



1           The Complaint alleges that Honolulu Civil Beat made an in-kind contribution by  
2 publishing one Senate candidate's answers to the newspaper's questions about political issues  
3 before it published the answers from another nine candidates, including the Complainant.<sup>3</sup>  
4 Honolulu Civil Beat responds that it is a non-profit online newspaper and is covered by the  
5 media exemption.<sup>4</sup>

6           The Act and Commission regulations exclude from the definitions of "contribution" and  
7 "expenditure" the cost incurred in covering or carrying a news story, commentary, or editorial by  
8 any broadcasting station, newspaper, Web site, magazine, or other periodical publication,  
9 including any Internet or electronic publication, unless such facilities are owned or controlled by  
10 any political party, political committee, or candidate.<sup>5</sup>

11           The available information shows, and Complainant admits, that Honolulu Civil Beat  
12 regularly publishes news stories and there is no information to suggest that it is owned or  
13 operated by a political party, political committee, or candidate. It appears that when Honolulu  
14 Civil Beat published the candidates' answers, it was operating within its legitimate press

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<sup>3</sup> Compl. at 1-2.

<sup>4</sup> Resp. at 1 (Aug. 2, 2018). It further explains that it asked approximately 275 candidates running for office in Hawaii to fill out questionnaires, and publishes approximately six each day so that readers are not overwhelmed by the number of articles posted on a single day. *Id.*

<sup>5</sup> 52 U.S.C. § 30101(9)(B)(i); *see also* 11 C.F.R. §§ 100.73 (excluding bona fide news coverage from the definition of "contribution"); 100.132 (same as to the definition of "expenditure"). The Commission uses a two-step analysis to determine whether the media exemption applies. First, the Commission considers whether the entity in question is a media entity, focusing on whether the entity produces, on a regular basis, a program that disseminates news stories, editorials, and/or commentary. Factual and Legal Analysis at 5-6, MUR 7206 (Bonneville International Corp., et al.) ("Bonneville F&LA"); Advisory Op. 2016-01 (Ethiq) at 2 ("AO 2016-01"); Advisory Op. 2010-08 (Citizens United) at 2 ("AO 2010-08"). Second, the Commission considers two factors in determining the scope of the exemption: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press function"). Bonneville F&LA at 5; AO 2016-01 at 3; AO 2010-08; AO 2010-08 at 3. With respect to the second factor, when determining whether an entity is engaging in a legitimate media function, the Commission examines (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. Bonneville F&LA at 6-7; AO 2016-01 at 3; AO 2010-08 at 6.

1 function. Therefore, Honolulu Civil Beat's activities in this matter fall within the media  
2 exemption, and we recommend that the Commission find no reason to believe a violation  
3 occurred.

4 **RECOMMENDATIONS**

- 5  
6 1. Find no reason to believe that Honolulu Civil Beat, Inc. violated the Act and  
7 Commission regulations;  
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9 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and  
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11 3. Close the file as to all respondents.  
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Lisa J. Stevenson  
Acting General Counsel

Kathleen M. Guith  
Associate General Counsel

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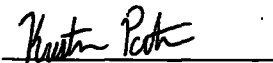
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36 Attachment:  
37 Factual and Legal Analysis  
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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

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3 RESPONDENTS: Honolulu Civil Beat, Inc. MUR 7431  
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5 This matter was generated by a Complaint alleging violations of the Federal Election  
6 Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Honolulu Civil  
7 Beat, Inc. It was scored as a low-rated matter under the Enforcement Priority System, by which  
8 the Commission uses formal scoring criteria as a basis to allocate its resources and decide which  
9 matters to pursue.

10 The Complaint alleges that Honolulu Civil Beat made an in-kind contribution by  
11 publishing one Senate candidate’s answers to the newspaper’s questions about political issues  
12 before it published the answers from another nine candidates, including the Complainant.<sup>1</sup>

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19 any political party, political committee, or candidate.<sup>3</sup>

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<sup>1</sup> Compl. at 1-2 (July 17, 2018).

<sup>2</sup> Resp. at 1 (Aug. 2, 2018). It further explains that it asked approximately 275 candidates running for office in Hawaii to fill out questionnaires, and publishes approximately six each day so that readers are not overwhelmed by the number of articles posted on a single day. *Id.*

<sup>3</sup> 52 U.S.C. § 30101(9)(B)(i); *see also* 11 C.F.R. §§ 100.73 (excluding bona fide news coverage from the definition of “contribution”); 100.132 (same as to the definition of “expenditure”). The Commission uses a two-step analysis to determine whether the media exemption applies. First, the Commission considers whether the entity in question is a media entity, focusing on whether the entity produces, on a regular basis, a program that disseminates news stories, editorials, and/or commentary. Factual and Legal Analysis at 5-6, MUR 7206 (Bonneville International Corp., et al.) (“Bonneville F&LA”); Advisory Op. 2016-01 (Ethiq) at 2 (“AO 2016-01”); Advisory Op.

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3 operated by a political party, political committee, or candidate. It appears that when Honolulu  
4 Civil Beat published the candidates' answers, it was operating within its legitimate press  
5 function. Therefore, the Commission finds no reason to believe that Honolulu Civil Beat, Inc.  
6 violated the Act and Commission regulations.

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2010-08 (Citizens United) at 2 ("AO 2010-08"). Second, the Commission considers two factors in determining the scope of the exemption: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press function"). Bonneville F&LA at 5; AO 2016-01 at 3; AO 2010-08; AO 2010-08 at 3. With respect to the second factor, when determining whether an entity is engaging in a legitimate media function, the Commission examines (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. Bonneville F&LA at 6-7; AO 2016-01 at 3; AO 2010-08 at 6.