

 ORIGINAL

UNITED STATES FEDERAL ELECTION COMMISSION

2013 AUG 15 AM 9:41

OFFICE

Daniel G. Hempey
3175 Elua Street, Suite C
Lihue, HI 96766

Complainant,

MUR # 6748

v.

Colleen Hanabusa
c/o Hanabusa for Hawaii
P.O. Box 1416
Honolulu, Hawaii 96806

Respondent.

COMPLAINT

I am writing to file a complaint against Representative Colleen Hanabusa. Information has come to light suggesting that her campaign is collaborating with the Pharmaceutical Research and Manufacturers of America ("PhRMA"), a corporation, on an advertising campaign in support of her candidacy for the U.S. Senate. Such collaboration is prohibited by federal campaign finance law. Further, the timing of this coordination merits investigation into whether Representative Hanabusa violated the House Code of Official Conduct by improperly linking official acts with campaign activities.

FACTUAL BACKGROUND

Representative Hanabusa represents Hawaii's 1st District and has announced a Democratic primary challenge to incumbent Senator Brian Schatz in the upcoming 2014 special election.

In April 2013, Senator Jay Rockefeller, Senator Schatz and 17 other Senate Democrats introduced the Medicare Drug Savings Act, which would require drug manufacturers to provide rebates for Medicare Part D for low-income seniors and, according to the Congressional Budget Office, reduce the deficit by \$140 billion over the next decade.

PhRMA is a trade association representing pharmaceutical research and biopharmaceutical companies. Among the most powerful lobbying groups in Washington D.C., PhRMA has opposed common-sense efforts to make prescription drugs more affordable.¹ Not surprisingly, PhRMA is lobbying against the Rockefeller-Schatz legislation, which would be an important step toward achieving this goal.²

On May 23, 2013, Representative Hanabusa participated in a telephone town hall sponsored by the Healthcare Leadership Council, a special interest group comprised of companies (including pharmaceuticals) that would have to pay rebates under the Rockefeller-Schatz legislation. During the town hall, Representative Hanabusa trumpeted her opposition to the Rockefeller-Schatz legislation. The news media has speculated that Representative Hanabusa's support for PhRMA's position and Senator Schatz's opposition to it "could inject money into Hanabusa's campaign," noting that pharmaceutical and health product companies made \$15 million in campaign contributions in the last election.³

On June 28, 2013, a month after Representative Hanabusa advocated for PhRMA's position in the town hall, her Deputy Chief of Staff, Christopher Raymond, sent an email to her Chief of Staff, Rod Tanonaka, and two campaign advisers, Jennifer Sabas and Peter Boylan. The email said: "As I'm sure you have heard, PhRMA has committed to pulling together an independent expenditure on CH's behalf. Nick Shipley (Government Relations VP) and Bob

¹ PhRMA has already spent \$5.3 million on lobbying Congress in 2013. See Murakami, Kery "Hanabusa and Schatz

² See <http://www.phrma.org/phrma-reacts-to-part-d-rebates-legislation>.

³ *Id.*

Phillipone (Senior VP) are the leads on this and would like to be put in touch with folks on the campaign.”⁴ Mr. Raymond relayed that “[a]fter having talked with Nick [Shipley] about this a little more, and based on our discussion, I came to the conclusion that it is the three of you he’d like to be in touch with.” After cryptically telling the three that he would provide Mr. Shipley with their email addresses because he “didn’t feel comfortable giving out your phone numbers,” Mr. Raymond instructed, “should you be contacted by Nick or Bob please know they are good [D]emocrats.”

LEGAL DISCUSSION

A. The Hanabusa campaign is coordinating with PhRMA on corporate expenditures in support of her candidacy.

The Federal Election Campaign Act (the “Act”) strictly prohibits corporations, including trade associations, from making contributions to U.S. Senate candidates.⁵ Under federal law, a contribution includes a payment for a communication that is “coordinated” with a candidate, her campaign, or her agents.⁶ A communication is “coordinated” when it is “created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee” or their agents “assent[] to the suggestion.”⁷ A communication is also “coordinated” when it is made following a “substantial discussion” in which “information about the candidate’s ... campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.”⁸ The Act also bars U.S. Senate candidates, their campaigns,

⁴ See Appendix 1.

⁵ 2 U.S.C. § 441b.

⁶ 11 C.F.R. § 109.21(b).

⁷ *Id.* § 109.21(d)(1).

⁸ *Id.* § 109.21(d)(3).

and their agents from soliciting, directing, or spending corporate funds in connection with a federal election.⁹

The June 28, 2013 email demonstrates that the Hanabusa campaign is actively coordinating with PhRMA on a corporate-paid advertising campaign in support of her candidacy. The email revealed that "PhRMA has committed to pulling together an independent expenditure on [Representative Hanabusa's] behalf." But, as the email makes clear, the expenditure contemplated by PhRMA is *not* independent. It is, instead, an impermissible coordinated expenditure. The two lead PhRMA representatives on the Hanabusa project have asked "to be put in touch with folks on the campaign." And Mr. Raymond, the Congresswoman's Deputy Chief of Staff, has acceded to that request, coordinating with one of the PhRMA representatives to determine which campaign personnel could most effectively coordinate the expenditure and then instructing the personnel to work with the PhRMA representatives on the advertising campaign.

This conduct is impermissible. As a corporation, PhRMA is prohibited from paying for communications that are coordinated with federal candidates. Yet PhRMA, through its representatives, has suggested to Representative Hanabusa's campaign that it pay for a communication on behalf of her candidacy. And Representative Hanabusa's agents have assented to that request. That alone would make any subsequent communication an illegal corporate contribution. But even worse, PhRMA's representatives and Representative Hanabusa's campaign appear to be working together to ensure that PhRMA's communications on behalf of her candidacy are informed by the campaign's non-public plans, projects, activities, and needs. Moreover, by encouraging and collaborating with PhRMA on its corporate campaign

⁹ 2 U.S.C. § 441i(e)(1).

expenditures, Representative Hanabusa's agents are soliciting and preparing to spend "soft money" in violation of 2 U.S.C. § 441i(e)(1).

B. The timing of this coordination merits investigation into whether Representative Hanabusa violated the House Code of Official Conduct by improperly linking official acts with campaign activities.

The House Code of Official Conduct (the "House Code") sets forth ethical standards of conduct that Congress has bound itself to abide by, and that the public expects from its elected leaders.¹⁰ The House Code provides that House Members and staff "shall behave at all times in a manner that shall reflect creditably on the House."¹¹ Citizens have a right to expect that their representatives in Congress will exercise impartial judgment in performing their official duties, and make decisions based on the merits of issues and without regard to the prospect of obtaining campaign contributions.¹² Therefore, a House Member or staff may not accept any contribution that is linked with an official action that a Member has taken or is being asked to take.¹³ This standard extends to even the appearance of impropriety regarding campaign contributions and official activity.¹⁴ This is because the public's confidence in government and its elected leaders may be undermined if the public believes that campaign contributors exercise undue influence in the governmental process.¹⁵ Accordingly, a Member should avoid official conduct that would appear to a reasonable, thoughtful, and well informed person to be improperly connected to campaign activities.¹⁶

¹⁰ House Ethics Manual at 2-3, 23 (2008 ed.).

¹¹ House Rule 23, cl. 1.

¹² House Ethics Manual at 2, 23, 151.

¹³ *Id.* at 146-147, 150-151.

¹⁴ *Id.* at 147-48, 309.

¹⁵ *Id.* at 148, 309.

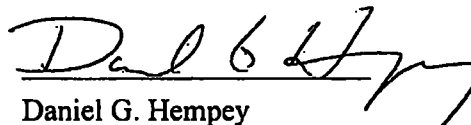
¹⁶ House Committee on Ethics, Staff Report "In the Matter of Allegations Relating to Fundraising Activities and the House Vote on H.R. 4173" at 7 (January 26, 2011), available at http://ethics.house.gov/sites/ethics.house.gov/files/documents/Wall%20Street%20Bill%20Report_Final.pdf.

Further investigation is needed to determine whether Representative Hanabusa's unusually vocal support for PhRMA's position on the Rockefeller-Schatz legislation is linked to PhRMA's pledge to run advertisements on behalf of her candidacy. In late May, Congresswoman Hanabusa appeared in town hall to express her support for PhRMA's position on the Rockefeller-Schatz legislation. Within the next month, Congresswoman Hanabusa's official staff was coordinating with PhRMA's executives about the details of an advertising campaign in support of her candidacy. The involvement of Congresswoman's official staff in these campaign activities is particularly troublesome under House rules.¹⁷

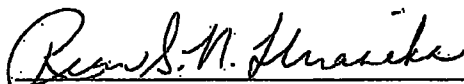
CONCLUSION

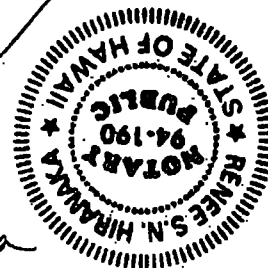
Sadly, it appears that the Hanabusa campaign is violating federal campaign finance law. Moreover, the efforts to facilitate an in-kind contribution from PhRMA have taken place while Representative Hanabusa has been championing PhRMA's position on a high profile piece of legislation. I request an immediate investigation into this matter.

Sincerely,


Daniel G. Hempey

SUBSCRIBED AND SWORN to before me this 6th day of August, 2013.


Notary Public Renee S.N. Hiranaka



My Commission Expires:

March 30, 2014



¹⁷ *Id.* at 13.

Doc. Date: Undated # Pages: 6
Name: Renee S.N. Hiranaka Fifth Circuit
Doc. Description: Complaint


Notary Signature Date

NOTARY CERTIFICATION