

To Prevent Pernicious Political Activities: The Hatch Act and Government Ethics

When a man assumes a public trust, he should assume himself a public property.
Thomas Jefferson¹

The impeachment trial has concluded. By the time you read this editorial, Super Tuesday will be over. Then there will be the political party conventions, and finally the general election. Politics is everywhere and will be for the rest of 2020. As a preventive ethics measure, the legal arms of almost every federal agency will be sending cautionary e-mails to employees to remind us that any political activity undertaken must comply with the Hatch Act. Many of you who have worked in federal health care for some years may have heard a fellow employee say, “be careful you don’t violate the Hatch Act.”

Most readers probably had not heard of the statute before entering federal service. And you may have had an experience similar to mine in my early federal career when through osmosis I absorbed my peers fear and trembling when the Hatch Act was mentioned. This was the situation even though you were not at all sure you understood what the lawyers were warning you not to do. In my decades in federal service, I have heard that the Hatch Act dictates everything from you cannot vote to you can run for political office.

All this makes the timing right to review a piece of legislation that governs the political actions of every federal health and administrative professional. The Hatch Act sets apart federal employees from many, if not most, of our civilian counterparts, who, depending on your perspective, have more freedom to express their political views or are not held to such a high standard of ethical conduct.

In legalese, the Hatch Act is Political Activity

Authorized; Prohibitions, 5 USC §7323 (1939). The title of this editorial, “To Prevent Pernicious Political Activities” is the formal title of the Hatch Act enacted at a time when government legislation was written in more ornamental rhetoric than the staid language of the current bureaucratic style. The alliterative title phrase of the act is an apt, if dated, encapsulation of the legislative intention of the act, which in modern parlance:

The law’s purpose is to ensure that federal programs are administered in a nonpartisan fashion, to protect federal employees from political coercion in the workplace, and to ensure that federal employees are advanced based on merit and not based on political affiliation.²

For all its poetic turn of phrase, the title is historically accurate. The Hatch Act was passed in response to rampant partisan activity in public office. It was a key part of an effort to professionalize civil service, and as an essential aspect of that process, to protect federal employees from widespread political influence. The ethical principle behind the legislation is the one that still stands as the ideal for federal practitioners: to serve the people and act for the good of the public and republic.

The Hatch Act was intended to prevent unscrupulous politicians from intimidating federal employees and usurping the machinery of major government agencies to achieve their political ambitions. Imagine if your supervisor was running for office or supporting a particular candidate and ordered you to put a campaign sign



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CORRECTION

In Quach TV, Goldschmidt MH. Evaluating a program process change to improve completion of foot exams and amputation risk assessments for veterans with diabetes. *Fed Pract.* 2019;36(suppl 7):S10-S15. The color labels for Figure 1 were reversed. The blue label should have read “Accurately completed” and the yellow label should have read “Inaccurately completed”. The article has been corrected online.

in your yard, attend a political rally, and wear a campaign button on your lapel or you would be fired. All that and far worse happened in the good old USA before the Hatch Act.³

The Office of Special Counsel (OSC) is the authoritative guardian of the Hatch Act providing opinions on whether an activity is permitted under the act; investigating compliance with the provisions of the act; taking disciplinary action against the employee for serious violations; and prosecuting those violations before the Merit Systems Protection Board. Now I understand why the incantation “Hatch Act” casts a chill on our civil service souls. While there have been recent allegations against a high-profile political appointee, federal practitioners are not immune to prosecution.⁴ In 2017, *Federal Times* reported that the OSC sought disciplinary action against a VA physician for 15 violations of the Hatch Act after he ran for a state Senate seat in 2014.⁵

Fortunately, the OSC has produced a handy list of “Though Shalt Nots” and “You Cans” as a guide to the Hatch Act.⁶ Only the highpoints are mentioned here:

- Thou shalt not be a candidate for nomination or election to a partisan public office;
- Thou shalt not use a position of official public authority to influence or interfere with the result of an election;
- Thou shalt not solicit or host, accept, or receive a donation or contribution to a partisan political party, candidate, or group; and
- Thou shalt not engage in political activity on behalf of a partisan political party, candidate, or group while on duty, in a federal space, wearing a federal uniform, or driving a federal vehicle.

Covered under these daunting prohibitions is ordinary American politicking like hosting fundraisers or inviting your coworkers to a political rally, distributing campaign materials, and wearing a T-shirt with your favorite candidates smiling face at work. The new hotbed of concern for the Hatch Act is, you guessed it, social media—you cannot use your blog, Facebook, Instagram, or e-mail account to comment pro or con for a partisan candidate, party, office, or group.⁶

You may be asking at this point whether you can even watch the political debates? Yes, that is allowed under the Hatch Act along with run-

ning for nonpartisan election and participating in nonpartisan campaigns; voting, and registering others to vote; you can contribute money to political campaigns, parties, or partisan groups; attend political rallies, meetings and fundraisers; and even join a political party. Of course these activities must be on your own time and dime, not that of your federal employer. All of these “You Cans” enable a federal employee to engage in the bare minimum of democracy: voting in elections, but opponents argue they bar the civil servant from fully participating in the complex richness of the American political process.⁷

Nonetheless, since its inception the Hatch Act has been a matter of fierce debate among federal employees and other advocates of civil liberties. Those who feel it should be relaxed contend that the modern merit-based system of government service has rendered the provisions of the Hatch Act unnecessary, even obsolete. In addition, unlike in 1939, critics of the act claim there are now formidable whistleblower protections for employees who experience political coercion. Over the years there have been several efforts to weaken the conflict of interest safeguards that the act contains, leading many commentators to think that some of the amendments and reforms have blurred the tight boundaries between the professional and the political. Others such as the government unions and the American Civil Liberties Union (ACLU) believe that the tight line drawn between public and private binds the liberty of civil servants.⁸ Those who defend the Hatch Act believe that the wall it erects between professional and personal in the realm of political activities for federal employees must remain high and strong to protect the integrity of the administrative branch and the public trust.⁹

So, as political advertisements dominate television programming and the texts never stop asking for campaign donations, you can cast your own vote for or against the Hatch Act. As for me and my house, we will follow President Jefferson in preferring to be the property of the people rather than be indebted to the powerful. You need never encounter a true conflict of interest if you have no false conflict of obligation: history teaches us that serving 2 masters usually turns out badly for the slave. Many of you will completely disagree with my stance, holding

that your constitutional rights as a citizen are being curtailed, if not outright denied, simply because you choose to serve your country. Our ability to freely hold and express our differences of opinions about the Hatch Act and so much else is what keeps democracy alive.

Disclaimer

The opinions expressed herein are those of the author and do not necessarily reflect those of *Federal Practitioner*, Frontline Medical Communications Inc., the US Government, or any of its agencies.

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