

## OFFICE OF CONGRESSIONAL AFFAIRS

### Routing Slip

*POF Leg*

	ACTION	INFO
1. D/OCA		X
2. DD/Legislation	XXX	
3. DD/Senate Affairs		X
4. Ch/Senate Affairs		
5. DD/House Affairs		X
6. Ch/House Affairs		
7. Admin Officer		
8. FOIA Officer		
9. Constituent Inquiries Officer		
10. DD/OCA		X
11.		
12.		

SUSPENSE

21 JUL 89 AT 4PM.

Date

Action Officer:

Remarks:

OCA REG. REC'D IT ON 24 JUL 89

*NO objection*  
GAH 24 JUL 89

Name/Date

STAT



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

July 21, 1989

*Lea*  
OCA 2404-89  
**SPECIAL**

LEGISLATIVE REFERRAL MEMORANDUM

*12 total*

TO: Legislative Liaison Officer -

Department of Agriculture - Wanda Worsham - 382-1516  
Department of Commerce - Michael Levitt - 377-3151  
Department of Defense - Sam Brick - 697-1305  
Department of Education - John Kristy - 732-2670  
Department of Energy - Bob Rabben - 586-6718  
Department of Health and Human Services - Fran White -  
245-7760  
Department of Housing and Urban Development -  
Edward Murphy - 755-7093  
Department of Interior - Ralph Hill - 343-6706  
Department of Justice - Carol Crawford - 633-2141  
Department of Labor - Seth Zinman - 523-8201  
Department of State - Bronwyn Bachrach - 647-4463  
Department of Transportation - Tom Herlihy - 366-9293  
Department of the Treasury - Richard Carro - 566-8523  
Department of Veterans Affairs - Donald Ivers - 233-3832  
Central Intelligence Agency -   
Environmental Protection Agency - Henry Schilling -  
382-5414  
National Aeronautics Space Administration -  
Lynn Heninger - 453-1948  
Office of Special Counsel - Bill Cinnamon - 653-9001  
United States Postal Service - Fred Eggleston - 268-2958

SUBJECT: Office of Personnel Management testimony for July 25, 1989, proposing a new position on revision of the "Hatch Act" prohibitions on partisan political activity by Federal employees.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than 4 PM Friday, July 21, 1989.

Questions should be referred to Hilda Schreiber (395-7362), the legislative analyst in this office.

*Naomi R. Sweeney*  
Naomi R. Sweeney for  
Assistant Director for  
Legislative Reference

Enclosure

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**STATEMENT OF  
HONORABLE CONSTANCE BERRY NEWMAN, DIRECTOR  
OFFICE OF PERSONNEL MANAGEMENT**

**before the**

**SUBCOMMITTEE ON FEDERAL SERVICES,  
POST OFFICE AND CIVIL SERVICE  
COMMITTEE ON GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE**

**ON**

**S. 135**

**THE HATCH ACT REFORM AMENDMENTS OF 1989**

**JULY 25, 1989**

**MISTER CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:**

**I AM PLEASED TO APPEAR BEFORE YOU TODAY TO PRESENT THE VIEWS OF  
THE ADMINISTRATION ON S. 135, THE "HATCH ACT REFORM AMENDMENTS OF  
1989."**

**THREE FUNDAMENTAL PRINCIPLES MUST GOVERN THE CONDUCT OF THE  
NATION'S BUSINESS BY THE CIVIL SERVICE. THE FIRST PRINCIPLE IS**

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THAT THE ADMINISTRATION OF ALL LAWS MUST BE IN THE PUBLIC INTEREST AND MUST BE NONPARTISAN. THE SECOND PRINCIPLE IS THAT SELECTION AND ADVANCEMENT OF PERSONNEL MUST BE BASED ON MERIT. THE THIRD PRINCIPLE IS THAT FEDERAL EMPLOYEES MUST BE PROTECTED AGAINST ANY FORM OF COERCION FOR POLITICAL PURPOSES. ANY ACTIONS THAT THREATEN CONFORMANCE WITH THOSE PRINCIPLES CANNOT BE TOLERATED.

THERE IS ALSO THE NECESSITY FOR GOVERNMENT TO CONSIDER CHANGING ITS WAY OF DOING BUSINESS WHEN IT IS CLEAR THAT THERE HAS BEEN A CHANGE IN THE ENVIRONMENT. THE QUESTION BEFORE US NOW IS WHETHER THERE HAS BEEN SUFFICIENT CHANGE IN THE ENVIRONMENT TO REVIEW AND REFORM THE HATCH ACT.

WE BELIEVE THAT THERE HAS BEEN SUFFICIENT CHANGE TO REQUIRE A THOROUGH REVIEW OF THE PROVISIONS OF THE HATCH ACT. HOWEVER, MANY OF THE CONCERNS THAT LED TO THE PASSAGE OF THE HATCH ACT ARE STILL VALID; THEREFORE, SWEEPING CHANGE IS OUT OF THE QUESTION. ~~WHAT MAY~~

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~~THEREFORE, SWEEPING CHANGE IS OUT OF THE QUESTION.~~ WHAT MAY NOT BE OUT OF THE QUESTION IS MORE LIMITED REFORM. BEFORE SUGGESTING WHAT THE ADMINISTRATION BELIEVES ARE LEGITIMATE CHANGES, I WOULD LIKE TO SHARE OUR RATIONALE FOR SUGGESTING THAT THIS IS A TIME FOR LIMITED REFORM AND ONLY LIMITED REFORM.

THE HATCH ACT GREW OUT OF THE ABUSE OF FEDERAL EMPLOYEES DURING BOTH THE 1936 AND 1938 ELECTIONS. GOVERNMENT EMPLOYEES WERE FORCED TO CHANGE THEIR PARTY REGISTRATIONS. INSTEAD OF WORKING IN THE PUBLIC INTEREST, FEDERAL EMPLOYEES ON THE GOVERNMENT PAYROLL DEVOTED OFFICIAL TIME TO PERNICIOUS POLITICAL ACTIVITIES. PATRONAGE WAS THE ORDER OF THE DAY, NOT ONLY IN TERMS OF EMPLOYMENT, BUT IN TERMS OF ALLOCATION OF FEDERAL DOLLARS. ALTHOUGH THE PENDLETON ACT CREATING THE MERIT SYSTEM WAS ON THE BOOKS AND PRESIDENT ROOSEVELT HAD BANNED EMPLOYEES FROM ENGAGING IN POLITICAL CAMPAIGNS, THERE WERE INSUFFICIENT PROTECTIONS AGAINST THE POLITICIZATION OF THE FEDERAL PUBLIC SERVICE; HENCE THE NEED

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FOR LEGISLATION TO VIRTUALLY PROHIBIT ALL EMPLOYEES OF THE EXECUTIVE BRANCH FROM ENGAGING IN THE ACTIVE MANAGEMENT OF POLITICAL CAMPAIGNS.

HAVING HAD 50 YEARS UNDER THE HATCH ACT, WE AS A NATION ARE IN A SOMEWHAT DIFFERENT SITUATION. IN ADDITION TO THE HATCH ACT, WE HAVE A NUMBER OF LAWS WHICH PROVIDE PROTECTIONS AGAINST CERTAIN MAJOR TYPES OF PERNICIOUS POLITICAL ACTIVITY. BESIDES A SERIES OF CRIMINAL STATUTES, THERE ARE CHECKS ON THE POLITICAL PROCESS ITSELF, FOR EXAMPLE, THROUGH THE FEDERAL ELECTION CAMPAIGN ACT, WHICH LIMITS CONTRIBUTIONS FOR FEDERAL CANDIDATES. SO THERE IS A CERTAIN LEVEL OF PROTECTION THAT DID NOT EXIST 50 YEARS AGO.

HOWEVER, THE ADMINISTRATION'S WILLINGNESS TO WORK WITH THE CONGRESS IN CRAFTING AN ACCEPTABLE COMPROMISE SHOULD NOT BE MISUNDERSTOOD. OUR PARAMOUNT CONCERNS REMAIN THE PROTECTION OF FEDERAL EMPLOYEES FROM POLITICAL COERCION AND THE MAINTENANCE OF PUBLIC CONFIDENCE IN THE INTEGRITY OF THE CAREER CIVIL SERVICE.

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THE ADMINISTRATION CONTINUES TO BELIEVE THAT THE PROPOSALS NOW UNDER CONSIDERATION WOULD NOT ACHIEVE THOSE PRIMARY GOALS. ALLOWING FEDERAL EMPLOYEES TO HOLD OFFICE IN A POLITICAL PARTY OR TO RUN FOR AND HOLD PUBLIC OFFICE WOULD CONSTITUTE THE ABANDONMENT OF THE HISTORICAL POSITION OF THE EXECUTIVE BRANCH THAT THE CIVIL SERVICE MUST BE POLITICALLY NEUTRAL. THOSE TYPES OF POLITICAL INVOLVEMENT WOULD LEAD INEVITABLY TO PUBLIC IDENTIFICATION OF FEDERAL EMPLOYEES WITH PARTISAN CAUSES AND ISSUES AND THEREBY UNDERMINE PUBLIC CONFIDENCE IN THE INDEPENDENCE AND INTEGRITY OF THE FEDERAL CIVIL SERVICE.

THE OTHER ACTIVITY WHICH PRESENTS SIGNIFICANT PROBLEMS IS THE SOLICITATION OF CONTRIBUTIONS FOR PARTISAN PURPOSES. THE POTENTIAL FOR COERCION IS IMMENSE, WITH THE LIKELIHOOD OF FOSTERING COMPETITION FOR ADVANCEMENT BASED ON FINANCIAL SUPPORT OF A PARTICULAR PARTY OR CANDIDATE. THE PRESSURES WOULD BE OBVIOUS, BUT

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POLITICAL PROCESS IN ALL THE WAYS PERMISSIBLE UNDER THE CURRENT  
HATCH ACT.

THE REASON FOR CONTINUING THE STATUS QUO FOR THE SES IS THAT WE  
BELIEVE THEY, AS SENIOR POLICY MAKERS AND MANAGERS, ARE THE PERSONS  
MOST VULNERABLE TO POLITICAL COERCION. AND THEY ARE THE  
INDIVIDUALS WHO ARGUABLY WOULD BE IN A POSITION TO APPLY POLITICAL  
PRESSURES ON THEIR SUBORDINATES. ALTHOUGH THERE IS NO REASON TO  
THINK OUR PEOPLE IN THE SES CORPS WOULD SO ABUSE THEIR POSITIONS,  
THERE IS A RISK THAT SUBORDINATES MIGHT PERCEIVE THAT THEIR CAREER  
FORTUNES COULD BE IMPROVED THROUGH ACTIVE SUPPORT OF A CANDIDATE  
OR PARTY THOUGHT TO BE FAVORED BY A SUPERIOR. ALSO, WE WOULD NOT  
WANT SES PEOPLE TO BE SUSCEPTIBLE TO CHARGES THAT THEIR PROGRAM  
DECISIONS ARE DRIVEN BY THEIR PARTICULAR POLITICAL PREFERENCES.  
FINALLY, IT IS IN THE INTEREST OF THIS ADMINISTRATION, AS WELL AS  
FUTURE ADMINISTRATIONS, TO HAVE THE BENEFIT OF CANDID AND OBJECTIVE  
ADVICE FROM SENIOR MANAGERS, AND NOT TO ENCOURAGE AN ATMOSPHERE IN

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WHICH THE SES MEMBERS FEEL THEY MUST BEND WITH THE PREVAILING  
POLITICAL WINDS OF THE MOMENT.

IT IS OUR VIEW THAT EXPANDING UPON THE PARTISAN POLITICAL  
ACTIVITIES AT THE STATE AND LOCAL LEVEL, BUT NOT AT THE NATIONAL  
LEVEL, IS AN APPROACH THAT MINIMIZES THE POSSIBILITY FOR CONFLICTS  
BETWEEN A FEDERAL EMPLOYEE'S POLITICAL ACTIVITIES AND THE  
EMPLOYEE'S FEDERAL EMPLOYMENT RESPONSIBILITIES. THE IMPORTANCE OF  
LIBERALIZING THE HATCH ACT TO PERMIT EMPLOYEES TO ENGAGE IN STATE  
AND LOCAL PARTISAN POLITICS SHOULD NOT BE UNDERESTIMATED, BECAUSE  
IT IS PRECISELY THE POLITICS AT THESE LEVELS WHICH DEAL WITH ISSUES  
THAT ARE CLOSEST TO HOME FOR MOST PEOPLE, THIS IS WHERE CITIZENS,  
I BELIEVE, GENERALLY FEEL THEIR CIVIC RESPONSIBILITIES MOST KEENLY  
AND WHERE THEY THINK THEIR CIVIC INVOLVEMENT CAN MAKE A REAL  
DIFFERENCE.

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WITH THE CHANGES TO THE EATCE ACT THAT WE ENVISION, THERE WILL BE A SUBSTANTIAL INCREASE IN THE KINDS OF ACTIVITIES THAT THE MAJORITY OF EMPLOYEES CAN PURSUE AT THE STATE AND LOCAL LEVELS. SOME EXAMPLES OF ADDITIONAL PERMISSIBLE POLITICAL ACTIVITIES ARE AS FOLLOWS:

- PUBLICLY ENDORSING, AND SOLICITING VOTES FOR, A CANDIDATE;
- ORGANIZING AND PARTICIPATING IN POLITICAL MEETINGS;
- PREPARING AND DISTRIBUTING CAMPAIGN LITERATURE;
- WRITING SPEECHES, PRESS RELEASES, POSITION PAPERS;
- CANVASSING VOTERS.

AS I HAVE NOTED, WE WOULD CONTINUE TO EXCLUDE FEDERAL EMPLOYEES FROM BEING CANDIDATES FOR PUBLIC OFFICE, FROM HOLDING AN OFFICE IN A POLITICAL PARTY, AND FROM SOLICITING POLITICAL CONTRIBUTIONS. ADDITIONALLY, EMPLOYEES WOULD NOT BE ALLOWED TO ENGAGE IN PARTISAN ACTIVITIES WHILE AT A FEDERAL WORK SITE OR WHILE ON DUTY, SINCE THIS WOULD UNDERMINE THE EFFICIENCY

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IN SUMMARY, I SUGGEST THAT THE CHANGES THE ADMINISTRATION PROPOSES ARE A DRAMATIC DEPARTURE FROM THE TRADITIONAL HATCH ACT RESTRICTIONS. THESE CHANGES WOULD GREATLY EXPAND UPON THE OPPORTUNITIES FOR FEDERAL EMPLOYEES TO PARTICIPATE IN THE POLITICAL LIFE OF THEIR COMMUNITIES AND THEIR HOME STATES. YET, THE CHANGES MINIMIZE THE POTENTIAL FOR THE GENERAL PUBLIC TO CONFUSE A FEDERAL EMPLOYEE'S POLITICAL ACTIVITIES WITH THE DUTIES OF THE EMPLOYEE'S FEDERAL JOB. ALTHOUGH THESE CHANGES WOULD ENLARGE THE POLITICAL ARENA FOR FEDERAL EMPLOYEES, THEY PROVIDE PROTECTION FROM COERCION, PARTICULARLY FOR THOSE SENIOR POLICY-MAKING INDIVIDUALS WHO MIGHT BE MOST VULNERABLE. I KNOW THAT WHAT WE PROPOSE IS SOMEWHAT LESS THAN WHAT S. 135 WOULD PROVIDE, BUT IT IS AN APPROACH WHICH THE PRESIDENT CAN SUPPORT.

~~THE ADMINISTRATION BELIEVES THAT THIS PROPOSAL STRIKES THE APPROPRIATE BALANCE BETWEEN REASONABLE PARTICIPATION IN PARTISAN ACTIVITIES AND PROTECTION FROM POLITICAL COERCION. WE LOOK FORWARD~~

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THE ADMINISTRATION BELIEVES THAT THIS PROPOSAL STRIKES THE APPROPRIATE BALANCE BETWEEN REASONABLE PARTICIPATION IN PARTISAN ACTIVITIES AND PROTECTION FROM POLITICAL COERCION. WE LOOK FORWARD TO WORKING WITH YOU TO DEVELOP SPECIFIC LANGUAGE TO ACHIEVE THIS NEW EQUILIBRIUM.

I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THE SUBCOMMITTEE MAY HAVE.