



The Hatch Act in the Digital Age

Presented by:

Ana Galindo-Marrone
Office of Special Counsel

FEDERAL HATCH ACT

5 U.S.C. § § 7321-7326



The Hatch Act:

Who is covered?

FEDERAL HATCH ACT

5 U.S.C. § § 7321-7326



TWO CATEGORIES OF EMPLOYEES

EMPLOYEES OF INTELLIGENCE- AND ENFORCEMENT-TYPE AGENCIES

(MORE RESTRICTED)

- EXCEPT PAS

ALL OTHERS

(LESS RESTRICTED)

- GS
- WG
- PAS
- SCHEDULE C
- NONCAREER SES

FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **CRIMINAL AND NATIONAL SECURITY DIVISIONS (DOJ)**
- **CENTRAL INTELLIGENCE AGENCY**
- **DEFENSE INTELLIGENCE AGENCY**
- **ELECTIONS ASSISTANCE COMMISSION**
- **FEDERAL BUREAU OF INVESTIGATION**
- **FEDERAL ELECTIONS COMMISSION**
- **MERIT SYSTEMS PROTECTION BOARD**
- **NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**

FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **NATIONAL SECURITY AGENCY**
- **NATIONAL SECURITY COUNCIL**
- **OFFICE OF CRIMINAL INVESTIGATION (IRS)**
- **OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**
- **OFFICE OF INVESTIGATIVE PROGRAMS (CUSTOMS)**
- **OFFICE OF LAW ENFORCEMENT (BATF)**
- **OFFICE OF SPECIAL COUNSEL**
- **SECRET SERVICE**

FEDERAL HATCH ACT: RESTRICTED POSITIONS

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **CAREER SES**
- **ADMINISTRATIVE LAW JUDGES**
- **MEMBERS OF CONTRACTS APPEALS BOARDS**
- **ADMINISTRATIVE APPEALS JUDGES**

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



The Hatch Act:

What may less restricted employees do?

FEDERAL HATCH ACT DOs

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



GENERALLY, LESS RESTRICTED EMPLOYEES MAY—

1. ENGAGE IN PARTISAN POLITICAL CAMPAIGNING

(E.G., DISTRIBUTE CAMPAIGN LITERATURE, ORGANIZE CAMPAIGN EVENTS, SPEAK ON BEHALF OF A CANDIDATE, ETC.)

2. ENGAGE IN PARTISAN POLITICAL MANAGEMENT

(E.G., HOLD PARTY OFFICE, ORGANIZE PARTY EVENTS, SERVE ON A PARTY COMMITTEE, ETC.)

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



The Hatch Act:

What prohibitions apply to all employees?

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



1. USE OFFICIAL AUTHORITY OR INFLUENCE TO INTERFERE WITH AN ELECTION

- **Use of official title**
- **Subordinates**
- **Circulation of press articles/news clips**
- **Agency social media (Facebook, Twitter, web site)**
- **Personal use of social media**
- **New case decisions**

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



2. SOLICIT OR DISCOURAGE POLITICAL ACTIVITY OF ANYONE WITH BUSINESS BEFORE THEIR AGENCY

- **Actual pending business (permits, licenses, grants, contracts, enforcement actions, investigation, audits, etc.)**

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



3. SOLICIT OR RECEIVE POLITICAL CONTRIBUTIONS

- Solicitation letters (signed or unsigned)
- Fundraising events (including phone banks)
- Campaign treasurer
- Web sites (links to)
- Social media/blogs
- New case decisions

A LESS RESTRICTED EMPLOYEE MAY HOST A MEET AND GREET OR SPEAK AT A FUNDRAISER

FEDERAL HATCH ACT DON'Ts
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



4. BE CANDIDATES FOR PUBLIC OFFICE IN PARTISAN ELECTIONS

- **NONPARTISAN ELECTIONS**
- **PARTY OFFICE (e.g., PRECINCT COMMITTEE PERSON)**
- **DESIGNATED COMMUNITIES**



WHEN DOES IT BEGIN?

WHEN AN INDIVIDUAL —

- **BEGINS TO COLLECT SIGNATURES FOR NOMINATING PETITIONS**
- **BEGINS TO FUNDRAISE**
- **MAKES AN ANNOUNCEMENT TO THE PRESS**
- **FILES NOMINATING PETITIONS**
- **PUTS A CAMPAIGN COMMITTEE TOGETHER**

NONPARTISAN ELECTIONS / CANDIDACIES

5 U.S.C. § 7323



NONPARTISAN CAN BECOME PARTISAN WHEN EMPLOYEE / CANDIDATE —

- SEEKS AND RECEIVES ENDORSEMENT OF POLITICAL PARTY
- ADVERTISES ENDORSEMENT OF POLITICAL PARTY
- USES POLITICAL PARTY RESOURCES
- ANNOUNCES HE / SHE IS A POLITICAL PARTY CANDIDATE

KEY: EVIDENCE SHOWING PARTISAN POLITICS ENTERED A CAMPAIGN

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7324; 5 C.F.R. PART 734, SUBPART C



5. ENGAGE IN POLITICAL ACTIVITY WHILE —

- **ON DUTY**
- **IN A GOVERNMENT OFFICE**
- **WEARING AN OFFICIAL UNIFORM**
- **USING A GOVERNMENT VEHICLE**

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



POLITICAL ACTIVITY MEANS:

AN ACTIVITY DIRECTED TOWARD THE SUCCESS OR FAILURE OF A —

- POLITICAL PARTY
- CANDIDATE FOR PARTISAN POLITICAL OFFICE, OR
- PARTISAN POLITICAL GROUP

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



Not Prohibited Political Activity (Examples):

1. Displaying items with the following:

NRA

“Repeal the healthcare law”

“Right-to-life”

“Pro-choice”

“I support the war”

“Peace not war”

2. Supporting or opposing ballot initiatives or pending legislation

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



Prohibited Political Activity (Issues):

- Buttons, posters and T-shirts
- Screen savers
- E-mails
- Blogs
- Social media
- Telecommuting
- Candidate photographs

(An employee's personal vehicle may have a political bumper sticker.)

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



The Hatch Act:

What additional prohibitions apply to further restricted employees?

FEDERAL HATCH ACT DON'Ts:
FURTHER RESTRICTED EMPLOYEES
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



**FURTHER RESTRICTED EMPLOYEES MAY NOT ENGAGE IN PARTISAN
POLITICAL CAMPAIGNING AND POLITICAL MANAGEMENT**

EXAMPLES:

- VOLUNTEER FOR A PARTISAN POLITICAL CAMPAIGN
- MAKE CAMPAIGN SPEECHES
- DISTRIBUTE CAMPAIGN LITERATURE
- ORGANIZE A POLITICAL RALLY, MEETING OR FUNDRAISER
- HOLD POLITICAL PARTY OFFICE OR BE A PARTY DELEGATE
- PARTICIPATE IN PARTISAN VOTER REGISTRATION DRIVES
- CIRCULATE NOMINATING PETITIONS

**KEY: NO ACTIVITY IN CONCERT WITH A POLITICAL PARTY
OR CANDIDATE**

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



The Hatch Act:

What may further restricted employees do?

**FEDERAL HATCH ACT DOs:
FURTHER RESTRICTED EMPLOYEES**
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



FURTHER RESTRICTED EMPLOYEES MAY—

- **JOIN POLITICAL CLUBS OR PARTIES**
- **EXPRESS OPINIONS ABOUT CANDIDATES AND ISSUES**
- **SIGN NOMINATING PETITIONS**
- **ATTEND POLITICAL RALLIES AND CONVENTIONS**
- **PARTICIPATE IN NONPARTISAN ACTIVITIES**



DISCIPLINARY ACTION (Penalties)

5 U.S.C. § 7326



**MERIT SYSTEMS PROTECTION BOARD MAY ORDER
EMPLOYEE'S —**

- **REMOVAL**

OR

- **SUSPENSION (30-DAY MINIMUM)**

FEDERAL HATCH ACT: OSC PHONE / E-MAIL CONTACTS



HATCH ACT UNIT:

(800) 85-HATCH

(202) 254-3650

hatchact@osc.gov

OSC SPEAKERS / OUTREACH:

(202) 254-3650