



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

May 25, 2004

Mr. _____

Re: OSC File No. AD-04-xxxx

Dear Mr. _____:

This letter is a follow-up to an advisory opinion the Office of Special Counsel (OSC) issued you on April 14, 2004, and in response to several federal agencies' requests for advisory opinions concerning AFGE's desire to conduct voter registration drives in the workplace. In the April 14 opinion, we advised that the Hatch Act would prohibit a federal employee, while on duty or in his or her workplace, from participating in a partisan voter registration drive. In addition, we gave general guidance regarding some factors that OSC considers in determining whether a voter registration drive is partisan.

Since issuing that opinion, we have learned of AFGE's plans to conduct voter registration drives in various agencies across the country. We also now have more information regarding AFGE's political activities. We understand that at this time, AFGE has not endorsed a candidate in the 2004 Presidential election.¹ However, since at least the election of 1984,² AFGE has endorsed partisan candidates in federal elections, including Presidential elections. Thus, over the years AFGE has become identified with the success or failure of candidates in partisan elections. The evidence we have obtained, as explained further below, has led us to conclude that, in the current election cycle, AFGE has become identified publicly and repeatedly with the failure of a Presidential candidate, namely, George W. Bush. Therefore, we have concluded, as we did in 1984, that AFGE is unable to conduct a truly nonpartisan voter registration drive. As such, the Hatch Act would prohibit federal employees, while on duty or in their workplace, from participating in a voter registration drive conducted by AFGE.

The information we have gathered from AFGE's website supports the conclusion stated above. For example, there is information posted under the heading "Election 2004" about AFGE's 2004 Media Campaign and the two ads it is currently running in South Carolina. Both ads are critical of the Bush Administration on the issues of privatization within the Veteran's Administration and government contracts awarded to certain corporations. One ad states, "And when contractors go over budget or commit fraud? It seems as long as [big corporations] keep writing bit [sic] contribution checks to the Bush Campaign, they just keep getting more government contracts." In addition, posted under this same heading is the statement, "Come

¹ However, AFL-CIO has endorsed Senator John Kerry in the 2004 Presidential election. Thus, an argument could be made that because of AFGE's close affiliation with AFL-CIO, AFGE has also become identified with the success of Senator Kerry.

² See AFGE v. O'Connor, 589 F. Supp. 1551 (D.D.C. 1984), vacated, AFGE v. O'Connor, 747 F.2d 748 (D.C. Cir. 1984), cert. denied, NTEU v. O'Connor, 474 U.S. 909 (1985).

U.S. Office of Special Counsel

Page 2

back soon for more information on the 2004 Media Campaign and AFGE's efforts to impact the outcome of the presidential race."

Also posted on AFGE's website is its publication, The Government Standard. In the January/February 2004 issue of this publication is a message from AFGE National President John Gage that clearly advocates against the current Administration. Mr. Gage makes comments about Congress being "led by rogue Republicans," and about "[t]he Administration's brass-knuckle tactics," and states that, "[i]t is particularly disgusting now to recall how this Administration repeatedly raised the red, white and blue to justify their actions when, in hindsight, it has become so clear that the only color they really care about is green." In addition, Mr. Gage states, "we are targeted as a big red bulls-eye by this Administration." These statements by Mr. Gage were made in his capacity as AFGE President and printed in an official AFGE publication.

In the March/April 2004 issue of The Government Standard is an article about the annual Civil, Women and Workers' Rights Caucus titled, "Protecting Our Rights . . . Saving Our Jobs." The article notes that conference participants were invited to discuss topics pertinent to AFGE members, such as voter registration, privatization and the elimination of collective bargaining rights, and equal employment opportunity and civil rights. At the conference, members were encouraged to "become active in the election process by educating and registering voters in AFGE's membership and in their respective agencies." Voter education and registration was also emphasized as playing a role in combating alleged threats by the Bush Administration. The article stresses that "this is a time to rally together against the Bush Administration and, moreover, unite under the common thread of AFGE membership."

This article, as well as other postings on AFGE's website, demonstrates not only that AFGE is dissatisfied with the current Administration, but goes further to encourage that efforts of AFGE members should be directed at the Administration's removal. In addition, its website makes it clear that AFGE plans to become involved in and make an impact on the 2004 Presidential election and that voter registration is an important tool in advancing that goal.

OSC has also received information about activities of AFGE regional and local representatives which indicates that AFGE has become identified with the failure of Presidential candidate George W. Bush. Currently, OSC is investigating three AFGE officials for allegedly engaging in political activity while on duty and/or in a federal workplace. One official circulated throughout a federal office an AFGE regional newsletter that stated, "Protect yourself and your country: Vote George Bush out of office!"

In a second case, we have obtained evidence that another AFGE official explicitly advocated Mr. Bush's defeat by making statements to federal employees at a new employee orientation program, such as, "the only way to stop this administration and keep government employees' jobs safe is to vote Democratic in the upcoming election." Lastly, we are investigating an AFGE official who sent an e-mail purporting to be President George W. Bush's resume to over seventy individuals. The document sets forth, in resume format, President Bush's education, work experience, and "accomplishments" as Governor of Texas and as President, and other matters relating to his career. The document is filled with allegations of incompetence and

U.S. Office of Special Counsel

Page 3

malfeasance and is clearly directed at Mr. Bush's defeat in the upcoming election. At the end of the document, the following statement is flashing: "Please send this to every voter you know."

Thus, based on the complaints OSC has received so far, it appears that AFGE officials have already become politically active in the 2004 Presidential election and that their message is aimed at the failure of George W. Bush.

It is evident that organizing and conducting voter registration drives is significant to AFGE for achieving its political goals. When one of those goals is the failure of a partisan political candidate for President, it is clear to us that voter registration is being used as a tool to further AFGE's announced political objectives.

In fact, AFGE has a history of using voter registration as such a tool. Twenty years ago, when OSC first issued an advisory opinion on this subject, it was apparent that AFGE considered voter registration a crucial instrument in advancing the campaigns of candidates it supported. For example, one AFGE official stated, "AFGE National leadership was not surprised by President Reagan's announcement to run for and seek a second term. The battle lines are drawn, and it is time to speak out! One way to 'speak-out' is to vote. If you are not a registered voter please contact any of our stewards, and we will assist you with voter registration in this area." OSC has no evidence that AFGE's motives for conducting voter registration have changed, and all indications are that they remain the same.

We would like to reiterate, however, that the fact that AFGE uses voter registration as a tool to further its political objectives no longer means, as it did twenty years ago, that federal employees cannot participate in its voter registration drives. Because of the 1993 amendments to the Hatch Act, most federal employees are now able to participate in partisan voter registration drives, provided that they are not conducted while on duty, in a government office or building, while wearing an official uniform or insignia, or using a government vehicle.

At this time, we believe that, for the foregoing reasons, AFGE is unable to conduct a truly nonpartisan voter registration drive. As such, the Hatch Act would prohibit federal employees, while on duty or in their workplace, from participating in a voter registration drive conducted by AFGE. Please contact OSC attorneys Ana Galindo-Marrone or Erica Stern at 202-254-3650 if you have additional questions regarding this matter.

Sincerely yours,

/s/

William E. Reukauf
Associate Special Counsel
for Investigation and Prosecution