Testimony of Sandra Bell, General Counsel of the
Ohio Civil Service Employees Association (OCSEA)
before the
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
on
H.R. 4272, an Act, "To amend chapter 15 of title 5, United States Code, to provide for an additional, limited exception to the provision prohibiting a State or local officer or employee from being a candidate for elective office."
September 8, 2008

Mr. Chairman and members of the Subcommittee, my name is Sandra Bell. I am the General Counsel of the Ohio Civil Service Employees Association (OCSEA). OCSEA represents approximately 36,000 public employees spanning all state agencies, as well as every county of Ohio. OCSEA is affiliated with the 1.4 million-member American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO.

AFSCME and OCSEA strongly support reforming the antiquated Hatch Act. We applaud Representative Bart Stupak for introducing H.R. 4272, an Act "to amend chapter 15 of Title 5, United States Code, to provide for an additional limited exception to the provision prohibiting a State or local officer or employee from being a candidate for elective office."

The Hatch Act was originally created in 1939 to ensure political neutrality by prohibiting federal employees from:

- Soliciting, accepting or receiving a political contribution in a government building;
- Running for partisan office; or
- Engaging in political activity while on duty, in a government building, in uniform or in a government vehicle.

The prohibition against running for office, codified at 5 U.S.C. §§ 1502(a)(3) and 1503, reaches beyond what is necessary today to prevent corruption in state and local governments or misuse of federal funds, and we believe, is ripe for change.

While AFSCME and OCSEA fully support H.R. 4272, we would like to see its scope broadened. The population threshold is too low to provide relief to the vast majority of state and local government employees, including those in my home state of Ohio.

Ohio is one of nine states governed by its own "little" Hatch Act, modeled after the federal statute. The state act creates two types of public employees, classified and unclassified. "Classified employees" include state public employees and those who work in cities and counties, including firefighters, police officers, teachers and many other workers. "Unclassified employees" include agency directors, deputy directors, division chiefs, and a host of others that "serve at the pleasure of the appointing authority." Unclassified employees may serve on state central committees, run for party leadership positions and may seek for full-time elected office with prior approval from the Governor. However, classified employees are treated like felons and are prohibited from running for office.

Political activity for classified, public employees is governed by Ohio Administrative Code §§123:1-46-02. Under state law, a classified public employee may not make a telephone call on behalf of a candidate, go door to door for or with a candidate, circulate a partisan nominating petition, serve on a state committee or hold office in any political party structure on their own time. A classified public employee may vote, express a political opinion, and wear a button or a put a sign in their yard, but anything beyond this is prohibited.

Consequently, the Hatch Act has a chilling effect upon the ability of ordinary citizens to engage in the political process. Charlie Bakle, for example, is a highway maintenance worker for the Ohio Department of Transportation (ODOT). Charlie loves the political process as much as he loves his neighbors. His goal in life is to serve the public at work and in his free time. Even though Charlie understands the political process and would love to run for office, he is prohibited from doing so by virtue of his career choice. Charlie received a 10-day suspension for talking politics at ODOT garages and engaging in water cooler conversations.

Debbie King, an enthusiastic female state worker, is another example. Debbie was so impressed with a newcomer running for political office that she volunteered to gather signatures for her on her own time. This enthusiastic effort resulted in a 30-day unpaid suspension, all because Debbie was a market analyst for the Department of Job & Family Services.

Had Charlie or Debbie not been state employees, they would have been allowed to engage in the political process and maintain their job security. OCSEA is actively working to repeal the state Hatch Act and continually fights to give employees, like Charlie and Debbie, a chance to fully participate in the democratic process, and we believe it is unfair that our members are denied the opportunity to participate in many election activities, including volunteering in "get out the vote" and campaign programs simply because of where they work.

Additional Reforms are Necessary

Another election cannot pass without reform. The prohibition of partisan candidacies for elected office by state and local government employees should be repealed in its entirety. This prohibition has outlived its usefulness. Unlike the era when the Hatch Act became law, most states' laws – like Federal law – now require disclosure of campaign contributions and expenditures. Today, the public may monitor campaign contributions and see how those funds are being utilized. Safeguards are in place to protect the public from corruption and will remain in place if the prohibition is lifted. If repeal is not achievable, incremental reforms are available and may be included in H.R. 4272.

Limit Prohibition to Employees with Discretionary Authority

The Hatch Act could be amended to limit prohibition on partisan candidacies to those state and local employees with discretionary authority over use of federal funds or with policy making discretion. No limitation is currently in place. Instead, the prohibition applies, with some narrow exceptions, to "any individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency" and who exercises some function in connection with that

activity. See 5 U.S.C. 1501(4).[1] The less policy making or spending discretion a public employee has, the less opportunity there is for corruption or misuse of funds.

By allowing unclassified employees to participate, the Hatch Act actually increases the possibility that employees with the greatest discretionary authority are the ones most likely to engage in the political process, a consequence almost opposite of its stated intentions.

Set a Federal Funding Threshold Amount

Secondly, a threshold could be set for the amount of federal funding that would trigger a Hatch Act prohibition. As it now stands, the Act simply applies to all state or local government employees whose "principal employment is in connection with an activity which is financed *in whole or in part* by loans or grants made by the United States or a Federal agency."[2] Thus, state and local employees whose agencies receive even a minimal amount of federal funds are restricted from running for partisan office, as are those whose jobs are financed by an insubstantial amount of federal funds. We believe setting a threshold amount would be a reasonable fix. For instance, an amendment could be added to provide that only those state and local employees who are employed by agencies whose total budgets include at least 25% federal funds would be prohibited from running for partisan public offices.

Permit Employees To Run For Office While on Unpaid Leave

A third problem with this provision of law is that the prohibition applies even when a state or local employee takes an unpaid leave of absence from his or her government employment. In order to run for partisan political office, the employee must resign from government employment. *See State of Minnesota Dept. of Jobs and Training v. MSPB,* 875 F.2d 179, 183 (8th Cir., 1989) (*en banc*). If a state or local government employee is on unpaid leave he or she will not have access to nor receive federal funds while campaigning. Little harm seems to exist if such an employee is permitted to run for office while on unpaid leave.

Conclusion

Under present law, public employees are treated like second class citizens who are being denied the rights and privileges of full citizenship in this nation. This is grossly unfair and undemocratic. Consequently, reform of the Hatch Act is long overdue. We believe that the prohibition against partisan candidacy should be repealed in its entirety. AFSCME and OCSEA strongly urge Congress to act now and utilize its authority to correct this injustice.

For the foregoing reasons, we strongly support H.R. 4272. As outlined above, we urge that the population threshold in H.R. 4272 be increased and additional reforms be included.

I thank the Subcommittee again for the opportunity to discuss Hatch Act reform and will be happy to answer any questions.

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[1] The narrow exceptions to the broad sweep of the prohibition include individuals "employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization" and non-civil-service state and local executive officers and elected officials. *See* 5 U.S.C. §§ 1501(4)(b) and 1502(3)(c).