

The original documents are located in Box 44, folder “President - Campaign Executive Branch Officials Participation (3)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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NOTES

CABINET BRIEFING

JULY 16, 1975

Restrictions on Political Participation
by Executive Branch Officials and Employees

- I. Purpose: To familiarize department heads with provisions of Federal law which may impact on their official duties during the course of the 1976 Presidential campaign.
 - A. Campaign Reform Act: The Act imposes a number of restrictions on campaign management; e. g., reporting requirements, contribution limits, spending limitations, which are a principal focus of the Republican National Committee and the President's political committee. By and large, however, these restrictions on campaign management are not central to the concerns of Presidential appointees within the Executive Branch that they not run afoul of Federal law during the 1976 election.
 - B. Restrictions on officers and employees: Federal law contains a number of restrictions on the conduct of Federal officials and employees relevant to the



political process. Many of these provisions operate as direct restraints on Presidential appointees. Others operate indirectly to the extent that they limit the ability of appointees to direct action by career civil servants and others who are precluded from engaging in the political process.

- C. Cautionary Note: It is the responsibility of Government lawyers to alert officials and employees of legal restrictions which may restrict official activities. Legal questions which relate to political management, on the other hand, are within the exclusive province of the political committees. Hopefully, this briefing will alert you to the general nature of the first category of questions and lead you to convince yourself of the propriety of any official action before it is taken.

[Chart #1]

- II. Relevant Provisions of Law: This chart outlines the basic architecture of current law.



- A. Criminal Sanctions: Chapter 29 of Title 18 of the United States Code contains a series of provisions of general applicability. As you will see later, these prohibitions relate to the improper use of Government office, funds or premises and to improper aspects of political fund raising.
- B. Civil Restrictions: Civil restrictions imposed by current law derive from two sources: (1) The so-called "Hatch Act" and implementing regulations which are found in Title 5 of the United States Code; and Volume 5 of the Code of Federal Regulations, and (2) Executive Order 11222.

The Hatch Act and implementing regulations are applicable to all but three classes of employees and officials --

- White House personnel -- I might note, however, that since this exception tracks budget authority, it does not include other offices within the Executive Office of the President such as the Domestic Council.



- Heads and assistant heads of military and civilian departments within the Executive Branch.
- Presidential appointees who have obtained the advice and consent of the Senate.

Two points should be made with respect to the effect of the Hatch Act. First, it covers not only career civil servants but also so-called "Schedule C" positions which are filled without regard to normal Civil Service requirements -- thus, the personal staffs of Cabinet members and other appointees are, as they say in the trade, "hatched".

Secondly, although the Hatch Act does not directly limit the activities of top-level Executive Branch officials, it does impose limitations on the way you relate to the personnel within your departments and agencies.

E.O. 11222 applies to all officials and employees regardless of status under the Hatch Act and generally prohibits any preferential treatment on behalf of outside organizations or persons and the use of Federal property for non-official activities.



[Chart #2]

III. Federal Crimes: This chart outlines certain Federal crimes which are relevant to our discussions. Several of these offenses can be a trap for the unwary.

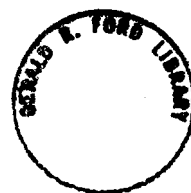
Contributions are prohibited among Government employees. Thus, it is a crime for any official or employee to solicit a contribution from another official or employee. Similarly, the transfer of political funds between such officials or employees is also proscribed.

It is a crime to solicit or receive any contribution in any room or building occupied by a Government official or employee.

The term "contribution" can have various meanings within these statutes. An original donation of funds always qualifies. In some instances, subsequent transfers are also "contributions" within the terms of these sanctions.

Relative to the use of office for partisan political purpose, three separate crimes are set forth in chapter 29 --

- Solicitation or receipt of anything of value in return for a promise to secure appointive office.



- Promising employment as consideration or reward for political activity.
- Discrimination by one Federal employee in favor or against another employee on account of political contributions.

It is a Federal crime for corporations, unions or government contractors to contribute to a Federal election campaign.

It is a Federal crime to distribute written or printed campaign material relating to a candidate which does not identify its source.

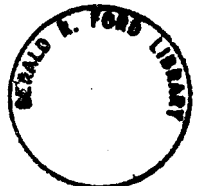
It is a Federal crime to make a campaign contribution in the name of another or to permit one's name to be used to effect such a contribution.

The use of official funds for political purposes could run afoul of several statutes.

[Chart #3]

IV. Civil Restrictions: As noted earlier, the Hatch Act applies to all officials and employees who are not expressly exempted.

A. Effect of Hatch Act: The Act prohibits Federal employees covered from participating in any way in the process of electing Federal office-holders. By way of example, you may not ask employees to --



1. attend partisan political functions
2. volunteer for partisan political activity
3. make political contributions
4. distribute political literature
5. wear political buttons
6. assist with political correspondence
7. help with arrangements for political events
8. write political speeches
9. do errands of a political nature

B. Scope of Coverage: These restrictions apply --

1. to part-time and full-time employees
2. to career and Schedule C employees
3. during business and private hours
4. during any leave or furlough

[Chart #4]

V. Illustrative Problem Areas: During the upcoming months, you will be confronted by problems that may fall into the gray areas of current law.

A. Receipt of contributions: In the event a contribution is forwarded to your office by some well-meaning Republican, it should of course be returned rather than forwarded to the election committee.



B. Use of government materials, facilities and privileges:

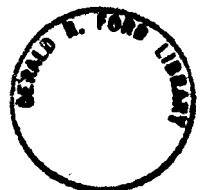
In returning a contribution, it would be appropriate to utilize departmental stationary and the franking privilege since it is your duty to return the contribution. However, many other situations will not be so clear.

C. Personal Staff: Beware of the use of your staff assistants and secretaries for partisan political activity.

D. Travel: The question of whether all or some portion of a trip is political in nature to be paid from political funds can be a close one. In some instances, it will also be difficult to apportion costs or compute the values of services to be reimbursed.

E. Appearances: This presentation has focused on the bare bones of Federal law. Obviously, questions of appearance are as important as narrow technical interpretations of the law.

F. Traditionally non-political offices: The three Cabinet members who traditionally have been held outside the political process will face particularly difficult problems in avoiding appearances of misuse of office.



VI. Close: A memorandum is available treating these matters in much greater detail. Close questions should always be referred to counsel. We stand ready to be of any assistance that might be necessary.



*copy sent to
Barry*

THE WHITE HOUSE
WASHINGTON

July 21, 1975

MEMORANDUM FOR:

PHIL BUCHEN

THRU:

MAX L. FRIEDERSDORF *M.L.*
VERN LOEN *VL*

FROM:

CHARLES LEPPERT, JR. *CLJr*

SUBJECT:

H. R. 8617 - Federal Employees' Political
Activities Act of 1975.

Attached per your request is a copy of H. R. 8617, the Federal Employees' Political Activities Act of 1975.

Please note that page 2, line 9 defines "employee" to include the "President" and the "Vice President."



94TH CONGRESS
1ST SESSION

H. R. 8617

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 1975

Mr. CLAY (for himself, Mrs. SPELLMAN, Mr. SOLARZ, Mr. CHARLES H. WILSON of California, Mr. HARRIS, and Mrs. SCHROEDER) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

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 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Federal Employees'
- 4 Political Activities Act of 1975".

- 5 SEC. 2. (a) Subchapter III of chapter 73 of title 5,
- 6 United States Code, is amended to read as follows:



1 "SUBCHAPTER III—POLITICAL ACTIVITIES

2 "§ 7321. Political participation

3 "It is the policy of the Congress that employees should
4 be encouraged to fully exercise, to the extent not expressly
5 prohibited by law, their rights of voluntary participation in
6 the political processes of our Nation.

7 "§ 7322. Definitions

8 "For the purpose of this subchapter—

9 "(1) 'employee' means any individual, including
10 the President and the Vice President, employed or
11 holding office in—

12 "(A) an Executive agency,

13 "(B) the government of the District of
14 Columbia,

15 "(C) the competitive service, or

16 "(D) the United States Postal Service or the
17 Postal Rate Commission;

18 but does not include a member of the uniformed services;

19 "(2) 'candidate' means any individual who seeks
20 nomination for election, or election, to any elective office,
21 whether or not such individual is elected, and, for the
22 purpose of this paragraph, an individual shall be deemed

23 to seek nomination for election, or election, to an elective
24 office, if such individual has—

25 "(A) taken the action required to qualify for
26 nomination for election, or election, or

1 "(B) received political contributions or made
2 expenditures, or has given consent for any other
3 person to receive political contributions or make ex-
4 penditures, with a view to bringing about such indi-
5 vidual's nomination for election, or election, to such
6 office;

7 "(3) 'political contribution'—

8 "(A) means a gift, subscription, loan, advance,
9 or deposit of money or anything of value, made for
10 the purpose of influencing the nomination for elec-
11 tion, or election, of any individual to elective office
12 or for the purpose of otherwise influencing the re-
13 sults of any election;

14 "(B) includes a contract, promise, or agree-
15 ment, express or implied, whether or not legally
16 enforceable, to make a political contribution for any
17 such purpose; and

18 "(C) includes the payment by any person,
19 other than a candidate or a political organization,
20 of compensation for the personal services of another
21 person which are rendered to such candidate or po-
22 litical organization without charge for any such
23 purpose;

24 "(4) 'superior' means an employee (other than the
25 President or the Vice President) who exercises super-

1 vision of, or control or administrative direction over,
2 another employee;

3 “(5) ‘elective office’ means any elective public
4 office and any elective office of any political party or
5 affiliated organization; and

6 “(6) ‘Board’ means the Board on Political Activi-
7 ties of Federal Employees established under section 7327
8 of this title.

9 **“§ 7323. Use of official authority or influence; prohibition**

10 “(a) An employee may not directly or indirectly use or
11 attempt to use the official authority or influence of such em-
12 ployee for the purpose of—

13 “(1) interfering with or affecting the result of any
14 election; or

15 “(2) intimidating, threatening, coercing, command-
16 ing, influencing, or attempting to intimidate, threaten,
17 coerce, command, or influence—

18 “(A) any individual for the purpose of inter-
19 fering with the right of any individual to vote as
20 such individual may choose, or of causing any indi-
21 vidual to vote, or not to vote, for any candidate or
22 measure;

23 “(B) any person to give or withhold any politi-
24 cal contribution; or

1 “(C) any person to engage, or not to engage,
2 in any form of political activity whether or not such
3 activity is prohibited by law.

4 “(b) For purposes of subsection (a) of this section, ‘use
5 of official authority or influence’ includes, but is not limited
6 to, promising to confer or conferring any benefit (such
7 as appointment, promotion, compensation, grant, contract,
8 license, or ruling), or effecting or threatening to effect any
9 reprisal (such as deprivation of appointment, promotion,
10 compensation, grant, contract, license, or ruling).

11 **“§ 7324. Solicitation; prohibition**

12 “An employee may not—

13 “(1) give or offer to give a political contribution
14 to any individual either to vote or refrain from voting,
15 or to vote for or against any candidate or measure, in
16 any election;

17 “(2) solicit, accept, or receive a political contribu-
18 tion to vote or refrain from voting, or to vote for or
19 against any candidate or measure, in any election;

20 “(3) knowingly give or hand over a political con-
21 tribution to a superior of such employee; or

22 “(4) knowingly solicit, accept, or receive, or be in
23 any manner concerned with soliciting, accepting, or
24 receiving, a political contribution—

25 “(A) from another employee (or a member

H.R. 8617
THE FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

OPENING STATEMENT BY MR. CLAY

MR. CHAIRMAN, I move that the Committee take up and consider the bill, H.R. 8617, and that it be open for amendments at any point.

MR. CHAIRMAN, H.R. 8617, the Federal Employees' Political Activities Act of 1975, was reported by the Subcommittee on Employee Political Rights and Intergovernmental Programs as a "clean bill" on July 10, 1975.

Earlier, the Subcommittee conducted eleven days of hearings and received testimony from over one hundred witnesses in Washington and six other cities across the nation. Testimony in support of H.R. 3000, which I introduced earlier this year with the co-sponsorship of 64 of my colleagues, was overwhelmingly in support of this legislation. There were however, a number of recommendations for the strengthening of H.R. 3000 and related legislation which the Subcommittee has incorporated into the "clean bill", H.R. 8617.

MR. CHAIRMAN, the Hatch Act was enacted in an effort to protect federal employees from improper involvement in partisan political activities. Previous studies, public hearings, and staff surveys reveal no evidence that voluntary political activity in any way erodes the merit system or operates against the public interest. Yet, existing law, which actually consists of over 3000 administrative regulations, is vague, overly broad and infringes upon the rights of every American to participate fully in the political life of this nation.

H.R. 8617, takes these realities into consideration. It prohibits those involuntary political activities which tend to erode



public confidence in the integrity of the merit system. It establishes an independent Board to adjudicate alleged violations. It gives the Commission strengthened authority for investigating alleged violations. It provides due process and judicial review for federal employees.

The major provisions of the Subcommittee bill follow:

- *States that federal employees are encouraged to exercise their right of voluntary political participation.
- *Prohibits the use of official authority, influence, or coercion with the right to vote, not to vote or to otherwise engage in political activity.
- *Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in government rooms or buildings.
- *Prohibits political activity while on duty, in federal buildings, or in uniform.
- *Provides leave for candidates for elective office.
- *Establishes an independent Board on Political Activities of Government Personnel whose function is to hear and adjudicate alleged violations of law.
- *Authorizes the Civil Service Commission to investigate alleged violations of law and provides for subpoena authority, due process, and judicial review of adverse decisions.
- *Subjects violators of law to removal, suspension or lesser penalties at the discretion of the Board.
- *Requires that the Civil Service Commission conduct a program for informing federal employees of their rights of political participation and report annually to the Congress on its implementation.

MR. CHAIRMAN, this bill represents a significant improvement over earlier legislative proposals which aimed to achieve full and complete political suffrage for federal employees. The Subcommittee worked long and hard in forging this bill. It incorporates many of

the suggestions of not only its supporters but also the concerns of those relatively few who withheld their endorsement. The bill is comprehensive. The bill is specific. The bill is fair. I urge your support in ensuring the prompt and speedy enactment of this landmark legislation.

1 of another employee's immediate family) with re-
 2 spect to whom such employee is a superior; or

3 " (B) in any room or building occupied in the
 4 discharge of official duties by—

5 " (i) an individual employed or holding
 6 office in the Government of the United States, in
 7 the government of the District of Columbia,
 8 or in any agency or instrumentality of the
 9 foregoing; or

10 " (ii) an individual receiving any salary or
 11 compensation for services from money derived
 12 from the Treasury of the United States.

13 **“§ 7325. Political activities on duty, etc.; prohibition**

14 “An employee may not engage in political activity—

15 “ (1) while such employee is on duty,

16 “ (2) in any room or building occupied in the dis-
 17 charge of official duties by an individual employed or
 18 holding office in the Government of the United States,

19 in the government of the District of Columbia, or in
 20 any agency or instrumentality of the foregoing, or

21 “ (3) while wearing a uniform or official insignia
 22 identifying the office or position of such employee.

23 **“§ 7326. Leave for candidates for elective office**

24 “ (a) An employee who is a candidate for elective
 25 office shall, upon the request of such employee, be granted

1 leave without pay for the purpose of allowing such employee
 2 to engage in activities relating to such candidacy.

3 “ (b) Notwithstanding section 6302 (d) of this title,
 4 an employee who is a candidate for elective office shall, upon
 5 the request of such employee, be granted accrued annual
 6 leave. Such leave shall be in addition to leave without pay
 7 to which such employee may be entitled under subsection
 8 (a) of this section.

9 **“§ 7327. Board on Political Activities of Federal Employees**

10 “ (a) There is established a board to be known as the
 11 Board on Political Activities of Federal Employees. It shall
 12 be the function of the Board to hear and decide cases regard-
 13 ing violations of section 7323, 8324, and 7325 of this title,

14 “ (b) The Board shall be composed of 3 members—

15 “ (1) one member of which shall be appointed, with
 16 the confirmation of a majority of both Houses of the
 17 Congress, by the President and who shall serve as Chair-
 18 man of the Board;

19 “ (2) one member of which shall be appointed, with
 20 the confirmation of a majority of both Houses of the
 21 Congress, by the Speaker of the House of Representa-
 22 tives, after consultation with the majority leader of the
 23 House and the minority leader of the House; and

24 “ (3) one member of which shall be appointed, with
 25 the confirmation of a majority of both House of the

1 Congress, by the President pro tempore of the Senate,
2 after consultation with the majority leader of the Senate
3 and the minority leader of the Senate.

4 “(c) Members of the Board shall be chosen on the basis
5 of their professional qualifications from among individuals
6 who, at the time of their appointment, are employees (as
7 defined under section 7322 (1) of this title).

8 “(d) (1) Members of the Board shall serve a term of
9 3 years, except that of the members first appointed—

10 “(A) the Chairman shall be appointed for a term
11 of 3 years,

12 “(B) the member appointed under subsection (b)
13 (2) of this section shall be appointed for a term of 2
14 years, and

15 “(C) the member appointed under subsection (b)
16 (3) of this section shall be appointed for a term of 1
17 year.

18 An individual appointed to fill a vacancy occurring other
19 than by the expiration of a term of office shall be appointed
20 only for the unexpired term of the member such individual
21 will succeed. Any vacancy occurring in the membership of
22 the Board shall be filled in the same manner as in the case
23 of the original appointment.

24 “(2) If an employee who was appointed as a member
25 of the Board is separated from service as an employee he

1 may not continue as a member of the Board after the 60-
2 day period beginning on the date so separated.

3 “(e) The Board shall meet at the call of the Chairman.

4 “(f) All decisions of the Board with respect to the
5 exercise of its duties and powers under the provisions of this
6 subchapter shall be made by a majority vote of the Board.

7 “(g) A member of the Board may not delegate to any
8 person his vote nor, except as expressly provided by this
9 subchapter, may any decisionmaking authority vested in the
10 Board by the provisions of this subchapter be delegated to
11 any member or person.

12 “(h) The Board shall prepare and publish in the Fed-
13 eral Register written rules for the conduct of its activities,
14 shall have an official seal which shall be judicially noticed,
15 and shall have its office in or near the District of Columbia
16 (but it may meet or exercise any of its powers anywhere
17 in the United States).

18 “(i) The Civil Service Commission shall provide such
19 clerical and professional personnel, and administrative sup-
20 port, as the Chairman of the Board considers appropriate
21 and necessary to carry out the Board's functions under this
22 subchapter. Such personnel shall be responsible to the Chair-
23 man of the Board.

24 “(j) The Administrator of the General Services Ad-
25 ministration shall furnish the Board suitable office space ap-

1 appropriately furnished and equipped, as determined by the
2 Administrator.

3 “(k) (1) Members of the Board shall receive no addi-
4 tional pay on account of their service on the Board.

5 “(2) Members shall be entitled to leave without loss of
6 or reduction in pay, leave, or performance or efficiency rating
7 during a period of absence while in the actual performance
8 of duties vested in the Board.

9 **“§ 7328. Investigation; procedures; hearing**

10 “(a) The Civil Service Commission shall investigate
11 reports and allegations of any activity prohibited by section
12 7323, 7324, or 7325 of this title.

13 “(b) As a part of the investigation of the activities of an
14 employee, the Commission shall provide such employee an
15 opportunity to make a statement concerning the matters
16 under investigation and to support such statement with any
17 documents the employee wishes to submit. An employee of
18 the Commission lawfully assigned to investigate a violation of
19 this subchapter may administer an oath to a witness attend-
20 ing to testify or depose in the course of the investigation.

21 “(c) (1) If it appears to the Commission after investi-
22 gation that a violation of section 7323, 7324, or 7325 of this
23 title has not occurred, it shall so notify the employee and the
24 agency in which the employee is employed.

1 “(2) Except as provided in paragraph (3) of this sub-
2 section, if it appears to the Commission after investigation
3 that a violation of section 7323, 7324, or 7325 of this title
4 has occurred, the Commission shall submit to the Board and
5 serve upon the employee a notice by certified mail, return
6 receipt requested (or if notice cannot be served in such man-
7 ner, then by any method calculated to reasonably apprise
8 the employee)—

9 “(A) setting forth specifically and in detail the
10 charges of alleged prohibited activity;

11 “(B) advising the employee of the penalties pro-
12 vided under section 7329 of this title;

13 “(C) affording a period of not less than 30 days
14 within which the employee may file with the Board a
15 written answer to the charges in the manner prescribed
16 by rules issued by the Board; and

17 “(D) advising the employee that unless the em-
18 ployee answers the charges, in writing, within the time
19 allowed therefor, the Board is authorized to treat such
20 failure as an admission by the employee of the charges
21 set forth in the notice and a waiver by the employee of
22 the right to a hearing on the charges.

23 “(3) If it appears to the Commission after investiga-
24 tion that a violation of section 7323, 7324, or 7325 of this
25 title has been committed by—

1 “(A) the Vice President;

2 “(B) an employee appointed by the President by
3 and with the advice and consent of the Senate;

4 “(C) an employee whose appointment is expressly
5 required by statute to be made by the President;

6 “(D) the Mayor of the District of Columbia; or

7 “(E) the Chairman or a member of the Council of
8 the District of Columbia, as established by the District of
9 Columbia Self-Government and Governmental Reor-
10 ganization Act;

11 the Commission shall refer the case to the Attorney General
12 for prosecution under title 18, and shall report the nature and
13 details of the violation to the President and to the Con-
14 gress.

15 “(d) (1) If a written answer is not duly filed within
16 the time allowed therefor, the Board may, without further
17 proceedings, issue its final decision and order.

18 “(2) If an answer is duly filed, the charges shall be
19 determined by the Board on the record after a hearing
20 conducted by a hearing examiner appointed under section
21 3105 of this title, and, except as otherwise expressly pro-
22 vided under this subchapter, in accordance with the require-
23 ments of subchapter II of chapter 5 of this title, notwith-
24 standing any exception therein for matters involving the
25 tenure of an employee. The hearing shall be commenced

1 within 30 days after the answer is filed with the Board
2 and shall be conducted without unreasonable delay. As soon
3 as practicable after the conclusion of the hearing, the exam-
4 iner shall serve upon the Board, the Commission, and the
5 employee such examiner's recommended decision with notice
6 to the Commission and the employee of opportunity to file
7 with the Board, within 30 days after the date of such notice,
8 exceptions to the recommended decision. The Board shall
9 issue its final decision and order in the proceeding no later
10 than 60 days after the date the recommended decision is
11 served. The employee shall not be removed from active duty
12 status by reason of the alleged violation of this subchapter
13 at any time before the effective date specified by the Board
14 in its final order.

15 “(e) (1) At any stage of a proceeding or investigation
16 under this subchapter, the Board may, at the written request
17 of the Commission or the employee, require by subpoena the
18 attendance and testimony of witnesses and the production
19 of documentary or other evidence relating to the proceeding
20 or investigation at any designated place, from any place in
21 the United States or any territory or possession thereof, the
22 Commonwealth of Puerto Rico, or the District of Columbia.
23 Any member of the Board may issue subpoenas and members
24 of the Board and any hearing examiner authorized by the
25 Board may administer oaths, examine witnesses, and receive

1 evidence. In the case of contumacy or failure to obey a sub-
 2 pena, the United States district court for the judicial district
 3 in which the person to whom the subpoena is addressed
 4 resides or is served may, upon application by the Board,
 5 issue an order requiring such person to appear at any desig-
 6 nated place to testify or to produce documentary or other
 7 evidence. Any failure to obey the order of the court may be
 8 punished by the court as a contempt thereof.

9 “(2) The Board (or a member designated by the
 10 Board) may order the taking of depositions at any stage of
 11 a proceeding or investigation under this subchapter. Deposi-
 12 tions shall be taken before an individual designated by the
 13 Board and having the power to administer oaths. Testimony
 14 shall be reduced to writing by or under the direction of the
 15 individual taking the deposition and shall be subscribed by
 16 the deponent.

17 “(3) An employee may not be excused from attending
 18 and testifying or from producing documentary or other evi-
 19 dence in obedience to a subpoena of the Board on the ground
 20 that the testimony or evidence required of the employee
 21 may tend to incriminate the employee or subject the em-
 22 ployee to a penalty or forfeiture for or on account of any
 23 transaction, matter, or thing concerning which the employee
 24 is compelled to testify or produce evidence. No employee
 25 shall be prosecuted or subjected to any penalty or forfeiture

1 for or on account of any transaction, matter, or thing con-
 2 cerning which the employee is compelled, after having
 3 claimed the privilege against self-incrimination, to testify
 4 or produce evidence, nor shall testimony or evidence so com-
 5 pelled be used as evidence in any criminal proceeding against
 6 the employee in any court, except that no employee shall
 7 be exempt from prosecution and punishment for perjury
 8 committed in so testifying.

9 “(f) An employee upon whom a penalty is imposed
 10 by an order of the Board under subsection (d) of this section
 11 may, within 30 days after the date on which the order was
 12 issued, institute an action for judicial review of the Board's
 13 order in the United States District Court for the District of
 14 Columbia or in the United States district court for the judicial
 15 district in which the employee resides or is employed. The
 16 institution of an action for judicial review shall not operate
 17 as a stay of the Board's order, unless the court specifically
 18 orders such stay. A copy of the summons and complaint
 19 shall be served as otherwise prescribed by law and, in
 20 addition, upon the Board. Thereupon the Board shall certify
 21 and file with the court the record upon which the Board's
 22 order was based. If application is made to the court for
 23 leave to adduce additional evidence, and it is shown to the
 24 satisfaction of the court that the additional evidence may
 25 materially affect the result of the proceeding and that there

1 were reasonable grounds for failure to adduce the evidence
 2 at the hearing conducted under subsection (d) (2) of this
 3 section, the court may direct that the additional evidence be
 4 taken before the Board in the manner and on the terms and
 5 conditions fixed by the court. The Board may modify its
 6 findings of fact or order, in the light of the additional evi-
 7 dence, and shall file with the court such modified findings or
 8 order. The Board's findings of fact, if supported by substan-
 9 tial evidence, shall be conclusive. The court shall affirm the
 10 Board's order if it determines that it is in accordance with
 11 law. If the court determines that the order is not in ac-
 12 cordance with law—

13 “(1) it shall remand the proceeding to the Board
 14 with directions either to enter an order determined by
 15 the court to be lawful or to take such further proceedings
 16 as, in the opinion of the court, are required; and

17 “(2) it may assess against the United States rea-
 18 sonable attorney fees and other litigation costs reason-
 19 ably incurred by the employee.

20 “(g) The Commission or the Board, in its discretion,
 21 may proceed with any investigation or proceeding instituted
 22 under this subchapter notwithstanding that the Commission
 23 or the head of an employing agency or department has re-
 24 ported the alleged violation to the Attorney General as re-
 25 quired by section 535 of title 28.

1 “§ 7329. Penalties

2 “(a) Subject to and in accordance with section 7328
 3 of this title, an employee who is found to have violated
 4 any provision of section 7323, 7324, or 7325 of this title
 5 shall, upon a final order of the Board, be—

6 “(1) removed from such employee's position, in
 7 which event that employee may not thereafter hold any
 8 position (other than an elected position) as an em-
 9 ployee (as defined in section 7322 (1) of this title) for
 10 such period as the Board may prescribe;

11 “(2) suspended without pay from such employee's
 12 position for such period as the Board may prescribe; or

13 “(3) disciplined in such other manner as the Board
 14 shall deem appropriate.

15 “(b) The Board shall notify the Commission, the em-
 16 ployee, and the employing agency of any penalty it has
 17 imposed under this section. The employing agency shall cer-
 18 tify to the Board the measures undertaken to implement the
 19 penalty.

20 “§ 7330. Education program; reports

21 “(a) The Commission shall establish and conduct a
 22 continuing program to inform all employees of their rights
 23 of political participation and to educate employees with
 24 respect to those political activities which are prohibited.

1 “(b) On or before March 30 of each calendar year, the
2 Commission shall submit a report covering the preceding
3 calendar year to the Speaker of the House of Representa-
4 tives and the President pro tempore of the Senate for referral
5 to the appropriate committees of the Congress. The report
6 shall include—

7 “(1) the number of investigations conducted under
8 section 7328 of this title and the results of such investi-
9 gations;

10 “(2) the name and position or title of each indivi-
11 dual involved, and the funds expended by the Commis-
12 sion, in carrying out the program required under subsec-
13 tion (a) of this section; and

14 “(3) an evaluation which describes—

15 “(A) the manner in which such program is
16 being carried out; and

17 “(B) the effectiveness of such program in
18 carrying out the purposes set forth in subsection
19 (a) of this section.

20 **“§ 7331. Regulations**

21 “The Civil Service Commission shall prescribe such
22 rules and regulations as may be necessary to carry out its
23 responsibilities under this subchapter.”

24 (b) (1) Sections 8332 (k) (1), 8706 (e), and 8906
25 (e) (2) of title 5, United States Code, are each amended
26 by inserting immediately after “who enters on” the follow-

1 ing: “leave without pay granted under section 7326 (a)
2 of this title, or who enters on”.

3 (2) Section 3302 of title 5, United States Code, is
4 amended by striking out “7153, 7321, and 7322” and in-
5 serting in lieu thereof “and 7153”.

6 (3) Section 1308 (a) of title 5, United States Code,
7 is amended—

8 (A) by inserting “and” at the end of paragraph
9 (2);

10 (B) by striking out paragraph (3); and

11 (C) by redesignating paragraph (4) as paragraph
12 (3).

13 (4) The second sentence of section 8332 (k) (1) of title
14 5, United States Code, is amended by striking out “second”
15 and inserting “last” in lieu thereof.

16 (5) The section analysis for subchapter III of chapter
17 73 of title 5, United States Code, is amended to read as
18 follows:

- 19 **“SUBCHAPTER III—POLITICAL ACTIVITIES**
- 20 **“Sec.**
- 21 **“7321. Political participation.**
- 22 **“7322. Definitions.**
- 23 **“7323. Use of official authority or influence; prohibition.**
- 24 **“7324. Solicitation; prohibition.**
- 25 **“7325. Political activities on duty, etc.; prohibition.**
- 26 **“7326. Leave for candidates for elective office.**
- “7327. Board on Political Activities of Federal Employees.**
- “7328. Investigation; procedures; hearing.**
- “7329. Penalties.**
- “7330. Education program; reports.**
- “7331. Regulations.”**

1 (c) Sections 602 and 607 of title 18, United States
2 Code, relating to solicitations and making of political con-
3 tributions, are each amended by adding at the end thereof the
4 following new sentence: "This section does not apply to any
5 activity of an employee as defined in section 7322 (1) of
6 title 5 unless such activity is prohibited by section 7324 of
7 that title."

8 (d) Section 6 of the Voting Rights Act of 1965 (42
9 U.S.C. 1973d) is amended by striking out "the provisions of
10 section 9 of the Act of August 2, 1939, as amended (5
11 U.S.C. 118i), prohibiting partisan political activity" and by
12 inserting in lieu thereof "the provisions of subchapter III
13 of chapter 73 of title 5, United States Code, relating to
14 political activities".

15 (e) Sections 103 (a) (4) (D) and 203 (a) (4) (D) of
16 the District of Columbia Public Education Act are each
17 amended by striking out "sections 7324 through 7327 of
18 title 5" and inserting in lieu thereof "section 7325 of title 5".

19 (f) The amendments made by this section shall take
20 effect on the ninetieth day after the date of the enactment
21 of this Act.

94TH CONGRESS
1ST SESSION

H. R. 8617

A BILL

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.

By Mr. CLAY, Mrs. SPELLMAN, Mr. SOLARZ, Mr.
CHARLES H. WILSON of California, Mr.
HARRIS, and Mrs. SCHROEDER

JULY 14, 1975

Referred to the Committee on Post Office and Civil
Service

Campaign

THE WHITE HOUSE
WASHINGTON

July 21, 1975

MEMORANDUM FOR: PHIL BUCHEN
THRU: MAX L. FRIEDERSDORF *M.L.*
VERN LOEN *VL*
FROM: CHARLES LEPPERT, JR. *Clg*
SUBJECT: H. R. 8617 - Federal Employees' Political
Activities Act of 1975.

Attached per your request is a copy of H. R. 8617, the Federal Employees' Political Activities Act of 1975.

Please note that page 2, line 9 defines "employee" to include the "President" and the "Vice President."



H.R. 8617

THE FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

OPENING STATEMENT BY MR. CLAY

MR. CHAIRMAN, I move that the Committee take up and consider the bill, H.R. 8617, and that it be open for amendments at any point.

MR. CHAIRMAN, H.R. 8617, the Federal Employees' Political Activities Act of 1975, was reported by the Subcommittee on Employee Political Rights and Intergovernmental Programs as a "clean bill" on July 10, 1975.

Earlier, the Subcommittee conducted eleven days of hearings and received testimony from over one hundred witnesses in Washington and six other cities across the nation. Testimony in support of H.R. 3000, which I introduced earlier this year with the co-sponsorship of 64 of my colleagues, was overwhelmingly in support of this legislation. There were however, a number of recommendations for the strengthening of H.R. 3000 and related legislation which the Subcommittee has incorporated into the "clean bill", H.R. 8617.

MR. CHAIRMAN, the Hatch Act was enacted in an effort to protect federal employees from improper involvement in partisan political activities. Previous studies, public hearings, and staff surveys reveal no evidence that voluntary political activity in any way erodes the merit system or operates against the public interest. Yet, existing law, which actually consists of over 3000 administrative regulations, is vague, overly broad and infringes upon the rights of every American to participate fully in the political life of this nation.

H.R. 8617, takes these realities into consideration. It prohibits those involuntary political activities which tend to erode



public confidence in the integrity of the merit system. It establishes an independent Board to adjudicate alleged violations. It gives the Commission strengthened authority for investigating alleged violations. It provides due process and judicial review for federal employees.

The major provisions of the Subcommittee bill follow:

- *States that federal employees are encouraged to exercise their right of voluntary political participation.
- *Prohibits the use of official authority, influence, or coercion with the right to vote, not to vote or to otherwise engage in political activity.
- *Prohibits use of funds to influence votes; solicitation of political contributions by superior officials; and making political contributions in government rooms or buildings.
- *Prohibits political activity while on duty, in federal buildings, or in uniform.
- *Provides leave for candidates for elective office.
- *Establishes an independent Board on Political Activities of Government Personnel whose function is to hear and adjudicate alleged violations of law.
- *Authorizes the Civil Service Commission to investigate alleged violations of law and provides for subpoena authority, due process, and judicial review of adverse decisions.
- *Subjects violators of law to removal, suspension or lesser penalties at the discretion of the Board.
- *Requires that the Civil Service Commission conduct a program for informing federal employees of their rights of political participation and report annually to the Congress on its implementation.

MR. CHAIRMAN, this bill represents a significant improvement over earlier legislative proposals which aimed to achieve full and complete political suffrage for federal employees. The Subcommittee worked long and hard in forging this bill. It incorporates many of

the suggestions of not only its supporters but also the concerns of those relatively few who withheld their endorsement. The bill is comprehensive. The bill is specific. The bill is fair. I urge your support in ensuring the prompt and speedy enactment of this landmark legislation.

2

94TH CONGRESS
1ST SESSION

H. R. 8617

IN THE HOUSE OF REPRESENTATIVES

JULY 14, 1975

Mr. CLAY (for himself, Mrs. SPELLMAN, Mr. SOLARZ, Mr. CHARLES H. WILSON of California, Mr. HARRIS, and Mrs. SCHROEDER) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

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 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Employees'
4 Political Activities Act of 1975".

5 SEC. 2. (a) Subchapter III of chapter 73 of title 5,
6 United States Code, is amended to read as follows:

1 "SUBCHAPTER III—POLITICAL ACTIVITIES

2 "§ 7321. Political participation

3 "It is the policy of the Congress that employees should
4 be encouraged to fully exercise, to the extent not expressly
5 prohibited by law, their rights of voluntary participation in
6 the political processes of our Nation.

7 "§ 7322. Definitions

8 "For the purpose of this subchapter—

9 "(1) 'employee' means any individual, including
10 the President and the Vice President, employed or
11 holding office in—

12 "(A) an Executive agency,

13 "(B) the government of the District of
14 Columbia,

15 "(C) the competitive service, or

16 "(D) the United States Postal Service or the
17 Postal Rate Commission;

18 but does not include a member of the uniformed services;

19 "(2) 'candidate' means any individual who seeks
20 nomination for election, or election, to any elective office,
21 whether or not such individual is elected, and, for the
22 purpose of this paragraph, an individual shall be deemed
23 to seek nomination for election, or election, to an elective
24 office, if such individual has—

25 "(A) taken the action required to qualify for
26 nomination for election, or election, or

1 “(B) received political contributions or made
2 expenditures, or has given consent for any other
3 person to receive political contributions or make ex-
4 penditures, with a view to bringing about such indi-
5 vidual’s nomination for election, or election, to such
6 office;

7 “(3) ‘political contribution’—

8 “(A) means a gift, subscription, loan, advance,
9 or deposit of money or anything of value, made for
10 the purpose of influencing the nomination for elec-
11 tion, or election, of any individual to elective office
12 or for the purpose of otherwise influencing the re-
13 sults of any election;

14 “(B) includes a contract, promise, or agree-
15 ment, express or implied, whether or not legally
16 enforceable, to make a political contribution for any
17 such purpose; and

18 “(C) includes the payment by any person,
19 other than a candidate or a political organization,
20 of compensation for the personal services of another
21 person which are rendered to such candidate or po-
22 litical organization without charge for any such
23 purpose;

24 “(4) ‘superior’ means an employee (other than the
25 President or the Vice President) who exercises super-

1 vision of, or control or administrative direction over,
2 another employee;

3 “(5) ‘elective office’ means any elective public
4 office and any elective office of any political party or
5 affiliated organization; and

6 “(6) ‘Board’ means the Board on Political Activi-
7 ties of Federal Employees established under section 7327
8 of this title.

9 **“§ 7323. Use of official authority or influence; prohibition**

10 “(a) An employee may not directly or indirectly use or
11 attempt to use the official authority or influence of such em-
12 ployee for the purpose of—

13 “(1) interfering with or affecting the result of any
14 election; or

15 “(2) intimidating, threatening, coercing, command-
16 ing, influencing, or attempting to intimidate, threaten,
17 coerce, command, or influence—

18 “(A) any individual for the purpose of inter-
19 fering with the right of any individual to vote as
20 such individual may choose, or of causing any indi-
21 vidual to vote, or not to vote, for any candidate or
22 measure;

23 “(B) any person to give or withhold any politi-
24 cal contribution; or

1 “(C) any person to engage, or not to engage,
2 in any form of political activity whether or not such
3 activity is prohibited by law.

4 “(b) For purposes of subsection (a) of this section, ‘use
5 of official authority or influence’ includes, but is not limited
6 to, promising to confer or conferring any benefit (such
7 as appointment, promotion, compensation, grant, contract,
8 license, or ruling), or effecting or threatening to effect any
9 reprisal (such as deprivation of appointment, promotion,
10 compensation, grant, contract, license, or ruling).

11 **“§ 7324. Solicitation; prohibition**

12 “An employee may not—

13 “(1) give or offer to give a political contribution
14 to any individual either to vote or refrain from voting,
15 or to vote for or against any candidate or measure, in
16 any election;

17 “(2) solicit, accept, or receive a political contribu-
18 tion to vote or refrain from voting, or to vote for or
19 against any candidate or measure, in any election;

20 “(3) knowingly give or hand over a political contribu-
21 tion to a superior of such employee; or

22 “(4) knowingly solicit, accept, or receive, or be in
23 any manner concerned with soliciting, accepting, or
24 receiving, a political contribution—

25 “(A) from another employee (or a member

1 of another employee's immediate family) with re-
2 spect to whom such employee is a superior; or

3 “(B) in any room or building occupied in the
4 discharge of official duties by—

5 “(i) an individual employed or holding
6 office in the Government of the United States, in
7 the government of the District of Columbia,
8 or in any agency or instrumentality of the
9 foregoing; or

10 “(ii) an individual receiving any salary or
11 compensation for services from money derived
12 from the Treasury of the United States.

13 **“§ 7325. Political activities on duty, etc.; prohibition**

14 “An employee may not engage in political activity—

15 “(1) while such employee is on duty,

16 “(2) in any room or building occupied in the dis-
17 charge of official duties by an individual employed or
18 holding office in the Government of the United States,
19 in the government of the District of Columbia, or in
20 any agency or instrumentality of the foregoing, or

21 “(3) while wearing a uniform or official insignia
22 identifying the office or position of such employee.

23 **“§ 7326. Leave for candidates for elective office**

24 “(a) An employee who is a candidate for elective
25 office shall, upon the request of such employee, be granted

1 leave without pay for the purpose of allowing such employee
2 to engage in activities relating to such candidacy.

3 “(b) Notwithstanding section 6302 (d) of this title,
4 an employee who is a candidate for elective office shall, upon
5 the request of such employee, be granted accrued annual
6 leave. Such leave shall be in addition to leave without pay
7 to which such employee may be entitled under subsection
8 (a) of this section.

9 “§ 7327. Board on Political Activities of Federal Employees

10 “(a) There is established a board to be known as the
11 Board on Political Activities of Federal Employees. It shall
12 be the function of the Board to hear and decide cases regard-
13 ing violations of section 7323, 8324, and 7325 of this title.

14 “(b) The Board shall be composed of 3 members—

15 “(1) one member of which shall be appointed, with
16 the confirmation of a majority of both Houses of the
17 Congress, by the President and who shall serve as Chair-
18 man of the Board;

19 “(2) one member of which shall be appointed, with
20 the confirmation of a majority of both Houses of the
21 Congress, by the Speaker of the House of Representa-
22 tives, after consultation with the majority leader of the
23 House and the minority leader of the House; and

24 “(3) one member of which shall be appointed, with
25 the confirmation of a majority of both House of the

1 Congress, by the President pro tempore of the Senate,
2 after consultation with the majority leader of the Senate
3 and the minority leader of the Senate.

4 “(c) Members of the Board shall be chosen on the basis
5 of their professional qualifications from among individuals
6 who, at the time of their appointment, are employees (as
7 defined under section 7322 (1) of this title).

8 “(d) (1) Members of the Board shall serve a term of
9 3 years, except that of the members first appointed—

10 “(A) the Chairman shall be appointed for a term
11 of 3 years,

12 “(B) the member appointed under subsection (b)
13 (2) of this section shall be appointed for a term of 2
14 years, and

15 “(C) the member appointed under subsection (b)
16 (3) of this section shall be appointed for a term of 1
17 year.

18 An individual appointed to fill a vacancy occurring other
19 than by the expiration of a term of office shall be appointed
20 only for the unexpired term of the member such individual
21 will succeed. Any vacancy occurring in the membership of
22 the Board shall be filled in the same manner as in the case
23 of the original appointment.

24 “(2) If an employee who was appointed as a member
25 of the Board is separated from service as an employee he

1 may not continue as a member of the Board after the 60-
2 day period beginning on the date so separated.

3 “(e) The Board shall meet at the call of the Chairman.

4 “(f) All decisions of the Board with respect to the
5 exercise of its duties and powers under the provisions of this
6 subchapter shall be made by a majority vote of the Board.

7 “(g) A member of the Board may not delegate to any
8 person his vote nor, except as expressly provided by this
9 subchapter, may any decisionmaking authority vested in the
10 Board by the provisions of this subchapter be delegated to
11 any member or person.

12 “(h) The Board shall prepare and publish in the Fed-
13 eral Register written rules for the conduct of its activities,
14 shall have an official seal which shall be judicially noticed,
15 and shall have its office in or near the District of Columbia
16 (but it may meet or exercise any of its powers anywhere
17 in the United States).

18 “(i) The Civil Service Commission shall provide such
19 clerical and professional personnel, and administrative sup-
20 port, as the Chairman of the Board considers appropriate
21 and necessary to carry out the Board’s functions under this
22 subchapter. Such personnel shall be responsible to the Chair-
23 man of the Board.

24 “(j) The Administrator of the General Services Ad-
25 ministration shall furnish the Board suitable office space ap-

1 appropriately furnished and equipped, as determined by the
2 Administrator.

3 “(k) (1) Members of the Board shall receive no addi-
4 tional pay on account of their service on the Board.

5 “(2) Members shall be entitled to leave without loss of
6 or reduction in pay, leave, or performance or efficiency rating
7 during a period of absence while in the actual performance
8 of duties vested in the Board.

9 **“§ 7328. Investigation; procedures; hearing**

10 “(a) The Civil Service Commission shall investigate
11 reports and allegations of any activity prohibited by section
12 7323, 7324, or 7325 of this title.

13 “(b) As a part of the investigation of the activities of an
14 employee, the Commission shall provide such employee an
15 opportunity to make a statement concerning the matters
16 under investigation and to support such statement with any
17 documents the employee wishes to submit. An employee of
18 the Commission lawfully assigned to investigate a violation of
19 this subchapter may administer an oath to a witness attend-
20 ing to testify or depose in the course of the investigation.

21 “(c) (1) If it appears to the Commission after investi-
22 gation that a violation of section 7323, 7324, or 7325 of this
23 title has not occurred, it shall so notify the employee and the
24 agency in which the employee is employed.



1 “(2) Except as provided in paragraph (3) of this sub-
2 section, if it appears to the Commission after investigation
3 that a violation of section 7323, 7324, or 7325 of this title
4 has occurred, the Commission shall submit to the Board and
5 serve upon the employee a notice by certified mail, return
6 receipt requested (or if notice cannot be served in such man-
7 ner, then by any method calculated to reasonably apprise
8 the employee) —

9 “(A) setting forth specifically and in detail the
10 charges of alleged prohibited activity;

11 “(B) advising the employee of the penalties pro-
12 vided under section 7329 of this title;

13 “(C) affording a period of not less than 30 days
14 within which the employee may file with the Board a
15 written answer to the charges in the manner prescribed
16 by rules issued by the Board; and

17 “(D) advising the employee that unless the em-
18 ployee answers the charges, in writing, within the time
19 allowed therefor, the Board is authorized to treat such
20 failure as an admission by the employee of the charges
21 set forth in the notice and a waiver by the employee of
22 the right to a hearing on the charges.

23 “(3) If it appears to the Commission after investiga-
24 tion that a violation of section 7323, 7324, or 7325 of this
25 title has been committed by—

1 “(A) the Vice President;

2 “(B) an employee appointed by the President by
3 and with the advice and consent of the Senate;

4 “(C) an employee whose appointment is expressly
5 required by statute to be made by the President;

6 “(D) the Mayor of the District of Columbia; or

7 “(E) the Chairman or a member of the Council of
8 the District of Columbia, as established by the District of
9 Columbia Self-Government and Governmental Reor-
10 ganization Act;

11 the Commission shall refer the case to the Attorney General
12 for prosecution under title 18, and shall report the nature and
13 details of the violation to the President and to the Con-
14 gress.

15 “(d) (1) If a written answer is not duly filed within
16 the time allowed therefor, the Board may, without further
17 proceedings, issue its final decision and order.

18 “(2) If an answer is duly filed, the charges shall be
19 determined by the Board on the record after a hearing
20 conducted by a hearing examiner appointed under section
21 3105 of this title, and, except as otherwise expressly pro-
22 vided under this subchapter, in accordance with the require-
23 ments of subchapter II of chapter 5 of this title, notwith-
24 standing any exception therein for matters involving the
25 tenure of an employee. The hearing shall be commenced

1 within 30 days after the answer is filed with the Board
2 and shall be conducted without unreasonable delay. As soon
3 as practicable after the conclusion of the hearing, the exam-
4 iner shall serve upon the Board, the Commission, and the
5 employee such examiner's recommended decision with notice
6 to the Commission and the employee of opportunity to file
7 with the Board, within 30 days after the date of such notice,
8 exceptions to the recommended decision. The Board shall
9 issue its final decision and order in the proceeding no later
10 than 60 days after the date the recommended decision is
11 served. The employee shall not be removed from active duty
12 status by reason of the alleged violation of this subchapter
13 at any time before the effective date specified by the Board
14 in its final order.

15 “(e) (1) At any stage of a proceeding or investigation
16 under this subchapter, the Board may, at the written request
17 of the Commission or the employee, require by subpoena the
18 attendance and testimony of witnesses and the production
19 of documentary or other evidence relating to the proceeding
20 or investigation at any designated place, from any place in
21 the United States or any territory or possession thereof, the
22 Commonwealth of Puerto Rico, or the District of Columbia.
23 Any member of the Board may issue subpoenas and members
24 of the Board and any hearing examiner authorized by the
25 Board may administer oaths, examine witnesses, and receive

1 evidence. In the case of contumacy or failure to obey a sub-
2 pena, the United States district court for the judicial district
3 in which the person to whom the subpoena is addressed
4 resides or is served may, upon application by the Board,
5 issue an order requiring such person to appear at any desig-
6 nated place to testify or to produce documentary or other
7 evidence. Any failure to obey the order of the court may be
8 punished by the court as a contempt thereof.

9 “(2) The Board (or a member designated by the
10 Board) may order the taking of depositions at any stage of
11 a proceeding or investigation under this subchapter. Deposi-
12 tions shall be taken before an individual designated by the
13 Board and having the power to administer oaths. Testimony
14 shall be reduced to writing by or under the direction of the
15 individual taking the deposition and shall be subscribed by
16 the deponent.

17 “(3) An employee may not be excused from attending
18 and testifying or from producing documentary or other evi-
19 dence in obedience to a subpoena of the Board on the ground
20 that the testimony or evidence required of the employee
21 may tend to incriminate the employee or subject the em-
22 ployee to a penalty or forfeiture for or on account of any
23 transaction, matter, or thing concerning which the employee
24 is compelled to testify or produce evidence. No employee
25 shall be prosecuted or subjected to any penalty or forfeiture

1 for or on account of any transaction, matter, or thing con-
2 cerning which the employee is compelled, after having
3 claimed the privilege against self-incrimination, to testify
4 or produce evidence, nor shall testimony or evidence so com-
5 pelled be used as evidence in any criminal proceeding against
6 the employee in any court, except that no employee shall
7 be exempt from prosecution and punishment for perjury
8 committed in so testifying.

9 “(f) An employee upon whom a penalty is imposed
10 by an order of the Board under subsection (d) of this section
11 may, within 30 days after the date on which the order was
12 issued, institute an action for judicial review of the Board’s
13 order in the United States District Court for the District of
14 Columbia or in the United States district court for the judicial
15 district in which the employee resides or is employed. The
16 institution of an action for judicial review shall not operate
17 as a stay of the Board’s order, unless the court specifically
18 orders such stay. A copy of the summons and complaint
19 shall be served as otherwise prescribed by law and, in
20 addition, upon the Board. Thereupon the Board shall certify
21 and file with the court the record upon which the Board’s
22 order was based. If application is made to the court for
23 leave to adduce additional evidence, and it is shown to the
24 satisfaction of the court that the additional evidence may
25 materially affect the result of the proceeding and that there

1 were reasonable grounds for failure to adduce the evidence
2 at the hearing conducted under subsection (d) (2) of this
3 section, the court may direct that the additional evidence be
4 taken before the Board in the manner and on the terms and
5 conditions fixed by the court. The Board may modify its
6 findings of fact or order, in the light of the additional evi-
7 dence, and shall file with the court such modified findings or
8 order. The Board's findings of fact, if supported by substan-
9 tial evidence, shall be conclusive. The court shall affirm the
10 Board's order if it determines that it is in accordance with
11 law. If the court determines that the order is not in ac-
12 cordance with law—

13 “(1) it shall remand the proceeding to the Board
14 with directions either to enter an order determined by
15 the court to be lawful or to take such further proceedings
16 as, in the opinion of the court, are required; and

17 “(2) it may assess against the United States rea-
18 sonable attorney fees and other litigation costs reason-
19 ably incurred by the employee.

20 “(g) The Commission or the Board, in its discretion,
21 may proceed with any investigation or proceeding instituted
22 under this subchapter notwithstanding that the Commission
23 or the head of an employing agency or department has re-
24 ported the alleged violation to the Attorney General as re-
25 quired by section 535 of title 28.

1 **“§ 7329. Penalties**

2 “(a) Subject to and in accordance with section 7328
3 of this title, an employee who is found to have violated
4 any provision of section 7323, 7324, or 7325 of this title
5 shall, upon a final order of the Board, be—

6 “(1) removed from such employee’s position, in
7 which event that employee may not thereafter hold any
8 position (other than an elected position) as an em-
9 ployee (as defined in section 7322 (1) of this title) for
10 such period as the Board may prescribe;

11 “(2) suspended without pay from such employee’s
12 position for such period as the Board may prescribe; or

13 “(3) disciplined in such other manner as the Board
14 shall deem appropriate.

15 “(b) The Board shall notify the Commission, the em-
16 ployee, and the employing agency of any penalty it has
17 imposed under this section. The employing agency shall cer-
18 tify to the Board the measures undertaken to implement the
19 penalty.

20 **“§ 7330. Education program; reports**

21 “(a) The Commission shall establish and conduct a
22 continuing program to inform all employees of their rights
23 of political participation and to educate employees with
24 respect to those political activities which are prohibited.

1 “(b) On or before March 30 of each calendar year, the
2 Commission shall submit a report covering the preceding
3 calendar year to the Speaker of the House of Representa-
4 tives and the President pro tempore of the Senate for referral
5 to the appropriate committees of the Congress. The report
6 shall include—

7 “(1) the number of investigations conducted under
8 section 7328 of this title and the results of such investi-
9 gations;

10 “(2) the name and position or title of each indivi-
11 dual involved, and the funds expended by the Commis-
12 sion, in carrying out the program required under subsec-
13 tion (a) of this section; and

14 “(3) an evaluation which describes—

15 “(A) the manner in which such program is
16 being carried out; and

17 “(B) the effectiveness of such program in
18 carrying out the purposes set forth in subsection
19 (a) of this section.

20 **“§ 7331. Regulations**

21 “The Civil Service Commission shall prescribe such
22 rules and regulations as may be necessary to carry out its
23 responsibilities under this subchapter.”.

24 (b) (1) Sections 8332 (k) (1), 8706 (e), and 8906
25 (e) (2) of title 5, United States Code, are each amended
26 by inserting immediately after “who enters on” the follow-

1 ing: "leave without pay granted under section 7326(a)
2 of this title, or who enters on".

3 (2) Section 3302 of title 5, United States Code, is
4 amended by striking out "7153, 7321, and 7322" and in-
5 serting in lieu thereof "and 7153".

6 (3) Section 1308 (a) of title 5, United States Code,
7 is amended—

8 (A) by inserting "and" at the end of paragraph
9 (2);

10 (B) by striking out paragraph (3); and

11 (C) by redesignating paragraph (4) as paragraph
12 (3).

13 (4) The second sentence of section 8332 (k) (1) of title
14 5, United States Code, is amended by striking out "second"
15 and inserting "last" in lieu thereof.

16 (5) The section analysis for subchapter III of chapter
17 73 of title 5, United States Code, is amended to read as
18 follows:

"SUBCHAPTER III—POLITICAL ACTIVITIES

"Sec.

"7321. Political participation.

"7322. Definitions.

"7323. Use of official authority or influence; prohibition.

"7324. Solicitation; prohibition.

"7325. Political activities on duty, etc.; prohibition.

"7326. Leave for candidates for elective office.

"7327. Board on Political Activities of Federal Employees.

"7328. Investigation; procedures; hearing.

"7329. Penalties.

"7330. Education program; reports.

"7331. Regulations."

1 (c) Sections 602 and 607 of title 18, United States
2 Code, relating to solicitations and making of political con-
3 tributions, are each amended by adding at the end thereof the
4 following new sentence: "This section does not apply to any
5 activity of an employee as defined in section 7322 (1) of
6 title 5 unless such activity is prohibited by section 7324 of
7 that title."

8 (d) Section 6 of the Voting Rights Act of 1965 (42
9 U.S.C. 1973d) is amended by striking out "the provisions of
10 section 9 of the Act of August 2, 1939, as amended (5
11 U.S.C. 118i), prohibiting partisan political activity" and by
12 inserting in lieu thereof "the provisions of subchapter III
13 of chapter 73 of title 5, United States Code, relating to
14 political activities".

15 (e) Sections 103 (a) (4) (D) and 203 (a) (4) (D) of
16 the District of Columbia Public Education Act are each
17 amended by striking out "sections 7324 through 7327 of
18 title 5" and inserting in lieu thereof "section 7325 of title 5".

19 (f) The amendments made by this section shall take
20 effect on the ninetieth day after the date of the enactment
21 of this Act.

THE WHITE HOUSE

WASHINGTON

July 16, 1975

MEMORANDUM FOR:

DON RUMSFELD

FROM:

PHILIP BUCHEN *P.W.B.*

Concerning the presentation which I had been scheduled to make to the Cabinet at its meeting on July 16, it was to be based on the memo I had sent you, Jack Marsh and Robert Hartmann on June 12.

It was to be in condensed form according to the attached outline (Tab A) and was to be aided by three charts containing the information shown on the three sheets in Tab B.

If you concur, I will be glad to make the presentation at the next Cabinet Meeting. We should keep in mind that without words of caution, we may have Cabinet officers "tilting too far toward Tilly (or was it Milly?)."

Attachments



THE WHITE HOUSE

WASHINGTON

OUTLINE FOR BRIEFING OF CABINET
AND OF WHITE HOUSE STAFF
ON ELECTION CAMPAIGN LAWS

I. INTRODUCTION

- A. Purpose: To summarize the constraints we and our colleagues are under as Federal officials or employees in relation to the 1976 Presidential campaign.
- B. Not Covered: The impact of the Federal Election Campaign Act as amended in 1974 on persons whether or not they are Federal officials. This Act restricts candidates, political committees, and campaign contributors. The provisions in this regard are complex and to some extent so unclear as to be troublesome. Rather than my attempting to go into these problems, I recommend that you rely on advise from the RNC or the PFC whenever questions arise about legal sources and limits for campaign contributions or for expenditures to support the campaign.



II. GENERAL PROHIBITIONS

A. Campaign contributions

1. Two taboos: Other Federal employees;
any Federal office or building.
2. Even unsolicited contributions which violate
the taboos should be returned.
3. Do not act as a solicitor, a recipient, or
even a conduit.

B. Governmental inducements or detrimental treatment
for campaign or election purposes.

C. Turning a government operation into a campaign
operation.

III. HATCH ACT

A. Coverage

1. Everyone on a Federal payroll is "Hatched"
unless he or she is a Presidential appointee
subject to Senate confirmation or is paid
solely from WH or VP appropriations.
2. The rest of the vast Federal bureaucracy is
by law made neutral or apolitical for election
campaign purposes.

B. Proper behavior for the "Hatched" employee

1. He may express his opinions about a candidate
and wear a candidate button, but he may not

use his authority or position to influence the outcome of an election.

2. He can attend political functions but he cannot be active in the workings of political organizations or raise money for them.
3. He may act as an individual voter but not as a campaigner for votes or money in support of a particular candidate or party.

C. The Pervasive Nature of Hatch-Imposed Restrictions

IV. SPECIFIC PROBLEMS

- A. Return directly to the sender any contribution sent to you, designating only where a check may be delivered in order to reach the intended political committee.
- B. "An employee shall not use Federal property of any kind for other than officially approved activities" -- including supplies and equipment.



- C. An exempt employee must not look to a Hatched employee to help in his political activities, except possibly for routine, non-discretionary support which is minimal and does not detract from the subordinate's performance of official duties.
- D. How much time can you fairly devote to campaigning?
- E. Drawing the line between official and political travel
- F. However legal may be a particular activity on your part, it should not be undertaken if it could create even the appearance of being improper.



GENERAL PROHIBITIONS

- Soliciting or receiving campaign contributions:
 - from other government employees
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- Using governmental personnel or resources for campaign activities



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Applicable to all officials and employees except --

- Personnel paid from White House and Vice President's appropriations
- Presidential appointees subject to confirmation

Prohibits "Hatched" employees from --

- Using authority for campaign purposes
- Participating in a political organization
- Campaigning for any political party or partisan candidate

Prohibitions apply --

- To employees of competitive and excepted service including Schedule C and NEA employees
- To part-time and full-time employees
- During business hours or private time, including leave



ILLUSTRATIVE PROBLEM AREAS

- Receipt of contributions
- Use of Government materials, facilities and privileges
- Use of departmental personnel
- Time devoted to political activities
- Travel expenses
- Problems of appearance



THE WHITE HOUSE

WASHINGTON

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