

January 16, 2015

Hon. Joseph P. Souki
Speaker
House of Representatives
Twenty-Seventh Legislature
State of Hawai'i
Hawaii State Capitol
Honolulu HI 96813

Re: Qualifications of Calvin Say to the Office of Representative of the 20th District

Dear Mr. Speaker,

As you know, I represent Ramona Hussey, M. Ka'imila Nicholson, Natalia Antonia Hussey-Burdick, Brent S. Dupuis, Marvin D. Heskett, and Joel L. Merchant (the Voters) who challenge Calvin Say's qualifications to serve as the representative of the twentieth district. They renew their original request made to you on February 22, 2013 and on October 6, 2014 that the House investigate the qualifications of Say to possess the title to office of representative for the twentieth district.

FACTUAL BACKGROUND

Calvin Say currently possesses title to office of representative of the twentieth district of the twenty-seventh Legislature of the State of Hawai'i. He has lived and continues to live at 2247 Star Road in Pauoa Valley, in the twenty-fifth representative district and the house at 2247 Star Road is where his habitation is fixed. He lives and continues to live with his wife and two adult children at 2247 Star Road and has done so for over two decades. His wife and two adult children are registered to vote at 2247 Star Road.

Nevertheless, Say has registered to vote using the legal address of 1822 10th Avenue in Palolo Valley. He has previously admitted he does not actually live there and he does not actually live there. For instance, at the February 13, 2013 Palolo Neighborhood Board meeting held at Palolo

Elementary School cafeteria, Say was asked about his so-called residency at 1822 10th Avenue. He explained that he kept the house at 1822 10th Avenue vacant over the years and had foregone rent because of his love and commitment to the district. He even became emotional while he was describing what he considered to be his sacrifice of rental income over the years for the greater good.

As noted by the Attorney General in Opinion No. 86-10 in determining residency for voter qualification purposes: “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 continues:

“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 Haw. 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

In 2006, several voters challenged the propriety of Say's voter registration in the former fifth precinct of the former twentieth representative district. On appeal to the Board of Voter Registration, affirmed by a vote of 2-1, that Say's homeowner's real property tax exemption claimed at 1822 10th Avenue created a rebuttable presumption that it was Say's legal residence even though he was absent from the dwelling place because he “intends to return.”

In 2010, several voters again challenged the propriety of Say's voter registration in the former fifth precinct of the former twentieth representative district. The City Clerk denied the challenge on the basis of the 2006 Board of Registration decision holding: “It is my determination that 1822 10th Avenue continues to be Mr. Say's voter registration residence.”

In 2009, the Hawai'i Supreme Court ruled:

If a person who has been living on the mainland packs up their belongings and ships them to Hawai'i, flies to Honolulu and moves in with family members with the intent of making Hawai'i their permanent home, they could be considered residents from the day they arrived. At the other extreme, consider a person who has a home in Los Angeles, flies to Honolulu and registers to vote, and then returns to Los Angeles on the same day, all with the stated intent of making Honolulu his or her permanent residence. Recognizing such a person as a Honolulu resident would render the physical presence requirement in HRS § 11-13(4) an absurdity.” *Dupree v. Hiraga*, 121 Haw. 297, 323 (2009)

As has been noted elsewhere, voter registration is not a qualification of voting but a regulation thereof. Therefore, voter registration is not dispositive of the issue of voter qualification.

It is true that some courts have held that where the constitution prescribes the qualifications of voters and does not include registration among them, the legislature cannot add that, although it is said to be the better opinion that the legislature may, as a matter of regulation, require registration in such cases and even prevent persons from voting who become otherwise qualified after the last session of the board of registration and before election day, provided that interval is not unreasonably long.

Fairchild v. Smith, 15 Haw. 265, 269-270 (Terr., 1903) See also *Right to Life Party v. Rockefeller*, 319 F.Supp 642, 646 (SDNY 1970) (“To be a qualified voter is only to be eligible to register, it is not the same as being registered.”); *Piusner v. Sioux City*, 262 N.W. 551, 554 (Iowa, 1935) (“[O]ne may be a qualified voter although not registered, and that one may not vote unless registered even though a qualified voter. It is generally recognized that ... registration is a regulation of the exercise of the right of suffrage and not a qualification for such right.”)

PROCEDURAL BACKGROUND

On December 31, 2012, the Voters filed a Petition for Writ of Quo Warranto in the First Circuit Court challenging Calvin Say's possession of title to office of representative of the twentieth district in special proceeding entitled Ramona Hussey et al v. Calvin Say, S.P. No. 12-1-0736 K'TN. On February 20, 2013, the Circuit Court dismissed the Petition and the Voters appealed.

I met with you at your office at the Capitol on February 22, 2013 to request, on Voters' behalf, that the House entertain their challenge pursuant to Article III, Section 12 of the Hawai'i State Constitution and to appoint a committee or engage some other process to receive evidence and decide questions of law and to determine or recommend for decision to the whole House the issue of Say's qualifications. At that time, you indicated that the House does not get involved in such disputes. The credentials committee solely looks to the validity of the certificate of election before seating members. You indicated that all other matters are resolved in the courts.

Subsequently, however, you authorized the Attorney General to intervene on the House of Representative's behalf in the Hussey v. Say case asserting that “the Hawaii Constitution vests the House exclusive authority to 'judge' the 'qualifications of its own member[.]’” (House of Representatives Motion to Dismiss, filed August 29, 2014, page 1)

On September 30, 2014, Judge Nakasone granted the House's Motion to Dismiss on this

ground: “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.” (Conclusions of Law and Order Granting House of Representatives Motion to Dismiss, filed September 30, 2014, page 25)

ISSUE

Whether Calvin Say is eligible to serve as a member of the house of representatives for the twentieth district pursuant to Article III, Section 6 where he is not a qualified voter of the twentieth district

RELIEF REQUESTED

Voters renew their request for the House of Representatives to conduct an inquiry and make a determination regarding whether Calvin Say's Article III, Section 6 qualifications to serve as a member of the house of representatives for the twentieth district and for a decision by the House to expel Calvin Say for his usurpation of office and lack of constitutional qualifications

The request was originally lodged on February 22, 2013 but no action was taken because you determined the matter was for the courts to decide. Given that you authorized the House to intervene and assert it has exclusive jurisdiction over this matter much more recently, the House will have the courtesy to promptly address this request. The Voters expect the House will either conduct an adversarial type hearing where the Voters and Mr. Say may present evidence to a committee of the House or that the House will conduct a credible and competent inquisitorial type hearing where a full and impartial fact-finding investigation may be conducted and justified conclusions drawn thereupon.

Please do not hesitate to contact me if you have any questions.

Very truly yours,
LAW OFFICE OF LANCE D COLLINS



LANCE D COLLINS
Attorney for the Voters

IN THE CIRCUIT COURT OF FIRST CIRCUIT

STATE OF HAWAII

RAMONA HUSSEY, et. al	)	SP No. 12-1-0736 KTN
Petitioners,	)	(Quo Warranto)
vs.)	
	)	DECLARATION OF RAMONA HUSSEY
CALVIN K.Y. SAY,)	
Respondent.)	

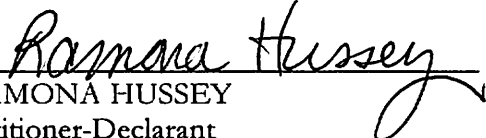
DECLARATION OF RAMONA HUSSEY

I, Ramona Hussey, do declare under penalty of law that the following is true and correct.

1. I am a Petitioner in this case and make this declaration based upon my personal knowledge, information and belief.
2. After the general election of 2012, I began to travel by the house located on the road at 1822 10th Avenue in Palolo. I would travel by the house. I never observed any activity at the house in the evenings. The curtains were always drawn and the lights were always off. The only change I noticed over time was that cars and trucks parked in the carports of neighboring houses would on occasion be parked in the carport of 1822. Only on one occasion did I observe the lights to be on in the house at night but there was no corresponding activity of any kind (including sound of movement or visual indications of movement).
3. Since it was made public that I have been involved in this suit, I have discussed the matter of Mr. Say's residency with dozens and dozens of people involved in the political community. There is a general consensus of opinion in this community that Mr. Say while raised in Palolo Valley along 10th Avenue but farther up the road than the house at 1822 has for more than twenty years lived with his wife and children at his in-laws house at 2247 Star Road in Pacific Heights/Pauoa Valley.

DATED: Honolulu, Hawai'i

September 8, 2014



 RAMONA HUSSEY
 Petitioner-Declarant

IN THE CIRCUIT COURT OF FIRST CIRCUIT

STATE OF HAWAII

RAMONA HUSSEY, et. al) SP No. 12-1-0736 KTN
Petitioners,) (Quo Warranto)
vs.)
) DECLARATION OF KEIKO BONK
CALVIN K.Y. SAY,)
Respondent.)

DECLARATION OF KEIKO BONK


I, Keiko Bonk, do declare under penalty of law that the following is true and correct.

1. I am an adult resident of the island and county of Honolulu and make this declaration based upon my personal knowledge, information and belief.
2. On the evening of February 13, 2013, I attended the Palolo Neighborhood Board meeting at Palolo Elementary School Cafeteria.
3. At that meeting, the audience was permitted to ask questions of Mr. Calvin Say after his presentation of his report. I asked him about his residency at 1822 10th Avenue. He explained that he kept the house at 1822 10th Avenue vacant over the years and had foregone rent because of his love and commitment to the district. He was visibly disturbed by the line of questions and even choked up while he was describing what he considered to be his sacrifice of rental income over the years for the greater good.
4. On February 22, 2013, I arranged a meeting between House Speaker Joseph Souki, attorney Lance D. Collins, and myself regarding the Petitioners in this case and other residents of District 20 who wanted the House to investigate whether Say is qualified to serve as a member of the House.
5. Mr. Souki informed me that he and Mr. Say had a long friendship together including when Mr. Say served as Mr. Souki's Finance Chair during the time of Mr. Souki's first Speakership. He stated that everyone knew that Mr. Say lived at 2247 Star Road. He also indicated that after session, during that time, on some nights members of the House leadership would go for drinks and socialize and that he frequently would be the one to drive Mr. Say home to his house on Star Road in Pacific Heights. He also related one occasion where he dropped off Mr. Say quite late in the night and particularly drunk and Mrs. Say refused to let Mr. Say into the house. And after some time, Mr.

Souki left Mr. Say on the steps in front of the door and went to his lodging.

DATED: Honolulu, Hawai'i

September 8, 2014

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

KEIKO BONK
Declarant

Law Office of Lance D Collins
Lance D. Collins 8246
Post Office Box 2154
Wailuku, HI 96793
808.243.9292

IN THE CIRCUIT COURT OF FIRST CIRCUIT

STATE OF HAWAII

12-1-0736 KTM

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

Petitioners,

vs.

CALVIN K.Y. SAY,

Respondent.

) SP No. _____
) (Quo Warranto)
)
) PETITION FOR WRIT OF QUO
) WARRANTO; VERIFICATION OF
) PETITION; WRIT OF QUO WARRANTO
)
) Return Hearing
) Judge: _____
) Date: _____
) Time: _____
)

PETITION FOR WRIT OF QUO WARRANTO

1. Petitioners RAMONA HUSSEY, M. KA'IMILA NICHOLSON, NATALIA ANTONIA HUSSEY-BURDICK, BRENT S. DUPUIS, MARVIN D. HESKETT, and JOEL L. MERCHANT are residents of the Twentieth Representative District, island of O'ahu and city and county of Honolulu and are all registered voters thereat (hereafter "Petitioners").

2. Respondent CALVIN K.Y. SAY acts as the member of the House of Representatives from the Twentieth Representative District.

3. Respondent, has at all times pertinent in this filing been a resident of the First Circuit and that acts complained of herein took place in the First Circuit.

4. The Hawai'i State Constitution, Article III, Section 6 states in part: "No person shall be eligible to serve as a member of the house of representatives unless the person is, prior to

RECEIVED
\$200.00

PAID
SURCHARGE
\$50.00

RECEIVED
CIVIL ADM. COST
\$ 50.00

RECEIVED
DEC 1 PM 3:30
J. KUBO
F. M. K.

filing nomination papers and thereafter continues to be, a qualified voter of the representative district from which the person seeks to be elected[.]”

5. The Hawai'i State Constitution is the source of all law in the State and is an enabling authority, and it forbids the respondent to serve as a member of the house of representatives from one district while living in another district.

6. That said provision cannot be modified, changed, corrected, amended, clarified or explained by any statute, rule or regulation and is mandatory and supreme.

7. Respondent has lived and continues to live at 2247 Star Road in Pauoa Valley in the Twenty Fifth Representative District and the house at 2247 Star Road is where his habitation is fixed.

8. Respondent has lived and continues to live with his wife and two children at their 2247 Star Road home for over two decades and his wife and two children are registered voters at 2247 Star Road.

9. Respondent is registered to vote and claims legal residency at 1822 10th Avenue in Palolo Valley but has previously admitted he does not actually live there and does not actually live there.

10. The Writ of Quo Warranto is an action regarding the authority of an official to hold office. Office of Hawaiian Affairs v. Cayetano, 94 Haw. 1 (2000), Haw. Rev. Stat. 659-1 et seq.

11. The Writ of Quo Warranto requires that the Respondent come forward with his burden and show by what authority he holds title to office.

12. This Petition and the Writ do not collaterally attack any of said Respondent's acts, if any, during the performance of membership in the Twenty-Seventh State Legislature, but only challenge his authority to be in said position and conform to the liberal notice pleading standard.

WHEREFORE Petitioners pray:

A. That a Writ of Quo Warranto issue by this Honorable Court directing said Respondent to appear before this Honorable Court at a time certain and as soon as possible and answer unto petitioners and show by what warrant and authority he claims title.

B. That upon an evidentiary hearing, judgment be entered directly, that Respondent 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.

C. That Petitioners be awarded costs and attorney's fees as are reasonable and appropriate.

D. That the Court award such other remedies that are reasonable and appropriate to the meaningful execution of the aforementioned requested judgment.

DATED: Wailuku, Maui, Hawaii

December 29, 2012



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorneys for Petitioners

Law Office of Lance D Collins
Lance D. Collins 8246
Post Office Box 2154
Wailuku, HI 96793
808.243.9292

IN THE CIRCUIT COURT OF SECOND CIRCUIT

STATE OF HAWAII

RAMONA HUSSEY, M. KA'IMILA	)	SP No. _____
NICHOLSON, NATALIA ANTONIA	)	(Quo Warranto)
HUSSEY-BURDICK, BRENT S. DUPUIS,)	
MARVIN D. HESKETT, and JOEL L.	)	VERIFICATION OF PETITION
MERCHANT)	
)	
Petitioners,)	
)	
vs.)	
)	
CALVIN K.Y. SAY,)	
)	
Respondent.)	

VERIFICATION OF PETITION

State of Hawai'i)	
	)	ss.
City and County of Honolulu)	

RAMONA HUSSEY, being first duly sworn on oath, deposes and says: That she has read the Petition, knows the contents thereof and that the matters and things set forth therein are true based upon his or her information or belief.

Ramona Hussey

 RAMONA HUSSEY, Petitioner

Subscribed and sworn to before me this
21st day of December, 2012.
S. Kehau Lee Riley
 NOTARY PUBLIC, STATE OF HAWAII

 S. Kehau Lee-Riley

Date: DEC 20 2012	# Pages: 10
Name: S. Kehau Lee-Riley	First Circuit
Doc. Description: Petition for Writ of Quo Warranto	
<i>S. Kehau Lee Riley</i> Notary Signature	
NOTARY CERTIFICATION	



My commission expires: MAY 08 2015



State of Hawai'i)
)
City and County of Honolulu) ss.

M. KA'IMILA NICHOLSON, being first duly sworn on oath, deposes and says: That she has read the Petition, knows the contents thereof and that the matters and things set forth therein are true based upon his or her information or belief.

M. Ka'imila Nicholson

M. KA'IMILA NICHOLSON, Petitioner

Subscribed and sworn to before me this
12th day of December, 2012.

Sandy Yoshimura
NOTARY PUBLIC, STATE OF HAWAII

Sandy Yoshimura

My commission expires: 6-24-2015

Date: 12-13-12 # Pages: 10

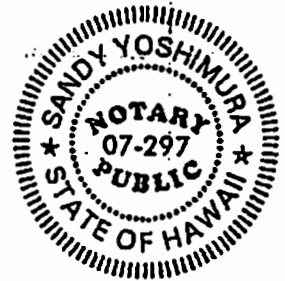
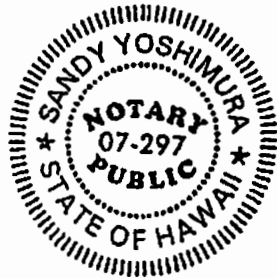
Name: Sandy Yoshimura First Circuit

Doc. Description: Verification

of Petition

Sandy Yoshimura
Notary Signature

NOTARY CERTIFICATION



State of Hawai'i)
)
City and County of Honolulu) ss.

NATALIA A. HUSSEY-BURDICK, being first duly sworn on oath, deposes and says: That she has read the Petition, knows the contents thereof and that the matters and things set forth therein are true based upon his or her information or belief.

Natalia A. Hussey-Burdick
NATALIA A. HUSSEY-BURDICK, Petitioner

Subscribed and sworn to before me this
13th day of December, 2012.

Sandy Yoshimura
NOTARY PUBLIC, STATE OF HAWAII

Sandy Yoshimura
My commission expires: 6-24-2015

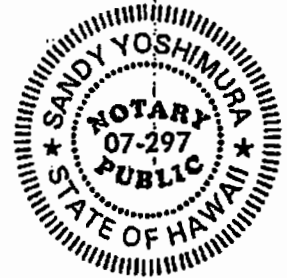
Date: 12-13-12 # Pages: 10

Name: Sandy Yoshimura First Circuit

Doc. Description: Verification of
Petition

Sandy Yoshimura
Notary Signature

NOTARY CERTIFICATION





NOTARY CERTIFICATION

Name: Sandy Yoshimura First Circuit
 # Pages: 10
 Date: 12-2-12
 Doc. Description: Petition for Verification
 Notary Signature: [Signature]



Subscribed and sworn to before me this 12th day of December, 2012.
 My commission expires: 7-29-12
 Notary Public, State of Hawaii
 Notary Signature: [Signature]

[Signature]
 BRENT SCOTT DUPUIS, Petitioner

BRENT S. DUPUIS, being first duly sworn on oath, deposes and says: That he has read the Petition, knows the contents thereof and that the matters and things set forth therein are true based upon his or her information or belief.

State of Hawaii)
 City and County of Honolulu)
)
)
)
 ss.)

State of Hawai'i)
)
City and County of Honolulu) ss.

MARVIN D. HESKETT, being first duly sworn on oath, deposes and says: That he has read the Petition, knows the contents thereof and that the matters and things set forth therein are true based upon his or her information or belief.

MARVIN D. HESKETT
MARVIN D. HESKETT, Petitioner

Subscribed and sworn to before me this
13th day of December, 2012.

Sandy Yoshimura
NOTARY PUBLIC, STATE OF HAWAII

Sandy Yoshimura
My commission expires: 6-24-2015

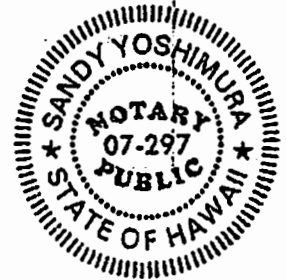
Date: 12-13-12 # Pages: 10

Name: Sandy Yoshimura First Circuit

Doc. Description: Verification of
Petition

Sandy Yoshimura
Notary Signature

NOTARY CERTIFICATION



State of Hawai'i)
)
City and County of Honolulu) ss.

JOEL L. MERCHANT, being first duly sworn on oath, deposes and says: That he has read the Petition, knows the contents thereof and that the matters and things set forth therein are true based upon his or her information or belief.

Joel L. Merchant
JOEL L. MERCHANT, Petitioner

Subscribed and sworn to before me this
13th day of December, 2012.

Sandy Yoshimura
NOTARY PUBLIC, STATE OF HAWAII

Sandy Yoshimura

My commission expires: 6-24-2015

Date: 12-13-12 # Pages: 10

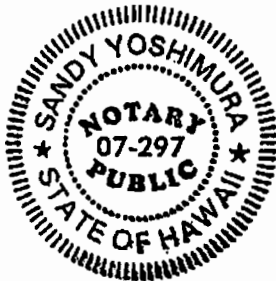
Name: Sandy Yoshimura First Circuit

Doc. Description: Verification

Sandy Yoshimura

Notary Signature

NOTARY CERTIFICATION



Law Office of Lance D. Collins
Lance D. Collins
Post Office Box 2154
Wailuku, HI 96793
808.243.9292

IN THE CIRCUIT COURT OF SECOND CIRCUIT

STATE OF HAWAII

RAMONA HUSSEY, M. KA'IMILA	)	SP No. _____
NICHOLSON, NATALIA ANTONIA	)	(Quo Warranto)
HUSSEY-BURDICK, BRENT S. DUPUIS,)	
MARVIN D. HESKETT, and JOEL L.	)	WRIT OF QUO WARRANTO
MERCHANT)	
Petitioners,)	
vs.)	
)	
CALVIN K.Y. SAY,)	
Respondent.)	

WRIT OF QUO WARRANTO

IN THE NAME OF THE STATE OF HAWAII

CALVIN K.Y. SAY, who acts as member of the House of Representatives from the
Twentieth Representative District:

YOU ARE COMMANDED to appear on _____, the
_____ day of _____, 2013 at the hour of
_____, before the undersigned in his or her courtroom, Courtroom No. _____
at Ka'ahumanu Hale, 777 Punchbowl Street, City and County of Honolulu, State of Hawai'i, and
answer unto the petitioners, and their petition hereto annexed, and to show by what warrant and
authority you claim title to the office of member of the House of Representatives for the Twentieth
Representative District, and to abide by the order, judgment or decree to be made in the premises,
and have you then and there this writ.

DATED: _____

JUDGE OF THE ABOVE ENTITLED COURT

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

90, NY 60 11 11 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

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.

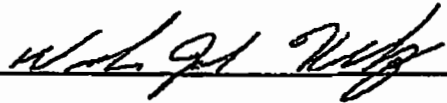
The ultimate question is whether and where Representative Say has a permanent, fixed residence. Even if Representative Say claims that he is merely "absent" from 1822 10th Avenue and "intends" to return there (pursuant to § 11-13(1)), this would make the constitutional and statutory requirements for 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 18 (voter fraud).

Thank you for your attention to this matter.





ELECTIONS

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

DENISE C. De COSTA
City Clerk

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.

Exhibit B

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.

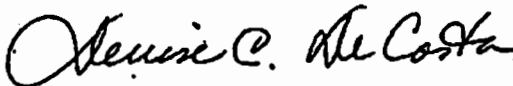
The preponderance of documentary evidence suggests that 10th Avenue is the address used by Mr. Say for much of his personal matters. I am also satisfied with Mr. Say's explanation that his absence from his 10th Avenue home is due to extraordinary circumstances relating to the provision of health and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

AUG 17 12 35 PM '06

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

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.

Exhibit C

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 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

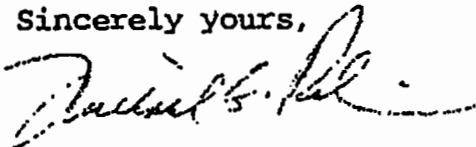
owners commonly check the condition, maintenance and repair of real property with visits to the property, for example, but in no way does this constitute residency for electoral purposes.

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."

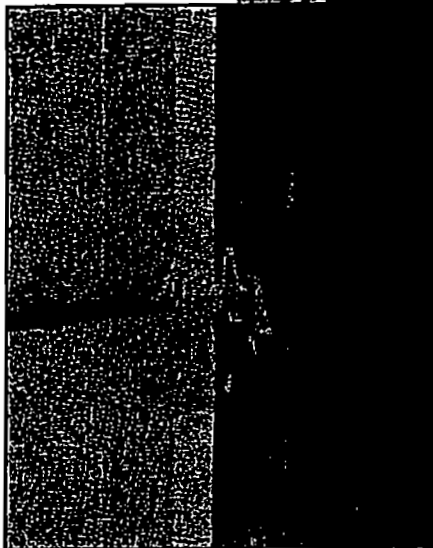
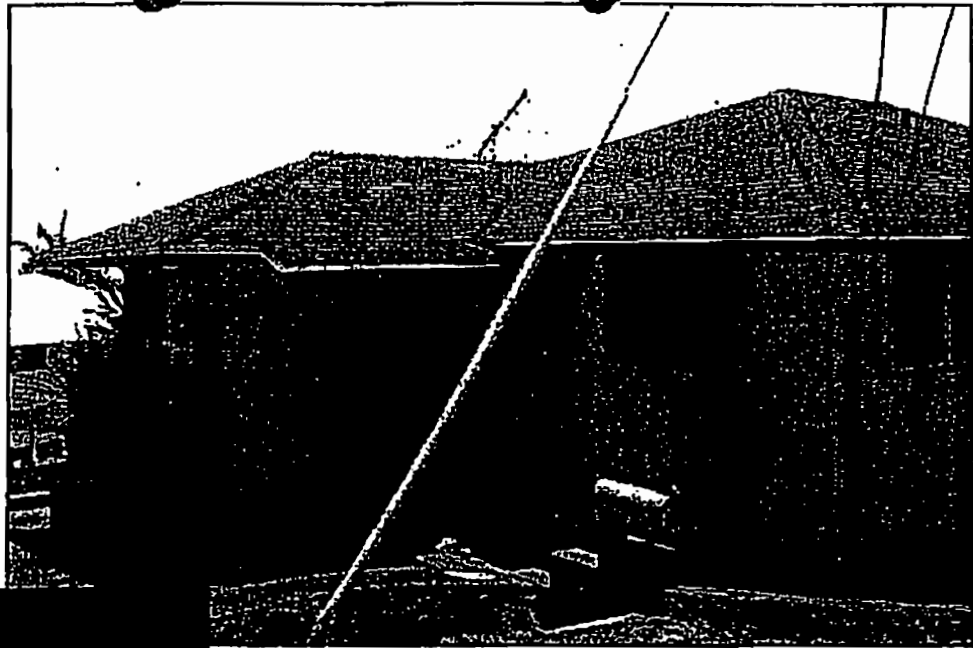
-- Davy Crockett 1786-1836

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.

Exhibit 2, page 1.



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.

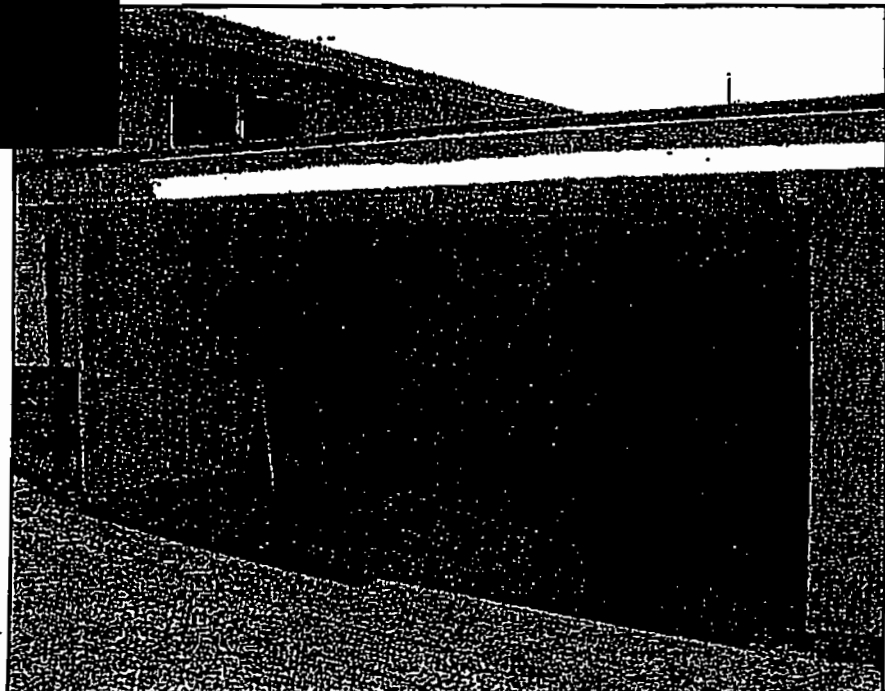
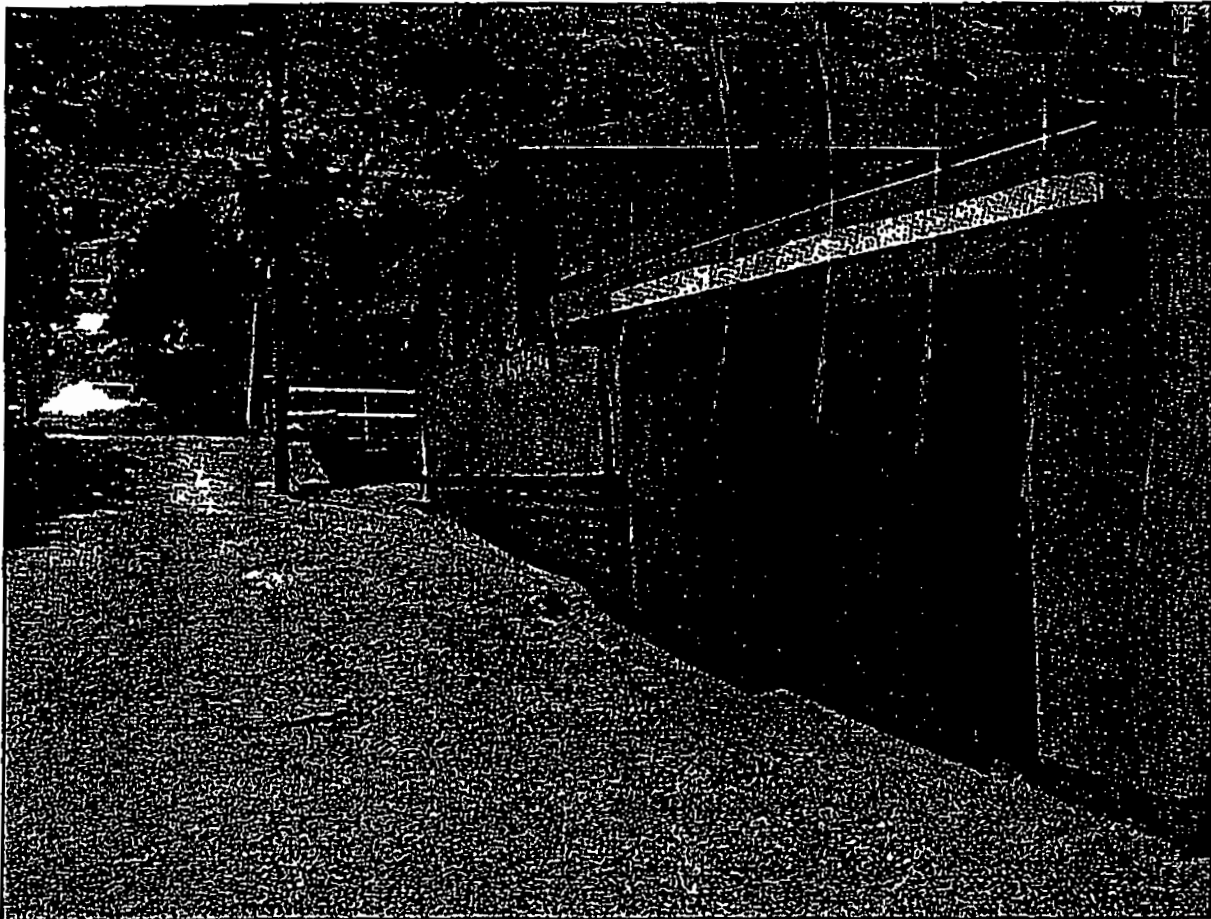
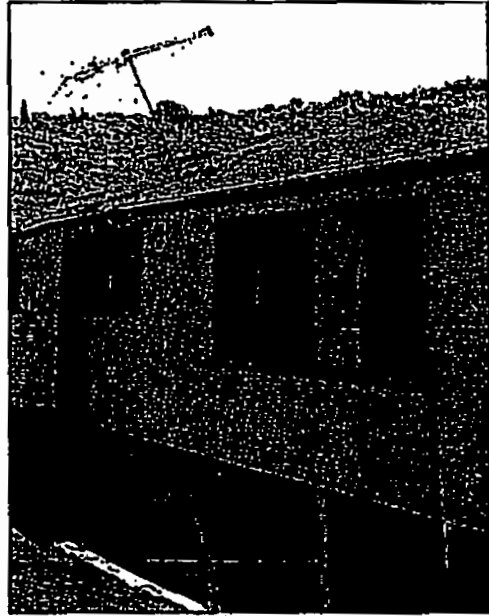


Exhibit 2, page 2.

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.





HELP CONTACT US

Home Property Search
Address Parcel ID Advanced

RECORD DETAILS

Parcel Data

Permits 330380230000
Land Details 1822 10TH AVE

SAY,CALVIN K Y

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

Parcel Data

TMK 330380230000
Site Address 1822 10TH AVE
Apartment No.
Property Class Please select the Land Details tab.
Neighborhood Code 3384-1
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**

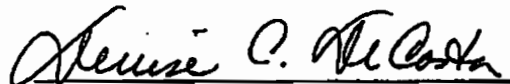
**DENISE C. DE COSTA
CITY CLERK**

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. Palcio 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

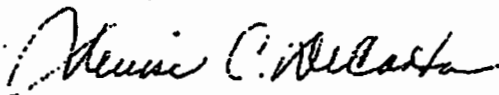
We are in receipt of your letter seeking to challenge the voter registration of Mr. Calvin K.Y. Say and Ms. Cora K. Say to remain registered voters in the 20th Representative District, Precinct 5. The challenge to the voter registration for Ms. Cora K. Say will be addressed separately.

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

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

Postage	\$.39
Certified Fee	2.40
Return Receipt Fee (Receipts Required)	1.55
Registered Delivery Fee (Insurance Required)	
Total Postage & Fees	\$ 4.34

Send To
MR. CALVIN SAY
1822 10th Avenue
Honolulu, HI 96816

NOTE 9550 2000 0070 9007

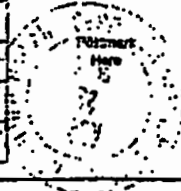


Exhibit D

**OFFICE OF THE CITY CLERK
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 529-4352**

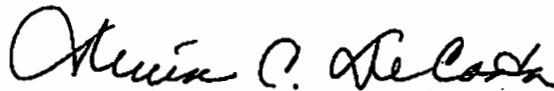
**DENISE C. DE COSTA
CITY CLERK**

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

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 Hiramawa 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 PH 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&index=1>

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

⁷ <http://www.honolulupropertytax.com/Forms/Datalets.aspx?mode=PROFILEALL&slIndex=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



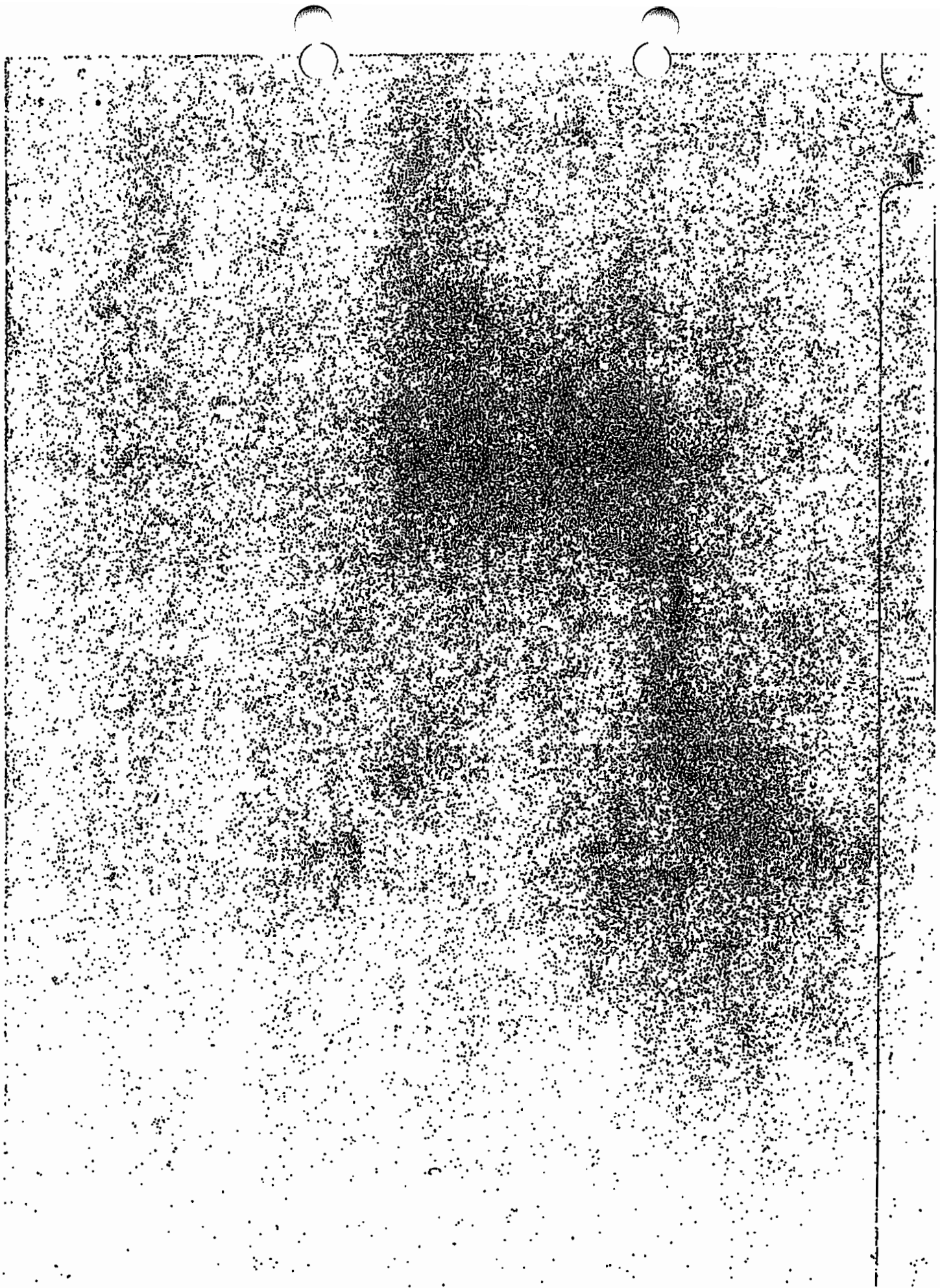
Julius Calasicas

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

84-5544-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 § 10-4.

I. FACTUAL BACKGROUND

For voter registration purposes, Representative Say lists his residence address as "1822 10th Avenue, Honolulu, Hawaii 96818." 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 residency 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 place 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."

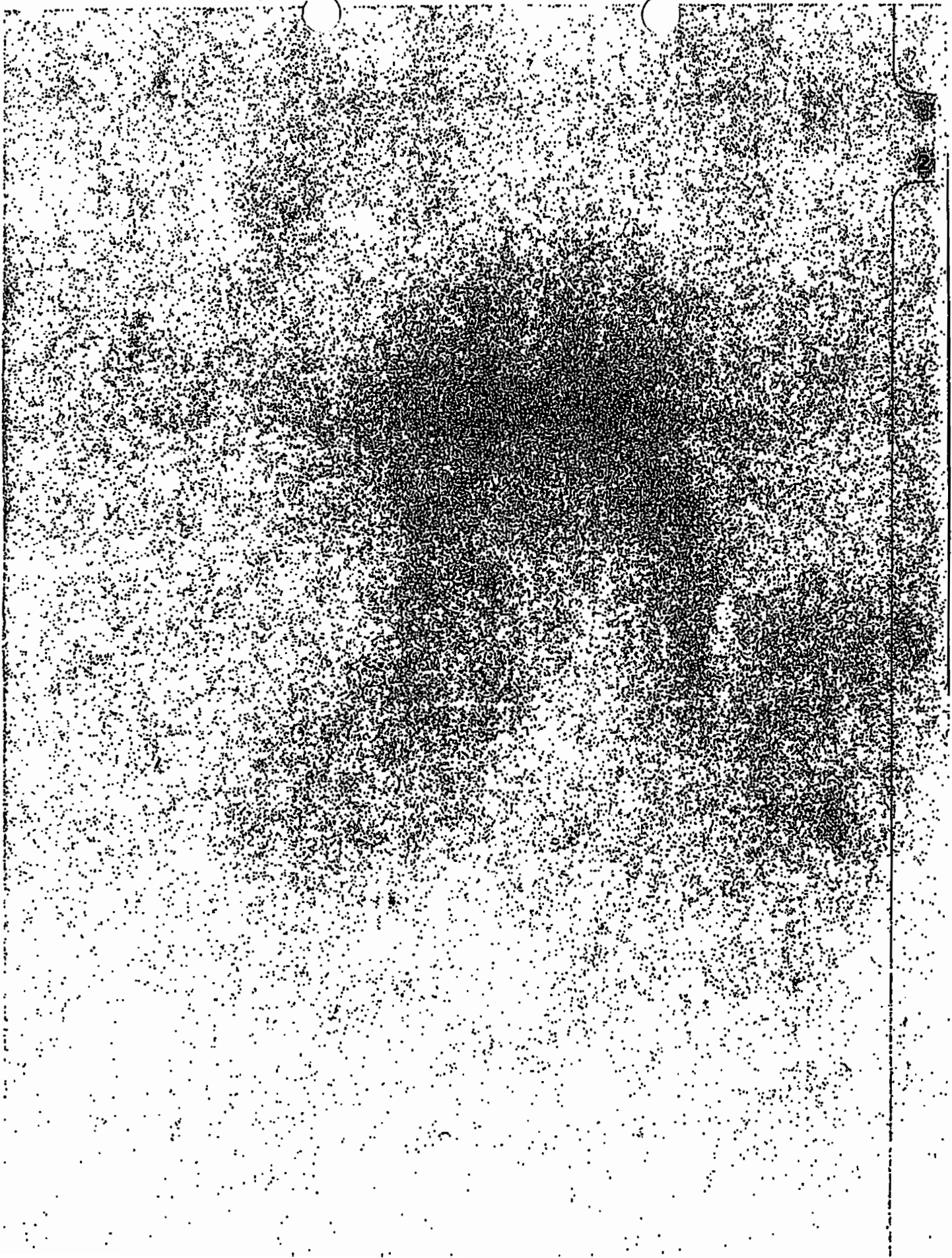
An investigation will show that Representative Say has clearly established a permanent and fixed residence outside of House District 20. (Please provide me with the name(s) of your staff members who will be responsible for conducting this investigation.) The mere act of maintaining a residence in District 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.

A handwritten signature in cursive script, appearing to read "W. L. J. [unclear]", is written over a horizontal line.



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,

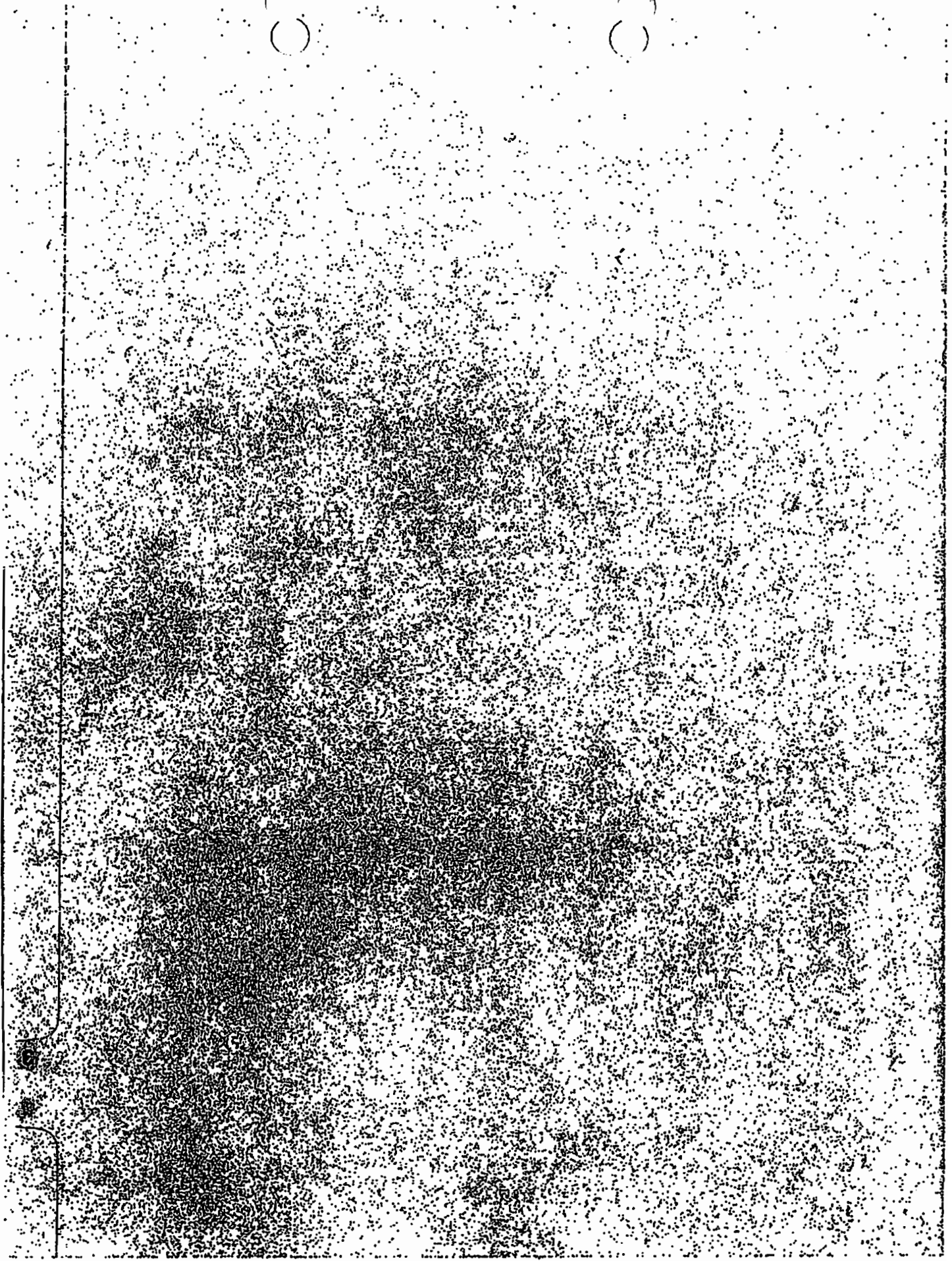
neither Mrs. Say nor their sons join him in these brief stays, and convenience is not residency.

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
220180110000
220180110000

Owner
KOTAKE,HARUYO MTR
KOTAKE,STEPHEN T TR

Situs Address
2247 STAR RD
2247 STAR RD

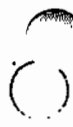
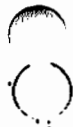
Data Last Updated : 12 Jul 2010

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.



7 3



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 KOTAKE	08 Apr 1913	26 Mar 2001 (V)	87	96812 (Honolulu, Honolulu, HI)	(none specified)	Hawaii	575-03-0816		

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/interim/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

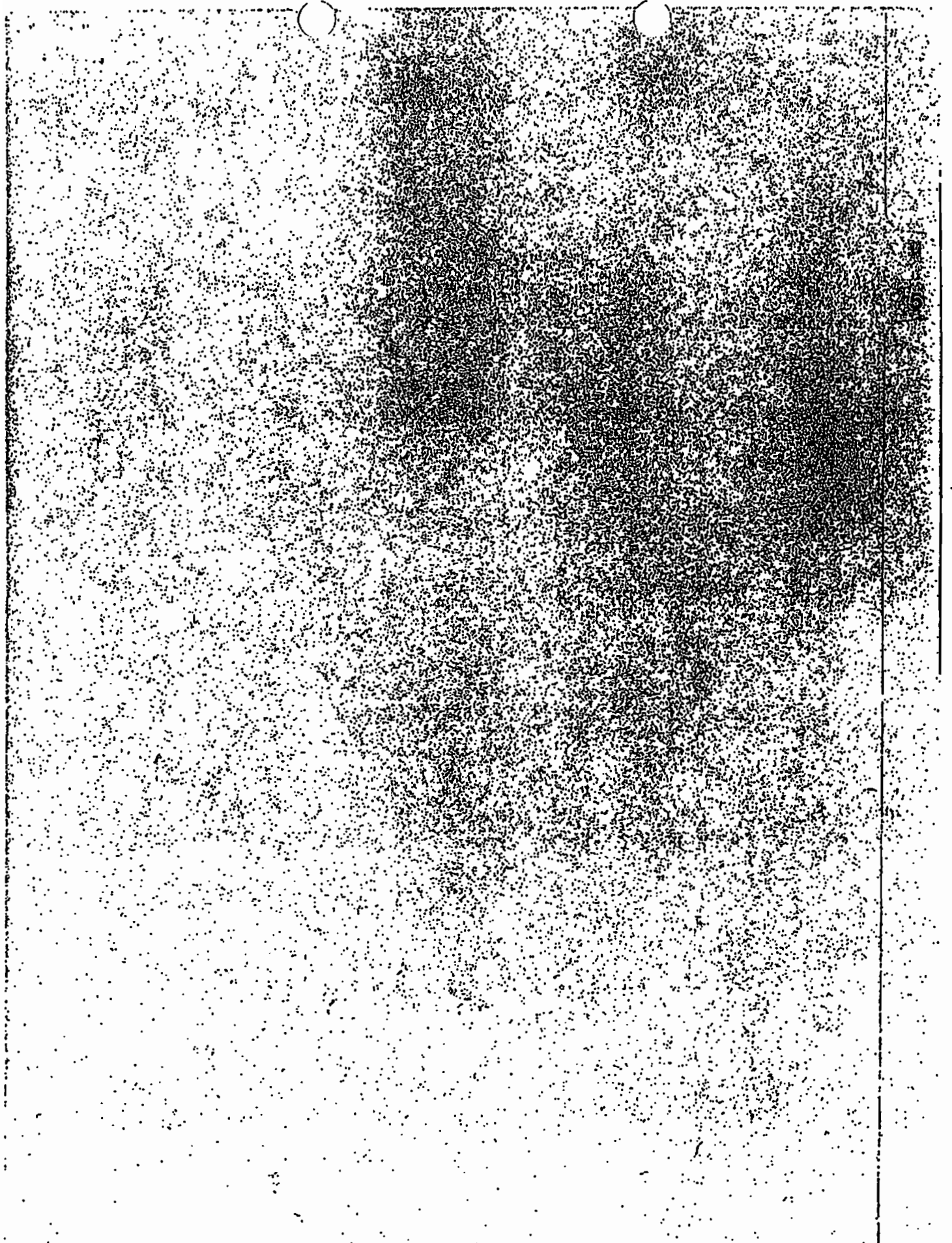
Name	Last KOTAKE	Exact	First STEPHEN	Middle (Initial)
Birth	Year	Exact	Month	Day
Death	Exact	Any	Any	Any
Last Residence	Zip	City	County	State
Last Benefit	or			
SSN				
Issued by	Any			
Age at Death	Exact			

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

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, Hilarío 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 Kulamann "Darling" Apana, 74, of Nanakuli, a homemaker, died Saturday. She was born in Honolulu. She is survived by hanaí sons Douglas Mahoe and Peter Mahoe; sons James "Butchie" and Morris; daughters Imaikalani Bertelmann, Kulamanu Kikila, Kaipoleimaru Brown, NakooOkalani Apana, Pililua Apana-Okí 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 No()ni St. Casual attire. Donations suggest() 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 Nuanu Ave. Burial: 1 p.m. Monday at the National Memorial Cemetery of the Pacific, Punchbowl. Casual attire.

Stephen Toshitchi 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 Kellii 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 Phumberg, 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 Wana, Maui, a social services caseworker at 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>

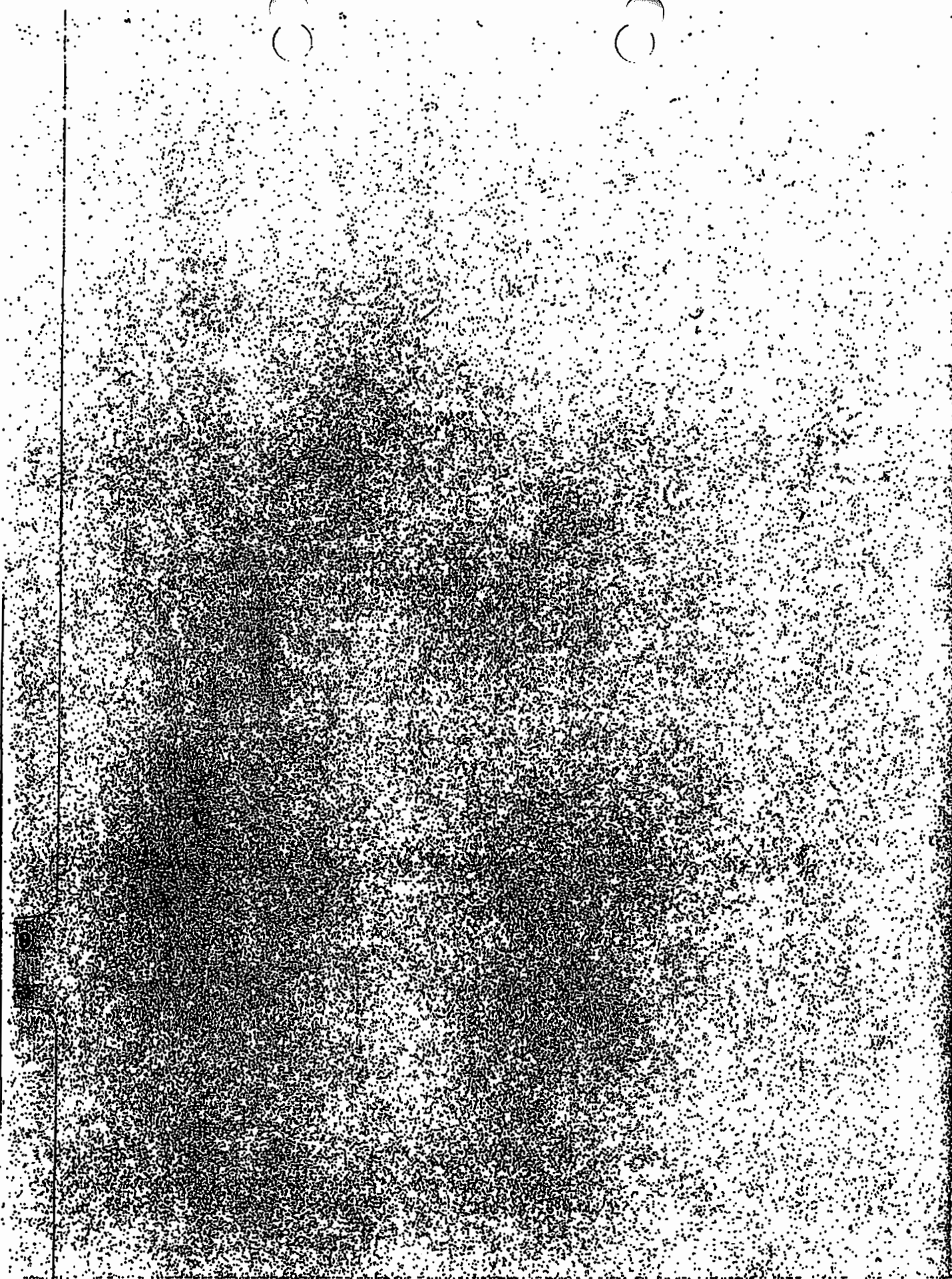
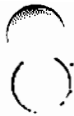
The index, which goes back several decades,
is available via Telnet software.

E-mail to City Desk

Text Site Directory:

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

© 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.

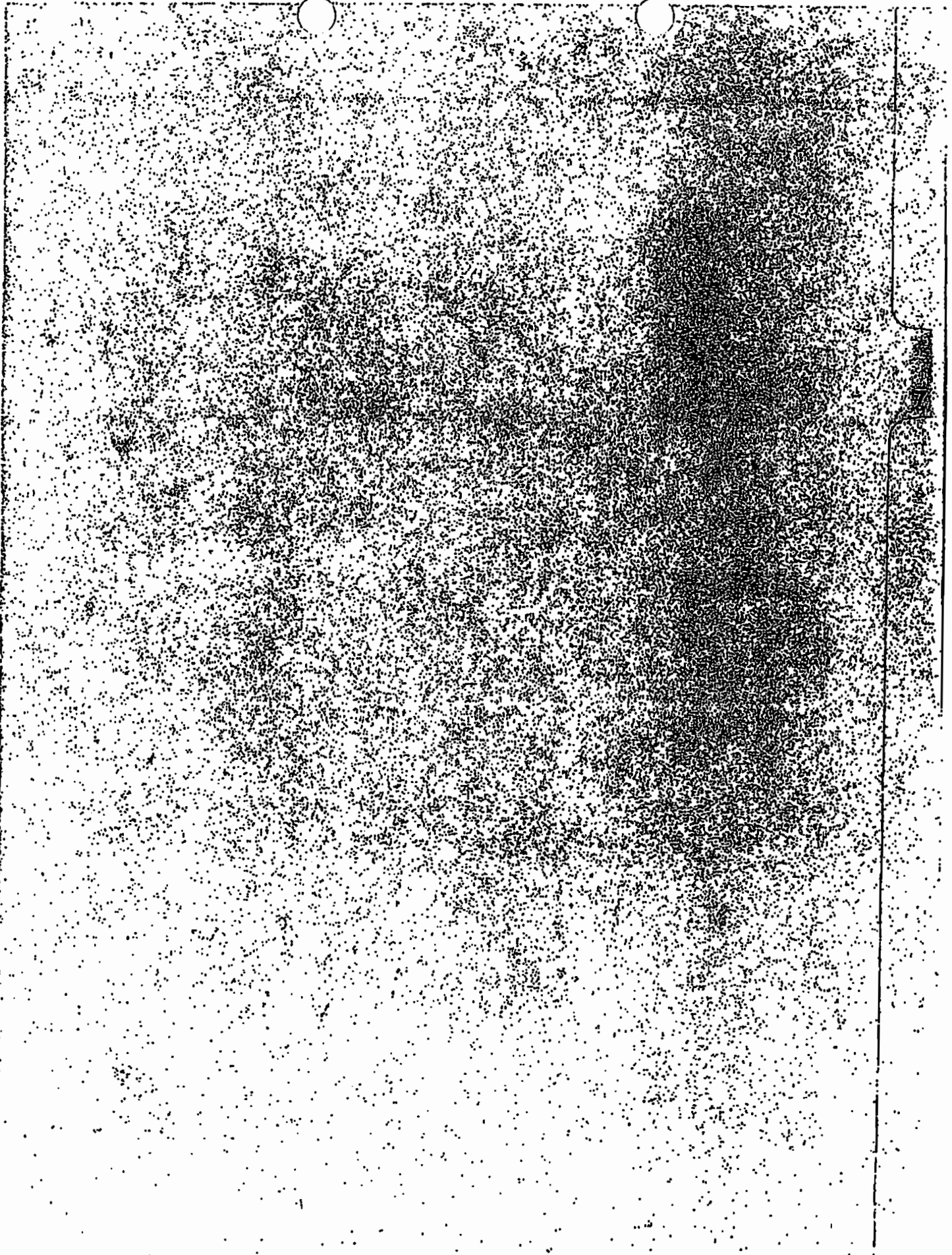
Dated: 8/28/06 Signed: Calvin K.Y. Say

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: 2-16-09

leg



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. Palcio'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. Palcio's letter, I provide you with the following information:

which often requires her to stay in bed with abdominal and hemmoroidal 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

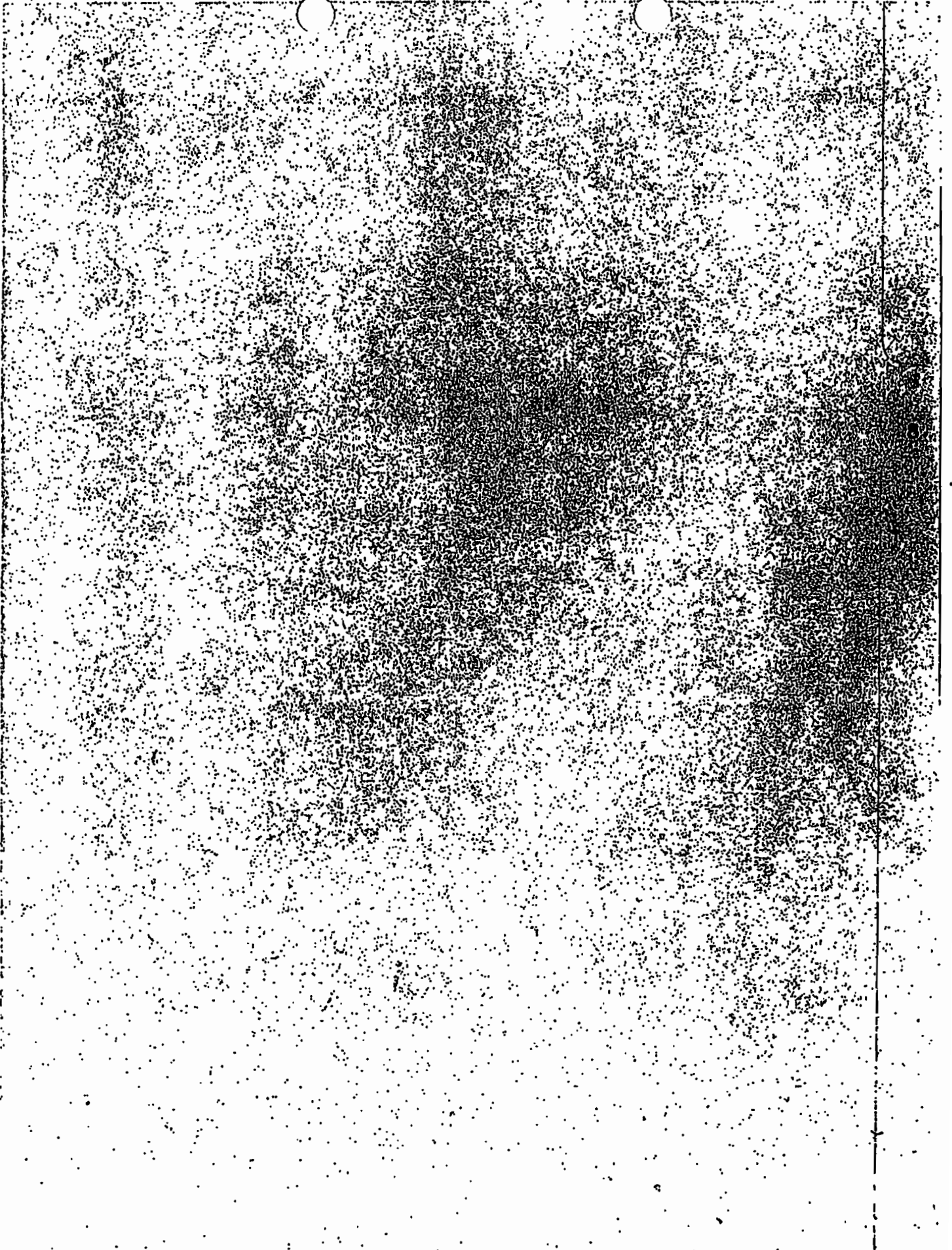
b. There are no gardening tools around the exterior of our 10th Avenue Home because our gardening tools are kept and stored under our home.

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



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. Palcio appealed Ms. DeCosta's decision to the Board of Registration for the City & County of Honolulu.

12. As Mr. Palcio and witness Jaynel Hiramawa testified, and as is documented more specifically for the month of August 2006 by the photographs and handwritten log submitted by Mr. Palcio, 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

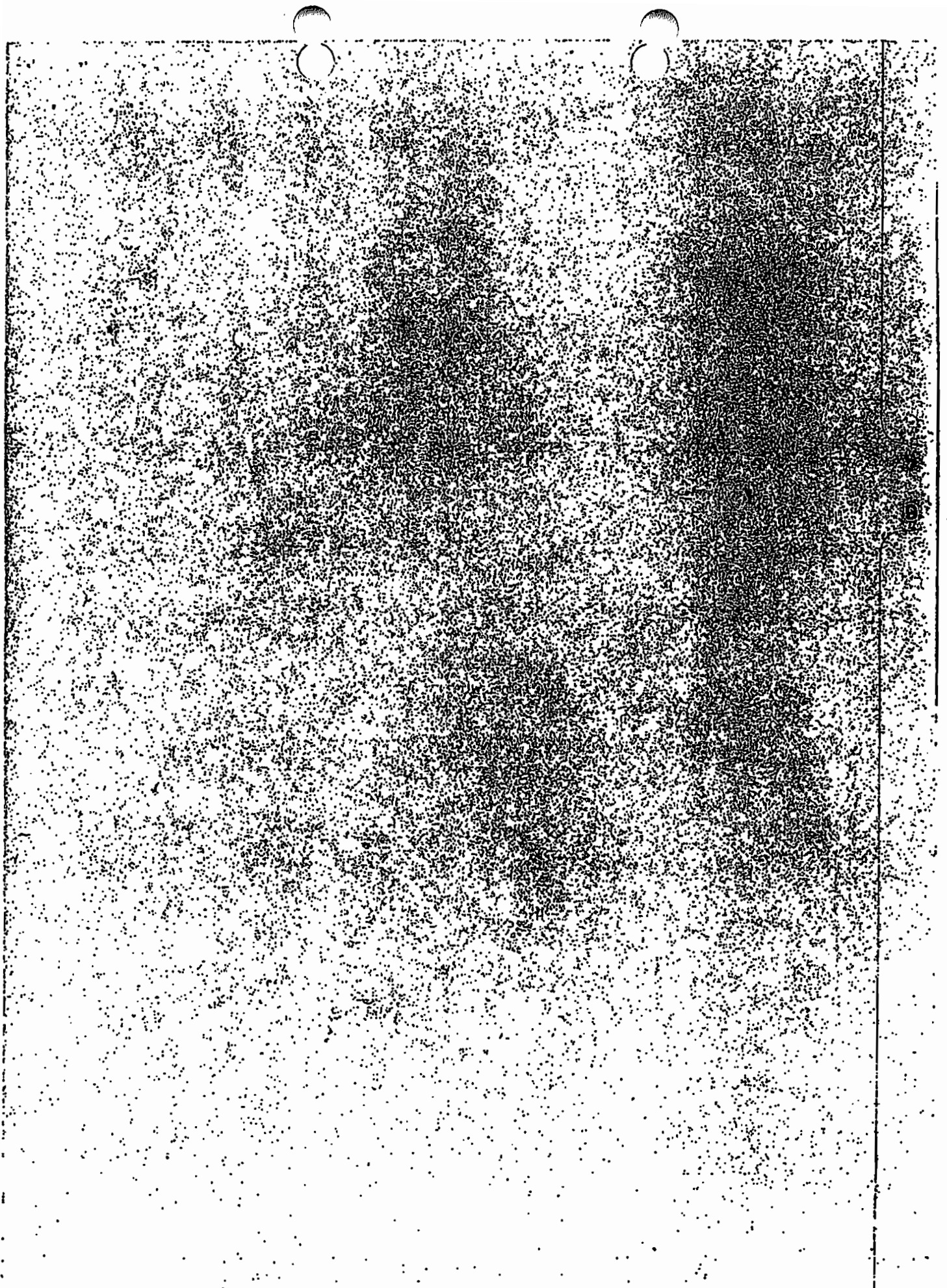
Board of Registration for the City &
County of Honolulu

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 E. Smith*
Woodell H. Fuji*
Robert K. Ichikawa*
Jinzeo-Aru A. Oida*
Clifford K. Waga*
Charles W. Coll*
John P. Litzak*
Larry L. Myers*
Craig K. Shikama*
Christopher T. Kobayashi*
Rich K. Oh*
Burt T. Lee*

Ronald T. Ogino*
David B. Tong*
Shane A. Nakamura*
Lanson K. Rippa*
Jonathan A. Kobayashi*
Nathan H. Yoshimoto*
Kunath M. Nakazono*
Gregory M. Sato*
Brendan S. Bailey
James W. Schickel
Joseph A. Stewart
Robert A. Ueda
Laura L. Van Buren
Thomas K. Yea

*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 Palcio**

Dear Mr. Suzuki:

Thank you for the phone call this afternoon. First, it is rather disheartening that Mr. Palcio 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.

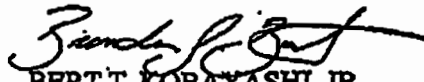
Nonetheless, Mr. Palcio's admittedly politically motivated actions have caused a great deal of unwarranted stress on Ms. Say and the rest of the Say family. In fact, due to Mr. Palcio's actions, Ms. Say was discouraged from voting in the recent primary election and did not intend to vote in the upcoming general election. Therefore, while Ms. Say firmly believes that the 10th Avenue residence is her permanent and fixed residence, she chooses not to contest Palcio'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 oneself separate from the person's spouse" for purposes of determining residency under HRS Chapter 11.

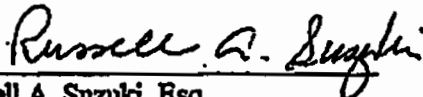
Please confirm your receipt and acknowledgment of this letter and Ms. Say's decision not to contest Mr. Paicic's appeal of the City Clerk's decision by signing in space provided below and sending a copy back to our office. Thank you for your time and attention in this matter.

Very truly yours,

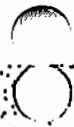


BERT T. KOBAYASHI, JR.
BRENDAN S. BAILBY

for
KOBAYASHI, SUGITA & GODA



Russell A. Suzuki, Esq.
Department of the Attorney General



CS059081
Jul 15,10

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

01:05 PM

Prem Addr: 1822 10TH AVE
HONOLULU 96816-6924

Prem Rte: 450
Old S/N.: 45063893

Prem Name:
Cust Name: SRY, CALVIN H 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.: R
Eff Date....: 05/01/1981 Payment Type...: AB
Sewer Class.: 1-10-0001-R

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	05/09/2010	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.:

LP: FN: CS:
SS: NS: UN:

Check Notes.: PC Close Date.....:

Next Read Date: 09/02/2010

Life Support: N Num of Services: 1

Outst Bal.....:

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

Disputed Bal...:

Eff Date.....: 11/01/1978 Payment Type...: AB

Pending Refund:

Sewer Class.: 1-10-0001-R

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

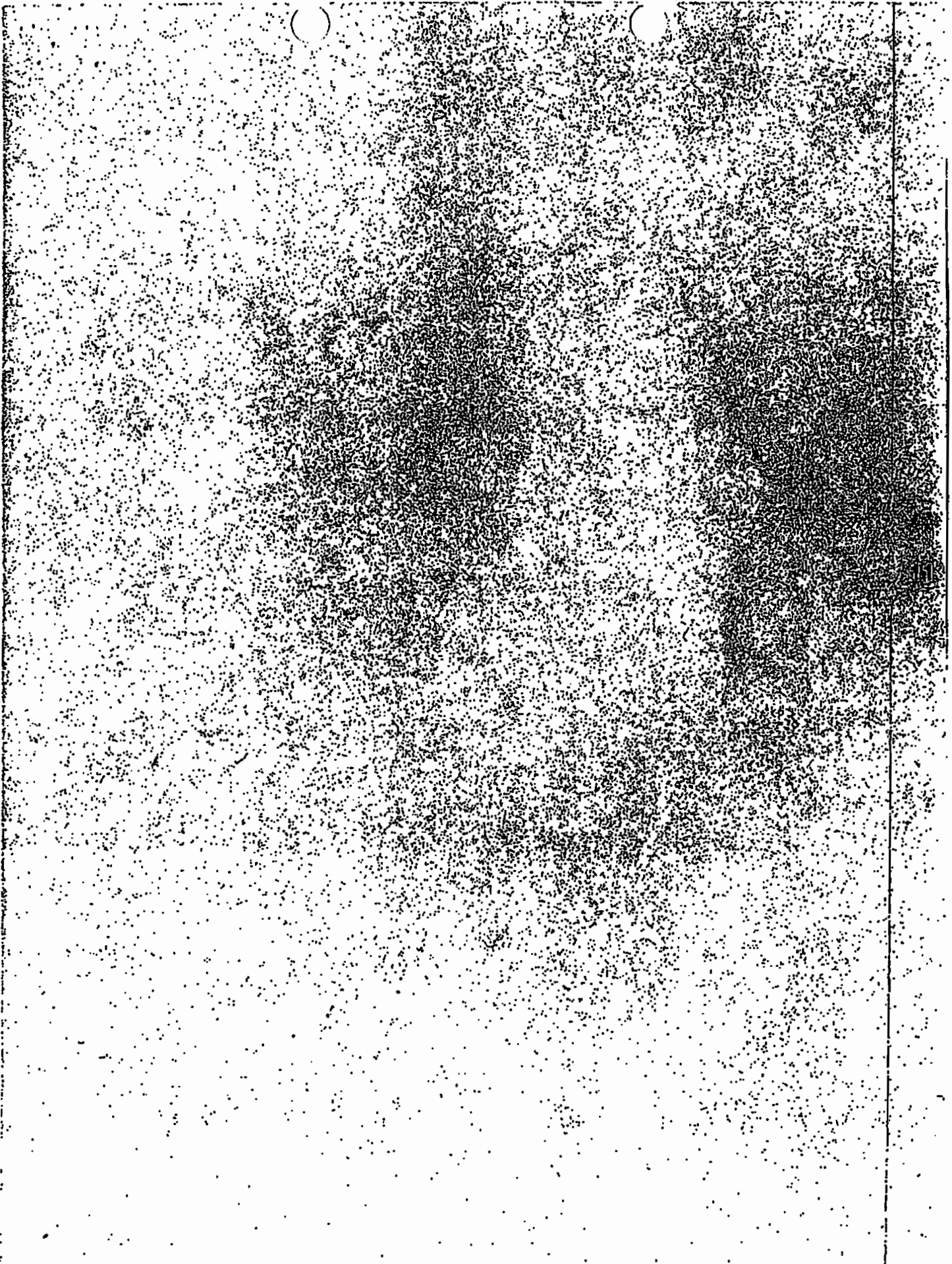
Prem ID: 1144758 Cust ID: 1066611

Direct Command:

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

help retrn quit flip bkward frwrd main

Position cursor or ENTER screen value to select



330380230000
 SAY,CALVIN K Y TR

1822 10TH AVE

Parcel Data
 TMK
 Site Address
 Apartment No.
 Property Class
 Total Parcel Area
 Zoning

330380230000
 1822 10TH AVE

Please select the Assessed Values tab.
 .0936 Acres
 U/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	Acres	Agricultural Indicator
Residential	3583	.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	Recording Date	Land Court Doc#	Certificate Number	BookPage
08/14/2007			FEES CONVEYANCE	08/15/2007	3642789	872062	/

Residential

Property Class	Please select the Land Details tab.
Card	1
Story Height	1
Occupancy	SINGLE-FAMILY
Full Baths	1
Total Living Area	952
Bedrooms	3
Year Built	1959
Eff. Year Built	
First Floor Living Area	952
Half Baths	

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/Amount	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	4224086	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

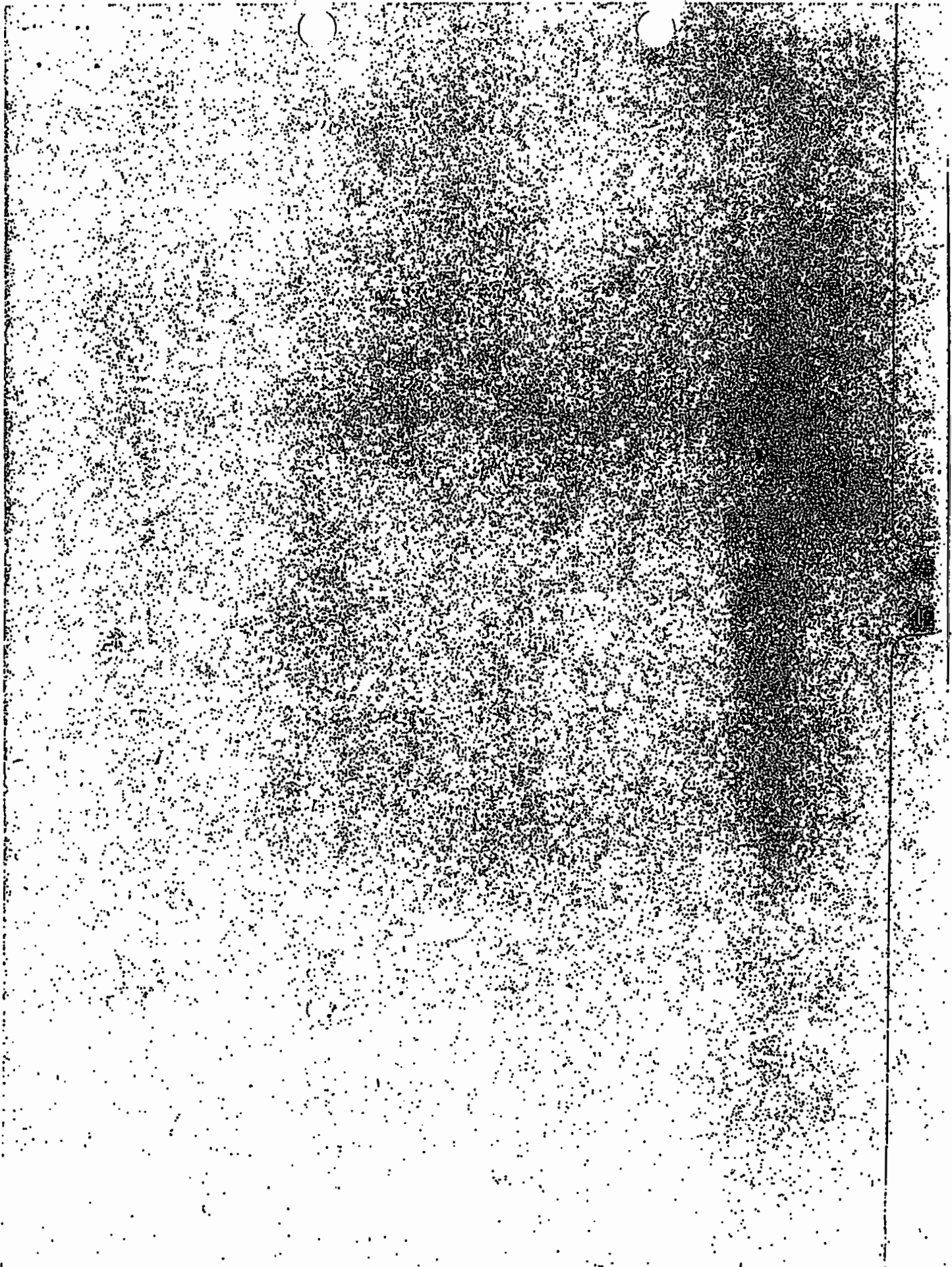
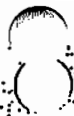
Year	Payment #	Date	Tax	Penalty	Interest	Other
2002	923573	20-AUG-02	-470.12	0.00	0.00	0.00
2002	1034921	20-FEB-03	-470.12	0.00	0.00	0.00
Total:			-940.24	0.00	0.00	0.00

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	489906	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

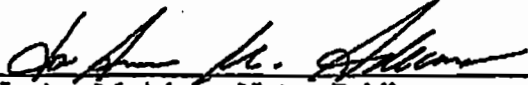
property items near the front porch.

- 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.

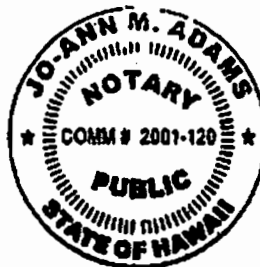



VANLAW

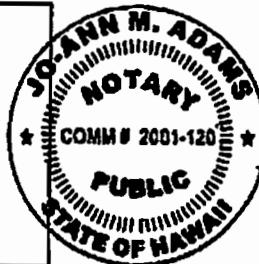
This affidavit was subscribed and sworn to before me on July 29, 2010 in the First Circuit of the State of Hawaii by Van Law.

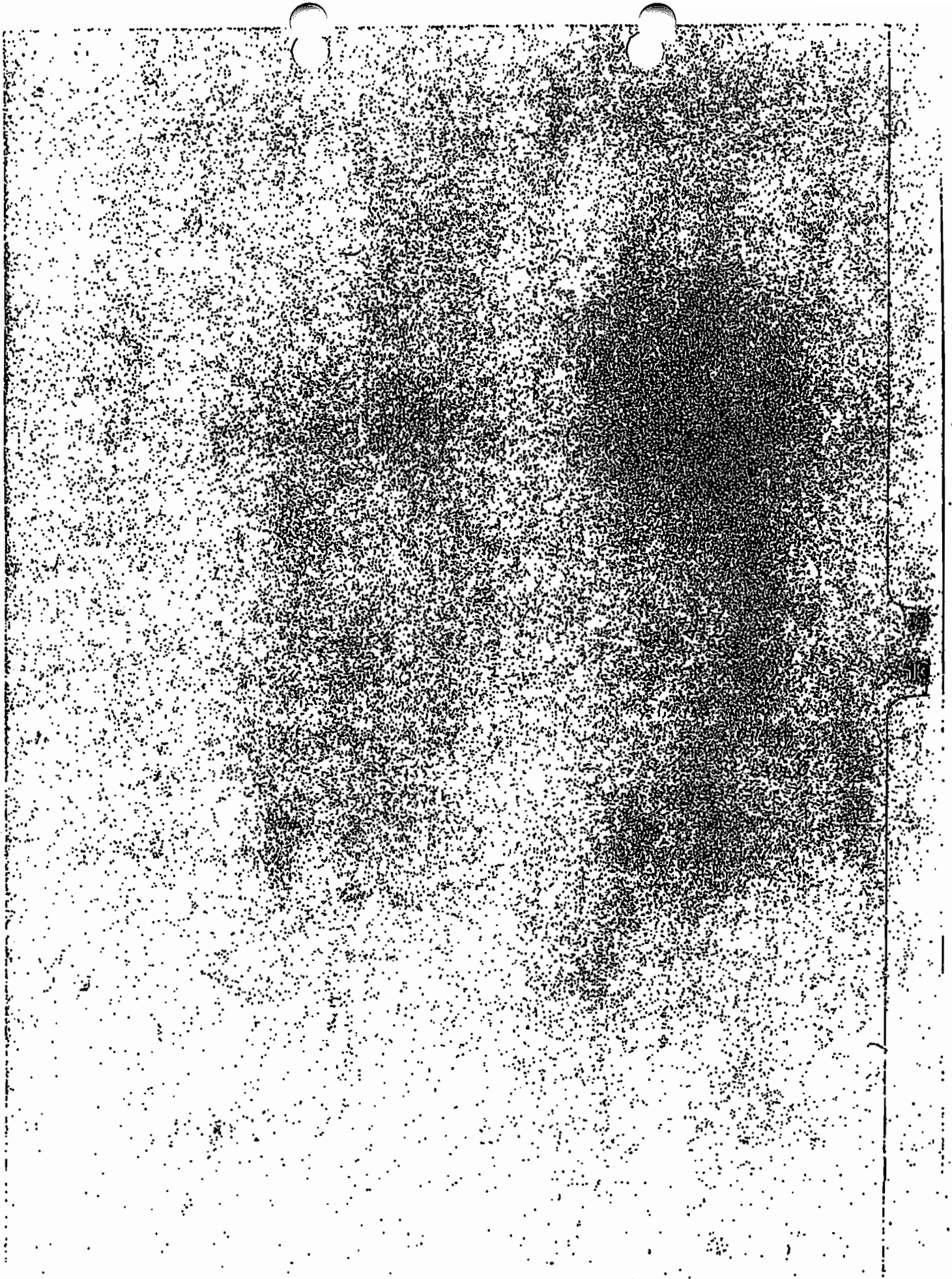


Jo-Ann M. Adams, Notary Public
First Judicial Circuit, State of Hawaii
My commission expires: April 8, 2013



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.



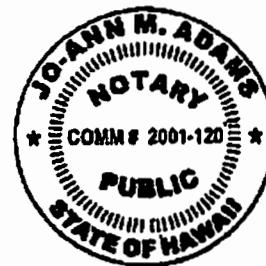
JAYNEL HIRAKAWA

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

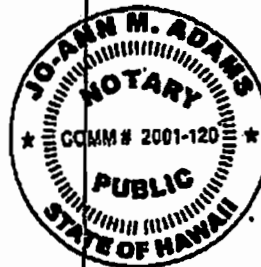


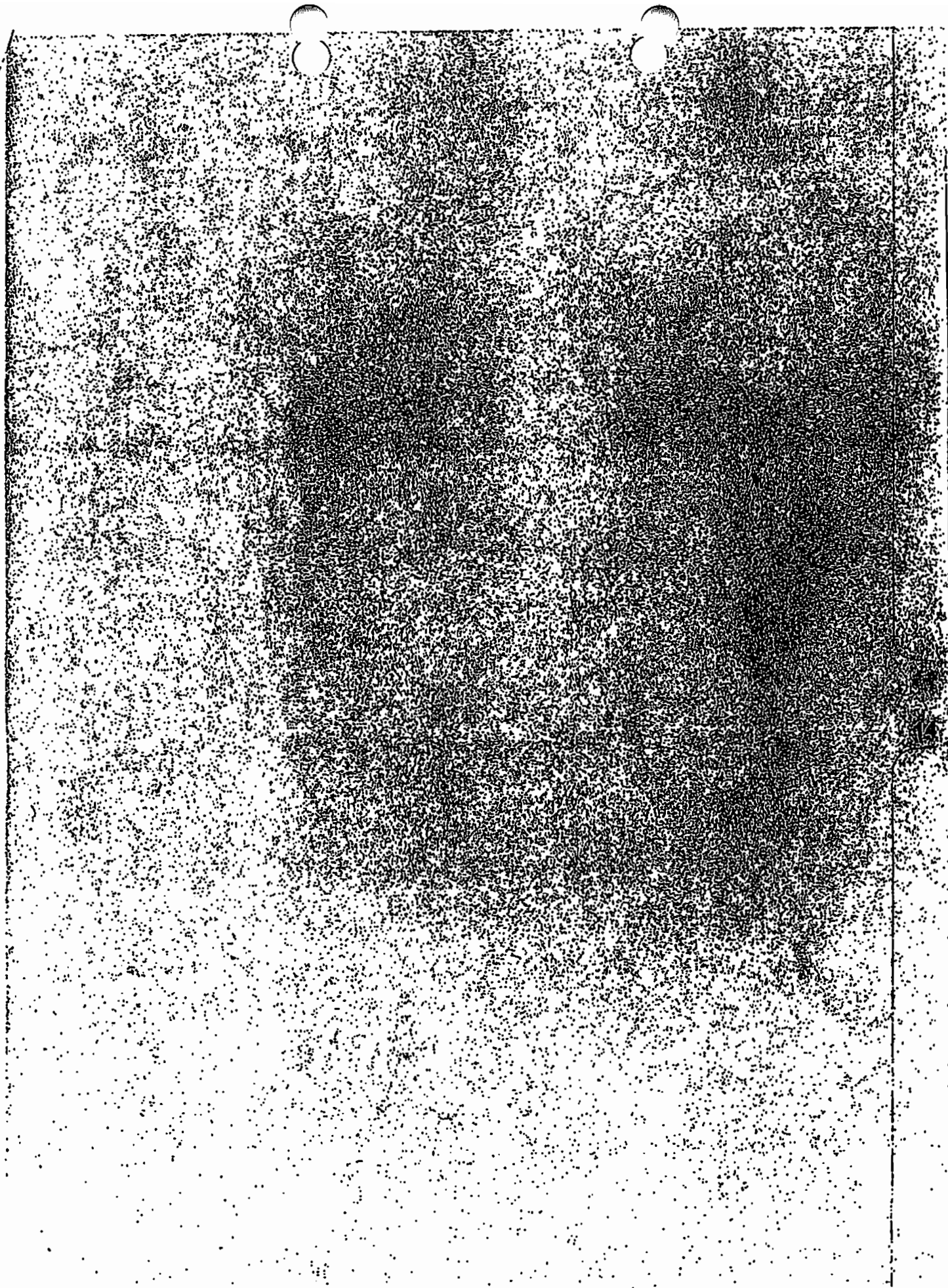
Document Date: July 23, 2010 # Pages: 2

Name: Jo-Ann M. Adams 1st Circuit

Document Description: Affidavit


Notary signature Date July 23, 2010





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	66916 (Honolulu, Honolulu, HI)	(none specified)	Hawaii	576-10-8923		

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-FEWWeb/Internet/main.jsp>

Search
Hundreds of
Thousands
of
Family
Trees

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	Day
Death		Exact	Any	Any
Last Residence	Zip	City	County	State
Last Benefit		or		
SSN				
Issued by	Any			
Age at Death		Exact		

First Name:

Last Name:

Search

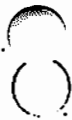
One Family

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 0.008698

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	1894 10TH AVE
340010940000	SAY,CALVIN K Y	1894 10TH AVE
340010940000	SAY,CLARA W S	1894 10TH AVE
340010940000	SAY,HELEWYNN K L	1894 10TH AVE
340010940000	SAY,HUGH S C	1894 10TH AVE
340010940000	SAY,KERWIN K D	1894 10TH AVE
340010940000	TAMANAH,SUSAN O K	1894 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.



BERNICE K.N. MAU
CITY CLERK

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

*To: Maria
Thanks for
your help.
C. Law
August*

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 Messrs. 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 G

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

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 08-01 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)

Electronically Filed
Intermediate Court of Appeals
CAAP-13-0002225
23-APR-2014
09:32 AM

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

---o0o---

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

v.

CALVIN K.Y. SAY,
Respondent-Appellee

NO. CAAP-13-0002225

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(SPECIAL PROCEEDING NO. 12-1-0736)

APRIL 23, 2014

NAKAMURA, C.J., FOLEY AND LEONARD, JJ.

OPINION OF THE COURT BY FOLEY, J.

Petitioners-Appellants Ramona Hussey, M. Ka'imila Nicholson, Natalia Antonia Hussey-Burdick, Brent S. Dupuis, Marvin D. Heskett, and Joel L. Merchant (Petitioners) appeal from: (1) the March 11, 2013 "Order Granting Respondent Calvin K.Y. Say's Motion to Dismiss Petition for Writ of Quo Warranto" (Order Granting Motion to Dismiss Petition); (2) the February 20, 2013 Denied "Petition for Writ of Quo Warranto;" and (3) the July 5, 2013 Final Judgment, all entered in the Circuit Court of the

FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

First Circuit¹ (circuit court).

Petitioners contend the circuit court erred by:

(1) finding it lacked subject matter jurisdiction to hear quo warranto actions challenging an individual's possession of title to office of representative when allegations have been averred that the individual is no longer a qualified voter of the representative district pursuant to article III, section 6 of the Hawai'i Constitution (rev. 1978);² and

(2) finding a quo warranto action challenging an individual's possession of title to elected office when allegations have been averred that the individual is no longer a qualified voter of the representative district pursuant to article III, section 6 of the Hawai'i Constitution, was a voter registration challenge pursuant to Hawaii Revised Statutes (HRS) § 11-25 (2009 Repl.).³

¹ The Honorable Karen T. Nakasone presided.

² Article III, section 6 of the Hawai'i Constitution provides:

Section 6. No person shall be eligible to serve as a member of the senate 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 senatorial 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 senator may move to a new district without being disqualified from completing the remainder of the incumbent senator's term. 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.

³ HRS § 11-25 provides:

§11-25 Challenge by voters; grounds; procedure. (a) Challenging prior to election day. 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

(continued...)

I. BACKGROUND

On December 31, 2012, Petitioners filed their Petition for Writ of Quo Warranto (Petition) with the circuit court pursuant to HRS § 659-4 (1993).⁴ Petitioners alleged Respondent-Appellee Calvin K.Y. Say (Say), a member of the House of Representatives from the Twentieth Representative District, "has lived and continues to live at 2247 Star Road in Pauoa Valley in the Twenty Fifth Representative District and the house at 2247

³(...continued)

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.

(b) Challenging on election day. Any voter rightfully in the polling place may challenge the right to vote of any person who comes to the precinct officials for voting purposes. The challenge shall be on the grounds that the voter is not the person the voter alleges to be, or that the voter is not entitled to vote in that precinct; provided that only in an election of members of the board of trustees of the office of Hawaiian affairs, a person registered to vote in that election may also challenge on the grounds that the voter is not Hawaiian. No other or further challenge shall be allowed. Any person thus challenged shall first be given the opportunity to make the relevant correction pursuant to section 11-21. The challenge shall be considered and decided immediately by the precinct officials and the ruling shall be announced.

(c) If neither the challenger nor the challenged voter shall appeal the ruling of the clerk or the precinct officials, then the voter shall either be allowed to vote or be prevented from voting in accordance with the ruling. If an appeal is taken to the board of registration, the challenged voter shall be allowed to vote; provided that ballot is placed in a sealed envelope to be later counted or rejected in accordance with the ruling on appeal. The chief election officer shall adopt rules in accordance with chapter 91 to safeguard the secrecy of the challenged voter's ballot.

⁴ "A petition for a writ of quo warranto seeks a court order directing a person who claims or usurps a state office to show by what authority he or she claims the office. The burden [of proof] rests with the respondent once the writ is issued." Application of Ferguson, 74 Haw. 394, 399, 846 P.2d 894, 897 (1993) (citation and emphasis omitted). Private individuals obtain a writ of quo warranto by filing a sworn petition with a circuit court "setting out facts sufficient to show a right to the order[.]" HRS § 659-4. The Respondent must file her or his answer in writing, within a time determined by the circuit court, and stating the authority under which the person claims to act. HRS § 659-5 (1993).

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

Star Road is where his habitation is fixed;" and that "[Say] is registered to vote and claims legal residency at 1822 10th Avenue in Palolo Valley [(Palolo residence)] but previously admitted he does not actually live there" Petitioners sought a writ of quo warranto requiring Say "to appear before this Honorable [circuit c]ourt at a time certain and as soon as possible and answer unto petitioners and show by what warrant and authority he claims title."

In 2006, Say prevailed in two challenges to his voter registration, partly on the basis of his contention that his absence from his Palolo residence was "due to extraordinary circumstances relating to the provision of health and living assistance for a member of his family." Another unsuccessful challenge to Say's voter registration occurred in 2010.

On January 8, 2013, Say filed his Motion to Dismiss Petition for Writ of Quo Warranto (Say's Motion to Dismiss). On February 12, 2013, Petitioners filed a Memorandum in Opposition to Say's Motion to Dismiss. On February 15, 2013, Say filed a reply to the Memorandum in Opposition.

The circuit court held a hearing on Say's Motion to Dismiss on February 20, 2013. Petitioners argued that the question of an officer-holder's residency should be submitted to an evidentiary trial as occurred in Dejetley v. Kaho'ohalahala, 122 Hawai'i 251, 226 P.3d 421 (2010). The circuit court ruled at the hearing: "It is [the circuit court's] determination as a question of law that this [(the petition's challenge to Say's voter registration)] is exclusively within the province of the city clerk, and HRS Section 11-25 would govern these types of questions and this type of issue, not the jurisdiction of [the circuit court.]"

On March 11, 2013, the circuit court entered its Order Granting Motion to Dismiss Petition pursuant to Hawai'i Rules of Civil Procedure (HRCP) Rule 12(b)(1), which states:

1. The [Petition] is, on its face, a challenge to [Say's] voter registration. Challenges to voter registration are exclusively within the province of the clerks of the respective counties pursuant to [HRS] §11-25.
2. The circuit courts can never have jurisdiction

over challenges to voter registration. A person ruled against by the county clerk may appeal to the board of registration pursuant to [HRS] §11-26 [2009 Repl.], and an appeal from a board of registration decision must be made to the intermediate appellate court pursuant to [HRS] §11-51 [2009 Repl.].

3. [Say's Motion to Dismiss] is GRANTED pursuant to [HRCF Rule] 12(b)(1). The dismissal shall be without prejudice as to Petitioners' ability to bring a challenge in the proper forum, which the [circuit court] finds is the Office of the City Clerk, City and County of Honolulu.

4. [Say's] request for attorneys' fees is DENIED without prejudice as to [Say's] ability to seek such fees in the proper forum.

On March 21, 2013, Petitioners filed a notice of appeal to this court, which was dismissed on July 2, 2013 for lack of appellate jurisdiction because the circuit court's order had not been reduced to a separate final judgment.

On July 5, 2013, the circuit court filed its Final Judgment in favor of Say. Petitioners then filed a notice of appeal on July 23, 2013.

II. DISCUSSION

Petitioners sought a writ of quo warranto "requir[ing] that [Say] come forward with his burden and show by what authority he holds title to office." The circuit court found however, that it lacked jurisdiction because the Petition was "on its face, a challenge to [Say's] voter registration." Petitioners contend the circuit court erred.

A circuit court's grant or denial of a motion to dismiss under HRCF Rule 12(b)(1) for "lack of subject matter jurisdiction is a question of law, reviewable de novo." Norris v. Hawaiian Airlines, Inc., 74 Haw. 235, 239, 842 P.2d 634, 637 (1992), aff'd, Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246 (1994). In Norris, the Hawai'i Supreme Court adopted the view of the Ninth Circuit Court of Appeals in Love v. United States, 871 F.2d 1488, 1491 (9th Cir. 1989), opinion amended on other grounds and superseded by Love v. United States, 915 F.2d 1242 (9th Cir. 1989):

review of a motion to dismiss for lack of subject matter jurisdiction is based on the contents of the complaint, the allegations of which we accept as true and construe in the light most favorable to the plaintiff. Dismissal is improper unless it appears beyond doubt that the plaintiff

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

can prove no set of facts in support of his claim which would entitle him to relief.

Norris, 74 Haw. at 240, 842 P.2d at 637 (internal quotation marks, citation, and brackets omitted.)

The Petition addressed Say's eligibility to serve as a member of the House of Representatives under article III, section 6 of the Hawai'i Constitution. Article III, section 6 of the Hawai'i Constitution provides, in part, eligibility requirements for those seeking to serve as house representatives:

Section 6 . . . 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; 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.

Our courts have jurisdiction over the interpretation of constitutional provisions for the qualification of candidates for the house of representatives and of elected representatives to serve in that capacity. See Alakai Na Keiki, Inc. v. Matayoshi, 127 Hawai'i 263, 276, 277 P.3d 988, 1001 (2012), reconsideration denied, 127 Hawai'i 233, 277 P.3d 327 (2012) ("Our ultimate authority is the Constitution; and the courts, not the legislature, are the ultimate interpreters of the Constitution.") quoting State v. Nakata, 76 Hawai'i 360, 370, 878 P.2d 699, 709 (1994); and Cnty. of Hawai'i v. Ala Loop Homeowners, 123 Hawai'i 391, 454, 235 P.3d 1103, 1166 (2010) ("The ultimate authority for interpreting Hawai'i's constitutional guarantees is vested in the courts of this state."); Akizaki v. Fong, 51 Haw. 354, 357, 461 P.2d 221, 223 (1969) ("[C]ourts are required by the [Hawai'i] Constitution to be the forum and the final arbiter in such disputes [over election contests involving a legislative seat].").

Article III, section 1 of the Hawai'i Constitution vests the legislature with "the power to enact laws and to declare what the law shall be." Sherman v. Sawyer, 63 Haw. 55, 57, 621 P.2d 346, 348 (1980). "Under this grant of authority,

the legislature has the power to establish the subject matter jurisdiction of our state court system." Id. Jurisdiction established by legislative enactment, however, may not encroach on judicial power vested in the courts by the constitution. See AlohaCare v. Dep't of Human Servs., 127 Hawai'i 76, 88, 276 P.3d 645, 657 (2012), as corrected (May 18, 2012), reconsideration denied, 127 Hawai'i 233, 277 P.3d 327 (2012).

Petitioners did not "challenge" Say's voter registration under HRS chapter 11, but rather his qualification to remain seated as a house representative under the Hawai'i Constitution. A person is a "voter" if she or he is "duly registered to vote." See HRS § 11-1 (2009 Repl.). "No person shall register or vote in any other precinct than that in which the person resides except as provided in [HRS] section 11-21." HRS § 11-12(a) (2009 Repl.). "An applicant shall not be registered to vote unless the applicant's voter registration form contains all of the information listed in [Hawaii Administrative Rules (HAR)] section 3-172-20(a)." HAR § 3-172-24(a) (am. 2010).⁵ "Prior to election day, any registered voter may

⁵ HAR § 3-172-20(a) provides:

§3-172-20 Voter registration form. (a) The affidavit on the application for voter registration form shall be in a form prescribed and approved by the chief election officer containing substantially the following information:

- (1) A place for the applicant's name, social security number, date of birth, residence address or a description of the location of the residence, and mailing address;
- (2) A statement that the residence stated in the voter registration form is not simply because of the applicant's presence in Hawaii, but that the residence was acquired with the intent to make Hawaii the applicant's legal residence with all the accompanying obligations therein;
- (3) A statement that the applicant is a U.S. citizen;
- (4) A statement that the applicant is at least sixteen years of

(continued...)

challenge the right of a person to be or to remain registered as a voter in any precinct." HAR § 3-172-40(a). Challenges to a voter's registration prior to an election are investigated and ruled upon by the clerk of the county in which an election is held. HRS § 11-25(a). A Board of Registration (County Board) in each of the four counties hears appeals from the county clerk's ruling. See HRS § 11-41 (2009 Repl.).

The legislative history of HRS chapter 11 shows that the legislature did not intend to vest powers in the county clerk and County Boards that would conflict with constitutional provisions governing the eligibility of persons to serve as members of the legislature. HRS chapter 11 was enacted in 1970 as part of Act 26. 1970 Haw. Sess. Laws Act 26, § 2 at 17-71. "Due to the initiation of new voting systems, new parties, a rapidly increasing and mobile population, and actions of the 1968 Constitutional Convention," the legislature passed Act 26 to "thorough[ly] revis[e]" State and county election laws. 1970 Haw. Sess. Laws Act 26, § 1 at 17. The committee report stated that provisions included in Act 26 were intended to clarify residency, make voter registration "easier," and "assist[]" the county clerk in "keeping registration up to date." H. Stand. Comm. Rep. No. 589, in 1969 House Journal at 852. Specifically,

⁵(...continued)

- age at the time of completing the registration form;
- (5) A self-subscribing oath that the applicant is swearing or affirming to the truth of the information given in the affidavit;
 - (6) A space for the signature of a witness when the applicant is unable to write for reason of illiteracy, blindness, or other physical disability; and
 - (7) A statement which says that the office, site, or location at which an applicant registers to vote, or the declination on the part of the applicant to register to vote will remain confidential and will be used for voter registration purposes only.

added provisions would allow the county clerk "to gather information on the residency status of voters' names and addresses from public and private sources." Id. The committee report noted, "[b]ecause of a large population and high voter mobility, voter lists, especially that for [O'ahu], are becoming increasingly difficult to maintain accurately. This provision will aid the clerk of Honolulu and the clerks of the neighbor islands, as their populations increase, to continually update their lists." Id. Act 26 amended the Hawaii Revised Statutes by adding chapter 11, which includes HRS §§ 11-23 and 11-25. 1970 Haw. Sess. Laws Act 26, § 2 at 24-25. Under HRS §§ 11-23(a) and 11-25(a), the county clerk is empowered to investigate challenges to a voter's registration. The legislative history of HRS chapter 11 shows the legislature empowered the county clerk to "investigate" and rule upon voter registrations under HRS § 11-25 to "assist" the county clerk in keeping voter registrations up to date. H. Stand. Comm. Rep. No. 589, in 1969 House Journal at 852.

Hawai'i courts have delineated the jurisdictional boundary between the courts, the county clerk, and County Boards' respective authorities to decide whether a person's residency status makes her or him eligible for elected office or "to be or to remain registered" as a voter. In Dupree v. Hiraga, 121 Hawai'i 297, 219 P.3d 1084 (2009), a County Board did not exceed its jurisdiction when it ruled on candidate Solomon Kaho'ohalahala's registration as a voter in Lāna'i county for Maui County Council election purposes. See id. at 316, 219 P.3d at 1103. The Dupree court specified the County Board did not exceed its jurisdiction under HRS chapter 11 because it ruled "only on Kaho'ohalahala's right to be or remain a registered voter" under HRS § 11-25(a), and "did not mention any possible consequences for Kaho'ohalahala's candidacy under the provisions applicable to a candidate whose nomination papers have been successfully

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

challenged" under HRS § 12-8 (2009 Repl.).⁶ Dupree, 121 Hawai'i at 316, 219 P.3d at 1103 (emphasis added). Likewise, the Dejetley court distinguished the factual determination of whether Kaho'ohalahala was a resident "for purposes of his public office residency requirement" from a County Board's determination that Kaho'ohalahala was not a resident "for purposes of voter registration." Dejetley, 122 Hawai'i at 267 n.36, 226 P.3d at 437 n.36.

Circuit courts have jurisdiction over "actions or proceedings in or in the nature of . . . quo warranto[.]" HRS § 603-21.7(b) (1993). A writ of quo warranto inquires into the authority by which a State official claims her or his office. HRS § 659-1 (1993). The Dejetley court concluded that a writ of quo warranto "seemed to be an appropriate remedy" for Kaho'ohalahala's alleged violation of § 3-3 of the Charter of the County of Maui residency requirements, which automatically and instantly created a forfeiture and vacancy of his office. Dejetley, 122 Hawai'i at 266, 226 P.3d at 436. In Office of Hawaiian Affairs v. Cayetano, 94 Hawai'i 1, 8, 6 P.3d 799, 806 (2000), the State sought a judicial declaration that the Office of Hawaiian Affairs trustees appropriately held their elected offices after the U.S. Supreme Court held trustees' eligibility requirements to be unconstitutional. The Hawai'i Supreme Court concluded, "the State should seek relief through a quo warranto petition filed pursuant to HRS chapter 659." Id.

Here, the circuit court dismissed the Petition for lack of jurisdiction pursuant to HRCF Rule 12(b)(1). However, HRS § 603-21.7 expressly grants the circuit court jurisdiction to entertain such petitions.⁷

Therefore, we conclude the circuit court reversibly erred by entering the Order Granting Motion to Dismiss Petition.

⁶ Circuit courts, and not County Boards, hear complaints relating to nomination papers. See HRS § 12-8(h).

⁷ The circuit court did not dismiss the petition for failure to state a claim pursuant to HRCF Rule 12(b)(6), and Say did not so move. That issue is not before us. It was not raised and addressed below. This case is solely about the jurisdiction of the circuit court to entertain a Petition for Quo Warranto pursuant to HRS § 603-21.7.

III. CONCLUSION

For the foregoing reasons, the (1) March 11, 2013 "Order Granting Respondent Calvin K.Y. Say's Motion to Dismiss Petition for Writ of Quo Warranto"; (2) February 20, 2013 denied "Petition for Writ of Quo Warranto;" and (3) July 5, 2013 Final Judgment, all entered in the Circuit Court of the First Circuit are vacated and remanded for further proceedings consistent with this opinion.

On the briefs:

Lance D. Collins
for Petitioners-Appellants.

Bert T. Kobayashi, Jr.
Maria Y. Wang
for Respondent-Appellee.

Craig H. Nakamura

Daniel R. Foley
[Signature]