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Supplemental Advisory Opinion about Wearing or Displaying Presidential Campaign Items after the Election

In light of the many questions the Office of Special Counsel (OSC) received as a result of its November 5, 2008, advisory opinion about wearing or displaying Presidential campaign items after Election Day, the following is some additional guidance on the issue.

I. Wearing or Displaying Items about the Presidential Candidates

In a November 5 opinion, OSC stated that even though Senator McCain and former Senator Obama will still be Presidential candidates until January 8, 2009¹ (because of the Electoral College system), wearing their campaign t-shirts, buttons, etc. or displaying their pictures after Election Day is not activity directed at the success of their candidacies, *i.e.*, political activity for purposes of the Hatch Act. To clarify, after Election Day, with rare exception, activities supporting or opposing a Presidential candidate will not affect the result of the election, as the only individuals left to cast their votes are the members of the Electoral College. Thus, activities like wearing campaign t-shirts or displaying the candidate's picture, do not constitute political activity, and the Hatch Act does not prohibit a federal employee from engaging in such activities, even while on duty or in a federal room or building.

It is important to note that although the Hatch Act currently does not prohibit employees from wearing or displaying these types of items while on duty or in the federal workplace, such items will be prohibited by the Act if and when President-elect Barack Obama becomes a candidate for reelection (*e.g.*, partisan political photographs of President-elect Obama, campaign buttons, t-shirts, etc.). This prohibition ensures that political patronage does not enter the federal workplace and employees do not feel like they might anticipate possible benefit or detriment if they do or do not support a particular candidate.

It is premature, at this point, to speculate if and when President-elect Obama will become a candidate for reelection, but should that occur, OSC will provide further guidance to the federal community at that time.

¹ The November 5, 2008, advisory opinion had this date as January 6, 2009. However, Public Law 110-430, signed October 15, 2008, changed the date of the electoral vote in Congress in 2009 from January 6 to January 8. This date change is effective only for the 2008 presidential election.

II. Wearing or Displaying Items about Political Parties or Partisan Organizations

The definition of political activity also includes activity directed at the success or failure of a political party or partisan organization. See 5 C.F.R. § 734.101. Therefore, even after Election Day, the Hatch Act still prohibits federal employees, while they are on duty or in a federal room or building, from wearing or displaying items that show support for or opposition to a political party or partisan organization. For example, a federal employee can never wear or display a Democratic or Republican Party t-shirt or similar item while on duty or in the federal workplace. In addition, even after Election Day, employees are prohibited from wearing or displaying items that show support for or opposition to both a Presidential candidate and a political party, for example, items with a “Democrats for Obama” slogan.