

April 25, 2016

Gregory Shoda, Chair
Campaign Spending Commission
Commissioners of the Campaign Spending Commission
Executive Director Kristin Izumi-Naito
235 S. Beretania Street, Room 300
Honolulu, HI 96813

RESPONDENT ROSALYN H. BAKER'S RESPONSE

In Re the Matter of Leonard G. Horowitz v. Rosalyn H. Baker, et al., Docket No. 16-30

Aloha Chair Shoda, Commissioners and Executive Director Izumi-Naito:

Mahalo for the opportunity to respond to the allegations in the complaint LEONARD G. HOROWITZ (HOROWITZ) lodged against me and the other Respondents.

I **deny and refute all of the allegations** in the HOROWITZ complaint. He is attempting to impugn and disparage me and my name based on his philosophical and dogmatic disagreement with my position on vaccines. However, my belief in and advocacy for such issues are long standing and have absolutely nothing to do with the alleged campaign donations. Moreover, the attenuated lines that HOROWITZ tries to connect between various dots are completely non-existent.

Thus, I respectfully request that all of the allegations in the complaint against me be dismissed with prejudice.

I. INTRODUCTION

HOROWITZ's Complaint is based on the following legal authorities (Complaint Form, at "I"):

1. Haw. Rev. Stat. (HRS) § 11-412(b)¹ (intentional falsification of report);
2. Code of Federal Regulations - 11 CFR 110.3 ²(contribution limits for affiliated committees);
3. HRS § 11-204(f)(2) (there is no such statutory provision);
4. HRS § 11-333(2) ³ (candidate committee reports);

¹ HRS 11-412, Criminal prosecution.

(b) Any person who knowingly or intentionally falsifies any report required by this part with the intent to circumvent the law or deceive the commission or who violates section 11-352 or 11-353 shall be guilty of a class C felony. A person charged with a class C felony shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.

² <https://www.law.cornell.edu/cfr/text/11/110.3>

³ HOROWITZ appears to be alleging a violation under subsection (b) which provides:

5. HRS § 11-361 (aggregate contributions and expenditures);
6. HRS § 710-1040 (public servant bribery).

My response in sum is outlined below:

1. There is no evidence of any falsified report, and even if there was some minor discrepancy, any error was inadvertent, not knowingly or intentional;
2. While the State of Hawai'i Campaign Spending Commission has indicated it looks to these federal regulations as guidance, that legal authority does not constitute a basis for a violation under Hawai'i law. But, even if it did, the persons who donated to my campaign committee are not "financed, maintained or controlled" by a single entity or even affiliated entity;
3. There is no statutory section HRS § 11-204;
4. My candidate committee reports were timely and accurately filed;
5. There was no violation of the aggregate limits because all of the donations came from separate persons, and in particular, mostly individuals in their personal capacity. Under Hawai'i's law these are all counted separately and there is no basis to attribute and aggregate these contributions of one as part of that of another; and lastly
6. There was absolutely and unequivocally no quid pro quo, direct or indirect, express or implied, or any other agreement or understanding to relate my official actions with any campaign activity.

I am responding to the HOROWITZ allegations out of order below because I believe that by *first addressing the bribery allegations* you will have the background and context for this complaint. Then, I will refute the allegations relating to improper aggregate donations over the limit. The remaining allegations are all tangential to these two main alleged violations and are handled at the end of my response.

II. THERE IS ABSOLUTELY NO BASIS FOR HOROWITZ'S BRIBERY ALLEGATION AND THIS INSTEAD, IS SIMPLY A RETALIATORY ALLEGATION TO IMPUGN MY CHARACTER ARISING OUT OF HIS DISLIKE FOR MY POSITION ON VACCINES

Under HRS §710-1040(1)(b) Bribery, a person commits the offense of bribery if . . . [w]hile a public servant, the person solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that the person's vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

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- (b) Schedules filed with the reports shall include the following additional information: . . .
(2) The amount and date of deposit of each contribution and the name, address, occupation, and employer of each contributor who makes contributions aggregating \$1,000 or more during an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;

HOROWITZ characterizes my position on vaccines as somehow related to campaign donations. This is completely untrue. I have been a long-time proponent of medically-based, scientifically-vetted public policies on healthcare. I have advocated on behalf of women's rights, consumer protection, increased access to healthcare including community health center funding, cancer research, prevention and treatment, expanded healthcare benefits and healthcare insurance coverage for the underprivileged, especially children and enabling health professionals to practice to their highest level of education and competency. And I have been recognized nationally and locally for my health policy efforts and cancer advocacy for more than a decade. I'm not a healthcare professional. However, sound public policy in the healthcare arena is a passion of mine because it impacts our quality of life.

In addition, I have a personal and deep commitment when it comes to advocating for public awareness, education about and use of recognized vaccines to prevent the spread of Human Papillomavirus (HPV). I am a cervical cancer survivor whose cancer was detected in 1976 about the time the scientific medical community was beginning to connect the dots linking HVP to cervical and other cancers. The 2008 Nobel Prize in Medicine was awarded to Dr. Harald zur Hausen for his research showing that HVP16 and HVP18 caused cervical cancer. I had an opportunity to meet Dr. zur Hausen when he came to a cancer research symposium in Hawai'i sponsored in part by the American Cancer Society (ACS) and the UH Cancer Research Center (now the UH Cancer Center). I have been an active and vocal ACS volunteer since the mid-80's. The meeting with Dr. zur Hausen and my involvement with ACS have had a profound impact on my public health policy positions and advocacy on behalf of cancer survivors, tobacco control, and cancer prevention, cures and research in Hawai'i. As a result of Dr. zur Hausen's discovery, three vaccines to protect against cancers caused by HPV have been approved by the FDA. The makers of these vaccines are Merck and Company (Gardasil for boys and girls) and GlaxoSmithKline (Cervarix for girls). These vaccines are recommended for boys and girls aged 11-12 by the Centers for Disease Control (CDC), the American Academy of Family Physicians, the American Academy of Pediatrics, and the Society for Adolescent Health and Medicine because they provide $\geq 95\%$ protection from infection by the high risk HPV16 and 18 strains that lead to the development of cancer plus two other HPV strains. According to the CDC, the HPV vaccines may also reduce the need for surgery and the global burden of cervical cancer. Along with my colleagues of the Hawai'i Women's Legislative Caucus, I have been speaking out at every opportunity about the need for HPV education. This year at the Capitol along with the Hawai'i Immunization Coalition, we sponsored a documentary called "Someone You Love" about the link between HPV and cervical cancer. As a cervical cancer survivor, allegations that somehow my support for finding ways to stop the spread of HPV is related to campaign donations is not just distasteful, it is insulting.

Thus, my views being opposite of HOROWITZ's position against vaccinations is not surprising nor a sudden or recent development. Instead, his complaint stems from his disagreement with my views and is an attempt to intimidate and disparage me and my reputation. In fact his complaint

came shortly after my committee on commerce, consumer protection and health held hearings and subsequently passed measures on HVP education for parents and mandatory flu vaccinations for healthcare workers in hospital facilities – a CDC recommended best practice for healthcare workers. Pfizer does not make flu vaccines and does not make HPV vaccines either.

Importantly, in Pedrina v. Chun, 906 F.Supp 1377 (D. Haw. 1995), the court noted that:

"Not every gift, favor or contribution to a government or political official constitutes bribery." United States v. Arthur, 544 F.2d 730, 734 (4th Cir.1976). Rather, the intent that the official's actions be influenced by the gift, favor or contribution is crucial to a violation of the state bribery statute. Id.; H.R.S. § 710-1040(1)(b). . . . vague expectations of some future benefit is not sufficient to make a campaign contribution a bribe[.]

Here, HOROWITZ's allegations don't even detail or provide some "vague expectations of some future benefit." In fact, all they amount to are the barest of threads in which he tries to weave together some complex pattern that has no basis in fact or reality. I have long promoted legislation that seeks to improve and protect public health. Thus, any positions I took in the past, or will take in the future, related to the issue of vaccinations is not due to campaign related contributions and it is a far stretch to assert that there is a relationship between them. As such, the CSC should dismiss these allegations.

III. THE DONATIONS WERE ALL FROM DIFFERENT PERSONS UNDER THE LAW AND THERE IS NO BASIS TO AGGREGATE THESE CONTRIBUTIONS

Under HRS § 11-357(a), a person is allowed to contribute up to \$4,000 during an election period to my campaign as a State Senator for a 4-year non-statewide office. "Person" is broadly defined under HRS § 11-302 as "an individual, a partnership, a candidate committee or noncandidate committee, a party, an association, a corporation, a business entity, an organization, or a labor union and its auxiliary committees." Thus, the law generally provides that each "person," whether an individual or business entity, can contribute up to \$4,000 to a State Senator's candidate committee during an election period.

However, the law does have a provision which delineates when such contributors will not be considered separate "persons" and instead, their contributions shall be aggregated under HRS §11-361 Aggregation of contributions and expenditures. There, the law basically prescribes that when one entity is "financed, maintained or controlled" by another entity, the donations of one can be aggregated towards that of one single entity.

Here, HOROWITZ alleges that by aggregating the contributions of CCH, RADCLIFFE individually as John Radcliffe, MORRIS, along with Pfizer, Hawaii Medical Political Action Committee, Fred Perlak, Loihi Communications and Robert Toyofuku, this amounts to over \$6,000 exceeding the

\$4,000 limit under HRS § 11-357(a)(2). However, most of these contributions come from individuals. These individuals are not financed, maintained or controlled by any single entity (i.e. Monsanto or Pfizer). Instead, these persons are all contributing in their individual capacity and there is no basis nor reason for the aggregation to apply.

Moreover, HOROWITZ's complaint appears to seek to have me prove a negative and something that does not exist. There is no relationship between the various parties other than a remote tie of these all being lobbyists, or employees, and organizations that employ lobbyists. The complainant provides as the reason these contributions should be tied together are attenuated and non-existent theories that: (1) Monsanto and Pfizer are somehow related businesses (when they clearly are not); (2) that an employee of Monsanto (Fred Perlak) should be aggregated with Monsanto (when there is no legal or factual reason to do so); and (3) that the consultant lobbyists should also be aggregated with Monsanto (when again, there is no legal or factual basis to do so).

Based on the foregoing, the Campaign Spending Commission should dismiss all HOROWITZ's allegations related to aggregate contributions exceeding the \$4,000 limit.

IV. THERE IS NO VIOLATION UNDER 11 CFR 110.3, NOR ADVISORY OP. 05-01 SINCE NONE OF THE FACTORS AND CIRCUMSTANCES ARE PRESENT IN THIS INSTANCE

HOROWITZ cites to CFR110.3, which more likely should be a citation to 11 CFR110.3. However, this is only relevant because the Campaign Spending Commission in Advisory Opinion 05-01, indicated that it looks to the Federal Elections Commission (FEC) for some guidance on the issue of what constitutes "financed, maintained, or controlled."⁴

⁴ In particular, the Advisory Op. 05-01 details:

While the term "financed, maintained, or controlled" is not defined in the Commission's laws or rules, the Federal Election Commission (FEC) has a similar standard. If a committee is "established or financed or maintained or controlled" ("affiliated") with another committee the federal contribution limit is shared. The FEC's rules provide the following guidelines to determine whether a committee is "affiliated".

- Whether a sponsoring organization owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee;
- Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;
- Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decision making employees or members of another sponsoring organization or committee;
- Whether a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;
- Whether a sponsoring organization or committee has common or overlapping officers or

However, as demonstrated above in the section related to HRS § 11-361, none of the circumstances and facts enumerated in Advisory Op. 05-01 exist to demonstrate that the “sponsoring organization” (Pfizer, or Monsanto, or Blackrock) have any direct or indirect financing, maintenance or control mechanisms between one another, or to that of the individual donors.

V. CAMPAIGN COMMITTEE REPORTS ARE ACCURATE AND TRUE

There is no evidence of any knowing or intentional false reporting. My campaign reports list these donations separately and distinctly because these are all different “persons” as defined by the law. As such, there is no basis to find any violations under the sections alleged by HOROWITZ.

CONCLUSION

Based on the foregoing, I respectfully request that the Campaign Spending Commission dismiss with prejudice all of HOROWITZ’s complaints allegations against me and my campaign.

If there is any additional information I can provide, please contact me.

Sincerely yours,

ROSALYN H. BAKER

employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

- Whether a sponsoring organization or committee has any members, officers or employees who were members, officers or employees of another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees, or which indicates the creation of a successor entity;
- Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs;
- Whether a sponsoring organization or committee causes or arranges for funds in a significant amount or on an ongoing basis to be provided to another sponsoring organization or committee;
- Whether a sponsoring organization or a committee or its agent had an active or significant role in the formation of another sponsoring organization or committee; and
- Whether the sponsoring organizations or committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the sponsoring organizations or committees.

The Commission has previously relied upon the FEC’s rules for guidance. The Commission, therefore, will consider all the circumstances, including the factors in the FEC’s rules, to determine whether a committee is “financed, maintained, or controlled” by the party.