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GUTTING THE HATCH ACT: CONGRESS'S PLAN TO RE-POLITICIZE THE CIVIL SERVICE

INTRODUCTION

The United States Senate soon will consider legislation that would repeal key provisions of the 54-year-old Hatch Act, a law prohibiting federal employees from engaging in electioneering and related partisan political activities.

The Hatch Act Amendments of 1993 (S. 185), sponsored by Senator John Glenn, the Ohio Democrat, would allow federal employees to become actively involved in partisan political campaigns, serve as campaign aides to candidates for federal elections, and serve as officers of political parties. A similar bill, the Federal Employees Political Activities Act (H.R. 20), sponsored by Representative William Clay, the Missouri Democrat who is Chairman of the House Post Office and Civil Service Committee, already has passed the House of Representatives by a wide margin. President Clinton has indicated his willingness to sign the legislation into law.

Both bills represent a dramatic reversal of the wise and long-standing rule against partisan political activity by federal civil servants. Worse still, the proposed legislation does not even maintain the non-partisan political status of employees in such sensitive federal agencies as the Internal Revenue Service, the Department of Justice, and the Central Intelligence Agency.[1]

1 During consideration of an earlier version of the Hatch Act reform, the Senate Governmental Affairs Committee rejected a modest amendment by Senator William Roth, the Delaware Republican that would have excluded these agencies. See *Hatch Act Reform Amendments of 1992*, Report of the Committee on Governmental Affairs, United States Senate, 102nd Congress, Second Session, Report 102-278, May 5, 1992. Altogether, attempts to exempt these sensitive agencies from the Hatch Act amendments have failed three times during the past two years.

If current Hatch Act restrictions on partisan political activities by federal employees are eliminated, Americans no longer will be able to depend on a federal career civil service insulated from partisan political pressures and partisan interests. Without strong legal protection from such influences, the reputation of an independent and non-partisan civil service itself will be tarnished and progressively undermined.

While Senate opponents of the Hatch Act argue that they are retaining the most important restrictions on partisan political activity, such as bans against federal workers running for office and soliciting campaign contributions, ending the long-standing Hatch Act barriers against partisan political activity will re-introduce political pressures on the career civil service reminiscent of the old spoils system, in which most government jobs were political patronage. The law must protect civil servants from such pressure. As the *Fresno Bee* commented in a recent editorial, "No procedural safeguards have ever been devised that can protect a worker who fears his job promotion rests on his willingness to walk precincts or make campaign contributions to the public employee union's endorsed candidate."[2]

Wall of Opposition. Significantly, this weakening of the Hatch Act is opposed by a wide spectrum of experts, professional bodies, and public interest groups. These include former Civil Service Commission head Bernard Rosen of the American University School Public Administration, the Federal Bar Association, the International Personnel Management Association, Common Cause, and the Public Service Research Council. The only major exception to this wall of opposition is the federal and postal unions.

Members of Congress should recall that the Hatch Act restrictions were designed not only to protect the taxpayers, but also to assure the professional independence and integrity of the civil service. "The Hatch Act reflects a knowing compact between federal personnel and the government. Any alteration to that compact should respect the role of Federal personnel in their responsibilities to the public, a role not made easier if the public perceives that day to day governmental operations are managed by public servants susceptible to political overreaching," says Marvin H. Morse, a spokesman for the Federal Bar Association.[3] Most federal employees understand this, and that is why most federal employees have little or no desire to become actively involved in partisan politics. As the late Marjorie Fribourg, a Washington-based historian, wrote, "When a civil servant says, 'I'm Hatched', he is not complaining. He is protecting himself from political arm twisting."[4]

While federal law currently prohibits federal workers from engaging in partisan political activity on or off the job, their basic political rights are not infringed. Only active partisan conduct is prohibited. This includes such activities as running for office on a partisan ticket, serving as a campaign organizer, an officer of a political party, or fundraiser for party candidates. Yet federal workers are quite free to join a political party and contribute to political campaigns. The House and Senate bills would remove current restric-

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2 "Hatch Act Revisited," an editorial in *The Fresno Bee*, March 18, 1993.

3 Hon. Marvin H. Morse, Testimony of the Federal Bar Association before the Committee on Governmental Affairs, United States Senate, April 30, 1993, p. 2.

4 Cited in "Hatch Not Hacks," an editorial in *The Wall Street Journal*, February 19, 1993.

tions, allowing federal employees to engage in a broad range of partisan political activities when they are not actually at the job site.

Rather repealing key provisions of a successful 54-year-old-law, the Clinton Administration and Members of Congress should work together to improve the effectiveness and efficiency of the federal civil service. This would not only include steps to strengthen the Hatch Act. To do so, federal policy makers should consider legislation or regulatory action that would:

✔ **Protect the career service by maintaining and sharpening the traditional division between the responsibilities of career civil servants and those of political appointees.**

The main job of federal civil servants is to carry out impartially the administrative functions of government, regardless of which political party occupies the White House. The main job of political appointees is to ensure that the President's agenda becomes official policy of the federal government. The dividing line between career and non-career managers' areas of responsibility often is deliberately or inadvertently blurred. The law should make this less possible.

✔ **Maintain Hatch Act protection for employees in sensitive positions or agencies.**

In certain agencies of government, such as the Department of Justice and the IRS, even the appearance of partisan political pressures is unacceptable. If Congress insists on revising the Hatch Act to broaden allowable partisan activity on the part of federal employees, the Hatch Act protection for these employees should be retained.

✔ **Exempt state government employees and the President's political appointees from the Hatch Act.**

The federal government should not dictate personnel management rules in the states. And the President's political appointees, who enjoy none of the protections of the career merit system, and do not fulfil the same role as career officials, should not be treated as if they were simply another class of career government workers.

✔ **Correct genuine abuses of civil service rules.**

Congress and the Clinton Administration should focus on correcting genuine abuses of the merit system, particularly the hiring of family and friends at the expense of the competitive selection process. These prohibited personnel practices are far more widespread than Hatch Act violations, but have received scant attention on Capitol Hill and at the White House.

✔ **Allow career federal employees to make a personal choice every four years to enter a special non-career employment status and engage in partisan political activities.**

Career civil servants should be able to play a full role in partisan politics, like presidential appointees do now, but only in return for giving up the ironclad job protections of the federal merit system. This reform would fully protect the professional integrity and the independence of the career civil service, while giving individual federal

employees the option of entering partisan politics and the possibility of a high-level presidential appointment. At the end of a four-year period, these employees should be given the option to switch back into career civil service.

Congress should reaffirm the simple principle that government service is a public trust and not a private right. When any citizen undertakes to perform public service, there are necessarily special conditions and restrictions that govern the service in government. In return, career federal employees enjoy a level of job security that is virtually unknown in the private sector. The Hatch Act restrictions are essential to maintaining this public trust, and should not be gutted.

TURNING BACK THE CLOCK

The Hatch Act of 1939 prohibits federal employees from interfering or using the authority of their office to:

- ✘ **Influence the outcome of electoral campaigns;**
- ✘ **Offer compensation or employment to anyone in return for their participation in political activities;**
- ✘ **Take an active role in managing or running partisan election campaigns.**

The Hatch Act covers not only federal employees, but also state government employees who administer federal grant-in-aid programs.[5]

Lawmakers and advocates of weakening or eliminating the Hatch Act restrictions against off-duty political activities by federal employees argue that the law is unfair. The reason: it is often confusing to employees, who have trouble distinguishing between permissible and impermissible political activities. Spokesmen for the American Civil Liberties Union (ACLU) claim that the law is an impermissible restriction of First Amendment freedoms, and is thus unconstitutional. They say it makes federal workers second class citizens by denying them the same political rights enjoyed by other Americans. Members of Congress who favor revision of the Hatch Act make the point that the key concern is to prevent partisan politics on the job, and they would toughen penalties for such activity at the work place.

Some federal employee union officials, on the other hand, view the Hatch Act as an obstacle to more far-reaching changes they would like to see in the federal work force. Except for postal unions, federal employee union officers cannot bargain with federal managers over wages and benefits, nor can federal workers legally strike against the federal government. But some federal union leaders see a substantial weakening of the Hatch Act as a positive step toward winning for federal employees the right to strike.[6]

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5 For an excellent description of the Hatch Act and its historical rationale as a civil service reform measure, see Robert Rector, "Inviting Tammany Hall To The Potomac: Rolling Back The Hatch Act," Heritage Foundation *Issue Bulletin* No. 134, November 2, 1987.

6 There is ample historical reason for concern on this point. In a December 18, 1978, article in the *Federal Times*, Bob Williams wrote: "Hatch reform also would sharply expand union clout on Capitol Hill. Joe Vacca, NALC [National

This would go far beyond the re-establishment of an old-fashioned spoils system. For all of its vast potential for corruption and incompetence, that system could at least claim the democratic mantle of direct accountability to the electorate. A huge, highly politicized, career bureaucracy, fully protected by the civil service system and armed with a right to strike, would dramatically change the relationship between federal employees and ordinary Americans.

WHAT THE BILLS WOULD DO

The House and Senate bills would substantially revise the Hatch Act and remove key barriers to partisan political activity on the part of federal employees.

While the House bill would allow federal employees to run for office and solicit campaign contributions from the general public, the Senate bill would continue the ban on employees running for office and would limit campaign solicitations.

Among the major provisions in each bill:

1) While the bills would retain prohibitions against federal employees acting in their official capacity to influence the outcome of election campaigns, they would allow federal employees to hold office in political parties, manage political campaigns, organize and chair partisan political meetings, and solicit financial contributions for political campaigns.

2) The House bill allows a broad solicitation of campaign funds, and includes raising money from both fellow federal workers and from private sector citizens.[7] In the Senate bill, federal employees are forbidden to solicit, accept, or receive funds from any person, with the critical exception of federal employees who are members of the same union. Notes Senator William Roth, the Delaware Republican, "The legislation accepts this principle [of non-solicitation] but makes a glaring exception for labor employee PACs."[8] Remarkably, this provision is being promoted at the very same time that Congress is debating comprehensive campaign finance reform.

PROTECTING THE INTEGRITY OF THE CAREER SERVICE

Before weakening the Hatch Act, Members of Congress should realize that the law embodies principles of nonpartisanship by federal officials dating back to the earliest days of the American Republic. In 1801, President Thomas Jefferson issued an order directed at stopping partisan political activities on the part of government employees:

Association of Letter Carriers] president, for example, believes that until Hatch reform is achieved his union stands no chance of winning the right to strike and other legislative plums that are aimed at expanding labor power in the federal establishment." Williams's comments were cited by David Denholm, President of the Public Service Research Council, in testimony before the Senate Committee on Governmental Affairs, April 30, 1993.

7 Under the House bill, however, federal employees would be forbidden from soliciting campaign contributions from any member of the general public with whom they are conducting official business or from subordinates

8 See *Minority Views of Messrs. Roth, Cohen and Cochran on S.185*, Governmental Affairs Committee, United States Senate, 1993.

> The right of any officer [i.e. office holder] to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice; but it is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being inconsistent with the spirit of the Constitution and his duties to it.[9]

The spirit of Jefferson's famous executive order is hardly mean, narrow-minded, undemocratic, or unfair. The order instead was among the first of a series of presidential efforts to reinforce a basic principle of a free society: that public office is a public trust; that political authority is to be exercised in service of the entire community, and should not degenerate into an instrument of partisan abuse or coercion. Likewise, civil service reform efforts throughout the 19th century and early 20th century were aimed at securing for the public a nonpolitical and thoroughly professional civil service.

The most important fruits of these efforts were the Civil Service Act of 1883, establishing the federal merit system, and President Theodore Roosevelt's 1907 executive order requiring strict compliance with the civil service rules against political activity. Roosevelt's order required federal employees to take "no active part in political management or in political campaigns."[10] If current congressional initiatives to revise the Hatch Act become the law of the land, allowing federal employees to manage and run campaigns, no future President could issue a similar executive order.

During the Great Depression, publicity surrounding the coercion of federal employees to support certain candidates and flagrant partisan abuses of power within the federal government spurred Congress to reform the system further and insulate federal employees from partisan political pressures.[11] Thus Senator Carl Hatch, a New Mexico Democrat, introduced a bill to protect the civil service from such political pressures by prohibiting electioneering by civil service workers. Passed by Democratic majorities in both Houses of Congress, and signed by President Franklin Delano Roosevelt, the Hatch Act of 1939 codified previous administrative policies in statute. The Hatch Act subsequently withstood constitutional challenges in the federal courts.[12]

Under the Hatch Act and subsequent federal rules and regulations, federal employees are prohibited from:

- ✘ **Running for public office in partisan elections;**
- ✘ **Campaigning in partisan elections;**
- ✘ **Managing campaigns;**

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9 Cited in The United States Civil Service Commission, *Biography of an Ideal: A History of The Federal Civil Service* (Washington D.C.: Office of Personnel Management Office of Public Affairs, 1977).

10 See Rector, *op. cit.*

11 Federal workers in Kentucky, during the Great Depression, were threatened with firings if they did not contribute financially to the re-election campaign of a United States Senator. This incident and similar stories became the basis for enacting the Hatch Act.

12 The Hatch Act has thus far survived three constitutional challenges before the United States Supreme Court. Of the most recent, twenty years ago, the United States Supreme Court upheld the constitutionality of the Hatch Act in the case of *National Association of Letter Carriers* v. *the United States Civil Service Commission*, 413, U.S. 548 (1973).

- ✘ Making speeches on behalf of partisan candidates for public office;
- ✘ Conducting fundraising campaigns for candidates or political parties;
- ✘ Soliciting personal contributions for candidates or political parties or organizations;
- ✘ Holding office as an official of a political party; and
- ✘ Circulating nominating petitions or registering voters on behalf of a political party.[13]

The Act's Broad Range of Permissible Political Activities

While the Hatch Act specifically forbids federal employees from certain activities, employees nevertheless are given a wide range of opportunities to be involved in the political process. Beyond exercising their right to vote, federal employees can, for example, join political clubs and organizations. They can assist in non-partisan voter registration drives and contribute to political parties and political organizations. They can attend political fundraising dinners, rallies, and political meetings. They can sign nominating petitions and can actively campaign for ballot initiatives such as referendum questions or constitutional questions. And federal employees can participate actively in any campaign where none of the candidates represents a political party.[14] Civic-minded federal employees thus have ample opportunities under current law and regulation to become involved in the electoral process.

A FEDERAL LAW THAT WORKS

Unlike so many other laws and rules and regulations emanating from Washington, the Hatch Act is working—and working well.

In fact, because the Hatch Act works so well in protecting the career civil service from partisan corruption, it is difficult for Americans today to imagine what the federal bureaucracy would be like without it. Nineteenth-century Americans well understood partisan abuse of public employees. And that was in an era in which the federal government was small, and its impact on ordinary Americans slight. Today, with the growth in the massive regulatory authority of the federal government, the introduction of partisan political pressures would have profound implications for American families and businesses. Comments an editorial writer in the *Loveland Daily Reporter-Herald* of Colorado, "Consider the effect on the citizen who is audited by day by the IRS, and approached during non-working hours by the same IRS agent for a political contribution."[15] For all of their frustrations with the red tape of the federal bureaucracy, taxpayers do not generally appreciate just how little abuse now takes place on political grounds.

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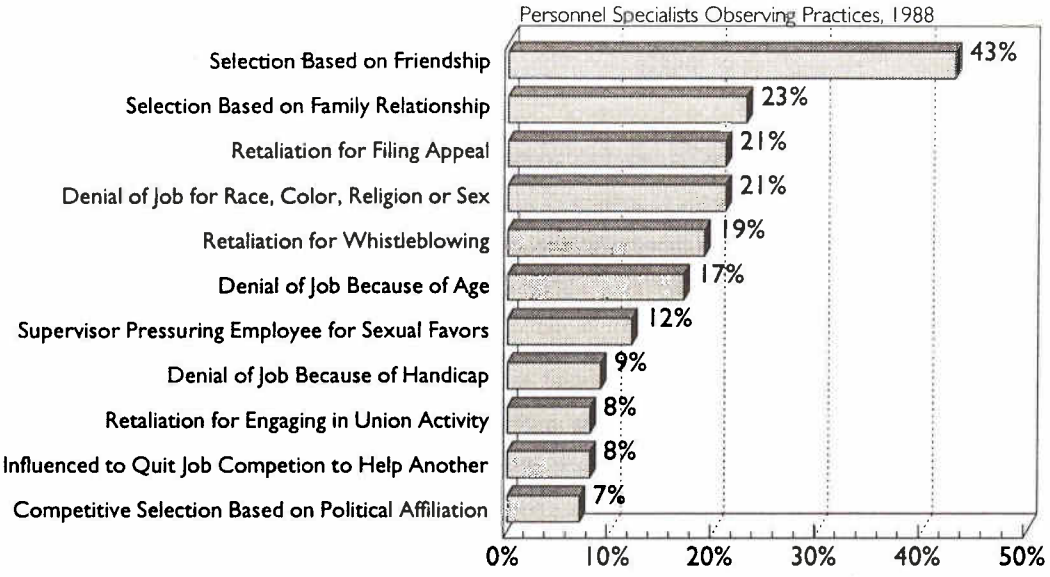
13 What federal employees can and cannot do is spelled out very clearly in *Political Activity and The Federal Employee* (Washington D.C.: The U.S. Office of Special Counsel, no date).

14 *Ibid.*

15 "Who Gains From The Destruction of Hatch?" an editorial in *Loveland Daily Reporter-Herald*, Loveland, Colorado, March 18, 1993.

Federal Personnel Management: Prohibited Practices Common, Even After Civil Service Reform



Source: U.S. Merit Systems Protection Board. Heritage DataChart

In 1988, the Merit System Protection Board (MSPB), the federal agency charged with adjudicating merit system cases, conducted a survey of over 5,000 federal personnel specialists. It found that fewer than one percent of respondents observed employees being pressured to contribute to a political campaign or participate in political activity.[16] As the chart shows, other politically motivated violations of federal personnel rules also are rare. Only seven percent of respondents in the MSPB survey reported an instance of a competitive selection of civil service personnel based on political affiliation. And only two percent reported the denial of a job for political affiliation.

As the chart shows, however, all is not well with the civil service personnel system. The biggest set of violations of the personnel rules is found in the far more pervasive operation of the "buddy system," the hiring of friends (43 percent) or personnel based on family relationships (23 percent). Other continuing abuses include racial, religious, age, and sexual discrimination. It would be far more useful for the Clinton Administration and Members of Congress to "reinvent government" by focusing on these violations of personnel rules, rather than gutting the Hatch Act and opening the door to partisan political manipulation of the civil service.

The effectiveness of the Hatch Act is further confirmed by the evidence from the case load of the Merit System Protection Board itself. Notwithstanding claims by some Hatch

16 *Federal Personnel Management Since Civil Service Reform: A Survey of Federal Personnel Officials, A Report to The President and The Congress of the United States*, United States Merit System Protection Board, November 1989, p. i.

Act opponents that the law is too complicated and difficult for federal employees to understand, few employees are going to court pleading ignorance of the law. In fact, few federal employees go to court at all: Hatch Act prosecutions are very rare. In fiscal year 1992, the MSPB, which adjudicates Hatch Act prosecutions, decided nearly 2,000 civil service cases. Only five of these cases involved alleged violations of the Hatch Act.[17]

While there are relatively few violations and precious few prosecutions of federal employees for violating the Hatch Act, the occasional Hatch Act investigation shows the vital role the Act plays in maintaining a public service free from political coercion. A good example is a very recent case, in which the U.S. Office of the Special Counsel, the federal agency that investigates violations of the merit system, was called in to examine possible violations of the Hatch Act by employees of the District of Columbia, who are covered under the law. In this instance, federal investigators were asked to look into complaints that high-ranking D.C. government officials were calling private vendors to solicit funds for a political fundraiser. According to *The Washington Post* account, these private vendors did not "appreciate the heavy-handed approach" of the inquiries.[18] Says the *Post*, "There is no question that certain city employees were made uncomfortable—on company time—by talk of participating in these political activities."[19]

UNDERMINING THE CONFIDENCE OF THE CAREER CIVIL SERVICE

Millions of citizens must deal daily with some aspect of the federal government, from applying for student loans and federal grant applications, to the adjudication of disability benefits and Social Security claims. They expect fairness and impartiality in these administrative decisions, without a hint of political influence or interest. But as the Federal Bar Association's Marvin Morse observes, "It is difficult... to square the public's expectation of a non-political public servant when confronted by their letter carrier or social security claims clerk who, off duty, has distributed campaign literature for a partisan candidate."[20]

While many Members of Congress who support amending the Hatch Act would retain prohibitions against federal employees running for office and soliciting political contributions from the general public, these provisions still do not address one central problem. This is the subtle coercion of career employees that necessarily follows from the breakdown of the barriers against partisan political activities. The professional relationships between line management and staff invariably are strained when career supervisors and their employees are actively engaged in political combat after hours, perhaps over the very same set of public policies that they are charged with developing or enforcing during the workday. Relations can be strained even more if career employees, who are duty-bound to carry out the policies of the President, are actively engaged in highly visible, partisan efforts to defeat the President and turn out Administration officials. It is

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17 See *U.S. Merit Systems Protection Board, Annual Report for Fiscal Year 1992, Submitted to the President and the Congress of the United States* (Washington, D.C.: U.S. Merit System Protection Board, January 1993), p. 52.

18 "Mayor Kelly's Fundraising," an editorial in *The Washington Post*, February 3, 1993.

19 *Ibid.*

20 Morse, *op. cit.*

naive for Members of Congress to expect otherwise. Observes Fred Wertheimer, President of Common Cause, the liberal public interest group, "With the basic restrictions on partisan activity repealed, no procedural or other safeguards will be sufficient to protect against subtle forms of political favoritism or coercion of federal workers."[21] Former President George Bush, in his 1990 veto message on similar legislation, made the same point:

> Overt coercion is difficult enough by itself to guard against and detect. The more subtle forms of coercion are almost impossible to regulate, especially when they arise in a climate in which the unspoken assumption is that political conformity is the route to achievement and security. Such a climate leads inexorably to subtle, self imposed pressures on employees to conform, or appear to conform, to whatever political tendency will assure greater job security.[22]

For these reasons, it is understandable why so many federal personnel management specialists do not want to see the provisions of the Hatch Act weakened. In a 1988 MSPB survey of such federal personnel specialists, only about 11.5 percent of respondents agreed with loosening the Act's restrictions. More than three times as many, or 35.5 percent, said they believed the liberalization would have a "negative effect on the work environment" and thus do harm to the civil service merit system.[23]

Likewise, professional organizations representing federal employees are almost uniformly opposed to weakening the Hatch Act. The Federal Bar Association, the International Personnel Management Association, and the Association of Former IRS Executives, for instance, are concerned about the dangers posed to the fair and impartial execution of federal law if the Hatch Act were weakened. These strong misgivings are shared by representatives of the National Academy of Public Administration and by Bernard Rosen of the American University School of Public Administration and former Executive Director of the Civil Service Commission. Moreover, liberal public policy organizations, such as Common Cause, as well as conservative public interest groups, such as the Public Service Research Council, oppose "reform." The only major exception to this broad base of support for retaining the Hatch Act restrictions against partisan political activities are the federal and postal unions, particularly those with large political action committees (PACS).

HOW CONGRESS CAN IMPROVE THE HATCH ACT

The Hatch Act is working. And given the widespread public dissatisfaction with government at all levels, it is odd that Congress would be so preoccupied with weakening an effective tool of sound management. Instead of gutting the Hatch Act, the Clinton Administration and Members of Congress should be seeking to improve its operational efficiency.

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21 Fred Wertheimer, letter to members of the United States Senate, March 8, 1993.

22 Cited in *Hatch Act Reform Amendments of 1992*, *op. cit.* p. 16.

23 Cited in Denholm testimony, *op. cit.*

The President and Congress could do this in several ways:

1) Maintain and sharpen the traditional division between the responsibilities of career civil servants and those of political appointees.

By clarifying the critical dividing line between the President's political appointees and the members of the career civil service, the Clinton Administration can improve managerial control over its own agenda and preserve the integrity of the professional civil service.

The President and his Cabinet appoint only a tiny number of federal positions—fewer than 3,000 out of approximately 3 million federal jobs. If President Clinton believes that he needs to exercise more direct control over the operations of the federal bureaucracy, in order to assure his policies are properly developed and executed, he can simply order the Office of Personnel Management (OPM) to increase the number of political positions reserved to "Schedule C," or non-career appointees, in the various agencies of the federal government. No President should be denied the right to fulfill his campaign promises or follow through on his responsibilities because of a shortage of men and women personally committed to his national agenda. It is not only his right to make such appointments, it is his duty to the general public. At the same time, the President and every Cabinet officer and agency head should do everything within their power to see to it that the laws and the rules and regulations governing the merit system, and the merit principles governing of federal employment and retention, are vigorously enforced. Problems in personnel management arise when political appointees attempt to use career employees in an inappropriate fashion, or when career employees attempt to undermine the policy role of the President's political appointees.[24]

2) Correct genuine abuses of civil service rules.

Instead of reintroducing partisan politics into career government employment, Congress and the Clinton Administration should instead concentrate on finding ways to cope with the most widespread violations of merit system rules. Perhaps the most damaging is when friends and acquaintances and family relations are hired at the expense of other qualified candidates for positions in the competitive service. MSPB reports make clear that these are the most common violation of prohibited personnel practices in the federal civil service, accounting together for 66 percent of reported violations of the merit system. House and Senate hearings into this matter are long overdue, and the Clinton Administration would do well to address this problem as part of its overall review of the management and performance of the federal government.

3) Maintain Hatch Act protections for employees in sensitive agencies.

There are certain agencies of the federal government, in which career employees perform highly sensitive tasks, where even the appearance of partisan political pressure is

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24 As Senator William Roth of Delaware has written, "The controversy over whether Clinton Administration improperly utilized the FBI and IRS with respect to the White House travel office is a graphic illustration of the importance of maintaining the Hatch Act. As it is human nature to want to advance one's career, it is human nature to try to meet the expectations of one's employer." See Senator William Roth, "Keep Politics Out of Civil Service," *Roll Call*, June 28, 1993.

unacceptable. These agencies employ public servants charged with law enforcement and certain sensitive regulatory functions. At the very least, these agencies would include the Department of Justice and the Federal Bureau of Investigation, the Internal Revenue Service, the Central Intelligence Agency, the Office of Personnel Management, the U.S. Office of the Special Counsel, the Merit System Protection Board, and Administrative Law Judges in every federal agency. No employee of these agencies should be denied the protection of the Hatch Act.

Alternatively, Congress should take the advice from former Civil Service Commission Executive Director Bernard Rosen, and retain Hatch Act protections for federal supervisors, federal managers, and members of the senior executive service, roughly 300,000 employees in all. These managers invariably perform sensitive policy tasks and are responsible for the daily management of the career civil service.[25] Maintaining Hatch Act coverage for these employees will not only protect them, of course, from partisan pressures, it will also protect the taxpayers at large. As George Will notes, "Making political activity permissible may make it semi-obligatory. And the person who audits your tax return will be able, after work, to solicit a political contribution from you."[26]

4) Exempt state employees and the President's political appointees from the Hatch Act.

Under the Hatch Act and its accompanying regulations, a state government employee is forbidden to run for political office if that state government employee works in a program receiving federal funds. The states frequently receive federal assistance for a wide variety of programs, including public health, welfare and housing programs, public works, agricultural, transportation, and anti-poverty programs. While the federal interest in maintaining politically neutral administration of these programs is understandable, on balance it is one of the many federal rules that are weakening the local autonomy and independence of the states. In this respect, the Hatch Act functions as another federal mandate on the states, and undermines the independence of the voters and elected officials of the states to set their own rules for state government service.

States should be free to determine their own civil service rules. If Congress is committed to restoring strong and vital federalism, and reaffirming the authority of the states, there is no justification for this level of federal interference in state personnel management. As Senator Joseph Lieberman, the Connecticut Democrat, observes, "Where the states have decided that they can grant full political freedom to their employees, it is not the federal government's role to tell the states otherwise. If there is evidence in the future that states are doling out federal funds on a partisan basis, we should address that concern directly instead of through the back door of the Hatch Act."[27]

If there is any class of federal employees who can reasonably be exempted from the Hatch Act restrictions on partisan political activity it is the one group of employees who enjoy no civil service job protection—the President's own political appointees. While members of the White House staff, Cabinet heads, and sub-cabinet officials who are

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25 See Bernard Rosen, Statement on Proposed Changes tothe Hatch Act before the Committee on Governmental Affairs, United States Senate, April 30, 1993.

26 George Will, "The Core of Clintonism," *The Washington Post*, May 23, 1993.

27 Senator Lieberman's remarks on the subject are found in *Hatch Act Reform Amendments of 1992, op. cit.*, p. 14.

inated by the President and confirmed by the Senate are not subject to the restrictions of the Hatch Act, the vast majority of the President's appointees are covered by the law. These employees are appointed directly or indirectly by the President and serve at his pleasure or, for all practical purposes, at the pleasure of the federal agency heads who supervise them. They can be hired or fired at will. They enjoy no job security, and any job security they may think they have comes to an end every four years. Moreover, their express function is to advance the partisan political agenda of the White House. So it is not unreasonable to allow these employees to work on the President's behalf in a presidential or other federal campaign.

5) Allow career federal employees to make a personal choice every four years to enter a non-career employment status and engage in partisan political activities.

The creation of a politically neutral, career civil service, free from partisan pressures, must of necessity involve certain trade-offs between career civil servants and the public they serve. Career civil servants are given strong job protection under the federal merit system, in return for a legal restriction on their partisan activities. They are, after all, the custodians of an immense public trust. They are charged with administering government in a non-partisan fashion, regardless of which political party is in power and irrespective of which policy the Administration pursues.

If Congress is serious about broadening the opportunities of federal employees to participate in partisan political activities, then Congress should be fair to the federal workers and to taxpayers. Congress simply should allow federal employees to trade in their merit system job protection for the right to participate in partisan political activity. Inasmuch as the vast majority of federal employees, at least according to the available empirical evidence, do not have any great desire to repeal or weaken the Hatch Act, there is no need to threaten the political neutrality of the entire federal career civil service on behalf of a minority who want to take leadership roles in partisan politics. Congress can instead create another schedule or another classification of employment in the federal civil service.

Opportunity to Switch. Under this new classification, a federal worker could elect, every four years and before the presidential primaries, to jump into partisan politics by changing his or her status from a career civil service position, governed by all the protections of the civil service system, to a new non-career status for the next four years. In that capacity, such a federal employee could retain all the benefits and entitlements of the career civil service, except for the job protection specifically afforded by the merit system governing employment and retention. At the end of that four-year period, the employee could switch back into the career civil service. This option for employees to change from career to non-career status, however, would not be available to employees working in the highly sensitive agencies like the FBI or the IRS.

This reform would constitute a fair trade-off. The arrangement would give federal employees a personal choice in their status, as well as a rare opportunity to join the ranks of political appointees and serve the President and the country in confidential and high-ranking policy-making positions reserved to men and women committed to the President's agenda. This personal choice could be freely exercised once every four years during a special "Open Season."

CONCLUSION

The Hatch Act has preserved the independence and integrity of the career civil service. It has survived constitutional challenges. And it has struck a reasonable balance between the right of political employees to engage in limited partisan political activity and the right of citizens to government administration free of partisan political abuse.

While improvements can and should be made in the Hatch Act, consonant with protecting the independence of the career civil service, the basic ban against partisan political activity on the part of federal employees should be retained. Both MSPB's reports on the low frequency of Hatch Act violations and its caseload affirms the general success of the Hatch Act in curbing politically inspired abuses of the career civil service. Members of Congress should reaffirm the simple principle: Government service is a privilege, not a right. With the acceptance of such a privilege comes the acceptance of certain obligations, including the duty to refrain from active roles in partisan political campaigns.

Meanwhile, Members of Congress should recall that career civil servants enjoy a level of job security unknown to workers in the private sector. If individual career civil servants are insistent on taking leadership roles in partisan politics, they should be given the personal choice to make that decision. But they should then also be willing to accept the same employment risks as political appointees—and workers in the private sector.

President Clinton has pledged to "reinvent government," including the streamlining of federal management and the reduction of 100,000 positions in the federal government. Reintroducing partisan politics into the ranks of the career federal service is not what most Americans would consider to be an example of reinventing government.

Robert E. Moffit, Ph.D.
Deputy Director of Domestic Policy Studies