Congressional Research Service

Memorandum

March 26, 2007

TO: House Committee on Oversight and Government Reform
Attention: Susanne Sachsman

FROM: Jack Maskell
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SUBJECT: Meetings, Conferences as "Political Activities" in a Federal Office, and "Hatch Act" Considerations

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This memorandum responds to the Committee's request for an analysis of whether there may have been "Hatch Act" violations in a scenario, presented by the Committee, where a Department head in the executive branch and a White House assistant to the President conduct a meeting within the offices of the federal Department building, attended by a number of schedule C federal employees in that Department, involving an analysis and discussion of the previous mid-term congressional elections, the next (2008) congressional elections, and a particular political party's chances and opportunities for holding certain seats and picking up other "targeted" seats. According to information provided by the Committee, the White House staffer made a PowerPoint presentation on the congressional races, the meeting was video-conferenced to other staffers by a contractor of the Department (paid for by the Department), and the Department head, after noting that their Department is responsible for facilities in every congressional district, inquired of the assembled federal employees as to how they could "help our candidates in the next election." According to information provided by the Committee, a discussion then ensued concerning discouraging or preventing certain elected officials of one political party from attending the opening of buildings or facilities in a district, while encouraging other officials/candidates of the other party to attend.

Summary

1. The Hatch Act Amendments of 1993 apply to all employees in the executive branch of the Federal Government, other than the President and Vice President.

2. Certain federal officials, such as assistants to the President paid from appropriations of the Executive Office of the White House, and officials appointed by the President with the advice and consent of the Senate [PAS officials] who determine national policy, while still covered by the Hatch Act Amendments, are exempt from the specific prohibition on engaging in "political activities" while on duty or in a federal office space.

3. "Schedule C" employees in the executive branch are *not* exempt from the on-duty and on-federal-premises restrictions on political activities in the Hatch Act Amendments, since they are not PAS officials, and may thus not be involved in "political activities" while on duty or in a federal building.

4. Federal officials, such as heads of Federal Departments, are expressly forbidden to use their federal position or influence to affect the results of a federal election, which would, under current interpretations, prohibit them from inviting, requesting, asking or suggesting subordinate federal employees, such as schedule C employees, to attend and participate in meetings or strategy or "informational" sessions in a federal building which involve partisan "political activities."

5. "Political activities" are defined as activities that are "directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group," and include even "behind-the-scenes" political strategy sessions intended to promote the success of party candidates in the next election.

6. If a meeting or conference in a federal building were held or designed for the purpose of advancing the partisan political interests of a particular political party or group of candidates, and included discussions of strategies or ideas to best use official influences, activities, or resources of an agency for the benefit of a particular party or candidate, then a superior inviting or even accepting voluntary participation from a subordinate schedule C employee in such a session would appear to violate the specific prohibition of the Hatch Act Amendments on use of official authority and influence.

7. A "PowerPoint" or other presentation which might arguably be merely "informational" in certain contexts, may raise concerns under Hatch Act interpretations when the sponsor and presenter is closely affiliated/identified with a partisan political campaign, invitations are directed only to "political" employees of a department, and the objectives and agenda of the program appear to have partisan slant, such that questions may be raised concerning the propriety of (1) funding such conference with federal appropriated funds, as well as (2) the participation of non-PAS, non-exempt federal employees in such conference held in federal workspace.

Hatch Act Coverage and Restrictions.

The current provisions of the so-called "Hatch Act" derive from the Hatch Act Amendments of 1993,[1] and generally apply to, among other specified employees, "any individual, other than the President and the Vice President, employed or holding office in – (A) an Executive agency ...."[2] There is no broad or *general* exemption from the more limited Hatch Act prohibitions in the 1993 Amendments for certain presidential appointees as there had been under the former Hatch Act provisions.[3] Rather than a broad or general exemption,

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[1] P.L. 103-94, October 6, 1993, see now 5 U.S.C. §§ 7321 - 7326.

[2] 5 U.S.C. § 7322(1)(A). An "Executive agency" is defined for purposes of title 5 of the United States Code at 5 U.S.C. § 105 to include an "Executive department, a Government corporation, and an independent establishment" in the executive branch.

[3] Officials appointed by the President with the advice and consent of the Senate who were in policy

(continued...)

the Hatch Act Amendments of 1993 apply generally to all persons in the executive branch, other than the President and Vice President, but allow certain presidential assistants and certain presidential appointees who are confirmed by the Senate ["PAS" employees] and who determine national policy, to be exempt from the restriction on political activities within a federal building, federal office, or while in "on-duty" status.[4]

Most of the provisions of the Hatch Act Amendments thus now apply to all officers in the executive branch of the Federal Government, including PAS employees (that is, those who are appointed by the President and who require Senate confirmation). Although federal personnel in the executive branch may now generally engage in most partisan political activities on their own "free time" or "off-duty" hours,[5] all federal officers and employees in the executive branch of the Federal Government, other than the President and Vice President, are still prohibited from:

(1) using their "official authority or influence for the purpose of interfering with or affecting the result of an election;"[6]
(2) soliciting, accepting or receiving a political campaign contribution from any person, other than fellow members of federal employee organizations;[7]
(3) running for office in a partisan election;[8]
(4) soliciting or discouraging participation in any political activities by a person who has an application for a grant, contract or other funds pending before their agencies, or is the subject of an ongoing audit or investigation by their agencies;[9] and
(5) (other than for certain PAS employees and White House staff), engaging in partisan political activity on federal property, on official duty time, or while wearing a uniform or insignia identifying them as federal officials or employees.[10]

The Office of Personnel Management [OPM], in a discussion preceding the promulgation of its current Hatch Act regulations, notes that those officials, such as PAS employees, who had been covered under the general prohibitions of the old Hatch Act on

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[3] (...continued)
determining positions, and certain presidential aides, were exempt from the strict "no politics" portion of Section 9(a) of the original Hatch Act; but the former Hatch Act in 1939 applied its *general* coverage to "any person employed in the executive branch of the Federal Government, or any agency of department thereof ...." Public law No. 252, , 53 Stat. 1147, 1148, August 2, 1939.

[4] 5 U.S.C. § 7324(b); 5 C.F.R. § 734.502.

[5] 5 U.S.C. § 7323. Some employees of designated agencies and departments are still restricted in participating in even voluntary, off duty political activities. See 5 U.S.C. § 7323(b) for such list. Such employees generally are in law enforcement or national security agencies, but the more restrictive provisions do not apply to the heads of such agencies.

[6] 5 U.S.C. § 7323(a)(1).

[7] 5 U.S.C. §§ 7323(a)(2), note exceptions to solicitation prohibition at § 7323(a)(2)(A)-(C).

[8] 5 U.S.C. § 7323(a)(3).

[9] 5 U.S.C. § 7323(a)(4).

[10] 5 U.S.C. § 7324(a). Note specific exemptions to the "on duty" restriction for certain presidential appointees requiring Senate confirmation, and for certain White House personnel, as discussed in more detail, below. 5 U.S.C. § 7324(b).

misuse of authority but were exempt from the strict "no politics" provisions, will now *still* be covered under the general misuse of authority language in the Hatch Act Amendments, and will be *additionally* covered by those new provisions from which they are not expressly exempt, such as the prohibitions on solicitations of political campaign contributions, running for office in a partisan election, and the encouragement of political activity by those with matters pending before one's agency:

> Subpart E applies to certain employees who are paid from the appropriation for the Executive Office of the President. It also applies to an employee who is appointed by the President by and with the advice and consent of the Senate, whose position is located within the United States, and who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws. ...
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> Under the Hatch Act, these employees were covered by the prohibition against misusing their official authority to interfere with or affect the result of an election, but they specifically were excluded from all aspects of the prohibition against active partisan political participation. Under the Amendments, these employees continue to be covered under the prohibition against misuse of official authority. In contrast to the Hatch Act, the Amendments subject these employees to additional prohibitions. Thus, the Amendments prohibit these employees from running for partisan political office. They also prohibit these employees from soliciting, accepting, and receiving political contributions, except under the conditions specified in the Amendments and these interim regulations. However, the Amendments specifically exclude these employees from the prohibition against political participation while on duty, in uniform, in a room or building occupied in the discharge of official duties, or in a Government-owned or leased vehicle.[11]

Exemption For PAS Employees From "On-Duty" and On-Premises Limitations.

As noted above, certain officials in the executive branch of Government are exempt from the specific prohibitions of 5 U.S.C. § 7324(a) on conducting political activities while in a federal building or while in "on-duty" status. These employees exempt from this specific prohibition are those (1) for whom "duties and responsibilities continue outside normal duty hours and while away from the normal duty post"; and (2) who are paid from an appropriation for the Executive Office of the President; or are appointed by the President, by and with advice and consent of the Senate, whose position is located in the United States and who "determine[ ] policies to be pursued by the United States in relation with foreign powers or in the nationwide administration of Federal laws."[12]

This provision and definition would likely exempt from the "on-duty" or "on-federal-premises" political activities restriction both the White House assistant to the President, as well as the Department head in question who is appointed by the President with the advice and consent of the Senate and who appears to be involved in the nation-wide administration of federal laws. However, the "schedule C" employees in the Department who allegedly attended the meeting in question would *not* be so exempt, as their appointments do not require Senate confirmation, and they are thus not "PAS employees."[13] Such Schedule C

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[11] 59 *Federal Register* 48769, September 23, 1994, referring to regulations now at 5 C.F.R. §§ 734.501 - 734.504 (Subpart E of 5 C.F.R. Part 734).

[12] 5 U.S.C. § 7324(b)(2).

[13] This analysis is not intended to address the question of whether or not the mere attendance by

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employees are clearly subject to the full panoply of the restrictions of the Hatch Act Amendments of 1993, in a similar manner as the majority of executive branch employees.[14]

It should be noted that while the exempt officials, that is, certain presidential assistants and PAS officials, are permitted to engage in political activities while on-duty or on federal premises, "the costs associated with that political activity" may *not* be "paid for by money derived from the Treasury of the United States."[15] Thus, if the conference and meeting in question were considered a "political activity" (see discussion below on the meaning of the term "political activity"), then the cost, above what would be considered *de minimis* or "incidental," could not be paid from appropriated funds, but must be reimbursed "within a reasonable period of time."[16] Costs which the Government would have incurred in any event, regardless of whether such activities were political or not, such as employee salaries, the value of federal office space, and security, would generally not be included in costs that must be reimbursed;[17] and those costs which are additional but which are considered *de minimis*, such as for "local calls" do not have to be reimbursed.[18]

Use of Official Authority or Influence to Affect the Result of an Election.

Under the current provisions of the Hatch Act Amendments, White House personnel paid from the appropriation for the Executive Office of the President, as well as federal

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[13] (...continued)
schedule C employees, at the request or invitation of superiors, at a meeting which turns out to involve a political strategy session is a violation of the Hatch Act Amendments by such schedule C employees, but rather is intended to examine the issue of whether inviting, requesting or suggesting the attendance of subordinates at such a meeting on federal premises may implicate a Hatch Act violation.

[14] See, for example, mention of schedule C political activity in opinion of the United States Office of Special Counsel, Federal Hatch Act Advisory: FHA-06, "Solicitation of Services From Subordinate Employees," October 16, 1996. Note that some federal employees in the executive branch are subject to even greater restrictions on political activities, similar in nature to the "old" Hatch Act "no-politics" restrictions even off-duty, including generally those employees in agencies and bureaus dealing with criminal law enforcement, national security and national defense. 5 U.S.C. § 7323(b)(1)-(3).

[15] 5 U.S.C. § 7324(b)(1).

[16] 5 C.F.R. § 734.503(a).

[17] 5 C.F.R. § 734.503(b)(1)-(4). "Example 1: The Secretary, an employee described by section 7324(b)(2) of title 5 of the United States Code, holds a catered political activity (other than a fundraiser) in her office. Her security detail attends the reception as part of their duty to provide security for her. The Secretary will not be in violation of the Hatch Act Reform Amendments if the costs of her office, her compensation, and her security detail are not reimbursed to the Treasury. A violation of the Hatch Act Amendments occurs if Government funds, including reception or discretionary funds, are used to cater the political activity, unless the Treasury is reimbursed for the cost of the catering within a reasonable time."

[18] U.S. Office of Special Counsel, Federal Hatch Act Advisory: FHA-24, "Reimbursement of de minimis Expenses for PAS Employees," February 25, 2000: "[W]e have concluded that there is a *de minimis* rule concerning expenses incurred when a PAS employee makes local telephone calls (or faxes), or uses a copy machine or printer in connection with political activity. A good rule of thumb for applying this principle would be to consider agency policies regarding the use of such resources on an incidental basis for personal reasons."

officials appointed by the President and confirmed by the Senate and who determine national policies may certainly hold and engage in political "informational" meetings, as well as political "strategy" sessions in a federal building, on federal premises, even when "on-duty" status, as long as there is no additional cost (other than *de minimis*, and incidental costs) to the Government. However, it is also apparent from the Hatch Act Amendments, and from previous interpretations of similar restrictions under the "old" Hatch Act, that such "exempt" personnel are prohibited from inviting, requesting, asking or suggesting to other federal employees, who are below those officials in rank and who are *not* exempt from the on-duty or on-premises restriction of the "Hatch Act," to attend and to participate in meetings, or strategy or "informational" sessions, which are "directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group."[19]

A provision of the current Hatch Act, in a fashion similar to the former law, prohibits any officer or employee in the executive branch of the Federal Government from using his or her official position, authority or influence for the purpose of "interfering with or affecting the result of an election." This provision of law states, in relevant part, specifically as follows:

> [A]n employee may not – (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election ....[20]

The operative language of the current Hatch Act Amendments restriction, at 5 U.S.C. § 7323(a)(1), is identical to the former Hatch Act restriction on all employees and officers of the executive branch (PAS officials and White house personnel were not exempt under the old "Hatch Act" from this particular restriction), which had also expressly provided that a federal officer may not "use his official authority or influence for the purpose of interfering with or affecting the result of an election."[21]

The Office of Personnel Management regulations promulgated under the Hatch Act Amendments provide the following with respect to this statutory restriction:

> **Sec. 734.302 Use of official authority; prohibition.**
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> (a) An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.
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> (b) Activities prohibited by paragraph (a) of this section include, but are not limited to:
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> (1) Using his or her official title while participating in political activity;
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> (2) Using his or her authority to coerce any person to participate in political activity; and
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> (3) Soliciting, accepting, or receiving uncompensated individual volunteer services from a subordinate for any political purpose.

The language of this provision of federal law has thus generally been directed at conduct that would entail activities that may be deemed coercive in nature with respect to the federal workforce, including the more subtle coercion by way of suggestion, request or requirement by a superior federal officer of subordinate employees to engage in partisan political

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[19] See definition of "political activity" at 5 C.F.R. § 734.101, and restriction at 5 U.S.C. § 7323(a)(1).

[20] 5 U.S.C. § 7323(a)(1).

[21] Under former Hatch Act, see 5 U.S.C. § 7324(a)(1) (1988 ed.).

activities. As noted by the former Civil Service Commission under the identical language of the former "Hatch Act":

> In pursuance of this section, Civil Service Rule IV, section 4.1 provides, in part, that "Persons in the executive branch ... shall not use their official authority or influence for the purpose of interfering with an election or affecting the results thereof." This provision applies to all persons in the executive civil service, and is held to prohibit a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates.[22]

The request, invitation or direction by a superior to a subordinate officer or employee in the federal service to engage in partisan "political activity," or to use official resources, official time or supplies in such activity would, therefore, implicate this section of the Hatch Act on use of official authority. However, because of what has been recognized as the inherently coercive nature of the superior-subordinate relationship, the interpretations of this language make it clear that a violation of this provision would occur even if the superior official did *not* request the participation in political activities or the political services from a subordinate employee, but merely *accepted* from a subordinate employee services or activities, even *voluntary* in nature, when such services or activities are of a partisan political character.[23] In a more recent Federal Hatch Act Advisory, the U.S. Office of Special Counsel (the office charged with Hatch Act enforcement) explained that "while a Schedule C employee may write a policy speech to be given at a political event," if the speech contained partisan political advocacy, the Secretary of the employee's agency "would not be able to accept the speech from the schedule C employee."[24] Thus, because of the inherent nature of the superior-subordinate official relationship, the acceptance by a superior of partisan political activities or services even voluntarily offered from a subordinate employee is prohibited.[25] Clearly, if a meeting or conference were held or designed for the purpose of advancing the partisan political interests of a particular political party or group of partisan candidates, and included discussions of strategies or ideas to best use official influences, activities, or resources of an agency for the benefit of a particular party or candidate, then a superior inviting subordinate schedule C employees to attend and participate in such a session would implicate this specific prohibition of the Hatch Act Amendments.

Definition of the Term "Political Activities."

The Hatch Act restrictions concerning on-duty or on-premises conduct, as well as the prohibition on use of official authority to affect the results of an election, both reference

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[22] *Political Activity of Federal Officers and Employees,* U.S. Civil Service Commission, Pamphlet 20, at p. 23 (March 1964).

[23] See cases under identical language on use of official authority in the former Hatch Act, for example, *In the Matter of McLeod,* CSC No. S-19-43 (1943), 2 P.A.R. 42; *In the Matter of Fleming,* CSC No. S-2-43 (1943), 2 P.A.R. 1.

[24] U.S. Office of Special Counsel, Federal Hatch Act Advisory: FHA-06, "Solicitation of Services From Subordinate Employees," October 16, 1996.

[25] If conduct by a supervisor is more *overtly* "coercive," it should be noted that the Hatch Act Amendments have added an explicit criminal provision which prohibits any person from intimidating, threatening or coercing or attempting to coerce any covered federal employee to engage in or refrain from political activity, to support or oppose a candidate, or to make or not to make a political contribution. 18 U.S.C. § 610, P.L. 103-94, Section 4(c), 107 Stat. 1005.

conduct that would involve "political activity," either while on duty, or when such activities engaged in by subordinate employees are requested or accepted by a superior. For the purposes of these restrictions and the statutory restrictions of the Hatch Act Amendments, the term "political activity" is defined in regulations of the Office of Personnel Management as follows:

> Political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.[26]

It is clear that the term "political activity" would extend to encompass more than merely overt solicitations of political support or political contributions from others, such as canvassing or phone calls to the public, or public speeches or writings advocating a partisan political position or result, and would reach, as well, so-called "behind-the-scenes" activities of political management, drafting of partisan advocacy positions or papers, and other political strategy or planning sessions when directed at the success of a political party or partisan candidates. The United States Office of Special Counsel [OSC] has noted that it successfully prosecuted "Hatch Act" cases involving a Small Business Administration official who had, among other activity, used his federal office "to draft documents ... in support of a political party and its candidates."[27] Similarly, OSC has explained that federal buildings may generally not be used by candidates for partisan "political activity," and has explained:

> Examples of activities prohibited by the preceding restrictions include the following: authorizing the use of a federal building or office as described above for campaign activities, such as town hall meetings, rallies, parades, speeches, fundraisers, press conferences, "photo ops" or meet and greets; attending *or planning* such campaign events while on duty or in a federal building or office; or distributing campaign literature or wearing campaign-related items while on duty or in a federal building or office.[28]

These more recent examples and explanations of what would constitute "political activity" under the Hatch Act Amendments of 1993 are consonant with the concept of partisan "political activities" under the interpretations of the former "Hatch Act" provisions. Those rulings and interpretations indicate that behind-the-scenes activity and assistance (*e.g.*, preparation of political material, research or analysis intended for the benefit or use of a partisan candidate or political party in a campaign or an election, or assisting in organizing political campaign events), even though not overt electioneering, soliciting or canvassing for a candidate, are nevertheless the type of activity that has traditionally constituted partisan "political activity."[29]

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[26] 5 C.F.R. § 734.101. Definitions.

[27] U.S. Office of Special Counsel, Successful Case Summaries, Hatch Act Case summaries, 2006, at www.osc.gov/Successfulcase.htm .

[28] U.S. Office of Special Counsel, Federal Hatch Act Advisory: "Candidate Visits to Federal Agencies," OSC File No. AD-xx-xxxx, August 9, 2004. Emphasis added. In another matter Special Counsel Scott Bloch noted: "Our federal system depends upon the public knowing that partisanship on the job is not permitted. No employee may use his or her federal office as a staging ground for partisan political activity." U.S. Office of Special Counsel, Press Release, "U.S. Office of Special Counsel seeks Disciplinary Action against Federal Employee for Hatch Act Violation," 3/21/05.

[29] *See*, for example, "Political Activity and the Federal Employee," Office of Special Counsel, at 7, which notes that activity is covered even if the employee does not come in contact with the public:

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Meeting/Tele-conference in Question

In consideration of the meeting or conference that is the subject of the Committee's inquiry, it is possible to conceive of a type of meeting or conference of this nature which could be merely or purely an "informational" or "educational" activity, where a political or elections expert would explain to and analyze for agency personnel the results and demographics of the preceding mid-term election, and the possible make-up of the next Congress following the 2008 elections, based on various demographics, trends, and predictions. It might be contended that such an "informational" meeting or conference, although discussing partisan political elections, results and trends, might not necessarily be considered "political activity" where nothing inherent in the material presented at the program, nor in the manner of presentation or in the discussion accompanying the presentation, would be intended or designed to assist or to hinder a political party or partisan political candidate.

If, however, such a meeting were conducted, and elections analyzed, with the purpose and intent to promote the success of the Administration's party and its candidates, then that conference or meeting would be considered "political activity" in a federal building. Certainly, if in such a conference or meeting there were indications that the meeting was used to brainstorm ideas, strategies, or possible directions or other actions to "help our candidates in the next election," then participating in such a meeting or conference would appear to involve "political activities" (as defined and interpreted in the Hatch Act), such that a superior inviting subordinate employees to participate would implicate the Hatch Act restriction on using one's official office or influence to affect the results of an election (5 U.S.C. § 7324(a)(1); 5 C.F.R. § 734.302).

It should be noted that gleaning the *intent* of an activity (that is, if the activity "is directed at the success or failure" of partisan candidates or parties) might often be central to the determination of whether any given activity is "political activity" under the Hatch Act. Advisory rulings of the Office of Special Counsel have found that activities concerning elections and campaigns, even while seemingly "nonpartisan" activity, may be considered as "political activity" in the federal workplace because of various factors surrounding the conduct and sponsorship of such activities that might indicate a political intent or a partisan "agenda." For example, even an apparent "nonpartisan" voter registration drive in a federal building may be prohibited as partisan "political activity," merely when the sponsor of such activity is an organization which has in the past endorsed a federal candidate for office,[30] that is, when the sponsor "has become identified with the success or failure of candidates in

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[29] (...continued)
"The law prohibits direct action to assist partisan candidates or political parties in campaigns. Thus, covered employees are not permitted to do clerical work at campaign headquarters, write campaign speeches ....;" see also "Federal Employees Political Participation," United States Civil Service Commission, GC-46, at 2 (1972) ("work for a partisan candidate ... is prohibited, whether the work involves contact with the public or not"); *In the Matter of Jordan,* CSC No. F-1369-52, 1 P.A.R. 648, (drafting or printing of a political cartoon); *Special Counsel v. West,* 18 M.S.P.R. 519, 521 (1984) ("assisted [friend's] campaign by doing research and running various errands.")

[30] United States Office of Special Counsel, advisory opinion 2006, OSC File No. AD-06-xxxx, [available at www.osc.gov/documents/hatchact/federal/fha34014.pdf].

partisan elections."[31] In these opinions, the Office of Special Counsel noted that "in determining whether a voter registration drive is partisan, OSC considers all of the circumstances surrounding the drive." The OSC then noted the factors that are included in such a consideration:

> Some of the factors relevant to this inquiry ... include: 1) the political activities of the sponsoring organization; 2) the degree to which that organization has become identified with the success or failure of a partisan political candidate, issue or party (e.g., whether it has endorsed a candidate); 3) the nexus, if any, between the decision to undertake a voter registration drive and the other political objectives of the sponsor; 4) whether particular groups are targeted for registration on the basis of their perceived political preference; and 5) the nature of publicity circulated to targets of the drive immediately prior to or during the drive.[32]

Thus, under these Hatch Act interpretations, (1) if the sponsor/presenter of a meeting in a federal building (when the meeting concerns specifically one party's prospects and strategies for upcoming elections) is "identified with the success or failure of a partisan political candidate ... or party"; (2) when there may be a perceived "nexus" between this activity and "other political objectives of the sponsor," that is, the election success of particular candidates; and (3) when employees in the agency have been "targeted" for such meeting (where the information presented is to be considered a "close hold" and confidential), that is, where employees have been included and invited "on the basis of their perceived political preference";[33] may all be factors to consider whether this particular meeting, conference and program is to be considered "political activity" taking place in a federal building. With respect to the alleged partisan nature of the program and the identification of its sponsor/presenter with the success of partisan candidates, it should be noted that according to information received from the Committee the e-mails from the sponsor/presenter of the conference to agency personnel, that is, from the White House political director concerning this program came not from the White House, or from another Government e-mail account, but rather apparently from an e-mail account owned and controlled by the campaign committee of a national political party.[34] This might arguably give further indication of the nature, intent and agenda of the intended presentation as "political activity."

If these types of meetings and teleconferences are considered by their nature to be "political activities," then certain PAS officials and White House staff may attend, even on federal premises and during "on duty" time. However, the additional costs to the Government of such conferences, over and above typical overhead or *de minimis* expenses,

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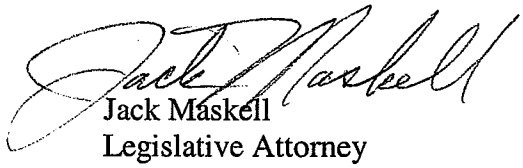
[31] U.S. Office of Special Counsel, advisory opinion May 25, 2004, OSC File No. AD-04-xxx, at 1, [available at www.osc.gov/documents/hatchact/federal/fha-32.pdf]; U.S. Office of Special Counsel, Federal Hatch Act Advisory, "Voter Registration Drives in the Workplace," April 14, 2004, at 2 [available at www.osc.gov/documents/hatchact/federal/fha-31.pdf].

[32] U.S. Office of Special Counsel, advisory opinion 2006, OSC File No. AD-06-xxxx; advisory opinion May 25, 2004, OSC File No. AD-04-xxx; Federal Hatch Act Advisory, "Voter Registration Drives in the Workplace," April 14, 2004, at 2.

[33] Correspondences between the sponsor/presenter of the meeting and agency personnel indicate that the briefing was only for the "political team" in the Department.

[34] From information provided by the Committee, the e-mail account in question was "gwb43.com," which e-mail domain is apparently owned by a national political party.

must be reimbursed to the Government in a reasonable amount of time. Furthermore, if such meetings and briefings are considered in the nature of "political activities" under the Hatch Act Amendments, then subordinate employees may not be invited to attend, and should not be allowed to participate in such meetings on federal premises and during "on-duty" time.



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