



***GEARING UP FOR THE 2012
ELECTION SEASON:
WHAT EVERY FEDERAL
EMPLOYEE NEEDS TO KNOW***

FEDERAL HATCH ACT

5 U.S.C. 7321-7326



The Hatch Act:

Who is covered?

FEDERAL HATCH ACT

5 U.S.C. 7321-7326



TWO CATEGORIES OF EMPLOYEES

MORE RESTRICTED

- EMPLOYEES IN CERTAIN POSITIONS (e.g, career SES)
- EMPLOYEES OF INTELLIGENCE- AND ENFORCEMENT-TYPE AGENCIES (EXCEPT PAS)

LESS RESTRICTED

ALL OTHERS

- GS
- WG
- PAS
- SCHEDULE C
- NONCAREER SES

FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **CRIMINAL AND NATIONAL SECURITY DIVISIONS (DOJ)**
- **CENTRAL INTELLIGENCE AGENCY**
- **DEFENSE INTELLIGENCE AGENCY**
- **ELECTIONS ASSISTANCE COMMISSION**
- **FEDERAL BUREAU OF INVESTIGATION**
- **FEDERAL ELECTIONS COMMISSION**
- **MERIT SYSTEMS PROTECTION BOARD**
- **NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**

FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- NATIONAL SECURITY AGENCY
- NATIONAL SECURITY COUNCIL
- OFFICE OF CRIMINAL INVESTIGATION (IRS)
- OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
- OFFICE OF INVESTIGATIVE PROGRAMS (CUSTOMS)
- OFFICE OF LAW ENFORCEMENT (BATF)
- OFFICE OF SPECIAL COUNSEL
- SECRET SERVICE

FEDERAL HATCH ACT: RESTRICTED POSITIONS

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- CAREER SES
- ADMINISTRATIVE LAW JUDGES
- MEMBERS OF CONTRACTS APPEALS BOARDS
- ADMINISTRATIVE APPEALS JUDGES

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPARTS B & D



The Hatch Act:

What may all federal employees do?

FEDERAL HATCH ACT DOs:

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPARTS B & D



ALL FEDERAL EMPLOYEES MAY—

- JOIN POLITICAL CLUBS OR PARTIES
- EXPRESS OPINIONS ABOUT CANDIDATES AND ISSUES
- SIGN NOMINATING PETITIONS
- ATTEND POLITICAL RALLIES AND CONVENTIONS
- PARTICIPATE IN NONPARTISAN ACTIVITIES

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



The Hatch Act:

What may less restricted employees do?

FEDERAL HATCH ACT DOs

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



GENERALLY, LESS RESTRICTED EMPLOYEES MAY –

1. ENGAGE IN PARTISAN POLITICAL CAMPAIGNING

(E.G., DISTRIBUTE CAMPAIGN LITERATURE, ORGANIZE CAMPAIGN EVENTS, SPEAK ON BEHALF OF A CANDIDATE, ETC.)

2. ENGAGE IN PARTISAN POLITICAL MANAGEMENT

(E.G., HOLD PARTY OFFICE, ORGANIZE PARTY EVENTS, SERVE ON A PARTY COMMITTEE, ETC.)

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



The Hatch Act:

What prohibitions apply to all employees?

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



POLITICAL ACTIVITY MEANS:

AN ACTIVITY DIRECTED TOWARD THE SUCCESS OR FAILURE OF A —

- POLITICAL PARTY
- CANDIDATE FOR PARTISAN POLITICAL OFFICE, OR
- PARTISAN POLITICAL GROUP

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



1. USE OFFICIAL AUTHORITY OR INFLUENCE TO INTERFERE WITH OR AFFECT AN ELECTION

- **Use of official title**
- **Subordinates**
- **Agency social media (Facebook, Twitter, website)**
- **Personal use of social media**
- **New case decisions**

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



2. SOLICIT OR DISCOURAGE POLITICAL ACTIVITY OF ANYONE WITH BUSINESS BEFORE THEIR AGENCY

- **Actual pending business (permits, licenses, grants, contracts, enforcement actions, investigation, audits, etc.)**

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



3. SOLICIT OR RECEIVE POLITICAL CONTRIBUTIONS

- Solicitation letters
- Fundraising events (including phone banks)
- Campaign treasurer
- Websites (links to)
- Social media/blogs
- New case decisions

A LESS RESTRICTED EMPLOYEE MAY HOST A MEET AND GREET OR SPEAK AT A FUNDRAISER

FEDERAL HATCH ACT DON'Ts
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



4. BE CANDIDATES FOR PUBLIC OFFICE IN PARTISAN ELECTIONS

- **NONPARTISAN ELECTIONS**
- **PARTY OFFICE (e.g., PRECINCT COMMITTEE PERSON)**
- **DESIGNATED COMMUNITIES**

CANDIDACY

5 U.S.C. § 7323



WHEN DOES IT BEGIN?

WHEN AN INDIVIDUAL —

- **BEGINS TO COLLECT SIGNATURES FOR NOMINATING PETITIONS**
- **BEGINS TO FUNDRAISE**
- **MAKES AN ANNOUNCEMENT TO THE PRESS**
- **FILES NOMINATING PETITIONS**
- **PUTS A CAMPAIGN COMMITTEE TOGETHER**

NONPARTISAN ELECTIONS / CANDIDACIES

5 U.S.C. § 7323



NONPARTISAN CAN BECOME PARTISAN WHEN EMPLOYEE / CANDIDATE —

- SEEKS AND RECEIVES ENDORSEMENT OF POLITICAL PARTY
- ADVERTISES ENDORSEMENT OF POLITICAL PARTY
- USES POLITICAL PARTY RESOURCES
- ANNOUNCES HE / SHE IS A POLITICAL PARTY CANDIDATE

KEY: EVIDENCE SHOWING PARTISAN POLITICS ENTERED A CAMPAIGN

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7324; 5 C.F.R. PART 734, SUBPART C



5. ENGAGE IN POLITICAL ACTIVITY WHILE —

- ON DUTY
- IN A GOVERNMENT OFFICE
- WEARING A UNIFORM OR OFFICIAL INSIGNIA
- USING A GOVERNMENT VEHICLE

(exception: some PAS/EOP employees)

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



POLITICAL ACTIVITY MEANS:

AN ACTIVITY DIRECTED TOWARD THE SUCCESS OR FAILURE OF A —

- POLITICAL PARTY
- CANDIDATE FOR PARTISAN POLITICAL OFFICE, OR
- PARTISAN POLITICAL GROUP



Not Prohibited Political Activity (Examples):

1. Displaying items with the following:

NRA

“Repeal healthcare bill”

“Right-to-life”

“Pro-choice”

“I support the war”

“Peace not war”

2. Supporting or opposing ballot initiatives or pending legislation

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



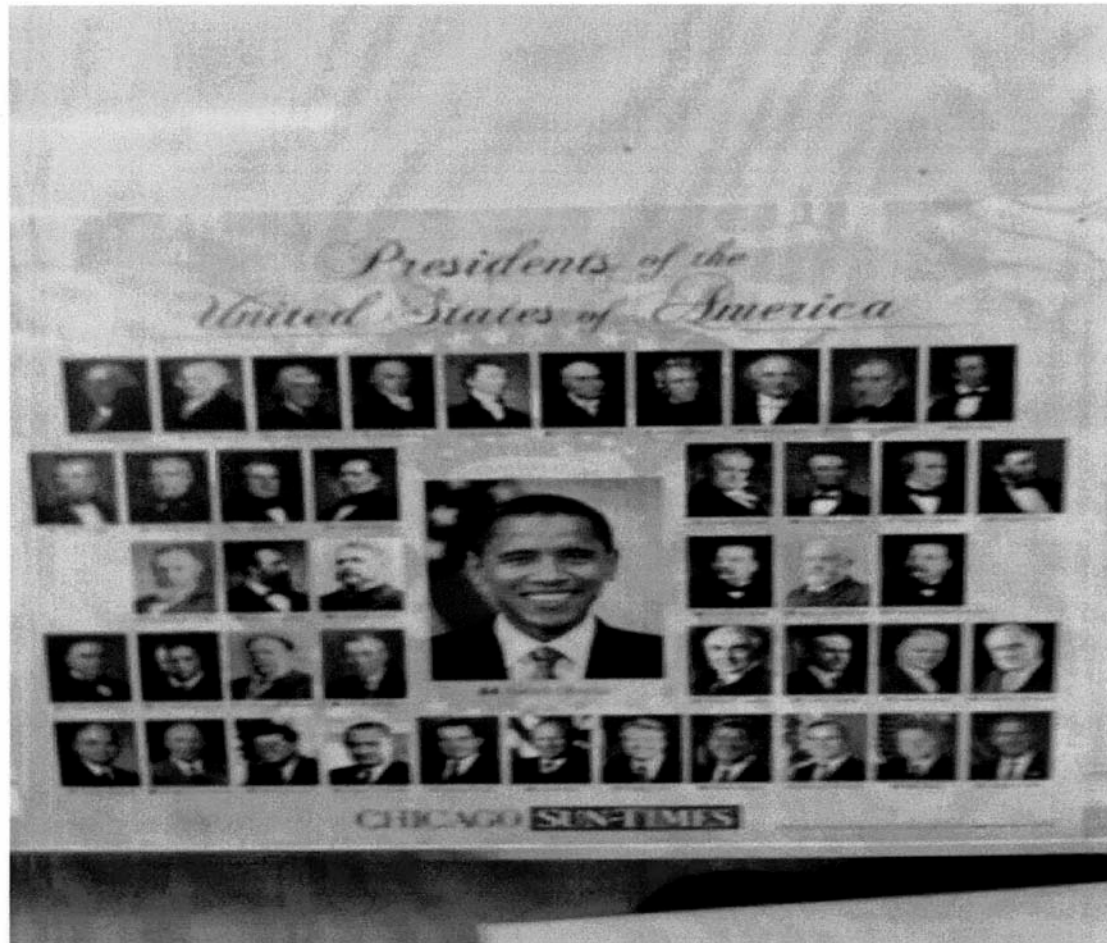
Prohibited Political Activity (Issues):

- Buttons, posters and T-shirts
- Screen savers
- E-mails
- Blogs
- Social media
- Telecommuting
- Candidate photographs

(An employee's personal vehicle may have a political bumper sticker.)

FEDERAL HATCH ACT

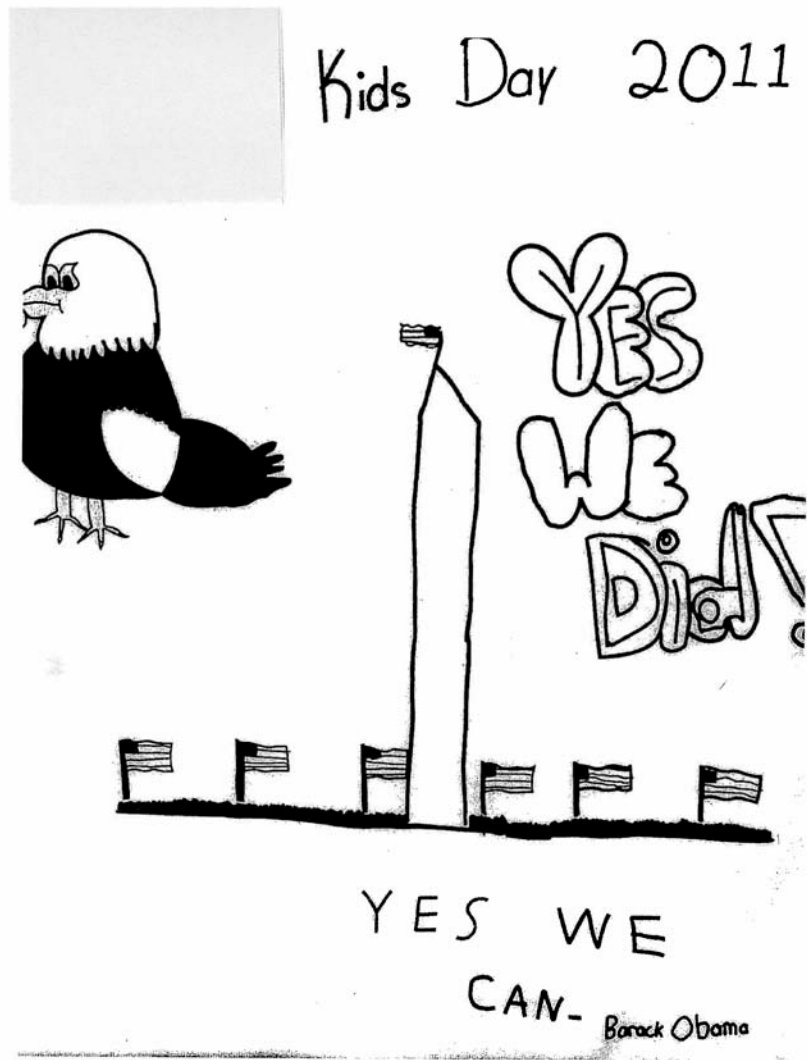
5 U.S.C. § 7324; 5 C.F.R. PART 734.101



FEDERAL HATCH ACT
5 U.S.C. § 7324; 5 C.F.R. PART 734.101



Kids Day 2011



FEDERAL HATCH ACT: EOP/PAS COVERAGE

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



Exception applies to:

THOSE WHOSE DUTIES AND RESPONSIBILITIES CONTINUE OUTSIDE NORMAL DUTY HOURS AND WHILE AWAY FROM THE NORMAL DUTY POST, AND ARE —

1. PAID FROM AN APPROPRIATION FOR THE EOP, OR
1. APPOINTED BY THE PRESIDENT AND SENATE-CONFIRMED (PAS),

WHO —

A) OCCUPY POSITIONS LOCATED IN THE U.S., AND

B) DETERMINE POLICIES TO BE PURSUED IN —

- RELATIONS WITH FOREIGN POWERS, OR
- NATIONWIDE ADMINISTRATION OF FEDERAL LAWS

**FEDERAL HATCH ACT:
EOP / PAS COVERAGE (*cont'd*)
5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E**



SUCH PAS AND EOP EMPLOYEES MAY ENGAGE IN POLITICAL ACTIVITY WHILE —

- ***ON DUTY***
- ***IN A GOVERNMENT ROOM OR BUILDING***
- ***WEARING A UNIFORM OR OFFICIAL INSIGNIA***
- ***USING A GOVERNMENT VEHICLE***

IF COSTS ASSOCIATED WITH POLITICAL ACTIVITY ARE NOT PAID FOR BY MONEY DERIVED FROM THE U.S. TREASURY

FEDERAL HATCH ACT: EOP / PAS

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



MIXED TRAVEL -- Hatch Act Regulation v. FECA or PECA (Hard Time Formula)

5 C.F.R. § 734.503 (d):

For any cost of a political activity of an employee that is required to be reported to the Federal Election Commission under the Federal Election Campaign Act (FECA) or the Presidential Election Campaign Act (PECA), the employee shall use the same method of allocation as used under the FECA or PECA and regulations thereunder in lieu of the allocation method in paragraph (c) of this section.

FEDERAL HATCH ACT: EOP / PAS

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



OFFICIAL EVENTS v. POLITICAL EVENTS

FACTS TO CONSIDER:

- the type of event and the reason for holding it
- whether candidates (including incumbents seeking reelection) will be present at the event and what their role will be
- the relationship, if any, between the event and official agency business
- whether a candidate's request is one reason for the agency political appointee to attend the event
- whether the event was scheduled prior to a candidate's involvement or after
- the agency political appointee's motivation for attending the event

FEDERAL HATCH ACT: EOP / PAS

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



OFFICIAL EVENTS v. POLITICAL EVENTS

FACTS TO CONSIDER (cont.):

- the frequency of similar types of events during non-election years and whether agency political appointees participated in such events in those years
- the proximity of the event to the date of the election
- who invited the agency political appointee to attend (e.g., congressional office, campaign staff, OPA, other agency officials, political party)
- the parties responsible for planning and organizing the event
- whether the event is open or closed to media
- remarks made during the event by any person
- other event invitees and the audience, i.e., whether party operatives or donors will be present

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The Hatch Act:

What additional prohibitions apply to further restricted employees?

**FEDERAL HATCH ACT DON'Ts:
FURTHER RESTRICTED EMPLOYEES**
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



**FURTHER RESTRICTED EMPLOYEES MAY NOT ENGAGE IN PARTISAN
POLITICAL CAMPAIGNING AND POLITICAL MANAGEMENT**

EXAMPLES:

- VOLUNTEER FOR A PARTISAN POLITICAL CAMPAIGN
- MAKE CAMPAIGN SPEECHES
- DISTRIBUTE CAMPAIGN LITERATURE
- ORGANIZE A POLITICAL RALLY, MEETING OR FUNDRAISER
- HOLD POLITICAL PARTY OFFICE OR BE A PARTY DELEGATE
- PARTICIPATE IN PARTISAN VOTER REGISTRATION DRIVES
- CIRCULATE NOMINATING PETITIONS

**KEY: NO ACTIVITY IN CONCERT WITH A POLITICAL PARTY
OR CANDIDATE**

DISCIPLINARY ACTION (Penalties)

5 U.S.C. § 7326



MERIT SYSTEMS PROTECTION BOARD MAY ORDER EMPLOYEE'S —

- REMOVAL

OR

- SUSPENSION (30-DAY MINIMUM)

FEDERAL HATCH ACT: OSC PHONE / E-MAIL CONTACTS



HATCH ACT UNIT:

(800) 85-HATCH

(202) 254-3650

hatchact@osc.gov

OSC SPEAKERS / OUTREACH:

(202) 254-3600

OSC WEBSITE:

www.osc.gov