

November 2, 1987

INVITING TAMMANY HALL TO THE POTOMAC: ROLLING BACK THE HATCH ACT

INTRODUCTION

The Hatch Act makes it illegal for federal employees to take part in partisan electoral campaigns. The Act is the result of over one hundred years of bi-partisan effort to improve the functioning of the federal government and to strengthen American democracy. The principles of the current Act were first established within the federal government by a Republican president, Theodore Roosevelt, and placed into law under a Democratic president, Franklin Delano Roosevelt. They have been endorsed by presidents of both parties for many decades. Throughout most of this century, Republicans and Democrats have agreed that there must be a wall of separation between professional government service and the partisan electoral process, both in the interest of government employees themselves and for the health of American democracy.

Today this consensus has eroded. Ironically, this may be because the Hatch Act was too successful; lawmakers have long since forgotten the political abuses the Hatch Act was designed to eliminate. Legislation now before Congress, sponsored by William Clay, a Democrat Representative from Missouri, effectively would eliminate restrictions on partisan political activity within the career civil service. Specifically, the Clay proposals would allow federal employees to serve as officers in political parties and to become active workers in election campaigns.

Undermining Freedom of Opinion. Abolishing restrictions on the partisan political activities of federal employees would serve neither the interests of the public nor the federal workforce. Such a change would undermine freedom of political opinion of federal workers, and subject many employees to serious political pressure in the workplace. It would erode the merit-based career civil service and return features of the patronage system of the past. Moreover, it would permit federal employee unions and activist government officials to exert disproportionate influence on federal elections.

The principles embodied in the Hatch Act have been a part of the American system of government for three quarters of a century. This is no time to undermine them.

DEVELOPMENT OF THE HATCH ACT

The concept of separating government employees from active partisan politics was advanced forcefully as early as 1801 by President Thomas Jefferson. In his view, the role of non-elected government officials was to enforce the laws of Congress and the policies of the president. He saw the intrusion of such government officials into the electoral processes as improper and a threat to democratic self-governance. According to Jefferson, the Constitution not only permitted, but actually required, a distinct separation between government officials and election politics.

Jefferson set forth three principles for the conduct of officials within the federal government. They are:

- 1) **Government employees should not be rewarded or punished because of their personal partisan beliefs;**
- 2) **Employees have a basic right to vote and express personal political views which should not be impaired; but**
- 3) **Participation in more active and organized forms of electoral politics should be restricted.**

While Jefferson's three principles eventually formed the foundation of the modern Hatch Act, it took more than a century for them to do so. In the meantime, the federal government had sunk into a "spoils system," with appointments to official positions awarded to party functionaries. Following a presidential election, as much as one-third of all government jobs were awarded on a partisan basis. Government officials were expected to continue partisan activity while in office. The result was inefficiency, favoritism, and corruption.

Garfield's Assassination. By the end of the century, Americans were growing outraged by spoils system excesses. The assassination of President James A. Garfield in 1881 by a disappointed Republican office-seeker prompted passage in 1883 of reform legislation known as the Pendleton Act. This created the merit-based civil service and established the Civil Service Commission to oversee the non-partisan testing of job applicants. New career civil servants were guaranteed tenure in their positions, independent of the outcomes of presidential elections.

Non-partisan recruitment into the career government ranks, however, answered only some concerns of the reform movement. There were still complaints about partisan activities of the burgeoning non-elected bureaucracy. To answer these, President Theodore Roosevelt in 1901 issued sweeping restrictions on partisan activities. Known as "Rule One," this new civil service regulation specified that

employees in the career civil service could express their political opinions privately, but could take "no active part in political management or in political campaigns."

Abuses of the 1930s

Rule One became the standard guide of conduct for federal employees for several decades. However, new programs intended to deal with the depression of the 1930s brought a rapid expansion of the federal bureaucracy. Officials in many of these new agencies, such as the Works Progress Administration (WPA), were not part of the traditional career civil service and thus not subject to the protections and restrictions of Rule One. So rapid was the growth of these new agencies that by the mid-1930s, 30 percent of federal employees were in non-traditional agencies and exempt from civil service regulations and protections. The resultant political abuses underscored the wisdom of the earlier policies separating government employment from partisan politics.

Kick-backs and Intimidation. Abuse was particularly strong within the WPA. There workers were frequently hired or fired according to their political beliefs. Workers in some states were required to change their Party registration, attend political rallies, and vote as their supervisors directed. Supervisors waited outside polling places with a check-off list of employees: employees who did not show up to vote were fired; employees entering polling places were admonished to "vote the straight party ticket." Another common practice was to require that WPA workers kick back a portion of their salaries into a political campaign fund. Supervisors vied with each other to see who could extract the highest level of "contributions" from workers.

Perhaps surprisingly, it was the Democratic politicians, who had most to gain from partisan activities by government workers, who eventually confronted the problem. In 1939, hearings conducted by Senator Morris Sheppard, a Texas Democrat, revealed a widespread pattern of corruption. Reform legislation was introduced by Senator Carl Hatch, a New Mexico Democrat, and passed with the backing of other influential Democratic Senators. Similar legislation was introduced by Democrats in the House and passed by nearly a two to one margin. The Hatch Act was signed in 1939 by President Roosevelt.

PROVISIONS OF THE HATCH ACT

The Hatch Act transformed "Rule One" into law. Its protections and restrictions were extended to all federal employees except those in top-level political positions. The four particularly important provisions of the Act:

- 1) **Declared it unlawful for any federal employee to coerce** or threaten another individual in order to affect or interfere with his or her vote;
- 2) **Prohibited federal employees from offering employment** or compensation to any person as a reward for political activities;

- 3) **Barred any federal employee from using his or her official authority or influence to affect the results of an election; and**
- 4) **Reaffirmed the right of federal employees to vote** and express political opinions, while prohibiting them from taking active part in political management or political campaigns.

This fourth provision, barring active participation in campaigns and political organizations, was the key Hatch reform. Because the jobs and livelihood of government employees were so closely linked to the political process, it was felt that special protections were needed to insulate employees from political pressures. As long as employees were allowed to participate in political campaigns, it was believed inevitable that many would be coerced to participate in an "appropriate" manner. Thus, to protect the personal liberties of employees, it was necessary to build a solid wall separating them from partisan activities.

Proponents of the legislation similarly argued that non-elected government office provided many opportunities for undue influence in elections, and that measures were needed to restrain such influence. It was felt that this influence would be exerted to protect the narrower interests of the government itself or its employees rather than public interest. Thus in order to protect the democratic process, sponsors of the Hatch Act believed it was necessary to restrict the role which non-elected officials could play in elections.

Permissible and Prohibited Activities

The Hatch Act, nevertheless, permits federal employees to engage in a wide range of political activities. All of the political activities in which the typical citizen participates are open to federal employees. They may: register and vote; join political parties and clubs; express opinions about candidates and issues; contribute money to political organizations and candidates; and attend political fund-raising functions. Federal employees may also take an active role in non-partisan elections and may assist in non-partisan voter registration drives.

Only a small but important range of political activity is restricted by the Act--running for partisan office, actively campaigning in partisan elections, holding office in political parties, and fund-raising for partisan elections. The Hatch Act merely precludes citizens who are part of the government process from becoming partisan activists within that process.

The Act provides exemptions from these prohibitions for political appointees subject to Senate confirmation and for White House staff. These officials are deemed to be separate from the permanent civil service. A partial exemption rule also applies to local elections in certain communities with large number of federal employees. Within these communities, federal employees may run in partisan elections as independent candidates or may campaign for such independent candidates.

PROPOSED HATCH ACT CHANGES

Recently proposed legislation would remove many of these traditional prohibitions on federal employees participating in partisan politics. Under H.R. 3400, introduced by Representative Clay, federal employees would be permitted to:

- ◆◆ run for elected office;
- ◆◆ publicly endorse candidates and solicit votes;
- ◆◆ work in political campaigns;
- ◆◆ raise funds for candidates and political parties; and
- ◆◆ hold office in political parties.

Some current prohibitions would still apply, though in a very weakened form. For instance, federal employees still in theory would be prevented from using their official authority to affect the outcome of elections, or to coerce individuals to engage in or refrain from any form of political activity. These safeguards, however, would likely prove ineffective. In other cases, minor protections would be retained. H.R. 3400 would forbid the solicitation and exchange of political contributions between federal employees and between those employees and individuals engaged in business transactions with the employees' agency. In addition, the bill would prohibit federal employees from engaging in political activities while on duty, or in federal buildings.

WHY REPEALING THE HATCH ACT IS A BAD IDEA

Congressmen seeking Hatch Act repeal believe it is possible to permit large scale partisan activity within the federal bureaucracy while still protecting individual employees from partisan coercion. This ignores the hard lessons learned that prompted both the original "Rule One" and the Hatch Act: that there is an unavoidable linkage between partisan activity within government and the erosion of the freedoms of career employees.

The alleged safeguards of H.R. 3400 would not protect employees from partisan pressures. To be sure, if the proposed Hatch Act rollbacks are enacted, Americans might not be subjected again to 1930s-style politics with federal supervisors standing outside polling places with an employee check list. But the rollbacks will make it impossible to prevent the spread of more subtle forms of political pressure. Example: a federal worker whose supervisor is an active member of a local political party, and whose fellow office workers participate in political campaigns for that party, could come under considerable pressure. Such a worker could never prove that a mediocre performance rating and a delay in promotion stemmed from his political inactivity, but a prudent employee in such circumstances very likely might decide to protect his own interests by joining in the common partisan activity of the office.

Pressuring the Civil Servants. Similarly, the fact that a high-level bureaucrat was an officer in a political party and had access to records of financial donations to that party would exert pressures on government employees and businesses with contracts with the government agency to make political contributions. This pressure would exist even if no active solicitations occurred. Employees and contributors could never be certain that a lack of political support would not adversely affect their personal interests. Political pressures of this sort are not unusual in state and local politics.

With the repeal of the Hatch Act, such subtle pressures would pervade federal government service. Many federal bureaucracies already display a marked political slant. For example, in ACTION, the Environmental Protection Agency, and the Department of Housing and Urban Development 75 percent of top level career managers routinely vote Democratic in presidential elections. At the Department of Defense, on the other hand, a GOP tendency prevails. Repeal of the Hatch Act would greatly intensify the already enormous institutional forces promoting ideological conformity within these government bureaucracies. The result would be a loss of individual freedom for most government employees.

A New Political Patronage

Proponents of abolishing the Hatch Act also ignore the threat which a politically active bureaucracy poses to the electoral process. Campaign politics are fueled largely by manpower: block walkers, phone bank operators, and precinct organizers. Because their interests are closely tied to political decisions, public employees are a rich potential source of campaign workers. A Hatch Act rollback would transform large segments of the federal bureaucracy into a political machine ready to back candidates favoring higher government salaries and bureaucratic expansion. Just as public employees have served as the political foot soldiers for traditional political machines in state and local politics, an "un-Hatched" federal workforce of 2.9 million would quickly serve the same role at the federal level.

In effect, this would create a new patronage system in which politicians would hand out not government jobs (federal employees already have those) but higher wage and benefits, and enhanced career opportunities through the expansion of government programs and organizations. The old patronage system was inimical to the public interest; so would be the new one. Un-Hatching government employees would intensify the division between the interests of the federal bureaucracy and interests of the society that bureaucracy is intended to serve. It would establish a "Tammany Hall on the Potomac."

It is revealing that the push to repeal the Hatch Act comes not from rank and file federal employees but from the civil service unions, such as the American Federation of Government Employees. These unions have long been engaged in a struggle against efforts to cut government expenditure, reduce waste, and streamline federal agencies. With over half a million members, union leadership is eager to play a broader role in presidential and congressional elections. Such union power would no doubt form the core of a new patronage system.

Undermining the Professional Civil Service

The creation of the permanent career civil service was based on a political compromise. Government employees were given permanent tenure in their positions; in exchange, the career civil servants were to remain above political contests, carrying out the policies of the elected government in an impartial, professional manner. Combining permanent tenure for officials with the right to engage in political campaigning would undermine the career civil service and pose an obvious threat to American democracy.

Intensified political activity by the federal bureaucracy thus would not serve the public interest, nor the long run interests of federal employees. Public confidence in government and the career civil service is low enough. "Bureaucrat" is a public term of rebuke--but "active partisan bureaucrat" would be far worse. If the permanent career civil service is to play an enduring role in American government, public belief in its political neutrality is essential.

CONCLUSION

The Hatch Act embodies three principles governing career employees in the federal government. First, government employees should not be rewarded or punished because of their personal political beliefs. Second, the rights of government employees to express political viewpoints, join political parties and vote should not be restricted. Third, employees should not actively participate in election campaigns or hold office in political parties.

Restrictions on the degree of political involvement permitted to government workers marked a final break with the political patronage system of the nineteenth century.

The sponsors of the Hatch Act knew well that as long as government employees are free to engage in political activity in support of elected officials and can anticipate some form of benefit in return for this political service, the spectre of patronage and harassment of officials would remain. Thus restrictions on the partisan political activity of federal employees, first established by Theodore Roosevelt and later codified in the Hatch Act, were and remain a triumph over narrow partisan policies. The provisions of the Act have been an indispensable element of a merit-based career civil service.

Damaging Good Government. Rolling back the Hatch Act would damage severely good executive government in the U.S. It would subject government employees to partisan political pressure in the workplace and would free the federal workforce to act as a political lobby for increased public expenditures.

The Hatch Act and its predecessors have worked well for almost three quarters of a century. In both Republican and Democratic administrations, the Hatch Act has shielded government employees from political coercion and bolstered public confidence in the integrity of the civil service. Perhaps the very effectiveness of the Hatch Act has diminished understanding of its importance in a democratic

system. Many of the political abuses which the Hatch Act was created to curtail have long since faded from memory. But if the Act is repealed, the American political system will live through these abuses again. The Hatch Act provides a wall of separation between government service and partisan politics. That wall must not be dismantled.

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