IN THE MATTER OF CERTAIN ALLEGATIONS RELATING TO SENATOR DAYLIN LEACH

REPORT

OF

ECKERT SEAMANS CHERIN & MELLOTT, LLC

FOR THE

SENATE DEMOCRATIC CAUCUS

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I. INTRODUCTION

On December 17, 2017, a news story was published alleging, *inter alia*, that Senator Daylin Leach engaged in "sex[ualized] talk" and "inappropriate touching" with volunteers and staffers. Subsequent to its publication, a private individual named Cara Taylor made allegations of sexual assault involving then private citizen Leach that allegedly occurred in 1991. In January 2019, Ms. Taylor circulated an un-signed private criminal complaint to members of the Senate detailing her assertions. On January 24, 2019, the Senate Democratic Caucus ("Caucus") retained Eckert, Seamans, Cherin and Mellott, LLC (the "Firm") to conduct an independent investigation into the allegations made against Senator Leach.

II. SCOPE OF INVESTIGATION

This Firm was commissioned to perform an independent workplace investigation which, by necessity, is not an examination adjunct to a court case. To that end, the Firm was provided with authority to seek whatever assistance was necessary from those individuals over whom the Senate Democratic Caucus could exercise jurisdiction. The Firm was not directed or overseen by the Minority Leader or Caucus Staff in either its methodology or reaching its conclusions and recommendations.

All members, employees, and staffers of the Senate were required to cooperate and provide documents. As part of its investigation, this Firm reviewed thousands of pages of documents, including news media reporting, social media postings, Senate policies, internal communications, notes of trial testimony, and legal filings, among other documents. The Firm interviewed twenty-one witnesses, including current and former Caucus employees and officials and current and former campaign staffers. In addition, three individuals expressly declined to provide an interview and three did not return calls or were not located.

The primary focus of the investigation was the adherence of Senator Leach to the applicable law and Senate policies regarding workplace harassment (detailed, *infra*) while serving as a member of the Pennsylvania Senate. Neither the Senate nor the Caucus exercises jurisdiction over an individual member's campaign organization nor its interactions with volunteers or members of the public; however, the actions of any member are—to a large degree—inextricably intertwined with their identity as a member such that examination of these non-Senate interactions was also required, where relevant, as part of this investigation.

Finally, as to the complaints of Cara Taylor against then-Mr. Leach, these allegations predated the public career of Senator Leach. Nonetheless, we determined that the allegations made by Ms. Taylor also required examination and all parties, including Senator Leach, concurred in that conclusion. As detailed below, the lapse of time between the alleged incident and the particular posture of the matter require the more searching examination afforded by an adversarial process rather than an employment investigation conducted 28 years after the claims accrued.

III. SENATE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

One must first understand the requirements and limits of employment law in order to understand how the law interacts with those facts which were known to us at the time of publication to the law as it presently exists. As a general proposition, the statutes which provide the boundaries of employment law were enacted by the United States Congress and the case law interpreting same are framed by the federal court system.

Employment law uses terms of art which are defined both in statute and in case law and they have a particular meaning as a matter of law. This is because employment law is designed to protect *employees* from illegal behavior with regard to the *terms of their employment*. As courts have often observed, therefore, employment law does not constitute a general code of civility nor does it protect individuals from incivility, rudeness, or general unpleasantness in the workplace. *Perry v. Harvey*, 332 Fed. Appx. 728, 731 (3d Cir. 2009); *Saidu-Kamara v. Parkway Corp.*, 155 F. Supp. 2d 436, 439 (E.D. Pa. 2001) ("[T]he purview of Title VII does not extend to all workplace difficulties, even where the conduct at issue may be crass and unwarranted.").

This dividing line is especially acute here where the conduct alleged involves, in part, conduct directed towards other elected officials. When Congress enacted Title VII, 42 U.S.C. §§ 2000e *et seq.*, it specifically exempted elected officials and their personal staff from the definition of employee.[1] This necessarily means that actions which might otherwise be actionable by a similarly situated employee against an employer would not be actionable under Title VII if the individual was excluded by Act of Congress from the definition of employee.

Put another way, Title VII, as it presently stands, does not afford the same protection to individuals who are elected officials as it would as if they were classified as employees. This is a legislative choice that imposes a boundary as to what is ultimately actionable. For there to be a right of recovery for elected officials under these circumstances, the law must be changed by those empowered to do so.

A. General Provisions of Employment Law

All types of workplace harassment, including but not limited to sexual harassment, are prohibited in the Senate by both federal statute and applicable Senate Rule against those individuals who are covered by definitional provisions of the applicable statutes. *See* 42 U.S.C. §§ 2000e *et seq.*; COMO Policy 1997:01 (Effective 3/3/97; Amended 11/20/08); Senate Democratic Caucus Prevention of Workplace Harassment Supplemental Policy (December 18, 2017).

[1] "[T]the term 'employee' means an individual employed by an employer except that the term 'employee' shall not include any person elected to public office in any State or public subdivision thereof or any person chosen by such officer to be on such officer's personal staff . . ." *See* 42 U.S.C.A. §2000(e).

B. Sexual Harassment – Federal Law

There are three primary theories of sexual harassment law applied by federal courts: 1) *quid pro quo* harassment; 2) hostile work environment harassment; and 3) retaliation. These theories are not mutually exclusive and a potential plaintiff may endeavor to pursue one, two, or all three of these theories (as well as any related legal theories which may apply under the facts).

1. Title VII – Quid Pro Quo Sexual Harassment

With regard to claims of *quid pro quo* harassment, the Third Circuit has adopted the formulation set out in 29 C.F.R. § 1604.11(a)(1) and (2), which provides:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment [or] (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual…

Under this test, the consequences attached to an employee's response to the sexual advances must be sufficiently severe as to alter the employee's "compensation, terms, conditions, or privileges of employment," 42 U.S.C. § 2000e–2(a)(1), or to "deprive or tend to deprive [him or her] of employment opportunities or otherwise adversely affect his [or her] status as an employee." 42 U.S.C. § 2000e–2(a)(2).

In other words, "*quid pro quo* harassment requires a direct conditioning of job benefits upon an employee's submitting to sexual blackmail, or the consideration of sexual criteria in work evaluations." *Bonenberger v. Plymouth Twp.*, 132 F.3d 20, 28 (3d Cir. 1997). Thus, "*quid quo pro* sexual harassment generally requires that the harasser have authority to carry out the *quid pro quo* offer or threat." *Id.*

Broken down into its most basic parts, a *prima facie* showing of *quid pro quo* harassment requires that:

1. Plaintiff was subjected to sexual advances or other conduct of a sexual nature by his or her supervisor, because of plaintiff's sex or gender;
2. Supervisor's conduct was not welcomed by plaintiff;
3. Plaintiff's submission to supervisor's conduct was an express or implied condition for receiving a job benefit or avoiding a job detriment;
4. Plaintiff was subjected to an adverse "tangible employment action"; and
    - a tangible employment action is defined as a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing significant change in benefits

5. Plaintiff's rejection of, or failure to submit to, supervisor's conduct was a motivating factor in the decision to take the alleged tangible employment action.

See Third Circuit Model Jury Instructions, Instructions for Employment Discrimination Claims Under Title VII, § 5.1.3 Harassment – Quid Pro Quo (March 2017).

2. Title VII – Hostile Work Environment Sexual Harassment

Pursuant to federal law, the Third Circuit has enumerated five elements a plaintiff must prove to state a claim for hostile work environment sexual harassment:

(1) the plaintiff suffered unwanted intentional discrimination because of her sex/gender;

(2) the discrimination was pervasive and regular;

(3) the discrimination detrimentally affected the plaintiff;

(4) the discrimination would detrimentally affect a reasonable person of the same sex/gender in that position; and

(5) *respondeat superior* liability existed.

Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999) (en banc), *cert. denied*, 528 U.S. 964 (1999) (citing *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1482 (3d Cir. 1990)); *Cardenas v. Massey*, 269 F.3d 251, 260 (3d Cir. 2001); *Fenter v. Mondelez Global, LLC.*, 574 Fed. Appx 213 (3d Cir. 2014).

Title VII is violated "[w]hen the workplace is permeated with '*discriminatory intimidation, ridicule and insult*' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" *Waite v. Blair, Inc.*, 937 F. Supp. 460, 468 (W.D. Pa. 1995), *aff'd*, 79 F.3d 1140 (3d Cir. 1996) (citations omitted) (emphasis in original). "In short, what is illegal is a 'hostile work environment,' not an 'annoying work environment.'" *Lynch v. New Deal Delivery Serv. Inc.*, 974 F. Supp. 441, 452 (D.N.J. 1997).

a. *Plaintiff must fit within the definition of "employee."*

Breaking that standard down, a putative plaintiff must first be an "employee" as that term is defined in the law. If he or she is not an employee, then he or she cannot maintain a hostile work environment claim under Title VII. As noted above, an "employee" is defined by the statute as "an individual employed by an employer except that the term 'employee' shall not include any person elected to public office in any State or public subdivision thereof or any person chosen by such officer to be on such officer's personal staff . . ." *See* 42 U.S.C.A. §2000(e).

b. *Plaintiff must demonstrate that he or she suffered unwanted intentional discrimination for reasons of sex or gender.*

If the individual is an "employee" then the putative plaintiff must demonstrate that he or she suffered unwanted intentional discrimination for reasons of sex or gender. As courts struggle with differences in workplaces, they struggle to differentiate from unwanted discriminatory

behaviors as opposed to workplaces in which, for instance, uncivil but not discriminatory behavior is present. Moreover, because (as previously observed) Title VII is not a general civility code, the discrimination alleged must be based on one's sex or gender.

c. *Plaintiff must demonstrate that the discrimination was pervasive and regular.*

In analyzing the workplace atmosphere for a hostile environment claim, the totality of the circumstances must be considered. This includes the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating or a mere offensive utterance, and whether it reasonably interferes with an employee's work performance. *Pittman v. Correctional Healthcare Solutions, Inc.*, 868 F. Supp. 105, 108 (E.D. Pa. 1994) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22-23 (1993)); *Williams v. Perry*, 907 F. Supp. 838, 846 (M.D. Pa. 1995), *aff'd*, 72 F.3d 125 (3d Cir. 1995); *Caver v. City of Trenton*, 420 F.3d 243, 262 (3d Cir. 2005).

"[O]ffhand comments, and isolated incidents (unless extremely serious) are not sufficient to sustain a hostile work environment claim." *Caver*, 420 F.3d at 262 (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)). "Rather, the 'conduct must be extreme to amount to a change in the terms and conditions of employment….'" *Id.*

Based on the foregoing, this determination often requires sifting through differing explanations for a quantum of facts. *See Waite*, 937 F. Supp. at 468. As such, the determination of "severe and pervasive" conduct is highly fact specific.

d. *Plaintiff must demonstrate that the discrimination would have detrimentally affected the Plaintiff as well as a reasonable person of the same sex/gender in that position.*

In order to be actionable under Title VII, the work environment must be both objectively and subjectively offensive. *See Harris*, 510 U.S. at 21-22. The test for hostile work environment sexual harassment requires that the plaintiff's perceptions of discriminatory conduct be reasonable under the circumstances then applicable. As such, claims have been dismissed when an individual's singular perceptions of alleged discrimination are not, in the judgment of a reviewing court, objectively reasonable. In analyzing the workplace atmosphere for a hostile environment claim, the "analysis must concentrate not on individual incidents," but instead, *the totality of the circumstances must be considered*. *Caver*, 420 F.3d at 262–63.

e. *Plaintiff must demonstrate that respondeat superior liability existed.*

Finally, an employee seeking to prove sexual harassment on a hostile work environment claim must demonstrate the existence of *respondeat superior* liability. *Respondeat superior* liability exists when "the defendant [employer] knew or should have known of the harassment and failed to take prompt remedial action." *Andrews*, 895 F.2d at 1486. Therefore, "if a plaintiff proves that management-level employees had actual or constructive knowledge about the existence of a sexually hostile work environment and failed to take prompt and adequate remedial action, the employer will be liable." *Id.*

f. *General observations regarding hostile work environment claims.*

As previously observed, a hostile work environment claim is not a generalized claim of unpleasantness in the workplace but a specific test, the tenants of which one must affirmatively meet in order to make an appropriate legal claim. Here, we are constrained to apply this definition to the facts of which we are presently aware to determine whether sexual harassment on a hostile work environment claim exists.

3. Retaliation Based on a Protected Report of Sexual Harassment

A plaintiff asserting a retaliation claim must establish that: (1) she engaged in protected activity; (2) she suffered an adverse employment action subsequent to or contemporaneously with such activity; and, (3) there is a causal link between the protected activity and the adverse action. *Woodson v. Scott Paper Co.*, 109 F.3d 913, 920 (3d Cir. 1997); *Krouse v. American Sterilizer Co.*, 126 F.3d 494, 500 (3d Cir. 1997).

While courts do not require formal written complaints to an employer or agency as the only acceptable form of "protected activity," a plaintiff would still have to establish "informal protests of discriminatory employment practices, including complaints to management, writing critical letters to customers, protesting against discrimination by industry or by society in general, [or] expressing support of a co-worker who has filed a formal charge." *See Sumner vs. United States Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990).

If a plaintiff can establish she engaged in protected activity, a plaintiff still must establish a causal connection between the activity and any adverse employment action. *Momah v. Albert Einstein Med. Ctr.*, 978 F.Supp. 621 (E.D.Pa. 1997), *aff'd*, 229 F.3d 1138 (3d Cir. 2000) ("A causal relationship … requires more than mere coincidence.").

4. Title VII – Exclusion of Elected Officials

Title VII defines the term "employee" to mean

> an individual employed by an employer, *except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof*, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

42 U.S.C. § 2000e(f) (emphasis added).

Therefore, elected state officials – including state senators – are not "employees" for purposes of Title VII harassment claims, and are not protected by the statute's prohibition on discrimination. *See Conley v. City of Erie, Pa.*, 521 F. Supp. 2d 448, 452 (W.D. Pa. 2007) (noting that "Title VII excludes from its protections certain workers," including "any person elected to public office").

C. Sexual Harassment – Senate Policy

The Senate Prevention of Workplace Harassment Policy encourages all employees to report instances of workplace harassment. COMO Policy 1997:01. For purposes of the Senate policy, the term "employee" includes "any temporary or permanent employee, applicant for Senate employment, as well as any member or officer of the Senate." *Id.* The policy further prohibits retaliation against any employee who files a workplace harassment statement in good faith or testifies in good faith on behalf of another employee. *Id.*

Pursuant to Senate Policy, the term "workplace harassment" is defined as follows:

> . . . [A]ny repeated, deliberate, unwelcome comments, gesture, conduct or physical contact of any nature:
>
> > A. to which an employee is forced to acquiesce as a condition of the employee's receipt of any benefit, including, but not limited to, hiring, compensation, continuation of employment, promotion, or advancement, or
> >
> > B. that has the purpose or effect of unreasonably interfering with an employee's work performance or creating and intimidating, hostile, abusive, or offensive work environment.

Id.

The Supplemental Policy, applicable only to the Senate Democratic Caucus, reminds employees and members of the Senate Democratic Caucus that it is "committed to creating and maintaining a professional environment in which all employees and members are treated with respect and are free from sexual harassment in the workplace." *Supplemental Policy*, 12/18/17. The supplemental policy further advises that "employees and members should feel comfortable in the workplace and empowered to report harassment." *Id.*

Sanctions for violating this Policy include suspension or termination, and, if applicable, sanctions pursuant to Article II, Section 11, of the Pennsylvania Constitution. *Id.* Article II, Section 11, of the Pennsylvania Constitution provides:

> Each House shall have power to determine the rules of its proceedings and punish its members or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence or offers of bribes or private solicitation, and, with the concurrence of two-thirds, to

> expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State. A member expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

Pa. Const. Art. 2, § 11.

It is important to note that Senate policy differs in coverage from Title VII. Most notably, elected officials are covered by Senate policy while under Title VII they are excluded from the definition of the term "employee." *See, discussion supra*. This means that the Senate – which is free to interpret its own policies – may look to the actions of its employees and elected officials to determine whether or not those policies were violated.

As to the Senate's innate ability to determine the scope of its own policies, there is no substantial body of precedent which outlines with specificity either the similarities or differences as between federal law and Senate policy. So, while case law interpreting federal statutes may be persuasive, it is not necessarily determinative. Therefore, it is up to the Senate as a body to determine whether or not the actions set forth herein violate its policies as the Senate is empowered by Article 2, Section 11 of the Pennsylvania Constitution to make that determination.

IV. BACKGROUND

On December 17, 2017, the PHILADELPHIA INQUIRER published a story detailing allegations that Senator Leach engaged in behavior both in and outside of his official offices that included "sexualized jokes and comments" as well as touching that female staff members and volunteers claimed was inappropriate. *See* David Gambacorta and Angela Couloumbis, *Ex-Staffers: Sen. Daylin Leach crossed line with sex talk, inappropriate touching*, PHILADELPHIA INQUIRER, December 17, 2017. According to the article, of the nearly two dozen people interviewed, "eight women and three men recounted instances when Leach either put his hands on women or steered conversations with young, female subordinates into sexual territory, leaving them feeling upset and powerless to stop the behavior." *Id.*

The following incidents were identified in the December 2017 article:

- A 2008 campaign fundraiser, Aubrey Montgomery, stated that she "was offended by his sexualized tone in the office," and when she expressed discomfort, the Senator "labeled [her] a prude and characterized [her] to [her] colleagues as the campaign's wet blanket."

- A 2008 campaign staffer said that "he would talk about actresses he wanted to sleep with;" "referenced wanting to hire a 'full set' of secretaries: a blonde, a brunette, and a redhead – followed by a 'bald chick;'" and "referenced wanting to have his own 'Charlie's Angels.'"

- Two campaign staffers from the Senator's 2008 campaign indicated that the Senator "repeatedly discussed sex in front of young female staffers, including references to 'women I'd like to f--.'"

- A campaign fundraiser stated that Senator Leach "was prone to 'inappropriate' touching." "He'd put his arm around [her], and his hand would linger on the small of [her] back, and briefly graze [her] butt."

- In 2012, the Senator made "inappropriate sexualized comments" to a female intern at the Democratic National Convention.

- In February 2015, a campaign staffer said that she met Senator Leach at the Federal Taphouse during a Senate Democratic Campaign Committee ("SDCC") event and that he slid his hand down her back and "touched [her] butt." In response, "[s]he yelled at [Senator] Leach," and one of his aids advised her that her response was inappropriate. She encountered Senator Leach a month later, now a Caucus employee, when Senator Leach "approached her from behind and tickled her torso while she sat at her desk …, leaving her stunned." The incident was reported to her boss and she was interviewed by a human resources officer. She stated that "she felt as if she had been discouraged from filing a formal complaint."

- In February 2016, a campaign staffer by the name of Emily reported that during a conversation with Senator Leach he "held on to her upper arm 'for an uncomfortable amount of time,' maybe 10 seconds or so." "It seemed harmless, but later that evening," she received an email from Senator Leach written in Arabic that stated: "How wonderful it was to talk to you today … before making reference to some petitions." The next morning, she encountered Senator Leach at a SDCC breakfast. During a conversation there, he "discussed his history of fighting for women, and suggested he might be able to help her find a job." "And then 'he grabbed [her] thigh, almost to punctuate his point with a cruel irony.'"

Regarding the incidents described in the article and those interviewed: "None of the women who described seeing or hearing questionable conduct by Leach told the INQUIRER and DAILY NEWS that they had been assaulted, denied promotions, or had their careers threatened. Each said that he created and promoted a culture in his office that objectified women and that he often framed his comments as harmless jokes." *Id.*

The same day that this article was published, Senator Leach responded, contending that "people affiliated with [his] political opponent started a 'whisper campaign' against [him]." David Gambacorta, *Sen. Daylin Leach responds: Alleged inappropriate touching 'did not happen'*, PHILADELPHIA INQUIRER, December 17, 2017. In his response, the Senator admitted to engaging in bawdy comedy but denied engaging in inappropriate or sexual touching. *Id.*

The day after the initial story ran, Matt Goldfine, Senator Leach's field director for the 2008 campaign, gave an interview, stating that the Senator "would sometimes treat female interns differently than male interns, and in ways that made [him] feel uncomfortable, including tickling them or hugging them excessively. This did not happen once; there was a pattern of behavior that [he] believe[d] was totally inappropriate." Angela Couloumbis and David Gambacorta, *Wolfe: Leach should resign in wake of allegations*, PHILADELPHIA INQUIRER, December 18, 2017. Mr. Goldfine recounted that Senator Leach would come to the campaign office and watch an event held at a nearby coffee shop called "Milk and Cookies" for young mothers and toddlers and, in the presence of staffers, call it "MILF and Cookies." *Id.* Mr. Goldfine also stated that during this time "an intern was referred to as 'thong girl' because her underwear had once inadvertently become visible." *Id.*

On December 18, 2017, the Senator announced via his Facebook page that he was "taking a step back from the congressional campaign," and subsequently officially ended his congressional bid in Pennsylvania's 7th congressional district on February 24, 2018. David Gambacorta, *State Sen. Daylin Leach ends congressional bid, cites 'attacks' on his family*, PHILADELPHIA INQUIRER, February 25, 2018.

According to her private criminal complaint, on the same day that the December 17, 2017 PHILADLPHIA INQUIRER article was published, Cara Taylor contacted one of the reporters with her allegations of a 1991 sexual assault by then private citizen Leach. *Commonwealth v. Leach*, Private Criminal Complaint Written by Cara Taylor. Thereafter, in February of 2018, Ms. Taylor emailed Senator Costa alleging that Senator Leach "sexually violated" her nearly 30 years ago, to which Caucus legal counsel responded that "neither Senator Costa nor the Senate of

Pennsylvania have the authority to review [her] claims under the Senate's Workplace Harassment Policy." Angela Couloumbis and Liz Navratil, *Top Pa. Senate Democrats knew of allegation against Sen. Daylin Leach months before launching investigation*, PHILADELPHIA INQUIRER, January 25, 2019.

Pursuant to media reporting, Ms. Taylor claimed that she filed a private criminal complaint on November 8, 2018 against Senator Leach with the Lehigh County District Attorney's office. Wallace McKelvey, *Sexual misconduct claim against Sen. Leach being investigated*, PATRIOT NEWS, January 26, 2019. The District Attorney, however, denied receiving a formally filed complaint but confirmed that Ms. Taylor met, on two occasions in late 2018, with an Assistant District Attorney. Wallace McKelvey, *Sen. Daylin Leach sues woman who alleged 1991 sexual misconduct claiming defamation*, PENNLIVE.COM, January 28, 2019. The Assistant District Attorney determined that Ms. Taylor's case could not be prosecuted because the statute of limitations on the claim had expired. *Id.*

Ms. Taylor then circulated an un-signed private criminal complaint to members of the Senate in early January 2019. *Commonwealth v. Leach,* Private Criminal Complaint Written by Cara Taylor. The private criminal complaint alleged "[s]exual assault of a minor by forcible compulsion." *Id.*

Ms. Taylor alleged that in 1991 her mother, Kathleen Speth, was arrested and charged with attempted homicide of Ms. Taylor's step-father. *Id.* Senator Leach—then a lawyer in private practice—was retained to represent Ms. Speth during her criminal trial. *Id.* During that representation, in the summer of 1991, Ms. Taylor alleged that Senator Leach picked her up from her home and drove her to his apartment, advising her that he needed to speak with her about her mother's case. *Id.* Once at Senator Leach's apartment, Ms. Taylor alleged that he disappeared into his bedroom and then called her name. *Id.* According to Ms. Taylor's complaint, she "found him naked, with only his socks on, lying on his bed stroking his erection." *Id.* She alleged that Senator Leach then stated, "Come help me out." *Id.* Ms. Taylor stated in her complaint:

> I did as I was told, getting on the bed, on my knees between his legs and put his penis in my mouth. When my tears had visibly annoyed him, he took a bottle of red lubricant from his bedside table and poured it onto his genitals. After he ejaculated, I went into the bathroom to clean his body fluid off of myself and when I returned to his bedroom he was dressed holding his keys. I followed him out the door and he drove me home.

After this incident, in late summer 1991, Ms. Taylor contends that Senator Leach requested that she break a leg, get sick, or become pregnant so that he would have a valid reason to request a continuance of her mother's trial. *Id.* Ms. Taylor alleged that she, therefore, became pregnant and a continuance was received. *Id.* Ms. Taylor stated that she testified at her mother's trial on June 9-10, 1992, testifying that she was the individual who attempted to murder her step-father. Ms. Speth was ultimately found guilty of the crime. *Id.* Ms. Taylor was subsequently charged with perjury and false swearing and entered a guilty plea on November 12, 1993. *Id.*

In 1993, Ms. Speth raised allegations related to inappropriate contact with the Pennsylvania Disciplinary Board. Angela Couloumbis and Liz Navratil, *State Senate hires law firm to investigate resurfaced sexual assault allegations against Sen. Daylin Leach*, POST-GAZETTE.COM, January 24, 2019. The Disciplinary Board dismissed the complaint against Senator Leach, indicating that there was not enough independent evidence to verify the complaint. *Id.* Certain allegations were also raised during a Post Conviction Relief Act ("PCRA") appeal proceeding by Ms. Speth. *Id.* Senator Leach testified under oath at the PCRA hearing on April 15, 1999, and denied the allegations. *Id.*; *Commonwealth v. Speth*, Criminal Docket CP-39-CR-0001186-1991 (Court of Common Pleas of Lehigh County); *Leach v. Taylor et al.*, No. 002559, January Term, 2019 (Philadelphia County Court of Common Pleas). Ms. Speth retracted the allegations related to any sexual encounter with Ms. Taylor at that proceeding. Wallace McKelvey, *Sen. Daylin Leach sues woman who alleged 1991 misconduct claiming defamation*, PENNLIVE, January 28, 2019; *Leach v. Taylor et al.*, No. 002559, January Term, 2019 (Philadelphia County Court of Common Pleas).

On January 25, 2019, Senator Leach filed a defamation lawsuit against Cara Taylor, Colleen Kennedy and Gwen Snyder in the Philadelphia County Court of Common Pleas. *Leach v. Taylor et al.*, No. 002559, January Term, 2019 (Philadelphia County Court of Common Pleas).

V. FINDINGS

This section addresses allegations raised in the December 17, 2017 PHILADELPHIA INQUIRER article, and a subsequent article; additional relevant allegations uncovered during the investigation; and the allegations raised by Cara Taylor.

- **Allegation Number 1**

  An unnamed intern/employee was nicknamed "thong girl" because her underwear had once inadvertently become visible.

Evidence:

Multiple witnesses recalled that a 2008 campaign staffer was referred to as "thong girl" by a number of other campaign staffers. According to witness reports, the staffer's thong was repeatedly visible, causing other staffers to complain about it.

Following the campaign, this staffer, among others, became an employee of the Caucus working in Senator Leach's District Office. Because the now-employee's thong continued to be visible in the office, a female co-employee complained as she found it inappropriate. As a result, a dress code was implemented to resolve the situation and District Office management spoke to employees about the use of this nickname. At some point prior to the issue being resolved, multiple employees used the nickname "thong girl" in reference to this individual.

It does not appear that this nickname originated with Senator Leach. Senator Leach admitted that he may have used the nickname on an occasion or two while the issue was being discussed within the office, prior to its resolution.

Conclusion:

Applying federal discrimination law to these facts, this comment, while unquestionably immature and unprofessional, did not rise to level of actionable *quid pro quo* sexual harassment since *quid pro quo* sexual harassment requires unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment. There is no evidence that the use of this nickname was connected with any such conduct.

As to an alternate claim of sexual harassment based on a hostile work environment theory, such a claim must demonstrate that, *inter alia*, a plaintiff suffered unwanted intentional discrimination because of her sex/gender; (2) the discrimination was pervasive and regular; and (3) the discrimination detrimentally affected the plaintiff. Here, there was no evidence that the use of the nickname met that standard in this case. The original complaint regarding this individual was raised by a female co-worker with respect to her discomfort with the professionalism of her female co-worker. There is no evidence that the use of this nickname—which was certainly unprofessional and inappropriate in and of itself—detrimentally affected the individual who remained employed.

As to any claim of retaliation, there is no evidence that the employee engaged in any protected conduct nor that she suffered adverse job action which are requirements under Title VII. As such, a claim for retaliation regarding these events would not lie.[2]

This demonstrates the narrow limits of employment law when applied to this situation. As we have previously observed, if—as he admitted—the Senator was aware of the use of the "thong girl" nickname, he should have acted to end the use of this nickname. But the use of the nickname in and of itself by staffers both male and female 11 years ago cannot form the basis of a sexual harassment claim under a *quid pro quo*, hostile work environment, or retaliation theory.

What is clear is that these types of comments/jokes ***could*** potentially contribute to a claim of hostile work environment based on other facts or the experiences of other employees. In other words, if a plaintiff claimed sexual harassment based on a hostile work environment claim in the future, it is possible that these comments might later form the basis of a claim of severe and pervasive conduct contained in that separate hostile work environment claim as evidence of gender based discrimination. Thus, as with any kind of unprofessional behavior in any workplace, the failure to correct that behavior may have other consequences as a plaintiff later attempts to base a hostile work environment claim on an alleged pattern of disparate behaviors.

While Senator Leach was not the originator of the nickname, as the superior in the Office, he had an obligation to set the tone and prohibit such behavior, not condone it. District Office management did take appropriate steps to resolve the issue once management became aware of it by instituting a dress code and by reinforcing with staff and the Senator that the use of the nickname was inappropriate.

As for the application of Senate policies, if one views them coextensively with the body of federal employment law, there would seem not to be a claim extant. However, we hasten to observe that these policies are the Senate's to interpret. The Senate may choose to view these actions in the light of how it believes its policies ought to be applied.

[2] In so concluding, we do not condone the use of this nickname. Rather, we are compelled to observe the limits of the applicable law as applied to these specific facts.

- **Allegation Number 2**

> *In February 2015, a campaign staffer met Senator Leach at the Federal Taphouse during a SDCC event where he slid his hand down her back and "touched [her] butt." After she yelled at Senator Leach, one of his aids advised her that her response was inappropriate. About a month later, while employed as a Caucus employee, Senator Leach "approached her from behind and tickled her torso while she sat at her desk." The incident was reported to her boss and she was interviewed by a human resources officer. She stated that "she felt as if she had been discouraged from filing a formal complaint."*

Evidence:

The campaign staffer/Caucus employee involved with this allegation was personally interviewed and described the two encounters with Senator Leach raised in the article.

February 2015 SDCC Event

The campaign staffer described the encounter at the SDCC event as follows: while engaged as a campaign staffer and while standing near the sign-in table at a SDCC event, she spoke with the Senator about her role at the SDCC. During that conversation, Senator Leach placed his hand on her back between her shoulder blades, his hand slid down to her lower back, and then she stepped away, stating "Woah, don't do that" to the Senator. The physical contact lasted no more than a few seconds.

During our interview the campaign staffer did not contend that Senator Leach "touched [her] butt," as alleged in the INQUIRER article; rather, she indicated that she stepped away before that contact could occur. When interviewed, the staffer did not characterize her interaction with the campaign aide as being yelled at or chastised. Instead, she explained that she expressed the fact that she was upset with the Senator's behavior and that the other campaign aide attempted to explain away the Senator's behavior by saying that the Senator was "just being friendly."

She was also told that the Senator had offered to help her find new employment as her job with the SDCC was ending. She later heard from the other campaign staffer that they did assist her in securing a Caucus position.

During his interview, Senator Leach recalled speaking with the campaign staffer at the SDCC event. He remembered that they discussed her concern that she was losing her job with the SDCC, which, he understood, would cause her to lose her health insurance. Senator Leach recalled that the loss of health insurance was of particular concern to the staffer. Senator Leach, therefore, offered to speak with the Caucus on her behalf to see if there were any positions available for her at the Caucus. Senator Leach specifically denied placing his hand on her back, sliding it down to her lower back, and "touching her butt." Senator Leach further specifically denied that she yelled at him at the event. Following the event, the Senator did speak with Caucus employees on her behalf about finding a position for her with the Caucus.

March 2015 Capitol Building Office

After the SDCC incident, the campaign staffer was hired by the Senate Democratic Caucus and employed in a Senator's Capitol Complex office. During her interview, the staffer explained that in March 2015, while seated at her desk, Senator Leach walked into the office, came up behind her, and tickled her sides. She stated that the contact lasted no more than two seconds, his hands did not linger, nor did they move anywhere other than her sides.

The employee stated that she was shocked by the contact, which was witnessed by the employee seated next to her as the contact occurred in the open area of the office. The contact was reported to her supervisor and she met with a representative of the human resources department as a result. During the meeting with human resources, Senate policies were reviewed, and she was offered the opportunity to file a formal complaint or have the matter handled internally. She declined to file a formal complaint and instead requested that the Caucus handle the matter internally with Senator Leach.

While Senator Leach recalled the interaction with the former employee, he denied touching her in any way inappropriately. Following the SDCC event at the Federal Taphouse, the Senator had reached out to the Caucus to see if there were any positions available for her. He indicated that he did not know whether his efforts had secured her a position with the Caucus until he walked into another Senator's office and saw her sitting at her desk. He recalled that he was excited to see her there because he felt that he had helped her to get this position, which, he believed, she needed in order to secure health insurance.

Senator Leach denied that he tickled the employee on her sides, but admitted that he put his hands on her shoulders while commenting that he was glad to see her there. He stated that this occurred in an open area of the office with several other people around. At some time after this encounter, he recalled that he met with representatives of the Caucus Human Resources department who informed him that an employee had reported unwanted physical contact and he was advised to cease unwanted physical contact.

The facts seems to demonstrate that the Caucus handled the report made by the employee appropriately by taking remedial action. When the instance of unwanted physical contact which occurred in Senate offices was reported to the employee's supervisor, he assisted her in reporting the contact to the Caucus' Human Resources Department. The Human Resources Department met with the employee, listened to her complaint, reviewed applicable policies, and offered her two options to address the situation. The employee opted to have the matter handle internally, and the complaint was addressed with the Senator by the Human Resources Department. The employee had no further complaints about the Senator's behavior during the remainder of her employment with the Caucus.

Thereafter, all agreed that Senator Leach avoided contact with the former employee, and no further issues were reported. After the INQUIRER article was published, Senator Leach made attempts through staff to reach out to the employee and apologize but she did not return contact.

Conclusion:

Despite the allegation included in the INQUIRER article, further interviews with all parties involved seem to confirm that Senator Leach did not touch the former campaign staffer/Caucus employee's rear end. The employee's version of events clarified that she "stepped away" before any such contact could have, or did, occur but, also, that she was upset with the Senator's conduct and expressed her feelings.

Senator Leach denied any physical contact with the employee at the SDCC event. However, if one fully credits the allegation that he did touch her between her shoulder blades and her lower back, that action—while unquestionably viewed as personally intrusive to the employee—was not described (even by the individual involved) as sexual in nature. As such, that action does not fit within the definition of *quid pro quo* sexual harassment as it was neither explicitly or implicitly a request for sexual favors or physical contact that was a term or condition of employment for this individual. In addition, in order to maintain a claim of sexual harassment based on a *quid pro quo* theory, a plaintiff has to demonstrate that she was detrimentally affected. Here, the individual did not suffer any adverse employment.

Similarly, we are unable to conclude that the alleged physical contact that occurred in March 2015 while the same employee was employed by the Caucus would be a basis for a *quid pro quo* claim. While Senator Leach admitted to touching the employee on her shoulders in the context of being excited to see that she had received a position with the Caucus, even if the activity occurred as described by the employee, such contact, while certainly viewed as personally intrusive to the employee, was not described by the employee as sexual in nature, was not described as an explicit or implicit request for sexual favors, and no adverse employment action arose.

Analyzing both occurrences alternatively under a hostile work environment theory of sexual harassment, the facts, as presently constituted, are insufficient to support a claim. A hostile work environment claim must show that the discrimination was pervasive and regular, the discrimination detrimentally affected the plaintiff and that the discrimination would detrimentally affect a reasonable person of the same sex/gender in that position.

Here, the two circumstances described might serve to establish the beginnings of a hostile work environment claim had there been further allegations of wrongdoing by the Senator by this employee. These two incidents—one which occurred outside of work and one which occurred at work—do not, in and of themselves, constitute hostile work environment as the law is presently constituted. The facts, as alleged regarding this employee are, based on our present knowledge, insufficient to support such a claim.

As for the application of Senate policies, if one views them coextensively with the body of federal employment law, there would seem not to be a claim extant. However, we hasten to observe that these policies are the Senate's to interpret. The Senate may choose to view these actions in the light of how it believes its policies ought to be applied.

- **Allegation Number 3**

> *While a former District Office staff employee was walking past the Senator in an open area of the office, his hand may have brushed her butt.*

Evidence:

Allegations related to this incident were not featured in the INQUIRER article but were discovered during this investigation. This incident occurred in or about early to mid-2015. The employee in question declined to participate in this investigation so her testimony was unavailable and the facts related here are based on interviews with other employees.

The employee in question informally reported to another employee that as she was walking past the Senator in an open area of the office his hand *may* have brushed her rear end as they passed each other. The employee who received the report brought the issue to the attention of the District Office Manager. Upon questioning by the District Office Manager and the other employee, the employee was unsure whether the contact actually occurred and could not state whether the contact, if it even occurred, was accidental or intentional. The employee was advised that she could file a formal complaint, but she declined to do so.

The employee continued to work for Senator Leach for several months after this incident without any additional complaints. At one point, turnover and reorganization within the office led to certain promotions being available. Upon learning that she would not receive the promotion she wanted, the employee became upset and allegedly told a current employee that she was going to use the incident where the Senator had allegedly touched her to "blackmail" the Senator so that she would get the promotion. The employee was subsequently terminated.

For his part, Senator Leach denied any inappropriate contact with the former employee and was not aware of the allegation that he may have touched her until some point later. He recalled that she was terminated for threatening to blackmail him.

Conclusion:

Without having the opportunity to interview the employee, we are unable to conclude whether the alleged contact, if any, with respect to this employee was either appropriate or inappropriate. As such, without more, we are unable to conclude that the alleged physical contact would be a basis for either a *quid pro quo* or hostile work environment sexual harassment claim. At the time it was reported, the employee could not conclusively determine if she had been touched at all or if the contact was intentional or inadvertent.

- **Allegation Number 4**

> *In February 2016, a campaign staffer reported that the at a political fundraiser she spoke with Senator Leach and explained to him that she had once lived in Beirut, Lebanon and could speak Arabic. During that conversation, Senator Leach "held on to her upper arm 'for an uncomfortable amount of time,' maybe 10 seconds or so." "It seemed harmless," but then she received an email from Senator Leach later that evening. The subject line read "Hey there," and contained a short message in Arabic, "How wonderful it was to talk to you today," followed by a reference to some petitions. The next morning, Senator Leach approached her at the check-in table, "sat next to her, discussed his history of fighting for women, and suggested he might be able to help her find a job." And, then, "he grabbed [her] thigh, almost to punctuate his point with cruel irony."*

Evidence:

The campaign staffer involved with this allegation was personally interviewed and described the two encounters with Senator Leach raised in the article.

February 8, 2016 Encounter at Fundraising Event

On February 8, 2016, the campaign staffer was covering a fundraising event for Senator Leach and working at the sign-in table. Throughout the event, Senator Leach would circle back out to her table to speak with her periodically. At one point, he placed his arm around her shoulder for approximately five to ten seconds. This was the same contact referenced in the article. During our interview, she stated that the contact felt uncomfortable to her. During this interaction, Senator Leach and the campaign staffer discussed that she had spent time in Beirut, Lebanon and that she could speak Arabic. She did not recall specifically speaking to Senator Leach about nomination petitions that evening but recalled that it was a topic of discussion around her at the event.

Following the event, the campaign staffer received an email from Senator Leach with the subject line "Hey there" and a message in Arabic that said "How wonderful it was to talk to you today," and thanked her for information about the petitions.[3] The campaign staffer indicated that it was clear to her that he used Google Translate, or something similar, to create the message and noted that the message was written in the more informal tense, but acknowledged that the Senator likely did not understand this distinction. She responded that evening in Arabic, (curtly as she described it), in the formal tense, stating "You're welcome Senator, I will see you tomorrow."[4]

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[3] Using Google Translate, Senator Leach's message (كم كان رائعا اتحدث اليكم اليوم اميلى .شكرا جزيلا لك على كافة تعليمات الالتماسات), translates to "How wonderful it was to talk to you today. Thank you very much for all the instructions of the petitions."

[4] Using Google Translate, the campaign staffer's message (اهلًا وسهلاً يا سيدي .اراك غدا), translates to "Welcome sir. see you tomorrow."

February 9, 2016 Encounter at SDCC Fundraising Breakfast Event

The same campaign staffer encountered Senator Leach the next day, while she was working at the check-in table for a SDCC breakfast fundraiser at the Hilton Harrisburg. Senator Leach served as then-Chair of the SDCC. At one point, midway through the event, Senator Leach came out and sat down next to the campaign staffer at the check-in table. At the time, the campaign staffer was only a temporary employee for the SDCC, covering events when needed, and Senator Leach started talking about assisting her in finding a more permanent position with the SDCC. After this, the Senator started to speak about his legislative record on women's rights.

As he was telling her about this, Senator Leach allegedly placed his hand on her thigh, a few inches above her knee (closer to her knee than her hip), as they were seated facing each other. The campaign staffer indicated that his hand remained there for five to ten seconds during their conversation and stated that she could not recall if his hand moved at all but that he did not squeeze her thigh during this contact.

Following this interaction, Senator Leach returned to the event, and she did not interact with him again during the event. The campaign staffer stated that the physical contact made her feel uncomfortable and reminded her of her prior experience with sexual assault. She recalled sending a text message about the encounter to only one SDCC employee who responded to the text indicating the encounter sounded "weird" and was "sorry that happened." The campaign staffer did not provide the text messages in question.

The Senator denied any inappropriate contact at either event with the campaign staffer.[5] He had no specific recollection of any physical contact with this campaign staffer, but acknowledged that it was not uncommon for him to have physical contact with individuals (male or female) with whom he was engaging in conversation. He specifically denied that any such physical contact would have been inappropriate.

At some point after the INQUIRER article was published, Senator Leach also made attempts through staff to reach out to this staffer and apologize but she told the employee not to contact her again.

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[5] Senator Leach claimed that when INQUIRER reporters initially approached him with these allegations prior to the story's publication, they told him that the allegation was that he "patted the knee" of a campaign staffer at an event and did not include reference to any claim that he did so while suggesting he could assist the staffer in finding employment. According to Senator Leach, the allegations as initially described to him by reporters, and the allegations as published in the story differed. Senator Leach claims to have later heard rumors that this individual's allegations were determined to be "not sufficient" enough for a story. He further alleges that a group of individuals, working with this campaign staffer, subsequently suggested increasing the salaciousness of the encounter—presumably in order to make the story more attractive to media. An independent witness later corroborated the Senator's allegation that the story was later changed from a pat on the knee to a thigh grab combined with a suggestion that Senator Leach could assist the staffer with finding employment.

Conclusion:

We are unable to conclude that the physical contact at the February 8, 2016 encounter was a violation of either federal law or Senate policy. In the first instance, neither incident was a Senate event as campaign organizations and the SDCC operate outside of Senate control.

Placing that aside, with respect to the first instance of physical contact on February 8, 2016, the Senator's action in placing his arm around the individual's shoulders is not, in and of itself, evidence of *quid pro quo* sexual harassment. There was no allegation from the witness that the Senator's action—while personally intrusive to her—was intended in a sexual manner or in furtherance of an explicit or implicit request for sexual favors. Further, the Senator's email in Arabic was not a communication that could be described as evidence of *quid pro quo* sexual harassment. We are also unable to conclude that this contact was sufficiently severe or pervasive to rise to the level of sexual harassment under a hostile work environment theory.

As to the second physical contact at the February 9, 2016 event, we are also unable to conclude that this encounter was a violation of federal law. The witness indicated that the Senator placed his hand on her thigh, closer to her knee, but he did not squeeze it. This contact, while personally intrusive to the campaign staffer, was not described as sexual in nature or as an explicit or implicit request for sexual favors during our interview. Because the contact was not described as sexually suggestive or in furtherance of an explicit or implicit request for sexual favors, nor was there any claim that an adverse employment action occurred, there is insufficient evidence of *quid pro quo* sexual harassment.

In addition, we are similarly unable to conclude that this contact was sufficiently severe and pervasive to rise to the level of sexual harassment under a hostile work environment theory. Moreover, we feel compelled to note that based on our interview it does not appear that Senator Leach "groped" the staffer as that term is commonly understood, and as had been subsequently characterized in media reporting. *See,* Ryan Briggs, *Despite harassment allegations, Leach eyes run in redrawn 4th District*, CITY & STATE PA, February 28, 2018.

Here, again, the two circumstances described might serve to establish the beginnings of a hostile work environment claim had there been further allegations of wrongdoing by the Senator by this campaign staffer. These two incidents—both of which occurred outside of the Senate work environment—do not, in and of themselves, constitute hostile work environment as the law is presently constituted. The facts, as alleged regarding this staffer are, based on our present knowledge, insufficient to support such a claim.

While these events arose outside the Senate, to the extent conduct of this type would be the subject of Senate policies, if one views them coextensively with the body of federal employment law, there would seem not to be a claim extant. However, we hasten to observe that these policies are the Senate's to interpret. The Senate may choose to view these actions in the light of how it believes its policies ought to be applied.

- **Allegation Number 5**

> *A video clip that could be classified as pornographic was shown in Senator Leach's District Office.*

Evidence:

Allegations related to a former female employee and video clip were not featured in the INQUIRER article but were discovered during this investigation. The District Office employee in question declined to participate in this investigation.

During the course of the investigation, it was discovered that a video clip, which could be classified as pornographic, was shown in Senator Leach's District Office. This occurred in or about early to mid-2016. While certain witnesses offered recitations of rumors circulating that suggested that Senator Leach showed the video clip to a former employee, none of these witnesses had any firsthand knowledge of what occurred, did not work in the District Office at any time, and were operating based on hearsay and rumor. On the other hand, four witnesses who were all employees of the District Office at the time of occurrence, in addition to the Senator, all credibly recounted that the employee showed the video clip on her own volition to the Senator.

Each witnesses consistently recounted the incident as follows: Senator Leach and other employees were in his office for a meeting when the employee walked in and insisted that they needed to see a video her friend had just sent. The employee was instructed not to show the video and was asked to leave the office so they could conclude their meeting.

At some point later that day, the employee went back into Senator Leach's office because she wanted to show him the video clip. Senator Leach admitted that he permitted the former employee to show him the video and he did not stop her. Senator Leach admitted that viewing the video was inappropriate and he should not have watched it or allowed the employee to show it to him. Senator Leach stated that the video clip lasted no more than ten seconds. After this, the District Office Manager learned that the former employee showed the Senator the video, and she reprimanded both Senator Leach and the employee for viewing the video clip in the office.

Conclusion:

Since the employee declined to participate in any interview and since other witnesses had no first-hand knowledge of what occurred other than rumor, we are constrained to credit the evidence offered by people working in the office who had firsthand knowledge of the incident. Those recollections indicate that it was the former employee that insisted that the Senator view the video in question.

The Office Manager did undertake to address the matter with the employee and with the Senator but did not report the matter to the Caucus' Human Resource Department. This may well suggest that a better understanding may be required that incidents like this ought to be reported

to the Caucus as it is the Caucus and the Senate—not the office of any Senator—that ultimately is required to address issues regarding its employees.

Presuming that the foregoing is true, the actions alleged cannot, at present, constitute *quid pro quo* sexual harassment as it was the employee herself and not the employer who sought to show the video and it was not done in furtherance of some request for sexual favors by a superior.

When analyzed alternatively as a claim of sexual harassment as a hostile work environment claim, the facts available to us presently do not support a claim of hostile work environment as that claim is defined as a matter of law. Based on the facts gathered to date, there seems to be no present evidence that the employee suffered unwanted intentional discrimination because of her sex/gender. Indeed, since she was the individual responsible for showing the video, there is no claim that she was discriminated against on the facts known.

While viewing the clip proffered by the employee did not constitute sexual harassment under either a *quid pro quo* or hostile work environment claim, the Senator's decision to do so was an example of exceptionally poor judgment. And, while no other employee complained, other employees knew that the incident occurred.

As such, it is also clear that actions of this nature could potentially contribute to a claim of hostile work environment based on other facts or the experiences of other employees. In other words, if another plaintiff claimed sexual harassment based on a hostile work environment claim in the future, it is possible that this ill-advised action might later form the basis of a claim of severe and pervasive conduct contained in that separate hostile work environment claim as evidence of gender based discrimination.

Moreover, we continue to observe that, even if the conduct alleged did not meet the definition of sexual harassment under the law, whether the conduct violated applicable Senate rules is a matter for the Senate as a body to decide.

➢ **Allegation Number 6**

> *While playing basketball in Senator Leach's office in 2014, a former SDCC employee alleges Senator Leach placed his hands on her back and moved them up and down.*

Evidence:

Allegations related to this incident were not featured in the INQUIRER article but were discovered during this investigation and raised in a Philadelphia Magazine article published on August 24, 2019. The former SDCC employee involved with this allegation was personally interviewed prior to the Philadelphia Magazine publication and described her encounter with Senator Leach.

By way of background, this witness worked in varying roles as the SDCC during 2012, then moved to another political organization, before coming back to the SDCC for the 2014 cycle. While Senator Leach was chair of the SDCC, this witness did not have significant interaction with him, but described the interactions they did have as typically professional. She further explained that in her role with the SDCC she would often be sent to places where she would be taken aback by her interactions with individuals at events that she was covering, and that Senator Leach always watched out for her at those events when he was present and made sure that she was in a safe environment.

The former SDCC employee explained that in 2014, she was in Senator Leach's office during budget season. He had a basketball hoop in his office, and while they were waiting for information, they spent some time playing basketball. At one point during the game he was behind her and placed his hands on her back and moved them up and down her back while they were playing. He did not touch her anywhere other than her back, and she explained that his actions were not overtly inappropriate, but that the contact made her feel uneasy. She left the game and sat on the couch, and then he came over and sat closely to her, so she decided to leave the room.

The former SDCC employee explained that she did not believe that Senator Leach meant anything sexual by the contact, and that he was just "pal-ing" around with her. She explained that she did not tell Senator Leach that his actions made her feel uncomfortable because she knew that if she told him she felt uncomfortable, he would have felt terrible and been apologetic about it. She specifically stated that she would have felt comfortable telling him that his actions made her uncomfortable but she choose not to say anything because she did not want to make him feel bad. She further explained that she did not want Senator Leach to feel like he could not "pal" around with her like he "pal-ed" around with others.

Conclusion:

As an initial observation, as an SDCC employee, the ex-employee would be outside the purview of the Senate. In any event, as noted below, we are unable to conclude that the behavior constituted *quid pro quo* or hostile work environment sexual harassment.

The action described herein does not fit within the definition of *quid pro quo* sexual harassment as it was neither explicitly or implicitly a request for sexual favors or physical contact that was a term or condition of employment for this individual. In addition, in order to maintain a claim of sexual harassment based on a *quid pro quo* theory, a plaintiff has to demonstrate that she was detrimentally affected. Here, the individual did not suffer any adverse employment action.

Analyzing the occurrence under a hostile work environment theory of sexual harassment, the facts, as presently constituted, are insufficient to support a claim. A hostile work environment claim must show that the discrimination was pervasive and regular, the discrimination detrimentally affected the plaintiff and that the discrimination would detrimentally affect a reasonable person of the same sex/gender in that position. Here, while the contact made the individual feel uncomfortable, she did not believe that Senator Leach meant for the contact to be sexually suggestive. By her own recounting of the incident, she did not perceive it as harassing or discriminating in nature. Further, she indicated that she would have felt comfortable telling Senator Leach that the contact had made her uncomfortable, but she chose not to do so because she understood he would have felt terrible for making her uncomfortable and she did not want him to feel bad.

Here, the single circumstances described might serve to establish the beginnings of a hostile work environment claim had there been further allegations of wrongdoing by the Senator by this former employee. However, the facts, as alleged regarding this former SDCC employee are, based on our present knowledge, insufficient to support such a claim.

➢ Allegation Number 7

Campaign Working Environment

The remaining allegations from the December 17, 2017 INQUIRER article, and a follow up article, concerned allegations of inappropriate comments/jokes and inappropriate touching that occurred during campaign activities. The allegations related to inappropriate comments/jokes and inappropriate touching are addressed separately below. These allegations do not follow a strict timeline and relate to allegations which generally occurred in 2008 during the Senator's campaign for his present seat and in 2012.

Evidence: ***Inappropriate Comments/Jokes***

- *The Senator made "inappropriate sexualized comments" to a female intern at the 2012 Democratic National Convention.*

The general allegation that Senator Leach made "inappropriate sexualized comments" to a female intern at the 2012 Democratic National Convention could not be substantiated. The intern in question does not appear to have reported this allegation to the reporters; rather, it appears that a former campaign employee reported this allegation to the reporters.

On the same day the INQUIRER article was published, the intern in question reached out to Senator Leach through Facebook. She advised Senator Leach that Aubrey Montgomery and reporters were attempting to contact her and that she did not respond to Ms. Montgomery and advised reporters to stop contacting her.

We did separately make contact with this individual and she declined to participate in the investigation.

- *Campaign staffers from the Senator's 2008 campaign indicated that the Senator "repeatedly discussed sex in front of young female staffers, including references to "women I'd like to f--'" and that "he would talk about actresses he wanted to sleep with."*

With respect to these allegations, one witness recalled Senator Leach would reference "women I'd like to f--" in the context of celebrities, not staffers or other women known to the Senator. For example, she recalled that the Senator was looking through a People Magazine and the Senator saw a particular celebrity and said that this celebrity was on such a list.

Multiple witnesses confirmed that Senator Leach did not talk about his personal sex life or make sexually suggestive jokes directed toward or about women in his presence. Witnesses instead recounted that Senator Leach would occasionally make jokes that had a sexual context in regards to current events or politics.

While the investigation substantiated at least one incident where Senator Leach referenced a celebrity with whom he would like to engage in a sexual encounter, as well as occasional jokes

that had a sexual context regarding current or political events, allegations that he "repeatedly discussed sex in front of young female staffers" were not substantiated.

- *A 2008 campaign staffer said that he referenced wanting to hire a "full set" of secretaries: a blonde, a brunette, and a redhead – followed by a 'bald chick'"; and "wanting to have his own "Charlie's Angels."*

Multiple witnesses recounted various versions of the "full set" of secretaries and "Charlie's Angels" comments by Senator Leach. For his part, Senator Leach admitted that this joke occurred. Senator Leach recalled that an individual came into the office and commented that a blonde, a brunette, and a redheaded female were all working for the Senator, another bystander commented that it looked like "Charlie's Angels," and the Senator joined in contending that he could be the "bald chick."

- *In the campaign office, Senator Leach would watch a nearby event for young mothers and toddlers held at a coffee shop and would call the event "MILF and cookies" instead of its actual name "Milk and Cookies."*

Multiple witnesses recalled that the Senator referred to the event as "MILF and cookies," and, for his part, the Senator admitted that he called the event "MILF and cookies."

- *A 2008 campaign fundraiser stated that she "was offended by his sexualized tone in the office," and when she expressed discomfort the Senator "labeled me a prude and characterized me to my colleagues as the campaign's wet blanket."*

The employee in question was interviewed and described the campaign atmosphere as immature and unprofessional but not sexualized. She confirmed that Senator Leach did not talk about sex "explicitly," but stated that he did reference the culture of the sexualized environment in Harrisburg, commenting and joking about others' improprieties. She noted that the Senator was not personally a part of that culture and believed that the Senator felt "virtuous" in that he did not cross the line like others did, but only made jokes about others' conduct. She did recall, however, an incident where the Senator mentioned attending an adult night club establishment following a fundraising event.

Regarding his conduct, she indicated that the Senator meant for his jokes to be funny, not sexual, but that she did not personally believe his humor was funny. When she made that clear, she was characterized as a "wet blanket" and the Senator seemed to take pleasure in making her uncomfortable.

She emphasized that Senator Leach understood where "the line" was between appropriate and inappropriate behavior and that he would walk right up to the line with respect to his jokes and comments but that he knew not to cross it.

Conclusion: ***Inappropriate Comments/Jokes***

Taken *individually*, none of the comments or jokes described above rose to the level of actionable sexual harassment under either a *quid pro quo* or hostile work environment theory. In addition, given the totality of the circumstances, including the frequency, severity, and nature of the conduct, we cannot conclude the behavior, if true, reasonably interfered with an employee's work performance. And, it is also important to note that these comments and jokes, as reported to us, occurred in the Senator's campaign office, not his District or Senate offices.

Taken *together*, conduct such as this which includes jokes/comments of an immature and unprofessional nature, while not directly sexual, but which contain a sexual context, could work together to form the basis of a hostile work environment claim. While no such claim arose as a result of the particular comments/jokes here, such a claim could arise if such conduct would continue unabated.

Evidence: ***Inappropriate touching***

- *A campaign fundraiser stated that Senator Leach "was prone to 'inappropriate' touching." "He'd put his arm around me, and his hand would linger on the small of my back, and briefly graze my butt."*

- *Senator Leach would sometimes treat female interns differently than male interns, including tickling them or hugging them excessively.*

Setting aside the allegations of touching noted above in Allegation numbers 2 and 4, none of the other witnesses interviewed made any claims that Senator Leach touched them inappropriately, nor did any of the witnesses have any first-hand knowledge of Senator Leach touching any other females in a sexually inappropriate manner. Moreover, none of the witnesses offered any specific instances of any particular woman who claimed that Senator Leach touched them in a sexually inappropriate way.

Rather, the allegations were all of a more general nature, without specifics, that the Senator had a way about him that could be viewed as sexually suggestive only if that person did not know Senator Leach. Some witnesses implied that Campaign employees tried to limit the Senator's contact with young female interns, but there were no specific instances of misbehavior with young female interns recounted that supported these tactics.

Witnesses acknowledged seeing Senator Leach hug women in the office, but all witnesses recounted that this contact occurred out in the open and did not appear to be sexualized or unwelcome. One witness indicated that it felt like Senator Leach hugged women more often than men, and when viewing the hugs from a distance, they appeared to last longer or be more physical than what the witness personally felt a hug should be.

The witness recalled having conversations that Senator Leach's hugs seemed "awkward" but the witness could not recall that any individual objected to this contact or reported that they felt the Senator had acted inappropriately. Another witness recalled receiving some general complaints

about physical proximity and hugging that felt too invasive but could not give any specific examples and no such complaints appeared to rise to the level of allegations of sexual touching.

For his part, the Senator admitted to being physical and expressive, but respectful. Other members of his staff repeatedly commented that it is the nature of politics to have physical contact with supporters and with campaign staff. Of course, that is neither a license for, nor incitement to, inappropriate behaviors.

Conclusion: ***Inappropriate touching***

While one can conclude that there are generalized rumors of alleged inappropriate touching, those rumors could not be substantiated by specific factual accounts. As such, we have focused on those allegations that were documented and not apocryphal. The only specific allegations involving any alleged inappropriate touching which this investigation can corroborate through witnesses available involved individuals who did not work for the Senator directly and had only isolated encounters with the Senator as described in Allegation numbers 2 and 4 above.

➢ Allegation Number 8

Caucus Working Environment

No specific claims regarding Senator Leach's District or Capitol office working environment were identified in the INQUIRER article or subsequent media reporting. As discussed above, two incidents at the District Office were identified during this investigation. Expanding more broadly, the witnesses' general descriptions of the District Office working environment are summarized below.

Evidence:

No witnesses complained about any activity in Senator Leach's District Office. In fact, every witness interviewed that either works or worked in the District Office reported that they enjoy(ed) working for the Senator and did not witness the Senator behave inappropriately.

When asked about the Senator's sense of humor and jokes of a sexual nature, each witness noted that the Senator's office used to hold an activity called "morning scrum" where the employees would sit around and primarily discuss legislation. At times, these sessions would be used to work on joke development for the Gridiron dinner hosted by the Pennsylvania Legislative Correspondents' Association or other appearances of the Senator.

It was during these planning sessions that District Office employees indicated jokes of a sexualized nature would come up. Joke ideas were raised by both Senator Leach and the employees in preparation for the Gridiron or other appearances. Most employees, but not all, participated in these sessions. All witnesses reported that such sessions were voluntary, and employees were not required to participate. None of these witnesses stated that they were offended by any of the jokes nor did any of these witnesses complain about this activity.

Senator Leach stated that due to public allegations that he engaged in inappropriate sexual humor, he no longer participates in the Gridiron event which was the catalyst for the sexual humor, and, as a consequence, morning "scrum" sessions in the District Office no longer include joke preparation sessions.

Conclusion:

When compared to office environments which have resulted in findings of a hostile work environment based on gender as set forth in reported cases, we are, by comparison, unable to conclude that the working environment in the Caucus (and in particular Senator Leach's District Office) is one that is permeated with sex discrimination or sexual harassment.

It is fair to observe, however, that case law does not require a complainant to formally announce the unwelcome nature of the conduct to which one is subjected. Further, the choice to discontinue any "scrum" in which jokes are discussed is wise inasmuch as it avoids the possibility of the claim of compulsion which, unabated, may serve to form the basis of a potential hostile work environment claim.

- **Allegation Number 9**

> *Senator Leach has engaged in inappropriate conduct towards colleagues in the Senate.*

Evidence:

A few of Senator Leach's colleagues reported as part of this investigation that the Senator engaged in behavior viewed as demeaning and/or bullying, such as asserting his seniority over new members in an inappropriate manner as well as engaging in inappropriate/unprofessional jokes. Senator Muth and Senator Collett were personally interviewed as part of this investigation.

1. Senator Muth Allegations

Senator Muth indicated that she believes that Senator Leach has engaged in a repeated pattern of inappropriate behavior. The incidents described by Senator Muth to support this belief are addressed in turn:

Incident 1: Then-private citizen Muth decided to run for Office in 2017. Her friend, who is also a former staffer for Senator Leach, assisted candidate Muth in the campaign process. In or about September 2017, then-candidate Muth and Senator Leach were scheduled to knock on doors together. Prior to this campaign activity, Senator Leach sent candidate Muth a text message stating something along the lines of "Don't worry, I promise to wear pants." Candidate Muth thought the text message was "weird" and texted two Senate Democratic Caucus members about it. Candidate Muth's friend, who worked for Senator Leach at the time, then called Senator Muth to apologize, indicating that "I tell him he can't say things like that." Ultimately, it rained, and Senator Muth and Senator Leach did not campaign together as planned. After this, another friend of candidate Muth's advised her to "stay away" from Senator Leach because something was going to be coming out about him in the media.

Incident 2: During candidate Muth's campaign she asked Senator Leach to donate to her campaign, as she had done with all of the other Democratic Senators. She reported that all Senators declined to give her a donation. It was suggested to her by her friend (Senator Leach's former staffer) that she should hold an event at Pennsylvania Society to fundraise. Candidate Muth did not want to hold a Pennsylvania Society affiliated event but did decide to have an event in New York at the time that was not affiliated with Pennsylvania Society. The event occurred on or about December 17, 2017. At the time, Senator Muth had knowledge that an article was coming out involving allegations against Senator Leach. She indicated that Senator Leach attended the event, he was the second person to arrive, and she described him as "eerily gawking around." She stated that he crashed the event – he did not give money for the event or provide a donation. She did not personally interact with him at the event.

Incident 3: Candidate Muth shared on social media Governor Wolfe's call for Senator Leach's resignation and a related Petition on Change.Org following the INQUIRER article. She stated this action was the beginning of her downfall with Senator Leach. After she did this, she was

advised that she needed to communicate with senior Democratic Caucus members before she publicly attacked a member of the Senate. However, candidate Muth felt compelled to voice her support for calls for Senator Leach's resignation because the weird message she received (as set forth under Incident 1) and the weird vibe she felt at the New York event (as set forth under Incident 2) combined with the allegations against the Senator in the article made her believe that the Caucus should also call for his resignation.

As a result of her "speaking out," candidate Muth believes that she was bullied and stated that people would not donate to her campaign. For example, following this, Senator Muth indicated that Senator Leach posted on Facebook about an Alex's Lemonade Stand fundraiser that supported Senator Muth's opponent. Senator Muth was upset that Senator Leach was showing public support for her opponent and so she approached a senior Caucus member about it and was advised they would speak to Senator Leach. Senator Muth indicated that Senator Leach then made another social media posting with her opponent in East Nantmeal Township at an event in support of renewable energy.

Incident 4: In or about September 2018, candidate Muth was invited to speak at an event in West Chester involving high school student activists. The night before the event she learned the line-up of speakers and that she was scheduled to speak immediately before Senator Leach. She stated that she was trying to avoid going to events with Senator Leach because he was a "giant elephant in the room," but she did not want to let the students down. Therefore, she had a staffer ask the student contact if they could separate candidate Muth and Senator Leach in the line-up of speakers. She later learned the students asked Senator Leach not to attend the event as a result of her inquiry. She further only later learned that Senator Leach's daughter was involved with the student organization.

Senator Muth stated there was a backlash against her after this because Senator Leach accused her of bullying his daughter. She recalled that she was contacted by a senior Caucus member the morning of the event asking her what she had done. During the call, she explained that she does not participate in events with Senator Leach in light of recent events and that she did not know Senator Leach's daughter was involved with the event. Senator Muth indicated that she did not intend to harm Senator Leach's daughter and that she felt bad for the students because they witnessed the backlash she faced over the event.

Following this incident, Senator Leach sent an email to the chairman of the Montgomery County's Democratic Party, calling Senator Muth "a dreadful person" and "a toxic hand grenade" over the incident. She explained that there is no human resources department on the campaign-side and that there is no one to whom she could report this kind of behavior.

Incident 5: Senator Muth indicated that there a number of female supporters of Senator Leach who attend her town hall events and tweet about her negatively.

Incident 6: In or about April 2019, a man who runs a Facebook page in Lower Merion told Senator Muth that someone from Senator Leach's staff sent him screenshots of social media postings allegedly by Senator Muth from an Instagram account. A screenshot included Senator Muth's headshot and a picture of a dog along with the heart eye emoji. Senator Muth indicated

that the Instagram account with the posting was not her official account and was a fake account. Senator Muth reported the fake account to the Senate and the Senate worked with Instagram to remove it. Senator Muth believes that Senator Leach created the fake account and believes that the Caucus did not adequately investigate to determine whether he was responsible for the fake account.

Incident 7: Senator Muth also referenced the tweet from Senator Leach's account to Senator Collett regarding her appointment as the minority chair of the aging and youth committee as an instance where Senator Leach failed to treat his colleagues appropriately. Following this incident, an email was sent to all Senators regarding how the Senators should treat one another. Thereafter, a meeting occurred wherein the Senators were advised that they should not speak out against one another. Senator Muth stated that she, Senator Collett, and others were upset by this meeting and believed that they have a moral obligation to call out people for doing bad things. They believed the Caucus was trying to censor them. Following this meeting, Senator Muth stated that Senator Leach attempted to corner Senator Collett to discuss the tweet, telling Senator Collett that he did not post the tweet.

Incident 8: Senator Muth referenced an issue between Senator Collett and Senator Leach over a bill that will be discussed more fully below under Senator Collett's allegations.

Cara Taylor: Regarding Cara Taylor's allegations, Senator Muth noted that she received the complaint in advance and told senior members of the Democratic Caucus that it was coming out. She recalled that she got in a fight with another senator in the cafeteria about it asking him if he wanted "bloody raped women" in front of him before he would take action. She believes that Senator Leach is a predator and knows how to pick women who will be susceptible, and specifically that "he knew how to pick her" (meaning Ms. Taylor).

Summary Comments: Senator Muth stated that the culture of the Capitol building enables individuals like Senator Leach to behave the way that they do. She stated that staffers have told her stories about inappropriate contact with elected officials but none of the stories involved Senator Leach. She stated that "Senator Leach is not our predator, we were never physically harmed by him – but we are trying to protect others." She further indicated that she has to mentally prepare herself to go into the Caucus room with him and that he is given a platform to give speeches about protecting women's rights. Finally, she noted that she has not participated in any protests against Senator Leach and has not encouraged them.

2. <u>Senator Collett Allegations</u>

Senator Collett also provided information about Senator Leach's conduct. The background she provided and the incidents described are discussed below in turn:

Background Comments: Then-private citizen Collett initially encountered Senator Leach in 2017 during municipal elections. Senator Leach reached out to her to coordinate campaigning activities with her. She noted that he was helpful and generous with his time. Thereafter, in October 2017, she approached Senator Leach about her desire to run for Office and he met with

her and offered her advice. Then-candidate Collett indicated that he did not act improperly toward her. He made some "bawdy, off-color" jokes but nothing that she found offensive.

Then, the December 17, 2017 INQUIRER article was published and candidate Collett could not get in contact with Senator Leach. At one point, one of Senator Leach's employees reached out to her and apologized that he was not available at the time as a result of dealing with other issues. Eventually, Senator Leach reached out to candidate Collett and offered to sit down and talk about campaigning. Senator Collett reached out to an SDCC staffer on how to proceed because she wanted to avoid Senator Leach as he was "persona non grata" since the article was published. Candidate Collett decided to meet with Senator Leach anyway and brought with her a few other individuals. The meeting occurred at Senator Leach's home and the group discussed campaigning for about two hours. She noted that while he was giving her advice Senator Leach made some "off-color" jokes but did not provide specifics.

Later as the race was progressing, candidate Collett reached out to Senator Leach again to ask for assistance with fundraising. She met with him at a coffee shop and asked him to call donors on her behalf. Senator Leach countered this request with a request to hold a joint fundraiser. Candidate Collett declined to hold a joint fundraiser with Senator Leach because she believed it was "risky" to appear with him publicly. After this, Senator Leach donated $500 to candidate Collett's campaign but she returned the money because she did not want his name to appear on her campaign finance report. When she returned the money, one of Senator Leach's staffers called and was upset that she had done so.

Candidate Collett next encountered Senator Leach at an event in or about September or October of 2018. She approached Senator Leach and told him that returning the money was not personal, it was political, and explained that she did not want his name on her campaign finance report. Candidate Colette indicated that Senator Leach accepted this explanation and seemed fine with the situation. Thereafter, Senator Collett won the election and was sworn in.

Incident 1: On January 4, 2019, Senator Collett posted on Instagram about an event she attended in North Wales to talk about the concerns that are part of the Korean community with Master Yang. Senator Leach responded to the post: "I know Master Yang well. Although, one time he got a little mouthy, so I had to teach him a lesson."

Incident 2: On or about January 7, 2019, Senator Collett was appointed minority chair of the aging and youth committee. Following this appointment, a tweet from Senator Leach's account provided as follows: "Well, I'm very old. But I look very young. So you'll be serving me in everything you do." Once the tweet generated public attention, Senator Collett indicated that Senator Leach sent her a long message claiming that he did not post the tweet. Senator Collett did not respond to his message. She then indicated that Senator Leach cornered her in the Caucus room, claiming that he was hacked and asking if she understood and if she believed him. In response, Senator Collett advised Senator Leach that he should stay off of social media but did not respond as to whether she believed him. She noted that Senator Leach has contended on social media that he was hacked and claimed that he filed an incident report with the police. She does not believe that Senator Leach filed any such report. Senator Collett states that since this incident, Senator Leach's behavior has been aggressive.

Following this incident, she stated that another Senator asked whether the Caucus had a policy regarding how members should treat one another on social media. She indicated that a policy was circulated to the Caucus related to social media conduct. During a meeting about the policy and how members should treat one another, Senator Collett indicated that she spoke up and asked whether Senator Leach's tweet rose to the level of offensive or if it was just demeaning. She indicated that Senator Leach responded that she had said that she understood that he was hacked.

Senator Collett spoke with Senator Leach following the meeting and told him that she did not believe that he was hacked and that she felt mistreated by him as a result of the tweet. She advised him that he handled his response poorly by doubling down on the lie and making himself the victim. Senator Leach advised Senator Collett that he paid $2000 for an investigator to perform a forensic analysis of his account and computer but the investigator could not determine who posted the tweet. Senator Collett said that Senator Leach also claimed that he was not paying attention to her on social media so he would not have tweeted about her anyway. She also explained that Senator Leach questioned her as to why she did not respond to him the first time he approached her about the incident. Senator Collett agreed that she did not respond and advised the investigators here that she had not responded because she was new and felt bullied and pushed around. She did not know how to tell him to back off in that moment. Senator Collett indicated this was the last personal interaction she had with Senator Leach.

Incident 3: Shortly after this interaction, Senator Collett was participating in a press conference about a bill that she was introducing. The bill had been introduced by Senator Leach in a prior session, but Senator Leach gave the bill to Senator Collett so that she could sponsor it in the present session. A member of Senator Leach's staff reached out to Senator Collett's staff and asked why Senator Leach did not receive an invitation to the press conference. Senator Collett stated that Senator Leach would have received the general invitation to the Press Conference but that he thought he should have received a personal invitation since he had given her the bill.

She felt like this was Senator Leach's way of putting her in her place and believed it was ongoing bullying. She further described it as "button pushing," "stay in your lane," and "kissing the ring" kind of behavior. Senator Collett believes that his request for a personal invitation was demeaning and not an appropriate way to interact with colleagues.

Incident 4: Next, Senator Collett posted on social media about wearing teal for sexual assault awareness while holding signs indicating "I believe victims." Senator Leach "liked" the post. Senator Collett believes that this behavior is undermining and described it as "gas lighting," particularly when Senator Leach had told her that he would not have posted the tweet about the chairmanship because he was not paying attention to her on social media.

Incident 5: In or about May 2019 during a Caucus retreat, the members were preparing to take a photograph. Someone realized Senator Muth was not present in the room and asked about her whereabouts. Someone called out that Senator Muth was in the ladies room. In response, another person called out in jest to a male Caucus staffer "don't go in there," to which Senator

Leach jokingly responded to that staffer "remember what happened last time." Senator Collett said this type of banter is not funny and inappropriate.

Summary Comments: Senator Collett indicated that Senator Leach has an inability to recognize the "cloud over him" and that there are issues with his effectiveness. She stated that she, and others, will not co-sponsor legislation with him. She further believes that the way in which he treats new female members, such as the issue with the Bill described in Incident 3, feels like bullying. She described his behavior as disrespectful toward women and explained that having to sit in a room with him at the Capitol feels like an ongoing assault. She further disagrees with his behavior toward women who have come forward with allegations against him, which she feels is appalling.

Conclusion:

The conduct reported by Senator Muth and Senator Collett qualifies as unprofessional and inappropriate as far as one would expect colleagues to treat one another, but none of the allegations involved claims of sexual harassment under any one of the three theories discussed herein. This is, in part, because the Senators who detailed the issues that they have previously had with Senator Leach are not "employees" under federal anti-discrimination law. This is consistent with the general proposition that employment law requires a change in one's terms or conditions of employment by virtue of the use of power agency by a superior or co-worker. Here, one Senator cannot fire, cannot demote, and cannot otherwise change the fact that a fellow elected representative has the full power accorded to him or her while serving as a member of the Senate and it is only the Senate as a body—and not a fellow Senator—that can change one's terms or conditions as an elected representative using the provisions set forth in Senate rules as well as the Pennsylvania Constitution.

This does not excuse Senator Leach's actions, if they occurred as described. It simply means that they cannot form the basis of sexual harassment under any theory. The separate issue of whether or not those actions would constitute conduct that violates applicable Senate policy is not something on which we can opine as it is the Senate that determines the scope and coverage of its rules and policies.

- **Allegation Number 10**

The real issue is the culture at the Capitol building.

Evidence:

Some witnesses throughout this investigation opined that the real issue has been the culture at the Capitol building which, they allege permits male officials and staffers to behave inappropriately toward female officials and staffers alike. This culture, they contend, creates an environment where women may be dissuaded from reporting misconduct out of concern that their careers will be negatively impacted as a result of such reporting.

In receiving this testimony, some witnesses recounted that Senator Leach does not engage in overtly inappropriate conduct, but that others do. They explain that Senator Leach understands where "the line" is and that he does not cross it. Some also observe that others conduct is worse. Some of these witnesses fault Caucus Leadership specifically and the Senate generally for permitting this culture to continue and for failing to take sufficient affirmative actions to correct this imbalance.

Conclusion:

While this investigation's scope was limited to investigating certain allegations made against Senator Leach, the culture within the Senate is a relevant consideration. If accurate, this type of culture, a culture which the #Me Too Movement has aimed at toppling, indisputably permits gender disparities which should be addressed.

Indeed, Caucus Leadership, along with all elected officials, have a positive obligation under the law to prohibit sexual harassment and sexually hostile work environments in the Caucus and in their respective offices. Each also has a duty to take prompt and adequate remedial action when knowledge of the existence of sexual harassment and/or a sexually hostile work environment arises.

Caucus Leadership should affirmatively takes steps to ensure that all employees work in an environment where (1) employees know and understand that inappropriate conduct will not be tolerated; and (2) employees work in an environment where they are comfortable reporting complaints and concerns without fear of reprisal. We note that since the initial reporting of the allegations subject to this investigation, Caucus Leadership has taken steps to address the cultural issues underlying the allegations.

Preliminarily, the Senate Democratic Caucus issued its Supplemental Workplace Harassment Policy immediately following the INQUIRER article which affirmed that the Caucus "is committed to creating and maintaining a professional environment in which all employees and members are treated with respect and are free from sexual harassment in the workplace" and reminds officials and employees that "any type of harassment shall not be tolerated." In addition, the Senate Democratic Caucus hired a Director of Human Resources as part of its commitment to reducing any culture at the Capitol (and Senate district offices) that would contribute to sexual harassment

or sexually hostile work environments. It further commissioned this investigation to scrutinize the allegations made against Senator Leach.

While these actions are appropriate first steps to address underlying cultural issues, the Senate must continue to take affirmative actions to demonstrate that improper conduct will not be tolerated and to ensure that employees can report issues without fear of reprisal.

- **Allegation Number 11**

> *Cara Taylor alleged that in 1991, while the private citizen Leach was defending her mother in an attempted murder trial, he sexually assaulted her in his apartment.*

Evidence:

During our interview, Ms. Taylor generally recounted the facts set forth in her private criminal complaint and Answer with New Matter filed with respect to the defamation lawsuit. For the most part, her version of events followed that written in the private criminal complaint and Answer with New Matter.

There were, however, certain factual inconsistencies in Ms. Taylor recollection of events. For example, Ms. Taylor's private criminal complaint alleges that in late summer 1991, Senator Leach asked her to get pregnant so that he could receive a trial continuance.

It appears, however, that the case was not listed for trial at this time. A trial attachment order was not filed until January 15, 1992, attaching the case for criminal trial week commencing February 18, 1992. A subsequent trial attachment order was filed on March 3, 1992, attaching the case for trial week commencing March 16, 1992. An application for postponement was first filed on March 13, 1992, attaching the case for criminal trial the week commencing June 1, 1992.

Further, Ms. Taylor's son was born on March 20, 1992, as such, a normal length pregnancy would have placed conception in late June, 1991, or early summer. Moreover, Ms. Taylor testified on June 10, 1992, and confirmed in her interview, that her pregnancy lasted longer than normal at ten and one-half months, placing her conception date in perhaps May 1991 or possibly even in April 1991. It is not clear that Senator Leach had any contact with Ms. Speth or Ms. Taylor at that time. As the facts are alleged by Ms. Taylor, it does not appear that this claim could be factually accurate.

In addition, during Ms. Taylor's interview, she purported to describe Senator Leach's apartment in detail, including descriptions of his furniture. Ms. Taylor's descriptions do not match Senator Leach's descriptions. While Senator Leach provided the investigators photographic evidence to support his descriptions, the investigators are unable to positively confirm that the photos were from the time period or the apartment in question.

Additionally, Ms. Taylor alleges in her private criminal complaint that public defender, Karen Schular, "was made aware of what Daylin did to me and not only did she choose to ignore the information but she then didn't even bother to show up on the day I plead guilty." However, during Ms. Taylor's interview, she was adamant that she did not tell Attorney Schular about the allegations.

Of note, Ms. Taylor failed to sign her private criminal complaint under penalty of perjury. While Ms. Taylor contends that the District Attorney's office would not permit her to sign the private criminal complaint when she provided it to that office, she failed to explain why this would have prevented her from signing it when she distributed it to varying elected officials at the Capitol. If

Ms. Taylor had signed the criminal complaint under penalty of perjury, the investigators may have given the statements contained therein more weight.

Finally, we note that Ms. Taylor's present day allegations vary substantially from allegations put forth by her and/or her mother to the Disciplinary Board in 1993 as well as during the subsequent PCRA proceedings. Ms. Taylor did not acknowledge these inconsistences during our interview let alone make any attempt to reconcile the varying factual claims.

Nonetheless, Ms. Taylor made clear during her interview that she steadfastly believed her account of what transpired between her and Daylin Leach. Her testimony on this point was detailed and passionate.

For his part, the Senator adamantly denies Ms. Taylor's allegations and insists that he had no sexual or otherwise inappropriate contact with Ms. Taylor at any time.

Conclusion:

Regarding the allegations raised by Cara Taylor, she has raised serious allegations. However, her allegations are also 28 years old, contested charges relying mainly on the resolution of credibility as between two people. There are no or few witnesses and the documentary evidence (such as the PCRA transcript in which Ms. Speth withdraws any allegation of wrongdoing by Mr. Leach) does not directly resolve this credibility dispute. Additionally, none of these allegations occurred while Mr. Leach was a member of the Senate.

While this investigation tried to speak to as many individuals as possible regarding these allegations, we ultimately find that the credibility disputes occasioned by the passage of time, among other things, may only be resolved through a contested hearing held under oath where witnesses are subject to either criminal or civil process, rules and sanctions. As noted above, both Ms. Taylor and Senator Leach were passionate and adamant about their respective recollections of the time period in question. While the investigators made every effort to attempt to corroborate either Ms. Taylor's or Senator Leach's version of events, we were unable to uncover any facts or information to permit us to believe one version of events over the other. Accordingly, without diminishing the beliefs of either party to this dispute, we cannot form any conclusion based on the facts at hand.

VI. CONCLUSION

This is an inquiry bounded and informed by employment law. As such, a primary issue that has become apparent is the balkanization of any senator's existence as an employer. By this we mean that while an individual senator is a member of the Senate and maintains an office, he or she is an employer and covered by employment law and the Senate's policies. At the same time, a senator often interacts with the Senate Democratic Campaign Committee which is an organization separate from the Senate over which the Senate has no direct control. Finally, any senator has a campaign organization staffed mainly with volunteers that is outside of Senate control.

While a senator (or candidate) is known publicly as a senator and acts as a senator, with respect to the Senate, his or her behavior while a member of the Senate and while operating his or her Senate offices are those actions over which the Caucus has jurisdiction. Thus, while there exists a number of forums from which an individual senator's behavior may become publicly relevant, it is his or her behavior as a member of the Senate and while operating his or her Senate offices which ultimately create legal liability for the Senate and the Caucus.

With respect to Senator Leach's behavior while as a member of the Senate, we conclude that there is no evidence of actionable discrimination or harassment in violation of applicable law or Caucus policies to the extent Caucus policies are interpreted as consistent with federal law. The Caucus may, however, interpret its policies to impose a broader standard than federal law but this is a policy decision that the Caucus must decide for itself.

It is important to note that this represents a legal conclusion based on the facts that were available to us through voluntary interviews and not an endorsement of any individual's behavior. It is also important to note that while Senator Leach's public commentary following the allegations against him may be outside the purview of this Title VII-based employment analysis, the same may be relevant to the Caucus' consideration of whether its own policies were violated.

Indeed, while we found no evidence of sexual harassment in regards to any particular individual, we note that Senator Leach engaged in joking and humor that was immature and unprofessional. At times, such jokes and humor were unquestionably sexual in nature. None of the witnesses interviewed described this sexual humor as directed at or toward any particular individual. Rather, such sexual jokes were generally made by the Senator about newsworthy current events and political happenings. Jokes with a sexual context, however, have the potential to create a hostile work environment even if not aimed at any particular individual.

At no time did any such behavior actually create a hostile work environment under the circumstances presented here. However, if such behavior continues unabated, the risk for a future hostile work environment claim is present. Senator Leach has acknowledged a need to increase the level of professionalism within his office and has reported that he has taken steps to address such issues.

Nonetheless, our earlier observation remains. It is fair to suggest that the Senate and the Caucus would be advised to point out to all members that all actions, whether they occur in Senate offices, during a SDCC event off site or in an individual senator's campaign office are events that—one way or another—will become part of the narrative in any legal action.

As such, we make the following recommendations:

First, we recommend that all Senators and all staff undergo annual interactive training in employment law issues related to sexual harassment and hostile work environment claims. We can report that, for 2019, the Senate has already commissioned such training but we suggest that it continue to be held on an annual basis.

Second, we recommend that the Caucus' Human Resources staff be in contact with all Chiefs of Staffs and office managers on a yearly basis to cover any employment law issues that may arise and to reaffirm reporting requirements regarding any claims of improper behavior.

Thirdly, we recommend that the Caucus seek to clarify for all Senators and staff that behaviors that occur during SDCC events and in one's campaign office will be events against which their conduct as an employer will likely be measured. As such, we would recommend that senators voluntarily apply the policies of the Senate and the Caucus to any office whether public or private without regard to whether they technically fall within the Senate's legal supervision.

Finally, we recommend that the Caucus reinforce its commitment to maintaining a workplace environment based on mutual respect. In doing so, it is important that Leadership take an active role in ensuring that all employees work in environment where they are comfortable with reporting complaints and concerns without fear of reprisal.