

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
OFFICE OF THE CLERK OF THE BOARD

SPECIAL COUNSEL,
[Hatch Act Unit]

DOCKET NUMBER
CB-1216-16-0017-T-1

Petitioner,

V.

KEITH L. ARNOLD,

Respondent.

RESPONDENT'S SUPPLEMENTAL OBJECTION TO "PETITIONER'S MOTION FOR
SUMMARY ADJUDICATION"

I, Keith L. Arnold, respondent, file this supplemental objection (the first objection was RESPONDENT'S MOTION FOR SUMMARY JUDGMENT [with ADDENDUM]) to Petitioner's Motion for Summary Adjudication per 5 C.F.R. §1201.55.

Petitioner's Motion for Summary Adjudication is additional Hatch Act Unit Overreach ("HAUO") and deception.

HAUO's PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS ("PoppD") states on pp 1-2 (including footnote 2):

"Arnold's motion asserts that the Complaint is not legally sufficient because even if he ran in the election at issue, which he admits to doing, (see Resp't Mot. at 2), the Hatch Act did not prohibit it because the election was not a partisan one."²

² The Hatch Act does not prohibit federal employees from being candidates in nonpartisan elections, that is, elections where *none* of the candidates is to be nominated or elected as representing a political party. See 5 C.F.R. §§ 734.101, 734.207(b)."

Also, PoppD states on pp 2-3:

"In any event, Arnold's motion is based on an incorrect interpretation the

Hatch Act.[sic] Specifically, he claims that the election for U.S. Representative was nonpartisan because Washington State holds open primary elections, in which the top two vote getters progress to the general election regardless of political affiliation, and the primary election does not serve as a mechanism for political parties to nominate candidates. (Resp't Mot. at 4.) While this is true of Congressional elections in Washington, the state's chosen election procedures do not affect the partisan character of the office of U.S. Representative. “

HAUO's opposition to respondent's motion to dismiss admits Washington state U.S. Representative elections are nonpartisan. Having an amended complaint that fraudulently leaves out (and hopes no one points out this deceptive omission) the exception at the end of 5 C.F.R. § 734.304 makes it look safe to confess Washington state U.S. Representative elections are nonpartisan and even arrogantly include *See* 5 C.F.R. §§ 734.101, 734.207(b) as a footnote.

HAUO didn't have RESPONDENT'S MOTION FOR SUMMARY JUDGMENT [with ADDENDUM] (“RSUM”) before filing its Petitioner's Motion for Summary Adjudication (“PSUM”), but it did have Respondent's Reply to Amended Complaint (“Reply”).

HAUO's amended complaint states it's based is a “Section 7323(a)(3) of Title 5 of the United States Code and 5 C.F.R. § 734.304” prohibition. However, the Reply clearly shows HAUO knowingly, willfully, and fraudulently left out the exception to this prohibition in 5 C.F.R. § 734.304 to create a false prohibition. That is why HAUO's PSUM doesn't mention 5 C.F.R. § 734.304 in its text nor even in its footnotes. Indeed, PSUM abandons HAUO's misrepresentation of 5 C.F.R. § 734.304 and thereby abandons the basis of its Amended Complaint and mentions Section 7323(a)(3) of Title 5 only. HAUO, apparently, thought no one would notice it's Amended Complaint deceitfully and fraudulently omitted the 5 C.F.R. § 734.304 prohibition exception. Since Respondent showed HAUO's omission in his Reply, HAUO has gone from citing only part of 5 C.F.R. § 734.304 to hide its truthful presentation to completely excluding 5 C.F.R. § 734.304 as a desperate attempt to get the 5 C.F.R. § 734.304 prohibition exception's truthful presentation forgotten and thereby hidden. This omission is shown again in RSUM.

HAUO's PSUM memo tries to focus on Washington state use of terms such as “partisan office” and tries to treat it as having the same definition as in federal law. State's make their own definitions for terms which may or may not match federal definitions that happen to use the same terms. It's the definition given to a term that matters and not the term itself. The definitions emphasize that it's a state's actions that matter not their terms. A state using a term used by federal law is irrelevant, because the federal and state definitions of the terms are made by different bodies, so it's unlikely the definitions match or have the same use and it's the federal definition that matters not the term itself. That is why federal laws include definitions such as 5 C.F.R. § 734.101 Definitions cited on HAUO Amended Complaint page 2 first paragraph.

HAUO's PSUM memo talks about state terms and the actions of political parties to “prove” its fraudulent claim. It talks about political parties nominating a candidate but that nomination is not an election as defined in HAUO's Amended Complaint page 2 first paragraph citing of 5 C.F.R. § 734.101 Definitions. Therefore, those political party “nominations” are actually just endorsements.

5 C.F.R. § 734.101 Definitions clearly states:

“Nonpartisan election means—

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or ”.

This definition of a Nonpartisan election says “in which” so it is only talking about in the election itself not in political party activities. This definition, also, says “is to be” not “has been”, so it is talking about what “is to be” the results of the election not what “has been” the results of a political party activity such as an endorsement vote. This clearly states that if the election itself does not elect or nominate any candidate as representing a political party then that election is a Non-partisan election. HAUO agreed with this in its PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS by admitting, “While this is true of Congressional elections in Washington...”. It does not matter if political parties endorse a candidate and call it a “nomination”. That political party “nomination” is not the nomination stated in this definition and is not an election as defined in HAUO's Amended Complaint page 2 first paragraph citing of 5 C.F.R. § 734.101 Definitions . This Nonpartisan election definition only refers to elections that are used as nominations not to political party endorsements that are called “nominations” for political party propaganda.

PSUM memo page one falsely states as its first sentence and the basis of its claim:

‘The only issue in dispute in this case is a legal one: whether the U.S. Representative from Washington state's 8th Congressional district is a "partisan political office" under the Hatch Act.’ and

“Thus, a finding that the U.S. Representative is a "partisan political office"-and thus that Arnold's candidacies were prohibited-resolves the only issue in this case.”

The true issue here is the truthful presentation of 5 C.F.R. § 734.304 which completely disproves HAUO's false claim and that is why PSUM tries to use abandonment of 5 C.F.R. § 734.304 to try to cover up 5 C.F.R. § 734.304's truthful presentation.

The answer to the true issue here as stated in RSUM page 4 is, “Since 5 C.F.R. § 734.304 ends with an exception, it is a limited prohibition not a total prohibition. Of course, an exception to a prohibition means where the exception condition exists, the prohibition does not exist. This clearly states that if an elected office is a “partisan political office” and at the same time has a “Nonpartisan election”, then the Nonpartisan election condition takes priority over, overrides, and supersedes the partisan political office condition thereby allowing the partisan political office condition itself to remain but nullifying the partisan political office prohibition. ”

HAUO's PSUM shows an activity (which respondent has always admitted anyway) but fails to show a

prohibition or prohibited activity. The prohibition it fraudulently tries to create is nullified by federal law. HAUO's PSUM's like its Amended Complaint's fails to show a meritorious basis making them both legally insufficient.

HAUO's PSUM conflates political party activities and state law terms and tries to substitute them for federal law because HAUO's complaint has no basis in its abandoned 5 C.F.R. § 734.304 bad faith, fraudulent misinterpretation of federal law.

PSUM mentions others at the Department of Commerce such as Ruben and Harrington who contributed to setting up HAUO's false complaint. This shows this false complaint was not just fraudulent but a fraudulent conspiracy. Also noteworthy, PSUM page 3 states, "Arnold attended in-person ethics training" referring to a session Respondent attended in 2010 because an email announcing it made it sound like routine job training and gave no indication that running for elected office or any so called "ethics" or "ethics training" would be included. This looks like those responsible for this email and session were, also, part of this fraudulent conspiracy. Therefore, this email was a deceitful trick, but respondent didn't realize this in time to save the misleading email.

This case is an unethical conspiracy led by HAUO to get away with filing a fraudulent ethics complaint.

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT [with ADDENDUM], previously submitted, is supported by and supports this supplemental objection.

Wherefore, Petitioner's Motion for Summary Adjudication should be denied.

Further, RESPONDENT'S MOTION FOR SUMMARY JUDGMENT [with ADDENDUM] should be granted, and Respondent should be granted the relief demanded therein.

Date: September 19, 2016

by: 

Keith L. Arnold

Respondent

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
OFFICE OF THE CLERK OF THE BOARD

SPECIAL COUNSEL,

[Hatch Act Unit]

Petitioner,

V.

KEITH L. ARNOLD,

Respondent.

DOCKET NUMBER

CB-1216-16-0017-T-1

CERTIFICATE OF SERVICE

I certify that this RESPONDENT'S SUPPLEMENTAL OBJECTION TO "PETITIONER'S MOTION FOR SUMMARY ADJUDICATION" was sent by electronic mail on September 19, 2016 to:

Martorana, Carolyn cmartorana@osc.gov

Carolyn S Martorana, Office of Special Counsel, Hatch Act Unit, 1730 M Street, N.W., Suite 218,
Washington, Dc 20036

Date: September 19, 2016

by: 

Keith L. Arnold

Respondent