



United States Department of the Interior
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
SOL-2022-004127

February 24, 2023

Via Email: info@citizensunited.org

David Bossie
Citizens United
1006 Pennsylvania Ave., SE
Washington, DC 20003

Re: Citizens United v. U.S. Dept of the Interior, Civil Action No. 22-2443 (CRC)
FOIA Request #SOL-2022-004127

Dear Mr. Bossie,

On June 7, 2022, the U.S. Department of the Interior, Office of the Solicitor received your Freedom of Information Act (FOIA) request. In your request, you specifically asked for:

“For the period of January 20, 2021 to the present, please provide copies of:

- Any emails or text messages to or from Interior Department White House Liaison Maggie Thompson or Deputy White House Liaison Amber Gaither and any employee of the Executive Office of the President mentioning “Hatch Act” and/or Executive Order 14019 (“Executive Order on Promoting Access to Voting”).
- Any emails or text messages to or from the following Interior Department staff: Maggie Thompson, Amber Gaither, Tommy Beaudreau, Bryan Newland, Robert Anderson, Ruchi Jain, Ann Marie Bledsoe Downes, Scott de la Vega, Eric Shepard, Matthew Kelly, Heather Gottry, Monica Garcia, Edward McDonnell, Jennifer Van der Heide, Rachael Taylor, Joel West Williams, Tracy Goodluck, Elizabeth Klein, Andrew Wallace, and/or Kate Kelly mentioning “Hatch Act” in the context of Executive Order 14019 (“Executive Order on Promoting Access to Voting”).
- Any emails or text messages to or from any Office of Special Counsel employee, including but not limited to, Ana Galindo-Marrone and Erica Hamrick, and the following Interior Department staff: Maggie Thompson, Amber Gaither, Tommy Beaudreau, Bryan Newland, Robert Anderson, Ruchi Jain, Ann Marie Bledsoe Downes, Scott de la Vega, Eric Shepard, Matthew Kelly, Heather Gottry, Monica Garcia, Jennifer Van der Heide, Rachael Taylor, Joel West Williams, Tracy Goodluck, Elizabeth Klein, Monica Garcia, Andrew Wallace, and/or Kate Kelly mentioning “Hatch Act” in the context of Executive Order 14019 (“Executive Order on Promoting Access to Voting”).”

We are writing today to provide our final response to your request. For this response, the Office of the Solicitor reviewed 15 pages. Upon review, 10 pages are being released to you in full, and 5 pages are being released in part. The pages being released in part were redacted pursuant to Exemption 5 deliberative process, attorney-client, and government commercial information privileges. Please see the attached responsive documents.

Exemption 5 allows an agency to withhold inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency. Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges.

Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decision-maker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials redacted under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Attorney-Client Privilege

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications

between attorneys that reflect confidential client-supplied information.

The information redacted under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the Bureau employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the Bureau has held this information confidential and has not waived the attorney-client privilege.

Government Commercial Information Privilege

We are redacting pages under Exemption 5, the Government Commercial Information Privilege, because those pages contain conference call-in numbers and passcodes. Release of the conference call-in numbers and passcodes to the general public would enable any member of the public to call in and listen to communications on that call-in line, rendering the call-in line useless and requiring the Department to purchase a new replacement call-in line.

Lance Purvis, FOIA Officer, Office of the Solicitor, is responsible for this decision. Leah B Bernhardt, Attorney-Advisor, Office of the Solicitor was consulted. This concludes the Office of the Solicitor's response to your request.

If you have any questions about our response to your request, you may contact Assistant United States Attorney Stephanie Johnson by phone at (202) 252-7874, or by email at stephanie.Johnson@usdoj.gov.

Sincerely,



Lance Purvis
Office of the Solicitor FOIA Officer

cc: Jeremiah Morgan, Esq.
Stephanie Johnson, AUSA

From: [Gottry, Heather C](#)
To: [Bledsoe Downes, Ann M](#)
Cc: [Garcia, Monica L](#)
Subject: FW: REMARKS TOMORROW: voting rights
Date: Tuesday, June 14, 2022 7:45:23 PM
Attachments: [Proposed Edits to NCAI GOTV Language.docx](#)

Ann Marie – Hello again! Following up on my earlier chat messages, I am sharing the email below for your situational awareness and am happy to brief you if helpful. At this point, we are still waiting on a copy of the entire speech for tomorrow. Many thanks.

- Heather

From: Gottry, Heather C
Sent: Tuesday, June 14, 2022 6:27 PM
To: Schwartz, Melissa A <melissa_schwartz@ios.doi.gov>
Cc: Taylor, Rachael S <rachael_taylor@ios.doi.gov>; Garcia, Monica L <monica.garcia@sol.doi.gov>
Subject: RE: REMARKS TOMORROW: voting rights

Melissa – Hello! Thank you for sending the language below to us for review. Is it possible to get a copy of the entire speech so we can fully understand the context of how the language you sent to us will be framed in the full remarks?

As background and as I have briefed Rachael, I have been engaged with the U.S. Office of Special Counsel (OSC) on questions about the inclusion of Get Out the Vote (GOTV) language in official remarks/speeches and just received informal guidance from them late last week. We should certainly schedule a time to discuss their informal guidance more broadly as it will inform how GOTV language can be included in official remarks/speeches in a manner consistent with the Hatch Act. To that end, we recommend that we be provided with copies of full remarks/speeches for review if they include language around voting, registering to vote, and/or other GOTV efforts.

While it is permissible for an employee to use official remarks and speeches to highlight DOI's efforts to formally designate the Department-operated post-secondary Tribal institutions – Haskell Indian Nations University in Kansas and the Southwestern Indian Polytechnic Institute in New Mexico – as voter registration agencies under the National Voter Registration Act, and [President Biden's Executive Order on Promoting Access to Voting](#), OSC has advised that it not permissible under the Hatch Act to do so in a way that appears that the federal employee is using their official authority or influence to interfere with or affect the result of an election, by showing support for or opposition to a political party or candidate.

OSC has further advised that if an employee ties GOTV language in an official speech to a specific issue or advocacy on an issue then such an action raises concerns about whether they are using their official authority or influence or encourage the individuals listening to the speech to vote for candidates who share the same viewpoints on the issue expressed in the official speech. In such a context, OSC has advised that the speech would then rise to level of potentially suggesting, encouraging, or directing an individual to register or not register as a member of a particular political

party, discussing upcoming elections or candidates for partisan political office, and/or expressing support or opposition to political parties or candidates for partisan political office.

Please note that OSC also advised that the inclusion of GOTV language in official remarks/speeches should not be targeted to specific demographics or other groups, but rather if it is important to include GOTV language in official remarks/speeches then it should be used for most, if not all, audiences.

With this guidance in mind, we have attached proposed edits and comments in redline. We are available to review the full speech, if provided, as the context of the language below in the full speech might necessitate further edits.

I am heading home now, but will be available after 7:30 if it would be helpful to discuss tonight. Thank you.

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Hi there –

The Secretary was asked to mention the new voter registration sites at SIPI and Haskell in remarks for NCAI tomorrow. Here is the language we have provided her:

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Thanks,
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(b)(5) [Redacted]

[Redacted]

[Redacted]

From: [Gottry, Heather C](#)
To: [Bledsoe Downes, Ann M](#)
Cc: [Garcia, Monica L](#)
Subject: RE: REMARKS TOMORROW: voting rights
Date: Wednesday, June 15, 2022 7:04:24 AM

Thank you. We received the full speech last night and just sent back further edits. This will likely be an issue it would be helpful to more fully brief up to you and/or Bob as there has been a request to include GOTV language in remarks/speeches to certain audiences which is what led to my consultations with OSC.

From: Bledsoe Downes, Ann M <ann.bledsoedownes@sol.doi.gov>
Sent: Tuesday, June 14, 2022 9:25 PM
To: Gottry, Heather C <heather.gottry@sol.doi.gov>
Cc: Garcia, Monica L <monica.garcia@sol.doi.gov>
Subject: Re: REMARKS TOMORROW: voting rights

I agree with these edits. I'm online again now if we need to chat.

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To: [Bledsoe Downes, Ann M](#)
Cc: [Garcia, Monica L](#)
Subject: RE: REMARKS TOMORROW: voting rights
Date: Wednesday, June 15, 2022 9:08:10 AM

Thanks. We proposed further edits once we reviewed the entire speech and Rachael wants to touch base on those this am. I also hope to find time to work on some general guidance on GOTV language. I will keep you updated on further developments.

From: Bledsoe Downes, Ann M <ann.bledsoedownes@sol.doi.gov>
Sent: Wednesday, June 15, 2022 8:31 AM
To: Gottry, Heather C <heather.gottry@sol.doi.gov>
Cc: Garcia, Monica L <monica.garcia@sol.doi.gov>
Subject: Re: REMARKS TOMORROW: voting rights

Okay. No problem. I'll ask Bob to join.

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To: Bledsoe Downes, Ann M <ann.bledsoedownes@sol.doi.gov>
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From: [Gottry, Heather C](#)
To: [Anderson, Robert T](#); [Bledsoe Downes, Ann M](#)
Cc: [Garcia, Monica L](#)
Subject: FW: Sec op-ed on Native voting
Date: Friday, July 8, 2022 9:12:54 AM
Attachments: [DRAFT OPED NativeVoting_06022022.docx](#)

Bob and Ann Marie – Hello again! Below please find documentation of guidance that we had previously discussed with Rachael and Melissa. Please let us know if it would be helpful to discuss. Many thanks.

- Heather

From: Gottry, Heather C
Sent: Friday, July 8, 2022 9:11 AM
To: Schwartz, Melissa A <melissa_schwartz@ios.doi.gov>
Cc: Taylor, Rachael S <rachael_taylor@ios.doi.gov>; Garcia, Monica L <monica.garcia@sol.doi.gov>
Subject: RE: Sec op-ed on Native voting

Melissa – Hello! Thank you again for your patience as we have reviewed the draft op ed. After careful review and follow up consultation with the Hatch Act Unit of the U.S. Office of the Special Counsel (OSC), we have determined that the Hatch Act would not prohibit the Secretary from drafting and publishing the attached op ed in her official capacity and using her official title.

The draft op-ed is framed in the context of both the Secretary’s personal history as well as the history of Native American voting rights. The draft op ed also highlights the Department’s recent action to formally designate the Department-operated post-secondary Tribal institutions – Haskell Indian Nations University in Kansas and the Southwestern Indian Polytechnic Institute (SIPI) in New Mexico – as voter registration agencies under the National Voter Registration Act, and [President Biden’s Executive Order on Promoting Access to Voting](#). Finally, the draft op ed encourages readers, and in particular Native American readers, to exercise their right to vote without tying that recommendation to specific candidates, political parties, or policy outcomes.

Under the Hatch Act, the Secretary is prohibited from engaging in political activity in her official capacity or when using her official title. Political activity is defined by regulation as “an activity directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group.” 5 C.F.R. § 734.101. In contrast, activity is generally considered to be official (and therefore not political) if it relates to the Administration’s or Department’s policies, programs, or activities. As we have advised previously, the determination of whether get out the vote or other official activity related to voting is political activity requires careful review of the facts and circumstances of each case.

After review, we concluded - and OSC concurred - that the draft op ed is not activity that is directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group. Therefore, if the Secretary works with staff at the Department to get the op ed published, such activities would not be considered to be political activity for purposes of the

prohibitions in the Hatch Act.

Finally, we confirmed with OSC that the Department's plan to publish the draft op ed in Indian country Today or in another news outlet that reaches Native Americans, would also not give rise to concerns under the Hatch Act. OSC noted that given the framing and context of the draft op ed it is appropriate for the distribution outlet to be targeted reach an audience of Native Americans. However, as noted above, future op eds that focus on specific groups will also need to be reviewed for compliance.

To the extent that the draft op ed is edited please provide us with an updated copy for review.

Please do not hesitate to let us know if it would be helpful to discuss or if we can be of any additional assistance.

- Heather

Customer service matters to us. Please take our short survey, [click here](#).

Heather C. Gottry
Director & DAEO
Departmental Ethics Office | Office of the Solicitor
U.S. Department of the Interior | MIB 5308
(O) (202) 208-4472
(C) (202) 740-0417
Email: heather.gottry@sol.doi.gov

Visit us online at: www.doi.gov/ethics

Integrity is our mission.

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Subject: Sec op-ed on Native voting

All –

As we've mentioned, the Secretary is very fired up about encouraging that Native people engage in voting, regardless of who they vote for. Here is a draft op-ed that we are hoping to place in Indigenous-focused outlets: [DRAFT_OPED_NativeVoting_06022022.docx](#)

Given the guidance you shared last week we opted to share the original content with you rather than make edits. We would appreciate your review and track changes.

Thanks

OPED DRAFT

Target Publications: Indian Country Today

Word Count: 635 words

Our Ancestors Survived Against All Odds, We Owe It to Them to Vote

By: Deb Haaland, Secretary of the Interior

Many people don't know that Native Americans didn't get the right to vote in federal elections until we were granted U.S. citizenship in 1924 and that it wasn't until the 1960s that the last state granted us the right to vote in state elections. This is the sad and ironic truth -- even though Indigenous communities in North America are some of the oldest democracies in the world.

Participating in governing is a time honored and sacred tradition in many Indigenous communities. Our people survived against seemingly insurmountable odds, which is why we owe it to them to make our voices heard at the ballot box.

This is why I became an organizer in the first place. I knew that generations of laws restricting the right to vote for Native people impacted our participation in elections, and that it would take a concerted effort to register voters; ensure they had the information about voting dates, locations and hours; and personal outreach to increase voter participation.

With my voting rights champion and WWII veteran Miguel Trujillo in my mind, I would lace up my tennis shoes, drive out to remote communities in New Mexico, and go door to door. I can't count how many times I knocked on someone's door and heard that it was the first time anyone had ever reached out to them to register to vote. Since my organizing days in the early 2000s, we've made strides to increase the Native vote. But as we fast forward to today, we are facing the same battles.

Recent attempts to close certain polling locations, limit early voting, change polling location hours, and even draw maps to hush the voices of specific populations are just the newest way to restrict voting access.

With President Biden's support, we are working with states to expand access to voting at Department of the Interior-operated post-secondary Tribal institutions. In May, I was proud to announce that Haskell Indian Nations University (Haskell) in Kansas and the Southwestern Indian Polytechnic Institute (SIPI) in New Mexico will be designated voter registration agencies under the National Voter Registration Act. This action removes barriers to voting by allowing these institutions to facilitate voter registration opportunities for enrolled students and members of the community.

These may seem like small steps, but to the students at Haskell, SIPI and Native communities everywhere, this is one way we can live up to our democratic Indigenous roots. Participatory democracy is part of who we are as people -- collaboration, consensus and common good are built into our cultures and traditions. Voting is sacred and we must use our voices in every election.

Our votes reflect our values and the issues we care about. When we vote, we can impact the direction of the country, because our votes determine who has the power to make decisions for our communities. From school board, to governor, to President -- leadership matters.

Our communities will thrive when leaders in elected office know and understand the federal government's commitment to Tribal nations. When I was in Congress, I heard from many Tribal leaders about how much more efficient it was to walk into a meeting with an elected leader who already understood and knew what trust responsibility is and what government-to-government relationships are. It was inspiring for young people to see themselves in an elected leader, and one of the many reasons I believe strongly that representation matters.

Your voice can make a difference. There are places in this country in which Native votes can turn the tables and drive our country toward progress. The strides we're taking for Native people at all levels of government can *and will* be slowed down if we don't use the power of our votes to make our voices heard. I encourage everyone to learn about the candidates on the ballot, reach out to your election officials, and vote in the upcoming elections.

###

DRAFT