

Political Activity and the Federal Employee

Shirley A. Jones, Esq.
National Legal Review Committee Chair
Blacks In Government

Course Objectives:

This session will summarize the laws and policies governing the political activities of civilian employees in the executive branch of the federal government, the U.S. Postal Service, and the District of Columbia, as well as certain state and local employees. Since ignorance of the law is very rarely an excuse for anything, government employees must be aware of these legal restrictions particularly since some of them apply during off-duty hours. Penalties for violating the Act are severe and may include loss of employment and/or criminal sanctions. The enclosed information, always subject to heated debate, describes the express do's and don'ts using guidance taken directly from the Office of Special Counsel's website and includes advisory opinions on some of the areas that you might find interesting and useful. If you have any questions about the attached material or would like to discuss a planned individual or chapter activity, feel free to call me on (202) 465-5852 or email me at jonessa@gao.gov.

Course Outline:

- Background
- Constitutionality of the Hatch Act
- Who's Covered - Are You A "Less Restricted" or "Further Restricted" Employee?
- Prohibited and Permitted Activities for Each Designation
- Penalties for Violation
- Select Advisory Opinions
- Full List of OSC Advisory Opinions by Topic

Background

The goal of the Hatch Act, originally entitled "An Act to Prevent Pernicious Political Activities", is to enforce political neutrality among civil servants i.e. preventing government employees from using their positions to coerce or influence voters who come before them to receive government services. The original Act prohibits intimidation or bribery of voters and forbids officials paid with federal funds from using promises of jobs, promotion, financial assistance, contracts, or any other benefit, to coerce campaign contributions or political support. Although acknowledging the right to vote, the most restrictive provision prevented government employees from taking any active part in political campaigns or political management.

Since passage of the Hatch Act Reform Amendments in 1993, most federal employees may now more actively participate in political campaigns, depending upon whether they are considered "less restricted" or "further restricted" employees. Federal employees are still across the board forbidden from using their authority to influence, interfere with or affect the results of an election, running for office in partisan elections (with some exceptions), soliciting or receiving political contributions, and engaging in political activities while on duty or on federal property. The U.S. Office of Special Counsel is responsible for enforcement of the Hatch Act.

Is the Hatch Act Constitutional?

The short answer is yes, so says the U.S. Supreme Court. Despite the Hatch Act's goal of enforcing political neutrality, its numerous critics argue that the Act violates government employee's First Amendment freedoms of speech and association. The U.S. Supreme Court has twice, however, upheld the law's constitutionality. In *United Public Workers of America v. Mitchell*, 330 U.S. 75, 67 S. Ct. 556, 91 L. Ed. 754, the Court upheld the legality of the Hatch Act by balancing individual free speech rights against the "elemental need for order". The Court concluded that public employment was a privilege subject to reasonable conditions. The Court rejected a similar challenge to the law in 1973 in *United States Civil Service Commission v. National Ass'n of Letter Carriers*, 413 U.S. 548, 93 S. Ct. 2880, 37 L. Ed. 2d 796.

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street N.W., Suite 218, Washington D.C. 20036-4505

www.osc.gov

August 25, 2010

About The Hatch Act - Federal Employees

Hatch Act: Who is Covered?

Federal Employees

All civilian employees in the executive branch of the federal government, except the President and the Vice President, are covered by the provisions of the Hatch Act. Employees of the U. S. Postal Service and the District of Columbia, except for the Mayor of the District of Columbia, the District of Columbia's City Council and the District's Recorder of Deeds, are also covered by the Act. Part-time employees are covered by the Act. Federal and District of Columbia employees subject to the Hatch Act continue to be covered while on annual leave, sick leave, leave without pay, or furlough. However, employees who work on an occasional or irregular basis, or who are special government employees, as defined in title 18 U. S.C. § 202(a), are subject to the restrictions only when they are engaged in government business.

Federal employees fall within two categories under the Hatch Act, Further Restricted and Less Restricted.

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1730 M Street N.W., Suite 218, Washington D.C. 20036-4505

About The Hatch Act - State and Local Employees

Hatch Act: Who is Not Covered?

State and Local Employees

Hatch Act provisions do not apply to:

- individuals who exercise no functions in connection with federally financed activities; or
- individuals employed by educational or research institutions, establishments, or agencies which are supported in whole or in part by state or political subdivisions thereof, or by recognized religious, philanthropic or cultural organizations (*e.g.*, administrators, teachers).

The law also exempts certain specified employees from the prohibition on candidacy for elective office. These exemptions include:

- the governor or lieutenant governor of a state, or an individual authorized by law to act as governor;
- the mayor of a city;
- a duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil service system; and
- an individual holding public elective office. This exemption applies only when the elective office is the position which would otherwise subject the employee to the restriction of the Hatch Act.

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1730 M Street N.W., Suite 218, Washington D.C. 20036-4505

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About The Hatch Act - Federal Employees

Less Restricted Employees

Who are you?

Most federal executive branch employees (except those listed here) and all District of Columbia employees are considered Less Restricted under the Hatch Act. These employees may take an active part in partisan political management or partisan political campaigns.

- Political Restrictions and Examples of Prohibited Activities
- Examples of Permitted Activities

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1730 M Street N.W., Suite 218, Washington D.C. 20036-4505

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Less Restricted Employees

Less Restricted Employees – Political Restrictions

The Hatch Act prohibits Less Restricted employees from:

- using their official authority or influence to interfere with or affect the result of an election;
- knowingly soliciting, accepting, or receiving a political contribution from any person (this may be done in certain limited situations by federal labor or other employee organizations);
- knowingly soliciting or discouraging the participation in any political activity of anyone who has business pending before their employing agency;
- being candidates for public office in partisan political elections; or
- engaging in political activity while:
 - on duty;
 - in a government office;
 - wearing an official uniform; or
 - using a government vehicle

Less Restricted Employees – Examples of Prohibited Activities

Less Restricted federal employees *may not*, for example:

- host a political fundraiser
- invite anyone to a political fundraiser
- accept or receive a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group
- use an official title or position while engaged in political activity
- supervisory employees may not invite subordinate employees to political events or otherwise suggest to subordinates that they attend the political event or undertake any partisan political activity

Additionally, while on duty and/or in any federal room or building, Less Restricted federal employees *may not*, for example:

- distribute campaign materials or items
- wear partisan political buttons, t-shirts or other items
- display campaign materials or items
- perform campaign related chores
- make political contributions to a partisan political party, candidate for partisan political office, or partisan political group
- post a comment to a blog that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group
- use any e-mail account to distribute, send or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group

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Less Restricted Employees

Less Restricted Employees – Examples of Permitted Activities

Less Restricted employees *may*, for example:

- be candidates for public office in nonpartisan elections
- register and vote as they choose
- assist in voter registration drives
- express opinions about candidates and issues
- contribute money to political organizations
- attend political fundraising functions
- attend and be active at political rallies and meetings
- join and be an active member of a political party or club
- sign and circulate nominating petitions
- campaign for or against referendum questions, constitutional amendments, municipal ordinances
- campaign for or against candidates in partisan elections
- make campaign speeches for candidates in partisan elections
- distribute campaign literature in partisan elections
- hold office in political clubs or parties
- volunteer to work on a partisan political campaign

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About The Hatch Act - Federal Employees

Further Restricted Employees

Who are you?

Certain federal executive branch employees are prohibited from engaging in partisan political management or partisan political campaigns; hence, these employees are Further Restricted under the Hatch Act. Generally, Further Restricted employees consist of employees in intelligence and enforcement-type agencies (except employees appointed by the President, by and with the advice and consent of the Senate). More specifically, Further Restricted employees include employees from the following agencies (or components) or in the following positions:

Federal Election Commission;
Election Assistance Commission;
Federal Bureau of Investigation;
Secret Service;
Central Intelligence Agency;
National Security Council;
National Security Agency;
Defense Intelligence Agency;
Merit Systems Protection Board;
Office of Special Counsel;
Office of Criminal Investigation of the Internal Revenue Service;
Office of Investigative Programs of the United States Customs Service;
Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;
National Geospatial-Intelligence Agency;
Office of the Director of National Intelligence;
Criminal Division of the Department of Justice;
National Security Division of the Department of Justice; as well as

Persons employed in positions described under Sections 3132(a)(4), 5372, 5372 (a), or 5372(b) of Title 5, United States Code, including:

Senior Executive Service [career positions described at 5 U.S.C. § 3132 (a)(4)]
Administrative Law Judges [positions described at 5 U.S.C. § 5372]
Contract Appeals Board Members [positions described at 5 U.S.C. § 5372 (a)]
Administrative Appeals Judges [positions described at 5 U.S.C. § 5372(b)]

- Political Restrictions and Examples of Prohibited Activities
- Examples of Permitted Activities

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Further Restricted Employees

Further Restricted Employees – Political Restrictions

Further Restricted federal employees ***may not*** –

- use official authority or influence for the purpose of interfering with or affecting the result of an election;
- knowingly solicit, accept, or receive a political contribution from any person (may be done in certain limited situations by federal labor or other employee organizations);
- be a candidate for nomination or election to a partisan political office;
- knowingly solicit or discourage the participation in any political activity of anyone who has business pending before their employing agency; or
- engage in political activity, while
 - on duty;
 - in a government office;
 - wearing an official uniform; or
 - using a government vehicle.

These employees are also prohibited from engaging in partisan political management or partisan political campaigns. Specifically, they may not engage in political activity in concert with a candidate for partisan political office, a political party or a partisan political group.

Further Restricted Employees – Examples of Prohibited Activities

Further Restricted federal employees ***may not***, for example:

- campaign for or against a candidate or slate of candidates in partisan elections
- make campaign speeches
- collect contributions or sell tickets to political fund raising functions
- distribute campaign material in partisan elections
- organize or manage political rallies or meetings
- hold office in political clubs or parties
- circulate nominating petitions
- work to register voters for partisan voter registration drives
- host a political fundraiser
- invite anyone to a political fundraiser
- accept or receive a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group
- use an official title or position while engaged in political activity
- supervisory employees may not invite subordinate employees to political events or otherwise suggest to the subordinate that he or she attend the political event or undertake any partisan

political activity

Additionally, while on duty and/or in any federal room or building, Further Restricted federal employees **may not**, for example:

- wear partisan political buttons, t-shirts or other items
- make political contributions to a partisan political party, candidate for partisan political office, or partisan political group
- post a comment to a blog that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group
- use any e-mail account to distribute, send or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group

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Further Restricted Employees

Further Restricted Employees – Examples of Permitted Activities

Further Restricted federal employees *may*, for example:

- register and vote as they choose
- assist in nonpartisan voter registration drives
- express opinions about candidates and issues
- participate in campaigns where none of the candidates represent a political party
- contribute money to political organizations or attend political fundraising functions
- attend political rallies and meetings
- join political clubs or parties
- sign nominating petitions
- campaign for or against referendum questions, constitutional amendments, municipal ordinances
- be a candidate for nomination or election to a public office in a nonpartisan election

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Penalties

Penalties

An employee who violates the Hatch Act shall be removed from their position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than a 30-day suspension without pay shall be imposed by direction of the Board.

OSC's Role (Hatch Act)

Advisory Opinions

The U.S. Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Hatch Act. OSC issues advisory opinions to persons seeking advice about political activity under the Hatch Act. You may request such advice by phone, fax, mail or e-mail.

Hatch Act Unit

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Tel: (800) 85-HATCH or (800) 854-2824
(202) 254-3650
Fax: (202) 254-3700

Subject - Contacting Members of Congress



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

January 24, 2007

Mr. Xxx Xxxxxx
xxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxx

Re: OSC File No. AD-xx-xxxx

Dear Mr. xxxx:

This is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you or other Department of XXXX employees from contacting Congressional members and/or their staff about the vulnerabilities in the XXXX process. For the reasons explained below, the Hatch Act does not prohibit you or other Department of XXXX employees from contacting members of Congress

As you know, individuals employed by the Department of XXXX are subject to the restrictions of the Hatch Act. See 5 U.S.C. 7322(1)(A). The Hatch Act, 5 U.S.C. §§ 7321-7326, generally permits most federal employees, including employees of the Department of XXXX, to actively participate in nonpartisan activities, partisan political management and partisan political campaigns. However, individuals covered by the Act are prohibited from, among other things, engaging in political activity while they are: (1) on duty¹; (2) wearing any uniform, badge, or insignia that identifies the employing agency of the employee; (3) in any room or building occupied in the discharge of official duties by an individual employed by the federal government; or using any vehicle owned or leased by the United States Government. 5 U.S.C. § 7324; 5 C.F.R. § 734.306. Political activity is defined as "any activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." 5 C.F.R. § 734.101.

In your request for an advisory opinion, you ask whether the Hatch Act would prohibit you and/or other Department of XXXX employees from contacting members of Congress concerning vulnerabilities in the XXXX process. Specifically, you explain that numerical standards/quotas in the XXXX process require employees to adjudicate the applications at such a rapid pace that the numerical standards/quotas hinder and prevent

¹ Officials of labor organizations who have been given official time to perform representational duties are considered to be "on duty" for purposes of the Hatch Act. 5 C.F.R. § 734.306, Example 12.

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Mr. XXXX

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employees from detecting XXXX fraud. As a result, you and other Department of XXXX employees would like to consider writing letters or personally visiting members of Congress to express your concerns about the XXXX process. You also would like to know whether the Act would prohibit you and/or other Department of XXXX employees from asking Congress to enact legislation that would provide the Department of XXXX additional time to process and diligently adjudicate the XXXX applications.

Section 7321 of the Hatch Act states:

It is the policy of the Congress that employees should be encouraged to exercise fully, freely and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

In addition, the Act provides that employees may be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, legislation or other question of a similar character. 5 C.F.R. § 734.203. For example, “[a]n employee, individually or collectively with other employees, may petition or provide information to Congress as provided in 5 U.S.C. 7211.”² *Id.* (Example 2).

Based on the above, the Hatch Act does not prohibit covered employees from meeting with Congressional representatives to discuss any federal employment matters. Consequently, the Hatch Act would not prohibit you and/or other Department of XXXX employees from contacting Congress, in writing or in person, concerning potential problems or concerns with the XXXX process. Similarly, the Act would not prohibit you from asking or encouraging Congress to enact legislation that would allow the Department of XXXX additional time to process the XXXX applications.

As explained above, the Hatch Act prohibits covered employees from engaging in political activity while: (1) on duty; (2) wearing any uniform, badge, or insignia that identifies the employing agency of the employee; (3) in any room or building occupied in the discharge of official duties by an individual employed by the federal government; or (4) in any government vehicle. However, please be advised that contacting Congress about potential vulnerabilities in the XXXX process does not constitute “political activity” for purposes of the Hatch Act. That is, contacting Congress about the XXXX process and/or encouraging Congress to enact legislation concerning XXXX applications is not an “an activity directed toward the success or failure of a political party, candidate

² Section 7211 of Title 5 of the United States Code states: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”

U.S. Office of Special Counsel

Mr. XXXX

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for partisan political office, or partisan political group.” Therefore, the Hatch Act would not prohibit you and/or other Hatch Act covered employees from contacting Congress about the XXXX concerns while on duty, while wearing any official uniform or insignia, while in any federal room or building, or while in any government vehicle.³ For example, the Hatch Act does not prohibit you from using official time to contact members of Congress about your concerns with the XXXX process. Similarly, the Act does not prohibit you or other Department of XXXX employees from writing letters or sending electronic mail messages to members of Congress during the lunch period or while on break, even if this activity is performed in a federal room or building.

In your request for an advisory opinion, you also ask whether the Hatch Act would prohibit you from asking or petitioning Congress to request the General Accounting Office to investigate the XXXX process. None of the prohibitions imposed by the Act would prohibit you from engaging in this activity.

Please contact me at (202) 254-3667 if you have any further questions.

Sincerely yours,

Amber Bell Vail
Attorney
Hatch Act Unit

³ Please be advised that this opinion only addresses the legality of these actions under the Hatch Act. Therefore, you may want to consult with the appropriate Department of XXXX officials to determine whether these activities are prohibited by some other law, rule or agency regulation.

Subjects - Wearing or displaying items after Election Day



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

December 12, 2008

Supplemental Advisory Opinion about Wearing or Displaying
Presidential Campaign Items after the Election

In light of the many questions the Office of Special Counsel (OSC) received as a result of its November 5, 2008, advisory opinion about wearing or displaying Presidential campaign items after Election Day, the following is some additional guidance on the issue.

I. Wearing or Displaying Items about the Presidential Candidates

In a November 5 opinion, OSC stated that even though Senator McCain and former Senator Obama will still be Presidential candidates until January 8, 2009¹ (because of the Electoral College system), wearing their campaign t-shirts, buttons, etc. or displaying their pictures after Election Day is not activity directed at the success of their candidacies, *i.e.*, political activity for purposes of the Hatch Act. To clarify, after Election Day, with rare exception, activities supporting or opposing a Presidential candidate will not affect the result of the election, as the only individuals left to cast their votes are the members of the Electoral College. Thus, activities like wearing campaign t-shirts or displaying the candidate's picture, do not constitute political activity, and the Hatch Act does not prohibit a federal employee from engaging in such activities, even while on duty or in a federal room or building.

It is important to note that although the Hatch Act currently does not prohibit employees from wearing or displaying these types of items while on duty or in the federal workplace, such items will be prohibited by the Act if and when President-elect Barack Obama becomes a candidate for reelection (*e.g.*, partisan political photographs of President-elect Obama, campaign buttons, t-shirts, etc.). This prohibition ensures that political patronage does not enter the federal workplace and employees do not feel like they might anticipate possible benefit or detriment if they do or do not support a particular candidate.

It is premature, at this point, to speculate if and when President-elect Obama will become a candidate for reelection, but should that occur, OSC will provide further guidance to the federal community at that time.

¹ The November 5, 2008, advisory opinion had this date as January 6, 2009. However, Public Law 110-430, signed October 15, 2008, changed the date of the electoral vote in Congress in 2009 from January 6 to January 8. This date change is effective only for the 2008 presidential election.

II. Wearing or Displaying Items about Political Parties or Partisan Organizations

The definition of political activity also includes activity directed at the success or failure of a political party or partisan organization. See 5 C.F.R. § 734.101. Therefore, even after Election Day, the Hatch Act still prohibits federal employees, while they are on duty or in a federal room or building, from wearing or displaying items that show support for or opposition to a political party or partisan organization. For example, a federal employee can never wear or display a Democratic or Republican Party t-shirt or similar item while on duty or in the federal workplace. In addition, even after Election Day, employees are prohibited from wearing or displaying items that show support for or opposition to both a Presidential candidate and a political party, for example, items with a "Democrats for Obama" slogan.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

Wearing or Displaying Presidential Candidate Items after the Election

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal executive branch employees. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. However, an employee covered by the Act may not, among other things, engage in political activity while on duty, in a government building, while wearing an official uniform, or using a government vehicle. 5 U.S.C. § 7324. Political activity has been defined as 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.

The Hatch Act regulations define candidate as “an individual who seeks nomination or election to any elective office whether or not the person is elected.” 5 C.F.R. § 734.101. Typically, a candidate is thought to seek election to an office up until the point at which his or her election to that office is determined. For the office of President and Vice President, the actual election of the candidate takes place through the Electoral College. See U.S. Const. art. II, § 1 & amend. XII. After the state electors cast their votes, the outcome of the election is declared by the President of the Senate, who, in the presence of the entire Congress, counts the votes. U.S. Const. amend. XII; 3 U.S.C. § 15 (after President of the Senate counts the votes, his announcement will be deemed a sufficient declaration of the persons elected to President and Vice President). Until the votes for the electors have been tallied and certified, all candidates for President and Vice President retain their status as candidates. Neither the President nor the Vice President is elected until the conclusion of that procedure. See U.S. Const. art. II, § 1 & amend. XII. That procedure takes place on the sixth day of January. 3 U.S.C. § 15. Therefore, an individual ceases being a Presidential candidate for purposes of the Hatch Act on the sixth of January following Election Day.

Even though Senators McCain and Obama will still be Presidential candidates until January 6, 2009, **we do not believe that wearing their campaign t-shirts or displaying their pictures after Election Day is activity directed at the success of their candidacies.** Accordingly, the Hatch Act does not prohibit a federal employee from doing so, even while on duty or in the federal workplace.

Subject - Forwarding Emails



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

March 18, 2008

Xx Xxxxx Xxxxx
Xxxxx Xxxxx xxxx
Xxxxxx, XX xxxxx

Re: OSC File No. AD-08-xxxx

Dear Xx Xxxxx:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. Specifically, you ask whether the sending of an e-mail entitled "Who is Barack Obama" by a federal employee violates the Hatch Act. We have reviewed this e-mail, and under the circumstances outlined below, we believe that sending this e-mail would violate the Act.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. Covered employees, however, are prohibited from, among other things, engaging in political activity while on duty, in a government office or building, while wearing an official uniform, or using a government vehicle. 5 U.S.C. § 7324. Political activity has been defined as 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.

The e-mail at issue begins by stating, "[s]cary stuff that everyone needs to know before it is too late." It asks, "[w]ho is Barack Obama?" and says, "[v]ery interesting and something that should be considered in your choice." The e-mail then provides information about Senator Barack Obama's family history and religious background. Examples of statements in the e-mail include: "Obama takes great care to conceal the fact that he is a Muslim;" "Obama's political handlers are attempting to make it appear that he is not a radical;" "[s]ince it is politically expedient to be a Christian when seeking major public office . . . Barack Hussein Obama has joined the United Church of Christ in an attempt to downplay his Muslim background;" and "[l]et us all remain alert concerning Obama's expected presidential candidacy." The e-mail ends by stating, "[t]he Muslims have said they plan on destroying the U.S. from the inside out, what better way to start than at the highest level - through the President of the United States, one of their own!!!!" Please forward to everyone you know. Would you want this man leading our country? . . . NOT ME." (emphasis in original).

The e-mail described above contains very negative statements about Senator Barack Obama, specifically warns recipients to "remain alert" about his candidacy, and states that it has information recipients should consider in their "choice." It also implies that, if elected President, Senator Obama would be part of a plan to destroy the United States. The e-mail ends with a

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declaration that the sender does not want Senator Obama leading this country and a plea for recipients to forward the e-mail to everyone they know. Accordingly, the content of this e-mail clearly is directed against Senator Obama's candidacy for President of the United States.

We understand that this e-mail was not created by a federal employee. Rather, a federal employee received it and then forwarded it to others without adding any content. Even under these circumstances, if a federal civilian employee¹ sent this e-mail while on duty and/or in a federal office or building, OSC would conclude that the employee had violated the Hatch Act's prohibition against engaging in political activity while on duty and/or in a federal building. If you would like to refer a complaint to our office concerning such activity, you can download a Hatch Act complaint form at: <http://osc.gov/documents/forms/osc13.pdf>.

Please contact me at (202) 254-3673 if you have any questions regarding this matter.

Sincerely,

/s/

Erica S. Hamrick
Attorney
Hatch Act Unit

¹ Members of the uniformed services are not covered by the provisions of the Hatch Act. 5 U.S.C. § 7322(1)(c). In addition, independent contractors are not covered by the Act. 5 C.F.R. § 734.205, Example 5.

Subject - BIG Voter Registration Drives



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

Mr. Xxx XXxxx
Attorney Advisor
Department of XXxxxxx
Office of the General Counsel, Ethics Division

VIA E-MAIL: XXXXXXXXXXXXX

Re: OSC File No. AD-04-xxxx

Dear Mr. XXXxxx:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue binding opinions under the Act. Specifically, you ask whether the Hatch Act would prohibit Department of XXXxxxx (XXX) employees, while on duty and in the federal workplace, from participating in a voter registration drive conducted by the organization Blacks in Government (BIG). As explained below, we do not believe that the Hatch Act would prohibit such activity.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal executive branch employees, including XXX employees. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. Covered employees, however, are prohibited from, among other things, engaging in political activity while on duty, in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof, while wearing a uniform or official insignia identifying the office or position of the employee, or using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof. 5 U.S.C. § 7324. Political activity has been defined as 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.

Therefore, the Hatch Act would prohibit a XXX employee, while on duty or in his or her workplace, from participating in a partisan voter registration drive, e.g., a drive aimed at helping a political party or candidate succeed. As explained in our April 14, 2004, advisory opinion, with which you are familiar, OSC considers all of the circumstances surrounding the drive in determining whether a voter registration drive is partisan.

You indicated that XXX has received a request from BIG to conduct a voter registration drive at the Xxxxx xxxxxxx on September 23, 2004. We understand that BIG is incorporated as a non-profit organization established to organize African Americans in public service to address issues of mutual concern and use their collective strength to address workplace and community issues. One of BIG's goals and objectives is to "provide a nonpartisan platform on major issues

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of local, regional, and national significance that affect Blacks in government." BIG Const., Art. II, § 6.

Based on the research we have done, it is our understanding that BIG is very involved in promoting voting and voter education. According to its website, BIG's nonpartisan "Project Big Vote" program is an aggressive campaign designed to empower the African American community by increasing awareness and participation in the full political process in local, state and federal elections. Everything we have learned about the BIG organization supports this assertion. We have found no indication that BIG has endorsed, or has otherwise become identified with the success or failure of, any candidates for partisan political office. In addition, nothing in our research suggests that BIG is unable at this time to conduct a truly nonpartisan voter registration drive.

Therefore, provided that the voter registration drive remains nonpartisan, for example, registrants are not solicited on the basis of political party or candidate preference and there is no advocacy or display of support for a particular party or candidate during the drive, we do not believe that the Hatch Act would prohibit XXX employees, while on duty or in the federal workplace, from participating in a voter registration drive conducted by BIG. Please contact me at 202-254-3650 if you have additional questions regarding this matter.

Sincerely,

/s/

Erica N. Stern
Attorney
Hatch Act Unit

Subject - Comparing Candidates



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: OSC File No. AD-XX-XXXX

Dear Ms. XXXX:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue binding opinions under the Act. Specifically, you ask whether as an employee of the Department of Agriculture you would violate the Hatch Act by posting in a government office or on a lunchroom bulletin board a flier comparing the Presidential and Vice Presidential candidates' positions on abortion. For the reasons explained below, the Hatch Act would prohibit this activity.

By virtue of your employment with the Department of Agriculture you are covered by the Hatch Act, which governs the political activity of federal employees. See 5 U.S.C. §§ 7321-7326. Among other restrictions, the Act prohibits covered employees from engaging in political activity while on duty or in any room or building occupied in the discharge of official duties. See 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for partisan political office or partisan political group. 5 C.F.R. § 734.101. For example, under this restriction covered employees may not wear partisan political buttons or display or post partisan political posters or partisan candidates' position statements in federal government offices or buildings, including bulletin boards.

The flier that we reviewed purports to set forth a side-by-side comparison of the Presidential and Vice Presidential candidates' positions on abortion. The flier contains such statements as: President Bush "promoted and signed the Partial-Birth Abortion Ban Act into law"; Senator Kerry "voted against the Partial-Birth Abortion Ban every chance he got -- six times"; President Bush "has repeatedly supported legislation which would protect unborn children and people with disabilities"; Senator Kerry "during his 20 years in the Senate, voted 79 times to support abortion"; President Bush "opposes the 1973 Supreme Court decision that legalized abortion on demand and he supports legal protection for unborn children"; and Senator Kerry "supports the 1973 Supreme Court decision that legalized abortion on demand -- even as a method of birth control." The flier, which includes a statement encouraging readers to copy and distribute it freely, is published by National Right to Life (NRL) and is posted on its website and the website of

its Political Action Committee (PAC). NRL's PAC has endorsed President Bush for reelection.

Additionally, information on NRL's website stresses that it is "important to be able to compare and contrast President's Bush commitment to life with Senator Kerry's equally strong embrace of abortion on demand." Also, pro-life supporters are urged to engage in "grassroots" efforts to get voters to the voting booth to elect pro-life candidates by educating them about the candidates' positions and the pro-life agenda. Moreover, pro-life supporters are warned that "staying home and not voting on election day is bad pro-life citizenship."

Based on the preceding, we have concluded that, even though the flier does not exhort readers to vote for a particular candidate, its purpose is to elicit support for one of the Presidential candidates and his running mate and oppose the other. Therefore, as a federal employee you would be engaging in political activity prohibited by the Hatch Act if you posted or displayed said flier while you were on duty or in a federal building, including employee offices and lunchroom bulletin boards.

Please contact me at (800) 854-2824 if you have any questions concerning this matter.

Sincerely yours,

/s/

Ana Galindo-Marrone
Chief, Hatch Act Unit

Subject - Political Activities Through Social Media (e.g. Facebook, Twitter)



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

August 10, 2010¹

Frequently Asked Questions Regarding Social Media and the Hatch Act²

In light of the many questions the Office of Special Counsel (OSC) has received concerning Social Media, OSC provides the following guidance on the issue, in the form of frequently asked questions concerning less restricted and further restricted federal employees (see questions one through eleven) as well as federal agencies (see questions twelve through fourteen).

Note: This guidance refers primarily to Facebook and Twitter in the following questions due to the popularity of those sites for social networking, but the advice provided in response to these questions applies equally to all other social media, such as Myspace, LinkedIn, etc. Please contact OSC at (202) 254-3650 if you have a question not addressed by the following scenarios.

For Individual, Federal Employees:

1. **May a federal employee write a blog on which he or she expresses support or opposition to partisan political candidates and political parties?**

Answer (Less Restricted Employees): Yes, but subject to the following limitations. Federal employees are not prohibited from expressing their opinions concerning partisan political candidates and political parties. However, they are prohibited from engaging in "political activity," that is, activity directed at the success or failure of a political party, partisan political candidate, or partisan political group, while on duty or in a building occupied in the discharge of official duties by a federal officer or employee. Thus, federal employees are prohibited from writing such a blog while on duty or in their federal workplace. However, doing so outside of duty hours and in another location would not violate the Hatch Act.

The Hatch Act also prohibits federal employees from using their official authority or influence to affect the result of an election. Therefore, they should not identify their official titles or use their statuses as federal employees to bolster the opinions concerning political parties, partisan candidates, or partisan groups that they post on their blogs.

¹ This advisory opinion supersedes the social media advisories that were previously published on July 14 and 27, 2010.

² This version of OSC's guidance contains revised responses concerning using Facebook or Twitter to "follow," be a "fan" of, or "like" political parties, partisan political groups, and partisan candidates.

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On the other hand, such statements would violate the Hatch Act if the supervisor specifically directed them toward his subordinate employees, or to a subset of friends that includes subordinates, *e.g.*, by sending a Facebook "message." In this situation, OSC would view the supervisor's actions as purposefully targeting subordinates with the message, as opposed to the scenario described above, in which the subordinates see the supervisor's opinions by chance.

Similar to the guidance above concerning Facebook's messaging function, a supervisor may never send to subordinate employees an e-mail that is directed at the success or failure of a political party, partisan political group, or partisan candidate. OSC would view such an e-mail as one that purposefully targets subordinates, and thus it would be an improper use of the supervisor's official authority or influence to affect the result of an election.

Answer (Further Restricted Employees): Yes. The same answer applies to further restricted employees, but subject to the following caveat. Specifically, further restricted employees are prohibited from taking an active part in partisan political management or partisan political campaigns. Thus, they should not post on Facebook links to the website of a political party, partisan political group, or partisan political candidate, because such activity is akin to distributing literature on behalf of those entities or individuals.

5. May a federal employee post a link to the website of a political party, partisan candidate, or partisan political group on his or another's Facebook page or blog?

Answer (Less Restricted Employees): Yes, but with some limitations. Specifically, as explained above, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Therefore, they may post a link that leads to the home page of a political party, partisan candidate, or partisan political group. The link, however, may not lead directly to the page of the website on which readers can contribute money to the party, group, or candidate.

In addition, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Posting links to the websites of political parties, partisan political groups, or partisan political candidates is akin to leafleting, that is, circulating literature for those groups and individuals. Thus, they may not post such links during duty hours or while in the federal workplace.

Answer (Further Restricted Employees): No. As explained previously, further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. As stated above, posting a link to the website of a political party or partisan political campaign is akin to leafleting, that is, distributing political literature on behalf of that party or campaign. Thus, the Hatch Act

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prohibits further restricted employees from posting such links on Facebook pages or blogs.

6. **What should a federal employee do if one of his Facebook friends posts a comment on the employee's Facebook page that solicits contributions to a political party, partisan political group, or partisan candidate, posts a link to the contribution page, or otherwise solicits political contributions?**

Answer (Less Restricted Employees): Although federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time, they are not responsible for the acts of a third-party, even if the third party's actions appear on their Facebook pages. Thus, if a federal employee's "friend" posts a link to the contribution page of a political party, partisan candidate, or partisan political group, or otherwise solicits political contributions, the employee does not need to take any action. However, he should not post any comments that would tend to encourage other readers to donate.

Answer (Further Restricted Employees): The same answer applies to further restricted employees.

7. **May a federal employee become a "friend" or "fan" of, or "like," the Facebook page of a political party, partisan political group, or partisan candidate?**

Answer (Less Restricted Employees): Yes, but subject to the following limitations. Specifically, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Thus, if they are a "friend" or "fan" of, or "like," a party, partisan group, or partisan candidate's campaign on Facebook, they should not engage in activities with respect those entities' Facebook pages that would constitute "political activity" during duty hours or while in the federal workplace. Political activity is defined as any activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. This would include, for example, suggesting that others "like," "friend," or become a "fan" of the party, group, or candidate, accepting an invitation to a partisan political event, or forwarding the invitation to others.

In addition, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Thus, if an employee receives an invitation from the party, group, or candidate to a fundraising event via Facebook or Twitter, the employee would be prohibited from sharing that invitation with others.

Answer (Further Restricted Employees): A further restricted employee may become a "friend" or "fan" of, or "like," a party, partisan group, or candidate's Facebook page, but only if he adjusts his privacy settings such that his lists of "friends," "likes," "interests," and "pages" that provide links to those entities' pages are visible only to the employee.

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The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If a further restricted employee becomes a "friend" or "fan" of, or "likes," a party, partisan group, or candidate's Facebook page, the employee's page would include links to those entities' pages, which others could use to get information. Therefore, OSC views such activity as not just an endorsement of the party, group, or candidate, but also akin to circulating those entities' literature. Thus, a further restricted employee may be a "friend" or "fan" of, or "like," a party, partisan group, or candidate on Facebook in order to receive updates from them, but must take measures to prevent others from accessing such material through his Facebook page.

8. **May a federal employee continue to "follow" the official White House Twitter account, or be a "fan" or "friend" of, or "like," the official White House Facebook page, after the President has become a candidate for reelection?⁴**

Answer (Less Restricted Employees): Yes, a federal employee may continue to follow the official White House Twitter account, *i.e.*, the account the President uses to comment on his official functions, even after the President begins his reelection campaign. The same is true for being a "fan" or "friend" of, or "liking" the official White House page on Facebook.

Answer (Further Restricted Employees): Yes. The same answer applies to further restricted employees.

9. **May a federal employee "follow" the Twitter account of a political party, partisan political group, or partisan candidate's campaign?**

Answer (Less Restricted Employees): Yes. A federal employee may "follow" a political party, partisan political group, or partisan candidate on Twitter. However, he must not engage in any activity on Twitter with respect to those entities that would otherwise violate the Hatch Act, *i.e.*, activities that would constitute soliciting, accepting, or receiving political contributions at any time, or that would constitute political activity while on duty or in a federal building.

⁴ Note that the Twitter account @barackobama is not an official Presidential account. Nor is the Facebook page found at www.facebook.com/barackobama. Both of these are maintained by Organizing for America, which is a component of the Democratic National Committee, and therefore a partisan political group. Thus, with respect to the @barackobama Twitter account and the "Barack Obama" Facebook page, please see OSC's responses to the questions, "May a federal employee 'follow' the Twitter account of a political party, partisan political group, or partisan candidate's campaign?" and, "May a federal employee become a "friend" or "fan" of, or "like," the Facebook page of a political party, partisan political group, or partisan candidate?"

Answer (Further Restricted Employees): Yes, but only if the employee's list of whom he follows is hidden from his followers. The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If an employee follows the Twitter account of a political party, partisan political group, or partisan candidate, the employee's account would include a link to the accounts of whomever he follows. Others could use that link to get information about the party, partisan group, or partisan campaign. Therefore, OSC views such activity as not just an endorsement of those entities, but also akin to circulating their literature. Thus, a further restricted employee may follow a party, partisan group, or partisan candidate on Twitter in order to receive information and updates from those entities, but he must take measures to prevent others from accessing partisan or campaign material through his Twitter account.

10. May a federal employee use an alias to create a Facebook page or Twitter account and be a "fan" of, "like," or "follow" a political party, partisan political group, or partisan candidate?

Answer (Less Restricted Employees): Yes; however, be advised that employees remain subject to the Hatch Act even when they act under an alias. Specifically, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Thus, if they "follow" on Twitter or are a "fan" of, or "like" a party, partisan group, or partisan candidate on Facebook, they should not engage in activities with respect those entities that would constitute "political activity" during duty hours or while in the federal workplace. As explained above, political activity is defined as any activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. This would include, for example, suggesting that others "follow," "like" or become a "fan" of the party, partisan group, or candidate, accepting an invitation to a partisan political event, or forwarding the invitation to others.

In addition, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Thus, if an employee receives an invitation from the candidate to a fundraising event via Facebook or Twitter, the employee would be prohibited from sharing that invitation with others.

Answer (Further Restricted Employees): Likewise, further restricted employees are subject to the same restrictions regardless of whether they act under an alias. Thus, they may "follow" or "like" a party, partisan group, or partisan candidate under an alias in Facebook or Twitter, but only if he adjusts his privacy settings such that whom he "follows" on Twitter or "likes" or is a "fan" of on Facebook is hidden from others. The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If an employee follows the Twitter account of a political party, partisan political group, or partisan candidate, the employee's account would include a link to the accounts of

whomever he follows. Likewise, if he is a "fan" of or "likes" one of those entities on Facebook, a link to those entities' pages would appear on his page. Others could use those links to get information about the party, partisan group, or candidate. Thus, further restricted employees must adjust their privacy settings accordingly.

11. May a federal employee create a Facebook or Twitter page in his official capacity and advocate for or against a political party, partisan political group, or partisan candidate on the page?

Answer (All Employees): No. Any page created in an employee's official capacity (e.g., a Cabinet member) must be limited to official business matters and must remain politically neutral. Advocating for or against a political party, partisan group, or partisan candidate on such a page would constitute a violation of the Hatch Act's prohibition against using one's official authority to interfere with or affect the result of an election. Thus, such advocacy must be confined to the employee's personal Facebook page or Twitter account, subject to the limitations described in response to Questions # 3 and # 5 above.

For Federal Agencies:

12. May a federal agency have a Facebook page that includes a link to the website of a political party, candidate for partisan political office, or partisan political group?

Answer: No. An agency's Facebook page, like its official website, should only be used to share information about the agency's official business and mission and should remain politically neutral. Thus, the Hatch Act would prohibit a federal employee or official from posting on an agency's Facebook page information about political parties, candidates for partisan political office, or partisan political groups, including links to websites of such individuals or entities.

13. May the agency's Facebook page include a link to the website of the President's reelection campaign, political party, or other partisan political group?

Answer: No. The agency's Facebook page should only be used to share information about the agency's official business and must remain politically neutral. When the President is campaigning for reelection, he is not acting in his official capacity as the nation's Chief Executive Officer. Thus, while the agency's Facebook page may include news about the President when he is acting in his capacity as the Chief Executive, it may not display news items concerning his candidacy for reelection.

Additional Advisory Opinions - Full Listing





























































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Last Updated: 8/24/2010

**Short Biographical Sketch
Shirley A. Jones, Esq.,**

Shirley Jones is an Assistant General Counsel at the U. S. Government Accountability Office (GAO) where she is responsible for supervising the legal support for GAO reports related to human capital and equal employment opportunity issues, tax policy and administration and other intergovernmental issues. She has a J.D. and a Masters of Laws (LLM) in Taxation degree from Georgetown University Law Center. She also graduated magna cum laude from Spelman College with a B.A. in Political Science. She is also a certified instructor for Net Speed Leadership Training.

Ms. Jones serves as Chair of the Legal Review Committee for our National Organization of Blacks In Government (BIG). She is also 1st Vice President for Region XI.

Ms. Jones has twice had the opportunity to testify before Congress as an employee advocate. In 2007, in her former capacity as President of the Government Accountability Office-U. S. Army Corps of Engineers Chapter of BIG, Ms. Jones testified before the Subcommittee on the Federal Workforce at its hearing on diversity at the Senior Executive Service and equivalent levels in Legislative Branch agencies. In 2008, Ms. Jones also testified before the Subcommittee to present the results of a survey that had been conducted agency-wide regarding the morale of employees following the agency's transition to market-based pay and other changes its pay for performance system.

