

OFFICE OF  
GENERAL COUNSEL

2018 JUL 17 PM 2:54

George L. Berish  
Candidate  
Hawaii's United States Senate Seat

Honolulu, HI 96814  
July 6, 2018

MUR # 7431

Office of General Counsel  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

2018 JUL 18 PM 1:11  
CELA  
FEDERAL ELECTION  
COMMISSION

Dear Commissioners:

I wish to file a complaint related to what I believe are material violations of election law related to the amount and reporting of political contributions. Also, to what the public generally knows a "equaltime" requirements that apply to the press, and a claim of tax-exemption by a news organization that I believe has knowingly, materially, and irreversibly acted to influenced Hawaii's primary elections.

More specifically, the core of the complaint is that Honolulu Civil Beat has given free publication of candidate-prepared material of one candidate in Hawaii's primary election for Hawaii's United States Senate Seat, while it withheld equal benefit from the other 9 candidates.

The advantage has continued for over 20% of the primary period remaining when Civil Beat began providing unequal benefit to a single candidate. The period lengthens daily, and with it, the material dollar value of the unreported benefit given to the candidate favored by Civil Beat's actions, while it was denied to others.

Here are facts I believe are relevant, and which I affirm to be true under penalty of perjury.

**Honolulu Civil Beat.**

- o Hawaii's only large-scale on-line newspaper.
- o It claims tax exemption under 501(c)3 (81-2803662)
- o Phone: 808-737-2300
- o Mailing address:  
3465 Waialae Avenue,  
Suite 200,  
Honolulu, Hawaii 96816.

My complaint does not involve anything published by the Civil Beat's own writers to cover what its editors deem election news. [Although I believe Civil Beat's reporting of election news is sufficiently biased that a cursory investigation would find Civil Beat's management and staff intend for it to influence

the out come of Hawaii's elections. I'd even bet that under oath, they would admit having conversations in which they expressed pride in Civil Beat's fight to help elect candidates they felt best served the Greater Good, while defending the public from opinions of candidates Civil Beat deemed less worthy. But that is a tax-exemption matter not FEC matter.]

Therefore, this complaint is limited solely to the fact Civil Beat has published candidate-prepared material for one of 10 primary candidates at no cost, while it withheld and delayed equal benefit to the other 9. And that constitutes a political contribution that has not been reported. And if it had been reported, the dollar value would exceed allow able limits even if Civil Beat did not claim tax-exemption.

More specifically:

- Civil Beat contacted each candidate and requested she or he participate in Civil Beat's election survey. Each was asked to submit up to 200 words on each of 5 issues selected by Civil Beat to tell voters about the candidate's position on those issues in her or his own words, i.e. material prepared by the candidate to promote her or his candidacy.
- The deadline was June 25. I and other candidates made timely submissions.
- As of July 3, Civil Beat had, for about a week, published the material submitted by 1 of the 10 ten candidates, but declined to publish any responses submitted by any of the other 9.
- As of June 3, there were less than 5 weeks left in the primary. My point is that a week's head start is a material percentage of the period, and therefore gave the favored candidate a benefit that has a material dollar value.
- Subjectively, no one can deny there is a material, and irreversible, advantage in being the "First and Only" candidate given that many free column inches in Honolulu's only large scale on-line news paper, to promote her or his candidacy, in her or his own words, for that length of time.
- Objectively, the dollar value of Civil Beat's free and exclusive coverage of a single candidate's material, while denying it to all other candidates, is the dollar cost to another candidate of buying a comparable number of column inches, for a full week, in Honolulu's only alternative paper, on a page that enjoyed the same prominence given by Civil Beat to the single candidate to whom it extended that coverage for free.

That amount is definitely determinable. Although, like Uber's time-of-day pricing, it is not the same all the time and every day. And that means obtaining it in writing requires the cost of hiring an advertising broker I can't afford until the FEC confirms Civil Beat's materially unequal treatment of US Senate candidates is a political contribution. But none the less it is available to the FEC. And I believe would be provided to the FEC at no charge by the other paper if asked.

But even with out a formal quote, no one denies it is common knowledge that buying that much space for that much time on a page where it enjoys equal prominence is material and measured in multiple thousands of dollars. And very likely exceeds the dollar amount any legal person may legally contribute to a single candidate. Even it the legal person did not claim tax-expemption, and so was prohibited from making any political contribution.

If the FEC confirms Civil Beat's highly unusual practice of dribbling out survey results in a way that benefits one candidate, at the expense of all others, is a political contribution, my complaint also includes the fact that the dollar value of the advantage given by Civil Beat was not reported by the candidate who accepted it. In the case of the primary for Hawaii's United States Senate Seat that candidate is Edward Pirkowski.

(As an aside, I understand that Civil Beat has done the same thing with respect to primary elections for other offices, i.e. favored one candidate with first and exclusive publication of candidate-prepared material, Civil Beat withheld and delayed equal benefit to other candidates. If the FEC deems the number of such instances is relevant it can be easily determined from Civil Beat's on-line achieves.)

I acknowledge that it would never have occurred to the favored candidates that Civil Beat's actions constituted a political contribution, because Civil Beat's decision to dribble out survey results in a way that gives political advantage to a single candidate, is highly unusual, if not unheard of. Especially for an organization claiming tax-exempt status.

But a violation results whether a person makes it knowingly or inadvertently. Therefore, while I have no opinion on what, or even if, any penalty is appropriate, I do assert it would be wrong for the FEC to look away, and by doing so set the precedent that excluding thousands of dollars in free publishing is ok so long as the candidate claims it was "inadvertent".

That would set a precedent under which Civil Beat's highly unusual manipulation of survey result disclosure would become a political tactic that could safely be used by other papers in any election to evade the intent of "equal time" laws. And by many non-profits to evade the prohibition of acts that sought to influence elections.

As a final note. The FEC should know I twice contacted Civil Beat to ask that they reconsider its highly unusual decision to dribble out responses in a way that provides such obvious advantages and disadvantages to candidates in a single race. And why I believed that activity violates letter, and intent, of our nation's election laws.

Also that the appropriate action is for Civil Beat to discontinue publishing the responses of any candidate in a particular party's primary for a specific office, until it was ready to equally publish the responses of all the candidates in that race. To date Civil Beat has not done so.

instead Civil Beat sent an email to the community explaining Civil "had to" post the responses as it did, because it was too busy to post them simultaneously.

After which Civil Beat has continued its practice of dribbling responses out over an extended period that, in Civil Beats own words, would extend into the summer, which of course is after the election in which I am a candidate is over, and the influence of its actions made permanent.

Therefore, I hope the FEC agrees Civil Beat's attorneys know, as all attorneys know, and anyone who has a had a basic civics class knows, being "too busy" to comply with election law does not exempt Civil Beat from the obligation to comply with it.

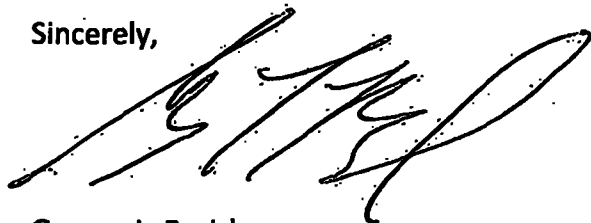
Not to mention that if Civil Beat's intention was to honestly treat all candidates equally, and not to intentionally influence the election by favoring one candidate over others, it would not have required any additional work by Civil Beat's staff to prepare 10 submissions for publication at one time than it does to prepare them 1 at a time and dribble them out in a way that favors 1 candidate and the expense of the others.

I hope and trust the commissioners will look seriously at this material influence of a tax-exempt organization on the primary election for Hawaii's United State's Senate Seat. Because there is no intellectually honest argument for claiming those actions have not already had a permanent and material influence on that election's outcome.

I understand there is not enough time for the FEC to fully review this complaint and render a decision before the primary election is over. However, I believe the FEC owes it to America's voters to render a decision at the end of its review.

Otherwise this end-run around our election laws will become a standard political tactic for avoiding the intent of the "equal time laws" in future elections. A tactic no one can deny can be used to have a direct, material, and irreversible influence on election results, while still flying under the radar of our election contribution limit and reporting requirements.

Sincerely,



George L. Berish  
Candidate  
Hawaii's Seat in the United States Senate.

cc: Internal Revenue Service  
Stop 31313 Fresno, CA 93888

Institute for Non-Profit News  
info@inn.org

Subscribed and sworn to before me this


6<sup>th</sup> day of July, 2018

  
Notary Public, State of Hawaii **BRENDA M. K. AU**

My commission expires **MAY 17 2020**

C.S.

Document Date: JUL - 6 2018 # Pages: 7  
Notary Name: **BRENDA M.K. AU** First Circuit  
Doc. Description: Affidavit

  
Notary Signature JUL - 6 2018  
Date

**Information Referral**

(See instructions on reverse)

Use this form to report suspected tax law violations by a person or a business.

**CAUTION: READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM.** There may be other more appropriate forms specific to your complaint. (For example, if you suspect your identity was stolen, use **Form 14039**.)

**Section A - Information About the Person or Business You Are Reporting**

Complete 1, if you are reporting an Individual. Complete 2, if you are reporting a business only. Complete 1 and 2 if you are reporting a business and its owner. (Leave blank any lines you do not know.)

1a. Name of individual		b. Social Security Number/TIN		c. Date of birth	
d. Street address		e. City		f. State HI	g. ZIP code
h. Occupation		i. Email address			
j. Marital status (check one, if known) <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Head of Household <input type="checkbox"/> Divorced <input type="checkbox"/> Separated				k. Name of spouse	
2a. Name of business Honolulu Civil Beat		b. Employer Tax ID number (EIN) 81-2803662		c. Telephone number 808-737-2300	
d. Street address 465 Waiialae Avenue, Suite 200		e. City Honolulu		f. State ID	g. ZIP code 96816
h. Email address membership@civilbeat.org		i. Website https://www.civilbeat.org/about/			

**Section B - Describe the Alleged Violation of Income Tax Law**

3. Alleged violation of income tax law. (Check all that apply.)

- |   |  |  |  |
|---|--|--|--|
| <input checked="" type="checkbox"/> False Exemption | <input type="checkbox"/> Unsubstantiated Income      | <input type="checkbox"/> Unreported Income | <input type="checkbox"/> Failure to Withhold Tax |
| <input type="checkbox"/> False Deductions           | <input type="checkbox"/> Earned Income Credit        | <input type="checkbox"/> Narcotics Income  | <input type="checkbox"/> Failure to File Return  |
| <input type="checkbox"/> Multiple Filings           | <input type="checkbox"/> Public/Political Corruption | <input type="checkbox"/> Kickback          | <input type="checkbox"/> Failure to Pay Tax      |
| <input type="checkbox"/> Organized Crime            | <input type="checkbox"/> False/Altered Documents     | <input type="checkbox"/> Wagering/Gambling | <input type="checkbox"/> Other (describe in 5)   |

4. Unreported income and tax years

Fill in Tax Years and dollar amounts, if known (e.g., TY 2010- \$10,000)

TY \_\_\_\_\_ \$ \_\_\_\_\_ TY \_\_\_\_\_ \$ \_\_\_\_\_ TY \_\_\_\_\_ \$ \_\_\_\_\_ TY \_\_\_\_\_ \$ \_\_\_\_\_ TY \_\_\_\_\_ \$ \_\_\_\_\_

5. Comments (Briefly describe the facts of the alleged violation-Who/What/Where/When/How you learned about and obtained the information in this report. Attach another sheet, if needed.)

Honolulu Civil Beat is Honolulu's only large on-line newspaper. It claims tax exempt status as a 501c(3) organization. In Hawaii's current primary election for Hawaii's United States Senate Seat it has given free space to one of 10 candidates in which CB published candidate-prepared content (not CB's own reporting staff's stories) for over a week, while denying equal treatment to all other candidates. The cost to another candidate buy equal space in the only comparable alternative paper in which to publish her or his equivalent content, with equal prominence, for a full week, is measured in thousands of dollars. And with only 4 weeks left, I see no way anyone can logically deny it has already had a material, and irreversible, influenced on the outcome of the election. Hence my request CB's tax-exemption be reviewed. [Please see related FEC complaint I've enclosed.]

6. Additional information. Answer these questions, if possible. Otherwise, leave blank.

- a. Are book/records available? (If available, do not send now. We will contact you, if they are needed for an investigation.)  Yes  No
- b. Do you consider the taxpayer dangerous?  Yes  No
- c. Banks, Financial Institutions used by the taxpayer

Name			Name		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code

**Section C - Information About Yourself**

(We never share this information with the person or business you are reporting.)

This information is not required to process your report, but would be helpful if we need to contact you for any additional information.

7a. Your name George L. Berish		b. Telephone number 808-542-5400	c. Best time to call Days -- Hawaii Time		
d. Street address 88 Piikoi Street, Unit 4009		e. City Honolulu		f. State HI	g. ZIP code 96814

Please print and send your completed form to: Internal Revenue Service  
Stop 31313  
Fresno, CA 93888

# Instructions for Form 3949-A, Information Referral

## General Instructions

### **Purpose of the Form**

Use Form 3949-A to report alleged tax law violations by an individual, a business, or both.

### **CAUTION: DO NOT USE Form 3949-A:**

- o If you suspect your **identity was stolen**. Use Form 14039. Follow "Instructions for Submitting this Form" on Page 2 of Form 14039.
- o To report suspected **misconduct by your tax return preparer**. Use Form 14157. Submit to the address on the Form 14157.
- o If your **paid preparer** filed a return or made changes to your return **without your authorization**. Instead, use Form 14157 AND Form 14157-A. Submit both to the address on the Form 14157-A.
- o If you **received a notice** from the IRS about **someone claiming your exemption or dependent**. Follow the instructions on the notice. Do not complete Form 3949-A.
- o To report an **abusive tax avoidance scheme, promotion, or a promoter** of such a scheme. Use Form 14242. Mail or FAX to the address or FAX number on the Form 14242.
- o To report misconduct or **wrongdoing by a tax exempt organization** or its officers, directors, or authorized persons. Use Form 13909. Submit by mail, FAX, or email, according to the instructions on the Form 13909.

**Have information and want to claim a reward?** Use Form 211, Application For Award For Original Information. Mail it to the address in the Instructions for the form.

## Specific Instructions

### **Section A – Provide Information About the Person/Business You Are Reporting, if known.**

Provide as much information as you know about the person or business you are reporting.

1. **Complete if you are reporting an individual.** Include their name, street address, city, state, ZIP code, social security number or taxpayer identification number, occupation, date of birth, marital status, name of spouse (if married), and email address. Include as much information as you know.
2. **Complete if you are reporting a business.** Include the business name, business street address, city, state, ZIP code, employer identification number (EIN), telephone number(s), email address, and website, if known.  
**Note: Complete both parts if you are reporting a business and its owner.**

### **Section B – Use to Describe the Alleged Tax Law Violation(s)**

#### **3. Check all Tax Violations That Apply to Your Report.**

False Exemption- Claimed persons as dependents they are not entitled to claim.

False Deductions- Claimed false or exaggerated deductions to reduce their taxable income.

Multiple Filings- Filed more than one tax return to receive fraudulent refunds.

Organized Crime- Member of a group of persons who engaged in illegal enterprises such as drugs, gambling, loansharking, extortion, or laundering illegal money through a legitimate business.

Unsubstantiated Income- Reported false income from an unverifiable source in order to get a false refund.

Earned Income Credit- Claimed Earned Income Credit which they were not entitled to receive. They may have reported income they did not earn or claimed children they were not entitled to claim.

Public/Political Corruption- Public official or politician violated laws against using their position illegally for personal gain.

False/Altered Documents- Changed documents, such as a W-2 or Form 1099, or created fake documents to substantiate a false refund.

Unreported Income- Received cash or other untraceable payments, such as goods or services, and did not report the income.

Narcotics Income- Received income from illegal drugs or narcotics.

**Kickback-** Received illegal payments or kickbacks in exchange for referring the business of a government agency or other business towards a company or for influencing business decisions that result in part of the payment for the business received or service performed being returned to the person who made the referral.

**Wagering/Gambling-** Did not report income received from wagering or gambling.

**Failure to Withhold Tax-** Individual or business did not withhold legally owed taxes from income paid to their employee(s), such as Social Security or Medicare taxes. Example: A business treated employees as independent contractors and issued Forms 1099, with no tax withheld, instead of a W-2.

**Failure to File Return-** Individual or business has not filed returns legally due.

**Failure to Pay Tax-** Individual or business has not paid taxes legally due.

**Other-** Describe in 5.

4. If your report involves unreported income, indicate the year(s) and the dollar amount(s).
5. Briefly describe the facts of the alleged tax law violation(s) as you know them. Please attach another sheet, if you need more room.
6. Additional information, if known. Attach another sheet, if you need more room.

### Section C – Provide Information about Yourself

7. Note: Information about yourself is NOT required to process your report, but may be helpful if we need additional information.

Please print and send your completed form to the Internal Revenue Service at:

**Internal Revenue Service  
Stop 31313  
Fresno, CA 93888**

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### Paperwork Reduction Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. This report is voluntary and the information requested helps us determine if there has been a violation of Income Tax Law. We need it to insure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administrations of any Internal Revenue laws. Generally, tax returns and tax return information are confidential, as required by Code section 6103.

The time required to complete this form will vary depending on individual circumstances. The estimated average time is 15 minutes.

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### Privacy Act Notice

We are requesting this information under authority of 26 U.S.C. 7801. The primary purpose of this form is to report potential violations of the Internal Revenue laws. The information may be disclosed to the Department of Justice to enforce the tax laws. Providing the information is voluntary. Not providing all or part of the information will not affect you.