

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 § 18-4.

#### **I. FACTUAL BACKGROUND**

For voter registration purposes, Representative Say lists his residence address as "1822 10<sup>th</sup> 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 10<sup>th</sup> 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.

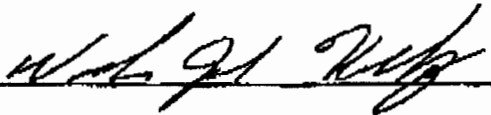
The ultimate question is whether and where Representative Say has a permanent, fixed residence. Even if Representative Say claims that he is merely "absent" from 1822 10<sup>th</sup> Avenue and "intends" to return there (pursuant to § 11-13(1)), this would make the constitutional and statutory requirements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



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