

C Ethics Watch

October 19, 2009

William E. Reukauf
Acting Special Counsel
Office of Special Counsel
1730 M. Street N.W., Suite 218
Washington, DC 20036-4505

VIA FACSIMILE 202-653-5151

Dear Mr. Reukauf:

Colorado Ethics Watch (“Ethics Watch”) respectfully requests the Office of Special Counsel (“OSC”) initiate an immediate investigation into whether Meghann Silverthorn violated the Hatch Act by running a partisan political campaign for the Douglas County, Colorado School Board while employed by the Department of Defense, Defense Contract Management Agency.

On or about July 6, 2009, Ms. Silverthorn filed as a candidate for the Douglas County School Board from District G. Colorado Secretary of State Elections Center, Candidate Detail Information (attached as **Exhibit 1**). While Douglas County School Board races are traditionally nonpartisan, Ms. Silverthorn has acted to inject partisan affiliation into the race. After the Douglas County Republican Party formally endorsed Ms. Silverthorn, she issued a statement on her public Twitter account that she “was honored to receive the endorsement of the Douglas County GOP for my candidacy for the Board of Education, District G. Douglas County Republican Party School Board Endorsements 2009 (attached as **Exhibit 2**); Meghann Silverthorn post on Twitter.com, July 12, 2009 at 12:27 a.m. (attached as **Exhibit 3**). Her Twitter.com feed includes as Item 1 the statement that “Some R shocked that people 4 parent choice, transparency & accountability R organizing w/GOP help, but what about years of union organizing?” and as Item 7 “Can’t wait for R Block Party tonite: come meet my friends Doug, Dan & John and support education reform!” Meghan Silverthorn’s feed on Twitter.com, printed out at 10:15 a.m. on October 15, 2009 (attached as **Exhibit 4**). “Doug, Dan & John” is apparently a reference to the other Republican Party-endorsed candidates in the Douglas County School Board election: Doug Benevento, Dan Gerken and John Carson. *See* Exhibit 2.

Ms. Silverthorn has also accepted direct contributions from the Douglas County Republican Party. On October 13, 2009, her candidate committee filed with the Colorado Secretary of State a Report of Contributions and Expenditures for the reporting period

ending October 8, 2009 (attached as **Exhibit 5**). That report shows that her committee accepted two contributions from the Douglas County Republican Central Committee totaling \$3242.25. Exhibit 5 at p. 10.

Ms. Silverthorn's committee report confirms that she is employed as an Analyst with the Department of Defense. *Id.* at pp. 4-6. On her campaign website, she tells prospective voters that she is "not new to public service" because she "serves as an analyst for an independent agency within the Department of Defense, whose local plant office is located at the Lockheed Martin facility at Waterton." "About Meghann," printed out from meghannsilverthorn.com at 2:14 pm on October 15, 2009 (attached as **Exhibit 6**).

The Hatch Act provides that "employees" may not "run for the nomination or as a candidate for election to a partisan political office." 5 U.S.C. § 7323(a)(3). "Employee" is defined to include individuals "employed . . . in . . . an Executive agency" and "partisan political office" means "any office for which any candidate is nominated or elected in representing" a major political party. *Id.* at § 7322(1)(a) and (2).

Significantly, it is well established that merely because an election is officially considered nonpartisan, it does not follow that federal employees are permitted to accept party endorsements and funding without violating the Hatch Act. To the contrary, the fact that an election, such as the Douglas County School Board election, is considered "nonpartisan" as a matter of state law only raises a presumption that a federal employee may participate in that election without violating the Hatch Act, but this presumption can be "rebutted by evidence showing that partisan politics actually entered the campaigns of the candidates." *McEntee v. Merit Systems Protection Board*, 404 F.3d 1320, 1325 (Fed. Cir.), *cert. denied* 546 U.S. 873 (2005). Thus, in *McEntee*, a federal employee who ran for Mayor of Albuquerque was found to have violated the Hatch Act by distributing leaflets that identified the employee as a Republican and accepting the endorsement of his county's Republican Executive Committee. *Id.* at 1324-25. Affirming the Merit Systems Protection Board's finding that the employee violated the Hatch Act, the Federal Circuit held that "while an employee-candidate in a presumptively nonpartisan election may independently assert a party affiliation, once the candidate and the party act in concert with each other, a representative relationship may be established sufficient to rebut the presumption of nonpartisanship."

In formal letters interpreting the Hatch Act, the OSC has continued to adhere to the longstanding rule that federal employees who inject partisanship into state elections that are treated as nonpartisan violate the statute. In 2007, the OSC advised a federal employee who wished to run for a municipal judgeship that "if a candidate solicits or advertises the endorsement of a political party or uses a political party's resources to further his or her campaign, these actions may rebut the presumption that an election is nonpartisan, and thus, indicate that the election is a partisan one." Office of Special Counsel, Advisory Letter (Dec. 12, 2007) (attached as **Exhibit 7**). In addition, the OSC's booklet regarding the Hatch Act, made available to federal employees and the general public to facilitate compliance, contains the following question and answer:

Q. Can nonpartisan election be transformed into a partisan election?

A. Yes. If state or local law mandates a nonpartisan ballot for a particular local office, there will be a presumption that the election for that office is nonpartisan. If evidence is presented, however, that shows that partisan politics actually enter the campaigns of the candidates, e.g., the employee solicits the endorsement of a partisan group, advertises the endorsement of a political party, or uses the party's resources to further her campaign effort, the nonpartisan election can be transformed into a partisan one in violation of the Hatch Act.

Office of Special Counsel, "Political Activity and the Federal Employee," December 2005 (attached as **Exhibit 8**), at p. 6.

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity. It is hard to imagine a more blatant example of a Hatch Act violation than a federal employee advertising a party endorsement and accepting party campaign contributions. In accordance with OSC's mission, Ethics Watch requests that you investigate to determine whether Ms. Silverthorn has violated the Hatch Act in her campaign for Douglas County School Board.

Sincerely,

A handwritten signature in cursive script that reads "Chantell Taylor".

Chantell Taylor
Director