

April 16, 2018

Effie Ameen, Secretary of the Senate
c/o Office of Legislative Legal Services
200 E. Colfax Ave. Rm. 091
Denver, CO 80203
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RE: Fact-Finding Investigation

Dear Ms. Ameen:

I am submitting a Supplemental Report with respect to the investigation of complaints brought against Senator Baumgardner (“Baumgardner”). The original fact-finding report in this matter (“Original Report”) is dated March 30, 2018. This Supplemental Report is necessary as a result of Baumgardner’s delay in agreeing to be interviewed. With your agreement, I advised Baumgardner, through his counsel, I would close this investigation on April 11. Baumgardner agreed to meet with me on that date. Baumgardner reports he is 62 years old. Baumgardner brought two attorneys to the interview. They were generally cooperative and did not interfere in the interview. During his interview, Baumgardner responded to the complaints and named three additional witnesses whom I have now interviewed.

In addition, since concluding my Original Report, I heard from a witness to whom I had reached out in March and I concluded an interview of this witness as well. I have now concluded all interviews in this matter.

I do not intend to repeat my conclusions contained in the Original Report. Please consider this Supplemental Report as an Addendum to the Original Report. Baumgardner acknowledges he has a copy of and has read the complaints submitted by [REDACTED] and [REDACTED]. He states he has not been provided a copy of the Original Report.

[REDACTED]

[REDACTED]

[REDACTED]

II. Baumgardner Response to Allegations Raised by [REDACTED]

Baumgardner does know [REDACTED] who continues to work in the Capitol. Baumgardner acknowledges that during the legislative session in [REDACTED] as well as before and after that particular session, it was his custom to walk through the Enrolling Room to say good morning to the staff and shake their hands. He has done this the same way for years. During the course of a given day, he might also cut through the Enrolling Room on his way to the Majority Leader's office, and states many legislators do this. In fact he states there are legislators in the Enrolling Room all the time. Baumgardner states he has now stopped going into the Enrolling Room since being advised by the President of the Senate that it could be perceived as harassment.

Baumgardner recalls the female clerk ("Victim")¹ employed in the Enrolling Room during the [REDACTED] legislative session, but he does not recall her name. He generally denies any inappropriate behavior, denies focusing attention on her or doing anything at all that might have made her uncomfortable.

Specifically, Baumgardner admits that during the [REDACTED] session he may have stopped in the Enrolling Room on occasion to chat with the clerks but denies he focused attention on Victim. He denies "parking himself" in a chair at the table so that he could speak to Victim. He states he does not think there was an extra chair in the Enrolling Room, and denies observing that

¹ I am retaining the same designation for this employee used in the Original Report. Baumgardner certainly denies she is a victim of his behavior.

during the [REDACTED] session an extra chair was removed. Baumgardner admits he may have asked some innocuous personal questions of all the enrolling clerks, including Victim, but that he did not single her out in this regard. He was trying to show interest and act friendly toward all.

Baumgardner describes that he never learned of any of Victim's food preferences and he denies bringing her plates of food. He agrees with other witnesses that there is often food at the Capitol left over from various morning events. Baumgardner states that if he ever brought food to the clerks in the Enrolling Room, which he does not deny but also does not specifically remember, he was bringing it to all of them. He denies bringing plates of food only to the Victim.

Baumgardner admits going to [REDACTED] where Victim worked as [REDACTED].² He describes he went there as a result of a conversation with Victim about rugby games. He told her he likes to watch rugby but it is hard to find [REDACTED] shows rugby games on TV. He states Victim mentioned she worked at [REDACTED] and they show rugby games there every Sunday. Baumgardner indicates he perceived her to be communicating to him that [REDACTED] is a good place to go to watch rugby. As a result of this conversation with Victim, Baumgardner states he went to [REDACTED] at least one time, maybe twice. He went alone. He did not call Victim in advance. He does not recall the date or the day of the week. He reports his only purpose was to watch rugby, and that he did not even know if Victim would be there. He does recall Victim was there on one occasion. He asserts he said hello to Victim, sat at [REDACTED], ordered a club soda, and watched the rugby game. He denies any intent to bother Victim and does not know why his presence in [REDACTED] would offend or alarm her. He did not think his decision to go to [REDACTED] was unusual. Baumgardner indicates he has not returned to [REDACTED] because he has since found another [REDACTED] that shows rugby on TV closer to where he lives near the Capitol.

Baumgardner denies attending a staff happy hour. He states he doesn't often go to any happy hours but would not go to a staff happy hour. He reports that for the past several years, he has been drinking alcohol only occasionally and not socially. He may have a beer at home. If he goes to happy hours at all, he goes to the happy hours for legislators, not staff.

Baumgardner denies the allegation that in shaking Victim's hand, he held it a little too long. He similarly denies that he hugs any females too long or too tight. He has never heard that people call him "boob grabber". He strongly denies engaging in any such behavior. He denies brushing his hand against any woman's breast or cupping a woman's breast when putting his hand around her shoulders.

Baumgardner agrees it would be inappropriate for him to focus unwanted attention on anyone, and denies doing so. He denies being aware of any behavior toward Victim that would have made her or her co-workers uncomfortable. He denies observing that Victim got less

² Victim reports [REDACTED] It will be referred to by this name herein.

friendly toward him or that she stopped talking to him. He denies mocking Victim in any way, and did not say “she’s not talking to me anymore”, or words to that effect.

Baumgardner denies [REDACTED]’s allegation about watching Victim from the Xerox machine in the antechamber outside the Enrolling Room. He asserts not only did he not do that, but it is “impossible” to see into the Enrolling Room while standing in front of the Xerox machine. I asked to inspect the area so that I could view the Xerox machine and the Enrolling Room. Together with his counsel, we walked to the Enrolling Room and stood in front of the Xerox machine. I was able to see into the Enrolling Room. From there, we saw a woman sitting at a desk. Baumgardner acknowledges this woman was sitting in the same place where Victim sat in [REDACTED].

III. Complainants and Victim Responses to Baumgardner’s Statements

Short telephone conferences were conducted with the Complainants and Victim to follow up on new information received from Baumgardner specifically that in [REDACTED] he wasn’t drinking socially, and regarding his conversation with Victim regarding rugby.

Neither [REDACTED] nor [REDACTED] had any knowledge regarding whether Baumgardner was drinking socially during the relevant time. [REDACTED] recalls being present at one staff happy hour attended by Baumgardner, but does not recall if he ordered a drink.

Victim specifically reiterated her prior statement that Baumgardner did attend at least one staff happy hour. She is certain he ordered himself a drink which she believes was whiskey and she asserts he offered to buy her a drink as well. She recalls he ordered a beer when he came to [REDACTED]. Victim denies discussing rugby with Baumgardner. She indicates she does not watch sports and would not know if [REDACTED] played rugby games on TV. She states she never said anything to Baumgardner to give him the impression she was inviting him to come to [REDACTED]. Victim gave me the name of a co-worker at [REDACTED] who in [REDACTED] was the General Manager for [REDACTED] owned by the same company and worked at [REDACTED] as a [REDACTED]. Victim asked this individual (“Witness J”)³ to call me to discuss if she knew whether rugby was shown on TV at [REDACTED].

I spoke to **Witness J** for the limited purpose of determining if she had direct information as to whether rugby games were played on TV at [REDACTED] in [REDACTED]. She states that [REDACTED] is owned by a company called [REDACTED]. Witness J reports she did work for them in [REDACTED] but no longer works there. She reports in [REDACTED] she was the [REDACTED] at the [REDACTED] and was the [REDACTED] for another [REDACTED] owned by the same company called [REDACTED]. Witness J reports that the company was obligated to purchase rights or licenses to show sports events on TV. She states her recollection is that they

³As in the Original Report, Witnesses here have requested anonymity. I will refer to them without using their names. In my opinion, this does not impact on their credibility.

offered the basic package showing local sports such as football, baseball and basketball. She states they did not purchase specialty packages such as rugby. Witness J reports she is certain of this because she had several conversations with her supervisors advising them customers were asking for specific sporting events such as rugby and boxing matches. Her supervisors told her that [REDACTED], particularly ones which are not very busy such as [REDACTED] and [REDACTED] cannot afford to purchase specialty sports packages to play on TV. Witness J states she is certain [REDACTED] did not play rugby on TV in [REDACTED]⁴

IV. Additional Witness from Original Investigative Work

This Investigator reached out to Witness F prior to submitting the Original Report but Witness F had not responded. Witness F later indicated that we could speak about Baumgardner as the Investigation is still ongoing.

Witness F worked with Baumgardner as part of Legislative Council staff but left that position prior to [REDACTED]. Witness F does not know the Complainants. Witness F reported feeling uncomfortable with Baumgardner's overt friendliness when she initially began working closely with him. For example, Witness F reports that Baumgardner invited Witness F to dinner or drinks on more than one occasion, which Witness F declined. These invitations made her uncomfortable but she did not communicate this to him. Witness F felt inclined to make sure Baumgardner knew that she was happily married. Witness F reports Baumgardner never retaliated against her for rejecting his invitations.

Over time, Witness F came to understand that Baumgardner's casual conversation about non-work topics and behavior were part of his very social personality and he was not treating her differently than those he considered his friends at the legislature. After this realization, Witness F was more comfortable around him. Witness F wanted to clearly emphasize that Baumgardner never sexually harassed her, touched her inappropriately or made inappropriate comments to her.

V. Witnesses in Support of Baumgardner⁵

1. Witness G

Witness G has worked for the Legislature for eight sessions, most of that time in the Senate. Witness G has supported the work of various legislators as a [REDACTED], but has not worked in that capacity for Baumgardner. Witness G has worked as a [REDACTED]

⁴ I recognize there is more that could be done to track down information on this point. I believe doing so is unnecessary and is outside the scope of this investigation.

⁵ Although my preference is to meet with witnesses in person, given the fact that Baumgardner chose to meet with me on the last day of the investigation, time was of the essence. In fairness to Baumgardner, I determined it was important that I extend the deadline a few days in order to have the opportunity to speak to his identified witnesses even if it was over the phone. I spoke to all of his witnesses, one in person and two over the phone.

2. Witness H

Witness H worked on two separate occasions with Baumgardner, once as a [REDACTED] in 2015 and once as an [REDACTED] assisting Baumgardner's Legislative Aide. Witness H did not work in the Senate during [REDACTED]. Witness H describes his relationship with Baumgardner as a typical boss-employee relationship. They were friendly and have remained friends since Witness H left the Senate. Witness has no complaints about the way Baumgardner treated him and never heard any complaints from others. Witness H never observed Baumgardner to engage in any inappropriate behavior. Witness H never socialized with Baumgardner. Witness H did go to an event at the Convention Center where Baumgardner and other Senators were present. Witness H recalls they were given drink tickets but does not know if Baumgardner used his drink ticket.

Witness H believes Baumgardner does drink alcohol and heard Cheryl Palm, Baumgardner's Legislative Aide, make a comment that made him think Baumgardner drinks whiskey. In 2015, Witness H gave Baumgardner a bottle of Jim Beam to thank him for the opportunity to work for him. Baumgardner seemed appreciative and made no comment that he doesn't drink whiskey. This bottle of whiskey was in Baumgardner's office for a few days, but otherwise Witness H does not know if Baumgardner has alcohol in his office. Overall, Witness H likes Baumgardner, has never seen him do anything inappropriate, and appreciated the opportunity to work for him.

3. Cheryl Palm

Cheryl Palm ("Palm"), an older female, has worked for Baumgardner for more than ten years as his Legislative Aide and his campaign treasurer. She states that Baumgardner is the most polite person she knows. He has never done anything inappropriate towards her and she has never seen him do anything inappropriate towards anyone else. He never uses profanity, and in fact makes people apologize if they use profanity around her. Baumgardner does not tell lewd jokes, and is always respectful to her. He holds doors open for her, walks on the outside when the two of them walk down the street. Palm describes Baumgardner as very friendly. He grew up in a southern environment and he is very respectful and friendly, as she believes southern culture expects.

Palm does not know [REDACTED] or the female enrolling clerk referred to in [REDACTED] complaint. She knows who [REDACTED] is, has said hello a couple of times when she goes into the Enrolling Room.

Palm has read the complaints submitted by [REDACTED] and [REDACTED]. As Baumgardner's Aide, she states it is her job to read everything. She has discussed them with Baumgardner. She does not believe the complaints are credible. She does not think Baumgardner would behave as

is described in the Complaints and believes the Complaints are politically motivated. She states he is an easy target because he hugs people.

Specifically, Palm believes Baumgardner went into the Enrolling Room to say hello to the clerks just like he goes into many offices to say hello to staff. He would not give unwanted attention to the one female clerk, although Palm was not present to observe Baumgardner's conduct. She does not believe he would act in such a way as to make anyone uncomfortable.

Palm has gone to events sponsored by lobbyists. She has seen Baumgardner at such events, but reports she has rarely gone with him to the events. In [REDACTED] she states Baumgardner told her he was not drinking because he wanted to lose weight. Palm reports she has not seen him with an alcoholic drink except an occasional beer. Palm does not know if, or how often, Baumgardner went to happy hours in [REDACTED]

Palm reports Baumgardner does not watch much sports. He told her recently in response to the [REDACTED] Complaint that he went to [REDACTED] where Victim worked a couple times to watch rugby. He told Palm the parking was bad so he stopped going there. This is consistent with what he said in his interview. Palm does not watch rugby and has not spoken to Baumgardner about rugby.

Palm reiterates overall Baumgardner is a nice, respectful, polite individual and she does not believe the Complaints are credible.

VI. Findings of Fact

1. Baumgardner came to the interview with two attorneys. The attorneys were appropriate during the interview. Baumgardner answered questions with short responses, often one or two words. He seemed stiff and highly restrained.

2. Interviews with Baumgardner and Witnesses G, H and with Palm do not change my Findings as described in the Original Report. I incorporate herein all Findings in the Original Report. Although Baumgardner denies substantive allegations contained in the Complaints, he gives no explanation why these Complainants would fabricate allegations against him. I recognize it is difficult to prove a negative. However, I find Baumgardner's credibility to be significantly compromised.

3. Baumgardner states that legislators spend time in the Enrolling Room "all the time". This is not credible. All other witnesses who have knowledge on this point state otherwise, including Witness E, a former Republican legislator who stated "There is no reason for a Senator to regularly spend time in the Enrolling Room." (Original Report at 11, ¶4).

4. Baumgardner states he does not believe there was an extra chair in the Enrolling Room in which he could sit to talk to the clerks. Multiple witnesses state otherwise, recalling a specific discussion between them during which they made the decision to remove the chair in order to discourage Baumgardner's conduct.

5. Baumgardner denies coming to staff happy hours. Several witnesses confirmed that he did, and Victim reiterates he offered to buy her a drink at least once at a staff happy hour.

6. Baumgardner was adamant that one cannot see into the Enrolling Room from the Xerox machine. He said it is "impossible." Based on my direct observation, I find Baumgardner's statement to be untrue. It is true that if one was actually making a copy, one would stand in the middle of the machine looking at the wall. However, Baumgardner was not making a copy when he was observed by [REDACTED]. As described by [REDACTED] he was "leaning over the Xerox machine located just outside the Enrolling Room in the ante-chamber staring into the Enrolling Room." (Original Report at 6.) Far from impossible, I was able to easily see into the Enrolling Room. I could see the woman who Baumgardner admits was sitting at the same desk used by Victim in [REDACTED]. From that vantage point, I could also see the table which is positioned horizontally behind the desks over which [REDACTED] describes Victim was bending at the time Baumgardner was staring at her.

7. Baumgardner described a reasonably legitimate purpose for going to [REDACTED]. He states he discussed watching rugby with the Victim, who then essentially invited him to come out to [REDACTED] to watch the games. However, in following up with Victim, she states she does not watch sports and does not even know if rugby games could be watched on TV at [REDACTED]. She claims she never had a conversation with Baumgardner about rugby, and did not tell Baumgardner [REDACTED] plays rugby games on TV. She states unequivocally she never said anything to Baumgardner from which he could perceive an invitation to come to [REDACTED] to visit her. I find Victim to be credible on this point and find that Victim did not discuss rugby games with Baumgardner or otherwise invite Baumgardner to come to [REDACTED]. Her expressed alarm when he called her and then came to [REDACTED] is credible.

8. Quite unexpectedly, Witness J contacted this Investigator at Victim's request to discuss the question whether rugby can be watched at [REDACTED]. Witness J described specific knowledge on this point as a result of her experience and positions held with [REDACTED], the entity that owned [REDACTED] in [REDACTED]. Witness J unequivocally stated [REDACTED] did not purchase the rights, and therefore did not offer rugby games on TV in [REDACTED]. Witness J has no connection to the Senate and has no reason to be untruthful. I find Witness J's statement credibly supports, but is not critical to, my Finding that Victim's statement on this point is credible.

9. Witnesses G and H, as well as Palm, are individuals whose experience with Baumgardner is professional and appropriate. I find these witnesses to be credible based on their

own experiences, but none of them have any personal knowledge of the complaints made by [REDACTED] or [REDACTED]. Palm in particular is protective of Baumgardner which is not surprising given her position and long-term employment with him. Palm's certainty that the behavior alleged in the Complaints did not happen is not based on personal knowledge, but on her recent conversations with Baumgardner about the Complaints, and her own experience with him. She repeats Baumgardner's recent explanation of why he went to [REDACTED]. The statements of these witnesses do not change my Findings submitted in the Original Report. Further, I find the fact that Baumgardner is appropriate and professional toward certain co-workers does not impact my Findings as to how he has treated the young women described in the Original Report.

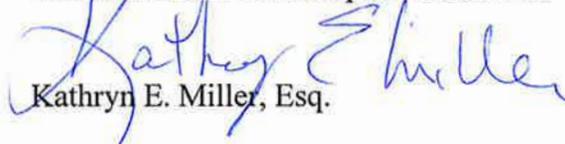
[REDACTED]
[REDACTED]
[REDACTED]

11. In addition, I find [REDACTED] complaint credible. I find that Baumgardner's behavior toward Victim "substantially interfered with" Victim's work performance and created for the entire Enrolling Room "an intimidating, hostile and offensive work environment", as defined in the Workplace Harassment Policy of the General Assembly (sec. C(e)).

Thank you again for the opportunity to work with you on this matter. If there are any questions about this report, feel free to contact me.

Very Truly Yours,

Littleton Alternative Dispute Resolution


Kathryn E. Miller, Esq.

