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March 30, 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:

Thank you for retaining me to perform an investigation with respect to the complaints brought against Senator Baumgardner (referred to herein as "Baumgardner"). You engaged me on Feb. 15, 2018 pursuant to the Workplace Harassment Policy of the General Assembly and Joint Rule 38. I began the investigation on Feb. 27. During this investigation, I reviewed the written complaints submitted to you as Secretary of the Senate, and have interviewed the two Complainants and six other individuals. The witnesses who agreed to speak to me were cooperative, although reluctant to be participants in the investigation. As such, I determined it is important to keep the identity of certain witnesses confidential. They will be referred to as Witness A, B, and so forth. In my opinion, the request for confidentiality comes from the public nature of this particular workplace and genuine concerns of retaliation, and does not impact the credibility of the witnesses.

I have not yet spoken to Baumgardner. Beginning March 7, I have been trying to schedule an interview with him. Through ten email/voice mail communications with him and his attorneys, I have provided many dates on which I would be available for the interview. I agreed to meet at his convenience as early as 7 a.m. He ultimately advised he will not meet without his attorney who happens to have been out of the country since we began the effort to set the interview. Although his preferred attorney has an associate with whom I have been conferring, Baumgardner refuses to meet until his preferred attorney returns to the U.S. No date for the interview has been provided. The Workplace Harassment Policy of the General Assembly provides that "Nothing ... requires any person accused of workplace harassment to involuntarily provide, either orally or in writing, any facts, information, or evidence in response to an

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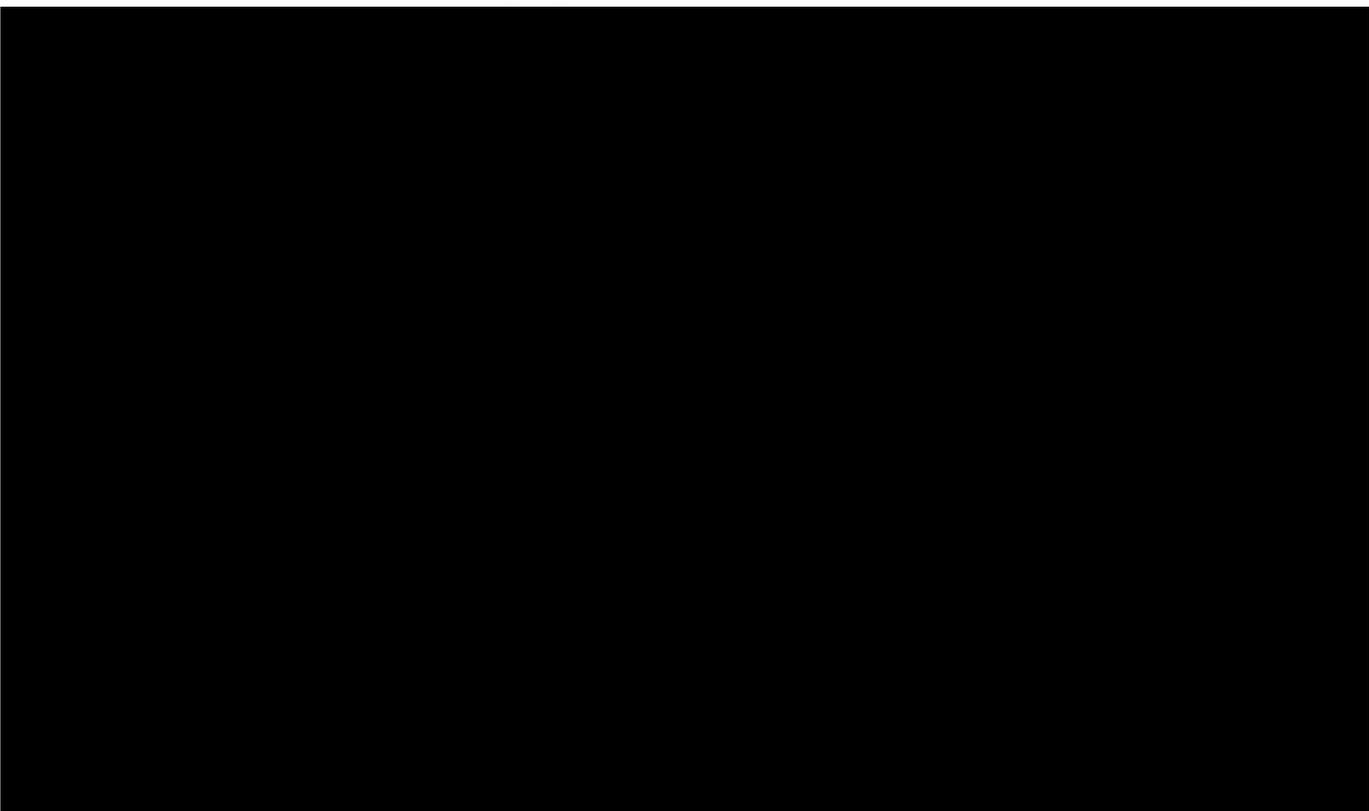
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investigation of a complaint..." (Sec. F(3)).¹ Thus, it is entirely up to Baumgardner whether to meet. If he does agree to do so in the future, I will supplement or amend this report.

It is important to keep in mind that as an independent investigator, I do not make conclusions of law. Rather, my role in this case is to learn the facts from perspectives of the various individuals with whom I speak, and make specific findings as to whether the complaints are credible, and if so, whether the behavior is inappropriate or unacceptable workplace harassment as defined in the Workplace Harassment Policy of the General Assembly.²

I. The Complaints

There are two written complaints against Baumgardner which I was asked to investigate.³



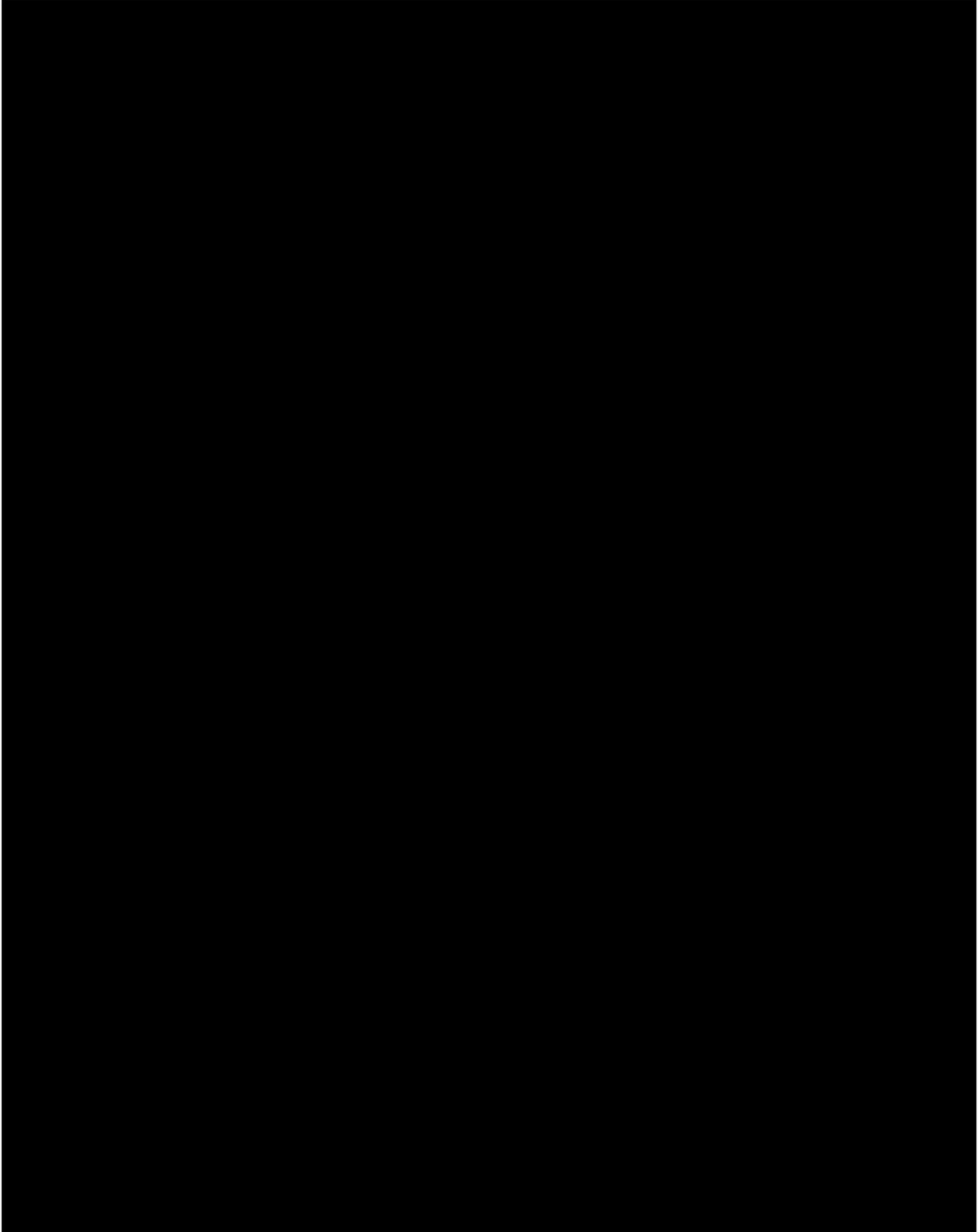
¹ This policy makes it very difficult to complete an investigation. It gives the Accused control over the entire situation. While generally denying allegations, which Baumgardner did through his attorney on March 28 by email, he can denigrate the credibility of the investigation claiming he wasn't even interviewed.

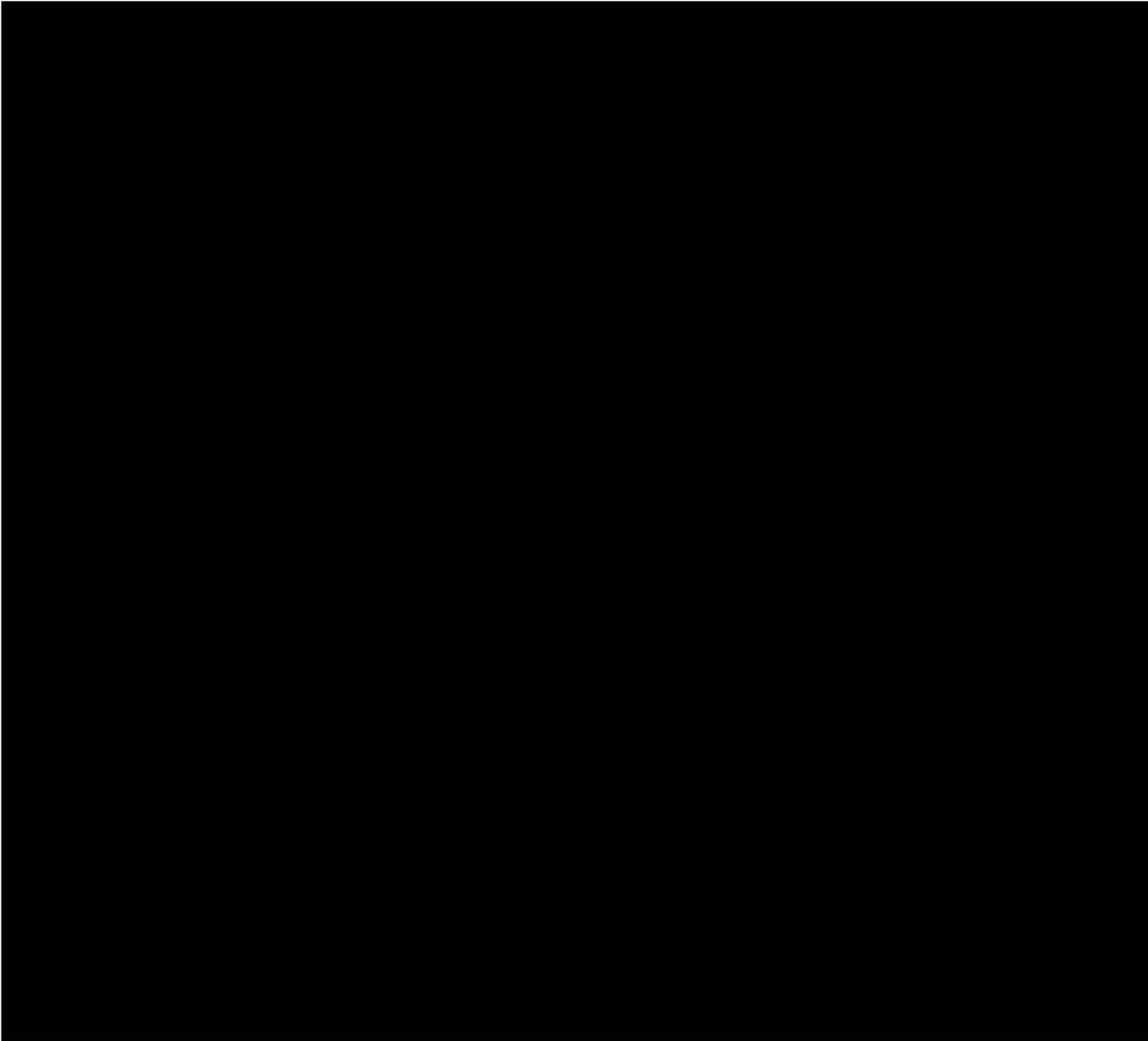
² I am aware of the political overlay on allegations made against a public official. Clearly, one could be motivated to make the complaint to further a political agenda. However, the motive is not at issue here. The question is whether the complaints are credible.

³ During my various interviews, I became aware that other complaints may have been made against Baumgardner. I did not pursue information regarding these allegations and express no opinion as to the allegations in other complaints.



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B. [REDACTED]

The second complaint against Baumgardner was submitted by [REDACTED] on Feb. 21, 2018.⁶ [REDACTED] is currently employed [REDACTED] a non-partisan staff position. [REDACTED]



⁶ [REDACTED] indicates he verbally reported this complaint to the Secretary of the Senate on Jan. 5, 2018. At that time he believed he was merely a witness to harassing behavior and had no right to make his own complaint. Upon a closer review of the Workplace Harassment Policy he decided he was a victim himself of Baumgardner's behavior and reported it in writing as a Complainant.

██████████ reports Baumgardner somehow learned the Victim did not eat eggs, and he sometimes brought her plates of fruit and bagels when there were leftovers from a morning event. ██████████ states any employee has the opportunity to get their own plates of food if they wished and it seemed strange that Baumgardner brought the Victim food she did not request.

According to ██████████ Baumgardner's unwelcome behavior toward the Victim continued through the session although it seemed to abate somewhat towards the end. He reports in mid- to late March, his alarm for the Victim grew when he learned Baumgardner had shown up at ██████████ where the Victim worked part time as a ██████████. He learned this second-hand and does not know the details. He reports the Victim expressed great anxiety about this. ██████████ encouraged her to file a complaint but she declined.

██████████ describes that Baumgardner continued to come to the Enrolling Room every day, sometimes multiple times a day. The Victim became increasingly less friendly and seemed very anxious when he was around. Late in March, ██████████ observed Baumgardner surreptitiously watching the Victim from outside the Enrolling Room. Baumgardner was leaning over the Xerox machine located just outside the Enrolling Room in the ante-chamber staring into the Enrolling Room. ██████████ came up behind him but Baumgardner did not appear to hear him approach. ██████████ quietly leaned forward to see what Baumgardner was looking at and observed the Victim with her back to them, leaning over a table stamping bills or doing some other work. According to ██████████ Baumgardner was clearly looking at her "ass". She was wearing pants but ██████████ was shocked. He made his presence known, and reports Baumgardner quickly stood up and muttered something about the Xerox machine. ██████████ contends Baumgardner was trying to cover up the fact he had been "perving out" on the Victim. He did not disclose this incident to the Victim but he claims he was shaken by it.

██████████ reports it became common knowledge Baumgardner was obsessed with and attracted to the Victim. Baumgardner continued his visits to the Enrolling Room. The Victim expressed she was disgusted and made it clear to ██████████ she was highly offended. The Victim did not return to the Senate in ██████████. ██████████ complains that Baumgardner's behavior impacted all staff in the Enrolling Room. They were worried for, and spent time trying to protect the Victim from the unwanted attention which he claims was "getting weird". She was very uneasy and anxious; she was distracted by the unsolicited and unwelcome attention. ██████████ reports he was personally offended and upset by Baumgardner's conduct. Baumgardner is a powerful person using his power against the Victim.

C. Witnesses related to ██████████ Complaint

1. The Victim

The Victim feels both resentful to be put in the position of having to be involved in this complaint, and thankful for the support she received and continues to receive. She wants to help but is uncomfortable with the potential attention it will place on her as she did not want the

attention to begin with, and as such did not make her own complaint. She is willing to participate only to confirm the following facts are true.

1. She worked in the Enrolling Room during the [REDACTED] legislative session.
2. Beginning in the first or second week of session, Baumgardner came into the Enrolling Room on a daily basis to talk to the three employees who worked there.
3. At first the banter seemed friendly. Baumgardner would make a point of shaking each employee's hand. But when he shook hands with Victim, he held her hand too long making her and others around her uncomfortable.
4. The non-partisan senate staff, including the Enrolling Room staff, went to a happy hour early in the session, and one of them invited Baumgardner to join them. He focused unsolicited and unwanted attention on Victim, offering repeatedly to buy her a whiskey. She declined. His attention made her uncomfortable.
5. For weeks thereafter, Baumgardner stopped in the Enrolling Room on a daily basis and focused unwanted attention on Victim. He sometimes brought her food which she did not request. He was the only Senator who came to the Enrolling Room to speak to staff¹⁰.
6. Baumgardner attempted to engage the non-partisan staff in discussion of bills which was inappropriate. While doing so, he focused his personal attention on Victim causing her embarrassment.
7. Baumgardner came into the Enrolling Room when Victim was telling her co-workers about her second job as a [REDACTED]. Baumgardner asked for the name of [REDACTED] where she worked.
8. About a week later, Baumgardner called [REDACTED] and Victim happened to answer the phone. He asked if he could come to [REDACTED]. She did not know how to say no, as she did not want to make the workplace situation awkward. He came alone and sat at [REDACTED]. It was mid-to late afternoon. He had a beer. Victim tried to stay busy. She felt very awkward and uncomfortable with his effort to engage in a personal conversation with her. When he left, he lingered at the doorway and stared at her.
9. This incident caused Victim to feel "alarmed and discomfited". She could not help but bring her uneasy feelings to the workplace at the Senate. She told her co-workers he had

¹⁰ The Victim and other witnesses indicate there were times a Senator would come to the Enrolling Room looking for something like a stapler or a copy of a bill, or to cut through to the Majority Leader's office. But no other Senator came to the Enrolling Room to engage any enrolling clerk in conversation. Witness E, a former legislator, corroborates this.

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come to her second job to see her. They encouraged her to file a complaint but she declined. She didn't want to rock the boat. She is not a confrontational person, and felt intimidated by him.

10. Victim stopped being friendly or even being polite to Baumgardner. He continued to come to the Enrolling Room and when she didn't engage in conversation with him, he mocked her by saying words to the effect, "She won't even talk to me anymore." He nevertheless continued to come on a daily basis for several more weeks trying to engage her in conversation.

11. Victim describes Baumgardner's conduct as predatory. As a young new employee, she felt he used his power against her. He is intimidating. His behavior made her very uncomfortable. She believes his behavior made her co-workers uncomfortable. He made the work environment hostile.

2. Witness A

[REDACTED]. Witness A states Baumgardner was the only Senator who liked to "hang out" in the Enrolling Room. No other Senators came in to speak to staff. Baumgardner would come in every day, shake hands, say good morning, and then focus his attention on the Victim. Baumgardner showed up at a couple of staff Happy Hours but Witness A is not sure if Baumgardner was actually invited. At first he seemed friendly.

Witness A recalls there was a table and chair located behind the enrolling clerks' desks. Baumgardner would "park himself" in the chair and talk about the bills, the sponsors of the bills. Witness A wondered if Baumgardner was baiting them, trying to get them to say something about the bills which they were not supposed to talk about. It was uncomfortable. It was also a distraction as they are busy in the Enrolling Room and don't have time to chat. It got so bad at one point staff removed the chair so Baumgardner would have no place to sit. He continued to come in to visit. Witness A recalls Baumgardner focused his attention on the Victim. He asked about her food preferences and brought her food even though everyone has the opportunity to get leftover food. He never brought other staff fruit and bagels.

Witness A recalls the Victim discussing her discomfort with Baumgardner's unwanted attention. She was not asking her co-workers to do anything about it. Witness A never observed the Victim to flirt with Baumgardner or return his attention in any way. In fact Witness A describes that Victim seemed to get less friendly and less talkative over the months when Baumgardner came into the Enrolling Room. She would ask "why is he singling me out?" and "I wish he would leave me alone." Victim told a group who went for a drink after work one day Baumgardner had come to her second job where she works as a [REDACTED] which seemed inappropriate to Witness A. Witness A believes it is unlikely Baumgardner's decision to go alone to [REDACTED] where Victim worked was a coincidence.

Witness A describes Baumgardner's behavior as disappointing. His presence in the Enrolling Room was uncomfortable and distracting for everyone. Their discomfort should have

For example, Baumgardner would visit the Enrolling Room on a frequent basis. He would shake hands with each staff member in the room, but Witness C observed Baumgardner would hold Victim's hand "a little too long." Witness C says it was noticeable and uncomfortable. At some point, staff removed the chair that Baumgardner would sit in hoping it would discourage his spending time in the room and his attention on Victim. No other Senators came in to the Enrolling Room to chat.

Witness C recalls at another Happy Hour, Victim described her discomfort with Baumgardner's attention on her. She told staff she didn't like shaking his hand. She described that Baumgardner showed up at her second job where she worked as [REDACTED] which was strange and made her uncomfortable. Witness C and others suggested Victim make a complaint but she expressed reluctance. She stated she "could handle it", and did not want to do anything that could impact her opportunities to get a full-time position with the State of Colorado. Witness C was offended by Baumgardner's behavior and told Victim if she did not file a complaint, Witness C would do so. Victim urged Witness C not to do that. Now that Victim is no longer in the Enrolling Room, Baumgardner might walk through and shake hands, but he seems to have lost interest in the enrolling clerks.

Witness C describes Baumgardner as a likeable friendly individual, but reports that Baumgardner's attention on Victim was so obviously unwelcome it made everyone uncomfortable. Witness C laments: it is [REDACTED], now 2018 – why are we still talking about this? Why do women have to put up with this unwelcome behavior and why do their male co-workers have to worry about protecting them from it? Will anything change from this investigation? "Staff should not be afraid to complain but we are".

5. Witness D

Witness D did not observe the behavior in the Enrolling Room described in the complaint. Witness D reached out to report that when Witness D worked as an Aide to a different Senator several years ago, she was warned never to be alone in a room with Baumgardner. He was commonly called "the boob grabber", and Witness D was fearful of him. Witness D is a young woman and she purposefully avoided contact with Baumgardner. She asks, why should women have to be fearful and be distracted by such concerns?

6. Witness E

Witness E confirms the following is true:

1. He is a former Republican legislator;
2. Witness E did not observe the behavior complained of by either [REDACTED] or [REDACTED]

3. He personally observed Baumgardner give hugs to female lobbyists, hugs that Witness E believed lasted too long or were too tight and/or clingy. This behavior made Witness E feel uncomfortable, although he does not know and never discussed how the hugs made female lobbyists feel;

4. There is no reason for a Senator to regularly spend time in the Enrolling Room. In all the years Witness E was in the legislature he recalls no time when he ever had a reason to speak to anyone in the Enrolling Room;

5. It is common knowledge in the legislature that Baumgardner has a nickname – he is known as “boob grabber”, reflecting how his hands brush against a woman’s breasts after a hug or when he puts his arms around her shoulders and under her breast. Witness E has never observed Baumgardner to touch or grab a woman’s breast.

II. Findings of Fact

It is clear these complaints are submitted now, [REDACTED] after the alleged offending behavior occurred, because of the cultural shift nationally and at the local level empowering employees to complain about offensive gender-based behavior in the workplace. The Complainants are not defensive about this and acknowledge it. In addition, the political environment in which this investigation is being done must be recognized. Certainly individuals who work at the state Capitol are driven by and colored by politics. It is hard for anyone not to be affected by politics in 2018. Yet here, I did not detect in any witness a political motive for supporting these complaints. Indeed most witnesses were quite reluctant to be involved. Regardless, I limit my Findings to whether the complaints regarding Baumgardner’s behavior are credible, and if so, whether his behavior was inappropriate or unacceptable workplace harassment as defined in the Workplace Harassment Policy.

Further, it is not normal to conclude a workplace investigation without interviewing the Accused. Baumgardner was given every opportunity to participate in the investigation and chose not to do so. I have tried not to make negative inferences from his refusal to participate. I understand an Accused may feel the need to have legal representation in an investigation of alleged workplace misconduct. However, in this context an attorney has a limited role. As I explained to the associate attorney with whom I spoke, this is not a deposition. Baumgardner’s attorney would not be allowed to make objections or comments or interfere in any way in the interview. Thus, delaying the interview until his preferred attorney returns from a long absence out of the country when Baumgardner has access to another attorney from the same office is unnecessary and unreasonable.

Finally, I must address the overall concern witnesses communicated during this investigation. All of them report there is no adequate process in the legislature that provides protection to employees (including volunteers) from gender-based inappropriate behavior. Even when other legislators see or are even impacted by the behavior themselves, witnesses perceive nothing is done to stop it. Certainly, the issue is complicated by the fact that an elected official is

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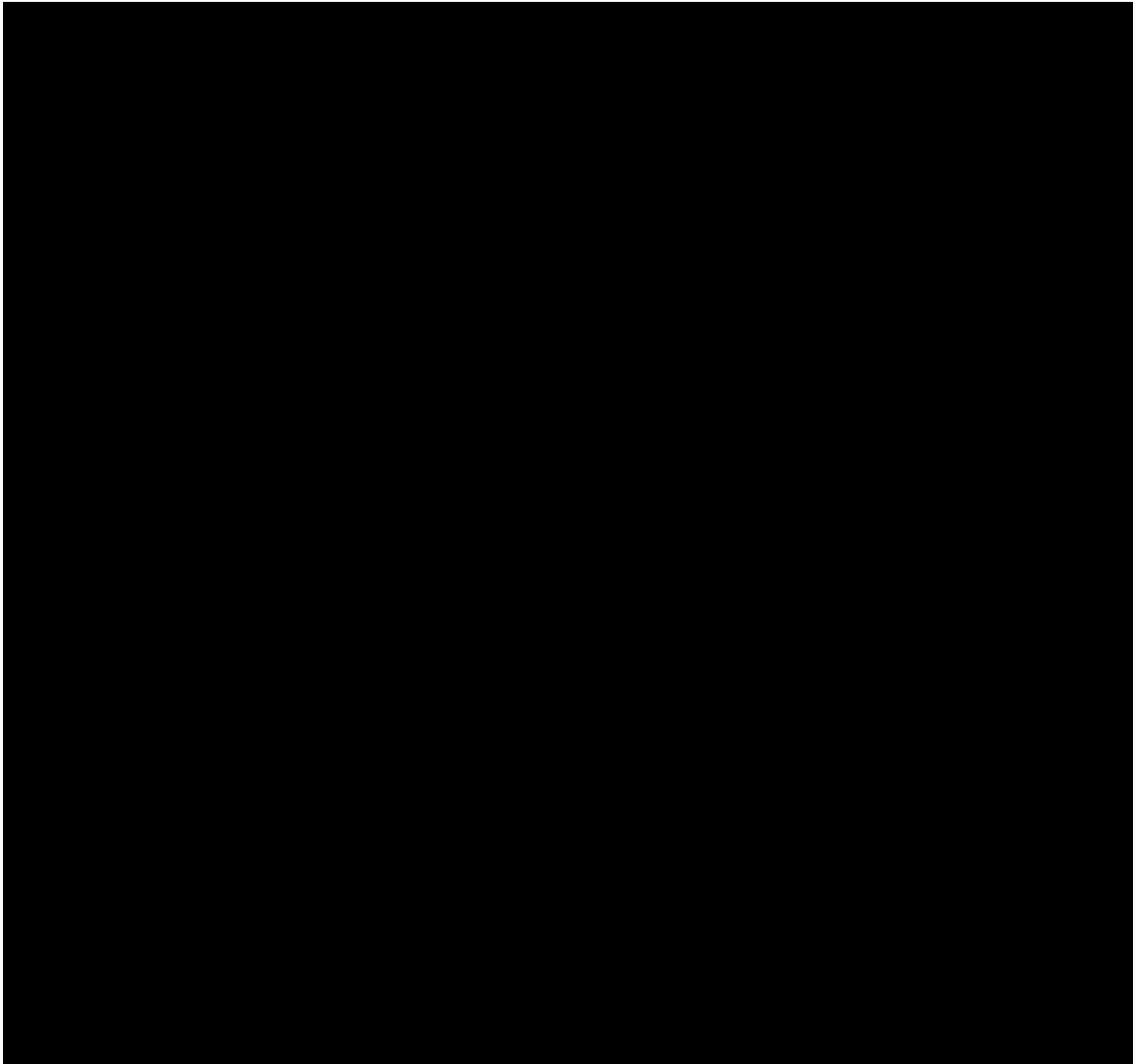
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not an employee, and is not subject to supervision in the typical sense of private industry. As we have seen, the Senator is not even compelled to participate in the investigation. Witnesses express genuine concern of retaliation and feel as the “lowest on the totem pole”, their options for making complaints are limited. They worry nothing will change even if the complaints are found to be credible because imposing disciplinary action against an elected official is so very difficult. Changes to the policy should be considered to strengthen the integrity of the investigation process and the resulting remedies.

My Findings as to the two Complaints are as follows:

1. I find the allegations in both Complaints to be credible.



7. Nevertheless, based on the Findings in the [REDACTED] Complaint and the totality of this investigation, I find Baumgardner engages in an unsettling pattern of inappropriate and offensive behavior toward women consistent with his reputation described by Witness D and Witness E.

8. I find the [REDACTED] Complaint to be credible. [REDACTED] is careful in his description of events. He openly worries his complaint could affect being asked to return to the Senate next session but reports he is tired of feeling guilty for not reporting the behavior. The Victim did not willingly come forward to make a complaint at all. She was only willing to confirm on a limited basis the statements made by others.

9. Other witnesses agreed to participate in the investigation but only if their identities are confidential. I find it likely these witnesses genuinely fear retaliation for participating.

10. I find it credible that Baumgardner regularly visited the Enrolling Room during the [REDACTED] legislative session when he had no legitimate reason to be there. Witness E credibly confirms there is no legitimate reason for a Senator to spend time chatting with staff in the Enrolling Room, and all other witnesses confirm Baumgardner was the only senator to do so.

11. I find it credible that Baumgardner spent his time in the Enrolling Room in [REDACTED] in order to focus attention on Victim. I find it made Victim uncomfortable when Baumgardner brought her food she did not request, and attempted to engage her in small talk.

12. I find credible the complaint that Baumgardner held Victim's hand too long when shaking hands. I find such behavior constitutes inappropriate physical contact. This allegation is similar to the statement from Witness E who credibly reported, without knowing of Victim's allegation, that he observed Baumgardner hugging female lobbyists "too long, or too tight and/or clingy." I find it credible this behavior caused Victim and her co-workers who witnessed it to feel embarrassment and discomfort

13. I find it credible Baumgardner visited Victim at [REDACTED] where she worked as [REDACTED], causing her alarm at this unwanted attention. Victim is the only witness on this point, but she reported it contemporaneously to her co-workers, each of whom expressed concern and anxiety and urged her to make a complaint about it. For a Senator to seek out and follow a low-level staffer to another place of employment would likely cause anxiety as to his intentions and discomfort as reported by Victim. I find it credible his staring at her as he was leaving [REDACTED] was "discomfiting" as she reports. The scenario certainly had a negative impact on her co-workers as well.

14. I find it credible [REDACTED] and Victim gave Baumgardner verbal and non-verbal messages to stop his unwanted behavior which he ignored. [REDACTED] told Baumgardner non-partisan staff could not engage in conversation with legislators regarding legislation. Victim declined Baumgardner's offer to buy her a whiskey at happy hour. Victim avoided conversation with Baumgardner at [REDACTED] where she works as [REDACTED]. Staff removed the chair in which Baumgardner sat to eliminate a place for him to sit. Witnesses including Victim describe that Victim became less friendly, even less polite to Baumgardner. I find Baumgardner's mocking comments that "she won't even talk to me anymore", reflect Baumgardner received these cues to stop bothering Victim but he failed to change his behavior toward Victim. I find this further establishes Baumgardner knowingly used his power and status against this young woman.

15. Although not corroborated, I find it is likely, based on the credibility of other complaints, that Baumgardner was watching Victim from the Xerox machine as described by [REDACTED]

16. I find it credible that during the entire [REDACTED] session, [REDACTED] Victim and other Witnesses were distracted by and worried about Baumgardner's behavior directed at Victim. I find credible Victim's final statement about the situation: "...Baumgardner's conduct [i]s predatory. As a young new employee, [I] felt he tried to use his power against [me]. He is intimidating. His behavior made [me] very uncomfortable and made [my] co-workers uncomfortable. As a result, he made the work environment hostile."

17. Overall, I find the [REDACTED] complaints about Baumgardner to be credible. I find that Baumgardner's behavior "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 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.