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C & C OF HONOLULU

July 29, 2008

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Denise De Costa
Office of the City Clerk
City & County of Honolulu
530 South King Street, Room 100
Honolulu, Hawaii 96813

Re: Objection of Amy Mizuno to Candidacy of Kirk Caldwell for City
and County of Honolulu Council District V Seat

Dear Ms. De Costa:

I am a registered voter in Honolulu Council District V. I hereby object to the certification of Kirk Caldwell as a candidate for District V of the Council of the City and County of Honolulu, pursuant to § 12-8 (a), Haw. Rev. Stat. Based upon the facts as they have been reported to date, and as I understand them, Mr. Caldwell's nomination papers are void for at least two independent reasons: (1) at the time Mr. Caldwell filed nomination papers for Council District V, he was filed to run for more than one office, in violation of § 12-3 (c), Haw. Rev. Stat.; and (2) Mr. Caldwell did not obtain the necessary signatures of fifteen qualified voters as required by § 12-5 (b). Because the elections statute requires strict compliance with its standards, and because all nomination papers that do not strictly comply with its standards "shall be void" pursuant to § 12-3 (f), Haw. Rev. Stat., Mr. Caldwell is not eligible to run for this office.

These facts raise serious questions as to the validity of Mr. Caldwell's candidacy for Council District V, and pursuant to § 12-8, I request that the Clerk: (1) make a preliminary determination that this objection may warrant the disqualification of Mr. Caldwell as a candidate for the Council District V seat; and accordingly (2) file a complaint in the circuit court for a determination of the objection.

In addition, I understand that an employee of the Clerk's office attempted to remedy Mr. Caldwell's lack of qualified signatures by signing his papers after the strict statutory deadline passed, and that City employees used City resources to organize political support for Mr. Caldwell in advance of the deadline. I ask that the Clerk recognize that such after-the-deadline remedies to the nomination papers are unlawful and violate the strict statutory deadline established in §§ 12-6 (a) and 12-3 (f), and the anti-tampering clause established in § 12-3 (e). Such apparently collusive activity also appears to violate the restrictions upon using City resources for private or political purposes, as set forth in the City Charter and elsewhere. As such, I also request that the Clerk refer the matter to the ethics commission and the State Attorney General for further investigation and appropriate action.

1. Mr. Caldwell is not a qualified candidate for council District V because he had not withdrawn from the House of Representatives contest

All candidates for elected office in Hawaii must be nominated in strict accordance with the requirements of Chapter 12, Haw. Rev. Stat., and by no other means. See § 12-1, Haw. Rev. Stat. The chapter sets forth several specific requirements, all of which must be satisfied in order for the chief election official to file nomination papers and certify the candidate for office. Nomination papers that do not strictly satisfy the requirements of Chapter 12 are to be deemed void. The law states:

Nomination papers which are incomplete and do not contain all of the certifications, signatures, and requirements of this section shall be void and will not be accepted for filing by the chief election officer or clerk.

See § 12-3 (f), Haw. Rev. Stat.

Among the requirements that must be met in order for nomination papers to be considered valid under Chapter 12 is that the candidate cannot file nomination papers for more than one office at a time. See § 12-3 (c). By my understanding, Mr. Caldwell admitted after the filing deadline that he still considered himself to be a candidate for the State House of Representatives at and after the time he attempted to file for the District V contest. As reported by the Honolulu Star Bulletin on the day after the filing deadline, Wednesday, July 23, 2008:

Caldwell cautioned that he might still decide to run for the state House if he wasn't pleased with the last minute candidate. Because he had filed for both his House seat and the Council seat, Caldwell will have to decide today which race he will remain in.

Consistent with Mr. Caldwell's report to the press that he was a candidate in the House contest at and after the time he filed for the Council race (and after the filing deadline passed), the State of Hawaii Office of Elections formally notified the Hawaii Democratic Party that it received Mr. Caldwell's withdrawal from the House contest on July 23, 2008, which is the day after the filing deadline.

Given Mr. Caldwell's admission to the Star Bulletin, and the formal notification by the State Office of Elections, there is no dispute that Mr. Caldwell did not and did not intend to withdraw from the House contest at the time he filed his papers for the Council seat.

2. Mr. Caldwell is not a qualified candidate because he did not obtain the signatures of fifteen qualified voters before the statutory deadline

In addition to the prohibition against a candidate filing papers for more than one office, the election law requires that nomination papers be signed by fifteen qualified voters in advance of the 4:30 p.m. statutory deadline. See §§ 12-4 and 12-5; see, also, §§ 12-3 (f) and 12-6. As with the dual-office prohibition discussed above, a failure to timely submit papers with the required number of qualified voters renders the papers void. The statute specifically states that a person's name must appear on the county register at the time the papers are presented for filing in order for that person to be considered eligible to sign nomination papers. The relevant section of the statute states:

Names on nomination papers shall not be counted, unless the signer is a registered voter and is eligible to vote for a candidate. The chief election officer or clerk shall use the most currently compiled general county register available at the time the nomination paper is presented for filing to determine the eligibility of the registered voters to sign for the candidate. Voter registration affidavits that have not been entered into the voter register by the clerk shall not be considered or accepted for this check. At the time of filing, the chief election officer or clerk may reject the candidate's nomination paper for lack of sufficient signers who are eligible to vote for the candidate.

See § 12-4 (b).

According to the initial reports in the press, Mr. Caldwell failed to obtain fifteen qualified signatures in advance of the statutory filing deadline. The Star Bulletin reported the following morning that:

At 4:29 p.m., one minute before the filing deadline, Caldwell submitted his petition with 18 signatures. Twenty minutes later [i.e., nineteen minutes after the statutory deadline], City Clerk Denise De Costa informed him that he had just enough signatures – 15 – but that only 14 of the signatures he turned in were valid. (emphasis added).

Thus, as reported, the Clerk affirmatively determined that Mr. Caldwell had submitted incomplete paperwork prior to the deadline, and as such, there is no question that Mr. Caldwell's nomination papers are void under § 12-3 (f).

3. The Clerk must file a circuit court complaint whenever an objection may warrant disqualification

The elections statute requires the Clerk to file a complaint with the circuit court for a determination of an objection whenever the objection "may" warrant

disqualification of a candidate. § 12-8 (e), Haw. Rev. Stat. As such, the Clerk is not designed to be the final arbiter of whether a generally meritorious objection merits disqualification. Rather, the Clerk is charged with the statutory obligation to seek final determination in the circuit court whenever an objection "may" reasonably warrant disqualification.

This objection clearly satisfies this standard. This objection identifies two serious violations in Mr. Caldwell's nomination papers that will result in his disqualification as a candidate for District V if the facts provided to the press and others, as recited above, prove accurate. The facts upon which the objection relies are reliable, consisting of admissions by Mr. Caldwell to the press and others, facts reported to the press by City employees and others immediately as events unfolded, and an official notice made by the State Office of Elections. Given these facts, a full inquiry by the circuit court is necessary by any reasonable standard. As such, I respectfully submit that the Clerk has no legitimate choice but to submit the objection to the circuit court for thorough review.

4. The Clerk should refer investigation of the apparently collusive activity between Mr. Caldwell and City employees to the Ethics Commission and the Attorney General

Again on July 23rd, the Star Bulletin reported the following purportedly collusive activity between City employees and Mr. Caldwell's efforts to file nomination papers for the Counsel:

After 4 p.m., Trudy Saito, city deputy managing director and one of Hanneman's closest advisers, started organizing city employees who live in Manoa to sign the petition for Caldwell to run for Kobayashi's open [District V Council] seat.

At 4:29 p.m., one minute before the filing deadline, Caldwell submitted his petition with 18 signatures. Twenty minutes later, City Clerk Denise De Costa informed him that he had just enough signatures – 15 – but that only 14 of the signatures he turned in were valid.

A Manoa resident working in the City Clerk's Office signed the petition to ensure Caldwell had enough signatures. "We want everything to be legal," De Costa told Caldwell.

These facts are troubling. They strongly suggest that City resources were mobilized to further the political goals of Mr. Caldwell and, possibly, those within the City administration both prior to and after the statutory filing deadline. These actions clearly violate Chapter 12's mandates, and appear to violate the ethical standards set forth in § 6-1112 of the Revised Charter of the City and County of Honolulu, and other

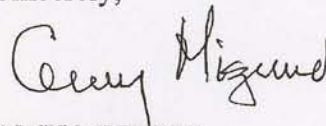
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authorities. As such, in addition to supporting the relief sought by this objection specific to the Counsel District V seat, these facts indicate that the matter should be referred by the Clerk to the Ethics Commission and the Attorney General for investigation and appropriate action.

In closing, the law is clear, and the facts as known to date clearly require that Mr. Caldwell's nomination papers be voided. Pursuant to § 12-8, Haw. Rev. Stat., I request that the Clerk make a determination that this objection may warrant the disqualification of Mr. Caldwell and file a complaint with the circuit court to determine the objection within seven business days of your receipt of this letter. I also request that the Clerk refer this matter to the City and County Ethics Commission and State Attorney General to investigate possible violations of the restrictions on using City employees for private political purposes.

Thank you in advance for your attention to this objection, and please do not hesitate to contact my attorneys Todd Eddins and Michael Cruise, who drafted this letter on my behalf, with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Mizuno".

AMY MIZUNO