

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 Megan Creeden (“Creeden”) and [REDACTED]. He states he has not been provided a copy of the Original Report.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. Complainants and Victim Responses to Baumgardner's Statements

Short telephone conferences were conducted with the Complainants and [REDACTED] to follow up on new information received from Baumgardner specifically that in 2016, he wasn't drinking socially, and regarding his conversation with [REDACTED].

Neither Creeden nor [REDACTED] had any knowledge regarding whether Baumgardner was drinking socially during the relevant time. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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.

[REDACTED]

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 [REDACTED]

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.

for all 18 members of the Republican caucus since 2015 when the legislature is not in session (herein "Interim").

Witness G has known and worked with Baumgardner since starting employment at the legislature. During Interim, Witness G reports that the work includes such tasks as answering voice mail, keeping track of constituent requests, and the like.

Witness G describes a professional relationship with Baumgardner and expresses no concerns with how he behaves with her. He shakes hands as a typical greeting, as do many people at the Capitol. Witness G has never experienced any discomfort with Baumgardner's handshakes. Similarly if Baumgardner gives a hug, it is always appropriate. Witness G indicates a hug is also a common form of greeting in politics. Witness G has never observed Baumgardner to inappropriately touch anyone.

Witness G has never seen Baumgardner attend a staff happy hour. Witness G rarely attends such events. Witness G reports happy hours are not uncommon, and legislators have their own happy hours separate from staff happy hours. If Witness G were to go to a happy hour, it would be a staff one. Baumgardner has never invited Witness G to dinner or out for a drink, and reports having never seen Baumgardner invite anyone else for dinner or a drink.

Witness G reports she does not recall ever seeing Baumgardner drink alcohol, but states he has never told her he does not drink socially. Witness G indicates that sometimes groups of people will walk to an outside event together, and probably there were occasions when Witness G and Baumgardner were both in such a group. These were events held, e.g., at a hotel or the University Club. Alcohol is often served at these events but Witness G did not observe one way or the other if Baumgardner ever consumed an alcoholic drink.

Witness G knows who Creeden is but does not know her personally. Witness G does not know [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Ultimately, Witness G is supportive of Baumgardner and believes he acts professionally at work.

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 Creeden or [REDACTED]
[REDACTED]
[REDACTED]

Palm has read the complaints submitted by Creeden 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.

[REDACTED]

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]

[REDACTED]

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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 Creeden 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. [REDACTED]

[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.

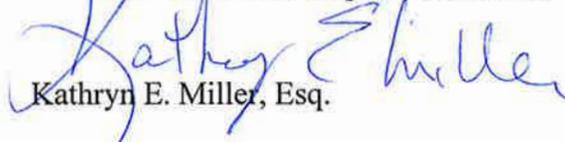
10. Overall and for all the reasons detailed in the Original Report, I find Creeden's complaint credible. I find Baumgardner's behavior towards Creeden was inappropriate and offensive.

[REDACTED]

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.

