

February 10, 2015

Rep. Karl Rhoads  
Chairperson  
Special Committee to Consider MC No. 1003  
House of Representatives  
Hawai'i State Capitol  
Honolulu, HI 96813

Dear Mr. Rhoads,

I represent the Voters who submitted their Petition on February 22, 2013, on October 6, 2014 and again on January 16, 2015 to House Speaker Joseph M. Souki challenging Mr. Calvin Say's privilege to serve in the House of Representatives. On February 4, 2015, Speaker Souki established this Special Committee through the issuing of a memorandum. This letter addresses the charge of this Special Committee.

Rule 4 mandates that the Special Committee "investigate the challenge without delay." In addition, at the discretion of the chair of the committee, the committee "may conduct hearings" where the petitioner and the challenged member, or their respective attorneys, shall each be provided an opportunity to make a brief statement and answer questions from the committee.

The definition of "investigate" is to "carry out a systematic or formal inquiry to discover and examine the facts of an incident, allegation, etc., so as to establish the truth." The discretionary opportunity to make a brief statement and answer questions cannot be construed to be the whole of the mandatory charge of the committee to investigate.

Because Rule 5 requires that compelling evidence is necessary for the House to consider finding a member lacking the requisite qualifications to serve, it follows that the Committee has a duty to investigate the matter to reasonably determine whether compelling evidence exists. This is so because only the Committee is charged with investigating and only the Committee has the power to examine witnesses under oath and subpoena documents.

If this Committee follows the precedents of the U.S. House of Representatives, a certificate of election only establishes prima facie evidence that the person was elected by the people in a member's district. But it does not establish a fact or create a presumption that the person elected has been and

continues to be a qualified voter of the district within which he or she was elected prior to filing nomination papers and continued to be thereafter. Even if it did establish a presumption regarding qualifications, such a presumption is easily overcome by the contrary evidence.

Compelling evidence is evidence which demonstrates probable cause that Mr. Say is not qualified to serve in the House of Representatives. "Probable cause exists when the facts and circumstances within one's knowledge and of which one has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been committed. This requires more than a mere suspicion but less than a certainty." *State v. Cambra*, 109 Haw. 84, 86, 123 P.3d 679, 681 (2005)

The House of Representatives power to judge the qualifications of its members only extends to ensuring the requirements of the Hawai'i State Constitution have been complied with. It does not extend to varying the constitutional requirements. *Akizaki v. Fong*, 51 Haw. 354, 356, 461 P.2d 221, 223 (1969) The House has no power to determine that up is down or blue is green.

The credibility and legitimacy of the House of Representatives will be impaired if the House were to fail to investigate the matter fully or to fail to rebut evidence which establishes probable cause that Mr. Say is not qualified to serve pursuant to the requirements of the Hawai'i State Constitution.

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

Very truly yours,  
LAW OFFICE OF LANCE D COLLINS

A handwritten signature in black ink, appearing to read "Lance D. Collins". The signature is fluid and cursive, with a large initial "L" and a distinct "D" at the end.

LANCE D COLLINS  
Attorney for the Voters-Petitioners