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June 19, 2026

Via E-mail:

David Chee, Chair
Danton Wong, Vice Chair
Barbara Polk, Commissioner
Caroline Peters Belsom, Commissioner
Campaign Spending Commission
Leiopapa A Kamehameha Building
235 S. Beretania Street, Room 300
Honolulu, Hawaii 96813

Re: In Re The Matter of Sylvia Luke, et al.
Docket No. 26-05
Request for Stay and/or Continuance of Proceedings

Dear Commissioners Chee, Wong, Polk, and Belsom:

On behalf of Respondent Friends of Sylvia Luke and the individually named Respondents, as to the Complaint captioned Docket No. 26-05, we submit the following response, pursuant to Hawaii Revised Statutes (“HRS”) § 11-403. First and foremost, we request an indefinite stay or continuance, pursuant to Article I, sec. 10 of the Hawaii Constitution¹ and the Fifth Amendment to the U.S. Constitution.² Because an ongoing criminal investigation is being conducted by the

¹ No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury or upon a finding of probable cause after a preliminary hearing held as provided by law or upon information in writing signed by a legal prosecuting officer under conditions and in accordance with procedures that the legislature may provide, except in cases arising in the armed forces when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy; **nor shall any person be compelled in any criminal case to be a witness against oneself.** Haw. Const. Art. I, § 10 (emphasis added).

² No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself,** nor be deprived of life, liberty, or

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Special Investigation and Prosecution Division of the Department of the Attorney General of the State of Hawaii (“SIPD”) into Respondents Sylvia Luke and Leodoloff Asuncion, Jr.,³ neither is able to testify or otherwise respond to the allegations set forth in the Complaint. Precedent from the Hawaii Supreme Court and the Ninth Circuit Court of Appeals makes clear that the right against self-incrimination requires that any civil action be postponed until after resolution of any criminal proceeding involving the same conduct.

The Ninth Circuit wrote, in *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995), that a five-factor balancing test is applied when considering a stay of a civil matter while a concurrent criminal proceeding is pending, which consists of the following elements:

- (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay;
- (2) the burden which any particular aspect of the proceedings may impose on defendants;
- (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources;
- (4) the interests of persons not parties to the civil litigation; and
- (5) the interest of the public in the pending civil and criminal litigation.

Id. at 325; *see also Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007) (citing Keating’s five-factor test).

Indeed, the Hawaii Supreme Court has repeatedly explained that the protection against self-incrimination given by Article I, sec. 10 of the Hawaii Constitution extends beyond that granted by the Fifth Amendment to the U.S. Constitution. *See State v. Hoffman*, 155 Hawaii 166, 172, 557 P.3d 895, 901 (2024) (“As a matter of state constitutionalism, this court ‘provide[s] criminal defendants with greater protection under Hawaii’s version of the privilege against self-incrimination . . . than is otherwise ensured by the federal courts under Miranda and its progeny.’” (quoting *State v. Hewitt*, 153 Hawaii 33, 44, 526 P.3d 558, 569 (2023), *as corrected* (May 18, 2023))); *State v. Bowe*, 77 Hawaii 51, 57, 881 P.2d 538, 544 (1994) (“In contrast to the values

property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Const. amend. V (emphasis added).

³ *See* [Lt. Governor Sylvia Luke’s office confirms receiving target letter in bribery investigation | Politics | kitv.com](#) (reporting statement of David Louie confirming Sylvia Luke’s receipt of target letter); [Luke Fallout Continues With Third Target In Bribery Investigation - Honolulu Civil Beat](#) (reporting that Governor Josh Green confirmed in an interview with Civil Best that Leo Asuncion Jr. was sent a target letter).

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underlying the fifth amendment stressed in *Connelly*, the considerations underlying the right against self-incrimination under the Hawaii Constitution are not limited to deterring government coercion, but are broader.”); *State v. Miyasaki*, 62 Haw. 269, 280, 614 P.2d 915, 922 (1980) (“We have not hesitated to ‘extend the protections of the Hawaii Bill of Rights beyond those of textually parallel provisions in the Federal Bill of Rights when logic and sound regard for the purposes of those protections have so warranted.’” (quoting *State v. Kaluna*, 55 Haw. 361, 369, 520 P.2d 51, 58 (1974))).

While there has not been a case in Hawaii directly addressing what the implications are of a civil party asserting his rights under Art. I, sec. 10 of the Hawaii Constitution, the Hawaii Supreme Court, quoting Justice Stewart in *Tehan v. Shott*, 382 U.S. 406, 415–416 (1966), articulated why the right to self-incrimination must be preserved in a civil context in *Kaneshiro v. Belisario*, 51 Haw. 649, 466 P.2d 452 (1970), *abrogated on other grounds in Ramil v. Keller*, 68 Haw. 608, 726 P.2d 254 (1986), stating:

The basic purposes that lie behind the privilege against self-incrimination do not relate to protecting the innocent from conviction, but rather to preserving the integrity of a judicial system in which even the guilty are not to be convicted unless the prosecution ‘shoulder the entire load.’ Insofar as strict application of the federal privilege against self-incrimination reflects the Constitution’s concern for the essential values represented by ‘our respect for the inviolability of the human personality and of the right of each individual ‘to a private enclave where he may lead a private life,’ any impingement upon those values resulting from a State’s application of a variant from the federal standard cannot now be remedied.

* * *

The policy of providing the individual with a constitutionally protected aura of privacy is also promoted by disallowing any comment. **If the defendant has a right to remain silent, this guarantee should be fully implemented. This is especially the situation when the party asserting his right is involuntarily in court at the behest of the petitioner.** We therefore hold that in a civil proceeding the assertion of defendant’s right against self-incrimination is protected by the state and federal constitutions and shall not be the subject of any comment or adverse inference by the opposing party.

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Kaneshiro, 51 Haw. at 652–54, 466 P.2d at 454–55 (emphasis added and internal brackets omitted); *see also State v. Grahovac*, 52 Haw. 527, 534, 480 P.2d 148, 153 (1971) (“Manifestly, then, a state by legislative enactment cannot abrogate this right by empowering police and judiciary to compel communication. Nor may a statute impose criminal liability for failing to speak.”).

In *Kaneshiro*, the Hawaii Supreme Court was considering the effect of the “no comment” rule, that is the prohibition on comment in a civil proceeding that a defendant had invoked their right against self-incrimination. Even allowing that there is a difference between the “no comment” rule and a request for a continuance or stay of proceedings while criminal proceedings are completed, the fact remains that the Hawaii Supreme Court has, in a case where the consequences were purely in a civil case, stood firm in holding that a person’s right against self-incrimination remains inviolate.

Further, we understand that there is precedent to continue, stay, or defer proceedings before this body. In Docket No. 18-08, a complaint was filed by the Executive Director against Respondents Mark Ing and Friends of Kaniela Ing. In the course of that proceeding, “on or about July 19, 2021, attorney William Harrison, called Commission staff and informed staff that he represented Respondent Ing in a federal investigation into the same matters raised in the Commission’s July 2, 2021, letter. Mr. Harrison informed staff that he had advised Respondent Ing to hold off on responding to the Commission’s request for records until the federal investigation was completed.” *See* Docket No. 23-29, Meeting Minutes of February 9, 2023. The matter was not resolved until 2023, due in part to a request by the Commission for a status on Respondent Ing’s criminal proceedings.

Respondent Sylvia Luke’s and Respondent Asuncion’s exercise of their constitutional rights as noted above also materially affect the ability of the other individual Respondents to substantively respond to the allegations in the Complaint at this time, given that they are unable to present or rely upon information that is within Ms. Luke’s and Mr. Asuncion’s personal knowledge and understanding of the relevant facts, or to obtain testimony from Ms. Luke and/or Mr. Asuncion that would confirm or explain such facts. Moreover, Commission staff has recommended, as its primary alternative, that the Commission refer all counts alleged in the Complaint for criminal prosecution pursuant to HRS § 11-411. Under these circumstances, requiring the other individual Respondents to proceed in this matter would result in substantial prejudice. In addition to the evidentiary issues noted above, the other individual Respondents would be placed in the untenable position of having to choose at this point between potentially waiving their constitutional rights by responding to the Complaint and testifying in this proceeding, or invoking those rights and foregoing testimony and evidence necessary to defend against the allegations.

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To the extent the Commission intends to address the merits of the instant Complaint, despite the objections raised above, Respondents ask for dismissal of Count III, and an amendment of the factual basis for the allegations set forth in Count II.

Count III. The Complaint alleges that Respondents conducted improper expenditures in violation of Hawaii Administrative Rules (“**HAR**”) § 3-160-43(b)(1), for 11 checks paid to Emmanuel Zibakalam and approved by Respondent Zibakalam himself. HAR § 3-160-43(b) provides in relevant part that “[a] candidate or candidate committee shall not pay for expenses not predominantly and directly related to a candidate’s campaign to influence the nomination or election of the candidate, including: (1) An expenditure to compensate an individual who *approved* the expenditure.” (emphasis added).

The allegations of Count III are irreconcilable with the allegations of Count II. Specifically, Count II alleges that “[e]ach of the payment checks signed by Respondent Zibakalam (inclusive of each of the 11 checks subject to Count III) is an *unauthorized* expenditure of campaign funds.” See Complaint at ¶ 68 (emphasis added). If, as Count II alleges, Respondent Zibakalam lacked authority to execute or authorize the checks at issue, then he necessarily could not have allegedly “approved” a subset of those expenditures within the meaning of HAR § 3-160-43(b)(1). Accordingly, since Count III depends upon a factual predicate that is directly contradicted by the Complaint’s own allegations in Count II (and Count II already encompasses the checks at issue), Count III should be dismissed.

The Complaint also characterizes the 11 checks as prohibited “expenses not predominantly and directly related to a candidate’s campaign to influence the nomination or election of the candidate, including: [a]n expenditure to compensate an individual who approved the expenditure[.]” Complaint ¶ 70. However, these checks were categorized and paid to Respondent Zibakalam for professional services rendered, as authorized by HAR § 3-160-143(a)(3).⁴ Respondent Zibakalam served as the campaign manager for Friends of Sylvia Luke in the 2022 election period, providing professional services, which were “directly related to a candidate’s campaign to influence the nomination or election of the candidate.” *Id.* Accordingly, the expenditures were not improper and Count III should be dismissed.

Count II. The Complaint alleges that 216 checks were improperly signed by Respondent Zibakalam. These checks are attached to the Complaint as Exhibit 12. However, Exhibit 12 contains **215** checks. In addition, the check identified by “Tracer: 997699,” at page 44 of Exhibit

⁴ Section (a)(3) provides: “(a) A candidate or candidate’s committee may pay expenses that are predominantly and directly related to a candidate’s campaign to influence the nomination or election of the candidate and includes the following: . . . (3) Professional services that are necessary in a candidate’s campaign to seek the nomination or election of the candidate”

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12, is not a Friends of Sylvia Luke expenditure. Friends of Sylvia Luke previously corresponded with American Savings Bank as to this very check, which was attributed in error to Friends of Sylvia Luke by the bank. Accordingly, any consideration of Count II should start at 214 checks.

Respondents reserve the right to further respond to the remaining allegations and counts set forth in the Complaint at an appropriate time, since, as explained above, they are unable to do so at this time, and reserve all rights and defenses under applicable law.

Please direct any and all correspondence regarding this matter to the attorneys for Respondents noted below. Their contact information has been provided in our previous letter to the Commission staff, dated June 12, 2026.

Very truly yours,



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