**The original documents are located in Box 42, folder "1976/04/12 HR8617 Federal Employees Political Activities Act of 1976 (vetoed) (1)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.**

THE WHITE HOUSE
WASHINGTON

Bob Linder

The story is that what Gergen is doing is a statement for the 1:45 TV bit on the Hatch Act --

So therefore there is no hold on this.

Trudy

THE WHITE HOUSE
WASHINGTON


Last

Day —

Tues Apr 13th

VETOED
4/12/76
Delivered to House of Representatives 2:15 pm 4/12/76
Statement Issued: 4/12/76

rec'd 4/11/76

THE WHITE HOUSE

WASHINGTON

ACTION
Last Day: April 13, 1976

April 9, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Enrolled Bill H.R. 8617 - Federal Employees Political Activities Act of 1976

Background

H.R. 8617 substantially repeals Hatch Act restrictions and would allow nearly all Federal employees to participate actively in partisan politics.

The original House version of H.R. 8617, passed by a vote of 288 to 119 in October 1975; the House adopted the conference report 241 to 164. The original Senate vote was 47 to 32; the conference report was adopted by a vote of 54 to 36.

The enrolled bill would allow most Federal employees to engage in partisan activity during off-duty hours. Federal employees could run for office without severing their connection with the Government. The enrolled bill mandates that such employees would be entitled to use accrued annual leave for such a purpose.

The enrolled bill retains prohibitions on the use of official authority. It also bars employees from making political contributions to their immediate supervisors. The original Hatch Act restrictions would be retained for employees of the Department of Justice, the Internal Revenue Service and the Central Intelligence Agency in "sensitive" positions.

The President and Vice President are treated as "employees" by this bill. They could engage in political activity while on duty but could not use official authority or influence to sway votes, affect an election, promise or confer benefits, or threaten reprisals.

Pressure to repeal the Hatch Act comes from the AFL-CIO affiliated unions. The National Civil Service League, the National Academy of Public Administration and the National Federation of Federal Employees, one of the oldest non-affiliated employee organizations, all urge a veto of this enrolled bill. Newspaper editorial comment has also been supportive of a veto.

Recommendations

All who have reviewed this enrolled bill recommend that you veto it.

The following recommend a veto:

Office of Management and Budget (enrolled bill report Tab A)
Civil Service Commission
Central Intelligence Agency
U.S. Postal Service
Department of Justice
Department of the Treasury
Max Friedersdorf
Jack Marsh
Ken Lazarus

I recommend that you veto the enrolled bill. A proposed veto message is at Tab C. It has been cleared by Paul O'Neill, Ken Lazarus and Doug Smith.

Decision

1. Approve H.R. 8617 (Tab B) _____

2. Disapprove H.R. 8617 and issue veto message at Tab C

MR 7

Tab A - Enrolled Bill Report
Tab B - H.R. 8617
Tab C - Veto Message

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 6 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8617 - Federal employee political activity
Sponsor - Rep. Clay (D) Missouri and 5 others

Last Day for Action

April 13, 1976 - Tuesday

Purpose

Substantially repeals Hatch Act restrictions to allow nearly all Federal employees to participate actively in regular party politics, become candidates for elective office, and collect and exchange political contributions.

Agency Recommendations

| | |
|---|---|
| Office of Management and Budget | Disapproval (Veto message attached) |
| Civil Service Commission | Disapproval (Veto message attached) |
| Central Intelligency Agency | Disapproval |
| U.S. Postal Service | Disapproval |
| Department of Justice | Unable to recommend approval |
| Department of the Treasury | Concurs in recommendation against approval |

Discussion

The stated purpose of the enrolled bill is to encourage Federal employees to fully exercise their rights of voluntary participation in the political processes of the Nation. To that end, the bill would repeal nearly all existing restraints imposed by the Hatch Act on off-duty political party activity of Federal employees. The original House version of H.R. 8617, which is substantially

the same as the enrolled bill, passed by a vote of 288 to 119 in October 1975; the House adopted the conference report 241 to 164. The original Senate vote was 47 to 32; the conference report was adopted in the Senate by a vote of 54 to 36.

Hatch Act--current law

The Hatch Act bars Federal employees from taking an active, formal role in partisan political activities. As elaborated in regulations of the Civil Service Commission, for example, Federal employees cannot serve as managers, workers, or candidates in political parties, or as officers of political clubs and parties, or delegates to conventions. They cannot be fund-raisers, sell tickets for party affairs, or serve as poll-watchers, challengers or recorders, solicit votes for or against partisan candidates, or engage in other political activity which would formally identify them with one party or another. The law also bars use of official authority or influence to interfere with an election.

The Hatch Act does not bar all political activity of Federal employees, however. For example, they are entitled to register and vote, to express opinions as individuals on political issues or candidates, to be members of and make contributions to political parties, to attend political conventions and rallies and to wear political buttons, display political pictures and stickers, and engage in similar activities while off duty and not in a uniform that identifies them as Federal employees.

Major provisions of H.R. 8617

The principal features of the enrolled bill would:

-- repeal existing restrictions on active partisan political party activity--i.e., managing and campaigning--by Federal employees during their off-duty hours and outside Government offices. For instance, they would be able to be candidates themselves for partisan office, to serve as party officials and delegates, to serve as fund raisers and poll watchers, and to be otherwise formally identified with political parties, issues and candidates.

-- allow Federal employees who become candidates to campaign without severing their connection with the Government by mandating their entitlement to use accrued annual leave for such purpose. There would be no requirement for

resignation, as is the usual case in the private sector, but under existing law leave without pay, with attendant return rights to a Federal position, could be granted at the discretion of the individual agency. (A mandatory leave-without-pay provision for such purpose was deleted in the Senate on the ground the "guaranteed reemployment represents a privilege and right which employees in the private sector do not have.")

-- allow Federal employees freely to solicit and exchange political contributions on behalf of parties or candidates, but only off-duty and outside Government offices.

-- retain and restate existing prohibitions on use of official authority or influence to affect elections, and specifically bar employees from soliciting or receiving funds to sway votes or from making political contributions to their immediate superiors.

-- place rule-making authority under the Act in the Civil Service Commission (CSC), where present law vests such authority in the President, and provide that CSC rules, regulations or amendments thereto under the law would not take effect until 30 days after they are transmitted to Congress, unless disapproved by either House.

-- shift authority for adjudication of violations of the limited prohibitions on political activity retained by the enrolled bill from the CSC to a Board on Political Activities of Federal Employees, a new agency composed of three Federal employees other than those from CSC. No more than two members could be of the same political party. They would be appointed by the President with Senate confirmation for three-year terms. Agencies from which such employees are appointed would be required to grant them leaves of absence without loss of pay or leave for Board service. The Board would have subpoena power and could exercise its authority anywhere in the United States.

-- impose a minimum penalty of 30 days suspension for employees found guilty of misusing official authority; penalties for violation of such prohibitions as politicking or soliciting funds while on duty would be left to the discretion of the new Board, which could order disciplinary action, suspension, or removal.

-- retain the original Hatch Act restrictions for employees of the Department of Justice, the Internal Revenue Service and the Central Intelligence Agency in "sensitive" positions, but require those agencies to designate, in regulations promulgated annually, those sensitive positions whose incumbents may engage in all of the political activities permitted under the bill if such activity "would not adversely affect the integrity of the Government, or the public's confidence in the integrity of the Government". Such agency regulations would take effect 30 days after transmittal to Congress unless disapproved by concurrent resolution.

-- treat the President and Vice President as "employees" for purposes of the bill, although they would be exempt from the prohibitions on engaging in political activity while on duty and on solicitation and receipt of political contributions. They would, however, be subject to the ban on "use of official authority or influence"--for example, to sway votes, affect the result of any election, promise to confer benefits, or threaten reprisals. The Civil Service Commission's attached views letter on the enrolled bill notes that this feature of the bill leaves uncertain the point at which a President or Vice President might be in violation of prohibitions.

Background

The Hatch Act was enacted in 1939 as an outgrowth of instances of political coercion of Federal employees in connection with the 1936 and 1938 elections. The 1939 law actually codified a series of statutory and administrative restrictions on political activities by Federal employees imposed as early as President Thomas Jefferson's ban on their "electioneering." The explicit Hatch Act prohibition on political campaigning and managing in off-duty hours was first imposed by President Theodore Roosevelt in 1907. His action followed his tenure as a Civil Service Commissioner where reportedly he found that the prohibitions of the Civil Service Act of 1883 against coercion and misuse of official authority or influence were insufficient to prevent political abuse.

Agitation for liberalization of Hatch Act restrictions is a recent phenomenon reflecting the unionization of Federal employees. In Senate debate on H.R. 8617, Senator Fong attributed its support to pressure from leaders of unions of Federal and postal employee unions, "most of them affiliated with the newly organized Public Employee Department of the AFL-CIO." The chief of the National Federation of Federal Employees (NFFE), one of the oldest

non-affiliated employee organizations, bluntly characterized the campaign for Hatch Act repeal in H.R. 8617 as "nothing more than the old AFL-CIO pitch for muscle and power. It is a move for money and organizing influence."

Several of the larger unions affiliated with the AFL-CIO adopted resolutions in their 1964 annual conventions urging Hatch Act liberalization. These and other unions were among those who pressed for the 1966 enactment of the law creating a Commission on Political Activity of Government Personnel (CPA) whose function was to study the possibility of relaxation of Hatch Act restraints.

The CPA's 1967 report recommended only limited, partial repeal of the ban on partisan political activity. Union dissatisfaction with that result prompted the Letter Carriers' union, a powerful AFL-CIO affiliate, to mount a new challenge as to constitutionality of the Hatch Act. The Supreme Court, which had found the Hatch Act constitutional in an earlier, 1947 challenge, again upheld the Act's constitutionality in 1973 in the Letter Carriers' case.

Then, as now, proponents of Hatch Act repeal argue that its restrictions on party activity by Federal employees make them second-class citizens by denying them the full exercise of the First Amendment rights of speech and association allowed other citizens, that the circumstances which prompted enactment of the original restrictions have disappeared with the growth of the career service and diminution of widespread patronage, and that the Act is so vague and overbroad in its prohibitions as to have a "chilling effect" on the exercise by Federal employees of those political rights the law allows them.

It is of interest that a substantial majority of Federal employees are opposed to repeal of Hatch Act protections, as reported by Congressmen and Senators from nearby Maryland and Virginia communities with heavy concentrations of Federal employees. This is verified by the NFFE, which has reported that 89% of its members polled support retention of present restrictions.

Moreover, disinterested groups, such as the National Civil Service League, a citizens' organization which has led the fight for merit principles in public employment since about 1881, also oppose H.R. 8617. Its founders were instrumental in securing passage of the first civil service

law, the Pendleton Act of 1883, and its activities on behalf of a merit-based and politically neutral civil service have continued since that time.

Administration position

The Administration expressed strong opposition to Hatch Act repeal at every stage of Congressional consideration, on the grounds that:

-- Formal identification of Federal employees with party politics would erode public confidence in Government operations at a time when that confidence is acknowledged to be low.

-- Unlimited political party involvement by Federal employees would increase the likelihood that their own political views and considerations would be injected into and interfere with the impartial execution of the Government's business. The effect would be to deny the public its inherent right to the impartial administration and application of the laws and to convert the Federal workforce into an organized instrument for affecting the outcome of elections.

-- Repeal of Hatch Act restrictions would deprive Federal employees of the protection they now have not only from overt political abuse, but also from indirect, subtle pressures to comply or curry favor with one party or another.

-- The only real protection for employees against subtle pressures beyond the reach of anti-coercion provisions is the absolute ban on party politicking and electioneering. (Indeed, the enrolled bill itself recognizes this in its provisions which would apply the present Hatch Act restrictions to certain employees of the Department of Justice, the IRS and CIA.)

-- Federal employees subject to present Hatch Act restrictions are not disenfranchised, as argued by some proponents of H.R. 8617, and the limitation of their formal party involvement and participation is based on the historic necessity to find a balance between the rights of employees as citizens and the compelling need of Government and the public it serves for an impartial, politically neutral civil service.

-- No convincing evidence has been introduced which would warrant shifting responsibility for adjudication of Hatch Act violations from the Civil Service Commission to a new Board composed of Federal employees.

-- The provisions of H.R. 8617 which would authorize a one-House veto of Civil Service Commission rules and regulations relative to Hatch Act administration, and Congressional disapproval of regulations promulgated by the Department of Justice, IRS and CIA under the Act, are constitutionally objectionable as congressional infringements upon the legitimate functions of executive agencies.

Recommendations

CSC, in its views letter, recommends disapproval, and has attached a draft veto message. The Commission states that it is unalterably opposed to the enrolled bill and that its enactment "would have serious deleterious effects on the impartial administration of, and public confidence in, the Federal civil service...". The Commission further states that "it is an empty hope" that provisions against coercion, however carefully drawn, can alone protect the merit system against the encroachment of partisan political influences, and that the existing prohibition against active political participation is the only safeguard and protection against subtle political pressures which can and will be brought to bear against employees. The Commission believes H.R. 8617 would remove this essential "shield of impartiality" from the Federal service and from the public.

CIA recommends veto of H.R. 8617, favoring the retention of existing law as "more certain, clear and equitable" than the proposed selective application of the present law to three agencies (CIA, Justice, and IRS). CIA believes this proposed arrangement is arbitrary in setting different restrictions for its employees and other employees of the Intelligence Community. It also believes the bill's standards for determining which employees may engage in political activity are vague and arbitrary, and would invite contention and litigation. Finally, CIA questions the propriety of a legislative veto of administrative decisions in the Executive branch.

Postal Service also believes that you should veto this measure. The Postal Service states that "The elimination of partisan political considerations from postal operations was a hallmark of the Postal Reorganization Act. Removing

the prohibitions against partisan activity by postal employees could seriously undermine this important component of postal reform."

Justice states that it is unable to recommend Executive approval of the enrolled bill. Justice is opposed, for constitutional reasons, to the provisions subjecting agency regulations to disapproval by concurrent resolution and one-House veto. The Department also objects, as "most undesirable," to a provision of the bill conferring transactional immunity on employees in procedures before the proposed Board on Political Activities of Federal Employees; Justice states that such immunity confers an unnecessary gratuity in that it is broader than that required by the Fifth Amendment. Finally, Justice objects to a provision of the bill authorizing the award of counsel fees and other costs incurred by employees who prevail in appeals in court against Board decisions.

Treasury states that it would concur in a recommendation that the enrolled bill not be approved. The Department believes that any benefits to Federal employees from liberalizing the Hatch Act "would be outweighed by the concomitant negative impact on the merit system and on public confidence in the nonpartisan administration of Government operations." Treasury is especially concerned about the provisions of the bill relating to IRS, noting that only 70 IRS employees fall within the definition of "sensitive position" contained in H.R. 8617, and that the existing prohibitions would apply only to those employees.

* * * * * * * * *

We believe the arguments for veto of H.R. 8617 advanced by the Administration, as described above, are compelling. We would add only that the enrolled bill's effect on the President and Vice President, and on department and agency heads and their deputies, is at best unclear. For example, H.R. 8617 does not exempt department and agency heads from the ban on political activity while on duty. The literal effect of this provision might be to bar Cabinet officials and other Presidential appointees from all political activity. Also, as noted in the CSC views letter, there is an area of uncertainty as to the precise impact on the President, Vice President, and top officials of the proposed ban on use of official authority and influence for various purposes, such as affecting the outcome of an election. This simply illustrates the numerous technical

and procedural defects in the bill, apart from its more fundamental faults.

We have attached a draft veto message for your consideration.

James T. Lynn
Director

Attachments

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

April 2, 1976

YOUR REFERENCE

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for our views on H.R. 8617, the "Federal Employees Political Activities Act of 1976," an act "To restore to Federal civilian and Postal Service Employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes."

This Commission is unalterably opposed to this legislation.

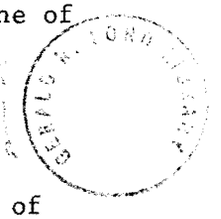
We strongly urge that the President veto this bill.

This Commission has, over the years, consistently been opposed to any legislation which would remove or substantially relax the political activity restrictions which current Federal law places on Federal employees in the Executive branch. This opposition is based, not on any misguided interest in retaining a programmatic responsibility, but, rather, on a sincere and historically founded belief that a relaxation of the political activity restrictions would pose a very real and serious threat to the maintenance of a career merit system. The enactment of such legislation would deprive employees of the protections which they now enjoy from the subtle, sometimes even unintended, pressures which can be and would be brought to bear.

As I testified before the House Subcommittee on Employee Political Rights and Inter-governmental Programs on March 25, 1975, it is an empty hope that provisions against coercion, no matter how tightly drawn they might be, can alone protect the merit system against the encroachment of partisan political influences. It is the prohibition against active participation in partisan political management and partisan political campaigns which constitutes the most significant safeguard against coercion--whether from superiors in the Federal service, or from outsiders. Employees realize that partisan political activity can subject them to removal, and know that those persons who could request them to be politically active have no greater threat

than that. Because of the management and campaigning provisions of the Hatch Act, most employees know that they need not respond to political requests or suggestions. This entire protective fabric would be destroyed if the prohibitions against political management and campaigning are removed, as is being proposed in this legislation. This is true even in view of the proposed continuation of present Hatch Act restrictions with respect to certain employees of the Internal Revenue Service, the Department of Justice, and the Central Intelligence Agency. We believe that whatever political activity is permitted to employees will eventually become that which is required of them. We do not believe, as has been stated by the public employee organizations, that Federal employees overwhelmingly, or that even a majority of them, are in favor of repealing the management and campaigning prohibition. We believe the opposite to be true.

Moreover, by limiting the Government employee's involvement in partisan politics, the Hatch Act reduces the likelihood that an employee will allow partisan political views to interfere with the impartial execution of the Government's business. The current Hatch Act makes it impossible for the party in power, or any other political power, to turn the Federal work force into an organized instrument for affecting the outcome of elections. Equally important, in our view, is the concern that involvement in partisan political activities on the part of Federal employees, being observed by the public, will erode public confidence in the impartial administration of Federal laws and programs. When the public sees at work a Federal employee who is prominently identified with partisan politics, and at the same time is charged with responsibility for the impartial, nonpartisan execution of public duties, it will inevitably have doubts about that employee's impartiality. One of the frequently made observations concerning the recent "Watergate" revelations, was the manner in which the daily operation of the Government continued uninterrupted, due in large measure to the dedication and efforts of impartial civil servants in the career service. It seems incongruous for the Congress to now seriously entertain a proposal to deprive the Federal service of that shield of impartiality. It seems to us that anything which has the clear potential for undermining the public's confidence in the impartiality and efficiency of the civil service should be rejected.



In addition to those concerns with the proposed bill in general, we would like to direct your attention to several other of the provisions which we feel are particularly troublesome.

Since, for the purposes of the proposed legislation, [section 7322 (1)], the President and the Vice President are deemed to be employees, they are, unless otherwise excepted, covered by the political activity restrictions applicable to other employees. Although the President and the Vice President are excluded from the prohibitions of section 7324 (Solicitation), and from section 7325 (Political activities on duty), they are nonetheless subject to section 7323, (use of official authority or influence). Under this section the President and the Vice President

are prohibited, in part, from influencing others with respect to their vote, the giving or withholding of a political contribution, or engaging in political activity. Although such misuse of official authority or influence is further defined with respect to a promise to confer a benefit or to effect a reprisal, it is "not limited to" these areas alone [section 7323(a) and (c)]. Thus, this section leaves an area of uncertainty as to the specific point at which a President or Vice President might violate this provision. Further, no procedure is set forth under section 7328(c)(3) should it appear that the President has committed a violation.

We are also troubled by the relaxation on the exchange of contributions among employees which results from section 7324. The Congress has previously recognized the need to restrict any solicitation or receipt of political contributions among employees, regardless of whether there exists a superior-subordinate relationship. The seriousness with which Congress has previously viewed this matter is evidenced by the existence of prohibitory provisions in the criminal code. Now it is being proposed that even those criminal provisions be amended, and that employees be permitted to freely solicit and receive contributions from one another, with the exception of those in a superior-subordinate relationship and of certain employees of the Internal Revenue Service, the Department of Justice and the Central Intelligence Agency. The possibilities for abuse are obvious. We would point out that the current restrictions do not preclude or inhibit an employee from making a voluntary contribution to the duly constituted campaign organization of any candidate, including that of an incumbent Member of Congress.

We seriously question the effectiveness of enforcement of the prohibition on an employee engaging in campaign or management activities while on duty, if the employee is not required to take a leave of absence from his or her job to become a candidate. Proposed section 7326 would require agencies to grant use of accrued annual leave to an employee-candidate upon request, but does not require the employee to take a leave of absence.

We have some reservations about the need for the proposed Board on Political Activities of Federal Employees as well. We would point out that there was no credible evidence introduced during the Congressional hearings that the Commission's performance of the responsibilities which would now be assumed by the Board has ever been inadequate or subject to serious criticism. We accordingly see no need for the new Board.

Finally, we have serious doubt as to the constitutionality of any provision, such as those at sections 7324(b)(3) and 7331 of this bill, which would allow Congress to disapprove proposed regulations of an Executive agency, but would defer to the Department of Justice on that issue.

Because we feel strongly that enactment of this type of legislation would have serious deleterious effects on the impartial administration of, and public confidence in, the Federal civil service, the Commission strongly urges that the President not approve this enrolled bill. A veto message is attached.

By direction of the Commission:

Sincerely yours,

Robert Hampton

Robert E. Hampton
Chairman

Enclosure

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

5 April 1976

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for our views and recommendations on enrolled bill H.R. 8617, "To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper solicitations, and for other purposes."

Enrolled bill H.R. 8617 would permit most Federal employees to participate in partisan political activity; however, it would permit employees of the Central Intelligence Agency, the Justice Department, and the Internal Revenue Service to engage in political activities only when the agency head determines that their activities would not adversely affect public confidence or the integrity of the Government. The Congress could disapprove determinations of any agency head.

It is recommended that the President veto H.R. 8617. While the Agency favors restrictions on the partisan political activities of Federal employees, it is believed that the selective application of such restrictions to three agencies is arbitrary. For example, the political activities of Federal employees in other Intelligence Community components with responsibilities similar to those of the Central Intelligence Agency are not restricted. In addition, the proposed legislation would impose on the agency head the burden of determining under a set of vague and inherently arbitrary standards which employees may engage in political activity. This would invite contention and litigation. Finally, by authorizing Congress to overturn an agency head's determination, the bill raises the question of the propriety of legislative veto of administrative decisions in the Executive branch.

For the foregoing reasons, the Central Intelligence Agency favors retaining existing law, which is more certain, clear and equitable than the proposed arrangement.

Sincerely,

George Bush
Director

LAW DEPARTMENT
Washington, DC 20260

April 5, 1976

Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This responds to your request for the views of the Postal Service with respect to the enrolled bill:

> H.R. 8617, "To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes."

1. Purpose of Legislation as it Pertains to the Postal Service

The bill would amend Subchapter III of chapter 73 of title 5, United States Code, dealing with political activities, which applies to Postal Service employees under 39 U.S.C. §410(b)(1). The bill would repeal the current prohibition on partisan political activity by Federal and postal employees, and establish a policy encouraging employees fully to exercise, to the extent not expressly prohibited by law, their rights of voluntary participation in the political processes of the Nation. The bill would retain or strengthen existing prohibitions against using official authority to affect the result of an election, soliciting or accepting payments for voting, engaging in political activity while on duty, and similar practices. The bill would establish a new Board on Political Activities of Federal employees to

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| | hear and decide cases regarding violations of these provisions. |
| 2. Position of the Postal Service. | The Postal Service opposes the enactment of this measure. The elimination of partisan political considerations from postal operations was a hallmark of the Postal Reorganization Act. Removing the prohibitions against partisan activity by postal employees could seriously undermine this important component of postal reform. |
| 3. Timing. | We have no recommendation regarding the timing of Presidential action on this measure. |
| 4. Cost or Savings. | We have no estimate as to the cost or savings of this measure. |
| 5. Recommendation of Presidential Action. | The Postal Service believes the President should veto this measure. |

Sincerely,

W. Allen Sanders

W. Allen Sanders
Assistant General Counsel
Legislative Division

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

# Department of Justice
Washington, D.C. 20530

April 5, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request I have examined a fasimile of the enrolled bill H.R. 8617, 94th Cong., the Federal Employees' Political Activities Act of 1976. In view of the time pressure your office suggested that this Department focus its review on proposed sections 7324(b)(2) and (3); 7328(e)(3)(A); 7328 (f)(2), and 7331 of title 5, U.S. Code.

1. Sections 7324(b)(2) and 7325(d)(1) would provide that certain relaxations from the original Hatch Act are not to apply to employees of the Internal Revenue Service, the Department of Justice and the Central Intelligence Agency. Section 7324(b)(2) would carve out of that exception (A) employees of those agencies who are not in a sensitive position, and (B) those who are in a sensitive position but with respect to whom the agency head has determined by regulation that the involvement of such employees in the relevant activities would not adversely affect the integrity of the Government, or the public's confidence in the integrity of the Government. Section 7324(b)(3) would provide for the disapproval by concurrent resolution of the regulations issued by the agency head.

The Department has some reservation concerning the practicability of determining which of its employees in a sensitive position should be excepted because their activities otherwise prohibited would not adversely affect the integrity of the Government or the public's confidence in the integrity of the Government.

More serious is the provision that subjects regulations to disapproval by concurrent resolution. This Department has consistently taken the position that provisions which enable Congress to disapprove implementing regulations authorized by statute violate the Constitution on two grounds: First, they are inconsistent with the principle of Separation of Powers, and, second, they are inconsistent with Article I, section 7, clauses 2 and 3 which require presentation to the President of all Congressional action which is designed to have legal effect beyond its confines. President Ford announced his agreement with this position in several signing statements: see, e.g., those relating to the Education Amendments of 1974, Pub. Law 93-380, 10 Weekly Compilation of Presidential Documents 1056; Amtrak Improvement Act of 1975, Pub. Law 94-25, 11 id. 560; Child Support Amendments, Pub. Law 94-88, 11 id.856. In his signing statement on the Social Security Act Amendments of 1973, Pub. Law 93-66, 9 id. 896, President Nixon instructed the agency head involved not to exercise a statutory rulemaking authority, subject to a Congressional veto.

2. Section 7328(e)(3)(A) and (B) would establish a procedure for the Board on Political Activities of Federal Employees to confer transactional immunity upon employees and thereby obtain their testimony in certain cases. The Department has no objection to permitting the Board to compel testimony pursuant to a grant of immunity, nor do we object in substance, to the procedures outlined in section 7328(e)(3)(A), which -- similarly to those in 18 U.S.C. 6001 et seq., applicable to other government agencies -- require that the Attorney General's approval be first obtained for the purpose. The Department, however, does strongly object to the provision in section 7328(e)(3)(B), which would authorize the Board, upon obtaining the Attorney General's approval, to bestow immunity from prosecution "for or on account of any transaction, matter, or thing concerning which the employee is compelled under this paragraph, after having claimed the privilege against self-incrimination, to testify or produce evidence". Such immunity confers an unnecessary gratuity in that it is broader than required by the Fifth Amendment. Kastigar v. United States, 406 U.S. 441 (1972). Moreover, this proposed section would operate outside the unified framework for immunity that was enacted by Congress in 1970, and is codified as 18 U.S.C. 6001-6005. Those statutes (sustained in the Kastigar case, supra) provide for the supplanting of the Fifth Amendment privilege by the conferral of immunity from use of the testimony that is compelled. The proposal to return to the "transactional" form of immunity which 18 U.S.C. 6001 et seq. was designed to replace is regarded as most undesirable. We note that the

goal of section 7328(e)(3)(A) and (B) may be accomplished readily in a manner acceptable to this Department by including the Board as an "Agency of the United States" through an amendment of 18 U.S.C. 6001, thus bringing the Board within the purview of the existing generally applicable statutory scheme.

3. Section 7328(f)(2) would authorize the court to award against the United States reasonable counsel fees and other litigation costs reasonably incurred by an employee who prevails in his attack against a penalty imposed by the Board on Political Activities of Federal Employees. The general rule governing the award of costs against the United States (28 U.S.C. 2412) does not authorize the award of counsel fees against the United States. Although analogous provisions may be found in legislation such as the Freedom of Information Act Amendments of 1974 and the Privacy Act, both enacted in 1974, 5 U.S.C. (Supp. IV) 552(a)(4)(E), 552a(g)(1)(B), the Department is unable to perceive any sound ground for the proliferation of such provisions.

4. Section 7331 would provide that the regulations of the Civil Service Commission implementing its responsibilities under the provision of the bill cannot take effect if disapproved by either House of Congress. This Department is opposed to these provisions for the constitutional reasons set forth above.

In sum, the Department of Justice is unable to recommend Executive approval of the bill.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

APR 5 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 8617, "To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes."

The primary thrust of the enrolled bill is to repeal certain of the existing restrictions in the Hatch Act, subchapter III of chapter 73 of title 5, United States Code, which prohibit employees of the District of Columbia and of the Federal Government from participation in partisan political campaigns and other political practices.

The House and Senate Committee reports on H.R. 8617 include letters from the Office of Management and Budget, the Civil Service Commission and the Department of Justice, among others, strongly opposing H.R. 8617 and other similar bills. Treasury concurs in that opposition and believes that any benefits to Federal employees resulting from the liberalization of the Hatch Act, as enacted in H.R. 8617, would be outweighed by the concomitant negative impact on the merit system and on public confidence in the nonpartisan administration of Government operations.

By limiting the Government employee's involvement in partisan political activities, the Hatch Act assures that employees will not be compelled, or feel themselves compelled, to engage in such activities in order to enhance their career prospects. If the enrolled bill were to become law, the fine line between voluntary and involuntary political contributions and participation would become even less distinct, and the pressures on Federal employees could greatly increase.

Further, when a Federal employee is both prominently identified with partisan politics and charged with the execution of public duties, the public will inevitably have serious doubts about that employee's impartiality.

The Department raises these concerns especially with regard to employees of the Internal Revenue Service (IRS). When H.R. 8617 was under consideration by the Senate Post Office and Civil Service Committee, Commissioner Alexander stressed to that Committee the need for retaining Hatch Act prohibitions with respect to IRS personnel in general. The bill as enacted would retain existing prohibitions only with respect to those IRS employees who are in sensitive positions. Only 70 of the approximately 80,000 IRS employees occupy positions which would fall within the definition of "sensitive position" contained in H.R. 8617. Thus, the enrolled bill also fails to incorporate the significant recommendation which the Commissioner urged on the Congress.

In view of the foregoing, this Department would concur in a recommendation that the enrolled enactment not be approved by the President.

Sincerely yours,

General Counsel
Richard R. Albrecht

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 7 Time: 1100am

FOR ACTION: ~~Brad Parsons~~ DAVID GLISS ok after cc (for information): Jim Cavanaugh
Max Friedersdorf no objection Ed Schmults
Ken Lazarus no objection
Jack Marsh NSC/S OK no objection
Robert Hartmann

FROM THE STAFF SECRETARY

DUE: Date: April 8 Time: 1000am

SUBJECT:

H.R. 8617 - Federal employee political activity

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Connor 4/9 652pm



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

~~Jerry~~ R.
~~For the President~~

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 7 Time: 1100am

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus ✓
Jack Marsh NSC/S
Robert Hartmann

cc (for information): Jim Cavanaugh
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REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Recommend veto occur on Tuesday, April 13th (last day for action) in order that vote to override not occur until after the Easter Recess. Since editorials and public sentiment are in our favor, an additional period of time prior to a vote would benefit the President's position. Additionally, a number of groups opposed to the legislation are keying their mass mailings to a vote after the Recess. The veto message needs some work and I shall provide our comments in this regard to the Domestic Council.

Ken Lazarus 4/8/76



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

**MEMORANDUM**

**NATIONAL SECURITY COUNCIL**

April 8, 1976

MEMORANDUM FOR: Mr. James Cannon

FROM: for Jeanne W. Davis

SUBJECT: H.R. 8617 - Federal Employee Political Activity

The NSC Staff concurs in the recommendation to veto this legislation.

THE WHITE HOUSE

WASHINGTON

April 8, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF

SUBJECT: H.R. 8617 - Federal employee political activity

The Office of Legislative Affairs concurs with the agencies that the subject bill be VETOED.

Attachments

To: [illegible]
F: [illegible]
4-7-76
10:15 a.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 6 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8617 - Federal employee political activity
Sponsor - Rep. Clay (D) Missouri and 5 others

Last Day for Action

April 13, 1976 - Tuesday

Purpose

Substantially repeals Hatch Act restrictions to allow nearly all Federal employees to participate actively in regular party politics, become candidates for elective office, and collect and exchange political contributions.

Agency Recommendations

| | |
|---|---|
| Office of Management and Budget | Disapproval (Veto message attached) |
| Civil Service Commission | Disapproval (Veto message attached) |
| Central Intelligency Agency | Disapproval |
| U.S. Postal Service | Disapproval |
| Department of Justice | Unable to recommend approval |
| Department of the Treasury | Concurs in recommendation against approval |

Discussion

The stated purpose of the enrolled bill is to encourage Federal employees to fully exercise their rights of voluntary participation in the political processes of the Nation. To that end, the bill would repeal nearly all existing restraints imposed by the Hatch Act on off-duty political party activity of Federal employees. The original House version of H.R. 8617, which is substantially

TO THE HOUSE OF REPRESENTATIVES:

I am today returning, without my approval, H.R. 8617, a bill that would essentially repeal the Federal law, commonly known as the Hatch Act, which prohibits Federal employees from taking an active part in partisan politics.

This bill runs directly counter to the concept of a neutral nonpartisan Government service. It would undermine the merit system which has been carefully nurtured since enactment of the Civil Service Act in 1883 by opening the door to a return to the spoils system of the 19th century.

The Hatch Act is designed to assure a fair and impartial civil service. By precluding active partisan politics by Federal employees, the Act prevents any political party or other political power from turning the Federal workforce into an organized instrument for affecting the outcome of elections.

The Hatch Act fosters impartial performance by Government employees in administering the laws of the land regardless of personal political philosophies and beliefs. This is essential for public confidence in the Government's business. When the public sees a Federal employee who is prominently identified with partisan politics, it will inevitably have doubts about that employee's impartiality in executing his or her public duties.

And, further, the Act protects the Federal employee from coercion for political ends. By limiting the employee's involvement in partisan political activities, it serves to assure that employees will not be compelled,

or feel themselves compelled, to engage in partisan political activities in order to curry favor with their superiors and thereby enhance their prospects for continued employment and advancement.

The enactment of the Hatch Act in 1939 was a major milestone in the extended effort, earlier reflected in the long struggle leading to the Civil Service Act of 1883, to establish and maintain the principle of a neutral Federal workforce hired and advanced on the basis of merit rather than political affiliation or activity. The 1883 Act was designed to end the spoils system of the 1820's to the 1880's, when Federal jobs were used as rewards for political service. The Hatch Act, in turn, was a direct reaction to widespread abuses in the 1936 and 1938 elections, when employees were coerced into making political contributions to get or keep Federal jobs.

If, as contemplated by H.R. 8617, the prohibitions against political activism and campaigning were removed, we would be destroying this entire fabric of employee impartiality and freedom from coercion, which has been largely successful in keeping undue political influence from affecting Government progams or personnel management. Pressures can be brought to bear on Federal employees in extremely subtle ways beyond the reach of any anti-coercion regulation, no matter how tightly drawn it may be. The employees would find that whatever political activity is permitted to them may well become that which is required of them.

It is significant that H.R. 8617 would retain present Hatch Act provisions for certain employees of the Department of Justice, the Internal Revenue

Service, and the Central Intelligency Agency. The Congress itself apparently has doubts about the wisdom of tarnishing the political impartiality of these employees in carrying out their responsibilities. But what of the employee responsible for approving or rejecting a loan or a grant? Or a contracting officer? Or employees in other law enforcement activities? Or employees determining benefit rights?

Proponents of this legislation state that the Hatch Act makes Federal employees "second class" citizens unable to exercise their full rights under the First Amendment to participate in the political process. There is no doubt that the Hatch Act restricts the rights of employees to engage actively in partisan politics. It was intended to do precisely that. It also assures, however, that their careers will be based on performance and not on political allegiance.

The U.S. Supreme Court has twice ruled that the Hatch Act is constitutional, most recently in 1973. At that time, the Court noted that its decision confirms

> "a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited."

The Court further stated that Federal employees

> "are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government--the impartial execution of the laws--it is essential that federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government."

The Hatch Act is intended to strike a delicate balance between "fair and effective government" and the First Amendment rights of individual employees. It has been successful, in my judgment, in striking that balance.

Under its provisions, employees may register and vote in any election, express opinions on political issues or candidates, be members of and make contributions to political parties, attend political rallies and conventions, and engage in a variety of other political activities. What they may not--and, in my view, should not--do is attempt to be partisan political activists and impartial Government employees at the same time.

H.R. 8617 is bad law in many other respects. For example, it contains provisions which represent an unconstitutional exercise of Congressional power in disapproving proposed regulations of an Executive agency. Its main effect, however--politicization of the civil service--is unacceptable, and I am therefore vetoing it.

The WHITE HOUSE

April , 1976