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**FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

MUR: 6344
DATE COMPLAINT FILED: 8/5/2010
DATE OF NOTIFICATION: 8/11/2010
LAST RESPONSE RECEIVED: 11/29/2010
DATE ACTIVATED: 10/22/2010

EXPIRATION OF SOL: 4/5/2015

COMPLAINANT: Georgette Yaindl, Esq.

RESPONDENTS: United Public Workers, AFSCME Local 646,
AFL-CIO
Dayton Nakanelua, State Director, UPW
Clifford "Chip" Uwaine, Executive Assistant to the
State Director, UPW
Laurie Santiago, Oahu Division Director, UPW

Hanabusa 2010
Patsy Saiki, in her official capacity as Treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434
2 U.S.C. § 441b
11 C.F.R. § 114.2(f)
11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter concerns Georgette Yaindl's allegations that Respondent United Public Workers, AFSCME Local 646, AFL-CIO and union managers Clifford "Chip" Uwaine, Dayton Nakanelua, and Laurie Santiago ("UPW" or "the union") coerced union employees to support Hawaii First Congressional District candidate Colleen Hanabusa's

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1 candidacy in a special congressional election on May 22, 2010, and then fired Ms. Yaindl
2 and another UPW employee, Terry Lau, when they refused to comply. Respondents deny
3 that they coerced employees to participate in union-sponsored pro-Hanabusa campaign
4 activities, but alternatively argue that after *Citizens United v. FEC*, 130 S. Ct. 876 (2010),
5 they could have legally compelled its employees to do so.

6 This matter presents a number of questions, but two are novel. First, may a union
7 coerce employees to make in-kind contributions of time outside their normal work hours
8 to support a union's independent expenditures, which are permissible post-*Citizens*
9 *United*? Second, may a union conduct an independent expenditure campaign using the
10 coerced labor of its employees without filing independent expenditure disclosure reports
11 with the Commission? As explained below, and based on the general rule that
12 contributions must be voluntary, we believe the answer to these questions is "no."
13 Accordingly, we recommend the following:

- 14
- 15 • find reason to believe that UPW, Dayton Nakanelua, Clifford "Chip"
16 Uwayne, and Laurie Santiago violated 2 U.S.C. § 441b(a) by coercing
17 employees to contribute their off-hour time to further the union's
18 independent expenditures in support of Hanabusa;
 - 19 • find no reason to believe that UPW, Dayton Nakanelua, Clifford "Chip"
20 Uwayne, and Laurie Santiago violated 2 U.S.C. § 441b(a) by coercing
21 employees to make financial contributions to Hanabusa 2010;
 - 22
 - 23 • find no reason to believe that UPW made, or Hanabusa 2010 accepted,
24 prohibited in-kind contributions via coordinated expenditures under
25 2 U.S.C. § 441b(a); and
 - 26
 - 27 • find reason to believe that UPW violated 2 U.S.C. § 434 by failing to
28 report its independent expenditures to the Commission.
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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. BACKGROUND**

3 **1. Parties**

4 UPW is the exclusive bargaining representative for approximately 11,800 public
5 sector employees in Hawaii. *See* UPW Response at 3. UPW's staff consists of
6 approximately 39 employees. *See id.* at 4. Clifford "Chip" Uwaine, Dayton Nakauehua,
7 and Laurie Santiago are all union managers. The union operates a registered state PAC,
8 but does not have a federal PAC. *Id.* at 3 (citing Ex. 5). UPW acknowledges it is a
9 "political entity" that endorses candidates and "plan[s], organiz[es], and coordinat[es] a
10 wide range of political actions," including "sign-waving, coffee hours, friend-to-friend
11 cards, phone banking, mail-outs, house-to-house canvassing, [and] rallies" to support
12 those candidates. *Id.*

13 Hanabusa 2010 is the principal campaign committee of Colleen Hanabusa, then a
14 member of the Hawaii Senate and a candidate in the May 2010 special election in
15 Hawaii's First Congressional District. *See* Amended Statement of Organization, dated
16 Oct. 28, 2009. The Committee's disclosure reports do not reflect receipt of any financial
17 or in-kind contributions from UPW, UPW's State PAC, or any UPW employees.
18 Further, neither UPW nor its State PAC filed any independent expenditure or
19 electioneering communications reports as to activities in support of Hanabusa.

20 Georgette Yaindl, Esq., is a licensed attorney in Hawaii. Complaint at ¶ 1. She
21 worked as a staff attorney for UPW from August 27, 2007, until April 16, 2010, when
22 UPW terminated her. *Id.* at ¶¶ 4, 30 and Ex. 1; UPW Response at 4 and Ex. 9.

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1 Terry Lau was a lobbyist for UPW. Complaint at ¶ 34; UPW Response at 4 n.2.
2 He worked for UPW until April 16, 2010, when UPW terminated him. UPW Response
3 at 4 n.2 and Ex. 18.

4 **2. UPW's campaign activities**

5 In mid-to-late March 2010, UPW e-mailed its employees a notice that the union
6 would sign-wave to support Hanabusa every Friday at 4:30 p.m. See Complaint at ¶ 8.
7 Then, UPW required all employees to attend a staff meeting on April 5, 2010, at which
8 the union asked employees to support Hanabusa 2010 by sign-waving, phone banking,
9 canvassing, and making financial contributions to the Committee. See *id.* at ¶¶ 12, 16.
10 The union notified employees by e-mail about the mandatory meeting "[s]ometime
11 within ten (10) or so days prior to April 5, 2010," and required employees to formally
12 request and obtain approval from Mr. Nakanelua if they were unable to attend. See *id.* at
13 ¶ 12. Except for three or four employees, including Mr. Lau, the entire staff was in
14 attendance, including executive staff, business agents, receptionists, clerks, and UPW's
15 custodian. See *id.* at ¶ 14. The union's campaign to support Hanabusa was similar to
16 previous instances when the union had asked employees to participate in political
17 campaign activities for state and local candidates. See *id.* at ¶ 6. Ms. Yaindl states that
18 she did not participate in any of these prior campaign-related activities for state and local
19 candidates, and UPW Executive Assistant Uwains mentioned her failure to sign-wave
20 after being asked to do so to her. See *id.*

21 According to Ms. Yaindl, at the April 5th meeting, Mr. Nakanelua told employees
22 that they were being asked to sign-wave on Fridays, phone bank Monday through
23 Thursday evenings, canvass door-to-door Saturday mornings, and make financial

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1 contributions. *See id.* at ¶ 16. Mr. Nakanelua also reportedly stated that “any staff who
2 may need to request an exemption from any of these activities should ‘come see [him].”
3 *Id.* at ¶ 17 (paraphrasing Nakanelua). Mr. Uwaine then reportedly stated something like,
4 Nakanelua is “‘too kind’” or ‘being too easy.’” *Id.* at ¶ 18. Uwaine then reportedly said,
5 “It is expected that all staff will sign wave on Fridays [afternoons], phone bank Monday
6 through Thursdays [evenings], and canvass on Saturdays [mornings].” *Id.* at ¶ 18. Ms.
7 Yaindl also claims that Mr. Uwaine directed employees, “who may have a part time job
8 on Saturdays, or who may be involved in other activities like coaching, you are to inform
9 your employer or team that you are not going to be available to them for the next six (6)
10 weeks.” *Id.* at ¶ 21.

11 At the meeting, Ms. Yaindl openly expressed concerns about the union’s policy
12 on requiring employees to forego work or other responsibilities to do volunteer political
13 work. *See id.* at ¶ 23. After the meeting, she documented those concerns in a
14 memorandum, and advised UPW that while she was available “and actually eager” to
15 phone bank for Hanabusa, she refused to sign-wave because of public safety concerns to
16 drivers and was unavailable on Saturdays to participate in door-to-door canvassing
17 because she worked at a farmer’s market. *See UPW Response Ex. 14.* According to the
18 Complaint, Mr. Lau was not at the April 5th meeting, but upon his return to the office, he
19 also informed Mr. Nakanelua that he was unavailable to canvass on Saturdays. *See*
20 Complaint at ¶ 34.

21 UPW does not dispute Ms. Yaindl’s description of the April 5th meeting regarding
22 its planned activities in support of Hanabusa’s candidacy. UPW, however, maintains that
23 its campaign activities for employees were voluntary. *See UPW Responses at 12.* UPW

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1 also asserts that *Citizens United* permits the union to make independent expenditures,
2 such as instructing staff to engage in campaign activities. *See id.* at 12-13.

3 **3. The terminations**

4 UPW fired Ms. Yaindl and Mr. Lau on April 16, 2010. *See Complaint* at ¶¶ 30,
5 34 and Ex. 1; *see also* UPW Response at 4 n.2 and Exs. 9, 18. According to Ms. Yaindl,
6 Mr. Uwaine and Ms. Santiago gave her a termination letter signed by Mr. Nakanelua.
7 *Complaint* at ¶ 30. UPW offered to reinstate both employees on April 27, 2010, but
8 neither Ms. Yaindl nor Mr. Lau agreed to accept reinstatement. *See UPW Response* at
9 4 n.2 and Exs. 9, 10, 18. Neither the nearly identical termination letters nor the nearly
10 identical offers of reinstatement provide a reason for the terminations, although UPW's
11 termination letters note that both Ms. Yaindl and Mr. Lau were at-will employees. *See*
12 *id.* Exs. 9, 10; *see also Complaint* at ¶ 35.

13 The complaint alleges that both Ms. Yaindl and Mr. Lau were fired for refusing to
14 participate in the pro-Hanabusa campaign activities. In pursuing their unemployment
15 claims, both Ms. Yaindl and Mr. Lau cited their objections to political activity as the
16 reason for their dismissal, and UPW did not present any alternative reason (apparently
17 relying solely on its subsequent offer of reinstatement). *See UPW Response* Exs. 15-18.

18 UPW maintains that it did not threaten Ms. Yaindl and Mr. Lau for refusing to
19 contribute to, or participate in, political activities, and it did not fire them in retaliation for
20 expressing concern that the union was coercing employees to participate or contribute.
21 *Id.* at 5. The union also notes that other unnamed employees who did not participate in
22 its campaign activities "did not experience adverse employment action." *Id.* at 6.
23 Finally, the union notes that it offered to reinstate Ms. Yaindl and Mr. Lau shortly after

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1 their terminations, and “[a]ny unintended message that [Ms. Yaindl’s] termination was
2 imposed as a threat or in retaliation for not contributing to Hanabusa’s campaign quickly
3 evaporated with the offer to reinstate Ms. Yaindl (and Mr. Lau).” *See id.* at 10-11 (citing
4 Exs. 10, 18).

5 **B. LEGAL ANALYSIS**

6 This matter raises the question of whether unions can coerce employees to
7 contribute their own time, outside of regular work hours, including evenings and
8 weekends, to participate in union independent expenditures post-*Citizens United*.¹ As
9 explained below, UPW appears to have coerced employees to make in-kind contributions
10 of their free time for the purpose of influencing a federal election. While the union may
11 use its own resources, including paid work-hour time of its employees, for independent
12 expenditures post-*Citizens United*, it may not coerce its employees to make in-kind
13 contributions of their off-hour time for the purpose of influencing a federal election. *See*
14 2 U.S.C. §§ 431(8)(A), 441b(a). Such coerced, off-hour participation in campaign
15 activities is closely analogous to coercing employee contributions to a union SSF and
16 constitutes an involuntary in-kind employee contribution to UPW’s independent
17 expenditure campaign. *See* 2 U.S.C. § 441b(b)(3).

18 **1. Coerced contributions**

19 **a. Coercion of employees to participate in off-hour campaign activities**

20 The Federal Election Campaign Act of 1971, as amended (“the Act”), prohibits
21 corporations and labor organizations from making contributions in connection with any

¹ Following *Citizens United*, which invalidated the Act’s restriction on corporate financing of independent expenditures and electioneering communications, labor organizations can make independent expenditures. *See* 130 S. Ct. at 913; *see also* Advisory Opinion 2010-11 (Commonsense Ten) at 3 n.3 (applying *Citizens United* to labor organizations).

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1 federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). The term, "contribution,"
2 includes "any direct or indirect payment, distribution, loan, advance, deposit, gift of
3 money, or any services, or anything of value" made to a candidate, campaign committee,
4 or political party organization. 2 U.S.C. § 441b(b)(2). The prohibition against corporate
5 and labor organization contributions under 2 U.S.C. § 441b(a) extends to the facilitation
6 of contributions to political committees, including the labor organization's own separate
7 segregated fund ("SSF"). See 11 C.F.R. § 114.2(f)(1).² Facilitation includes the use of
8 coercive activity, which involves "the threat of a detrimental job action, the threat of any
9 other financial reprisal, or the threat of force, to urge any individual to make a
10 contribution or engage in fundraising activities on behalf of a [federal] candidate or
11 political committee." 11 C.F.R. § 114.2(f)(2)(iv). See also 2 U.S.C. § 441b(b)(3)
12 (prohibiting SSFs from making a contribution or expenditure "by utilizing money or
13 anything of value secured by physical force, job discrimination, financial reprisals, or the
14 threat of force, job discrimination, or financial reprisal . . .").

15 While an employee is allowed to provide uncompensated services as a volunteer
16 under 11 C.F.R. § 100.74, the employee ceases to be a volunteer once ordered by a
17 supervisor to perform a service. See 11 C.F.R. § 114.2(f)(2)(i)(A) (relating to
18 fundraising). Further, even if a corporation or labor organization is paid in advance for
19 the services of its employees in organizing or conducting a fundraiser, "employees who
20 are unwilling to perform these services as part of their job have a right to refuse to do so"
21 and may not be threatened with a detrimental job action. Corporate and Labor

² We note that part 114 of the Commission's regulations may be addressed in the Commission's upcoming rulemaking to implement changes in the law arising from the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

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1 Organization Activity; Express Advocacy and Coordination with Candidates; Final Rule,
2 60 Fed. Reg. 64259, 64265 (Dec. 14, 1995).

3 Similarly, the Commission has used the anti-coercion language found in
4 11 C.F.R. § 114.5(a)(2) as an aide to determine if an entity's solicitations for
5 contributions to its SSF are coercive. Specifically, part 114.5 provides that the individual
6 soliciting the suggested contribution must inform the solicited employee of "the political
7 purposes of such fund at the time of such solicitation," "of his right to refuse to so
8 contribute without any reprisal," "that the guidelines are merely suggestions," "that the
9 individual is free to contribute more or less," and that "the corporation or labor
10 organization will not favor or disadvantage anyone by reason of the amount of their
11 contribution or their decision not to contribute." 11 C.F.R. § 114.5(a)(2)-(4).

12 If UPW had a SSF and coerced employees to participate in mandatory campaign
13 activities during their off-hours to support the SSF's independent expenditure campaign
14 in support of Hanabusa, then it would have violated 2 U.S.C. § 441b(a), (b)(3), and
15 11 C.F.R. § 114.2(f)(2)(iv). However, UPW does not have a federal SSF, and it appears
16 that the current facilitation regulations prohibiting coerced contributions to political
17 committees, including union SSFs, simply do not contemplate the possibility of coerced
18 contributions to support union independent expenditures, which are now permitted by
19 *Citizens United*. As stated above, coerced, off-hour participation in campaign activities is
20 closely analogous to coercing employee contributions to a union SSF and constitutes an
21 involuntary in-kind contribution to UPW's independent expenditure campaign. See
22 2 U.S.C. § 441b(b)(3).

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1 UPW claims it never required employees to participate in its campaign activities,
2 *see* UPW Response at 12, but there is information that employees were required to
3 volunteer time during their off-hours. When Ms. Yaindl raised general concerns during
4 her initial employment interviews about campaign activities, Mr. Uwaine reportedly
5 stated something like, “while UPW cannot require staff participation in political
6 campaigns, let’s put it this way, we do strongly encourage it.” Complaint at ¶ 2
7 (paraphrasing Uwaine). In either late 2009 or early 2010, Mr. Uwaine reportedly
8 mentioned her absence at political functions prior to its Hanakusa campaign efforts to
9 Ms. Yaindl. *See id.* ¶ 6 (paraphrasing Mr. Uwaine, stating “[Respondent] Laurie
10 [Santiago] says you haven’t been doing any sign-waving when asked.”)

11 Further, at the April 5th mandatory meeting, the union appeared to require staff to
12 commit their evening and weekend off-hours to sign-wave, phone bank, and canvass. *See*
13 *id.* at ¶¶ 16, 18. Mr. Nakanelua informed UPW employees that they needed to request
14 exemptions from participating in specific campaign activities, and Mr. Uwaine instructed
15 UPW employees to inform weekend employers and those with community obligations
16 that they would be unavailable for the next six weeks. *See id.* at ¶¶ 17, 21. Lastly, the
17 union fired both Ms. Yaindl and Mr. Lau very shortly after they asked for exemptions
18 from canvassing on Saturdays because of weekend obligations, and has presented no
19 other reason for their dismissals. *See id.* at ¶¶ 30, 34, 38.

20 Collectively, UPW’s actions suggest that it coerced employees to participate in its
21 campaign activities because it 1) required employees to forego evening and weekend
22 obligations and/or employment, with any absences requiring approval by union
23 supervisors; 2) sent e-mails and held mandatory meetings to tell employees of the need to

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1 participate in campaign activities; and 3) appeared to have taken retaliatory action against
2 Ms. Yaindl and Mr. Lau for not participating.

3 The Commission previously found similar activities constituted coercion. See
4 MUR 5268 (Kentucky State District Council of Carpenters, *et al.*) (finding mandatory
5 campaign activity assignments both during and after normal business hours to be
6 coercive); MUR 5337 (First Consumers National Bank) (finding coercive an e-mail
7 solicitation that threatened bonuses and identified colleagues who had yet to make a
8 contribution); MUR 5379 (Alex Panelas U.S. Senate) (finding coercive an e-mail
9 indicating that the company was tracking which individuals did and did not make
10 requested contributions); see also MUR 5664 (International Union of Painters and Allied
11 Traders) (finding reason to believe that a union facilitated in-kind contributions by
12 requiring employees to participate in campaign activities both during and after normal
13 business hours, but ultimately closing the file following an investigation that did not find
14 sufficient evidence to sustain the allegations).

15 UPW asserts that "[a]ny unintended message that the termination was imposed as
16 a threat or in retaliation for not contributing to Harribusa's campaign quickly evaporated
17 with the offer to reinstate Yaindl (and Lau)." UPW Response at 10-11. While the offers
18 to reinstate Ms. Yaindl and Mr. Lau may mitigate the violation, they do not negate or
19 cure it. Also, UPW's claim as to what its employees thought about the terminations and
20 reinstatements is speculative.

21 As discussed above, the statutory prohibition on labor organization contributions
22 generally prohibits the coercion of employee contributions. 2 U.S.C. § 441b(a), (b)(3);
23 11 C.F.R. § 114.2(f)(2)(iv). While these provisions do not specifically prohibit a union

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1 from coercing contributions of its employees' free time to its own independent
2 expenditure campaign, the Act and the Commission's regulations direct in a number of
3 places that contributions must be voluntary. See 2 U.S.C. § 441b(a), (b)(3); 11 C.F.R.
4 § 114.2(f)(2)(iv); see also 11 C.F.R. § 114.5(a)(2), (4). Accordingly, we recommend the
5 Commission find reason to believe that UPW violated 2 U.S.C. § 441b(a) by coercing
6 employees to participate in campaign activities to support Hanabusa 2010 in their free
7 time; and also find reason to believe that UPW officers, Dayton Nakanelua, Clifford
8 "Chip" Uwaine, and Laurie Santiago who directed and/or consented to those activities,
9 violated 2 U.S.C. § 441b(a).³

10 **b. Unitemized financial contributions**

11 The complaint also generally alleges UPW coerced employees to make financial
12 contributions to Hanabusa 2010. However, the Committee's disclosure reports do not
13 indicate any receipt of contributions from UPW employees. It is possible that the
14 contributions may be unitemized because they fall below the amount that requires the
15 Committee to report the contribution. See 2 U.S.C. § 434(b)(3)(A). However, the
16 complaint also fails to allege any specific information regarding any purported
17 monitoring of employee response to the solicitation of financial contributions. By
18 contrast, in MUR 5268 (*Kentucky State District Council of Carpenters, et al.*), the
19 Commission made reason to believe findings based on information that the union was

³ Some facts in this matter could be viewed as suggesting that the union knowingly and willfully violated the Act. See, e.g., Complaint at ¶ 2 (acknowledgement by Mr. Uwaine that the union "cannot require staff participation in political campaigns . . . [but] we do strongly encourage it."). However, because the Supreme Court decided *Citizens United* less than three months before the relevant events in this matter, Respondents may have misunderstood the range of activities they could take in support of permissible independent expenditures. Accordingly, we are not recommending a knowing and willful finding at this time. However, should we discover additional relevant facts during our investigation, we will make appropriate recommendations to the Commission.

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1 monitoring or tracking which employees complied with its requests to make contributions
2 to specified federal candidates. *See* MUR 5268 Factual and Legal Analyses.

3 Here, the available information fails to allege a similar systematic effort to
4 monitor or track whether employees actually made the requested financial contributions.
5 Accordingly, we recommend the Commission find no reason to believe UPW violated
6 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by coercing UPW employees to make
7 financial contributions to Hanabusa 2010; and also find no reason to believe that UPW
8 officers, Dayton Nakanelua, Clifford "Chip" Uwaine, and Laurie Santiago, who directed
9 and/or consented to those activities, violated 2 U.S.C. § 441b(a).

10 **2. Coordination**

11 The Act prohibits corporations and labor organizations from making contributions
12 in connection with any federal election, including in-kind contributions. 2 U.S.C.
13 § 441b(a), (b)(2); 11 C.F.R. § 100.7(a)(1)(iii)(B). The Act provides that expenditures,
14 electioneering communications, or republished campaign materials made in coordination
15 with a committee constitute in-kind contributions to that candidate or party committee.
16 *See* 2 U.S.C. § 441a(a)(7).

17 The Commission's regulations provide a three-prong test to determine whether a
18 communication is coordinated.⁴ All three prongs of the test must be satisfied to support a
19 conclusion that a coordinated communication occurred. 11 C.F.R. § 109.21(a); *see also*
20 Explanation and Justification for Final Rules on Coordinated Communications, 71 Fed.
21 Reg. 33190 (June 8, 2006) and Explanation and Justification for Regulations on

⁴ Recently revised regulations on coordinated communications include a new content standard at 11 C.F.R. § 109.21(c)(5) for communications that are the functional equivalent of express advocacy and a new safe harbor for certain business and commercial communications. *See* Coordinated Communications, 75 Fed. Reg. 55947 (Sept. 15, 2010).

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1 Coordinated and Independent Expenditures, 68 Fed. Reg. 421 (Jan. 3, 2003). We also
2 note that under 11 C.F.R. § 109.20(b), a coordinated expenditure that is not made for a
3 communication is either an in-kind contribution or coordinated party expenditure that
4 must be reported as an expenditure. The campaign activities in this matter, however,
5 appear to involve communicative activities that would not invoke the application of part
6 109.20(b).

7 The available facts indicate that while the communication meets the payment and
8 content prongs via UPW's expenditures for pro-Hanabusa campaign activities, it did not
9 meet the conduct prong. The Hanabusa Committee explicitly denies any knowledge or
10 involvement with UPW's campaign activities. See Hanabusa 2010 Response at 1; see
11 also *id.* (Hamakawa Aff. at ¶ 6) (stating "To my knowledge, the Hanabusa 2010
12 campaign had no involvement with, or knowledge of, the alleged acts and
13 communications by [Respondents] as described in the Complaint."). While UPW's
14 Response does not comment on its interaction with Hanabusa 2010, it claims to have
15 engaged in the type of independent expenditures authorized by *Citizens United*.

16 In the absence of information suggesting the union satisfied the conduct prong of
17 the coordination regulations, the union's campaign activities do not appear to result in
18 prohibited in-kind contributions to Hanabusa 2010. Accordingly, we recommend the
19 Commission find no reason to believe that UPW made, or that Hanabusa 2010 accepted,
20 prohibited corporate in-kind contributions in violation of 2 U.S.C. § 441b(a). We further
21 recommend the Commission find no reason to believe that Dayton Nakanelua, Clifford
22 "Chip" Uwayne, and Laurie Santiago violated 2 U.S.C. § 441b(a) by consenting to the
23 making of prohibited contributions.

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1 **3. Failure to file independent expenditure reports**

2 Under the Act, a person that makes independent expenditures aggregating
3 \$10,000 or more at any time up to and including the twentieth day before the date of an
4 election must file a report describing the expenditures within 48 hours. 2 U.S.C.
5 § 434(g)(2). The Act further requires that a person that makes independent expenditures
6 aggregating \$1,000 or more after the twentieth day, but more than twenty-four hours
7 before the date of an election must file a report describing the expenditures within
8 twenty-four hours. *Id.* § 434(g)(1).

9 Although UPW acknowledges making expenditures to support Hanabusa 2010, as
10 permitted following *Citizens United*, the union did not report any independent
11 expenditures with the Commission.⁵ UPW would have been required to disclose the
12 campaign activities as independent expenditures within 48 hours if it spent more than
13 \$10,000 for employees to sign-wave, phone bank, and canvass after work hours and on
14 weekends prior to May 1, 2010. Similarly, UPW would have been required to disclose
15 the campaign activities as independent expenditures within 24 hours if it spent more than
16 \$1,000 for employees to engage in the same type of campaign activities between May 1,
17 2010 and the special election on May 22, 2010. Here, UPW's activities appear to date
18 from late March 2010 through the special election on May 22, 2010.

19 It appears that approximately 39 UPW employees were collectively required to
20 spend hundreds of hours on campaign activities, so it is likely that UPW spent over

⁵ While the response suggests the state PAC may have been behind the campaign activities, the state PAC also did not file any independent expenditure reports with the Commission. *See, e.g.*, UPW Response at 3 ("The State PACs play an important role in planning, organizing, and coordinating a wide range of political actions. The State PACs are responsible for endorsing the candidates . . . and developing plans and programs to realize the union's political priorities."). However, UPW's disclosure reports with the Hawaii Campaign Spending Commission do not reflect any expenditures for Hanabusa 2010 by the state PAC in the time frame leading up to the special election.

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1 \$10,000, including salaries, in connection with sign-waving, phone banking, and door-to-
2 door canvassing in support of Hanabusa up to May 1, 2010, and also spent over \$1,000
3 for costs (including salaries) for the same campaign activities in support of Hanabusa
4 between May 1, 2010 and the special election on May 22, 2010. Accordingly, we
5 recommend the Commission find reason to believe that UPW violated 2 U.S.C.
6 § 434(g) by failing to report those costs as independent expenditures.

7 **III. INVESTIGATION**

8 A limited investigation is necessary to determine the number of UPW employees
9 who participated in the campaign activities, the number of hours they worked, the value
10 of their time, and the value of any other disbursements made by UPW in connection with
11 its pro-Hanabusa independent expenditures.

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20 While we will try to conduct some of this investigation informally,
21 we request that the Commission authorize the use of compulsory process as to
22 representatives and officers of UPW, as well as other witnesses in the matter, including

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1 the issuance of appropriate interrogatories, document subpoenas, and deposition
2 subpoenas, as necessary.

3 **IV. RECOMMENDATIONS**

- 4 1. Find reason to believe that United Public Workers, AFSCME Local 646,
5 AFL-CIO violated 2 U.S.C. § 441b(a) when it coerced employees to contribute
6 their off-hour time to the union's pro-Hanabusa independent expenditure
7 campaign;
8
9 2. Find reason to believe that Dayton Nakanelua, Clifford "Chip" Uwaine, and
10 Laurie Santiago violated 2 U.S.C. § 441b(a) by directing and/or consenting to
11 the coercion of UPW employees to contribute their off-hour time to the
12 union's pro-Hanabusa independent expenditure campaign;
13
14 3. Find no reason to believe that United Public Workers, AFSCME Local 646,
15 AFL-CIO violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by coercing
16 employees to make financial contributions to Hanabusa 2010;
17
18 4. Find no reason to believe that Dayton Nakanelua, Clifford "Chip" Uwaine,
19 and Laurie Santiago violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by
20 directing and/or consenting to the coercion of employees to make financial
21 contributions to Hanabusa 2010;
22
23 5. Find no reason to believe that United Public Workers, AFSCME Local 646,
24 AFL-CIO or Hanabusa 2010, and Patsy Saiki, in her official capacity as
25 Treasurer, violated 2 U.S.C. § 441b(a) by making or accepting prohibited
26 corporate in-kind contributions in the form of coordinated expenditures;
27
28 6. Find no reason to believe that Dayton Nakanelua, Clifford "Chip" Uwaine,
29 and Laurie Santiago violated 2 U.S.C. § 441b(a) by consenting to the making
30 of prohibited contributions;
31
32 7. Find reason to believe that United Public Workers, AFSCME Local 646,
33 AFL-CIO violated 2 U.S.C. § 434(g) by failing to report independent
34 expenditures;
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36 8. Approve the attached Factual and Legal Analyses;
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38 9. Authorize use of compulsory process;
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40 10. Approve the appropriate letters.
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1/31/11
Date

Christopher Hughey
Acting General Counsel

BY: 
Stephen Gura
Deputy Associate General Counsel
for Enforcement


Mark Shonkwiler
Assistant General Counsel


Phillip A. Olaya
Attorney

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