Partisan Political Activity Rules for "Further Restricted" DoD Civilians

Applicability: The following rules apply to DoD ***civilian*** employees, referred to as "**Further Restricted**" employees, serving as:

- Presidential Appointees confirmed by the Senate (PAS),
- Non-career members of the Senior Executive Service (SES),
- Career members of the Senior Executive Service,
- Contract appeals board members, or
- Employees of:
    - National Security Agency,
    - Defense Intelligence Agency, and
    - National Geo-Spatial-Intelligence Agency.

General Information about the Hatch Act

1. What is the Hatch Act?

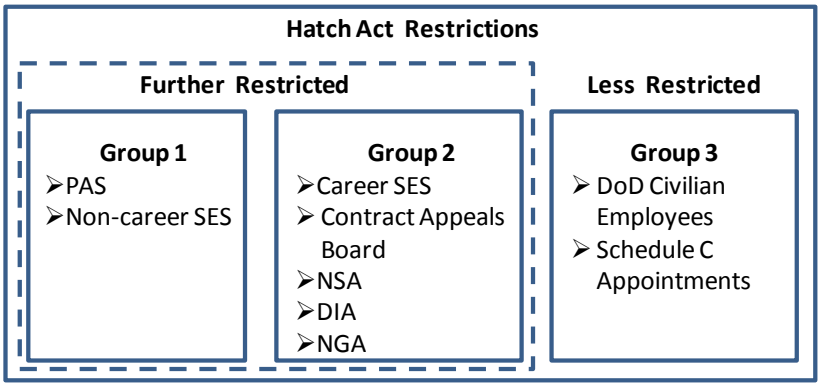
A. Passed in 1939, the Hatch Act (Act) is the law that restricts the partisan political activity of civilian executive branch employees of the Federal Government, District of Columbia Government, and some state and local employees who work in connection with federally funded programs. The Act was significantly amended in 1993, to allow most Federal employees to engage in certain types of political activities while in their personal capacities.

2. Do the Hatch Act restrictions apply to Members of the Armed Forces?

A. No. Members of the Armed Forces are not covered by the Act. The political activities of Members of the Armed Forces are governed by Department of Defense (DoD) Directive 1344.10, Political Activities by Members of the Armed Forces on Active Duty.

3. Are the Restrictions on partisan political activities the same for all DoD civilian employees?

A. No, the restrictions are not the same. At DoD, there are 2 sets of rules for 3 groups of employees. The first set of restrictions applies to: (1) individuals appointed by the President and confirmed by the Senate and individuals serving in non-career SES positions, who are further restricted by DoD policy; (2) career members of the SES, contract appeals board members, and all employees of the National



Security Agency (NSA), the Defense Intelligence Agency (DIA), and the National Geo-Spatial-Intelligence Agency (NGA). The second, and more lenient set of restrictions, applies to all other employees (including Schedule C political appointments). Employees in Groups 1 and 2 are prohibited from taking an active part in partisan political management or political campaigns and are referred to as "Further Restricted" employees.

4. What is political activity?

A. For purposes of the these rules, political activity is defined as an activity directed toward the success or failure of a political party, candidate for partisan political office or partisan political group. Examples of political activities include: volunteering for the campaign of a candidate for partisan political office, serving as an officer of a political party or club, serving as a delegate to a political convention, or distributing campaign literature for a candidate for partisan political office.

5. Does the Hatch Act restrict employees from participating in nonpartisan elections?

A. No. The Hatch Act does not prohibit employees from participating in or being candidates in nonpartisan elections. A nonpartisan election is one in which none of the candidates is to be nominated or elected as representing a political party, i.e., none of the candidates are running, for example, as representatives of the Democratic or Republican party. Classification of nonpartisan elections is determined at the state or local level. Employees who are interested in running for state or local office should first check with their local board of elections to clarify the nonpartisan status of the election. Employees who are candidates for public office in nonpartisan elections are not barred by the Act from soliciting, accepting, or receiving political contributions for their own campaigns.

A nonpartisan election can also include an election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum question, or a municipal ordinance (e.g., gun control, gay marriage, tax issues, climate change, and DC statehood).

6. Can a nonpartisan election become partisan?

A. Yes. Evidence showing that partisan politics actually entered any of the candidates' campaigns may invalidate the nonpartisan nature of an election. No bright-line rule exists that identifies the type or amount of conduct (either by the candidates or political parties) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. The ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of funding, supplies (*e.g.*, wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (*e.g.*, flyers, posters) or use of party headquarters.

7. What are "partisan political groups?"

A. "Partisan political groups" are committees, clubs and other organizations, which are affiliated with a political party or candidate for partisan political office. The term also includes committees, clubs, and other organizations that are organized for a partisan political purpose or engage in partisan political activity (e.g., the "Organizing for America" website specifically states that Organizing for America is "a project of the Democratic National Committee." Accordingly, Organizing for America is affiliated with a political party and is therefore a partisan political group or organization). Further, organizations which are created primarily to influence the selection, nomination, election, appointment or defeat of candidates to federal, state or local public office, known as "527 organizations" are considered partisan political organizations (e.g., EMILY's List, GOPAC, and American Crossroads).

Finally, 501(c)(3) non-profit organizations are not partisan political groups as the tax code specifically prohibits them from participating in any campaign activity in support of or against political candidates (e.g., the League of Women Voters, the Brady Center to Prevent Gun Violence, and the Audubon Society).

8. What political activities are prohibited for <u>all</u> DoD civilian employees?

A. All DoD employees are prohibited from: (1) using their official authority or influence for the purpose of interfering with or affecting the result of an election; (2) knowingly, personally soliciting, accepting or receiving a political contribution from any person; (3) running for the nomination or as a candidate for election to a partisan political office; (4) participating in political activity while on-duty or in any room or building occupied in the discharge of official duties by an individual employed by DoD; (5) engaging in political activity while wearing a uniform or official insignia identifying the office or position of the DoD employee; (6) engaging in political activity while using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof; (7) knowingly soliciting or discouraging the participation in any political activity of any person who has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employee's office; and (8) knowingly soliciting or discouraging the participation in any political activity of any person who is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employee's office.

<u>Campaign Activities for "Further Restricted" Employees</u>

9. May a Further Restricted employee volunteer to work for the campaign of a candidate running for partisan political office?

A. No. The rules expressly prohibit Further Restricted employees from taking an active part in partisan political management or political campaigns. Specifically, this means that these employees are prohibited from engaging in any political activity which is "in concert" with a political party, partisan political group or candidate for partisan political office. "In concert" activity is any activity that is sponsored or supported by a political party, partisan political group or candidate for partisan political office. For example, Further Restricted employees are prohibited from: writing speeches or performing research on political issues for a partisan

campaign; making speeches as a surrogate for a candidate for partisan political office; soliciting, accepting or receiving political contributions; holding office in a political party; hosting a fundraiser for a candidate for partisan political office; knocking on doors to solicit votes or handing out political leaflets for a candidate for partisan political office; serving as a delegate to a political party convention or doing any type of volunteer work for a candidate for partisan political office, including serving on a phone bank.

10. May a Further Restricted employee make a contribution to the campaign of a partisan candidate, or to a political party or organization?

A. Yes. All DoD employees may contribute (consistent with Federal Election Commission rules) to the campaign of a candidate for partisan political office or to a political party or organization, provided they do not do so while on duty or in a Federal building.

11. May a Further Restricted employee make a contribution using his DoD computer?

A. No. All DoD employees are prohibited from engaging in partisan political activity while in Federal buildings or while using Government equipment.

12. May Further Restricted employees attend political rallies, meetings or fundraisers?

A. Yes. Further Restricted employees may attend, but <u>not</u> actively participate in campaign events or fundraising functions sponsored by candidates for partisan political office or political parties. This means that at a political event, a Further Restricted employee is permitted to attend briefings, open forums, panel discussions, debates, receptions and dinners. They may not however, actively participate in any policy planning or political strategy sessions for candidates for partisan political office or political parties.

13. May Further Restricted employees place campaign signs in their yards?

A. Yes. All DoD employees, including Further Restricted employees, may place signs or banners supporting candidates for partisan political office in their yards.

14. May a Further Restricted employee write a letter to the editor or post a comment on a blog endorsing a candidate for partisan political office?

A. Yes, but with some limitations. All DoD employees, including Further Restricted employees, are permitted to express their personal opinions publicly on political subjects and participate in political activities to the extent not expressly prohibited by the rules. DoD employees, including Further Restricted employees, may not, however, express those personal views while on duty or in a Federal building, and may not use their official title or refer to their DoD position when expressing privately held opinions. In other words, DoD employees retain their First Amendment right to express their personal opinions absent any connection to DoD.

Accordingly, a DoD employee may write a personal letter to the editor or post a personal comment on a blog endorsing a candidate, provided she does not do so while on duty or in a Federal building. Further, she may endorse a candidate, but only in her personal capacity, and

may not identify her DoD position or office. Finally, the endorsement may not contain a request for political contributions or information about where voters may contribute, even if the employee makes the endorsement anonymously because Federal employees are strictly prohibited from political fundraising as discussed below.

15. May a Further Restricted employee work at the polls on Election Day for a political party or candidate for partisan political office?

A. No. This activity would be viewed as participating "in concert" with a political party, as discussed in greater detail above. They may, however, work on a non-partisan "Get Out the Vote" drive or as a non-partisan poll watcher or election judge for the city or county.

<u>Political Activity in a Federal Building or While on Duty</u>

16. When is an employee on duty?

A. An employee is on duty during the time period when they are: (1) in a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay) or (2) representing an agency or instrumentality of the United States Government in an official capacity.

17. May a Further Restricted employee engage in partisan political activity in a Federal building when off-duty?

A. No. At DoD, all employees, including Further Restricted employees, are prohibited from engaging in partisan political activity while they are in a Federal building, regardless of their duty status.

18. May a Further Restricted employee ever send a partisan political email (an email directed toward the success or failure of a political party, candidate for partisan political office or partisan political group) from his work computer? May an employee send the email after normal duty hours?

A. No to both questions. All DoD employees are prohibited from engaging in partisan political activity while in a Federal building, while on duty, or when using Government equipment. This means that even when a DoD employee is not on duty (e.g., Saturday at 10:00 AM), she still is prohibited from engaging in partisan political activity while in a Federal building. Therefore, an employee may never send a partisan political email while in a Federal building.

19. An employee receives a partisan political email in his Government email account while at work. Did he violate the Act?

A. No. Simply receiving a partisan political email while at work does not constitute prohibited political activity as defined under the Act. An employee may not, however, send or forward that email to others.

20. May a Further Restricted employee send or forward a partisan political email from his work email address to his personal email address while at work, i.e., on duty and in a Federal building?

A. Yes. If a DoD employee, including a Further Restricted employee, receives a partisan political email at his work email account, he may send that email to his personal email address while at work. Simply sending such an email to his personal email address does not constitute prohibited political activity as defined under the Act or its regulations. An employee would violate the Act if he sends the email to his personal email address and then using the personal email account sends the partisan political email to other people while he is on duty and/or in a Federal building.

21. May an employee display a picture of a candidate for partisan political office in her office, have a partisan screen saver on her computer, or wear a partisan political button or t-shirt while at work?

A. No. All employees are prohibited from displaying campaign pictures, posters, bumper stickers, screen savers, t-shirts and all other campaign materials of candidates for partisan political office in a Federal building.

22. May an employee display a picture of a President who is running for reelection in his or her office?

A. No. As stated above, the Act prohibits all DoD employees from displaying pictures of candidates for partisan public office in a Federal building. Because a sitting President is a candidate for reelection, the Act prohibits an employee from displaying his photograph in the Federal workplace, unless one of the two exceptions applies. The first exception applies to official photographs of the President. The Act does not prohibit the continued display of official photographs of the President in the Federal workplace, including both public and employee work spaces. Official photographs include the traditional portrait photo of the President displayed in all Federal buildings, as well as photographs of the President conducting official business (e.g., President meeting with heads of state). Pictures that are distributed by the President's campaign or a partisan organization are not official, even if they depict the President performing an official act. Similarly, pictures downloaded from the internet or clipped from magazines or newspapers, screens savers and life-size cutouts are not official photographs for purposes of this exception.

The second exception, applies to an employee's personal photographs. An employee would not be prohibited from displaying a photograph of a candidate for partisan political office in his or her office, if all of the following apply: the photograph was on display in advance of the election season, the employee is in the photograph with the candidate, <u>and</u> the photograph is a personal one (i.e., the employee has a personal relationship with the candidate and the photograph is taken at some kind of personal event or function, for example, a wedding, and not at a campaign event or some other type of partisan political event).

23. May an employee place a bumper sticker on her personal car and park the car in a Government lot or in a private lot if the Government subsidizes her parking fees?

A. Yes. All DoD employees, including Further Restricted employees, are permitted to park their privately owned vehicles that display a partisan political bumper sticker in a Government lot or in a private lot, even though they receive a parking subsidy from their agency.

Fundraising

24. May a Further Restricted employee solicit, accept or receive contributions on behalf of a candidate running for public office in a partisan election?

A. No. Generally, all DoD employees, including Further Restricted employees, are prohibited from soliciting, accepting or receiving contributions in partisan elections.[1]

25. May a supervisor invite a subordinate to a political fundraiser?

A. No. Inviting subordinate employees to a political fundraiser would violate at least two provisions of the Act. First, inviting other individuals to a political fundraiser would violate the Act's prohibition against soliciting, accepting, or receiving political contributions, even if the supervisory employee does not expressly ask the individuals to contribute money. Second, inviting subordinate employees to any political event would violate the Act's prohibition against using one's official authority or influence to affect the result of an election. Such conduct is inherently coercive, and violates the Act even if the supervisory employee does not threaten to penalize subordinates who do not attend or promise to reward those who do attend. Such actions can result in criminal prosecution under 18 U.S.C. § 610 and constitute a prohibited personnel practice.

26. May a Further Restricted employee help organize a political fundraiser or speak at a fundraiser?

A. No. Further Restricted employees are prohibited from participating in any "in concert" activity with a candidate for partisan political office or political party and are therefore, prohibited from organizing a political fundraiser or actively participating at the event.

27. May a Further Restricted employee notify his friends about a fundraiser simply by forwarding an invitation that he received, if he does not actually ask or invite them to attend himself?

A. No. The Act prohibits all DoD employees, including Further Restricted employees, from soliciting, accepting or receiving political contributions, which includes inviting individuals to political fundraisers, personally or by forwarding an email.

[1] There is an exception for members of labor and employee organizations at 5 C.F.R. 734.208(b)(3) and another exception for elections in designated municipalities at 5 C.F.R.§§ 733.103 & 733.105.

28. May a Further Restricted employee's name appear on an invitation to a political fundraiser as a sponsor, host or point of contact?

A. No. As noted in the answer to the preceding question, all DoD employees are prohibited from soliciting, accepting or receiving political contributions. Having one's name on an invitation to a political fundraiser as a sponsor, host or point of contact is considered soliciting political contributions.

29. May a Further Restricted employee's spouse host a fundraiser?

A. Yes. Hatch Act coverage is not transferred to spouses or family members. Therefore, as long the employee's spouse is not covered by the Act (not a Federal employee), then he or she may host a fundraiser. But do not forget, unlike Schedule C political appointees and other Less Restricted employees, Further Restricted employees are prohibited from organizing and working at fundraising events, even when the event is at their house. They may attend, but not actively participate.

Candidacy

30. May a Further Restricted employee be a candidate in a partisan election?

A. Generally, Federal employees **may not** be candidates for partisan political office. However, the Office of Personnel Management (OPM) has issued a regulation designating specific localities[2] where Federal employees may run as independent candidates in local partisan elections. OPM's list of designated localities can be found at 5 C.F.R. § 733.107.

A partisan election is one in which any candidate is to be nominated or elected as representing a political party. An election is partisan even if only one candidate represents a political party and the others do not. Examples of political parties that received votes in the last Presidential election include, the Democratic, Republican, Libertarian and Green Parties. If you are considering becoming a candidate contact your legal counsel for additional guidance.

31. May a Further Restricted employee serve as a delegate to a political convention?

A. No. Further Restricted employees may not serve as delegates to a national, state, or local political convention.

[2] A designated locality is a municipality or political subdivision in Maryland or Virginia and in the immediate vicinity of the District of Columbia, but not the District of Columbia, or a municipality in which the majority of voters are employed by the Government of the United States, when OPM determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in local elections. 5 C.F. R. 733.107.

Other

32. May a Further Restricted employee encourage subordinates or contractors of DoD to participate in the campaign of a candidate for partisan political office?

A. No. All DoD employees, including Further Restricted employees, are prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election. This prohibition includes using one's official authority to coerce any person to participate in partisan political activity. Such actions can result in criminal prosecution under 18 U.S.C. 610 and may constitute a prohibited personnel practice.

33. May a Further Restricted employee encourage subordinates to vote?

A. Yes. The Federal Government has a longstanding policy of granting employees limited time off from work (i.e., excused absence) to vote in Federal, State, county, or municipal elections or in referendums on any civic matter in their community. Agencies have discretionary authority to grant excused absence to the extent that such time off does not seriously interfere with agency operations. Adhering to this policy, a supervisor may encourage employees to vote in a manner that is consistent with DoD policy. The supervisor may not encourage or suggest that subordinates vote for a specific candidate or a specific political party's candidates.

34. Is an employee serving under the Intergovernmental Personnel Act (IPA) covered by the Hatch Act?

A. Yes. A non-Federal employee, who is appointed to a Federal position as an IPA, is considered to be a Federal employee for virtually all purposes, including application of the Hatch Act. Therefore, the guidance provided in this document is applicable to an IPA employee.

35. Are Special Government Employees (SGE) covered by the Hatch Act?

A. Yes, but with limitations. SGEs are covered by the provisions of the Hatch Act only during the hours that they are "on-duty" for the Government. While in their personal capacities, SGEs are free to participate in partisan political activities, including running for partisan political office and soliciting political contributions.

For specific questions, please contact your local legal counsel. For employees at the Office of the Secretary of Defense, the appropriate contact is the Standards of Conduct Office (SOCO) at OSD.SOCO@MAIL.MIL or (703) 695-3422. General guidance can also be viewed at the U.S. Office of Special Counsel website at www.osc.gov.