

CONFIDENTIAL
FINAL INVESTIGATION REPORT
Submitted November 26, 2019 by Melissa Healy, Stoel Rives LLP

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This report summarizes the findings of my investigation into a formal Legislative Branch Personnel Rule 27 (“Rule 27”) complaint made by Juliya Gudev against Representative Brad Witt on September 4, 2019, which was amended on September 18, 2019. Effective March 25, 2019, the Legislative Administration Committee, acting by and through the Legislative Administrator under ORS 173.720, engaged Stoel Rives LLP to perform services under the State of Oregon Contract for the Purchase of Services (“Contract”). I am the attorney who conducted the investigation under the Contract with assistance from my colleague Brenda Baumgart, as detailed below.

Executive Summary

Ms. Gudev, who is a private citizen and does not work for the Legislative Branch, brought this complaint alleging gender and national origin discrimination by Rep. Witt. The complaint arose following an interaction in Rep. Witt’s office on May 9, 2019, with Ms. Gudev and other members of the Slavic community.

Ms. Gudev’s allegations are set forth more fully in her September 4 email that contains her formal complaint. In summary, on May 6, Rep. Witt testified in support of HB 3063, which would have eliminated non-medical exemptions to child immunizations. During his comments on the House floor, he cited “Russian trolls” as a source of “misinformation” that had led people to “believe falsely that vaccines are unsafe.” Ms. Gudev, who was born in the Soviet Union and immigrated to the United States, alleges that Rep. Witt’s comment about “Russian trolls” was offensive to her as a mother and as someone from the Russian community. She further alleges that when she and a group of other individuals went to Rep. Witt’s office on May 9 to ask for an official apology, he raised his voice, pointed his finger, and became angry with the group, making her feel “belittled” and “hated.”

As detailed below, I conclude that, while Rep. Witt’s behavior during the May 9, 2019 meeting may have reasonably been perceived as abrupt and rude, it does not rise to the level of a Rule 27 violation or otherwise constitute discrimination based on gender, national origin, or any other legally protected characteristic.

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Background

On May 24, 2019, Representative Nancy Nathanson forwarded a report she had received from an individual named Carissa Bonham (also a private citizen) regarding the May 9 interaction to Jessica Knieling, Interim Human Resources Director. Ms. Bonham, who had not been present for the May 9 interaction, included a “victim statement” from Ms. Gudev in her email. Ms. Knieling spoke to Ms. Bonham and Ms. Gudev, who requested an apology from Rep. Witt. Ms. Knieling spoke to Rep. Witt, who declined to apologize. Ms. Knieling notified Ms. Gudev, and Ms. Gudev indicated that she wanted to file a formal complaint under Rule 27. Ms. Knieling contacted Ms. Baumgart from my office about this matter, which was designated as Case #9, on May 31, 2019.

Ms. Baumgart spoke with Ms. Gudev by telephone on or around June 3, 2019, and met with her on June 7. At that time, she was undecided as to her future course of action. Ms. Baumgart gave her time to consider her options. After some back and forth, Ms. Baumgart spoke with Ms. Gudev by telephone again on July 1. At the end of that call, Ms. Gudev was still deciding whether to pursue a formal complaint. She subsequently decided to go forward and Ms. Baumgart and I worked with her to coordinate that process. (I began handling the investigation due to Ms. Baumgart’s sabbatical.) I spoke with Ms. Gudev by telephone on August 9, 2019, and she confirmed that she would in fact be filing a formal complaint. Ms. Gudev submitted her formal complaint on September 4, 2019, and an amended complaint on September 18. I provided both the original formal Rule 27 complaint and the amended complaint to Rep. Witt.

Scope of Investigation

The following individuals were interviewed¹:

- Juliya Gudev – June 7 (by Ms. Baumgart) and September 30, 2019
- Rep. Brad Witt, Caleb Hayes (intern in Rep. Witt’s office) – September 17, 2019²
- Yulia Shipulina – September 30, 2019 (with Ms. Gudev also present)

At the beginning of each interview, I explained my role as an investigator under Rule 27, including the fact that I would write a report with my findings and conclusions. I encouraged witnesses to ask questions, provided them with my contact information, and invited them to contact me if they thought of any additional information after we met. All witnesses were willing to speak with me voluntarily.

¹ All interviews were conducted in person. Unless otherwise noted, I conducted all interviews.

² Melinda Bernert, Rep. Witt’s Communications Director, was also present for this interview.

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I reviewed the following in the course of my investigation:

- Legislative Branch Personnel Rule 27: Harassment-Free Workplace
- Compilation of news headlines referencing “Russian trolls” prepared by Rep. Witt’s office
- August 23, 2018 *New York Times* article – “Russian Trolls Used Vaccine Debate to Sow Discord, Study Finds” – provided by Rep. Witt
- May 9, 2019 Tweet from Jonathan Lockwood
- May 9, 2019 Facebook post from Carissa Bonham, along with portions of a Facebook video
- May 9, 2019 email from Veronica Darling to Rep. Witt – “Apologize or Resign”
- May 10, 2019 Facebook post from Oregonians for Medical Freedom quoting Jonathan Lockwood
- May 31, 2019 email from Jessica Knieling to Brenda Baumgart – “Case #9” and attached emails (May 20, 2019 email from Carissa Bonham to Rep. Nathanson; May 24, 2019 email from Jessica Knieling to Carissa Bonham)
- September 4, 2019 email from Juliya Gudev containing formal complaint
- September 18, 2019 email from Juliya Gudev requesting amendment to formal complaint

I reviewed the following footage on OLIS³:

- May 6, 2019 testimony of Rep. Witt in support of HB 3063

Pursuant to Rule 27(6)(i), this draft report is provided to the Human Resources Director, the Office of Legislative Counsel, Ms. Gudev, and Rep. Witt. Rule 27(6)(j) provides that within five days of receipt of this draft report, recipients may request modifications to the findings of fact. Any requests to modify the findings of fact must be made in writing and must explain the reason for the modification. Any written requests for modification under Rule 27 must be sent to Stoel Rives LLP, c/o Melissa Healy, 760 SW Ninth Avenue, Suite 3000, Portland, OR 97205 or to melissa.healy@stoel.com.

The Human Resources Director and the Office of Legislative Counsel will have no role in review of requests for modifications to the report, and any requests for modification should be made to the outside counsel fact-finder for review and consideration. Any decision to modify will rest solely with the fact-finder.

³ When Ms. Gudev sent her formal complaint on September 4, 2019, she notified me that someone who was with her on May 9 had recorded the first half of the conversation with Rep. Witt on his or her phone. During our September 30 meeting, she referenced there being a video of the encounter. I clarified that the recording and the video she had mentioned were one and the same, and declined to review it because all participants had not been aware of the recording at the time it was made. *See* ORS 165.540.

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The draft report issued on November 15, 2019. Ms. Gudev timely submitted requests for modifications on November 20. Rep. Witt did not submit any requests for modifications. I thoroughly considered Ms. Gudev’s comments in finalizing this report.

Summary of Factual Findings

The factual findings relevant to my conclusions and recommendations are summarized below.

1. HB 3063 was introduced during the 2019 Legislative Session. The bill would have eliminated non-medical exemptions for required vaccines in Oregon schools or children’s facilities (extracurricular activities). Parents would no longer be permitted to decline that their children be immunized for religious, philosophical, or other reasons aside from a medical diagnosis.⁴
2. Vaccinations were a particularly contentious issue during the 2019 legislative session. Rep. Witt stated that his office received a “barrage” of phone calls and emails from individuals opposed to vaccination legislation during the session, and similar opposition groups attended his town hall meetings, where they engaged in “exceedingly disruptive” behavior. Ms. Gudev states that she has not attended Rep. Witt’s town hall meetings and did not interact with him or his office before May 9, 2019.
3. On May 6, 2019, Rep. Witt testified in favor of HB 3063 during a floor session. He stated, in part:

“And as we all know, as time went on there were more and more vaccines and fewer and fewer diseases. Fast forward, however, several decades. And several instances of misinformation about the safety of vaccines and we are witnessing the revival of several of these diseases. Polio is rampant in Pakistan, Afghanistan and Nigeria because rumors in those countries have it that residents believing the vaccines are being used to sterilize the populace. Absent a vaccinated public, polio remains a scourge in these countries. Here in the United States, similar misinformation has led to a drop-off in measles and mumps vaccinations.

“* * * * *

“And the serious reintroduction of these diseases among the unvaccinated. A false and widely debunked report from the 1990s that linked autism to MMR vaccine[s]. **Fallacious reports about vaccine adjuvants and an anti-vaccine social media campaign**

⁴ HB 3063 died in the Senate in May 2019, shortly after the incident at issue in this complaint.

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led by Russian trolls to disrupt our society as reported, Madam Speaker, by CBS Network News have all combined to scare many into believing falsely that vaccines are unsafe.”

4. Rep. Witt’s comment about “Russian trolls” drew an audible response from individuals in the gallery, prompting him to spontaneously add in the reference to CBS News.
5. Ms. Gudev, who was born in the Soviet Union and has lived in the United States for most of her life, was in the gallery and present for Rep. Witt’s testimony on May 6. She was offended by his specific reference to the Russian community and believed that, by invoking the term “Russian trolls,” he was trying to discredit individuals of Slavic descent who opposed the bill.
6. Rep. Witt stated that in using the term “Russian trolls,” he was not referring to particular individuals, but was instead using the term that numerous news outlets had used in describing Russian anti-vaccination disinformation campaigns. (His staff provided me with a *New York Times* article, along with a compilation of news headlines using the term.)
7. On May 9, 2019, Ms. Gudev and two other people led a “Slavic Mothers Unite Against HB 3063” rally with approximately 200 attendees at the Capitol. After the rally, Ms. Gudev, Yulia Shipulina, and several other individuals went to Rep. Witt’s office to ask him to apologize for his comments on May 6. They did not have an appointment.
8. When the group arrived, they spoke to Rep. Witt’s Chief of Staff, Josette Hugo. There is some dispute about whether Rep. Witt met with them right away or if he was initially on the phone but, in any event, Rep. Witt ultimately met with the group in his office a short time after they arrived and had a printed copy of his May 6 testimony ready. The group was large enough that several individuals remained standing during the conversation.
9. Ms. Gudev began the meeting by telling Rep. Witt that the group was there on behalf of the Slavic community to ask him for an official apology for his comment about “Russian trolls” on the House floor. She said that the group was comprised of real mothers who were concerned about their children’s health and the comment was offensive to them.
10. Rep. Witt asked Ms. Gudev if she had been present during his testimony, and she said yes. Rep. Witt and Caleb Hayes state that Rep. Witt then held out a copy of the speech and offered it to the group, inviting them to read it, but they refused to take the document from him. Ms. Gudev, on the other hand, recalls that Rep. Witt asked if they would like to read it or if they would like him to read it, and she told him to go ahead and read it.
11. Rep. Witt proceeded to read an excerpt of his speech that included the reference to “Russian trolls.” When he finished, Ms. Gudev told him again that the group was offended, and Rep. Witt said that he was offended by what he perceived as their demand for an apology. Ms. Gudev and Ms. Shipulina allege that as he spoke, Rep. Witt raised his voice, pointed his finger and became more intense. Rep. Witt denies that he pointed his finger, but agrees that he was “extremely adamant and forceful” and wanted the group

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to understand very clearly that they had offended him. The group turned around and left. In total, the interaction lasted a few minutes.

12. After the meeting, Ms. Gudev was upset and went to Senator Kim Thatcher's office, where she encountered staff member Jonathan Lockwood. Mr. Lockwood tweeted about Ms. Gudev's experience, posting that "[t]he Slavic community [had been] spit on by Dem[ocrat]s today over their opposition to HB 3063." Ms. Bonham called on Rep. Witt to resign or apologize immediately over Facebook. Rep. Witt received tweets and emails to the same effect.
13. Rep. Witt met with another group of individuals against HB 3063 approximately a week later. He characterized the conversation with that group, which was comprised of women who opposed HB 3063 for religious reasons, as "respectful" in comparison to Ms. Gudev's group, stating that they had made an appointment and did not come in "demanding an apology."
14. During our meeting, Rep. Witt openly expressed his suspicion that Ms. Gudev's complaint was politically motivated, and that he had only been asked to apologize so her group could issue a press release saying something to the effect that he had "apologized for his racist comments toward the Slavic community." He also opined that the formal Rule 27 complaint, which was filed after he declined to apologize, was part of a larger "targeted operation" against vaccination legislation. On the day we met at the Capitol, Rep. Witt stated that there had been a group of women coming in and out of the House Minority Office all day, including at least one person who he recognized as having been in his office on May 9.

Summary of Conclusions and Recommendations

Based on the information obtained and factual findings, the evidence does not substantiate Ms. Gudev's claim of discriminatory treatment based on gender or national origin. Rule 27 prohibits "workplace harassment," which is defined as "unwelcome conduct in the form of treatment or behavior that, to a reasonable person, creates an intimidating, hostile or offensive work environment." Rule 27(2)(h). Workplace harassment "includes discrimination based on a person's protected class," but "does not include every minor annoyance or disappointment that an employee may encounter in the course of performing the employee's job." Rule 27(2)(h).

To be clear, Rep. Witt's behavior on May 9, 2019 was, by his own admission, "adamant" and "forceful." I find it more likely than not that he raised his voice and became visibly angry during the interaction with Ms. Gudev.⁵ I also find Ms. Gudev's claim that she was upset by the interaction to be credible. That said, the question is not whether Rep. Witt conducted himself in

⁵ Although there were other individuals present for the interaction aside from those I interviewed, it was not necessary to speak to them because Rep. Witt essentially admitted to the behavior.

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a professional manner – it is whether his conduct was more likely than not motivated by discriminatory bias against Ms. Gudev and her group.⁶

The evidence does not support a conclusion that Ms. Gudev’s gender or national origin or that of anyone in her group were the factors that made a difference. The May 9 incident occurred in the midst of a heated debate over HB 3063 (and, in fact, the May 9 incident itself became the subject of social media coverage by others who did not share Rep. Witt’s views on the bill). It also followed a period of time in which Rep. Witt’s office had been, as he described it, inundated by communications from individuals against vaccine legislation. When Ms. Gudev’s group came to his office, he deduced, rightly or wrongly, that they were part of a larger effort that he believes was responsible for the disruption at his town hall meetings and the “barrage” of emails and phone calls. Certainly, the manner in which the group arrived (without an appointment) and the tenor of the conversation (which began with the request for an apology) factored into his conclusion. To the extent that assumption guided his behavior during the meeting, however, treating someone differently because you believe they are part of a particular political movement, as he did, is not the same thing as treating someone differently due to their gender or national origin.

Furthermore, I find it more likely than not that the same two factors noted above – the manner in which the group arrived and the tenor of the conversation – caused the meeting to proceed as it did, rather than the gender or national origin of the participants.⁷ During our conversation, Rep. Witt repeatedly mentioned that Ms. Gudev’s group had come to his office unannounced and, in his view, promptly “demanded” an apology. He compared the May 9 interaction to the meeting he had with another group of women also opposed to HB 3063 a week later, citing the latter as a “respectful conversation” that had been scheduled in advance. Under the circumstances, and with the caveat that I am not tasked with deciding (nor am I deciding)

⁶ I note that Rule 27’s definition of “workplace harassment” appears to encompass *any* “treatment or behavior that, to a reasonable person, creates an intimidating, hostile or offensive work environment,” regardless of whether such treatment or behavior is based on a person’s protected class. Rule 27(2)(h). Even through that broad lens, I do not find that Rep. Witt’s actions during the May 9 meeting rose to the level of creating an “intimidating, hostile or offensive work environment” under the circumstances. Rule 27 is plainly not a civility code, as evidenced by its exclusion of “minor annoyance[s] or disappointment[s]” from the definition of “workplace harassment.” Rule 27(2)(h). That Rep. Witt reacted strongly when a large group came into his office unexpectedly and asked him to apologize for comments that, in his view, he did not need to apologize for is not harassment. It is outside my scope to suggest that Rep. Witt should have responded differently; rather, my task is to discern whether his response was improperly motivated.

⁷ During our meeting, Rep. Witt informed me that he is also Slavic (a fact he did not share with Ms. Gudev’s group because he did not believe it would have changed anything). Although I recorded this as background information, it did not factor into my findings in this case.

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who was right or wrong or professional or unprofessional in the May 9 interaction, I conclude that Rep. Witt's response to Ms. Gudev's group was not the product of a discriminatory motive.

Conclusion

For the reasons above, the evidence does not substantiate Ms. Gudev's complaint.

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