

Testimony of Jon J. Greiner on "Hatch Act: Options for Reform" before the Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, U. S. Postal and Labor Policy; May 16, 2012.

Good morning Mr. Chairman and members of the Committee on Oversight and Government Reform. I appreciate the opportunity to appear before you today to discuss my experience with the Office of Special Counsel and their enforcement of the Hatch Act.

In early March 2006 I was recruited to run for a Utah State Senate seat by a number of legislators and representatives of the Utah Attorney General's (AGs) office. I schedule time with the Ogden Mayor and City Attorney to talk about the city's position on the matter in the final days of the candidate filing period, as their employee, and get their approval as this service is determined by them to be in the best interests of the residents of Ogden City.

On about October 3, 2006 I was contacted by phone by an attorney of the Office of Special Counsel (OSC) about an anonymous complaint allegedly filed against me regarding a potential Hatch violation. She asks that I summarize the current police department grants in a letter back to her. I send her an E-Mail with the summary.

For the rest of that week I sent her every requested document by Fax, she had refused to have it by overnight mail, regarding any grants within the Ogden Police Department, (OPD). We had a couple of Justice Assistance Grants managed by an Assistant Chief that were primarily for a multi law enforcement jurisdiction drug Strike Force in two Utah counties, we had an old bullet proof vest grant which was managed by Ogden Police Department's Lieutenant assigned to the Strike Force, there was a Universal Hire Grant that had expired in June 2006 managed by another Ogden Police Lieutenant, and there was a Technology grant requested by Ogden City, managed by the Ogden Fire department and administered by the Weber/Morgan county dispatch center. The technology grant was for the benefit of all the other police/fire departments in Weber/Morgan county and the State of Utah, UCAN network, to hook into what Ogden had built in the combined public safety building in 1999. I had been listed as a police point of contact in the technology grant and the Ogden Police Department had nothing else to do with the grant to include not receiving any federal grant money. The grant required quarterly reports that were brought to me to be signed by the grant administrator of the dispatch center which comes under Weber County government because I was listed as a point of contact for Ogden City. This grant ended up being the principal Hatch Act violation document; it probably could have been signed by the Sheriff as a law enforcement point of contact if we had known there was an issue with the federal government and the grants.

By the 12<sup>th</sup> of October I have sent her, the OSC attorney, several hundred pages in this manner. I leave for an IACP police convention on the 12<sup>th</sup> or 13<sup>th</sup>. I am at the convention and somewhere towards the end of the convention I get an E-Mail from the OSC attorney saying she thinks I am in violation of the Hatch Act.

I return to Ogden on about the 19<sup>th</sup> and find there are several newspaper articles being written about my perceived violation, source of the information unknown. The newspapers were claiming the Utah State Democratic party chairman had singled me out as a potential violator and contacted the Office of Special Counsel, I also find the letter from the OSC attorney in my in basket, dated the 16<sup>th</sup>.

I immediately contact an attorney in Salt Lake City who gets me in to see him either the 20<sup>th</sup> or the 23<sup>rd</sup>. I also suspend my campaign and tell my opponent in the Senate election of the OSC letter and make my campaign suspension known to the media. I show the letter to the Mayor on the 24<sup>th</sup> and also talk to the city attorney. Between the 24<sup>th</sup> and 31<sup>st</sup> my attorneys talk to OSC attorney, the AG attorneys and the Senate President who is an attorney and others about what it is that I have allegedly done.

A recent Hatch case, OSC/MSPB, involving an assistant police chief Richard Perkins, in Nevada, CB-1216-04-0017-T-1, and others in law enforcement positions are found about Hatch decisions by the attorneys. My attorneys call everyone associated with the OPD grants the OSC attorney has identified in her letter and send a letter to her on about the 31<sup>st</sup> outlining those conversations and the overall legal advice we have received and what can be found in case law. There is a formal request from the Utah Senate President to the AG's office for an opinion in this time period. The AG's office pulls up a previous opinion from the early 1990s they had and independently researches case law. Their conclusions mirror the dissenting opinion of the Merit Service Protection Board on this case involving me. There also is the refusal of the OSC during this time period to give any advisory opinions, internal policy procedure documents or their archive of similar cases for the attorneys to read. The Perkins case file indicates such internal policy documents exist in the ALJ decision and indicates the OSC should try to work with potential offenders.

By the 3<sup>rd</sup> of November there is a response from the Office of Special Counsel's office. My attorney sends a response outlining what the city is doing to remove me from all perceived connections to grants, like what the Perkins decision directs, OSC operational letters discuss, and asks for an ability to work the issue out. The amount of the police department federal grant money, managed by the Ogden comptroller, for Ogden Police and other police agencies is estimated to be less than 1% of the overall Ogden Police department budget. This is a "de minimis" standard discussed in other case law and less than the 4% in the Perkins case brought forward by the Utah Attorney General's office. The OSC office responds that they may seek a complaint. All legal advice given to me at this point is to continue the campaign until a solution for everyone's concerns

can be worked out. Everything since November 6, 2006 has been handled by numerous attorneys on both sides of this issue.

The election is on the 7<sup>th</sup> of November 2006 and we hear nothing from the OSC until October 2008. Examples of the OSC working with potential offenders are found during this two year period including a Wyoming Police Chief elected to the Wyoming Senate on the same day in November 2006 with a Hatch Act complaint having been filed against him. In that 2008 notification they advise they are coming after the City of Ogden for allowing me to run and have scheduled a hearing for early 2009.

There was an Administrative Law Judge (ALJ) hearing in 2009 wherein a number of our due process concerns of the process were not addressed and our ability to provide a defense through normal legal procedures were denied including normal discovery of the OSC policy and procedure documents. Our witnesses are also denied an opportunity to testify.

In March of 2010 we received the ALJ decision and appeal it to the Merit Service Protection Board, (MSPB). In December 2011 we received the 2-1 decision of the board directing my termination.

There are hundreds of pages of legal documents on both sides of this issue filed with the Merit Service Protection Board on my case, CB-1216-08-0025-T-1, outlining the selective enforcement of the OSC and the misunderstandings of the Hatch Act on state and local employees by attorneys. There was also several hundreds of thousands of dollars in attorney fees spent to try and understand the public good of this civil law as it impacts state and local government without any considerations of mitigating circumstances. Included are penalties to the individual, myself, that exceed penalties federal courts give to convicted felons who have committed crimes for which jail is a possible remedy. The Hatch Act needs some reform.

Thank you for your time and can I answer any questions.

Committee on Oversight and Government Reform  
Witness Disclosure Requirement- "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)(5)

Name: Jon J. Greiner

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1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2009. Include the source and amount of each grant or contract.

**The city of Ogden, Utah has received federal grants or contracts (including subgrants or subcontracts) since October 1, 2009. However, the Mayor of Ogden in November 2006 in a written order directed that I have NO connection to any federal program in connection with a Hatch Act compliance program put in place by the city of Ogden. I am therefore personally unaware of any such grants or contracts.**

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2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

**It is my understanding that I am testifying to the Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy on the subject of "Hatch Act: Options for Reform" at their request. I have no relationship to the committee other than the fact that Representative Jason Chaffetz, from Utah, is a member of the committee.**

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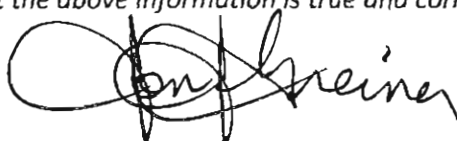
3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2009 by the entity(ies) you listed above. Include the source and amount of each grant or contract.

**I have no independent knowledge of any federal grants or contracts (including subgrants or subcontracts) that the Committee on Oversight and Government reform may have.**

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*I certify that the above information is true and correct.*

Signature:



Date: May 11, 2012

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RESUME OF:        JON J. GREINER

## EDUCATION

Master of Social Science Degree in Public Administration, Utah State University  
Bachelor of Science Degree in Police Science, Weber State University  
Bachelor of Science Degree in Business Administration-Finance, Weber State University  
Military Science Program, Weber State University  
Army Quartermaster Officer Basic and Advanced Courses  
Army Command and General Staff Officer Course  
Fixed wing pilot

## EXPERIENCE

Thirty-eight years as an Ogden Police officer (1973 to 2012)  
Chief of Police (1995 to 2012)

## MILITARY

Twenty-two years as an officer in the U.S. Army Reserve. Currently a Lieutenant Colonel in the Retired Reserve

## COMMUNITY INTERESTS

Utah State Senator representing Senate District # 18 (2007-2010)

Appropriations; Co-Chair Executive Offices and Criminal Justice  
Co-Chair. Commerce and Workforce Services  
Retirement and Independent Entities  
Standing; Senate Judiciary, Law Enforcement and Criminal Justice  
Senate Government Operations and Political Subdivisions  
Senate Retirement and Independent Entities  
Senate Health and Human Services

Governor's Appointment to State Children's Justice Center Executive Board (past)  
Governor's Appointment to 2002 Utah Olympic Public Safety Command (UOPSC) (past)  
Governor's Appointment to Utah POST Council representing cities of the 1<sup>st</sup> and 2<sup>nd</sup> class (past chairman)  
Governor's Appointment to the Utah Public Health Emergency Planning Advisory Council  
Governor's Appointment to the Utah Gang Task Force  
Department of Natural Resources Legislator of the year 2008  
Utah Senate representative to the Utah Sentencing Commission  
International Association of Chiefs of Police (member)  
Utah Chiefs of Police Association (Past President)  
Utah Police Chief of the Year, 2004  
Best of State, Utah "Public Safety Official", 2003  
U.S. Attorney General's Public Service Award , 2002  
Utah Attorney General's Public Service Award, 2010  
Past Alumni Board President and member of the Board of Trustees, Weber State University