



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

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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