move about safely without my assistance.

9. As a caregiver for my mother, I assist her in much of the household chores around her home including cooking, cleaning, accompanying my mother to doctor appointments and generally supporting her needs, especially at night when we are most concerned of her falling and hurting herself. I am also responsible for administering my mother's daily bone strengthening injections.

10. Please find attached hereto as Exhibit "B" reports from my mother's physician which will hopefully give you: (1) additional insight as to my mother's physical limitations and health; and (2) a better understanding of why it is important for me to provide my mother with the care and support she requires.

11. Needless to say, I frequently shuttle between my mother's home, and our 10th Avenue Home. However, our 10th Avenue Home is my permanent, fixed place of residence and, whenever I am absent, it is the home which I always intend to return to.

12. Even though I am frequently required to be absent from the 10th Avenue Home in order to care for my mother, I have never intended to change my residency from our 10th Avenue Home.

13. As to the other issues raised in Mr. Palcic's letter, I provide you with the following information:

a. There are no slippers at the door of our 10th Avenue Home because they are all located inside the house; and

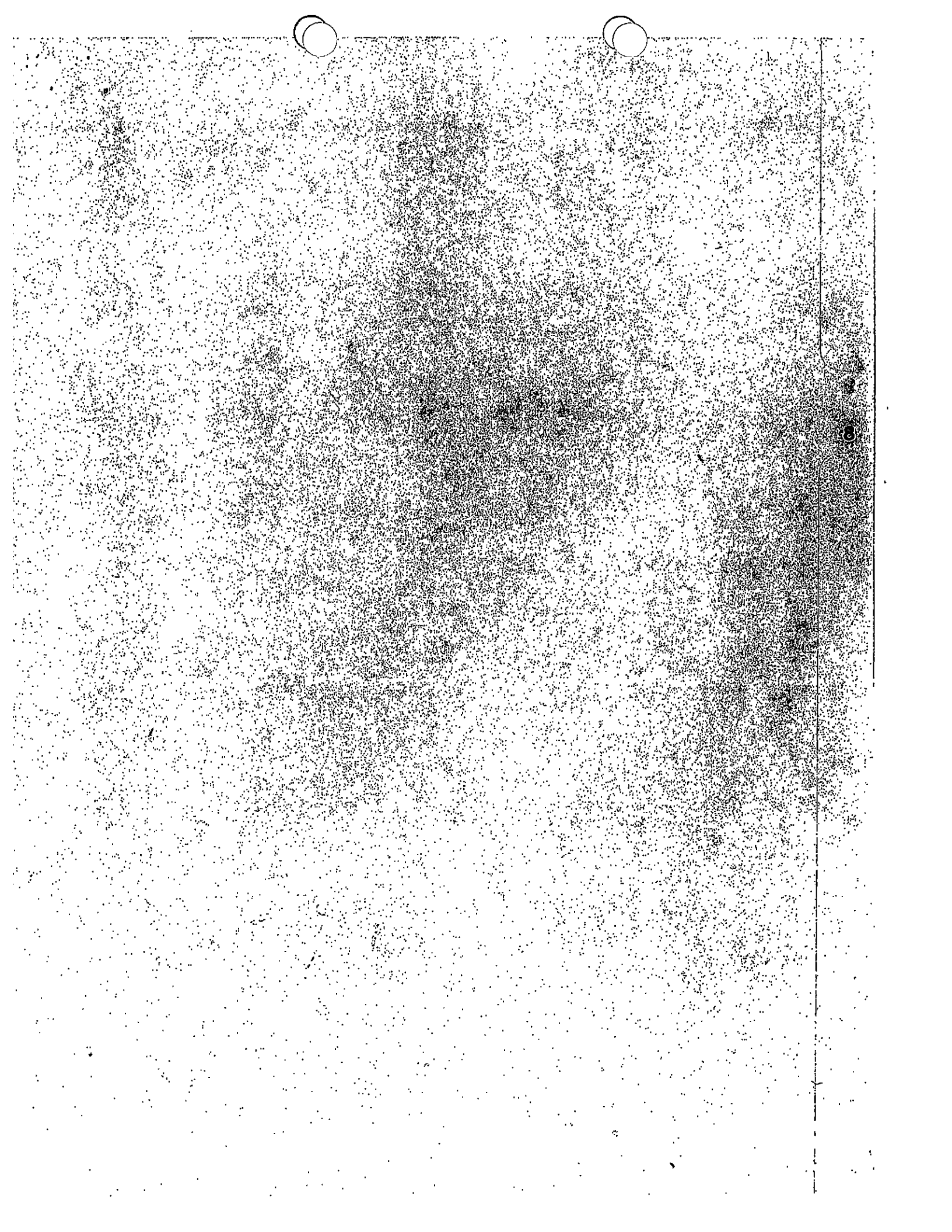
b. There are no gardening tools around the exterior of our 10th Avenue Home because our gardening tools are kept and stored under our home.

14. I hope the information provided above helps to answer the questions raised in Mr. Palcic's letter challenging my voter registration.

I declare under penalty of law that the foregoing is true and correct.



CORA K. SAY



BEFORE THE BOARD OF REGISTRATION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

MICHAEL G. PALCIC,

Appellant,

vs.

CALVIN SAY,

Appellee.

) CASE NO. BOR-06-01
) (Administrative Appeal)

) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION

By letter dated August 31, 2006, Mr. Michael G. Palcic filed an appeal of the decision of the City Clerk for the City & County of Honolulu dated August 22, 2006 that Mr. Calvin K. Y. Say is a registered voter in the 20th Representative District, Precinct 5. A hearing on Mr. Palcic's appeal was held on October 6, 2006 before the Board of Registration for the City & County of Honolulu. At the hearing, Mr. Palcic appeared pro se, Bert T. Kobayashi, Jr., Esq. and Brendan Bailey, Esq. appeared on behalf of Mr. and Mrs. Calvin K. Y. Say, who were also present, Reid M. Yamashiro, Esq. and Diane T. Kawauchi, Esq., Deputies Corporation Counsel, appeared on behalf of City Clerk Denise C. DeCosta, who was also present.

A further hearing was held on October 12, 2006 for the limited purpose of allowing the members of the Board of Registration to ask Mr. Say additional questions that were not asked during the October 6 hearing and to allow the parties to ask Mr. Say questions based on the Board's questions. At the further hearing held on October 12,

2006, Mr. Palcic was present, Bert T. Kobayashi, Esq. appeared on behalf of Mr. Say, who was also present and Reid M. Yamashiro, Esq. and Diane T. Kawauchi, Esq., Deputies Corporation Counsel, appeared on behalf of City Clerk Denise C. DeCosta, who was also present.

The Board of Registration, having heard and considered the evidence adduced at the hearing and, based on the credible evidence and good cause appearing therefore, hereby makes the following Findings of Fact and Conclusions of Law and Decision.

FINDINGS OF FACT

1. If it should be determined that any of these Findings of Fact should have been set forth herein as Conclusions of Law, the Board so concludes as to such findings.
2. Appellant Michael G. Palcic, who resides at 1907 St. Louis Drive, Honolulu, Hawaii 96816, is registered voter in the 6th Precinct, 20th Representative District, State of Hawaii.
3. Respondent Calvin K. Y. Say, the duly elected State Representative for the 20th Representative District, is running for re-election for the same seat that he currently holds.
4. By letter to Ms. Denise DeCosta, City Clerk for the City & County of Honolulu dated August 17, 2006, Mr. Palcic challenged the registration of Mr. Say as a voter in the 5th Precinct, 20th Representative District.
5. Mr. Palcic contends that Mr. Say is not a resident of 1822 10th Avenue, Honolulu, Hawaii 96816 (the "10th Avenue home") which is located in the 20th Representative District but instead, resides with his wife, their sons and his mother-in-law at 2247 Star

Road, Honolulu, Hawaii 96813 (the "Star Road home") in the 26th Representative District.

6. On May 4, 2006, Ms. DeCosta received a challenge of Mr. Say's residency from Mr. Walter John Kelly and in response, asked her staff to conduct an investigation.

7. Based on the results of her staff's investigation of Mr. Kelly's challenge, which included: (a) interviews with the neighbors on both 10th Avenue and Star Road; (b) a statement by Mr. Say in which he explained his absence from the 10th Avenue home as necessitated by his wife's care of her parents in their home on Star Road as well as, his intent to return to 10th Avenue as soon as his wife no longer needs to care for her mother; and (c) copies of utility bills addressed to him for the 10th Avenue home, Ms. DeCosta concluded that Mr. Say is a resident of 1822 10th Avenue, Honolulu, Hawaii 96816.

8. To investigate Mr. Palcic's subsequent challenge of Mrs. Say's residency, Ms. DeCosta reviewed all of the additional information submitted by Mr. Palcic, including: (a) photographs of the 10th Avenue home that show that at various times, there were no cars in the garage and no one appeared to be present in the home; and (b) a handwritten log that lists dates in August 2006, times and statements indicating that no one was present at the 10th Avenue home.

9. After considering the additional information submitted by Mr. Palcic, Ms. Decosta found there was insufficient evidence to depart from the conclusion she had reached earlier in response to Mr. Kelly's challenge.

10. By letter dated August 22, 2006, Ms. DeCosta informed Mr. Palcic of her decision.

11. By letter dated August 31, 2006, Mr. Palcic appealed Ms. DeCosta's decision to the Board of Registration for the City & County of Honolulu.
12. As Mr. Palcic and witness Jaynel Hirakawa testified, and as is documented more specifically for the month of August 2006 by the photographs and handwritten log submitted by Mr. Palcic, Mr. Say and his family do not reside full-time at the 10th Avenue home.
13. Beginning in 1995, Mrs. Say and the Says' sons began to stay more regularly with Mrs. Say's parents at their home located at 2247 Star Road, Honolulu, Hawaii 96813 so that Mrs. Say could help to care for her father who was in poor health.
14. After her father passed away in 2001, Mrs. Say and her sons stayed on in the Star Road home to care for her mother who is not well and they continue to reside there to care for her at the present time.
15. From 1995 to the present, Mr. Say has not lived full-time at the 10th Avenue home and instead, shuttles back and forth between the Star Road home and the 10th Avenue home.
16. With the exception of evenings when he has community meetings or other engagements and during the legislative session, Mr. Say usually has dinner with his family at the Star Road home and then goes to the 10th Avenue home to go to sleep at about 10:00 p.m. In the morning, Mr. Say wakes up at about 5:00 a.m., takes a shower and leaves for work at about 7:00 a.m.
17. Mr. Say estimates that he currently spends about 60% of his time during the week at the 10th Avenue home and this has been his schedule during the work week since 1995.

18. On the weekends, Mr. Say usually works at his wife's family's business on Saturday mornings and may spend time with his sons at baseball games or fishing in the afternoons. On Sundays, Mr. Say is usually at the 10th Avenue home doing yard work or other work around the house or he may walk through the neighborhood.

19. Other than the time he is working at his wife's family's business or out with his sons or participating in community activities, Mr. Say spends most of his time during the weekends at the 10th Avenue home.

20. Bills for water, electricity and cable television service for the 10th Avenue home as well as, Mrs. Say's cellular telephone bill are sent to the Says at the 10th Avenue home.

The utility bills for the 10th Avenue home are extremely low.

21. In addition to the utility bills, bank statements for accounts at Hawaii State Employees Federal Credit Union, Bank of Hawaii and Central Pacific Bank are sent to the Says at the 10th Avenue home.

22. Mr. Say claims a homeowner's real property tax exemption for the 10th Avenue home and he does not claim a real property tax exemption for any other property.

23. Mr. Say intends to return to live full-time at the 10th Avenue home as soon as his wife no longer needs to care for her mother.

CONCLUSIONS OF LAW

1. If it should be determined that any of these Conclusions of Law should have been set forth herein as Findings of Fact, the Board so finds as to such conclusions.

2. The Board of Registration for the City & County of Honolulu has jurisdiction over the parties in, and the subject matter of, this appeal.

3. Appellant Michael G. Palcic has standing to bring this appeal of City Clerk Denise DeCosta's decision regarding Mr. Palcic's challenge of Mr. Say's residency for election purposes.

4. Pursuant to Haw. Rev. Stat. § 11-13(1), for election purposes, Mr. Say's residence is that place in which his habitation is fixed, and to which, whenever he is absent, he intends to return.

5. Pursuant to Haw. Rev. Stat. § 11-13(2), "[a] person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct".

6. Pursuant to Haw. Admin. R. § 2-51-25(2)(A), where a person has more than one residence, "[i]f a person maintains a homeowner's property tax exemption on the dwelling of one of the residences, there shall be a rebuttable presumption that the residence subject to the homeowner's property tax exemption is that person's residence".

DECISION

While the rules for determining residency for election purposes set forth in Haw. Rev. Stat. § 11-13 are not as clear or straightforward as they could be and the evidence presented at the hearings made the Board's decision a difficult one, the Board, by a vote of 2 to 1, concludes that Appellant Michael G. Palcic did not present sufficient credible evidence to rebut the presumption that 1822 10th Avenue, Honolulu, Hawaii 96816, which is the property for which Mr. Say claims a homeowner's real property tax exemption, is Mr. Say's residence. The Board therefore upholds Ms. DeCosta's decision that the home located at 1822 10th Avenue, Honolulu, Hawaii 96816 is where Mr. Say's dwelling place is fixed and where, when he is absent, he intends to return.

Pursuant to Haw. Rev. Stat. §11-51, as amended, and Haw. Admin. R. §2-51-43(k), the Board hereby gives Appellant Michael G. Palcic notice that he has the right to appeal this decision to the Intermediate Court of Appeals of Hawai'i within 10 days of service of this decision. A copy of Part IV of Haw. Rev. Stat. Chap. 11, "Appeal from Board of Registration" is attached as Exhibit "A" hereto.

DATED: Honolulu, Hawaii, October 13, 2006

Board of Registration for the City &
County of Honolulu

Maureen Muraoka
Maureen Muraoka, Chairperson

Lisa Keala Carter
Lisa Keala Carter, Member

Roberta Chong Kee
Roberta Chong Kee, Member

Attachment



**KOBAYASHI
SUGITA &
GODA**
ATTORNEYS • AT • LAW

999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813-4430

Telephone: 808-539-8700
Facsimile: 808-539-8799
E-Mail: bsb@ksglaw.com

Bert T. Kobayashi, Jr.*
Kenneth Y. Sugita*
Alan M. Goda*
Dale W. Lee*
Lee R. Smith*
Wendell H. Fuji*
Robert K. Ichikawa*
Janet Ann A. Olds*
Clifford K. Higa*
Charles W. Call*
John F. Litzak*
Larry L. Ayers*
Craig K. Shikuma*
Christopher T. Kobayashi*
Ruth K. Oh*
Burt T. Lau*

Ronald T. Ogonori*
David B. Tongg*
Bruce A. Nakamura*
Larson K. Kupau*
Jonathan A. Kobayashi*
Nathan H. Yoshimoto*
Kenneth M. Nakasone*
Gregory M. Salo*

Brendan S. Bailey
Jesse W. Schiel
Joseph A. Stewart
Robert A. Uecker
Lauren U. Van Buren
Thomas H. Yee

*A Law Corporation

November 1, 2006

VIA FAX, EMAIL AND HAND DELIVERY

Department of the Attorney General
Attn: Russell A. Suzuki, Esq.
425 Queen Street
Honolulu, Hawaii 96813
FAX: 586-1372
Email: russel.a.suzuki@hawaii.gov

Re: CORA SAY: Appeal of City Clerk's Decision Regarding
Challenge to Residency of Cora Say by Michael Palcic

Dear Mr. Suzuki:

Thank you for the phone call this afternoon. First, it is rather disheartening that Mr. Palcic still seeks to challenge the residency of Cora Say despite all of the evidence that has been presented in this matter and the recent ruling of the Board of Registration in favor of her husband, Calvin Say. That being said, as you know, in recent years, Ms. Say has been a live-in caregiver for both her mother and her father before his death. Her responsibilities to her mother and father have caused her to be temporarily absent from the Say's 10th Avenue residence. However, as Ms. Say has consistently stated, she and Mr. Say have always intended that their 10th Avenue Home be their permanent and fixed place of residence.

Nonetheless, Mr. Palcic's admittedly politically motivated actions have caused a great deal of unwarranted stress on Ms. Say and the rest of the Say family. In fact, due to Mr. Palcic's actions, Ms. Say was discouraged from voting in the recent primary election and did not intend to vote in the upcoming general election. Therefore, while Ms. Say firmly believes that the 10th Avenue residence is her permanent and fixed residence, she chooses not to contest Palcic's appeal of the decision of the City Clerk despite the fact that the City Clerk ruled that the 10th Avenue address was in fact Ms. Say's residence for purposes of Hawaii Revised Statutes ("HRS") Chapter 11.

Russell A. Suzuki, Esq.
November 1, 2006
Page 2

This was a difficult decision for Ms. Say, nonetheless, she has chosen this course of action in order to put this matter behind her and her family and with the understanding that her decision will have no affect on Mr. Say's residency pursuant to HRS § 11-13 which provides that "a person may treat oneseff separate from the person's spouse" for purposes of determining residency under HRS Chapter 11.

Please confirm your receipt and acknowledgment of this letter and Ms. Say's decision not to contest Mr. Palcic's appeal of the City Clerk's decision by signing in space provided below and sending a copy back to our office. Thank you for your time and attention in this matter.

Very truly yours,

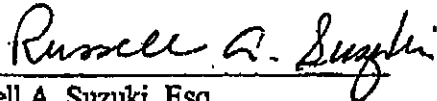


BERT T. KOBAYASHI, JR.

BRENDAN S. BAILEY

for

KOBAYASHI, SUGITA & GODA



Russell A. Suzuki, Esq.

Department of the Attorney General

CS059001
Jul 15,10

***** CUSTOMER SERVICE SUBSYSTEM *****
- BROWSE BILLS -

01:05 PM

Prem Addr: 1822 10TH AVE
HONOLULU 96816-6924

Prem Rte: 460
Old S/N.: 46063893

Prem Name:
Cust Name: SAV, CALVIN R Y
Bus Name.:

----- Credit Info -----
LP: FN: CS:
SS: NS: UN:

Check Notes.: PR PC Close Date.....:
Life Support: N Num of Services: 1
Cycle.....: 24 Prem Cust Stat.: A
Eff Date....: 05/01/1981 Payment Type...: AB
Sewer Class.: 1-10-0001-A

Next Read Date:
Outst Bal.....:
Disputed Bal...:
Pending Refund:

| Bill Date | Type | Bill Amt | Due Date | Start Dt | End Dt | Cons | Days | Gals/Day |
|------------|------|----------|------------|----------|----------|------|------|----------|
| 05/20/2010 | RE | 124.50 | 06/09/2010 | 03/19/10 | 05/19/10 | | 61 | |
| 03/22/2010 | RE | 124.50 | 04/12/2010 | 01/20/10 | 03/19/10 | | 58 | |
| 01/21/2010 | RE | 124.50 | 02/09/2010 | 11/18/09 | 01/20/10 | | 63 | |
| 11/19/2009 | RE | 124.50 | 12/09/2009 | 09/18/09 | 11/18/09 | | 61 | |

Prem ID: 1000205 Cust ID: 1114530

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
help retrn quit flip bkward frwrd main

Position cursor or ENTER screen value to select

CS0590B1
Jul 15,10

***** CUSTOMER SERVICE SUBSYSTEM *****
- BROWSE BILLS -

01:07 PM

Prem Addr: 2247 STAR RD
HONOLULU 96813-1308

Prem Rte: 428
Old S/N.: 42833785

Prem Name:
Cust Name: KOTAKE, TOSHIICHI

----- Credit Info -----

Bus Name.:
Check Notes.: PC Close Date.....:

LP: FN: CS:

Life Support: N Num of Services: 1

SS: NS: UN:

Cycle.....: 20 Prem Cust Stat.: R

Next Read Date: 09/02/2010

Eff Date,....: 11/01/1978 Payment Type...: RB

Outst Bal.....:

Sewer Class.: 1-10-0001-R

Disputed Bal...:

Bill Date Type Bill Amt Due Date Start Dt End Dt Cons Days Gals/Day

Pending Refund:

| Bill Date | Type | Bill Amt | Due Date | Start Dt | End Dt | Cons | Days | Gals/Day |
|------------|------|----------|------------|----------|----------|------|------|----------|
| 05/13/2010 | RE | 164.23 | 06/02/2010 | 03/15/10 | 05/13/10 | 10 | 59 | 169.49 |
| 03/15/2010 | RE | 174.69 | 04/05/2010 | 01/13/10 | 03/15/10 | 12 | 61 | 196.72 |
| 01/13/2010 | RE | 177.40 | 02/02/2010 | 11/12/09 | 01/13/10 | 13 | 62 | 209.67 |
| 11/12/2009 | RE | 164.23 | 12/02/2009 | 09/14/09 | 11/12/09 | 10 | 59 | 169.49 |

Prem ID: 1144758 Cust ID: 1066611

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---

help retrn quit flip bkward frward main

Position cursor or ENTER screen value to select

330380230000
SAY,CALVIN K Y TR

1822 10TH AVE

Parcel Data

TMK 330380230000
Site Address 1822 10TH AVE
Apartment No.
Property Class
Total Parcel Area
Zoning
Please select the Assessed Values tab.
.0936 Acres
L/05/00

Ownership

| Owner | Address | City | State | Country | Zip Code | Owner Type |
|-------------------|---------------|----------|-------|---------|----------|------------|
| SAY,CALVIN K Y TR | 1822 10TH AVE | HONOLULU | HI | | 96816 | Fee Owner |
| SAY,CORA K TR | | | | | | Fee Owner |

Permits

| Date | Amount | Reason for Permit | Permit No |
|------------|----------|-------------------|-----------|
| 03/22/2002 | \$30,000 | ADDITION | 532750 |

Land

| Valuation Class | Square Feet | Acreage | Agricultural Indicator |
|-----------------|-------------|---------|------------------------|
| Residential | 3683 | .0846 | |
| Residential | 390 | .009 | |

2010 Assessed Values as of October 1, 2009

| | |
|---|--------------|
| TMK | 330380230000 |
| Property Class | HOMEOWNER |
| Total Property Assessed Value | \$540,800 |
| Total Property Exemption | \$80,000 |
| Total Property Net Taxable Assessed Value | \$460,800 |
| Land Assessed Value | \$434,200 |
| Dedicated/Use Value | \$0 |
| Land Exemption | \$0 |
| Net Taxable Land Value | \$434,200 |
| Building Assessed Value | \$106,600 |
| Building Exemption | \$80,000 |
| Net Taxable Building Value | \$26,600 |

Sales

| Instrument Date | Sale Amount | Instrument # | Instrument Type | Recordation Date | Land Court Doc# | Certificate Number | Book/Page |
|-----------------|-------------|--------------|-----------------|------------------|-----------------|--------------------|-----------|
| 08/14/2007 | | | FEE CONVEYANCE | 08/15/2007 | 3642789 | 872062 | / |

Residential

Property Class
Card
Story Height
Occupancy
Full Baths
Total Living Area
Bedrooms
Year Built
Eff. Year Built
First Floor Living Area
Half Baths

Please select the Land Details tab.
1
1
SINGLE-FAMILY
1
952
3
1959
952

Additions

| Lower Floor | 1st Floor | 2nd Floor | 3rd Floor | Area |
|-------------|-----------|-----------|-----------|----------|
| | | | | 952 sf |
| | | | | ~ 470 sf |

GARAGE WD FR BIT/CONC FLOOR

Tax Bill Information

| Period | Description | Original Due Date | Tax/ Assmt | Tax Credits | Net Tax | Penalty | Interest | Other | Total |
|--------|--------------|-------------------|------------|-------------|----------|---------|----------|-------|----------|
| 2010-1 | Property Tax | 08-23-10 | 787.97 | 0.00 | 787.97 | 0.00 | 0.00 | 0.00 | 787.97 |
| 2010-2 | Property Tax | 02-22-11 | 787.96 | 0.00 | 787.96 | 0.00 | 0.00 | 0.00 | 787.96 |
| Total: | | | 1,575.93 | 0.00 | 1,575.93 | 0.00 | 0.00 | 0.00 | 1,575.93 |

Tax Bill data is computed to: July 31, 2010

Tax Details 2008

| Period | Description | Tax | Paid / Adjust | Penalty Paid | Interest Paid | Other |
|--------|---------------|----------|---------------|--------------|---------------|-------|
| 2008-1 | Beginning Tax | 738.11 | -50.00 | 0.00 | 0.00 | 0.00 |
| 2008-1 | Payment | 0.00 | -688.11 | 0.00 | 0.00 | 0.00 |
| 2008-2 | Beginning Tax | 738.11 | -50.00 | 0.00 | 0.00 | 0.00 |
| 2008-2 | Payment | 0.00 | -688.11 | 0.00 | 0.00 | 0.00 |
| Total: | | 1,476.22 | -1,476.22 | 0.00 | 0.00 | 0.00 |

Payment Summary

| Year | Payment # | Date | Tax | Penalty | Interest | Other |
|--------|-----------|-----------|-----------|---------|----------|-------|
| 2008 | 4007010 | 18-AUG-08 | -688.11 | 0.00 | 0.00 | 0.00 |
| 2008 | 4224096 | 18-FEB-09 | -688.11 | 0.00 | 0.00 | 0.00 |
| Total: | | | -1,376.22 | 0.00 | 0.00 | 0.00 |

Tax Credit Summary

| Period | Description | Amount |
|---------------|------------------------------|----------------|
| 2008-2 | Tax Credit for Non-Homeowner | -50.00 |
| 2008-1 | Tax Credit for Non-Homeowner | -50.00 |
| Total: | | -100.00 |

Tax Details 2007

| Period | Description | Tax | Paid / Adjust | Penalty Paid | Interest Paid | Other |
|---------------|---------------|-----------------|------------------|--------------|---------------|-------------|
| 2007-1 | Beginning Tax | 782.04 | -100.00 | 0.00 | 0.00 | 0.00 |
| 2007-1 | Payment | 0.00 | -682.04 | 0.00 | 0.00 | 0.00 |
| 2007-2 | Beginning Tax | 782.03 | -100.00 | 0.00 | 0.00 | 0.00 |
| 2007-2 | Payment | 0.00 | -682.03 | 0.00 | 0.00 | 0.00 |
| Total: | | 1,564.07 | -1,564.07 | 0.00 | 0.00 | 0.00 |

Payment Summary

| Year | Payment # | Date | Tax | Penalty | Interest | Other |
|---------------|-----------|-----------|------------------|-------------|-------------|-------------|
| 2007 | 3437266 | 15-AUG-07 | -682.04 | 0.00 | 0.00 | 0.00 |
| 2007 | 3745117 | 14-FEB-08 | -682.03 | 0.00 | 0.00 | 0.00 |
| Total: | | | -1,364.07 | 0.00 | 0.00 | 0.00 |

Tax Credit Summary

| Period | Description | Amount |
|---------------|------------------------------|----------------|
| 2007-2 | Tax Credit for Non-Homeowner | -100.00 |
| 2007-1 | Tax Credit for Non-Homeowner | -100.00 |
| Total: | | -200.00 |

Tax Details 2006

| Period | Description | Tax | Paid / Adjust | Penalty Paid | Interest Paid | Other |
|---------------|---------------|-----------------|------------------|--------------|---------------|-------------|
| 2006-1 | Beginning Tax | 804.70 | -100.00 | 0.00 | 0.00 | 0.00 |
| 2006-1 | Payment | 0.00 | -704.70 | 0.00 | 0.00 | 0.00 |
| 2006-2 | Beginning Tax | 804.70 | -100.00 | 0.00 | 0.00 | 0.00 |
| 2006-2 | Payment | 0.00 | -704.70 | 0.00 | 0.00 | 0.00 |
| Total: | | 1,609.40 | -1,609.40 | 0.00 | 0.00 | 0.00 |

Payment Summary

| Year | Payment # | Date | Tax | Penalty | Interest | Other |
|---------------|-----------|-----------|------------------|-------------|-------------|-------------|
| 2006 | 2860477 | 16-AUG-06 | -704.70 | 0.00 | 0.00 | 0.00 |
| 2006 | 3126444 | 14-FEB-07 | -704.70 | 0.00 | 0.00 | 0.00 |
| Total: | | | -1,409.40 | 0.00 | 0.00 | 0.00 |

Tax Credit Summary

| Period | Description | Amount |
|---------------|------------------------------|----------------|
| 2006-1 | Tax Credit for Non-Homeowner | -100.00 |
| 2006-2 | Tax Credit for Non-Homeowner | -100.00 |
| Total: | | -200.00 |

Tax Details 2005

| Period | Description | Tax | Paid / Adjust | Penalty Paid | Interest Paid | Other |
|---------------|---------------|-----------------|------------------|--------------|---------------|-------------|
| 2005-1 | Beginning Tax | 674.82 | 0.00 | 0.00 | 0.00 | 0 |
| 2005-1 | Payment | 0.00 | -674.82 | 0.00 | 0.00 | 0 |
| 2005-2 | Beginning Tax | 674.81 | 0.00 | 0.00 | 0.00 | 0 |
| 2005-2 | Payment | 0.00 | -674.81 | 0.00 | 0.00 | 0 |
| Total: | | 1,349.63 | -1,349.63 | 0.00 | 0.00 | 0.00 |

Payment Summary

| Year | Payment # | Date | Tax | Penalty | Interest | Other |
|---------------|-----------|-----------|------------------|-------------|-------------|-------------|
| 2005 | 2318778 | 16-AUG-05 | -674.82 | 0.00 | 0.00 | 0.00 |
| 2005 | 2587794 | 15-FEB-06 | -674.81 | 0.00 | 0.00 | 0.00 |
| Total: | | | -1,349.63 | 0.00 | 0.00 | 0.00 |

Tax Details 2004

| Period | Description | Tax | Paid / Adjust | Penalty Paid | Interest Paid | Other |
|---------------|---------------|---------------|----------------|--------------|---------------|-------------|
| 2004-1 | Beginning Tax | 484.32 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2004-1 | Payment | 0.00 | -484.32 | 0.00 | 0.00 | 0.00 |
| 2004-2 | Beginning Tax | 484.31 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2004-2 | Payment | 0.00 | -484.31 | 0.00 | 0.00 | 0.00 |
| Total: | | 968.63 | -968.63 | 0.00 | 0.00 | 0.00 |

Payment Summary

| Year | Payment # | Date | Tax | Penalty | Interest | Other |
|---------------|-----------|-----------|----------------|-------------|-------------|-------------|
| 2004 | 1885760 | 23-AUG-04 | -484.32 | 0.00 | 0.00 | 0.00 |
| 2004 | 2061122 | 18-FEB-05 | -484.31 | 0.00 | 0.00 | 0.00 |
| Total: | | | -968.63 | 0.00 | 0.00 | 0.00 |

Tax Details 2003

| Period | Description | Tax | Paid / Adjust | Penalty Paid | Interest Paid | Other |
|--------|---------------|--------|---------------|--------------|---------------|-------|
| 2003-1 | Beginning Tax | 418.69 | 0.00 | 0.00 | 0.00 | 0.00 |

| | | | | | | |
|--------|---------------|--------|---------|------|------|------|
| 2003-1 | Payment | 0.00 | -418.69 | 0.00 | 0.00 | 0.00 |
| 2003-2 | Beginning Tax | 418.69 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2003-2 | Payment | 0.00 | -418.69 | 0.00 | 0.00 | 0.00 |
| Total: | | 837.38 | -837.38 | 0.00 | 0.00 | 0.00 |

Payment Summary

| Year | Payment # | Date | Tax | Penalty | Interest | Other |
|--------|-----------|-----------|---------|---------|----------|-------|
| 2003 | 1292232 | 18-AUG-03 | -418.69 | 0.00 | 0.00 | 0.00 |
| 2003 | 1600502 | 17-FEB-04 | -418.69 | 0.00 | 0.00 | 0.00 |
| Total: | | | -837.38 | 0.00 | 0.00 | 0.00 |

Tax Details 2002

| Period | Description | Tax | Paid / Adjust | Penalty Paid | Interest Paid | Other |
|--------|---------------|--------|---------------|--------------|---------------|-------|
| 2002-1 | Beginning Tax | 470.12 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2002-1 | Payment | 0.00 | -470.12 | 0.00 | 0.00 | 0.00 |
| 2002-2 | Beginning Tax | 470.12 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2002-2 | Payment | 0.00 | -470.12 | 0.00 | 0.00 | 0.00 |
| Total: | | 940.24 | -940.24 | 0.00 | 0.00 | 0.00 |

Payment Summary

| Year | Payment # | Date | Tax | Penalty | Interest | Other |
|--------|-----------|-----------|---------|---------|----------|-------|
| 2002 | 923573 | 20-AUG-02 | -470.12 | 0.00 | 0.00 | 0.00 |
| 2002 | 1034921 | 20-FEB-03 | -470.12 | 0.00 | 0.00 | 0.00 |
| Total: | | | -940.24 | 0.00 | 0.00 | 0.00 |

Tax Details 2001

| Period | Description | Tax | Paid / Adjust | Penalty Paid | Interest Paid | Other |
|--------|---------------|--------|---------------|--------------|---------------|-------|
| 2001-1 | Beginning Tax | 398.22 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2001-1 | Payment | 0.00 | -398.22 | 0.00 | 0.00 | 0.00 |
| 2001-2 | Beginning Tax | 398.21 | 0.00 | 0.00 | 0.00 | 0.00 |
| 2001-2 | Payment | 0.00 | -398.21 | 0.00 | 0.00 | 0.00 |
| Total: | | 796.43 | -796.43 | 0.00 | 0.00 | 0.00 |

Payment Summary

| Year | Payment # | Date | Tax | Penalty | Interest | Other |
|--------|-----------|-----------|---------|---------|----------|-------|
| 2001 | 114775 | 20-AUG-01 | -398.22 | 0.00 | 0.00 | 0.00 |
| 2001 | 499906 | 20-FEB-02 | -398.21 | 0.00 | 0.00 | 0.00 |
| Total: | | | -796.43 | 0.00 | 0.00 | 0.00 |



AFFIDAVIT OF VAN LAW

STATE OF HAWAII

SS.


CITY & COUNTY OF HONOLULU

Van Law of legal age, being first duly sworn, deposes and says:

1. On July 29, 2010 I drove by 1822 10th Ave.
2. The house appeared to be vacant when compared to the other houses in the neighborhood.
3. When I got out to closely inspect the property, I notice the following about 1822 10th Ave:
 - a. The carport was completely bare; the surrounding properties has personal property stored in their carports;
 - b. There were no slippers on the porch or any other signs that persons had been entering or leaving; the surrounding properties had slippers on the porch except one neighboring property, which had no slippers, but did have a box of personal

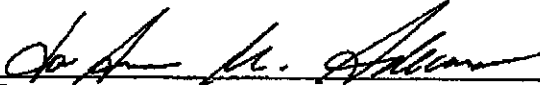
property items near the front porch.

- c. There were no potted plants; all of the other properties had several potted plants in the yard.
- d. The drapes were completely drawn on all windows except one; all of the other properties had at least one window with the drapes partially open.
- e. When I looked into the one open window from the street, all I could see was what appeared to be the back of a house; I saw no evidence of any personal items: furniture, books, clothing.
- f. There was no garden hose attached to any of the outdoor faucets; all of the other properties had a garden hose attached to one of the faucets.

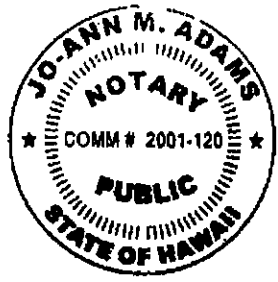



VAN LAW

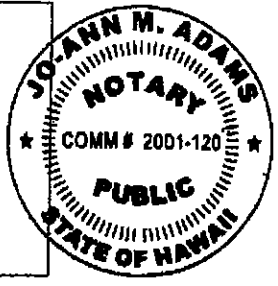
This affidavit was subscribed and sworn to before me on July 29, 2010 in the First Circuit of the State of Hawaii by Van Law.



Jo-Ann M. Adams, Notary Public
First Judicial Circuit, State of Hawaii
My commission expires: April 8, 2013



| | |
|---|------------------------|
| Document Date: <u>July 29, 2010</u> # Pages: 2 | |
| Name: <u>Jo-Ann M. Adams</u> 1 st Circuit | |
| Document Description: Affidavit | |
|  Notary signature | <u>29 2010</u> Date |



AFFIDAVIT OF JAYNEL HIRAKAWA

STATE OF HAWAII

SS.

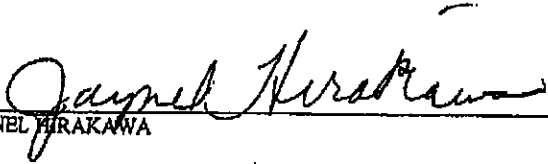
CITY & COUNTY OF HONOLULU

Jaynel Hirakawa of legal age, being first duly sworn, deposes and says:

1. I am fully retired and am at home most of the time.
2. I live at 1835 10th Ave, Honolulu, HI 96816.
3. I have lived at 1835 10th Ave since 1956.
4. My home is located in the same block as, across the street from, and slightly mauka of, 1822 10th Ave.
5. I observe 1822 10th Ave every day.
6. I have never seen a person in the house at that address.
7. I have never seen any lights on in the house: at night the house is dark.

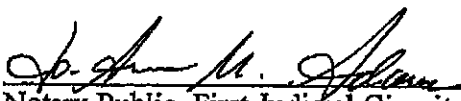
8. I have never seen any slippers on the front porch.

9. I have never seen a car parked there.



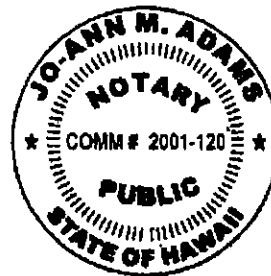
JAYNEL HIRAKAWA


This affidavit was subscribed and sworn to before me on July 23, 2010 in the First Circuit of the State of Hawaii by Jaynel Hirakawa.

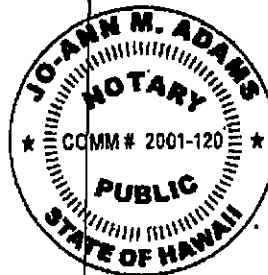


Notary Public, First Judicial Circuit, State of Hawaii

My commission expires: April 8, 2013



| | |
|---|------------------------------|
| Document Date: <u>July 23, 2010</u> | # Pages: 2 |
| Name: Jo-Ann M. Adams | 1 st Circuit |
| Document Description: Affidavit | |
|  Notary signature | <u>July 23, 2010</u> Date |



First Name Last Name Age

Viewing 1-1 of 1

| Name | Birth | Death | Age | Last Address of Record | Last Benefit | Issued By | SSN | Tools | Order Record? |
|-----------------------|----------------|--------------------|-----|-----------------------------------|---------------------|-----------|-------------|-------|---------------|
| HUGH SUN CHUNG SAY | 27 Oct 1922 | 14 Apr 2007 (P) | 84 | 96816 (Honolulu, Honolulu, HI) | (none specified) | Hawaii | 575-10-8923 | | |

Search
Hundreds of
Thousands
of
Family
Trees

First Name:

Last Name:

Search

One Family

Viewing 1-1 of 1

(V)=(Verified) Report verified with a family member or someone acting on behalf of a family member.
(P)=(Proof) Death Certificate Observed.

You can now order the SS-5 Form for deceased individuals directly from the Social Security Administration online at <https://secure.ssa.gov/apps9/eFOIA-FEWeb/Internet/main.jsp>

Social Security Death Index

87,186,822 Records last updated on 7-15-2010

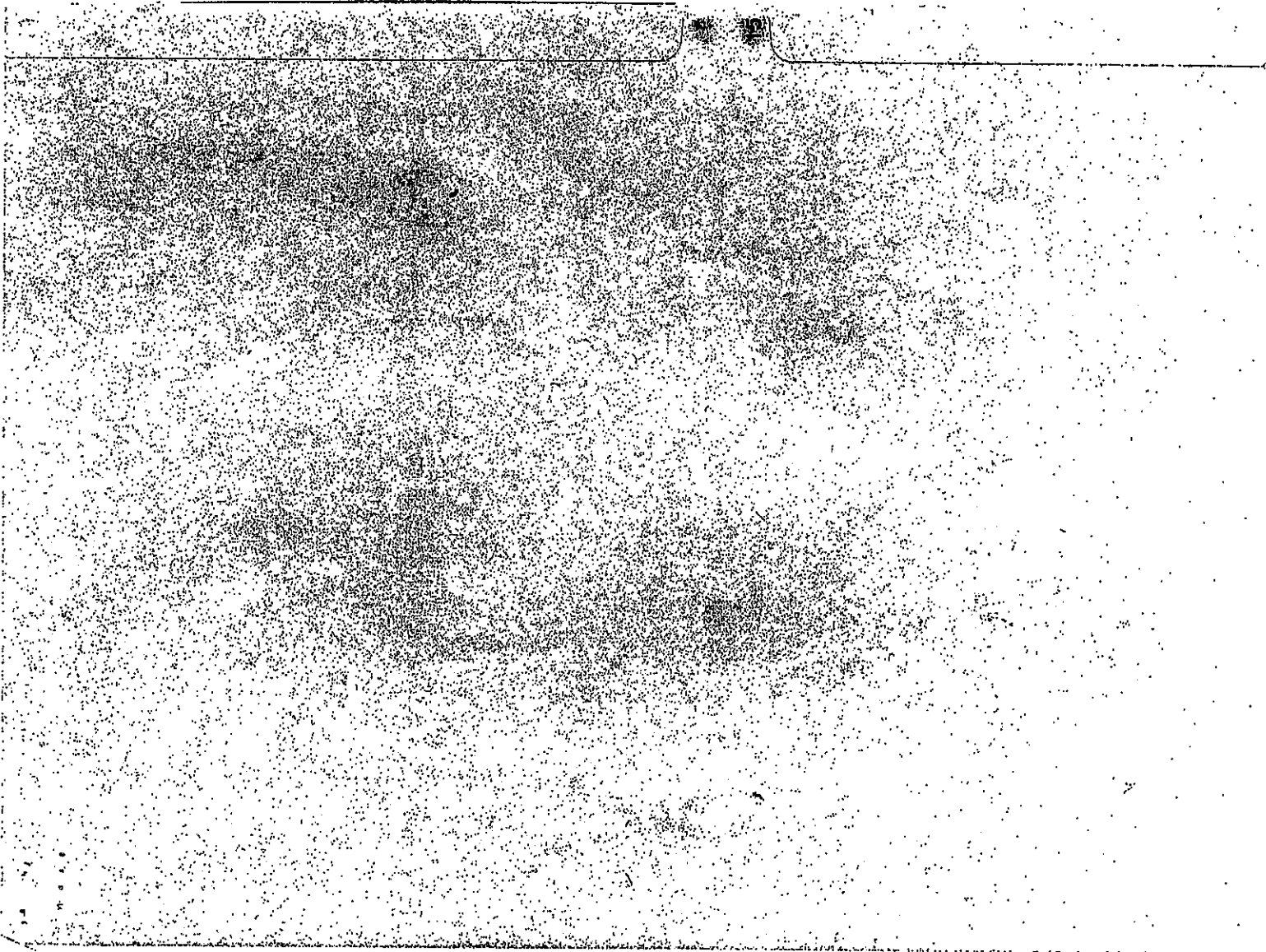
| | | | | |
|----------------|-------------|-------|---------------|------------------|
| Name | Last say | Exact | First hugh | Middle (initial) |
| Birth | Year | Exact | Month Any | Day Any |
| Death | Year | Exact | Month Any | Day Any |
| Last Residence | Zip | City | County | State |
| Last Benefit | or | | | |
| SSN | | | | |
| Issued by | Any | | | |
| Age at Death | Exact | | | |

For more info about the SSDI, see <http://www.rootsweb.ancestry.com/~rwguide/lesson10.htm>
For help using the SSDI search, see [Problem solving](#)

CPU seconds used 0.009998

RootsWeb is funded and supported by Ancestry.com and our loyal RootsWeb community. [Learn more.](#)

[About Us](#) | [Contact Us](#) | [Acceptable Use Policy](#) | [PRIVACY STATEMENT](#) | [Copyright](#)
© 2010 Ancestry.com



Search for: Tax Year: ANY

Results 1 - 7 of 7

| Parcel ID | Owner | Situs Address |
|--------------|-------------------|---------------|
| 340010940000 | DAOG,VALERIE O L | 1984 10TH AVE |
| 340010940000 | SAY,CALVIN K Y | 1984 10TH AVE |
| 340010940000 | SAY,CLARA W S | 1984 10TH AVE |
| 340010940000 | SAY,HEU-WYNN K L | 1984 10TH AVE |
| 340010940000 | SAY,HUGH S C | 1984 10TH AVE |
| 340010940000 | SAY,KERWIN K D | 1984 10TH AVE |
| 340010940000 | TAMANAH,SUSAN O K | 1984 10TH AVE |

Print All

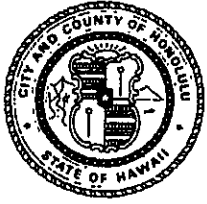
Data Last Updated : 26 Jul 2010

Disclaimer

The City and County of Honolulu Real Property Assessment & Treasury Divisions make every possible effort to produce and publish the most current and accurate information. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

Data Copyright City and County of Honolulu Public Access [Disclaimer] Last Updated: 26 Jul 2010

Site Design Copyright 1999-2007 Akanda Group LLC. All rights reserved.



OFFICE OF THE CITY CLERK

CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 100
HONOLULU, HAWAII 96813-3099
TELEPHONE: (808) 768-3810 • FAX: (808) 768-3835

BERNICE K.N. MAU
CITY CLERK

*To: Monica
Thanks for
your help.
Coko
Aizawa*

CERTIFIED MAIL
RETURN RECEIPT

September 7, 2010

Mr. Van Law
3274 Loke Place
Honolulu, Hawaii 96816

Mr. Julius Calasicas
3118 Waiialae Avenue, #302
Honolulu, Hawaii 96816

Dear Messers. Law and Calasicas:

RE: CHALLENGE TO VOTER REGISTRATION OF CALVIN K.Y. SAY

On August 2, 2010, the Office of the City Clerk received your challenge to the voter registration residence of Mr. Calvin K.Y. Say from both of you (Mr. Van Law and Mr. Julius Calasicas) and is hereinafter collectively referred to as the "Challenger". By copy of this letter, I am informing both the Challenger and Mr. Say of my ruling pursuant to §11-25, Hawaii Revised Statutes ("Haw. Rev. Stat.").

Firstly, the voter registration challenge incorrectly challenges Mr. Say's right to be registered to vote in the 5th precinct, 20th Representative district. Mr. Say is registered in the 2nd precinct. However, we acknowledge the validity of the voter registration challenge since precinct consolidations (in February 2010) re-designated Mr. Say's voting precinct from the 5th precinct (in 2008) to the 2nd precinct.

Exhibit 10

SEP 09 2010

BACKGROUND

Two voter registration challenges to Mr. Say's residency occurred in 2006. The prior proceedings from the previous challenges have been referenced extensively by both parties in their submittals to my office related to the current challenge. For both challenges, the City Clerk determined that the 10th Avenue address is Mr. Say's residence address. One of the 2006 rulings (Palcic v. Say, BOR 06-01) was appealed to the Oahu Board of Registration ("BOR"). Based upon the evidence presented, the BOR upheld the decision of the City Clerk concluding that the 10th Avenue address is where Say's dwelling place is fixed and where, when he is absent, he intends to return.

CHALLENGED VOTER OPPORTUNITY TO RESPOND

On August 5, 2010, Mr. Say was provided the opportunity to respond to the instant challenge by August 19, 2010. Mr. Say provided a response on August 17, 2010 that included a statement, his declaration, declarations of four neighbors, copies of various personal documents, and copies of documents from previous voter registration challenges.

RESEARCH/INVESTIGATION

All documents submitted by the Challenger and Mr. Say were reviewed.

1. Copies of documents submitted by Mr. Say included the following:
 - a. Documents listing 10th Avenue as the address included: water bill (05/19/2010-07/21/2010), financial statements for checking and savings accounts, telephone bill, financial manager account statement, Hawaii driver license, 2009 federal tax form, Hawaii identification certificate, August 11, 2010 letter from Real Property Assessment Division, City and County of Honolulu acknowledging and affirming correction of inadvertent, retroactive system-wide change to prior years' tax credits which resulted in incorrect labeling of tax credits for homeowners on the City's web site.
 - b. Declaration of Mr. Say.
 - c. Declarations of neighbors residing at 1816, 1816A, 1822A and 1826A 10th Avenue.
2. Copies of documents submitted by the Challenger included the following:
 - a. Affidavits of one neighbor residing at 1835 10th Avenue and the Challenger.

- b. Copies of internal Board of Water Supply computer screen prints of water usage for the 10th Avenue address.
 - c. Copies of documents concerning the deaths of Stephen Kotake and Hugh Sun Chung Say.
3. Both parties submitted:
- a. Copies of previous correspondence from the Office of the City Clerk and records filed in Palcic v. Say, BOR 06-01.
 - b. Copies of previous correspondence and/or documents from voter registration challenges to Ms. Cora Say's voter registration.

INVESTIGATION/FINDINGS

1. A review of the voter registry reveals that only Mr. Say is registered at the 10th Avenue address and that no other persons are registered to vote at that address.
2. A review of the voter registry does not indicate the return of the Notice of Voter Registration and Address Confirmation Postcard by the United States Postal Service (mailed in May 2010) as would occur if the resident had moved without leaving a forwarding address.
3. A review of real property records indicates continuous ownership of the 10th Avenue property by Mr. Say and his wife.
4. A review of real property permitting records reveals the issuance of building permits for the 10th Avenue property in March 2002.
5. A review of City driver license records updated in 2009 reveal Mr. Say's address is listed as 10th Avenue.
6. A review of motor vehicle registration records list Mr. Say's address as 10th Avenue.
7. Documents provided in Mr. Say's response list 10th Avenue as the address. Documents included: water bill (05/19/2010-07/21/2010), financial statements for checking and savings accounts, telephone bill, financial manager account statement, Hawaii driver license, 2009 federal tax form, Hawaii identification certificate, and August 11, 2010 letter from Real Property Assessment Division, City and County of Honolulu.
8. Two site visits were conducted to the area of the 10th Avenue address on August 24, 2010 and August 26, 2010. The purpose of these visits was to confirm the

September 7, 2010

Page 4

location of the physical addresses of the persons submitting affidavits or declarations who claimed to be neighbors of Mr. Say.

9. Affidavit of neighbor residing at 1835 10th Avenue states that she has never seen a person in the 10th Avenue house nor has seen lights on, slippers on the front porch, or a car parked at the property.
10. Declaration of neighbor residing at 1816 10th Avenue states that she usually sees Mr. Say outside of the 10th Avenue property during the weekends and sees or hears Mr. Say return to the property almost every evening at some time after 8 p.m.
11. Declaration of neighbor residing at 1816A 10th Avenue states that he usually sees Mr. Say outside of the 10th Avenue property on Sundays and has seen the lights and television on at the property between 5:15 a.m. and 5:30 a.m. most weekday mornings.
12. Declaration of neighbor residing at 1822A 10th Avenue states that she sees lights on and Mr. Say's car in the driveway at the 10th Avenue property almost every evening, has seen Mr. Say leave the property between 5:30 a.m. and 6:00 a.m. most weekdays, and sees Mr. Say outside at 10th Avenue property on Sundays.
13. Declaration of neighbor residing at 1826 10th Avenue states that she has seen Mr. Say at the 10th Avenue property almost every day for over six years.
14. All persons claiming to be neighbors of Mr. Say are registered voters and live within a line of sight of the 10th Avenue property.
15. Declaration of Mr. Say states *inter alia*:
 - a. His intention from 1980 to the present date has been to reside at the 10th Avenue property and to return there whenever he is absent and that he maintains personal property at the 10th Avenue property.
 - b. For short periods before, during and after the legislative sessions, Mr. Say spends a majority of his time at the Hawaii State Capitol, at political events, community meetings, and at his father-in-law's business.
 - c. He is frequently at the Capitol, community meetings or at social functions until late in the evenings, and on such evenings will choose to sleep at 2247 Star Road which is closer to the Capitol than the 10th Avenue property.
 - d. On those occasions, he makes a point of going to the 10th Avenue property the next day to pick up the mail and check on the house.

- e. After the legislative session, he returns to his normal pattern of sleeping at the 10th Avenue property.
- f. Acknowledges that his water consumption is low during legislative sessions and provides additional reasons for the low water consumption.

CONCLUSIONS OF LAW

1. Pursuant to Haw. Rev. Stat. § 11-13(1) for election purposes, "[t]he residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return."
2. Pursuant to Haw. Rev. Stat. § 11-13(2) "[a] person does not gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct."
3. Pursuant to Haw. Rev. Stat. § 11-13(4) "[t]he mere physical presence without the concurrent present intention to establish such place as the person's residence," does not establish residency.
4. Pursuant to Haw. Admin. R. § 3-172-25(a)(2)(A), where a person has more than one dwelling, "[i]f a person maintains a homeowners property tax exemption on one of the dwellings, that shall be a rebuttable presumption that the dwelling subject to the homeowner's property tax exemption is that person's residence."
5. Attorney General Opinion No. 86-10 states in relevant part:

"To relinquish one's domicile or residence there must be an intent to remain permanently at the new place where one is physically present and to simultaneously abandon the previously permanent place of abode. Acquisition of the new domicile must have been completed and the animus to remain in the new location fixed, before the former domicile can be considered lost. (citations omitted). Residence is not lost by a temporary absence or by maintenance of a temporary home elsewhere." (citation omitted).
6. This voter registration challenge presents questions, issues, and evidence very similar to the two voter registration challenges filed in 2006 in which the City Clerk determined that 10th Avenue is Mr. Say's residence address. The Oahu Board of Registration affirmed the ruling of the City Clerk in Palcic v. Say, BOR 06-01.

September 7, 2010
Page 6

DECISION

After reviewing various personal and governmental records, information obtained from site visits and in the absence of any changes to Haw. Rev. Stat. §11-13 (Rules for determining residency) since BOR 06-01 was issued, as well as the lack of evidence indicating that Mr. Say has abandoned his residence, it is my determination that 1822 10th Avenue continues to be Mr. Say's voter registration residence.

NOTIFICATION OF RIGHT TO APPEAL

Pursuant to Haw. Rev. Stat. §11-26 and Hawaii Administrative Rules §3-172-43, you are hereby notified of this decision and your right to appeal this decision to the Board of Registration within ten days of service of this decision.

Sincerely,

Bernice K.N. Mau

BERNICE K. N. MAU
City Clerk

Attachment (Calvin Say's Response)



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

SCOTT T. NAGO
CHIEF ELECTION OFFICER

June 9, 2014

CERTIFIED RETURN RECEIPT

Mr. Calvin K.Y. Say
1822 10th Avenue
Honolulu, Hawaii 96816

Dear Mr. Say:

Pursuant to Hawaii Revised Statutes §12-8(b), we are informing you that an objection to your nomination papers was made by Ms. Margaret K. Nicholson and Mr. Marvin Heskett. Their objection is that you do not really reside on 10th Avenue but that you currently reside on Star Road. Copies of the objection from each individual are attached.

A preliminary determination will be made by Monday, June 16, 2014, pursuant to Hawaii Revised Statutes §12-8(d).

You are invited to provide any information regarding the merits of the above objection. Your information must be received by our office no later than 4:30 p.m. on June 13, 2014.

If you have any further questions, please contact Ballot Operations Section Head Kristen Uyeda at (808) 453-VOTE (8683).

Very truly yours,

A handwritten signature in black ink, appearing to read "S. NAGO", written over a horizontal line.

SCOTT T. NAGO
Chief Election Officer

STN:AHS:cr
OE-14-149

Enclosures

Exhibit 11

OFFICE OF ELECTIONS

June 9, 2014

14 JUN -9 AM 11:27

M. Ka'imila Nicholson
2197 10th Avenue
Honolulu, HI 96813

Mr. Scott Nago
Chief Elections Officer
Office of Elections
State of Hawai'i
802 Lehua Avenue
Pearl City, HI 96782

Re: HRS 12-8 Objections to the Nomination Papers of Calvin Say

Dear Sir,

I hereby file objections, pursuant to HRS 12-8, to the nomination papers of Calvin Say (Say) for the office of representative for the Twentieth House District as follows:

- 1) I am a registered voter in the Twentieth House District;
- 2) Say is not qualified under the Hawaii State Constitution for the office of representative for the Twentieth House District;
- 3) No person shall register to vote or vote in any other precinct than that in which the person resides;
- 4) Say resides at 2247 Star Road with his wife and adult children who are all registered to vote at 2247 Star Road in the Twenty Fifth House District;
- 5) Say recently admitted at a public meeting that he does not rent and has not rented his vacant second home in the Twentieth House District in order to maintain the fiction that his second home in Palolo is his legal residence;
- 6) Prior to filing nomination papers and thereafter, Say has not resided legally or physically within the Twentieth House District and therefore lacks the requisite qualifications to hold the office of representative for the Twentieth House District;

For these reasons, the sworn certification required by HRS 12-3(a)(6) is invalid and Say is otherwise ineligible to hold said office for lacking the requisite constitutional qualifications to hold said office.

Very truly yours,



MARGARET KA'IMILĀ NICHOLSON

OFFICE OF ELECTIONS

June 9, 2014

14 JUN -9 AM 11:27

Marvin Heskett
3252 Palolo Terrace Pl
Honolulu, HI 96816

Mr. Scott Nago
Chief Elections Officer
Office of Elections
State of Hawai'i
802 Lehua Avenue
Pearl City, HI 96782

Re: HRS 12-8 Objections to the Nomination Papers of Calvin Say

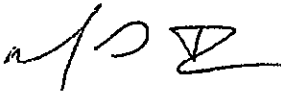
Dear Sir,

I hereby file objections, pursuant to HRS 12-8, to the nomination papers of Calvin Say (Say) for the office of representative for the Twentieth House District as follows:

- 1) I am a registered voter in the Twentieth House District;
- 2) Say is not qualified under the Hawaii State Constitution for the office of representative for the Twentieth House District;
- 3) No person shall register to vote or vote in any other precinct than that in which the person resides;
- 4) Say resides at 2247 Star Road with his wife and adult children who are all registered to vote at 2247 Star Road in the Twenty Fifth House District;
- 5) Say recently admitted at a public meeting that he does not rent and has not rented his vacant second home in the Twentieth House District in order to maintain the fiction that his second home in Palolo is his legal residence;
- 6) Prior to filing nomination papers and thereafter, Say has not resided legally or physically within the Twentieth House District and therefore lacks the requisite qualifications to hold the office of representative for the Twentieth House District;

For these reasons, the sworn certification required by HRS 12-3(a)(6) is invalid and Say is otherwise ineligible to hold said office for lacking the requisite constitutional qualifications to hold said office.

Very truly yours,



COPY



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96762
www.hawaii.gov/elections

SCOTT T. NAGO
CHIEF ELECTION OFFICER

June 16, 2014

CERTIFIED RETURN RECEIPT

Ms. M. Ka'imila Nicholson
2197 10th Avenue
Honolulu, Hawaii 96813

Dear Ms. Nicholson:

This responds to your correspondence challenging the nomination papers of Mr. Calvin K.Y. Say as a candidate for the Hawaii State House of Representatives, 20th District. Your objection is based on the contention that Mr. Say is not a registered voter of the representative district that he seeks to represent.

Pursuant to Article III, Section 6 of the Hawaii State Constitution, a candidate for state representative must be a qualified voter of the representative district from which the person seeks to be elected prior to filing nomination papers and thereafter. At the time Mr. Say was issued nomination papers, his voter registration reflected his 10th Avenue address.

We have confirmed with the Office of the City Clerk that Mr. Say is a registered voter at the address indicated on his nomination paper. Under these circumstances, I find that Mr. Calvin K.Y. Say's nomination papers were filed in conformity with HRS 12-3.

If you have any further questions, please contact me at 453-VOTE (8683).

Very truly yours,

A handwritten signature in black ink, appearing to read "S. Nago".

SCOTT T. NAGO
Chief Election Officer

STN:AHS:cr
OE-14-159

c: Calvin K.Y. Say

Exhibit 12

JUN 19 2014



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

SCOTT T. NAGO
CHIEF ELECTION OFFICER

June 16, 2014

CERTIFIED RETURN RECEIPT

Mr. Marvin Heskett
3252 Palolo Terrace Place
Honolulu, Hawaii 96816

Dear Mr. Heskett:

This responds to your correspondence challenging the nomination papers of Mr. Calvin K.Y. Say as a candidate for the Hawaii State House of Representatives, 20th District. Your objection is based on the contention that Mr. Say is not a registered voter of the representative district that he seeks to represent.

Pursuant to Article III, Section 6 of the Hawaii State Constitution, a candidate for state representative must be a qualified voter of the representative district from which the person seeks to be elected prior to filing nomination papers and thereafter. At the time Mr. Say was issued nomination papers, his voter registration reflected his 10th Avenue address.

We have confirmed with the Office of the City Clerk that Mr. Say is a registered voter at the address indicated on his nomination paper. Under these circumstances, I find that Mr. Calvin K.Y. Say's nomination papers were filed in conformity with HRS 12-3.

If you have any further questions, please contact me at 453-VOTE (8683).

Very truly yours,

SCOTT T. NAGO
Chief Election Officer

STN:AHS:cr
OE-14-160

c: Calvin K.Y. Say