

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED  
SEP 30 2014  
2:10 p.m.  
W. CABRAL  
Clerk, 22nd Division (lei)

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RAMONA HUSSEY, M. KA'IMILA  
NICHOLSON, NATALIE ANTONIA  
HUSSEY-BURDICK, BRENT S. DUPUIS,  
MARVIN D. HESKETT, and JOEL L.  
MERCHANT,

Petitioners,

vs.

CALVIN K.Y. SAY,

Respondent.

S.P. NO. 12-1-0736 (KTN)

(Quo Warranto)

CONCLUSIONS OF LAW AND ORDER  
GRANTING HOUSE OF  
REPRESENTATIVES OF THE TWENTY-  
SEVENTH LEGISLATURE, STATE OF  
HAWAII'S MOTION TO DIMISS, AND  
RESPONDENT CALVIN K.Y. SAY'S  
MOTION TO DISMISS PETITION FOR  
WRIT OF QUO WARRANTO FOR  
NONJUSTICIABILITY PURSUANT TO  
HRCF RULES 12(B)(1) AND 12(B)(6);  
NOTICE OF ENTRY

HEARING DATE: Sept. 18, 2014

HONORABLE KAREN T. NAKASONE  
JUDGE

**CONCLUSIONS OF LAW AND ORDER GRANTING HOUSE OF  
REPRESENTATIVES OF THE TWENTY-SEVENTH LEGISLATURE, STATE OF  
HAWAII'S MOTION TO DIMISS, AND RESPONDENT CALVIN K.Y. SAY'S  
MOTION TO DISMISS PETITION FOR WRIT OF QUO WARRANTO FOR  
NONJUSTICIABILITY PURSUANT TO HRCF RULES 12(B)(1) AND 12(B)(6)**

This matter came on for hearing on September 18, 2014, with the Honorable Karen T. Nakasone presiding. The Petitioners, Ramona Hussey, M. Ka'imila Nicholson, Natalie Antonia Hussey-Burdick, Brent S. Dupuis, Marvin D. Heskett, and Joel L. Merchant ("Petitioners") were represented by Lance D. Collins, Esq., Respondent Calvin K.Y. Say ("Respondent Say") was represented by Lex R. Smith, Esq., and Intervenor House of Representative of the Twenty-Seventh Legislature, State of Hawai'i ("House") was represented by Deirdre Marie-Iha, Esq.

The Court, having considered the two motions to dismiss filed July 18, 2014 and August 29, 2014, Petitioners' opposition memoranda filed September 10, 2014, and the replies, and having heard argument presented at the hearing on these motions, issues the following Conclusions of Law and Order granting the Motions to Dismiss.

### **BACKGROUND**

The Petition for Quo Warranto herein, requests that this court conduct an evidentiary hearing, and prays for judgment to be entered, that Respondent Say "lacks the continuing qualifications to hold title to office[,] and that the office of member of the House of Representatives for the Twentieth Representative District is vacant." Petitioners thus seek the removal of a sitting member of the House of Representatives, Respondent Say, on grounds that he lacks the residency qualifications required for his office. As the legal basis for their relief, Petitioners expressly and exclusively rely on Article III, Section 6 of the Hawai'i Constitution, which states,

### **QUALIFICATIONS OF MEMBERS**

**Section 6. . . . No person shall be eligible to serve as 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[.]

(Emphases added.)

Intervenor House of Representatives (“House”) and Respondent Say have both filed the instant motions to dismiss, on grounds of lack of jurisdiction<sup>1</sup> due to a nonjusticiable political question. They argue that the House has the exclusive power to decide the constitutional residency qualifications of its own members. As the legal basis for their relief, both the House and Respondent Say rely on Article III, Section 12 of the Hawai‘i Constitution:

#### **ORGANIZATION; DISCIPLINE; RULES; PROCEDURES**

**Section 12.** Each house shall be the judge of the elections, returns, and qualifications of its own members and shall have, for misconduct, disorderly behavior or neglect of duty of any member, power to punish such member by censure or, upon a two-thirds vote of all the members to which such house is entitled, by suspension or expulsion of such member. . . .

(Emphases added.)

The motions to dismiss do not concern the ultimate issue of whether Respondent Say meets the constitutional residency requirements for a House Representative; but rather, these motions deal with who may decide this question: this court or the House.

#### **CONCLUSIONS OF LAW**

1. State courts have jurisdiction over interpretation of constitutional provisions. Our precedent is clear that “the courts, not the legislature, are the ultimate interpreters of the Constitution.” Hussey v. Say, 133 Hawai‘i 229, 233 (App. 2014) (quoting State v. Nakata, 76

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<sup>1</sup> The House moved for dismissal under Hawai‘i Rules of Civil Procedure (HRCP) Rule 12(b)(1) (defense of lack of jurisdiction over subject matter). Respondent Say moved for dismissal under both HRCP Rule 12(b)(1) (subject matter jurisdiction) and alternatively under 12(b)(6) (defense of failure to state a claim upon which relief can be granted). This court disposes of both motions under HRCP Rule 12(b)(1), on grounds of subject matter jurisdiction, and not under 12(b)(6).

Haw. 360, 370 (1994)). “The ultimate authority for interpreting Hawai‘i’s constitutional guarantees is vested in the courts of this state.” Id. (quoting Cnty. Of Hawai‘i v. Ala Loop Homeowners, 123 Hawai‘i 391, 454 (2010)).

2. A writ of quo warranto inquires into the authority by which a government official claims his/her office. HRS § 659-1. HRS § 603-21.7 expressly grants state circuit courts jurisdiction over quo warranto petitions. See Hussey, 133 Hawai‘i at 234; Dejetley v. Kaho‘ohalahala, 122 Hawai‘i 251, 266 (2010) (writ of quo warranto is an appropriate remedy for county council representative’s alleged violation of county residency requirements); Office of Hawaiian Affairs v. Cayetano, 94 Hawai‘i 1, 8 (2000) (quo warranto relief available to State to create vacancy in office following U.S. Supreme Court ruling that trustees’ eligibility requirements were unconstitutional).

3. While this court has jurisdiction over quo warranto petitions and to interpret constitutional provisions, this court must still have jurisdiction over the particular subject matter under Hawai‘i Rules of Civil Procedure (HRCP) Rule 12(b)(1). The House and Respondent Say urge dismissal on grounds that the particular subject matter in this case – a challenge to the constitutional residency requirements of a sitting House member, presents a nonjusticiable political question, the determination of which is committed exclusively to the legislature via Article III, Section 12 of the Hawai‘i Constitution.

4. While Hawai‘i’s quo warranto case precedent supports the use of quo warranto proceedings to seek the ouster of a sitting public official, none of these cases involved the assertion of a nonjusticiable political question exempt from judicial review, as in this case. Thus,

this court is confronted with a question of first impression,<sup>2</sup> where another co-equal branch of government, i.e. the legislature, within our tripartite form of government consisting of the judicial, executive and legislative branches – claims the power to adjudicate the subject matter of this dispute on grounds that the Hawai`i Constitution specifies that the House “shall be the judge[.]”

5. In ruling on these motions, this court did not consider the Declaration of Keiko Bonk (attesting to statements allegedly made by House Speaker Joseph Souki in February 2013), and the April 2013 letter by Representative Marcus Oshiro to Speaker Souki, both attached by Petitioners in their submissions. These documents are irrelevant to the question of law presented by the instant motions to dismiss, and contain inadmissible hearsay. Hawai`i Rules of Evidence Rules 801, 802.

6. The term “justiciability” is a term of art recognizing the role of the judiciary in a “tripartite allocation of power” and assuring that the courts “not intrude into areas committed to the other branches of government.” Trustees of Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 168-169 (1987) (citing Flast v. Cohen, 392 U.S. 83, 94-95 (1968)). A “political question” arises when resolution of the dispute “threatens confrontation with the other parts of the government.” Id. at 169 (citation omitted).

7. Dismissal for nonjusticiability is mandated when a case involves an issue for which there is “a textually demonstrable constitutional commitment of the issue to a coordinate political department.” Nelson v. Hawaiian Homes Comm'n. 127 Hawai`i 185, 194 (2012).

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<sup>2</sup> This court has already rejected, at a prior hearing, Petitioners’ argument that the question of justiciability was “decided” by the Intermediate Court of Appeals (“ICA”). This court reaffirms its prior ruling, as law of the case, that the ICA’s summary denial of Respondent Says’ motion for reconsideration cannot be construed as a decision on the merits of the Article III, Section 12 jurisdictional argument. Such argument was newly raised in the reconsideration and was not a part of the trial and appellate record before the ICA in Hussey v. Say, *supra*.

8. Addressing language identical to our Article III, Section 12 in the federal constitution, the United States Supreme Court has stated that the subject provision is one of the few “explicit and unequivocal instances” of a textually demonstrable constitutional commitment. Nixon v. United States, 506 U.S. 224, 240 (1993). In this case, there is a clear “textually demonstrable constitutional commitment” of the issue raised by the petition, because Article III, Section 12 has demonstrably, explicitly, and unequivocally, committed the determination of qualifications of House members, to the House itself.

9. Hawai`i caselaw supports this court’s conclusion, that the legislature and not the court, has the exclusive authority to “judge” the qualification of its own members.<sup>3</sup> See e.g., Territorial-era decisions interpreting identical predecessor provision, Organic Act § 15: Harris v. Cooper, 14 Haw. 145, 148 (1902) (“The very fact that ‘each house shall be the judge of the elections, returns, and qualifications of its members’ (Organic Act, Sec. 15) is sufficient reason why neither the Secretary nor the courts should undertake to pass upon the question of the eligibility of a candidate except when it is clearly their duty to do so. The jurisdiction of each house of the legislature is exclusive in such cases. Each branch of the government must respect the prerogatives of each of the others.”); In re Contested Election, 15 Haw. 323, 329-30 (1903) (“Under a provision ‘that each house shall be the judge of the elections, returns and qualifications of its own members,’ the jurisdiction of each house is exclusive. ... To make the jurisdiction of the respective houses of the legislature exclusive it is not necessary that there should be a provision that each house shall be ‘sole’ judge, or that there should be other equivalent words.”).

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<sup>3</sup> More recent caselaw interpreting the current Article III, Section 12 provision does not alter this court’s analysis. See Akizaki v. Fong, 51 Haw. 354, 357 (1969) (concerning contested elections provision of Article II, section 10 in relation to the “judge of the elections” language in Article III, Section 12); Hayes v. Gill, 52 Haw. 251, 258 (1970) (in ruling on the qualification of its members, the House is limited by the qualifications expressly set forth in the constitution, and cannot interpret the constitution in a manner contrary to the court’s interpretation).

10. The overwhelming weight of authority from other jurisdictions (approximately 47 states), which have interpreted constitutional provisions identical or similar to Article III, Section 12 of the Hawai'i Constitution, supports this court's conclusion that the legislature and not the court must decide the question herein.

11. At least nine states have rejected similar quo warranto challenges on jurisdictional grounds. E.g., Buskey v. Amos, 310 So. 2d 468, 469 (Ala. 1975) ("In view of this constitutional provision this court is compelled to hold that it lost jurisdiction of this appeal when the appellee became a member of the State Senate."); State ex rel. Turner v. Scott, 269 N.W.2d 828, 832 (Iowa 1978) (state constitution "clearly leaves to the Senate the determination as to whether a member is qualified" and that issue is "nonjusticiable and improper for judicial resolution"); State ex rel. Attorney Gen. v. Tomlinson, 20 Kan. 692, 704 (1878) ("[T]his court has no jurisdiction to inquire by quo warranto, or otherwise, as to the right of any person to a seat as a member with a view of ousting him from his seat."); Houston v. McKinlay, 143 N.W.2d 781, 782 (Mich. 1966) ("It is settled law in Michigan that where constitutional or statutory provisions give a legislative body the authority to make this decision, its determination is conclusive."); State v. Cutts, 163 P. 470 (Mont. 1917) ("Each House is the judge of the ultimate right of persons claiming seats as members thereof (Constitution of Montana, art. 5, § 9; State ex rel. Thompson v. Kenney, 9 Mont. 223, 232, 23 Pac. 733), and its decision, right or wrong, is conclusive upon us..."); People ex rel. Sherwood v. Bd. of State Canvassers, 29 N.E. 345 (N.Y. 1891) ("It is undoubtedly true that the courts cannot by quo warranto try the title to a legislative office."); Alexander v. Pharr, 103 S.E. 8 (N.C. 1920) ("This court is without jurisdiction, because the action is to try the title to a seat in the [legislature], and the Constitution of the state (article 2, § 22) provides, 'Each house (of the [legislature]) shall be judge of the qualifications and

elections of its own members...’”); State ex rel. Walter v. Gutzler, 249 N.W.2d 271, 273 (S.D. 1977) (“This provision has been construed ... to mean that the power of each house to pass upon the qualifications of its own members is exclusive or plenary.”); State ex rel. v. Shumate, 113 S.W.2d 381, 386 (Tenn. 1938) (“Yielding full assent to the argument made as to the duty of this court to enforce the provisions of our Constitution in all cases within our reach we must nevertheless decline to interfere with the adjudication of the House of Representatives in a controversy committed solely to the decision of that body.”).

12. Courts in at least 27 states have also rejected similar challenges on jurisdictional grounds, outside of a quo warranto context. E.g., Irby v. Barrett, 163 S.W.2d 512, 513 (Ark. 1942) (“The Senate has the power ... and its action is beyond the power of review by this court, as the Senate is the sole judge of the qualification of its members.”); In re McGee, 226 P.2d 1 (1951) (Article IV, Section 7 “confers exclusive jurisdiction on the Legislature to judge the qualifications and elections of its members.”); Hughes v. Felton, 19 P. 444 (Colo. 1888) (“The power thus vested and conferred is exclusive. The courts cannot interfere with its exercise, or review the decision of either house, acting under and in pursuance of said power.”); McPherson v. Flynn, 397 So. 2d 665, 668 (Fla. 1981) (“The constitution grants the sole power to judge these qualifications to the legislature in unequivocal terms. The courts of this state, therefore, have no jurisdiction to determine these constitutional qualifications.”); Beatty v. Myrick, 129 S.E.2d 764, 765 (Ga. 1963) (“The State Senate being vested by the Constitution with exclusive power to adjudge the qualifications of its own members, the trial court had no jurisdiction to entertain the case and properly sustained the general demurrers to the petition.”); Reif v. Barrett, 188 N.E. 889, 899 (Ill. 1933), overruled on other grounds by Thorpe v. Mahin, 250 N.E.2d 633, 637 (Ill. 1969)) (“This power of the House of Representatives is plenary and exclusive. It has the



authority to act and to determine upon the qualifications of its members.”); Burchell v. State Bd. of Election Com'rs, 68 S.W.2d 427, 429 (Ky. 1934) (“By article 1, § 5, of the Federal Constitution, the power to pass upon the election and qualification of its own members is vested exclusively in each house of Congress, and no court has any authority to adjudicate upon that subject.”); Lee v. Lancaster, 262 So. 2d 124, 125 (La. Ct. App. 1972) (“[W]e hold that it is precisely those qualifications (including residency) ... [that the state constitution] makes the House the judge.”); Lund ex rel. Wilbur v. Pratt, 308 A.2d 554, 560 (Me. 1973) (“The Constitution of Maine declares ... that ‘each House shall be the judge of the elections and qualifications of its own members.’ This power is exclusive and plenary.”); W. v. Musgrave, 139 A. 551, 552 (Md. 1927) (“There is abundant authority for saying that, where the law makes a city council the judge of the qualification of its members, it has exclusive jurisdiction, not subject to review by the courts.”); Wheatley v. Sec'y of Com., 792 N.E.2d 645, 648 (Ma. 2003) (“The House's role as the sole arbiter of a petitioner's claim to a seat as a representative is by now firmly settled as a matter of State constitutional law.”); State v. Selvig, 212 N.W. 604, 604 (Minn. 1927) (“This provision gives the House of Representatives exclusive jurisdiction to determine whether the respondent is or is not disqualified from becoming a member of that body.”); Foster v. Harden, 536 So. 2d 905, 907 (Miss. 1988) (holding that the questions of qualification for office were vested in the Senate and “[a]ccordingly, there is no authority in the judiciary to hear this case.”); State on Info. of Danforth v. Banks, 454 S.W.2d 498, 500 (Mo. 1970) (“[T]he people of this state have specifically made a ‘textually demonstrable constitutional commitment’ to its house of representatives power to be the ‘sole judge’ of the qualifications of its own members.”); Brown v. Lamprey, 206 A.2d 493, 495 (N.H. 1965) (“For this court to interfere would be a usurpation of the authority of the Senate granted to it by the Constitution.”);

State ex rel. Chavez v. Evans, 446 P.2d 445, 449 (N.M. 1968) (“‘It is well settled that this provision constitutes each house of Congress the sole and exclusive judge of the election and qualifications of its own members and deprives the courts of jurisdiction to determine those matters.’”); State ex rel. Schmeding v. Dist. Court of Sixth Judicial Dist. in & for Morton County, 271 N.W. 137, 141 (N.D. 1937) (“Section 47 of the Constitution provides: ‘Each house shall be the judge of the election returns and qualifications of its own members.’ This means sole judge. ‘No other department of the government has any authority under the Constitution to adjudicate upon that subject.’”); Wixson v. Green, 521 P.2d 817, 819 (Okla. 1974) (“[I]t was the prerogative of the House of Representatives and not the Courts to determine whether petitioner continued to meet the qualifications for membership set out in [the constitution.]”); Lessard v. Snell, 63 P.2d 893, 894 (Or. 1937) (“In view of this constitutional power vested in the Legislature, it is clear that this court has no jurisdiction to determine the qualifications of the plaintiff as State Senator.”); Harrington v. Carroll, 239 A.2d 437, 441 (Pa. 1968) (“To say, in the face of that explicit phraseology that the qualifications of Council members may be determined by another tribunal is equivalent to saying that Hot may mean Cold, that Up may signify Down, and that Full can be interpreted as Empty.”); Grimball v. Beattie, 177 S.E. 668, 674 (S.C. 1934) (“The judiciary can have no voice in the decisions of the legality of the election of members of the General Assembly, nor can it have any voice in their legal qualifications to be members of the General Assembly.”); Henderson v. Democratic Executive Comm. of Falls County, 164 S.W.2d 192, 193 (Tex. Civ. App. 1942) (holding the courts do not have jurisdiction to pass upon the qualifications of a candidate for office at the legislature); Brady v. Dean, 790 A.2d 428, 431-32 (Vt. 2001) (“[W]here the state legislature is made the judge of the qualifications of its members by a provision of the state constitution, the legislature has the sole authority to do so,

and courts must refrain from interfering in that determination.”); State ex rel. Boze v. Superior Court In & For Pierce County, 129 P.2d 776, 776 (Wa. 1942) (“The people, through the constitution, granted this particular judicial power [to judge the qualifications of the legislature’s members] exclusively in that house of the legislature...”); Sutherland v. Miller, 91 S.E. 993 (W. Va. 1917) (holding a state statute that authorized judicial inquiries into U.S. Senate candidates to be invalid because the statute unlawfully delegated the Legislature’s power); State v. Circuit Court for Marathon County, 190 N.W. 563, 568 (Wis. 1922) (“The language, ‘Each house shall be the judge of the elections, returns and qualifications of its own members,’ found in article 4, § 7, Wis. Const., expressly makes the State Senate the proper tribunal to determine all questions concerning [a candidate’s] qualifications for service in the office in question.”); State ex rel. Schieck v. Hathaway, 493 P.2d 759, 764 (Wyo. 1972) (holding that the question of defendant’s qualification to serve as a member of the house of representatives was not proper for consideration by the courts).

13. Finally, in analyzing similar constitutional provisions, at least 12 other states have affirmed the legislative body’s exclusive jurisdiction in judging the qualification of its members. See, e.g., Miller v. N. Pole City Council, 532 P.2d 1013, 1015 (Alaska 1975) (“Each of these provisions empowers the City Council to decide all questions as to the qualifications and election ‘of its members’”); State ex rel. Pickrell v. Myers, 359 P.2d 757, 759 (Ariz. 1961) (“Pursuant to the foregoing constitutional provision the Legislature has prescribed the minimum qualifications for admittance as a member of both the Senate and the House.”); Application of Mylchreest, 6 Conn. Supp. 435, 436 (Super. Ct. 1938) (“In so far as the application prays for a declaration that the named applicant be declared elected senator and that a certificate issue to that effect, it clearly is outside of the jurisdiction of a judge of the of the Superior Court or, indeed, of any

court to grant it.”); State ex rel. Wahl v. Richards, 64 A.2d 400 (Del. 1949) (acknowledging the House of Representatives is the sole and exclusive judge of the qualifications of its members); Burge v. Tibor, 397 P.2d 235, 237 (Id. 1964) (“This provision makes each house of the legislature the sole judge of the election and qualification of its members.”); State ex rel. Jacobs v. Marion Circuit Court, 644 N.E.2d 852, 853-54 (Ind. 1994) (“Under Article 4, § 10, of the Indiana Constitution, each house of the General Assembly ‘judge[s] the elections, qualifications, and returns of its own members.’ This court has recognized that the respective houses of the legislature are the sole judges of the results of the elections of their members.”); Laxalt v. Cannon, 397 P.2d 466, 467 (Nv. 1964) (“It is equally well settled that such a state constitutional provision deprives the state courts of jurisdiction to decide election contests for state legislative offices.”); Van Winkle v. Caffrey, 175 A. 362, 363 (N.J. Sup. Ct. 1934) (“[I]t is undoubtedly true ... that ‘the constitution having conferred upon the legislative department the power to judge-that is judicially determine-it would not be competent for the Legislature to confer that authority on the judicial department of government.’”); Smith v. Polk, 19 N.E.2d 281, 283 (Oh. 1939) (“Under Section 5, Article I of the Constitution of the United States ... full power is granted to Congress to be the judge of the elections and qualifications of its members.”); Bailey v. Burns, 375 A.2d 203, 208 (R.I. 1977) (“In our judgment ... it grants to each house full jurisdiction over the elections and qualifications of members-elect as well as members.”); Ellison v. Barnes, 63 P. 899, 902 (Utah 1901) (holding that “[t]he senate, under the provisions of the constitution, has the exclusive jurisdiction to try, determine, and declare which of the parties to this action has been legally elected”); Mitchell v. Witt, 36 S.E. 528, 529 (Va. 1900) (“[Section 1030] empowers and authorizes the council itself to adjudicate all questions as to election of its members.”).

14. This court found no contrary authority from other states<sup>4</sup> in its research, supporting Petitioners' claim that this court could exercise jurisdiction over this quo warranto proceeding, despite the clear and unambiguous designation in Article III, Section 12, that the House shall judge the qualifications of its own members.

15. Petitioners, however, also urge that this court should retain jurisdiction over this dispute, because the House's power to exclusively determine its members' qualifications, would be "unchecked," and erode our constitutional system of checks and balances.

16. Significantly, in this case, the House has argued that it has not had an opportunity to judge the qualifications of Respondent Say.<sup>5</sup> The House stated in their motion and during oral argument, that "any interested voter could bring their concern to the House of Representatives' attention," and that Petitioners had not yet done so in this dispute. Thus, the House has urged that, "even if this court grants this motion to dismiss, Petitioners are not left without a forum to bring their complaints." House's Motion to Dismiss, at 3 (emphasis in original).

17. In State ex rel. Turner v. Scott, 269 N.W. 2d 828 (Iowa 1978), the Iowa State Senate credentials committee had researched and discussed the defendant's qualifications. The full Senate thereafter debated on an amendment to the report which would have seated every elected member of the Senate except the defendant, and specifically discussed the qualifications of the defendant. Id. After the debate, the amendment lost by a vote of 25 to 24. Id. The Iowa Attorney General thereafter filed a quo warranto action challenging (1) the defendant's right to

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<sup>4</sup> During oral argument, Petitioners claimed that cases from Kentucky and North Dakota provided contrary authority as set forth in their opposition memoranda; however, no such citations or argument were found in the memoranda. In this court's research, set forth *supra*, Kentucky and North Dakota are among the states which have concluded that courts lack jurisdiction over constitutional qualification questions.

<sup>5</sup> The House argued that the instant dispute is a "factual dispute," that the House must "weigh[ ] the competing factual claims from Petitioners and Representative Say," and the House must "resolve[ ] this dispute using its authority under Article III, Section 12, to 'judge' the 'qualifications of its own members.'" House's Motion to Dismiss, at 12 (emphasis in original).

hold the office based on constitutional residency requirements not being met, and (2) that the seating of the defendant denied the constitutional rights of equal protection and due process of the Iowa electorate, other senators, and potential candidates for the Senate seat in question. Id. The trial court conducted a trial and dismissed the petition, inter alia, on grounds that the Iowa Constitution precluded judicial review of the Senate's qualification determination, and that no deprivation of substantial constitutional rights was established. Id. The Iowa Supreme Court affirmed the dismissal, concluding that "[a]bsent a showing of deprivation of substantial constitutional rights," the court would not review the Senate's action taken pursuant to its constitutional authority. Id. at 832-833. Because the Attorney General had not established any violation of such rights, "respect for a coordinate branch of the government in the execution of its constitutionally delegated function" compelled the Supreme Court to affirm the dismissal. Id.

18. In State v. Evans, 735 P.2d 29 (Utah 1987), the Utah House of Representatives heard challenges on the opening day of the legislature regarding the qualifications of two House members. Id. The House then read briefs and heard arguments by legal counsels for the two defendant House members, the Attorney General, and counsel for the legislature. Id. Following this "thorough airing of the challenges" and the Utah House Speaker's "admonition . . . that the House members had the duty under article VI, section 10 to determine the qualifications of its members," the Utah House rejected the challenges. Id. The Utah Attorney General brought an action before the Utah Supreme Court, for an extraordinary writ against the Utah House of Representative for the House's rejection of the qualification challenges. Id. The Utah Supreme Court observed that there were no additional constitutional claims made, aside from the sole question regarding the constitutional qualifications of the two House members. Id. The Supreme Court declined "to interfere with or second-guess the action of the House of

Representatives”, because appropriate “constitutional procedures” had been followed and the House had clearly “met and discharged” its “duty and obligation” to decide the qualifications question. Id.

19. In both the Iowa and Utah cases, supra, the appropriate constitutional procedure had been followed, by the Iowa Senate and the Utah House of Representatives. Both legislative bodies had conducted a “thorough airing of the challenges,” and clearly discharged their respective duties and obligations to decide the qualifications questions of their own members put before them.

20. In this case, by contrast, no House proceedings regarding Respondent Says’ qualifications have been conducted, and no “thorough airing of the challenges” has yet occurred. The House has claimed to this court, that this quo warranto petition denies the House of the opportunity to weigh for itself the competing factual claims of Petitioners and Respondent Say, to resolve the factual dispute regarding Respondent Say’s qualifications, and to discharge its duties and obligations to decide the qualifications question herein.

21. Our House of Representatives possesses the same exclusive power over the qualifications of its members, like the legislative bodies in Turner and Evans, supra, and the Hawai’i House of Representatives must have a similar opportunity to exercise its power. In this regard, the House herein has affirmed that Petitioners, as interested voters, can avail themselves of the House of Representatives as a forum to bring the complaint contained in this Petition, in accordance with the constitutional commitment of this dispute to the House itself, under Article III, Section 12.

22. This court disagrees with Petitioners, that the House’s exercise of its exclusive power to decide qualifications of its own members, erodes our constitutional system of checks

and balances. On the contrary, it is wholly consistent with the separation of powers for this court, to accord the respect to a coordinate political branch of government, the House of Representatives, to carry out the exercise of the constitutionally conferred power to the legislative branch, to adjudge this dispute over Respondent Say's qualifications.

23. This result is consistent with the Hawai'i Supreme Court's construction of Article III, Section 12, as extending the legislature's "judicial power with respect to qualifications ... to investigation and determination of whether the specific membership [qualification] requirements set out in the Constitution ha[ve] been met." Akizaki, 51 Haw. at 358 (citing Powell v. McCormack, 395 U.S. 486, 522 (1969)). Thus, the House's power to judge qualifications encompasses the House's investigation and determination of Respondent Says' qualifications.

24. Our supreme court has cautioned that trial courts must "carefully weigh the wisdom, efficacy, and timeliness of an exercise of their power before acting, especially where there may be an intrusion into areas committed to other branches of government." Trustees of Office of Hawaiian Affairs, 69 Haw. at 171 (quoting Life of the Land v. Land Use Commission, 63 Haw. 166, 172 (1981)).


25. Given the state of this record, where the House has not yet exercised its power, nor conducted any investigation or determination thereto, this court's interference at this juncture would not only be unconstitutional, but also premature, unwise, and inefficacious. See id. Because the Hawai'i Constitution has clearly committed the question of House members' qualifications to the legislative branch, this court may not interfere with, nor intrude on, the Legislature's assertion and exercise of its power.



26. For all of the foregoing reasons, and for any other good cause shown in the record, this court concludes that it lacks jurisdiction over the nonjusticiable subject matter of the Petition for Quo Warranto herein, and dismissal is warranted under Rule 12(b)(1) of HRCp.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Respondent Say and Intervenor House of Representatives' Motions to Dismiss are granted, and the Petition for Quo Warranto filed December 31, 2012, is dismissed without prejudice to the claims therein being brought in the proper forum, which is the House of Representatives of the State of Hawai'i.

DATED: Honolulu, Hawaii, SEP 30 2014.

  
\_\_\_\_\_  
Judge of the Above-Entitled Court

NOTICE SENT TO:

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NOTICE OF ENTRY

The foregoing Order in S.P. No. 12-1-0736 has been entered and copies thereof served  
on the above-identified parties by placing the same in the United States Postal Service mail,  
postage prepaid, on SEP 30 2014.

  
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Clerk, Twenty Second Division