

ORAL PRESENTATION

I. INTRODUCTION

Chairman Rhoads and members of this Special Committee. [**Karl Rhoads, John M. Mizuno, Rep. Scott K. Saiki, Rep. Cindy Evans, Rep. Ken Ito, Rep. Beth Fukumoto Chang**]. I appreciate the opportunity to speak to you and to present our side of the current challenge against Representative Say's right to sit in the august body. With me at the table are Representative Say and my associate Maria Wang. I am an old friend of Representative Say and will to my best to present the information which I think you should all have and to represent him well.

II. SUMMARY OF DOCUMENTS PRESENTED

Though the deadline to present a summary of our position is not until February 17, 2015, I thought it would make more sense to provide to you in anticipation of his hearing a written summary and supporting documents of the applicable facts and the law as applies to this hearing to determine whether Represent Say is a qualified **voter of the twentieth representative district as required by Article III, Section 6 of the Hawaii State Constitution. This has been done and each of you has this summary and supporting documents.**

Towards that end we have included in our summary the applicable law and scope of the hearing taking place today and the law that applies to this Special

Committee. The Committee and Representative Say are and have been bound by the Hawaii Constitution and the Hawaii Revised Statutes.

Our summary also includes the relevant facts which we have presented by way of declarations and is consistent with the affidavits and testimony of Representative Say bearing on the issue of “residency” in three hearings (starting in 2006) brought before the City Clerk, one appeal to the Board of Registration of the City and County of Honolulu and one challenge before the Hawaii State Chief Elections Officer. Representative has prevailed in all such challenges. In addition there was also a lawsuit challenging his residency, which case is *Ramona Hussey, et al., v. Calvin K.Y. Say*, SP No. 12-1-0736, Circuit Court of the First Circuit, State of Hawaii. The Court dismissed this lawsuit against Representative Say on September 30, 2014.

Therefore, in all of these challenges since 2006, the City Clerk, the Board of Registration of the City and County of Honolulu and the Hawaii State Chief Elections Officer and the Circuit Court have all ruled in his favor.

III. HRS HAS NOT CHANGED

Our summary points out the fact that the Hawaii Revised Statutes that interprets what is required to be a “resident” has not changed since 1985 and the exact language remains the same to this date.

IV. RELEVANT FACTS

You may not be aware that Representative has always acknowledged that

- A. He has claimed as his residence the property located at 1822 10th Avenue, Honolulu, Hawaii 96816, in the twentieth representative district.
- B. His parents lived in the twentieth representative district and he grew up in the district.
- C. He and his wife purchased the 10th avenue home in 1980.
- D. He has been registered to vote in the twentieth representative district without interruption since 1980.
- E. Starting in 1995, Say's wife, Cora, and the Says' two sons began providing live-in care to Cora's father and mother, who live at 2247 Star Road, Honolulu, Hawaii 96813, which is located in the twenty-sixth representative district and essentially move so that they were physically in the 26th district..
- F. His wife and sons are now residents of the twenty-sixth representative district. Cora's residence had been in the twentieth representative district and this was sustained by the City Clerk; however, when the ruling was appealed, Cora did not want to be involved in the public dispute and elected not to contest the appeal. Representative Say, did however, wish to contest the appeal of the City Clerk's decision and Representative again prevailed.

G. Cora Say's parents have since passed away, his sons (one has purchased a home in the 26 rep district) still spend most of their time at the home in that district.

H. Cora plans to stay at the 2247 Star Road until such time as the sons decide to move out on their own.

I. This situation with separate homes has continued since 1995.

J. Representative Say has always said that he spends substantial time at house in the 26th representative district and eat meals there to be with his wife and sons, he sometimes sleeps at that address when it is more convenience to his schedule.

K. However, he sleeps most of the time at his home in the twentieth district and it is the home where he intends and has always intended to make and continue as his permanent residence.

L. Representative Say and his wife are in fact currently renovating their home at 1822 10th Avenue.

M. His intention is, and, since 1980 has been, to reside at 1822 10th Avenue and to return there when he is absent and he has never intended to establish a permanent dwelling place in any district outside of the twentieth representative district.

These have always been the facts and on this basis the challenges have claimed that such facts do not meet the definition of “residency” as provided for in the Hawaii law. We disagree and the position has been sustained in every challenge since 2006. Petitioners now wish the House to consider the same question, however, if the facts and the law have not changed, there is no basis to find against Rep. Say.

V. APPLICABLE HRS

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

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

The HRS §11-13 states as follows:

For the purpose of this title, there can be only one residence for an individual, but **in determining residency, a person may treat oneself separate from**

the person's spouse. The following rules shall determine residency for election purposes only:

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

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

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

...

In case of question, final determination of residence shall be made by the clerk, subject to appeal to the

board of registration under part III of this chapter.
[referring to Haw. Rev. Stat. §§11-41 – 11-44, which
set forth the powers and procedures of the board of
registration].

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

VI. CLOSING COMMENT

Given the facts and the law, we ask this Committee to find in support of Rep. Says continued service in this House. He has abided by the law since he entered this House, he has been subject to many challenges, which have been hard on he and his family, and in which and I repeat he has prevailed each and every time. Apparently, the strong majority of the voters in his district have much confidence as he has been returned to office many times.

Thank you. I am prepared to answer your questions.