

Legal Sidebar

Partisan Political Activities and Federal Workers: Questions in the 2016 Election

10/20/2016

As Election Day nears, interest in the [Hatch Act's regulation of government employees' political activities](#) peaks, with a number of issues raising congressional interest. Are federal officials permitted to appear with candidates for partisan political election at public events? Can federal entities endorse a candidate for partisan political election? The following Q&A addresses the issues implicated by these questions.

How does the Hatch Act regulate federal employees' ability to engage in the political process?

Federal law, commonly known as "[the Hatch Act](#)," has regulated federal executive branch employees' participation in partisan political activities for over a century. Although [it originally applied a broad ban](#) on all voluntary, outside activities in politics, subsequent amendments in [1993](#) and [2012](#) have allowed most federal employees to engage in a wide range of voluntary, partisan political activities in their time off-duty, away from their federal jobs, and off any federal premises. Some strict limitations still apply, however, to employees of [certain designated agencies](#) (e.g., certain law enforcement and national security agencies).

The Hatch Act generally prohibits some categories of political activities for all [covered employees](#). Covered employees may not use their "[official authority or influence for the purpose of interfering with or affecting the result of an election](#)"; [solicit, accept or receive campaign contributions](#); [run for partisan elective office](#); [solicit or discourage political participation of anyone with business before the employing agency](#); or [engage in partisan "political activity" while on duty, on federal property, in federal uniform, or in a government vehicle](#). Hatch Act regulations define [political activity](#) as one "directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." Outside of these general prohibitions, [employees may engage in a range of activities](#) voluntarily and in their personal capacity, including expressing opinions about candidates and issues. The [Office of Special Counsel](#), which enforces the Hatch Act, provides [specific guidance](#) on examples of permissible and restricted activities and [additional guidance](#) for employees who work for agencies that are subject to further restrictions.

Are federal officials permitted to appear with candidates running for partisan elective office?

As a regular matter of conducting federal business, federal officials and employees, including elected officials, often interface to promote or discuss federal policies, programs, or proposals. Officials and employees may appear publicly at official events in which both have an interest in their professional capacities or they may meet privately to discuss implementation and other options. Such joint appearances are not expressly barred under the Hatch Act. However, two of the general prohibitions for covered employees may be relevant in evaluating the propriety of joint appearances of federal employees and an official who is simultaneously running as a candidate for partisan elective office. [First](#), the employees' appearance cannot be deemed to be a use of their official position to affect the outcome of the election in which the candidate is running. [Second](#), the employees cannot engage in political activity while on duty, in any federal workplace, in federal uniform or other attire identifying them as federal officials, or from a government vehicle.

If an appearance with an official who is also a candidate for partisan elective office would appear to violate either of these general prohibitions, the employee may choose to decline to attend the event to ensure compliance with the Hatch

Act. Accordingly, federal executive entities or employees may decline a request from a Member of Congress related to a joint appearance if that Member is currently running for reelection and the executive officials believe the joint appearance may give the impression of support for the candidate's bid for reelection. Likewise, an employee may not authorize the use of federal property for campaign activities. In some cases, even if the event is considered to be distinct from the campaign, the mere proximity in timing to the election may create an appearance of impropriety under the Hatch Act because a public event close to Election Day could be perceived by the public as part of a final campaign push.

A [2004 advisory opinion](#) appears to provide the most recent guidance from OSC related to candidate visits to federal agencies. In that opinion, OSC highlights the distinction between events held for official business versus those held for campaign purposes. Covered employees were advised that "candidates' requests to visit federal facilities that are coordinated by candidates' campaigns [are presumed to be] for a campaign purpose and not official business." OSC emphasized that its opinion should not be read "to impede elected officials from appropriately representing their constituents" and that federal employees were indeed permitted to allow candidates for partisan elective office to visit federal facilities for official purposes (e.g., briefings, tours, or information gathering).

Can federal entities endorse a candidate for partisan political office?

In early October, questions were raised about [statements made during the second presidential debate](#) that a federal agency had endorsed a candidate for the presidency. According to [media reports](#) responding to that claim, it appears that the endorsement was made by an employee union representing federal workers from that agency, as opposed to the agency itself.

The Hatch Act's [general prohibition on using one's official authority or position to influence the outcome of an election](#) – applicable to all covered employees – appears to clearly bar agency officials from declaring, on behalf of the agency, an endorsement for or opposition to a candidate for partisan political office. Furthermore, because of the prohibition on engaging in partisan political activity in the federal workplace, individual employees – even if not acting on behalf of the agency or in their official capacity – may not display personal items in their workspace that indicate support for or opposition to such candidates during the course of the campaign. [OSC guidance](#) indicates that, as a general rule, displays related to candidates no longer constitute political activity after Election Day and are therefore no longer prohibited at that point, unless and until the candidate runs for partisan elective office again.

The Hatch Act does not restrict the ability of employee organizations to engage in political activity, provided employees are not violating Hatch Act provisions in doing so. For example, fundraising activity (otherwise restricted for employees generally) is [permitted in the context of federal labor organizations, subject to certain requirements](#). [As explained by OSC](#), covered employees who are members of a union that has a political action committee (PAC) may solicit, accept, or receive contributions from other members of that union if the donor is not a subordinate and the contribution is made to the union's PAC. The solicitation or contribution could not be made while the employees are on duty or in the federal workplace, however.

Posted at 10/20/2016 03:10 PM