The original documents are located in Box 42, folder "1976/04/12 HR8617 Federal Employees Political Activities Act of 1976 (vetoed) (2)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

DRAFT
DHL - 4/9/76

To the House of Representatives:

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

The public expects that government service will be provided in a neutral, nonpartisan fashion. This bill would produce an opposite result.

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If, as contemplated by H.R. 8617, the prohibitions against political campaining were removed, we would be endangering the entire concept of employee independence and freedom from coercion which has been largely successful in preventing undue political influence in Government programs or ~~personal~~ personnel management. If this bill were to become law, I believe pressures could be brought

to bear on Federal employees in extremely subtle ways beyond the reach of any anti-coercion regulation so that they would inevitably feel compelled to engage in partisan political activity. This would be bad for the employee, bad for the government, and bad for the public.

Proponents of this bill argue that the Hatch Act limits the rights of Federal employees. The Hatch Act does in fact restrict the right of employees to fully engage in partisan politics. It was intended, for good reason, to do precisely that. Most people, including most Federal employees, not only understand the reasons for these restrictions, but support them. However, present law does not bar all political activity on the part of Federal employees. They may register and vote in any election, express opinions on political issues or candidates, be members of and make contributions to political parties, and attend political rallies and conventions, and engage in a variety of other political activities. What they may not -- and, in my view, should not -- do is attempt to be partisan political activists and impartial Government employees at the same time.

The U.S. Supreme Court in 1973 in affirming the validity of the Hatch Act, noted that it represented

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

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

H.R. 8617 is bad law in other respects. The bill's provisions for the exercise of a Congressional right of disapproval of executive agency regulations are Constitutionally objectionable. In addition, it would shift the responsibility for adjudicating Hatch Act violations from the Civil Service Commission to a new Board composed of Federal employees. No convincing evidence exists to justify this shift. However, the fundamental objection to this bill is that politicizing the Civil Service is intolerable.

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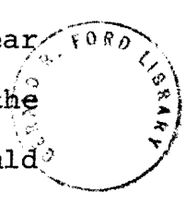

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I, therefore, must veto the measure.

Gerald R. Ford

THE WHITE HOUSE,

April 12, 1976.

TO THE HOUSE OF REPRESENTATIVES:

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

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

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

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

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

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

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

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

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

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

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

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

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

The Court further stated that Federal employees

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

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

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

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

The WHITE HOUSE

April , 1976

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith, without my approval, H.R. 8617, "To restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes."

This legislation would essentially repeal the present provisions of Federal law, commonly referred to as the Hatch Act, which prohibit Federal employees from taking an active part in partisan political management or in partisan political campaigns. This legislation would retain, however, certain limited restrictions against solicitation of political contributions by a superior or solicitation in a Government building, and prohibit political activity while on duty or while in a Government building. Further, it provides for a Board on Political Activity, and sets forth a requirement that any regulations promulgated by the Civil Service Commission hereunder must first be approved by the Congress.

Such a major change in the law would ill-serve the compelling interest of the Government, and of the public whom it serves, in an impartial and efficient Government service; it would destroy the basic fabric of a merit system which has been laboriously built up since 1883; it would heighten public cynicism toward the manner in which its Government operates; and it would be a giant step backward toward the Spoils System of the 19th century.

The historical lesson of the Spoils System tells us that intrusion of partisan considerations into the ~~career~~ civil service, such as that which occurred from the 1820's to the 1880's, is a detriment not only to civil

servants but, most importantly, to the public they serve. I see nothing to be gained by risking a return to such a system.

The Hatch Act is principally designed to serve the objective of an impartial and efficient civil service. By precluding active partisan activity, such as in party management or political campaigns, the Act makes it impossible for the party in power, or any other political power, to turn the Federal work force into an organized instrument for affecting the outcome of elections. This concern figured prominently in the enactment of the Hatch Act in 1939 because such abuses had in fact been widespread in the 1936 and 1938 elections.

Equally important with the concern that partisan political activity may detract from the impartiality of the performance of Government employees is the concern that such activities, being observed by the public, will erode public confidence in the impartial administration of the Federal Government. When the public sees a Federal employee who is prominently identified with partisan politics, and at the same time is charged with responsibility for the impartial, nonpartisan execution of public duties, it will inevitably have doubts about that employee's impartiality.

Anything which undermines the public's confidence in the impartiality and efficiency of the Federal civil service is of paramount concern to this Administration.

The Hatch Act has been very successful, in my judgment, in balancing the First Amendment rights of individual employees, on the one hand, with the public's right to an efficiently operating Government, on the other hand. By limiting the Government employee's involvement in partisan political activities, the Hatch Act further serves to assure that employees will not be compelled, or feel themselves compelled, to engage in unwanted partisan political activities in order to curry political favor with their superiors

and thereby enhance their prospects for continued employment and advancement. Pressures of this sort can be brought to bear on employees in extremely subtle ways beyond the reach of any anti-coercion regulation, no matter how tightly drawn it may be.

This entire fabric of employee impartiality and freedom from coercion, which has been largely successful in keeping undue political influence from affecting Government programs or Government personnel management, would be destroyed if, as contemplated by this legislation, the prohibitions against political management and campaigning were removed. For whatever political activity is permitted to Federal employees may well become that which is required of them.

The U.S. Supreme Court has twice ruled on the constitutionality of the Hatch Act. The wisdom of the Supreme Court, in its most recent determination that the Hatch Act is constitutional (U.S. Civil Service Commission v. National Association of Letter Carriers, AFL-CIO, 1973), is worthy of additional consideration here:

> "Such decision on our part (i.e., affirming the constitutionality of the Hatch Act) would no more than confirm the judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited."
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> "It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies should administer the law in accordance with the will of Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government--the impartial execution of the laws--it is essential that federal employees not, for example, take formal positions in political parties,

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Further, I continue to have serious doubt as to the constitutionality of any provision, such as those at sections 7324(b)(3) and 7331 of this bill, which would allow Congress to disapprove proposed regulations of an Executive agency. Such a blurring of the constitutionally authorized functions of the Executive and Legislative Branches cannot be countenanced.

For these reasons I am unable to approve H.R. 8617.

The White House

April, 1976

To be substituted

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The amendments which this bill make to the Hatch Act would deny the lessons of history.

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-444

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

AUGUST 1, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLAY, from the Committee on Post Office and Civil Service, submitted the following

REPORT

together with

MINORITY, ADDITIONAL, AND SEPARATE VIEWS

[To accompany H.R. 8617]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

AMENDMENTS

The amendments are as follows:

Page 4, line 22, after "measure" insert "in any election".

Page 5, line 4, strike out "purposes" and insert "the purpose".

Page 6, line 14, insert "(a)" before "An".

Page 6, immediately after line 22, insert the following:

"(b) The provisions of subsection (a) of this section shall not apply to—

"(1) the President and the Vice President; or

"(2) an individual—

"(A) paid from the appropriation for the White House Office,

"(B) paid from funds to enable the Vice President to provide assistance to the President, or

"(C) on special assignment to the White House Office,

unless such individual holds a career or career-conditional appointment in the competitive service.

57-006

Page 7, line 6, before the period insert "for the purpose of allowing such employee to engage in activities relating to such candidacy".

Page 7, line 13, strike out "section" and insert "sections".

Page 7, line 13, strike out "8324" and insert "7324";

Page 7, line 25, strike out "House" and insert "Houses".

Page 11, line 13, strike out "affording" and insert "specifying".

Page 17, line 20, strike out "Education" and insert "Educational".

Page 17, line 24, immediately after the period, insert the following: "The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 60 days before the earliest primary or general election for State or Federal elective office held in such State."

Page 19, in the item relating to section 7330 in the analysis, strike out "Education" and insert "Educational".

Page 20, line 5, after "employee" insert a comma.

Page 20, line 6, after "title 5" insert a comma.

Explanation of Amendments

The amendment to page 4, line 22, is a technical amendment to conform the language of section 7323(a)(2)(A) to that in section 7324(2).

The amendment to page 5, line 4, is a technical amendment which corrects a typographical error in section 7323(b).

The amendment to page 6, line 14, is a technical amendment made necessary by the committee amendment to section 7325 which added a new subsection (b).

The amendment to page 6, immediately after line 22, inserts a new section 7325(b). The new subsection (b) excludes individuals occupying those positions stated in the amendment, from the prohibitions contained in section 7325 pertaining to engaging in political activity while on duty, in a Government room or building, or while wearing a uniform or official insignia.

The amendment to page 7, line 6, is a technical amendment which conforms the language of section 7326(b) to that in section 7326(a).

The amendments to page 7, lines 13 and 25, are technical amendments which correct typographical errors in the introduced bill.

The amendment to page 11, line 13, and page 17, line 20, are technical amendments which correct the wording of section 7328(c)(2)(C) and the section heading for section 7330.

The amendment to page 17, line 24, adds three new sentences at the end of section 7330(a) to require the Civil Service Commission to annually inform each employee, individually in writing, of each employee's political rights and the restrictions under subchapter III of chapter 73 of title 5, as amended by the bill.

The amendment to page 19, in the item relating to section 7330 in the analysis, is a technical amendment to conform the analysis to the heading of section 7330, as amended.

The amendments to page 20, lines 5 and 6, are technical amendments which add two commas to section 2(c) of the bill.

Purpose

The primary purposes of H.R. 8617 are:

(1) to modify the "Hatch Act" by permitting Federal civilian and postal employees to participate voluntarily and as private citizens in the political life of the Nation;

(2) to prohibit the misuse of authority, coercion and certain activities involving political contributions by Federal civilian and postal employees;

(3) to establish an independent Board on Political Activities of Federal Employees to adjudicate alleged violations of the law; and

(4) to establish a strong mechanism through which the law may be administered.

Committee Action

H.R. 3000, the Federal Employees' Political Activities Act of 1975, was introduced by Mr. Clay on February 6, 1975. Subsequently, 10 identical bills were introduced with the cosponsorship of 64 Members of the House. The bill was referred to the Subcommittee on Employee Political Rights and Intergovernmental Programs which conducted public hearings in Washington, D.C., on March 25, and April 8, 9, and 10, 1975. In addition, field hearings were conducted in Annandale, Va., on April 14; Riverdale, Md., on April 15; St. Louis, Mo., on April 19; Cleveland, Ohio, on April 21; New York, N.Y., on May 2 and 3; and Los Angeles, Calif., on June 13, 1975 (hearing Nos. 94–17 and 94–18).

Testimony was received from the Civil Service Commission, Members of Congress, public employee organizations, the National Association for the Advancement of Colored People, public interest groups, partisan and nonpartisan civic organizations, and active and former Federal employees.

On July 10, 1975, the Subcommittee on Employee Political Rights and Intergovernmental Programs approved, by unaminous voice vote, a clean bill in lieu of H.R. 3000, which was subsequently introduced as H.R. 8617. On July 24, 1975, the Committee on Post Office and Civil Service, by unanimous voice vote, ordered H.R. 8617, with amendments, reported to the House.

Summary of Provisions

H.R. 8617, as reported by the full committee, includes the following provisions:

States that Federal employees are encouraged to exercise their right of voluntary political participation.

Prohibits the use of official authority, influence, or coercion with respect to 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.

Authorizes 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 subpena 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.

Statement

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 integrity of the merit system nor operates against the public interest.

Existing law which actually incorporates over 3,000 administrative determinations, is vague, overly broad, and infringes upon the right of every American to participate fully and completely in the political life of this Nation. Some quarters suggest that since Federal employees retain the right to vote, they enjoy adequate participation in the political process. This conclusion could not be endorsed by the committee.

H.R. 8617 takes these facts 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, freeing the Commission to focus its efforts upon its investigatory and educational responsibilities. It provides due process and judicial review for Federal employees.

The bill does not effect existing law relating to the political activities of State and local government employees. Section 401 of the Campaign Reform Act of 1974 addressed that issue. (See 5 U.S.C. Ch. 15).

Excepted employees

Presently, the disciplining of employees in the excepted service, other than Presidential appointees, is the responsibility of the agency head, not the Commission. The legislation corrects this inconsistency by making the Commission responsible for the investigation of all alleged violations of the law by employees as defined in the bill. The Board is responsible for the adjudication of alleged violations and the imposition of penalties upon employees.

District of Columbia

The committee recognizes the imperative of self-government for the District of Columbia. It considered excluding employees of the District of Columbia from this legislation at such time as that Government enacts legislation governing the political activity of its employees. This possibility was rejected by the committee because of legal impedi-

ments. If and when the District of Columbia enacts such legislation, the committee will consider excluding District of Columbia employees from this legislation.

Indirect coercion

The Civil Service Commission is concerned that it will encounter difficulty in enforcing the bill's prohibition against indirect coercion and misuse of authority. Notwithstanding this reservation, the committee is confident that the Commission will successfully implement this provision with the same vigor with which it has reportedly dealt with the equally subtle acts of racial, religious, and sexual discrimination in the Federal merit system.

Political activity on duty

The committee is sensitive to the abuses of the merit system which occurred during recent administrations. It adopted an amendment excluding the President, the Vice President and noncompetitive employees in the White House from the prohibition against political activity while on duty or in Government rooms or buildings. The committee is mindful that this prohibition might be impractical and difficult to enforce. The committee does, however, believe that the partisan political activities of the President and Vice President should be the responsibility of the appropriate political organizations. It is imperative that such activities be kept as far removed from the official duties of the President and the Vice President as the public interest will permit.

Leave of absence to seek elective office

The bill requires that Federal employees, upon request, must be granted accrued annual leave and leave without pay in order to seek party or public elective office. Such leave, if requested, must be granted, thereby precluding the hindering of such candidacy by superior officials. To require that Federal employees seeking elective office must take leave without pay would give an advantage to those individuals who are fortunate enough to have adequate resources to meet their personal and familial responsibilities during a campaign.

The committee considered and rejected an amendment to require that employees who seek Federal or Statewide elective public office take leave without pay. Such a requirement is inconsistent with the purpose of this legislation—to stimulate broad participation in the Nation's political process by Federal civilian and postal employees. Further, candidacy for such offices would necessarily require a full-time effort. Under these circumstances any Federal employee would most likely elect to take leave.

Board on political activities

The bill establishes a Board on Political Activities of Federal Employees whose function is to hear and to adjudicate alleged violations of the law. In creating this independent three member Board, composed of Government employees the committee has attempted to delineate a clearer line of responsibility between the educational and investigatory functions of the Commission, on the one hand, and the adjudicative functions of the Board on the other hand.

Investigatory procedures

The 1967 Commission on Political Activity of Government Personnel found a significant time lapse between the filing of complaints and their disposition. Administrative delays in the processing of complaints are intolerable.

This legislation ensures employees the right to timely adjudication of complaints while adequately protecting and safeguarding the interests of the employees, agencies, and the public.

It establishes specific time frames within which complaints must be processed. Simple equity and justice dictate these improvements in the administration of the law.

It is expected that any employee who is the subject of Commission or Board action in the investigation or adjudication of a complaint will be permitted representation by an individual or organization of his own choosing, if he so desires.

Penalties

Under existing law, penalties for violations of the law are overly severe. Removal from office is required for any violation, unless the Commission unanimously votes against removal. In such an event, a minimum penalty of 30 days' suspension without pay must be imposed. There is no opportunity for the Commission to temper the penalty in accordance with any unique conditions concerning violation.

To maintain a deterrent effect, while providing discretion to the Board in imposing penalties, the bill permits the Board by a simple majority vote, to impose any penalty ranging from a warning to removal from office.

The bill further removes the present permanent bar upon reemployment in the same agency for violators of the act. In many cases this is a harsh penalty for the agency as well as the individaul and is counterproductive to the public interest.

Subpena authority

Under existing law, the Commission has no authority to require, by subpena, testimony from potential witnesses. Without this authority, it is sometimes difficult for the Commission to secure the necessary evidence in proceedings where employees are reluctant to testify against a superior, coworker, friend, or neighbor.

Subpenas and orders for taking depositions can only be issued by a member of the Board. The committee intends, however, that to assist the Commission in its investigatory activities and to assist employees in their defense to charges, the Commission and employees will seek such subpenas and orders from the Board when circumstances dictate.

The bill further provides for the granting of immunity from prosecution to employees whose testimony is compelled under subpena.

The Commission or the Board may, in its discretion, proceed with any investigation or adjudication, notwithstanding the fact that criminal prosecution may be pending or contemplated.

Judicial review

Existing law makes no provision for judicial review of the Commission's decisions regarding Federal employees. That right is expressly

available to State and local employees under section 1508 of title 5, United States Code. The bill corrects this inequity and affords this right to Federal employees. In addition, a stay of the application of a penalty, preserving the status quo, is available. Thus, the bill guards against irreparable injury to the employee pending review. The bill further permits the award of attorney fees, should the court find that an employee has been wrongfully penalized.

Educational programs

As matters now stand, employees are generally confused as to where and how to report alleged violations of the law regulating the political activity. The committee believes that the Commission can and should be more aggressive in conducting an educational program for educating Federal employees about their political rights. The Commission on Political Activity of Government Personnel recommended that such a role could be fulfilled by an Office of Employees' Counsel and recommended that the Commission undertake a feasibility study on the establishment of such an office. No action was taken on this recommendation by the Commission.

The committee wishes to note its concern that the Commission has been of limited effectiveness in conducting a program for educating each Federal employee as to what does and does not constitute permissible political activity.

The committee expects that the Commission will undertake its educational program and evaluation in active and meaningful consultation with appropriate employee organizations. Such consultations can and should be initiated immediately upon enactment of this legislation.

The committee further believes that it is imperative that the Commission, in investigating complaints of alleged violations of law, not simply react to such allegations but aggressively seek and initiate appropriate investigations. For any number of reasons, employees may not file formal complaints.

The bill requires that the Commission notify each employee of permissible and prohibited political activities. It is the intent of the committee that this information be provided in as economic a manner as circumstances permit. If, for example, the Commission should deem it appropriate to distribute this information via employees' pay checks, the committee is hopeful that it would secure the active cooperation and support of appropriate Federal agencies.

Administrative support for the Board

The bill requires that suppport for the Board be provided by the Commission and the General Services Administration. Two factors influenced the committee's decision in this area. Indications are that, in all likelihood, there will be few cases requiring Board action. This judgment is based upon an analysis of the nature and number of previous complaints of alleged violations of the Hatch Act. The committee will observe developments in this area, and, should circumstances dictate, will consider appropriate legislation to deal with this issue.

Background

Historical background of the regulation of political activity of Government employees

A review of congressional and executive proposals for the regulation of political activity by Federal civilian employees reveals that until 1939, the legislative branch never determined that a blanket prohibition on voluntary political activity by Federal employees was necessary to protect either the integrity of the Federal merit system or the political process. From the first Congress in 1791 through 1939, the Congress refused to imposed such restraints on the grounds that they were unconstitutional.

Prior to 1939, all regulation of the political activity of Federal civil service employees was imposed by the executive branch. With the enactment of the Hatch Act in 1939, over 3,000 prior administrative determinations of the Civil Service Commission were incorporated into law.

Earlier, legislative attempts to limit the extent to which Federal employees could participate in voluntary political activities were successfully opposed in the Congress on the grounds that such restrictions unduly infringed upon the constitutional rights of free speech and free association. Employees were forbidden to use their authority or influence for the purpose of interfering with or coercing other employees or program beneficiaries.

In 1791, a proposed amendment to limit the political activities of inspectors of distilled spirits was defeated in the House by vote of 37 to 21 on the grounds that, "this clause will muzzle the mouths of freemen, and take away their use of their reason." (*Annals of Cong.* 1877 (1791).) In 1801, during Jefferson's administration, restrictions were proposed by the administration but were not implemented. Later, in 1838, a bill to prevent interference by Government officers with elections was introduced in the Senate by Senator Crittendon of Kentucky. The Senate Committee on the Judiciary made an unfavorable report on the Crittendon bill, calling it, "unjust, unequal, impractical, impolitic, tyrannical and unconstitutional." (*Cong. Globe, 25th Cong., 2d Sess. Appendix*, at 160 (1839).) The bill was defeated by vote of 28 to 5.

Action to limit the political activities of Government employees was taken by Secretary of State Daniel Webster in 1841. He proscribed, under penalty of removal, "partisan interference in popular elections" in order that elections "shall be free from undue influence of official station and authority," and "opinion shall also be free among the officers and agents of the Government." (Fowler, "Precursors of the Hatch Act," 47 *Miss. Valley Hist. Review* 253 (1960).) Webster's action did not proscribe voluntary partisan political activity. There were few other attempts to control the political activities of Federal employees during this period.

President Rutherford B. Hayes, in 1877, issued an Executive order providing that "no officer should be required or permitted to take part in the management of political organizations, caucuses, conventions, or election campaigns. (7 Richardson, *Messages and Papers of the Presidents*, 450–451, (1898).) The order was aimed at preventing

the coercion of public employees to engage in political activity. President Hayes was subsequently severely criticized by President James A. Garfield for "trying to effect a reform without legislative aid." (*Letter of James A. Garfield to Burke A. Hindsdale, July 25, 1880, Garfield Letter Book, James A. Garfield Papers (Manuscript Division, Library of Congress).*)

Protection for Federal officers from removal from office for political reasons was accomplished under President Garfield's successor, President Chester Arthur, with the passage of the Pendleton Civil Service Act of 1883. That Act established the Civil Service Commission and protected Federal employees from politically motivated removal from office. It did not prohibit voluntary political activity. The classified service, over which the Civil Service Commission had authority, constituted only about 10.5 percent of the total executive civil service work force of 131,208 positions. (Civil Service Commission, *the Classified Executive Service of the United States Government* 4 (1932).)

President Grover Cleveland refined the force of the Commission's rules governing the political activities of Federal employees in 1886, when he issued a circular permitting Federal employees substantially greater political participation. He made it clear that he was not condemning political activity in a blanket fashion. He expressed his concern about the use of official positions in attempts to control political movements in the following paragraph:

> Individual interest and *activity* in political affairs are by no means condemned. Officeholders are neither disfranchised nor forbidden the exercise of political privileges, *but their privileges are not enlarged nor is their duty to party increased* to pernicious activity by officeholding. [Emphasis added.] (*8 Richardson, Messages and Papers of the Presidents* 494–95 (1898).)

This circular governed the political activities of Government employees until President Theodore Roosevelt issued Civil Service Rule I in 1907.

Civil Service Rule I, drawn from President Roosevelt's Executive Order No. 642, prohibited all persons in the classified service from taking an "active part in political management or political campaigns." (*Twenty-fourth Ann. Rep. of the United States Civil Service Commission* 104 (1907).)

Theodore Roosevelt had served as a Civil Service Commissioner from 1889 to 1895. He was frustrated by the Commission's lack of enforcement authority over a system in which only 25 percent of the employees were classified. The "spoils" system controlled appointments to 75 percent of all Federal offices. In 1894, while admitting that no rule governing partisanship in the classified service had been authoritatively construed and that the Commission did not have proper authority to issue such a rule, Roosevelt stated his idea of what such a rule should be.

> A man in the classified service has an entire right to vote as he pleases, and to express privately his opinions on all political subjects; but he should not take any active part in political management or political campaigns. (*Eleventh Ann. Rep. of the Civil Service Commission* 20–21 (1894).)

This language is, of course, almost identical to that of the 1907 Rule and the 1939 statute.

On May 27, 1938, a special Senate committee was appointed to investigate charges that Federal public assistance monies were being utilized to influence Federal and local elections. Chaired by Senator Morris Sheppard of Texas, the committee found that the common feature of abuses was coercion or intimidation of Government employees or relief recipients to change party affiliation or to support party interests. The committee found that Federal public assistance funds were often diverted for political purposes. It recommended that such practices be made subject to criminal penalties.

The Sheppard committee considered instances of voluntary political activity by Federal employees. In each case it found that such activity did not constitute grounds for criticism. Its report contained no finding that the effectiveness of the Federal work force was compromised by voluntary political activity.

At the time, "New Deal" relief programs had expanded the Federal work force considerably. Many needy persons placed on the Federal payrolls were not in classified positions and therefore were not subject to the regulations governing partisan political activities administered by the Civil Service Commission. It has been estimated that of the total Federal work force of 953,891, only about 305,245, or about 32 percent, were in the competitive civil service.

A directive from the WPA program director that candidates or holders of elective office were prohibited from holding administrative capacities in WPA was eventually incorporated in WPA appropriation bills, beginning in 1936. Shortly thereafter, Senator Carl Hatch of New Mexico failed in his effort to add an amendment to the WPA 1938 appropriation bill making administrative employees of the WPA subject to the same restrictions imposed upon civil service workers by Rule I of the Civil Service Commission. The amendment was defeated in the Senate.

The Sheppard Committee reported to the Congress on January 3, 1939. Two months later, during the first session of the 76th Congress, Senator Hatch introduced legislation incorporating the Committee's recommendations into a single measure (S. 1871) forbidding any involvement in the affairs of a political organization by Federal employees working in nonpolicy making positions.

Summary of the legislative history of the Hatch Act

As introduced by Senator Hatch on March 20, 1939, S. 1871 contained various criminal provisions which were finally enacted and codified in title 18, United States Code. In addition, S. 1871 prohibited Federal administrative or supervisory employees from using their official authority to influence an election or from taking an active part in political campaigns. The penalty for violation of the law would be removal from Government service. The bill also provided that an employee retained the right to vote as he chose and to privately express his opinion on political subjects. This language was the forerunner of the Hatch Act prohibition which is now codified as section 7324 of title 5, United States Code.

On March 30, 1939, the Senate Committee on the Judiciary reported S. 1871. No public hearings were conducted on the bill nor was there much comment on the bill when it reached the Senate floor.

A motion by Senator Guffey to reconsider was withdrawn when Senator Hatch explained that section 9 of the bill did not apply to policymaking officials in the executive branch. Actually, there was no such express exemption in the bill. Express exempting language was, however, subsequently added by the House. The bill passed the Senate by unanimous consent.

In the House, S. 1871 was referred to the Committee on the Judiciary. The measure was reported, without public hearings, on July 5, 1939, with an amendment deleting the prohibition against taking an active part in political campaigns and the langauge dealing with the right of employees to vote and express political opinions.

On the House floor, S. 1871 was the subject of lengthy debate. Much of the discussion centered around section 9, which prohibited the misuse of official authority or active political management. Representatives Celler and Hobbs objected to the bill because it was overly broad. Mr. Celler contended that the measure should concern itself solely with the political activities of those in relief agencies, while Mr. Hobbs cautioned against prohibiting all political activities by Government employees, rather than just prohibiting pernicious political activities.

On the other hand, Representative Dirksen warned that, without the prohibitions of section 9, the Federal service might become a political machine. Several House Members voiced fears that the measure might place overly stringent controls on the political activities of Cabinet officers and other policymaking employees.

When a vote was finally taken on the committee amendment, the prohibition against taking an active part in political management was defeated. Mr. Hobbs then proposed to amend section 9 to provide that all persons shall retain the right to vote as they please and to express their opinions on all political subjects. This amendment, which was adopted by the House, setill omitted the language prohibiting Federal employees from taking an active part in political campaigns.

Following adoption of the Hobbs amendment, the House considered an amendment to section 9, offered by Representative Dempsey, which:

(1) Specified that only executive branch employees would be be covered by section 9, whereas, under the original language, the section would have applied to all Federal agency employees;

(2) Added to the prohibition against taking an active part in political management by barring nonexempt executive branch employees from taking an active part in political campaigns; and

(3) Specified that senior policymaking officials in the executive branch would be exempt from the prohibition against political campaigning.

The Dempsey amendment was approved and became part of the final measure adopted by Congress and signed into law by the President on August 2, 1939 (53 Stat. 1147). The language of section 9 has remained basically unchanged.

The enactment of the Hatch Act thus extended the proscriptions of Civil Service Rule I from 68 percent to almost all of the 953,891 Federal employees.

Since its adoption in 1939, the most significant amendment to the Hatch Act occurred in 1940, with the enactment of Public Law 76–753. In summary that law provided the following: (1) extended the political activity prohibitions to District of Columbia employees and to State and local government employees whose principle employment is in connection with a federally funded activity; (2) permitted Federal employees, residing in certain areas where a majority of the voters are Federal employees, to take part in local political matters; (3) amended Federal campaign laws by placing a limitation on certain contributions and expenditures; and (4) redefined the prohibitions against taking an active part in political campaigns by incorporating in the statute over 3,000 prior administrative determinations of the Civil Service Commission.

Regulation of political activities of Government employees in other nations

The subcommittee conducted a study of the prevailing practices in several other democratic nations with respect to the regulation of voluntary political activities by public employees. The countries surveyed were Sweden, France, Australia, Great Britain, West Germany, Canada, and Japan.

In Sweden, civil servants enjoy the same political rights as other citizens. They may join a political party, work actively in its behalf and become a candidate for Parliament. The Swedish Parliament contains a number of public employees who continue to receive a part of their pay as public workers as well as the normal compensation attached to the legislative office they hold. The only restrictions placed on public employees are that they must be objective in fulfilling their official duties; they are not permitted to participate in activities of political parties in their official capacity; and they must carry out the orders of their superiors even though complying with such orders is contrary to their own political views.

In France, civil servants are divided into two groups. The great majority of them have complete freedom to become members of political parties and to participate in their activities. Those who hold positions of responsibility (prefects-direct agents of the government) must show greater reserve—that is, they must not disclose the fact that they are civil servants when engaged in political activities, nor use information which they have acquired by virtue of their office, nor stand for election within the area of their prefecture (nor may they stand there until after they have left the area for 6 months). All other civil servants can run for election to Parliament (leave with pay status) while in active service. If elected they are placed in detached service but are taken back in, if they desire, when they relinquish their seat in Parliament. While serving in Parliament, they retain all pension and promotion rights as if they had never left active service.

In Australia, public servants may express opinions freely at all levels. The only prohibition on political expression is that they may not divulge departmental information. They can run for Parliament but must resign from the civil service before or upon nomination for election. (Public servants may contest state elections without resigning if the applicable laws of an individual state permits). They have full reappointment rights if they fail to be elected or desire to return after completing their term in office.

In Great Britain, employees are divided into three categories—industrial and nonindustrial workers (composed of service, maintenance and manipulative employees); an intermediate group (technical and clerical services and lower professional and administrative categories); and, senior civil servants (executive classes; those in executive, professional, scientific, technical, and administrative classifications).

Industrial and nonindustrial workers are free to engage in political activity, they can run for elective office but must resign if they run for Parliament, although they retain full reinstatement rights to return to active service. The intermediate group is free to take part in all political activities, with the permission of their department head, except Parliamentary candidature (they may run for local office without departmental permission). Senior civil servants are barred from taking part in national political activities. With permission, they may participate in political activities on the local level.

In West Germany, civil servants have the right of expression—*with moderation and restraint.* They must not divulge information obtained through government employment. Public officers have, through professional associations acting as pressure groups, become party activists and legislators. Government employees, on duty or acting in any official capacity, must refrain from any political activity. Anyone who wishes to run for Parliament must be given a leave of absence. If successful, the employee must resign from the civil service. After completing a term of office a civil servant may be reinstated provided that the general civil service requirements are met.

In Canada, deputy heads and employees are not permitted to participate actively in any election for membership in the House of Commons, the provincial legislatures and the Councils for the territories. They may not work for, on behalf of, or against any political party. They may attend, however, political meetings and make contributions to political funds. Employees may request a leave of absence without pay in order to become a candidate for national or local office. They must resign if successful. They may return to their former positions if unsuccessful.

In Japan, prior to 1947, classified government employees were permitted unlimited voluntary political participation. As a result, one political party was established within the government which frequently obstructed national policy. At the conclusion of World War II hostilities, the Commander of the Army of Occupation decreed that adequate safeguards should be established to protect the public against interruption of services by public employees. Shortly thereafter, the Japanese government outlawed all political activities by its employees.

Hearings

The public hearings conducted by the Subcommittee on Employee Political Rights and Intergovernmental Programs on H.R. 3000 constituted the first extensive congressional hearings held on the regulation of political activity of Government employees. There was widespread agreement among nonadministration witnesses that the Hatch Act was antiquated, repressive, overly broad and vague, and in need of revision. The subcommittee held 11 days of public hearings—4 in Washington and 7 in various cities around the country.

Two evening sessions were conducted in Annandale, Va., and Riverdale, Md., in order to receive testimony from active and retired Federal employees and others who were deeply interested in the bill. The public participation in these hearings was impressive.

In all, the subcommittee received testimony from 107 witnesses—individuals, employee organizations, civil rights groups, and local and national elected officials. Of the 107, 86 expressed support for amending the Hatch Act while only 21 wanted to retain the present Act.

The overwhelming sentiment which surfaced during these hearings was that the Hatch Act was overly broad, vague, and repressive in nature, and that it infringed upon the constitutionally guaranteed rights of free speech and free association.

Thomas Matthews, an attorney and consultant to the bipartisan independent Commission on Political Activities of Government Personnel stated:

> The vagueness and confusion of the present statute makes it a sword of Damocles constantly hanging, uncertainly, over the heads of millions of federal employees. That uncertainty inhibits them in the exercise of rights protected by the First Amendment and encourages them to exercise self-censorship beyond the actual prohibitions of the statute because it is difficult, if not impossible, to determine the reach of the law with confidence.

Numerous active and retired Federal civilian employees who came before the subcommittee attested to the fact that they were hesitant to participate voluntarily in the political life of this Nation because they were uncertain as to exactly what they could or could not do.

Many witnesses were unfamiliar with existing regulations governing political activities of Federal employees. This comes as no surprise when one reviews the regulations issued by the Civil Service Commission—they are contradictory, ambiguous and confusing. These regulations, along with the over 3,000 administrative determinations made by the Commission which constitute the Hatch Act, would make any Federal employee fearful of becoming politically involved. Instead, employees tend to sit back and "play it safe." Incongruously, at a time when this country should be encouraging active participation by its citizens, almost 3 million Federal employees have been politically sterilized.

Case after case presented before the subcommittee conclusively demonstrated the undue hardship imposed by the Hatch Act upon Federal employees. Several reported incidents involved Federal employees who could not take an active role in the campaign of their spouse for elective office. According to a witness from New York:

> I must be left so to speak in the "dog house" stuck with babysitting at home while my wife as a county committeewoman is allowed full freedom. It is indeed very frustrating for me not to enjoy this political freedom especially since it would take place when I'm off duty from my job and therefore would not present a conflict of interest in performing my duties on the job.

Another employee ran for public office to seek improvement of the conditions in state mental hospitals—he was found in violation of the Hatch Act and removed from his position.

Still another employee who attempted to become involved in community service came up against big business interests which aimed to destroy a local park in favor of an industrial site. Local citizens asked him to take up the banner of saving the environment. The employee discontinued his activities when he was told by his employing agency that if he continued he would be found in violation of the Hatch Act. As he stated to the subcommittee:

> Because I was a federal employee . . . my effectiveness as a spokesman for the citizens in the [Park] matter were curtailed, the city administration used it as a club, and the corporation had its way. We lost the part, and just as I had predicted, my neighborhood is deteriorating, blight has set in, and many of our influential neighbors have moved. Our home values have gone down and pollution is destroying us.

No conclusive evidence was presented during the hearings that voluntary political activity by Federal employees endangered the integrity of the merit system. All witnesses agreed that coercive or involuntary political activity was an area which must be controlled in order to safeguard Federal employees against possible abuses of official authority.

The committee differentiates between voluntary and involuntary political activity and aims to prevent the latter which does erode the integrity of the merit system. Witnesses suggested the best way to accomplish this was through a listing of those activities which clearly operated against the public interest and which should therefore be prohibited.

Criticism was also leveled against the Commission's lack of active enforcement of the Hatch Act. Witnesses suggested that adjudications of alleged violations of law should rest with an independent tribunal leaving the Commission to conduct investigations of complaints and to undertake a educational program to inform Federal employees as to their political rights.

Witnesses also complained that the current penalties under the Hatch Act were too severe. Existing law requires that any infraction be punished by removal from office, unless, by unanimous vote, the Commission decides otherwise.

The consensus was that penalties should be of a civil nature and should be applied according to the circumstances involved. Clarence Mitchell of the NAACP addressed himself to ths issue:

> It must be remembered that the Hatch Act was passed at a time when fines and jail sentences were almost routinely added to new laws. There is little to show that such penalties have improved the quality of society nor have they kept wrongdoers from carrying out schemes against the public interest.

Section Analysis

The first section provides that this Act may be cited as the "Federal Employees' Political Activities Act of 1975".

Subsection (a) of section 2 of the bill amends subchapter III of chapter 73 of title 5, United States Code, by rewriting seven existing sections (5 U.S.C. 7321–7327) and adding four new sections (5 U.S.C. 7328–7331). The revised and expanded provisions of subchapter III are explained below by code section references.

Political participation

Section 7321 sets forth the policy of the Congress that employees should be encouraged to fully exercise, to the extent not expressly prohibited by law, their rights of voluntary political participation in the political processes of the Nation. The phrase "should be encouraged to fully exercise, to the extent not expressly prohibited by law", reflects the committee's belief that any legislation restricting political activities by employees should do so expressly, and that in the absence of an express prohibition, an employee may, of his own volition, engage in any political activity.

In this regard, the bill includes, in most instances in revised language, those prohibitions in the Criminal Code which pertain to political activities of Federal employees (see, 18 U.S.C. 594, 597, 599, 600, 601, 602, 603, 606, 607). In other instances the bill includes, with minor revisions, definitions in the Criminal Code (see, 18 U.S.C. 591 (b) and (e)).

With the inclusion of these provisions the committee intends this bill to serve as a codification of the restrictions on political activities of employees. With the exception of sections 602 and 607 of title 18, which the bill amends to permit certain previously prohibited activities by employees, the criminal provisions remain unchanged. Accordingly, any activity by an employee which violates one or more of the criminal provisions cited above (including sections 602 and 607, as amended by the bill), would also constitute a violation of section 7323, 7324, or 7325 of title 5, as amended by the bill.

Definitions

Section 7322, consisting of 6 numbered paragraphs, defines various terms for purposes of subchapter III.

Paragraph (1) defines "employee" to mean any individual, including the President and the Vice President, employed or holding office in: (A) an Executive agency; (B) the government of the District of Columbia; (C) the competitive service; or (D) the United States Postal Service or the Postal Rate Commission. Thus, all officers and employees of Executive agencies and the District of Columbia, whether they are in the competitive service (see, 5 U.S.C. 2102) or the excepted service (see, 5 U.S.C. 2103) are included in the definition. Also included are those employees in the legislative and judicial branches who hold positions in the competitive service. Members of the uniformed services are specifically excluded from the definition.

Paragraph (2) defines "candidate." The definition is similar to that presently found in the Criminal Code (see, 18 U.S.C. 591(b), as amended) and provides that the term "candidate" means any individual who seeks nomination for election, or election, to an elective office, whether or not the individual is elected. Thus an individual who is seeking to win a party's nomination in a primary election or in a convention as well as an individual who has already been nominated and is seeking election to a particular office is included within the definition. Subparagraphs (A) and (B) of paragraph (2) establish the point in time at which an individual is deemed to seek nomination for election, or election, as that time when an individual has: (A) taken the action required to qualify for nomination for election, or election; or (B) received political contributions or made expenditures, or has

given consent for any other person to receive political contributions or make expenditures, with a view to bringing about that individual's nomination for election, or election.

Paragraph (3) defines "political contribution." The committee intends that this definition be given a broad interpretation.

Subparagraph (A) of paragraph (3) provides that "political contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election. The phrase "anything of value" is intended to include the use of real or personal property and the rendering of any personal service. The phrase "for the purpose of otherwise influencing the results of any election" reflects the committee's intent that contributions made to influence the results of elections relating to matters other than political office, for example, bond issues or local referenda, are included within the term "political contribution".

Subparagraph (B) provides that the term "political contribution" includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution.

Subparagraph (C) provides that the term "political contribution" also includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to a candidate or political organization without charge.

Paragraph (4) defines "superior" to mean an employee, other than the President or the Vice President, who exercises supervision of, or control or administrative direction over, another employee. The definition is intended to include those employees who, through the exercise of the authority of their position, may influence or affect the career advancement or working conditions of other employees. Thus an employee who has the authority to promote (or recommend or approve the promotion of) another employee, or to assign work to, or to evaluate the performance of, another employee would be deemed a "superior".

Paragraph (5) defines "elective office" to mean any elective public office and any elective office of any political party or affiliated organization. The phrase "elective public office" is intended to include any Federal, State, or local office which is filled by the election of an individual. The phrase "elective office of any political party or affiliated organization" is intended to include offices of a political party or organization such as committeeperson, convention delegate, president, or chairperson which are filled by the election of an individual.

Paragraph (6) defines "Board" to mean the Board on Political Activities established under section 7327 of title 5, as amended by the bill.

Use of official authority or influence; prohibition

Section 7323 sets forth prohibitions on the use of official authority or influence for political purposes and defines "use of official authority or influence".

Subsection (b) of section 7323 defines "use of official authority or influence for purposes of subsection (a) as including, but not limited to, promising to confer or conferring any benefit (such as appointment,

promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling). The parenthetical matters are examples only, and the committee intends, for purposes of subsection (a) of section 7323, "use of official authority or influence" to include the conferring, denying or affecting of any benefit emolument, or other thing which may be within the authority of an individual as a government employee to confer, deny, or affect.

Subsection (a) of section 7323 prohibits an employee from using or attempting to use that employee's official authority or influence, either directly or indirectly, for political purposes. The phrase "directly or indirectly" recognizes that the use of official authority or influence may often not be manifested in an overt act but instead may be exercised in a subtle fashion. The committee intends that such subtle use or attempted use of official authority or influence for political purposes be included in the prohibition of subsection (a).

Paragraphs (1) and (2) of subsection (a) set forth the political purposes for which it is improper for an employee to use or attempt to use official authority or influence.

Paragraph (1) prohibits the use or attempted use of official authority or influence for the purpose of interfering with or affecting the result of any election. This provision is identical to one of the primary prohibitions of the present Hatch Act (5 U.S.C. 7324(a)(1)).

Paragraph (2) of subsection (a) prohibits the use or attempted use of official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing, or attempting to intimidate, threaten, coerce, command, or influence: (A) any individual with regard to the right of that individual to vote, or not to vote, as that individual may choose, or to cause an individual to vote for or against any candidate or measure; (B) any person to give or withhold any political contribution; or (C) any person to engage, or not to engage, in any form of political activity whether or not the activity is prohibited by law. It should be noted that although the committee intends that it be the policy of the Congress, as set forth in section 7321 discussed above, to encourage employees to fully exercise their rights of political participation, the committee also intends that the prohibitions in subsection (a) of section 7323 provide protection against the use of official authority or influence for those employees who choose not to engage in political activity.

Solicitation; prohibition

Section 7324 sets forth prohibitions applicable to employees with regard to soliciting, accepting, receiving, or giving political contributions.

Paragraph (1) of section 7324 prohibits an employee from giving or offering to give a political contribution in return for any individual's vote, or abstention from voting, in any election.

Paragraph (2) of section 7324 prohibits an employee from soliciting, accepting, or receiving a political contribution in return for his vote or abstention from voting.

Paragraphs (1) and (2) parallel, with minor rewording, existing prohibitions in the Criminal Code pertaining to the buying or selling

of votes (see, 18 U.S.C. 597), and it is the intention of the committee that any act prohibited by the criminal provision also be prohibited by these paragraphs.

Paragraph (3) of section 7324 prohibits an employee from knowingly giving or handing over a political contribution to a superior of that employee. The phrase "superior of that employee" is intended to limit the prohibition to instances where an employee makes a political contribution to a superior who has the authority to affect that particular employee's employment. Thus, while an employee may not give a political contribution to another employee who is his superior, an employee is not prohibited from giving a political contribution to another employee solely because the other employee is a superior as defined in paragraph (4) of section 7322. For example, an employee of one agency is not prohibited from giving a political contribution to a supervisory employee of another agency.

Paragraph (4) of section 7324 sets forth two prohibitions against the solicitation or receipt of political contributions by employees.

Subparagraph (A) of paragraph (4) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution from another employee (or a member of another employee's immediate family) with respect to whom the employee is a superior. As with the prohibitions in paragraph (3) discussed above, the phrase "with respect to whom such employee is a superior" is intended to limit the prohibition to instances where a superior has the authority to affect an employee's employment. In most instances where an employee is a superior with respect to another employee, both employees would be in the same agency. The inclusion of the phrase "member of an employee's immediate family" is intended to prohibit possible circumvention of the literal prohibition against a superior soliciting political contributions from an employee such as where a superior solicits a contribution from the employee's wife. A member of an employee's immediate family would generally include those blood relations who reside in the employee's household, although in certain instances it could include other relations such as parents, children, brothers, or sisters, who reside in the nearby vicinity, and whose decision to give or not to give a political contribution to a superior of an employee could be affected by the superior-employee relationship.

Subparagraph (B) of paragraph (4) prohibits an employee from knowingly soliciting, accepting, or receiving, or being an any manner concerned with soliciting, accepting, or receiving, a political contribution in any room or building occupied in the discharge of official duties by: (i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or (ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States. Thus, an employee is prohibited from soliciting political contributions in any room or building where Federal Government business is being conducted. In addition, an employee is prohibited from soliciting political contributions in any room or building where an individual being paid from money derived from the Federal Treasury is working, for example, where an individual whose salary is paid through a Federal grant

or where an employee of a Federal contractor whose salary derives from Federal funds is working.

Subparagraph (B) parallels, with minor rewording, existing provisions in the Criminal Code (see, 18 U.S.C. 603), and it is the intention of the committee that any act prohibited by the criminal provision also be prohibited by subparagraph (B).

Political activities on duty, et cetera; prohibition

Subsection (a) of section 7325 prohibits an employee from engaging in political activity: (1) while on duty; (2) in any room or building in which an individual employed by the Government of the United States, or the government of the District of Columbia is engaged in official duties; or (3) while wearing a uniform or official insignia identifying the office or position of the employee. Subsection (a) reflects the belief of the committee that political activity of employees should not be allowed to interfere with the effective conduct of the Government's business.

Subsection (b) of section 7325, with the committee amendment, excludes from the prohibitions of subsection (a), the President, the Vice President, and an individual: (A) paid from the appropriation for the White House Office; (B) paid from funds to enable the Vice President to provide assistance to the President; or (C) on special assignment to the White House Office, unless such individual, described under (A), (B), or (C), holds a career or career-conditional appointment in the competitive service.

Leave for candidates for elective office

Section 7326 authorizes leave without pay and accrued annual leave to be granted to employees who are candidates for elective office.

Subsection (a) of section 7326 provides that an employee who is a candidate shall, upon that employee's request, be granted leave without pay for the purpose of engaging in activities relating to that employee's candidacy. It should be noted that there is no requirement that an employee who is a candidate take leave without pay, but if the employee requests such leave without pay, the employing agency must grant the request.

Subsection (b) of section 7326 provides that an employee who is a candidate shall, upon that employee's request, be granted accrued annual leave for the purpose of engaging in activities relating to that employee's candidacy. As is the case with leave without pay, an employee is not required to take accrued annual leave, but if the employee requests such leave, the employing agency must grant the request, notwithstanding the provision in section 6032(d) of title 5 which provides that the granting of annual leave is within agency discretion. The term "accrued annual leave" means that an employee is entitled only to that amount of annual leave which he has actually earned. An agency is not required to advance annual leave.

Under section 7326, an agency is only required to grant leave to an employee who is a *candidate*, as defined in section 7322(2), and to prevent possible abuses of leave requests, an agency should verify that an employee is actually a *candidate* before granting a request. An employee's right to be granted leave without pay or accrued annual leave is extinguished immediately following election day whether or not the employee is elected or at such other time when the candidacy terminates such as the date on which or employee withdraws from candidacy. The phrase "to engage in activities related to such candidacy" reflects the committee's intent that leave under this section is to be used primarily for such activities. Thus, an agency may deny a request for leave under this section if it is apparent that the leave is requested for other activities, unrelated to the employee's candidacy.

Subject to the foregoing qualifications, the decision as to whether to take leave without pay, accrued annual leave, or a combination of both, rests with the employee who is a candidate. If an employee who is a candidate does not take leave and engages in activities relating to that candidacy or other political activity while on duty, such activities would violate section 7325 discussed above.

Board on Political Activities of Federal Employees

Section 7327 establishes the Board on Political Activities of Federal Employees.

Subsection (a) establishes the Board and provides that its function shall be to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of title 5. Thus, the Board's authority is adjudicatory only, with actual investigatory, prosecutorial, and enforcement authority being given to the Civil Service Commission under section 7328. discussed below.

Under subsection (b), the Board is composed of three members. One member, who shall serve as Chairman, is appointed by the President. One each of the other two members is appointed by the Speaker of the House and the President pro tempore of the Senate, respectively. All three members are subject to confirmation by both Houses of the Congress.

Subsection (c) provides that the members shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment to the Board, are employees as defined under section 7322(1) of title 5, as amended by the bill.

Under paragraph (1) of subsection (d), the members are appointed for a term of three years, and the terms are staggered so that one member's term expires each year. An individual appointed to fill a vacancy may be appointed only for the unexpired term of the member he succeeds. Vacancies shall be filled in the same manner in which the original position was filled.

Paragraph (2) of subsection (d) provides that if a member of the Board ceases to be an employee due to separation from the service, he may not continue as a member of the Board for longer than 60 days after he becomes separated. The committee intends that a member who ceases to be an employee as defined under section 7322(1) but who otherwise remains an employee of the Federal Government, e.g. a noncompetitive employee of the Legislative branch, shall be deemed to have separated from service for purposes of this subsection.

Subsection (e) provides that the Board shall meet at the call of the Chairman.

Subsection (f) provides that all decisions of the Board with respect to the exercise of its duties and powers must be made by a majority vote of the Board.

Subsection (g) prohibits a member of the Board from delegating, except as otherwise expressly provided, his vote or any decision making authority vested in the Board.

Subsection (h) requires the Board to prepare and publish in the Federal Register, written rules for the conduct of its activities. Subsection (h) further provides that the Board's official seal shall be judicially recognized and requires the Board to have its office in or near the District of Columbia. The Board, however, may meet and exercise its powers anywhere in the United States, and it is intended that adjudicatory hearings will be held by the Board at locations which take into consideration the convenience of the parties concerned.

Subsection (i) requires the Civil Service Commission to provide clerical and professional personnel and administrative support. It is intended that personnel such as secretaries and attorneys will be furnished to the Board from the Commission and that administrative expenses such as travel expenses for Board members will be the responsibility of the Commission. The Chairman of the Board is required to determine what clerical and professional personnel and administrative support are appropriate and necessary, and personnel furnished to the Board are responsible to the Chairman of the Board.

Past experience indicates that the nature and number of cases involving violations of the restrictions on political activity are such that a full-time adjudicatory body is not necessary. In making determinations with regard to necessary and appropriate personnel, the committee intends that the Chairman of the Board carefully consider the nature and volume of the work to be performed by the personnel.

Subsection (j) requires the Administrator of the General Services Administration to furnish suitable office space, appropriately furnished and equipped. The equipment contemplated by this subsection would include such items as typewriters and stationery supplies necessary for the Board to carry out its functions. The responsibility for determining what may appropriately be provided to the Board under this subsection rests with the Administrator.

Subsection (k) relates to pay and leave for members of the Board. Paragraph (1) of subsection (k) provides that members shall receive no additional pay on account of their service on the Board. Paragraph (2) of subsection (k) provides that members are entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of duties vested in the Board.

Investigations; procedures; hearings

Section 7328 provides for enforcement of the prohibitions on political activity and establishes procedures for the investigation and adjudication of violations of such prohibitions.

Subsection (a) of section 7328 requires the Civil Service Commission to investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of title 5, as amended by the bill. It is the committee's intent that enforcement efforts by the Commission under this subsection not be limited to responding to formal reports or allegations, but additionally, that such efforts include all steps necessary to insure that the prohibitions are observed by employees.

Subsection (b) of section 7328 requires that the Commission provide an employee who is under investigation with the opportunity to make a statement and submit documentary evidence concerning matters under investigation. This subsection also authorizes Commission

employees lawfully assigned to investigate violations of subchapter III to administer oaths in the course of an investigation.

Paragraph (1) of section 7328(c) requires the Commission, if it appears after investigation that a violation has not occurred, to so notify the employee and the employing agency.

If it appears to the Commission after investigation that a violation has occurred, the Commission is required under paragraph (2) of section 7328(c) to submit to the Board and serve upon the employee a notice by certified mail, return receipt requested, if possible. The notice must: (A) set forth specifically and in detail the charges of alleged prohibited activity; (B) advise the employee of the penalties which may be imposed for violations; (C) specify a period of not less than 30 days within which the employee may file with the Board a written answer to the charges; and (D) advise the employee that unless a written answer is filed within the prescribed time, the Board is authorized to treat the failure to answer as an admission of the charges set forth in the notice and as a waiver by the employee of the right to a hearing on the charges.

Paragraph (3) of section 7328(c) establishes a separate procedure for cases concerning elected officials or employees appointed by the President against whom the Board has no authority to direct disciplinary action. The committee does not intend for the Board to adjudicate cases concerning elected Federal officials. The only individuals to whom the procedure under paragraph (3) applies are: (A) the Vice President; (B) an employee appointed by the President by and with the advice and consent of the Senate; (C) an employee whose appointment is expressly required by statute to be made by the President; (D) the Mayor of the District of Columbia; or (E) the Chairman or a member of the Council of the District of Columbia. If it appears to the Commission that a violation of section 7323, 7324, or 7325 has been committed by one of these individuals, it is required to refer the case to the Attorney General and to report the nature and details of the violation to the President and to the Congress.

Subsection (d) of section 7328 prescribes the procedures for hearings concerning violations of sections 7323, 7324, and 7325.

Paragraph (1) of section 7328(d) provides that if a written answer is not duly filed within the time allowed therefor, the Board is authorized to issue its final decision and order without further proceedings.

If an answer is duly filed, paragraph (2) requires a hearing on the record conducted by a hearing examiner appointed under section 3105 of title 5. Except as otherwise expressly provided under subchapter III, the hearing shall be conducted in accordance with the requirements of subchapter II of chapter 5 of title 5 (formerly the Administrative Procedure Act). Paragraph (2) further requires that the hearing be commenced within 30 days after the answer is filed, and that it be conducted without unreasonable delay. As soon as possible after the conclusion of the hearing, the hearing examiner is required to serve his recommended decision upon the Board, the Commission, and the employee, with notice that exceptions to such decision may be filed within 30 days. The Board is required to issue its final decision within 60 days after the recommended decision is served.

The last sentence in paragraph (2) provides that an employee shall not be removed from active duty by reason of the alleged violation of subchapter III before the effective date of the Board's final order.

Subsection (e) of section 7328 authorizes the Board to issue subpenas, order depositions, and compel testimony of an employee.

Paragraph (1) of section 7328(e) authorizes any member of the Board, upon written request of the Commission or an employee who is charged, to require by subpena the attendance and testimony of witnesses and the production of documentary or other evidence, which is relevant to the proceeding or investigation. Paragraph (1) further authorizes any member of the Board and any hearing examiner authorized by the Board to administer oaths, examine witnesses, and receive evidence. In the case of a refusal to obey a subpena, the Board is authorized to seek judicial enforcement in the United States district court for the judicial district where the subpena is served or where the person subject to the subpena resides. Failure to obey a court order enforcing the subpena may be punished as a contempt of court.

Paragraph (2) of section 7328(e) authorizes the Board (or a member designated by the Board) to order the taking of written depositions which shall be subscribed by the deponent.

Paragraph (3) of section 7328(e) authorizes the Board to compel the testimony or production of evidence by an employee notwithstanding any claim of the privilege against self-incrimination. Paragraph (3) further provides that no employee, having claimed the privilege against self-incrimination, shall be prosecuted or subjected to any penalty or forfeiture for or on account of the matter about which the employee has testified or produced evidence and, in addition, that no compelled testimony or evidence shall be used as evidence in any criminal proceeding (other than a proceeding for perjury) against the employee in any court.

Section 7328(f) provides for judicial review of an order of the Board. An employee upon whom a penalty is imposed is permitted 30 days from the issuance of the Board's order to institute an action for review in the United States District Court for the District of Columbia or in the district court for the judicial district in which the employee resides or is employed. An order of the Board may be stayed only upon an order of the court.

Upon receiving the required copy of the summons and complaint, the Board is required to certify and file with the court the record of the proceeding. If, upon application, the court determines to its satisfaction that (1) additional evidence may materially effect the result of the proceeding, and (2) there were reasonable grounds for failure to adduce the evidence at the administrative hearing, it may order further proceedings before the Board, and if further proceedings are ordered, the Board may modify its original findings of fact or its order and shall file with the court such modified findings or order. The Board's findings of fact are conclusive if supported by substantial evidence. If the court determines that the order is not in accordance with law it shall remand the proceeding to the Board with appropriate instructions and may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

Section 7328(g) provides that the Commission or the Board, in its discretion, may proceed with an investigation or proceeding notwithstanding the fact that a concurrent criminal investigation is in progress. The committee recognizes that many violations of this subchapter may also constitute violations of various criminal provisions. While it has generally been the practice in the past to hold a civil investigation in abeyance pending the results of a criminal investigation into the same or related matters, the usual result in cases involving alleged illegal political activities has been a decision not to proceed with a criminal prosecution and a concomitant delay of 12 to 18 months in the civil investigation. In view of this experience, it is the committee's belief that in most instances prompt resolution of proceedings under subchapter III is of primary importance, and such proceedings generally should not be interrupted or delayed.

Penalties

Section 7329 sets forth the penalties which the Board may order in the case of an employee who is found to have violated any provision restricting activities of employees under sections 7323, 7324, and 7325, and specifies the manner in which the penalty shall be imposed.

Subsection (a) provides that, subject to and in accordance with the procedures for investigation and hearing under section 7328, the Board shall, upon finding that an employee has violated any provision of section 7323, 7324, or 7325 of title 5, enter a final order directing disciplinary action against the employee. It should be noted that any order of the Board directing such action must, in accordance with section 7327(f), be made by a majority vote of the Board.

The three paragraphs of subsection (a) set forth the range of disciplinary action which the Board may order. Under paragraph (1) the Board may order the removal of an employee and, in addition if removal is ordered, the Board shall prescribe a period of time during which the employee may not be reemployed in any position (other than an elected position) in which the employee would be subject to the provisions of subchapter III.

Under paragraph (2) of subsection (a) the Board may order the suspension without pay of an employee for such period as the Board may prescribe. Under paragraph (3) of subsection (a) the Board may, in its discretion order lesser forms of penalties as it deems appropriate.

The committee recognizes that certain violations are necessarily more serious than others and intends that the penalty provisions of subsection (a) give complete discretion to the Board with regard to the severity of the penalty to be imposed so that whatever penalty is ordered may be tailored to the nature of the actual violation.

Subsection (b) requires the Board to notify the Commission, the employee, and the employing agency of any penalty it has imposed. It is then the responsibility of the employing agency to effect the disciplinary action, and that agency is required to certify to the Board the measures it has undertaken to implement the penalty ordered by the Board.

Educational program; reports

Subsection (a) of section 7330 requires the Commission to establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. It is the committee's

intent that the Commission take all necessary steps to insure that employees understand the law with regard to political activities, particularly with regard to which activities are permitted and which are prohibited, in order that employees may, to the maximum extent permissible, engage in political activities they so choose.

The last three sentences of subsection (a) as added by the committee amendment, further require the Commission to annually inform each employee, individually in writing, of each employee's political rights and the restrictions under subchapter III.

The Commission may determine the appropriate date for providing the required information to each employee, but in order to insure that the information is provided at a useful time, the date chosen by the Commission may not be less than 60 days prior to the earliest primary election for State or Federal elective office in the State where an employee is employed. If a State has no primary election, the date of the earliest general election is determinative. For purposes of this section, the term "State" includes the District of Columbia, and the Commonwealths, territories, and possessions of the United States. The manner in which the required information is provided to each employee is left to the administrative discretion of the Commission, so long as appropriate written information is provided to every employee personally.

Subsection (b) of section 7330 requires the Commission to submit, on or before March 30 of each calendar year, a report regarding the discharge of its responsibilities under subchapter III during the proceeding calendar year. The report is to be submitted to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. Each report is required to include information concerning; (1) the number of investigations conducted under section 7328 and the results of those investigations; (2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the educational program required under subsection (a); and (3) an evaluation of the educational program which describes the manner in which the Commission has carried out the program and the effectiveness of the program with regard to insuring that employees understand their political rights and the restrictions under subchapter III.

Regulations

Section 7331 requires the Civil Service Commission to prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter. It should be noted that under section 7327(h) the Board on Political Activities of Federal Employees is required to prepare and publish rules for the conduct of its activities. Rules and regulations promulgated by the Commission under this section may pertain only to matters within the responsibility and authority of the Commission, as provided by this subchapter, such as investigatory procedures to be followed by the Commission and Commission interpretations of the statutory restrictions on political activities.

Technical and conforming amendments

Subsection (b) of section 2 of the bill contains several technical and conforming amendments to title 5, United States Code.

Paragraph (1) of subsection (b) amends section 8332(k)(1), relating to civil service retirement coverage, section 8706(e), relating to civil service life insurance coverage, and section 8906(e)(2), relating to civil service health insurance coverage, by inserting a reference to leave without pay granted under section 7326(a) of title 5, as amended by this bill, in each of those sections. The effect of these amendments is to permit an employee who is a candidate and who is granted leave without pay under section 7326(a) of title 5, as amended by the bill, to elect, within 60 days after entering on leave without pay, to continue under the civil service retirement, life insurance, or health insurance programs.

An employee who elects to continue in one or more of those programs is required to arrange through his employing agency to pay currently into the appropriate fund an amount equal to the employee and the agency contributions. An employee who so elects may continue in a program for as long as that employee remains in a leave without pay status. With regard to retirement benefits, failure of an employee to make the required election precludes the period spent on leave without pay from being included as creditable service for retirement purposes. With regard to health and life insurance benefits, the failure of an employee to make an election will result in termination of coverage under those respective programs only if the employee continues on leave without pay for longer than 12 months. The provisions of subsection (b) of section 2 relating to retirement, health insurance, and retirement coverage, accord identical treatment to employees who enter on leave without pay for purposes of engaging in candidacy for elective office as is presently accorded to employees who enter on leave without pay to serve as officers of employee organizations.

Section 2(b)(2) amends section 3302 of title 5, relating to the President's authority to prescribe rules for necessary exceptions from certain provisions of title 5, by striking out the references to sections 7321 and 7322 in existing subchapter III of chapter 73 of title 5. Under the new subchapter III, as revised by the bill, all exceptions from the provisions of that subchapter are expressly set forth in the subchapter itself. Accordingly, no authority for additional exceptions is deemed necessary.

Section 2(b)(3) amends section 1308(a) of title 5, relating to annual reports of the Civil Service Commission, by striking out paragraph (3) relating to reports of the Commission concerning its actions under existing section 7325 of title 5. The reporting requirements of section 7330 of title 5, as provided by the bill, supersede the existing reporting requirements. The remaining paragraph of section 1308(a) is appropriately redesignated.

Section 2(b)(4) corrects an existing technical error in the second sentence of section 8332(k)(1) by striking out "second" and inserting in lieu thereof "last".

Section 2(b)(5) of the bill amends the section analysis for subchapter III of chapter 73 of title 5 to reflect the changes made by section 2(a) of the bill.

Amendments to the Criminal Code

Section 2(c) of the bill amends sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political

contributions, by adding a new sentence at the end of each section to provide that those sections do not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title. Since section 7324 of the bill, relating to solicitations and making of political contributions, permits employees to engage in certain activities which are presently prohibited under sections 602 and 607, this amendment is necessary to insure that an employee is not criminally liable for an activity that, although permissible under the bill, would, except for this amendment, be prohibited under section 602 or 607. It should be noted that the amendments to the criminal provisions pertain only to activities by "employees" as defined under section 7322(1) of title 5. Accordingly, the criminal prohibitions applicable to other individuals who are covered by the prohibitions in sections 602 and 607 of title 18, remain unchanged.

Amendments to other laws

Section 2(d) of the bill is a conforming amendment which amends section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d), relating to the appointment of Federal voting examiners, by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity", and inserting in lieu thereof "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities".

Section 2(e) is a conforming amendment which amends sections 103(a)(4)(D) and 203(a)(4)(D) of the District of Columbia Public Education Act, relating to the employment of officers and educational employees of Federal City College and the Washington Technical Institute, by striking out "sections 7324 through 7327 of title 5" and inserting in lieu thereof "section 7325 of title 5".

Effective date

Section 2(f) provides that the amendments made by section 2 of the bill shall take effect on the ninetieth day after the date of enactment of the act.

Costs

Past experience indicates that the nature and number of the cases requiring adjudication by the Board will be few. Accordingly, the bill provides for personnel and administrative support to be furnished by the Civil Service Commission and the General Services Administration. The committee anticipates, therefor, that the provisions relating to the Board will not result in any significant cost to the Federal Government.

The investigation of allegations of violations will be conducted by the Civil Service Commission the same as under the existing law. The committee has no information on which to base an estimate of the cost of administering this legislation.

Compliance With Clause 2(l)(3) of Rule XI

With respect to the requirements of clause 2(l)(3) of Rule XI of the House of Representatives—

(A) The Subcommittee on Employee Political Rights and Intergovernmental Programs is vested under Committee Rules with

legislative and oversight jurisdiction and responsibility over the subject matter and conducted extensive hearings on the matter. The subcommittee findings and recommendations in connection with its oversight responsibilities are embodied in the bill as reported;

(B) The bill does not provide new budget authority or new or increased tax expenditures and thus a statement required by section 308(a) of the Congressional Budget Act of 1974 is not necessary;

(C) No estimate and comparison of costs has been received by the committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974; and

(D) The committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 2(b)(2) of Rule X.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the committee has concluded that the amendments made by H.R. 8617 will not result in any significant cost or inflationary impact on prices and costs in the operation of the national economy.

Administrative Views

Set forth below are the reports on this legislation from the Office of Management and Budget, the U.S. Civil Service Commission, the U.S. Postal Service, the Comptroller General of the United States, the Internal Revenue Service, the Department of the Treasury, and the Department of Justice.

Executive Office of the President,
Office of Management and Budget,
Washington, D.C., April 2, 1975.

Hon. David N. Henderson,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This is in reply to the Committee's request for the views of this Office on H.R. 719, H.R. 1306, H.R. 1326, H.R. 1675, and H.R. 3000, all bills primarily concerned with political activity of Federal employees.

The principal purpose of these bills is to repeal the restrictions in existing law on active participation by Federal employees in partisan political activities. In its report, the Civil Service Commission states a number of reasons for strongly opposing elimination of such restrictions.

We concur in the views expressed by the Civil Service Commission and, accordingly, strongly recommend against enactment of any of these bills.

Sincerely,

James F. C. Hyde, Jr.,
Acting Assistant Director for Legislative Reference.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 24, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter requesting the Commission's views on H.R. 3000, H.R. 1306, and H.R. 1675, bills "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes"; on H.R. 1326, a bill "To amend title 5, United States Code, to permit Federal officers and employees to take an active part in political management and in political campaigns;" and on H.R. 719, a bill "To amend, title 5, United States Code, to permit Federal, State and local officers and employees to take an active part in political management and in political campaigns."

The Commission opposes enactment of these bills for several reasons.

In our opinion, the primary thrust of these bills is to repeal the existing restrictions on political activities as set forth at 5 U.S.C. 7324(a)(2). This provision prohibits Federal employees and employees of the District of Columbia from participation in partisan political management and partisan political campaigns.

A secondary thrust of these bills, with the exception of H.R. 1326 and H.R. 719, is to revise and expand 5 U.S.C. 7323 so as to clarify responsibilities and procedures under this section. The Commission does not disagree with the basic intent of the proposed revision. However, we do note that there is no indication in subsection (c) of section 7323 as to action to be taken, if any, concerning those employees in the excepted service who are not Presidential appointees. Further the provision that an employee may "make a contribution to any candidate" may conflict with 18 U.S.C. 607, administered by the Department of Justice, which prohibits an employee from giving to a Senator or Member of or Delegate to Congress "money or other valuable thing on account of or to be applied to the promotion of any political object." Additionally, a secondary thrust of H.R. 719 is to repeal the restriction on candidacy for elective office as set forth at 5 U.S.C. 1502(a)(3). This prohibition applies to State or local officers or employees whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency.

The Commission's major area of concern, however, is with the primary thrust of these bills which would allow employees virtually unlimited political activity, both partisan and nonpartisan, even at the national level. This goes far beyond the proposals to liberalize the political activity restrictions as recommended by the Commission on Political Activity of Government Personnel.

Where advancement in the public service is predicated exclusively upon merit, the entire society benefits from a more efficient and honest public service. Since 1883, this Commission, acting at the direction of the President and under Congressional enactments, has endeavored to insure that Federal employment and Federal personnel management are anchored on the principle of merit, free from the influence of political partnership.

We are convinced that some restriction on the ability of public employees to identify themselves prominently with partisan political party success is essential to an effective merit system. While the political activity of specific employees may appear to be innocuous in itself, the effect of such activity generally is that public employees become identified with the aspirations of political parties and candidates, and partisan considerations are injected into the career service. The identification of a civil servant with a political party through active participation in party affairs compromises that employee in the eyes of the public, and most certainly in the eyes of an opposing party during a change in administrations. Competition among employees for advancement and favor based on their contribution of money or services to political parties would also detract from the efficient administration of public business. Our conclusion is that the intrusion of partisan considerations into the career Federal service, even in appearance, would constitute a devastating blow to merit concepts, and to employee morale as well.

We, of course, favor the retention of the prohibition on the misuse of official authority to influence elections, as well as the restrictions on the solicitation and exchange of political contributions among Federal officers and employees. However, in our view, those limitations alone, even as revised and expanded by H.R. 3000, H.R. 1306 and H.R. 1675, are wholly inadequate to protect employees from the subtle pressures that would impel them to engage in other forms of political activity in order to protect or enhance their employment situation. Without the protection of a public policy that limits the political activities of public employees, an employee would be vulnerable to indirect influence to support the political party or candidates favored by those in a position to affect the employee's government career. Under current restrictions everyone knows that a covered employee cannot serve political purposes, except at the risk of loss of employment. This protection of the Federal employee would be discarded by the proposed legislation.

Similar restrictions, which previously applied to State and local employees in Federally financed programs, were repealed by section 401 of the Federal Election Campaign Act Amendments of 1974 (P.L. 93–443). The restriction against political management and political campaigning was replaced by a prohibition against being a candidate for elective office. It was our view at the time that amendment was passed (without public hearings of any kind), and it continues to be our view, that such a drastic change in the law would be seriously detrimental to the maintenance and operation of effective merit systems on the Statae and local levels, and would be contrary to the purpose and spirit of the original political activity legislation.

We believe that to go further, as would H.R. 719, and repeal the remaining prohibition against candidacy for elective office, would be an error of major proportions and would result in further impairment of effective merit systems at the State and local levels.

We think it significant that after nearly a year of study of the Hatch Act, the Commission on Political Activity of Government Personnel concluded that protection of a career system based on merit not only "requires strong sanctions against coercion . . . [but] also requires some limits on the role of the government employee in politics." Volume I, Report of the Commission on Political Activity of Government Personnel-Recommendations, page 3.

Apparently employees, too, feel some apprehension regarding the effect of amendments that would permit more political activity on their part. A survey of Federal employees, conducted by the same Commission in 1967, disclosed that more than half (52%) of those contacted believe that such changes would effect promotions, decisions, job assignments, and similar actions. Of the State employees surveyed, a fairly high percentage (42.3%) felt that the merit system would be hindered if all restrictions on political activity were removed. Volume II, Report of the Commission on Political Activity of Government Personnel-Research, pages 21 and 78 (1968). We believe the employees' fears stem from a realistic view of politics in relation to the public service.

The foregoing should in no way, of course, be construed as a total indictment against political activity of Federal employees. We would note, for example, that under existing law Federal employees are free to engage in a wide variety of activities. The Hatch Act does not circumscribe the entire field of political activity, but, rather, carefully directs its prohibitions to what Congress regarded as particular sources of danger to the public service, namely, direct participation by employees in the management and campaigns of major political parties. A wide range of freedom to participate in the political processes of the Nation, State, and the local community is permitted under the existing law.

Accordingly, the Commission opposes enactment of these bills.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., June 24, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On March 25, 1975, when I testified before the Subcommittee on Employee Political Rights and Intergovernmental Programs on H.R. 3000, "Federal Employees' Political Activities Act of 1975," it was suggested by Mr. Wilson that it would be helpful if we could provide a section-by-section analysis of the proposed bill. We previously submitted a bill report expressing our disagreement with the bill generally. We are herewith providing a section-by-section analysis as requested by Mr. Wilson.

Section 2 of the proposed bill, which would amend 5 U.S.C. 7323, provides that employees in an Executive agency, Presidential appointees, Members of Congress, and officers of the uniformed services "may not request or receive from, or give to" any other such employee, appointee, Member, or officer "a thing of value for political purposes," except that "an employee may freely and voluntarily make a contribution to any candidate for public office of his own volition."

The proposed section would extend to Presidential appointees (including those requiring the advice and consent of the Senate), Members of Congress, and officers of the uniformed services, the same restrictions on requesting, receiving, and giving political contributions as are currently applicable to employees in Executive agencies. The proposed section would also give to the Commission the responsibility for processing complaints arising under the section, conducting appropriate investigations, and determining whether a violation has in fact occurred.

The Commission is in agreement with the basic intent of this section. However, we note that while the action to be taken by the Commission in cases involving violations on the part of competitive service employees and Presidential appointees is made clear in subsections (c)(1) and (c)(2), there is no indication as to what action is to be taken in cases involving employees in the excepted service who are not Presidential appointees. Such employees are subject to the section by virtue of being employees "in an Executive agency," but the proposed bill does not set forth the action to be taken by the Commission when it finds a violation on the part of such an employee. We would recommend, therefore, that the proposed section be amended so that the Commission can impose a penalty, such as for competitive service employees, or notify the head of the employing agency of the Commission's determination of a violation and the penalty deemed to be appropriate.

We would also point out that section 607 of title 18, United States Code, which is within the jurisdiction of the Department of Justice, prohibits an employee from "directly or indirectly giv[ing] . . . to any Senator or Member of or Delegate to Congress . . . any money or other valuable thing on account of or to be applied to the promotion of any political object . . . ." We have consistently advised employees that they may make voluntary contributions to the duly constituted campaign committees of any candidate, including the campaign committees of incumbent Senators and Members of Congress. Therefore, in order to avoid any uncertainty, we would recommend that the provision of proposed section 2 which states that ". . . an employee may freely and voluntarily make a contribution to any candidate for public office on his own volition . . . ." be amended to read ". . . any employee may make a voluntary contribution to a political party or organization, including the duly constituted campaign committee of any candidate."

Section 3 of the proposed bill amends 5 U.S.C. 7234, which presently prohibits the misuse of an employee's official authority or influence to interfere with or affect the result of an election, and also prohibits employees from taking an active part in political management and political campaigns. The proposed bill would continue the present prohibition on misuse of official authority and influence. In our view, and based on our enforcement experience, this provision is not adequate as an "anti-coercion" provision, yet it is the only "anti-coercion" provision contained in the proposed bill. We feel that it is too vague in its meaning and there is no reasonable guidance in the present law or the proposed bill as to what is required to affect or interfere with the result of an election. It should be noted that the political activity provisions applicable to State and local employees working in Fed-

erally funded programs contain, in addition to a prohibition on misuse of official authority or influence [5 U.S.C. 1502(a)(1)], a separate prohibition which states that a covered employee may not "directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes." We would strongly recommend that a similar provision be included in any future legislation relative to the political activity of Federal employees. We would also recommend the inclusion of a provision which would establish a presumption of coercion whenever a superior solicits a subordinate employee to make a political contribution or to engage in any form of political activity.

Section 3 would also have the effect of repealing the current prohibition on employees taking an active part in political management and political campaigns. It would set forth some nine specifically permitted activities, including "candidacy for nomination or election to any National, State, county, or municipal office." We have previously presented our views with respect to a total relaxation of the management and campaigning restrictions, that being the major thrust of my March 25 testimony before the Subcommittee on this bill. Suffice it to say here that we view the particular section of the bill, if enacted, as a very real and serious threat to the maintenance of an impartial and effective career service.

Section 4 of the bill retains the current minimum penalty of thirty days' suspension without pay for violation of section 7324. The same penalty provisions would apply to violations of proposed section 7323. Currently, 5 U.S.C. 7323 specifies that an employee who violates that section will be removed from the service. Proposed section 4 would require that an employee would be subject to removal for violation of sections 7323 and 7324 only upon unanimous vote of the Commission that removal is warranted. This is a departure from the current law which makes removal mandatory unless the Commissioner unanimously determines that a lesser penalty is warranted. Since the only cases which arise under the proposed bill would be cases involving misuse of official authority in violation of proposed section 7324, or the soliciting, giving, or receiving of contributions in violation of proposed section 7323, it is our view that removal should be the mandatory penalty unless the Commission determines by unanimous vote that a lesser penalty would be appropriate. In this regard, it is our view that the Commission should be given the discretion to assess a penalty of less than 30 days, e.g., 5 days without pay, if in their judgment such lesser penalty would be more equitable under the circumstances of the case. This would be particularly important if the proposed bill were to be amended so that some management and campaign activities would still be prohibited.

Section 5 would repeal current sections 7326 and 7327 of title 5, United States Code. 5 U.S.C. 7326 currently provides that the prohibition on taking an active part in political management and political campaigns does not preclude activity in connection with nonpartisan campaigns and elections, i.e., campaigns and elections in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected. 5 U.S.C. 7327 provides for the designation, by the Commission,

of excepted localities impacted with Federal employees, to permit employee-residents to take an active part in partisan campaigns and elections at the local level, to the extent the Commission determines to be in the domestic interest. Both of the above referenced sections would be unnecessary under the proposed bill, since there would no longer be a prohibition on partisan political management and campaigning. As noted above we are in disagreement with the repeal of the management and campaigning provision.

Section 6 of the proposed bill would amend section 602 of title 18, United States Code, to require the Attorney General to prosecute violations of 5 U.S.C. 7323 referred by the Commission, or to report to the Congress, in writing, the reasons such prosecution was declined. We have no objection to such an amendment. However, jurisdiction of title 18 is solely within the Department of Justice.

In conclusion, while we have no objections to certain sections of the proposed bill, we do object strongly to that provision which would eliminate the existing prohibition on partisan management and campaigning.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., July 17, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Civil Service Commission desires to submit for consideration by the Committee our comments with respect to the Committee Print of July 7, 1975, cited as the "Federal Employees' Political Activities Act of 1975," which was ordered reported in the form of a clean bill by the Subcommittee on Employee Political Rights and Intergovernmental Programs.

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

As I testified before the Subcommittee on March 25, 1975, it is an empty hope that provisions against coercion, no matter how tightly drawn they might be, can alone protect the merit system against the encroachment of partisan political influences. It is the prohibition against active participation in partisan political management and partisan political campaigns which constitutes the most significant

safeguard against coercion—whether from superiors in the Federal service, or from outsiders. Employees realize that partisan political activity can subject them to removal, and know that those persons who could request them to be politically active have no greater threat than that. Because of the management and campaigning provisions of the Hatch Act, most employees know that they need not respond to political requests or suggestions. This entire protective fabric would be destroyed if the prohibitions against political management and campaigning are removed, as is being proposed in the bill to be considered by the Committee. We believe that whatever political activity is permitted to employees will eventually become that which is required of them. We do not believe, as has been stated by the public employee organizations, that Federal employees overwhelmingly, or that even a majority of them, are in favor of repealing the management and campaigning prohibition. We believe the opposite to be true.

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

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

Since, for the purposes of the proposed bill [§ 7322(1)], the President and Vice President are deemed to be employees, they are, unless otherwise specifically excepted, covered by the political activity restrictions applicable to other employees. Thus, under proposed section 7325, they would be prohibited from engaging in any political activity" while on duty, or in any room or building occupied in the discharge of official duties. . . ." An incumbent President would not be permitted, under this provision, to engage in any campaign activities, including campaign planning meetings or making campaign speeches, within his offices at the White House. A question which immediately presents itself, of course, is, when is a President, or a Vice President, not on duty?

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

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

In our view, the requirement that the employees appointed to be Members of the Board on Political Activities of Federal Employees under proposed section 7327 receive the confirmation of a majority of both Houses of Congress, serves no useful purpose and unnecessarily burdens the appointment process. We also have some reservations about the constitutional status of the Board, but would defer to the Department of Justice on that issue. We would also point out that there was no credible evidence introduced during the hearings before the Subcommittee that the Commission's performance of the responsibilities which would now be assumed by the Board has ever been inadequate or subject to serious criticism. We accordingly see no need for a new Board.

We note that no course of action is specified under section 7328 (c)(3) should it appear that the President has committed a violation. We also note that subpenas and orders for taking depositions can only be issued by Members of the Board [§ 7328(e)(1) and (2)].

Because we feel strongly that enactment of any legislation of the type embodied in the subject Committee Print would have serious deleterious effects on the impartial administration of and public confidence in the Federal civil service, we strongly urge that the Committee not report the proposed legislation favorably to the House. We should not turn our backs on a 50 year period of American history.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of this bill would not be in accord with the program of the President.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. POSTAL SERVICE,
Washington, D.C., May 22, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Postal Service on H.R. 3000, the proposed "Federal Employees' Political Activities Act of 1975."

The management of the Postal Service is dedicated to the concept, implemented by the Postal Reorganization Act, that partisan politics should not be allowed to interfere with the operation of the nation's postal system. We think it would be a mistake for Congress to take any action which could be interpreted or understood as a signal to reinstate the highly political atmosphere in which the old Post Office Department was operated. Accordingly, we recommend against the application to the Postal Service of any legislation such as H.R. 3000 which, we believe, would permit the injection of partisan political considerations into every level of postal operations from the mailroom floor to executive decision-making. As a practical matter it is our judgment that postal employees cannot be permitted to actively and openly participate in partisan politics as anticipated by H.R. 3000 without such activity inevitably becoming an influence in the operation of the Postal Service.

The most serious objection to H.R. 3000, from a postal standpoint, is that it would permit the erosion of the generally accepted idea or understanding that postal officers and employees, as such, are expected to be non-partisan. However, an examination of H.R. 3000 also reveals a number of specific ways in which the bill would permit partisan political activity to impinge upon everyday Federal and postal operations.

For example, as amended by the bill, 5 U.S.C. § 7324(c)(5) and (8) would allow Federal and postal employees to distribute campaign literature, distribute and wear campaign badges and buttons, initiate and sign nominating petitions, and canvass for the signatures of others. In their present form, clauses (5) and (8) would not prohibit campaigning and canvassing in a Federally owned or operated facility; nor would they forbid campaigning and canvassing by employees during working hours, or while in uniform, or while otherwise performing official duties. Similarly, proposed § 7324(c)(9) contains no requirement that an employee who is a candidate for national, state, county or municipal office, or an employee who is elected or appointed to such an office, take an unpaid leave of absence when his candidacy or his official duties unduly infringe upon his Federal job performance. Indeed, proposed § 7324 contains no explicit prohibition against the use of Federal facilities, materials, personnel, or working hours by employees who are taking an active part in political management or in political campaigns.

Obviously, the absence of safeguards in proposed new § 7324 presents significant opportunities for the abuse of Federal and postal resources and employment by employees engaged in political activity. The Government's work will not be done efficiently or economically by employees who are dispensing political literature along with

stamps, or having their secretaries type and duplicate campaign speeches as well as official reports. Moreover, allowing employee political activity during working hours will facilitate improper coercion and "arm twisting" of employees who do not share the political persuasions of their supervisors or fellow employees.

For the reason stated, the Postal Service opposes the enactment of H.R. 3000.

Sincerely,

W. ALLEN SANDERS,
Assistant General Counsel, Legislative Division.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 10, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: By letter of May 5, 1975, you requested our report on H.R. 3000, 94th Congress, 1st Session, a bill "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes."

The bill would amend sections 7323, 7324, and 7325 of title 5, United States Code, commonly known as the Hatch Act. Sections 7326 and 7327 of title 5, United States Code, would be repealed.

The proposed amendment of sections 7323 and 7325 would shift emphasis from removal of Federal employees for violations of the Hatch Act to lesser penalties, and correspondingly reduce the protection of Federal civilian employees from improper political solicitations.

The proposed amendment to section 7324 would permit a Federal employee to take an active part in political management or in political campaigns as a private citizen, including candidacy for nomination or election to any National, State, County, or municipal office, without involving his official authority or influence. We question whether this is possible. We believe any active participation by a Federal employee in political activities could involve or give the appearance of a conflict-of-interest situation. Without guidelines of maximum specificity of what constitutes official authority or influence, it would be virtually impossible to monitor or control the political involvement of a Federal employee.

Some modifications of the provisions of the Hatch Act, particularly as they relate to political activity in local communities, appear desirable. Changes of the scope proposed by the bill, however, would place an unmanageable administrative burden on the merit system and would dilute the protections afforded Federal employees by the Hatch Act.

Accordingly, it is recommended that the legislation not be enacted.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., May 13, 1975.

Hon. DAVID N. HENDERSON,
Chairman, House Post Office and Civil Service Committee, House of Representatives, Washington, D.C.

DEAR CHAIRMAN HENDERSON: I understand that Congressman Clay is now conducting a series of hearings by his subcommittee on H.R. 3000, a bill to revise the present Hatch Act, which restricts political activity of government employees. While I was not invited to testify on this legislation, I have read the bill, and testimony about it, including a strong statement in opposition by Chairman Hampton of the Civil Service Commission. It seems to me that if H.R. 3000 passes in its present form, it would damage the appearance of non-partisan objectivity in the conduct of Federal tax administration, which I believe is essential to maintaining public confidence in the Internal Revenue Service.

The Service's top manager in the North-Atlantic Region, Regional Commissioner Elliott Gray, recently testified on the bill before Congressman Clay in New York City. Mr. Gray was appearing in his private capacity as a concerned citizen and life-time civil servant, rather than as a representative of the Administration. I am attaching a copy of his statement, which I believe is an excellent expression of the problems we in Internal Revenue see in H.R. 3000.

The Civil Service Commission has a fine booklet, on the "Do's" and "Don't's" for employee political activity, under the present Hatch Act. The trouble is that too many Federal employees are not familiar with these rules, and they lean over backward and avoid even permissible political activities. It would be helpful if the present specific restrictions, the "Do's" and "Don't's", were spelled out clearly in the law itself, rather than being inferred from a body of Civil Service Commission and court decisions on a vaguely-worded statute.

I also would like to see provision for a positive education program for government employees, on what they can and can't do in political matters. Perhaps this could be jointly undertaken by the Civil Service Commission, agency training officials, and the unions, with materials and training aids provided by government funds. I would also like to see authorization for a flexible range of penalties and corrective actions, administered in accordance with the circumstances of particular cases of infringement on the rules.

What I definitely would not like to see, however, and certainly not in the Internal Revenue Service, is a return to the bad old days when officials and employees whose actions and decisions affect individual members of the public, are themselves candidates for political office while serving in government jobs, or actively campaign for partisan candidates, under party sponsorship. It strikes me as improper for a revenue agent or revenue officer to go out soliciting the public for votes either for himself, as a party candidate, or for a political nominee of a party. That is what H.R. 3000 would allow, and I hope such provisions are deleted before the bill moves further towards enactment.

With kind regards,

Sincerely,

DONALD C. ALEXANDER.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., June 16, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Department would like to take this opportunity to comment on H.R. 3000, a bill, "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes."

The primary thrust of the bill is to repeal the existing restrictions on political activities as set forth at 5 U.S.C. 7324(a) (2). This provision prohibits Federal employees and employees of the District of Columbia from participation in partisan political campaigns.

While the Department appreciates and lauds the efforts of Congress to increase the political rights of Federal employees, it is particularly concerned with the potential abuses and negative impact that such legislation could have upon the Government's merit system principles and practices. Without the protection of a public policy that limits the political activities of public employees, an employee would be vulnerable to indirect influence to support the political party or candidates favored by those in a position to affect the employee's government career.

Under current restrictions a covered employee cannot serve political purposes, except at the risk of loss of employment. By limiting the Government employee's involvement in partisan political activities, the Hatch Act serves to assure that employees will not be compelled, or feel themselves compelled, to engage in unwanted partisan political activities in order to curry political favor with their superiors and thereby enhance their prospects for continued employment or for advancement. The thin line between voluntary and involuntary contributions and participation would become even more nebulous and unprovable, and the pressures and subtle coercion to which the employee could be subjected greatly increased. This protection of the Federal employee would be taken away by the proposed legislation.

In addition, there are many agencies, including the Department of the Treasury, which have the power under law to acquire information about individuals which can be highly valuable in advancing or defeating the interests of partisan political candidates. To place employees of such agencies in a public, partisan political arena could subject them to improper pressures to divulge or misuse such information and, therefore, tend to compromise them and their agencies. The Department's Internal Revenue Service is one such office wherein the restrictions of the Hatch Act help to build and support the public confidence that is so essential to a voluntary compliance tax system founded on the belief that everybody will pay his or her just share, free of political or other improper consideration or favoritism. To remove those restrictions, as the proposed amendments would, could result in an erosion of public confidence in the impartial administration, not only of the tax system, but also of all government.

When the public sees a Federal employee who is prominently identified with partisan politics, and at the same time charged with respon-

sibility for the impartial, nonpartisan execution of public duties, it will inevitably have doubts about that employee's impartiality. By limiting the Government employee's involvement in partisan politics, the Hatch Act reduces the likelihood that the employee will allow partisan political views to interfere with the impartial execution of the Government's business. To amend the Act, as proposed by H.R. 3000, removes these safeguards.

Any benefits to Federal employees in increased political rights resulting from the liberalization of the Hatch Act by the proposed amendments of H.R. 3000 would be outweighed and overshadowed by the accompanying negative impact on the Government's merit system and on public confidence in the nonpartisan administration of Government operations. The Department of the Treasury, accordingly, strongly opposes enactment of H.R. 3000.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

DEPARTMENT OF JUSTICE,
Washington, D.C., June 26, 1975.

HON. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 3000, a bill "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes."

The chief purpose of H.R. 3000 is to amend the Hatch Act, particularly 5 U.S.C. 7324(a), so as to permit Federal civilian and Postal Service employees to take an active part in political management or in political campaigns in their roles as private citizens and without involving their official authority or influence. Sec. 3(a). Since this provision goes to the heart of the bill, we confine our comments to it.

The phrase "active part in political management or in political campaigns" would be broadly defined (see proposed section 7324(c).), so as to permit participation by Federal employees in political activities such as the following: "Candidacy for service as a delegate in political convention; participation in the deliberations of any primary meeting, mass convention or caucus, addressing the meeting or otherwise taking a prominent part; preparing for, organizing or conducting a political meeting or rally on any partisan political matter; membership in political clubs and organizing of such a club; distributing campaign literature, badges and buttons; publishing or having editorial or managerial connection with partisan political publications; organizing a political parade; initiating and circulating nominating petitions for a partisan candidate, including canvassing for signatures; candidacy for any public office—national, state or at any other local level."

For the purpose of this section, the Hatch Act amendment would also apply to employees of the United States Postal Service. Proposed sec. 7324(d). There is no exemption for components of agencies, such as the Federal Bureau of Investigation of the Department of Justice.

In *U.S. Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548 (1973), the Supreme Court recently sustained the constitutionality of 5 U.S.C. 7324(a)(2), which prohibits federal employees from taking an active part in political management or in political campaigns. The Court held that Congress had the power to prevent federal employees from holding a party office; working at the polls; organizing a political party or club; actively participating in fund-raising for a partisan candidate or political party; initiating a partisan nominating petition, soliciting votes for a partisan candidate for public office; or serving as a delegate to a political party convention—in sum, that Congress had authority to regulate various activities (such as H.R. 3000 would expressly permit), and that such regulation is not barred either by the First Amendment or any other provision of the Constitution. 413 U.S. at 556. In overruling these constitutional objections, the Court said (413 U.S. at 564–565):

"It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in accordance with the will of Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government—the impartial execution of the laws—it is essential that federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government. . . .

"There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent."

As the Court also pointed out, "Until now, the judgment of Congress, the Executive and the country appears to have been that partisan political activities by federal employees must be limited if the Government is to operate effectively . . . and employees themselves are to be sufficiently free from improper influences." *Id.* at 564. We are not aware of any substantial evidence within our recent experience which requires this judgment to be altered.

Apart from its consequences on federal employees in general, H.R. 3000 would be particularly objectionable so far as the Department of Justice is concerned. Under it, personnel of the Federal Bureau of Investigation would no longer have to abstain from taking an "active part in political management or political campaigns," as that term is defined in the bill. The Department of Justice feels it to be essential to the future success of the FBI that it continue to maintain the public image of complete detachment from political affairs.

For the foregoing reasons, the Department of Justice strongly opposes enactment of H.R. 3000.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A MITCHELL MCCONNELL, JR.,
Acting Assistant Attorney General.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

TITLE 5, UNITED STATES CODE

* * * * * * *

PART II—THE UNITED STATES CIVIL SERVICE COMMISSION

* * * * * * *

Chapter 13—Special Authority

* * * * * * *

§ 1308. Annual reports

(a) The Civil Service Commission shall make an annual report to the President for transmittal to Congress. The report shall include—

(1) a statement of the Commission's actions in the administration of the competitive service, the rules and regulations and exceptions thereto in force, the reasons for exceptions to the rules, the practical effects of the rules and regulations, and any recommendations for the more effectual accomplishment of the purposes of the provisions of this title that relate to the administration of the competitive service;

(2) the results of the incentive awards program authorized by chapter 45 of this title with related recommendations; *and*

[(3) at the end of each fiscal year, the names, addresses, and nature of employment of the individuals on whom the Commission has imposed a penalty for prohibited political activity under section 7325 of this title with a statement of the facts on which action was taken, and the penalty imposed; and]

[(4)] *(3)* a statement, in the form determined by the Commission with the approval of the President, on the training of employees under chapter 41 of this title, including—

(A) a summary of information concerning the operation and results of the training programs and plans of the agencies;

(B) a summary of information received by the Commission from the agencies under section 4113(b) of this title; and

(C) the recommendations and other matters considered appropriate by the President or the Commission or required by Congress.

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Part III—Employees

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Subpart B—Employment and Retention

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Chapter 33—Examination, Selection, and Placement

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Subchapter I—Examination, Certification, and Appointment

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§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3306(a)(1), 3321, 7152, [7153, 7321, and 7322] *and 7153* of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

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Subpart F—Employee Relations

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Chapter 73—Suitability, Security, and Conduct

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Subchapter III—Political Activities

[Sec.
7321. Political contributions and services.
7322. Political use of authority or influence; prohibition.
7323. Political contributions; prohibition.
7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
7325. Penalties.
7326. Nonpartisan political activity permitted.
7327. Political activity permitted; employees residing in certain municipalities.]

[Subchapter III—Political Activities

[§ 7321. Political contributions and services

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

[§ 7322. Political use of authority or influence; prohibition

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

[§ 7323. Political contributions; prohibition

[An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

[§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

[(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

[(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

[(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

[(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

[(d) Subsection (a)(2) of this section does not apply to—

[(1) an employee paid from the appropriation for the office of the President;

[(2) the head or the assistant head of an Executive department or military department;

[(3) an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

[(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

[(5) the Recorder of Deeds of the District of Columbia.

[§ 7325. Penalties

[An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Commission.

[§ 7326. Nonpartisan political activity permitted

[Section 7324(a)(2) of this title does not prohibit political activity in connection with—

[(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

[(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

[§ 7327. Political activity permitted; employees residing in certain municipalities

[(a) Section 7324(a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

[(b) The Civil Service Commission may prescribe regulations permitting employees and individuals to whom section 7324 of this title

applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Commission considers it to be in their domestic interest, when—

[(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

[(2) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.]

Subchapter III—Political Activities

§ 7321. *Political participation*

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

§ 7322. *Definitions*

For the purpose of this subchapter—

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

(A) an Executive agency,

(B) the government of the District of Columbia,

(C) the competitive service, or

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

but does not include a member of the uniformed services;

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

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

(B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to such office;

(3) "political contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

(B) includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any such purpose; and

(C) includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to such candidate or political organization without charge for any such purpose;

(4) "superior" means an employee (other than the President or the Vice President) who exercises supervision of, or control or administrative direction over, another employee;

(5) "elective office" means any elective public office and any elective office of any poltical party or affiliated organization; and

(6) "Board" means the Board on Political Activities of Federal Employees established under section 7327 of this title.

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

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purpose of—

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

(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

(A) any individual for the purpose of interferring with the right of any individual to vote as such individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

(B) any person to give or withhold any poltical contribution; or

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

(b) For the purpose of subsection (a) of this section, "use of official authority or influence" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling).

§ 7324. *Solicitation; prohibition*

An employee may not—

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

(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

(3) knowingly give or hand over a political contribution to a superior of such employee; or

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

(A) from another employee (or a member of another employee's immediate family) with respect to whom such employee is a superior; or

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

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

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

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

(a) An employee may not engage in political activity—

(1) while such employee is on duty,

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing, or

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

(b) The provisions of subsection (a) of this section shall not apply to—

(1) the President and the Vice President; or

(2) an individual—

(A) paid from the appropriation for the White House Office,

(B) paid from funds to enable the Vice President to provide assistance to the President, or

(C) on special assignment to the White House Office,

unless such individual holds a career or career-conditional appointment in the competitive service.

§ 7326. Leave for candidates for elective office

(a) An employee who is a candidate for elective office shall, upon the request of such employee, be granted leave without pay for the purpose of allowing such employee to engage in activities relating to such candidacy.

(b) Notwithstanding section 6302(d) of this title, an employee who is a candidate for elective office shall, upon the request of such employee, be granted accrued annual leave for the purpose of allowing such employee to engage in avtivities relating to such candidacy. Such leave shall be in addition to leave without pay to which such employee may be entitled under subsection (a) of this section.

§ 7327. Board on Political Activities of Federal Employees

(a) There is established a board to be known as the Board on Political Activities of Federal Employees. It shall be the function of the Board to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of this title.

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

(1) one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President and who shall serve as Chairman of the Board;

(2) one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the Speaker of the House of Representatives, after consultation with the majority leader of the House and the minority leader of the House; and

(3) one member of which shall be appointed, with the confirmation of a majority of both Houses of the Congress, by the President pro tempore of the Senate, after consultation with the majority leader of the Senate and the minority leader of the Senate.

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

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

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

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

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

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

(2) If an employee who was appointed as a member of the Board is separated from service as an employee he may not continue as a member of the Board after the 60-day period beginning on the date so separated.

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

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

(g) A member of the Board may not delegate to any person his vote nor, except as expressly provided by this subchapter, may any decision-making authority vested in the Board by the provisions of this subchapter be delegated to any member or person.

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

(i) The Civil Service Commission shall provide such clerical and professional personnel, and administrative support, as the Chairman of the Board considers appropriate and necessary to carry out the Board's functions under this subchapter. Such personnel shall be responsible to the Chairman of the Board.

(j) The Administrator of the General Services Administration shall furnish the Board suitable office space appropriately furnished and equipped, as determined by the Administrator.

(k)(1) Members of the Board shall receive no additional pay on account of their service on the Board.

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

§ 7328. Investigation; procedures; hearing

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

(b) As a part of the investigation of the activities of an employee, the Commission shall provide such employee an opportunity to make a statement concerning the matters under investigation and to support such statement with any documents the employee wishes to submit. An employee of the Commission lawfully assigned to investigate a violation of this subchapter may administer an oath to a witness attending to testify or depose in the course of the investigation.

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

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

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

(B) advising the employee of the penalties provided under section 7329 of this title;

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

(D) advising the employee that unless the employee answers the charges, in writing, within the time allowed therefor, the Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.

(3) If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has been committed by—

(A) the Vice President;

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

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

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

(E) the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act;

the Commission shall refer the case to the Attorney General for prosecution under title 18, and shall report the nature and details of the violation to the President and to the Congress.

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

(2) If an answer is duly filed, the charges shall be determined by the Board on the record after a hearing conducted by a hearing examiner appointed under section 3105 of this title, and, except as otherwise expressly provided under this subchapter, in accordance with the requirements of subchapter II of chapter 5 of this title, notwithstanding any exception therein for matters involving the tenure of an employee. The hearing shall be commenced within 30 days after the answer is filed with the Board and shall be conducted without unreasonable delay. As soon as practicable after the conclusion of the hearing, the examiner shall serve upon the Board, the Commission, and the employee such examiner's recommended decision with notice to the Commission and the employee of opportunity to file with the Board, within 30 days after the date of such notice, exceptions to the recommended decision. The Board shall issue its final decision and order in the proceeding no later than 60 days after the date the recommended decision is served. The employee shall not be removed from active duty status by reason of the alleged violation of this subchapter at any time before the effective date specified by the Board in its final order.

(e)(1) At any stage of a proceeding or investigation under this subchapter, the Board may, at the written request of the Commission or the employee, require by subpena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the proceeding or investigation at any designated place, from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may issue subpenas and members of the Board and any hearing examiner authorized by the Board may administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpena, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(3) An employee may not be excused from attending and testifying or from producing documentary or other evidence in obedience to a subpena of the Board on the ground that the testimony or evidence required of the employee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony or evidence so compelled be used as evidence in any criminal proceeding against the employee in any court, except that no employee shall be exempt from prosecution and punishment for perjury committed in so testifying.

(f) An employee upon whom a penalty is imposed by an order of the Board under subsection (d) of this section may, within 30 days after the date on which the order was issued, institute an action for judicial review of the Board's order in the United States District Court for the District of Columbia or in the United States district court for the judicial district in which the employee resides or is employed. The institution of an action for judicial review shall not operate as a stay of the Board's order, unless the court specifically orders such stay. A copy of the summons and complaint shall be served as otherwise prescribed by law and, in addition, upon the Board. Thereupon the Board shall certify and file with the court the record upon which the Board's order was based. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce the evidence at the hearing conducted under subsection (d)(2) of this section, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or order, in the light of the additional evidence, and shall file with the court such modified findings or order. The Board's findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Board's order if it determines that it is in accordance with law. If the court determines that the order is not in accordance with law—

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

(2) it may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

(g) The Commission or the Board, in its discretion, may proceed with any investigation or proceeding instituted under this subchapter nothwithstanding that the Commission or the head of an employing agency or department has reported the alleged violation to the Attorney General as required by section 535 of title 28.

§ 7329. Penalties

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

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

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

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

(b) The Board shall notify the Commission, the employee, and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.

§ 7330. Educational program; reports

(a) The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 60 days before the earliest primary or general election for State or Federal elective office held in such State.

(b) On or before March 30 of each calendar year, the Commission shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of investigations conducted under section 7328 of this title and the results of such investigations;

(2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the program required under subsection (a) of this section; and

(3) an evaluation which describes—

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

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

§ 7331. Regulations

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

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Chapter 83—Retirement

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Subchapter III—Civil Service Retirement

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§ 8332. Creditable service

(a) * * *

* * * * * * *

(k)(1) An employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, which 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the [second] *last* sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

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Chapter 87—Life Insurance

* * * * * * *

§ 8706. Termination of insurance

(a) * * *

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(e) Notwithstanding subsections (a)–(c) of this section, an employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

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Chapter 89—Health Insurance

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§ 8906. Contributions

(a) * * *

* * * * * * *

(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Commission. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

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TITLE 18, UNITED STATES CODE

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Chapter 29.—Elections and Political Activities

* * * * * * *

§ 602. Solicitation of political contributions

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person, shall be fined not more than $5,000 or imprisoned not more than three years or both. *This section does not apply to any activity of an employee, as defined in section 7322(1), of title 5, unless such activity is prohibited by section 7324 of that title.*

* * * * * * *

§ 607. Making political contributions

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than $5,000 or imprisoned not more than three years, or both. *This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.*

* * * * * * *

SECTION 6 OF THE VOTING RIGHTS ACT OF 1965

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether subtantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of [section 9 of the Act of August 2, 1939,] *subchapter III of chapter 73 of title 5, United States Code, relating to political activities*, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oath.

DISTRICT OF COLUMBIA PUBLIC EDUCATION ACT

* * * * * * *

TITLE I—FEDERAL CITY COLLEGE

* * * * * * *

SEC. 103. (a) The Board is vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Federal City College.

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Federal City College.

(3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Federal City College.

(4) To employ and compensate such officers as it determines necessary for the Federal City College, and such educational employees for the Federal City College as the president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) sections 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and [sections 7324 through 7327] *section 7325* of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81 of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code (relating to dual pay and dual employment),

but the employment and compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference).

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TITLE II—WASHINGTON TECHNICAL INSTITUTE

* * * * * * *

SEC. 203. (a) The Board is hereby vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Washington Technical Institute.

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Washington Technical Institute.

(3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Washington Technical Institute.

(4) To employ and compensate such officers as it determines necessary for the Washington Technical Institute, and such educational employees for the Washington Technical Institute as the president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) sections 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and [sections 7324 through 7327] *section 7325* of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81 of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code (relating to dual pay and dual employment),

but the employment and compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference).

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ADDITIONAL VIEWS OF CONGRESSMAN HERBERT E. HARRIS II

As a cosponsor of H.R. 8617, and as a member of the Subcommittee on Political Rights and Intergovernmental Programs which has worked for 7 months to produce a fair and comprehensive bill, I am in full support of this legislation. The bill has two significant thrusts: it contains important new protections for Federal and postal employees and it provides them clearly defined rights they do not currently enjoy. H.R. 8617 is, in essence a "bill of political rights" for our 2.8 million Federal and postal employees. I voted to report the bill out of subcommittee and full committee.

There is one provision in the bill, however, of concern to me. Section 7325 prohibits political activities while on duty, in any room or building occupied in the discharge of official duties by an employee, or while wearing a uniform identifying the individual as a Federal or postal employee. As amended by the full committee, exempt from this provision are the President, the Vice President and their staffs.

I can understand the argument that it is unrealistic and impractical to expect the President and Vice President to avoid political activity while on the job. They, it can be argued, are on the job around the clock, and they are the only elected officials of the executive branch. However, I consider it highly inappropriate for the White House staff to engage in political activity while on duty in their capacity as employees of the Chief Executive. I am concerned that not exempting them from this provision would in effect be a congressional "go-ahead" to the White House staff to engage in political activities on the job. It unfortunately puts the Congress in the position of condoning political activity in the White House by White House staffers.

I am concerned that this provision might allow a repeat of the agonizing experience we have come to call "Watergate." Presidential campaigns should be run by campaign committees, and I'm sure the incumbent President will not make the mistakes of his predecessor. But I feel compelled to make it clear that this Member of Congress does not condone campaigns run from behind the White House walls or from the Attorney General's office. I am concerned that the fact that this bill does not expressly prohibit White House staffers from "politicking" on the job might be interpreted as approval of the practice.

Just as Federal and postal employees should be ever-mindful of separating their work from their politics when carrying on "the people's business," so should the employees of the White House.

HERBERT E. HARRIS II.

MINORITY VIEWS TO H.R. 8617

This legislation, referred to as the "Federal Employees' Political Activities Act of 1975," is, in effect, a repeal of the "Hatch Act."

It constitutes a power grab by Federal union leaders to place conscientious Federal employees at the mercy and calling of politicians at every level of political activity.

"HATCH ACT"—1939

The "Hatch Act" of 1939 resulted from the systematic manipulation of the Federal public service under the political aegis of the Democratic National Committee.

In 1939, the creation of the New Deal agencies had left nearly 40 percent of the Federal public service of some 850,000 employees open to political manipulation. The situation existed at the State level where thousands of State employees of emergency relief agencies were paid in full or part by Federal funds.

Spectacular evidence of patronage politics involving these offices during the 1936 and 1938 Congressional campaigns brought forth a cry of indignation from the public, and the Congress responded in passing legislation to provide for an impartial and efficient civil service—free from partisan political activity. This Act placed upon all employees the same restrictions which a series of other Presidents had formerly placed on competitive service employees alone.

PRACTICAL EFFECTS OF THE "HATCH ACT"

For 36 years, the "Hatch Act" has served the Federal Government and the public well. It is not a perfect document. It may need some amendments, but it has helped to protect employees by insulating them from pressures that might otherwise force them to engage in political activities not of their own choosing.

By banning certain partisan political activity, such as fund raising, political campaigning, and soliciting votes, the "Hatch Act" has successfully shielded the Federal employees against coercion from their supervisors.

Therefore, Federal employees, except for top appointed officials of the Federal Government, do not owe their appointments to any political party, and do not need to curry the favor of any political party to receive a promotion, assignment, or any other consideration in the Government.

Inherent in the "Hatch Act" is the belief that Federal employees cannot serve both an impartial civil service and a partisan political party or partisan activist group. The goals of both interests are incompatible.

SUPPORT FOR REPEAL OF THE "HATCH ACT"

Support for this legislation has come from some leaders of Federal employee unions affiliated with the AFL–CIO. It has not come from the rank and file Civil Service employees. Federal employee union bosses are determined that their members become more involved in political activity, a move which would substantially increase the influence of Federal and postal union top bosses over the Congress. They, in turn, would then be able to shower their considerable favors upon the political party and office holders who respond to their every legislative request, no matter the principle or cost.

This new found manpower resource would enable Federal employee union officers to brazenly ignore the Campaign Reform Act, which limits campaign expenditures.

Dr. Nathan Wolkomir, greatly respected President of the National Federation of Federal Employees, which opposes this legislation, charged that organized labor's interest in the bill "is nothing more than the old AFL–CIO pitch for muscle and power. It's a move for money and more organizing influence." We agree.

As late as 1967, the National Federation of Federal Employees sent out a questionnaire to its members on the issue of changes of the "Hatch Act." The results based on 30,000 returns, showed that 89 percent of the total expressed strong support for continuing the Act "as is." Only 1 percent of the total suggested that the Act be repealed.

It would be a grave mistake to believe that Federal employees are behind the move to repeal the "Hatch Act," because the record just does not show that.

Hearings produced no evidence that any but a small minority of Federal employees at any level of Government favor the repeal or emasculation of protections they enjoy under the "Hatch Act". This obviously shows that these employees are displaying better judgment than their so-called leaders, and we in the Congress should be listening to the employees rather than self-annointed bosses.

If this bill were to pass, the Federal Government's merit system would be the casualty to Federal employee labor grab for increased political muscle and power.

SAFEGUARDS WEAK

The bill purports to provide for certain prohibitions against improper political activity, and for penalties to those who violate the law, but no penalty could relieve the pressure felt by ambitious employees to serve the political favorities of their supervisors in order to advance their own careers. Chairman Robert Hampton of the Civil Service Commission testified that "the only real deterrent against coercion is the removal of temptation through restrictions on political activities." There are few cases of coercion brought before the Commission because it is too difficult to prove such a charge.

Chairman Hampton further stated: "equally important with the concern that partisan political activity may detract from the impartiality of the performance of Government employees is the concern

that such activities, being observed by the public, will erode public confidence in the impartial administration of the Federal Government. The problem, of course, is that when the public sees a Federal employee who is prominently identified with partisan politics, and at the same time charged with responsibility for the impartial, nonpartisan execution of public duties, it will inevitably have doubts about that employee's impartiality. It seems clear to me that anything which undermines the public's confidence in the impartiality and efficiency of the civil service should be of paramount concern to the Congress."

Illustrations of the potential problems which could be encountered are as follows:

1. Mr. Elliott Gray, Regional Commissioner of the Internal Revenue Service, testified that "agencies such as IRS and a few others have the power under the law to acquire information about individuals which can be highly valuable in advancing or defeating the interests of partisan political candidates." He continued, . . . "contact by such IRS employees with the public for political purposes, for themselves as candidates or for candidates they are supporting, should be equally forbidden. It would produce the same appearance of conflict of interest or potential abuse of position which now applies to forbidden selling, soliciting, or canvassing activities on behalf of a private agency, firm or business. I think the American people would lose confidence in the integrity of an Internal Revenue System which permitted its employees to be avid political partisans one day and expected them to be perceived the next as wholly non-partisan by both political friends and foes."

2. A census employee runs for political office in a geographical area for which he has responsibility. How does the legislation prevent the employee from using the knowledge he has acquired during his tenure? Where does the employee stop and the politician begin? How do you continue to convince the public that their responses to census questionnaires are held in the strictest confidence when the enumerator or another census employer is actively involved in partisan political activity contrary to the views of the respondent?

3. An FBI agent is assigned to investigate alleged illegal activities in a campaign in which he was actively involved. Must he remove himself from the case? If so, can the Government afford the expense and high level of unproductivity as a result of thousands of Federal employees removing themselves from sensitive positions because of potential conflicts of interest? It is unlikely that an FBI agent who is the chief fund raiser for a partisan political party would continue to be viewed by the public as an impartial, objective enforcer of our criminal code.

4. A non-partisan city manager, who also happens to control the purse strings for Fedesal grant funds, is urged to support a candidate for office. If he selects the wrong candidate, his city will suffer. He cannot afford to guess wrong. The real loser in this situation and similar ones is the public.

EMPLOYEE POLITICAL RIGHTS SHOULD BE MAINTAINED

The proponents of this bill would have us believe that Federal employees are "second-class citizens" because of the "Hatch Act." As a matter of fact, those who support this bill are determined to conscript Federal employees into political machines against their independent will.

Under the present law, Federal employees are, however, prohibited from engaging in the partisan political crafts of fund raising, working on behalf of a candidate or political party, and running for elective office, except in certain localities in the country. These restrictions are necessary, to not only protect the employee and the public, but to help to eliminate the emergence of boss politics in the Federal workforce.

The fact of the matter is Federal employees may exercise the same political rights exercised by more than a majority of the citizens in our country. For example, they may register and vote, make voluntary contributions to a political party, express private political opinions, attend as a spectator primary meetings, political meetings, political conventions, wear political badges and buttons, place political stickers on the bumpers of their automobiles, sign a nominating petition, and individually, or collectively, petition Congress or any Member thereof, or furnish information to Members of Congress and Congressional Committees.

POLITICAL MACHINES

The "freedom" guaranteed by this bill is the freedom to build partisan political machines within the Executive Branch, machines whose purpose will be to publicly cripple the Executive Branch on any controversial issue and thus eclipse the equality and separation of powers.

Imagine Federal employees openly campaigning against Presidential policies, anticipated vetoes or budget cuts. This bill is a political coup for union leaders and can only result in crippling the Executive Branch.

The very integrity of the Executive Branch requires that its career employees not divide along the lines of legislative debate.

RETURN OF POLITICS IN THE POSTAL SERVICE

The Postal Reorganization Act of 1970 removed politics from the Postal Service. It eliminated the appointment of postmasters by the political party in control of the White House, and in its stead made all appointments on the basis of merit.

This decision was applauded by the Congress, and the postal unions which for too long were subjected to this political football game every four years.

We are all aware of the political history of the Post Office Department. It is not an enviable past. No matter how any Member feels about the wisdom of passing the Postal Reorganization Act, we think it is generally agreed that the Congress was right to remove political influence from the Postal Service. To reintroduce politics into the Postal Service would be a giant step backwards.

PUBLIC CONFIDENCE CRISIS

There presently exists a crisis of public confidence in our government officials. This legislation if enacted would undermine and destroy the people's confidence in their system of government by returning Federal employment to the Jacksonian spoils system. It would cause Americans to question and examine any activity of the Federal Government for political motivations. The government must have the voluntary cooperation from its citizens in order to function on a day-to-day basis.

This point was made abundantly clear by a former regional director of the IRS when he suggested that this bill would mean the end of a voluntary system for the collection of taxes because every audit would be regarded as being politically instigated. Furthermore, it would severely hamper the investigative capability of all Federal law enforcement agencies which have been dependent to some extent on the voluntary cooperation of individuals in obtaining information regarding criminal activities.

Every reliable barometer of public opinion in the past several years has conclusively shown that elected public officials are held in the lowest possible esteem by the public. The public is equally concerned about the growing militancy of public unionism which has increased its membership by 151 percent from 1951 to 1972, payrolls by 596 percent, and strikes by public employees by 1000 percent. In this political climate, it is incredible that we in the Congress are being asked to approve what could become a new spoils system.

SUPREME COURT VIEW—LIMITED POLITICAL ACTIVITY

As recent as 1973, the U.S. Supreme Court, in its decision on the constitutionality of the Hatch Act stated, "Our judgment is that neither the first amendment nor any other provision of the Constitution invalidates a law . . . barring political conduct by federal employees." And repeal of the Act would run contrary to the judgment of history . . . that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited." And it has been, the opinion continues, "the judgment of Congress, the Executive and the country—that partisan political activities by federal employees must be limited if the Government is to operate effectively and fairly."

A NECESSARY LOOK ABROAD

Perhaps one should take a brief glimpse at the effects of union control on foreign nations. Italy, Great Britain and Argentina have allowed the unions to effectively destroy the economies of each of their respective countries. Great Britain has literally been brought to its knees in current labor negotiations with employees in the nationalized coal industry. Prime Minister Wilson has stated that the country will

be bankrupt if union demands are not tempered. It should be remembered that these employees are public employees. The members should have some recollection of the crippling Italian postal strike which resulted in the destruction of tons of mail. A recent Art Buchwald column suggested that the Italian Government should provide "dial-a-strike" service to its citizens. Citizens could call a number which would inform them of the strikes that would be effecting them that day. The Argentinian Government is currently in a power vacuum because of union pressures demanding the resignation of governmental cabinet officials which were acceded to rather than risk another revolution. The United States has been spared this union abuse of power by not allowing Federal employee unions to blackmail the Government into submission.

LEGISLATION ILL-TIMED, ILL-CONCEIVED

This legislation is ill-timed, ill-conceived, and is bad for the employees, the merit system as we know it to be, and the general public. It must be summarily rejected unless we are willing to forfeit an independent, impartial civil service for the imposition of politics at every level of activity in the Federal Government.

EDWARD J. DERWINSKI

SEPARATE VIEWS

The "Hatch Act" needs to be amended to make it more effective in protecting Federal employees from those who would coerce them into forced participation in partisan political favoritism in the delegation of their duties. The American people have a right to demand that their Government be fair and impartial in the conduct of its business. We are also interested in making certain that every Federal Employee will reasonably be able to participate in political activity providing that participation does not infringe on the rights of other employees and does not conflict with his public responsibilities.

We believe that the following sections of this legislation are sound and should be adopted:

1. The right to participate voluntarily in the political activities which are not expressly prohibited by law. However, we would hasten to add that in order to be truly *voluntary* a Federal employee must be protected from coercion from individuals outside the Federal service with the same perseverance that Federal employees are protected from those within Government.

2. The items below have been strictly prohibited only as to the conduct of Federal employees: 1) Use of official authority to influence another employee's vote; 2) coercion of a fellow employee to engage in political activity; 3) use of funds to influence Federal employees' vote; 4) contributions to supervisors or in Government buildings; and 5) political activity while on duty in Government buildings, or in uniform. We believe that these restrictions will effectively protect employes from the coercion of other Federal employees but only if they are aggressively enforced. We would also suggest that sections 7323 and 7324 be made applicable to all individuals who would attempt to influence or solicit Federal employees.

3. An independent board is established with the functions of adjudicating and imposing penalties for violations of the law including removal, suspension, or lesser penalties at the discretion of the Board. Witnesses at hearings requested that a broader range of alternatives should be included in the legislation in order that the punishment should fit the crime. Formerly, the employee was either dismissed or given thirty days suspension.

4. This legislation would provide employees with the right of judicial review of adverse decisions which are nonexistent under the "Hatch Act."

5. We believe that an aggressive educational program is essential to insure that all Federal employees will be informed in clear and explicit language of their rights and responsibilities under the Act. One of the major problems discovered in hearings was the lack of knowledge and misinformation as to what the Hatch Act prohibited or permitted. Over three thousand administrative rulings of the Civil Service Commission have confused the issue and in effect "chilled" the per-

missible forms of political expression under the Act. This amendment mandates that every Federal employee receive a letter each year at least 30 days prior to every Federal election.

The following provisions should be deleted or amended:

1. Section 7326 would allow a candidate for elective office to remain on the Federal payroll while campaigning. Under the wording, he must request that he be placed on a leave without pay basis. The witnesses before the subcommittee were almost unanmious in their support for mandatory leave without pay at a date certain before the election. We would suggest at least 30 but not more than 90 days prior to the election.

2. Section 7328 does not provide any time limitation on the CSC for the investigation of reports and allegations of prohibited activities. We would suggest that the CSC be given 60 days to investigate alleged violations or that they provide the Board with a written report containing specific reasons for the extension of time. Recent testimony has indicated that there are only 187 investigators for the CSC throughout the country and that these people are severely overworked with the over 16,000 complaints which are filed with the Commission each year. It should be clearly mandated that the CSC hire additional investigators to handle the increased workload and guarantee a prompt determination of the case. Justice delayed is justice denied.

An additional problem in this section is the sweeping grants of immunity from criminal prosecution in any court which are granted to those who would testify even at the defendant's request. Potentially, conspirators could testify at each others request in hearings and defeat more serious criminal prosecutions which are concurrently being conducted by the Justice Department. We would suggest that the Attorney General be consulted before any grant of immunity is given.

The bill, as passed out of the Committee, is an unfair burden on a career civil servant. It would mean that a conscientious Federal employee could be pressed into political action for survival. Let's maintain the goals of civil service and defeat this political bill.

JOHN H. ROUSSELOT.
JAMES M. COLLINS.
TRENT LOTT.
GENE TAYLOR.
BENJAMIN A. GILMAN.
ROBIN L. BEARD.

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Calendar No. 496

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-512

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

DECEMBER 5 (legislative day, DECEMBER 2), 1975.—Ordered to be printed

Mr. MCGEE, from the Committee on Post Office and Civil Service, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 8617]

The Committee on Post Office and Civil Service, to which was referred the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

AMENDMENTS

The amendments are as follows:

Page 6, line 9, strike out ", etc.".

Page 8, beginning on line 2, strike out the period and all that follows before the period on line 4, and insert in lieu thereof the following:

", unless the employee is otherwise on leave".

Page 8, line 18, strike out "foregoing".

Page 9, line 20, strike out the quotation marks.

Page 14, line 5, strike out "duly".

Page 14, line 8, strike out "duly filed" and insert in lieu thereof "filed within the time allowed".

Page 17, line 23, strike out "Board. Thereupon the Board shall certify" and insert in lieu thereof "Board which shall then certify".

Page 22, between lines 13 and 14, in the item relating to section 7325, strike out ", etc.".

Page 12, lines 20 and 21, strike out "a notice by certified mail, return receipt requested" and insert in lieu thereof "a written notice by certified mail".

Page 4, between lines 24 and 25, insert the following new subsection:

"(b) Nothing in this section authorizes the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.".

Page 4, line 25, strike out "(b)" and insert in lieu thereof "(c)".

Explanation of Amendments

The amendments on pages 6, 8, 9, 14, 17, and 22 are technical amendments intended to simplify the language of the bill or correct typographical errors.

The amendment on page 12 eliminates the statutory requirement for requesting a return receipt on a certified notice of an alleged violation of the Act, leaving it up to the Civil Service Commission to determine the requirements on such notices, which might include restricted delivery as well as return receipt.

The amendment on page 4 inserts a new subsection in section 7323 to state that nothing therein authorizes the use by any employee of information available to him by virtue of his employment for any purpose where otherwise prohibited by law.

Purpose

The primary purposes of H.R. 8617 are two; one being to amend subchapter III of chapter 73, title 5, United States Code, so as to permit Federal civilian and postal employees to take part as they voluntarily choose to in their capacity as private citizens in the American political process at all levels of government, and the second being to prohibit the abuse of authority, the coercion of employees into nonvoluntary political activity of any kind, and certain activities involving political contributions by employees.

H.R. 8617 also establishes an independent Board on Political Activities of Federal Employees to adjudicate promptly alleged violations of the law and sets forth provisions for the administration and oversight of the law.

Background

Prior to 1939, regulation of political activity by Federal civil service employees was the result of executive branch action, Congress having refrained from imposing statutory restrictions beginning with the Second Session of the First Congress in 1791, when an amendment to bar political activity by collectors of an excise tax on distilled spirits was defeated in the House. The Civil Service Act of 1883, which established the concept of an institutionalized civil service system for Federal employees, did proscribe and provide penalties for certain activities related to the coercion of contributions or services of civil servants for political purposes or the conduct of political solicitations in government rooms or buildings.

President Chester A. Arthur issued the first civil service rules to implement the 1883 act, and while those rules did prohibit interference with any election, they did not specifically state to what extent Federal employees were permitted to voluntarily participate in electoral politics. President Theodore Roosevelt's Executive Order 642 of June 3, 1907, amended Civil Service Rule 1 to prohibit all political activity by employees in the competitive service which was related to active participation in campaigns or as a candidate, whether or not the activity was voluntary.

By 1907, then, two distinct but interrelated concerns were apparent, and still are. They are (1) the protection of civil service employees from coercion for involuntary contributions of money or services for political ends, and (2) the prohibition of partisan political activity, whether or not voluntary, related to political campaigning and candidacy. Present law does permit limited political activity by employees in certain local jurisdictions with high populations of Government employees.

The New Deal era gave rise to new concern because of the large number of persons employed in public works jobs funded by the Federal Government and allegations that there was widespread financial solicitation by local political party officials of workers as a condition of employment, primarily in the Works Project Administration. Those workers, not being in the competitive service, were not covered by the proscriptions of Civil Service Rule 1. An investigation by a Senate special committee ensued in 1938 and resulted in a report (S. Report 1, 76th Congress, 1st Session) recommending legislation to prohibit the political coercion of all Federal employees, whether or not in the classified civil service. The report contained no finding that the effectiveness of the Government was impaired by employees' voluntary political activity.

The so-called Hatch Act, prohibiting Federal employees from taking an active part in political activities, the forerunner of today's law as codified in section 7324 of title 5, United States Code, was enacted in 1939. No public hearings were conducted on the measure in either House or Senate.

The most significant amendments to the Hatch Act followed in 1940. Those amendments included provisions applying the restrictions to State and local governmental employees employed in activities funded by the Federal Government and incorporating more than 3,000 prior administrative determinations of the Civil Service Commission into the law on restricted activity. The restrictions on State and local employees were largely repealed by the Federal Campaign Practices Act of 1974 (Public Law 93-443).

Statement

At the time it was enacted, the Hatch Act constituted a response to an acknowledged problem. But circumstances have changed. The strength and influence of the Civil Service Commission, coupled with the need for skilled personnel to fill increasingly complex Government jobs, have increased to the extent that the patronage system does not flourish as it once did. On June 30, 1974, Federal civilian employment totaled 2,893,119, including 1,302,631 with competitive career appointments, 346,112 with career conditional appointments, 906,310

with excepted permanent appointments and 338,066 with temporary and indefinite appointments.

There have been relatively recent concerns stemming from the revelation of special referral units operating within government agencies in violation of the merit system, though studies have not demonstrated that voluntary political activity, freely entered into in off duty hours, takes anything away from the integrity of public service. The problem arises when authority is abused and coercion exercised. The bill H.R. 8617 provides stronger employee protection against coercion than that which is provided by existing law.

Existing law, in the Committee's opinion, does not strike an adequate balance between the two compelling needs, which are preservation of basic rights of citizenship for 2.8 million Americans and the requirement of an impartial civil service insulated from pernicious partisanship.

The Commission on Political Activity of Government Personnel, in its 1968 report observed:

> Since 1939, when the Hatch Act was enacted, the American political system has changed dramatically. The growth of Federal responsibilities, the parallel growth of technology in Government, and the need for skilled personnel are eroding away traditional patronage schemes. Not only has the American political system changed, but the growth of the merit principle and impartial administration of Government programs have been integral elements in this transformation.
>
> Under the Hatch Act, the Civil Service Commission has worked to maintain high standards and integrity in public service consistent with the need for voluntary and desirable political activity by Government employees. By and large, the public employee wants and needs the protection from coercive activity which the Hatch Act affords. But the line between permissible and forbidden political conduct has been a shifting one. It could not remain fixed as political methods were altered and the Government developed in size and in the nature of its activities. Moreover, there are ever-increasing difficulties confronting public employees in ascertaining what the statutory restrictions mean under the Hatch Act, and in knowing what interpretation has been given to the act by the Civil Service Commission in rulings which often are not published or readily available in usable form."

As did that Commission, the Committee on Post Office and Civil Service encountered conflict between the two goals of the broadest possible participation in our political processes and the maintenance of a fair and impartial civil service. But it does not see the continuance of a merit system in public employment as being dependent upon maintenance of the severe restrictions on employees' first amendment rights that now exist. The committee agrees that employees who freely and voluntarily engage in political activities which would be permissible under H.R. 8617 as reported need protection against penalty from those in authority who might disagree with their

political views and actions, as well as against coercion by those who endeavor to enlist their involuntary support for political purposes.

H.R. 8617 has been drawn to achieve a proper balance. It prohibits those political activities which tend to erode public confidence in the integrity of the civil service and Government itself. It prohibits political activity on duty, in Government buildings, or in uniform. It bars solicitation of employees or members of their families by those with supervisory authority over them. It establishes an independent Board to adjudicate alleged violations, thus freeing the Civil Service Commission to concentrate on its functions of educating employees on their rights and prohibitions and on the investigation of alleged violations. And it provides for the disciplining of employees in the expected service in the same manner as applies to those in the competitive service, instead of making that a responsibility of the agency head as at present.

With these protections, including a new criminal provision providing penalties for anyone who would extort any contribution from a government employee for political purposes, Federal employees would be free to participate in the political processes of their communities, their States and their Nation as they choose. For those who would seek full-time elective office, however, leave, including leave without pay, would be mandatory.

Committee Action

S. 372, to restore to Federal civilian employees their rights to participate as private citizens in the political life of the nation, was introduced by Senator McGee with the cosponsorship of Senator Burdick on January 23, 1975. The committee had, during the second session of the 92d Congress, conducted hearings on legislation of similar purpose, delaying action then because of pending litigation centering on the constitutionality of the Hatch Act and because the Civil Service Commission had assured the Committee that it was at work on a set of provisions to clarify the Act and permit Federal employees a greater degree of political freedom.

The Supreme Court, on June 25, 1973, in the case of the United States Civil Service Commission vs. National Association of Letter Carriers, reversed a lower court's decision to uphold the constitutionality of the Hatch Act. However, the recommendations of the Civil Service Commission never were forthcoming.

H.R. 8617 was approved by the House of Representatives as a clean bill in lieu of H.R. 3000, a companion to S. 372. Hearings were held on H.R. 8617 and S. 372 on November 5 and 6, 1975. The Committee voted 7–2 on November 19, 1975, to report the bill, as amended, after approving the amendments incorporated in the reported bill by a voice vote. Six additional amendments proposed by Senator Fong were defeated, each by a 6–2 vote, as follows: For the amendments—Senators Fong and Bellmon. Opposed to the amendments—Senators McGee, Randolph, Burdick, Moss, Leahy, and Stevens.

The vote by which H.R. 8617 was ordered reported was: Yeas—Senators McGee, Randolph, Burdick, Moss, Hollings, Leahy, and Stevens. Nays—Senators Fong and Bellmon.

Sectional Analysis

Section 1 of the bill as reported provides that this Act may be cited as the "Federal Employees' Political Activities Act of 1975."

Subsection (a) of section 2 of the bill amends subchapter III of chapter 73 of title 5, United States Code, by rewriting seven existing sections (5 U.S.C. 7321–7327) and adding four new sections (5 U.S.C. 7328–7331), as follows:

Section 7321 provides that it is the policy of Congress to encourage employees to fully exercise their rights of voluntary political participation to the extent not expressly prohibited by law.

Section 7322 defines terms used in the Act.

Paragraph (1) defines "employee" to mean any individual, including the President and the Vice President, employed or holding office in: (A) an Executive agency; (B) the government of the District of Columbia; (C) the competitive service; or (D) the United States Postal Service or the Postal Rate Commission.

Paragraph (2) defines the term "candidate" as any individual who seeks nomination for election, or election, to an elective office, whether or not the individual is elected. An individual who is seeking to win a party's nomination in a primary election or in a convention, as well as an individual who has already been nominated, is included within the definition. Subparagraphs (A) and (B) of paragraph (2) establish the time at which an individual is deemed to seek nomination for election, or election, as that time when an individual has: (A) taken the action required to qualify for nomination for election, or election; or (B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about that individual's nomination for election, or election.

Paragraph (3) defines "political contribution." The committee intends that this definition be given a broad interpretation.

Subparagraph (A) of paragraph (3) provides that "political contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election. The phrase "for the purpose of otherwise influencing the results of any election" reflects the intent that contributions made to influence the results of elections relating to matters other than political office, such as, bond issues or local referenda, are included within the term "political contribution".

Subparagraph (B) provides that the term "political contribution" includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution.

Subparagraph (C) provides that the term "political contribution" also includes the payment by any person, other than a candidate or a political organization, or compensation for the personal services of another person which are rendered to a candidate or political organization without charge.

Paragraph (4) definies "superior" to mean an employee, other than the President or the Vice President, who exercises supervision of, or control or administrative direction over, another employee. The definition is intended to include those employees who, through the exercise of the authority of their position, may influence or affect the career advancement or working conditions of other employees. Thus an employee who has the authority to promote (or recommend or approve the promotion of) another employee, or to assign work to, or to evaluate the performance of, another employee would be deemed a "superior".

Paragraph (5) defines "elective officer" to mean any elective public office and any elective office of any political party or affiliated organization. The phrase "elective public office" is intended to include any Federal, State, or local office which is filled by the election of an individual. The phrase "elective office of any political party or affiliated organization" is intended to include offices of a political party or organization which are filled by the election of an individual.

Paragraph (6) defines "Board" to mean the Board on Political Activities established under section 7327 of title 5, as amended by the bill.

Section 7323 forbids direct or indirect use or attempt to use official authority to interfere with or affect an election or to intimidate, threaten, coerce, command, or influence any individual to vote or not vote as he may choose; any person to give or withhold a political contribution, or any person to engage or not to engage in any form of political activity.

Subsection (b) states that nothing in this section authorizes the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.

Subsection (c) defines "use of official authority or influence" as including, but not limited to, promises of benefit or threats of reprisal.

Section 7324 sets forth the prohibitions applicable to employees with regard to the soliciting, accepting, giving, or receiving of political contributions.

Paragraph (1) prohibits an employee from giving or offering to give a political contribution in return for any individual's vote, or abstention from voting, in any election.

Paragraph (2) prohibits an employee from soliciting, accepting, or receiving a political contribution in return for his vote or abstention from voting.

Paragraph (3) prohibits an employee from knowingly giving or handing over a political contribution to a superior of that employee. The committee's intention is that the bar to handing over a contribution to a superior should mean that an employee may not give a contribution to an individual with authority to affect his employment but does not mean that an employee may not make a contribution to another employee who may, for instance, possess a supervisory position in another agency.

Paragraph (4) sets forth two prohibitions against the solicitation or receipt of political contributions by employees.

Subparagraph (A) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution from another employee (or a member of another employee's immediate family) with

respect to whom the employee is a superior. The inclusion of the phrase "member of an employee's immediate family" is intended to prohibit possible circumvention of the prohibition against a superior soliciting political contributions from an employee.

Subparagraph (B) prohibits an employee from knowingly soliciting, accepting, or receiving, or being in any manner concerned with soliciting, accepting, or receiving, a political contribution in any room or building occupied in the discharge of official duties by: (i) an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing; or (ii) an individual receiving any salary or compensation for services from money derived from the Treasury of the United States.

Section 7325 bars employees from engaging in political activity while on duty, in government offices or buildings, or while wearing a uniform or official insignia.

Subsection (b) provides that these prohibitions do not apply to The President, Vice President, or persons employed or assigned to them unless they hold career or career-conditional appointments, nor to the Mayor of the District of Columbia, or to the Chairman or Members of the Council of the District of Columbia.

Section 7326 provides, in subsection (a) that any employee who is a candidate for elective office, shall upon request, be granted leave without pay for the purpose of engaging in activities relating to such candidacy. It further requires that an employee who is a candidate for full-time elective office shall be placed on leave without pay either on the 90th day before any election, primary or general, in which he is a candidate or the day following the day on which he becomes a candidate, whichever is later. Such leave without pay status shall terminate on the day following the election or the day following the date on which the employee no longer is a candidate unless he is otherwise on leave. Subsection (b) provides that, notwithstanding 5 U.S.C. 6302(d), an employee who is a candidate for elective office, whether full-time or part-time, shall upon request, be granted accrued annual leave for the purposes of such candidacy. Subsection (c) requires prompt notification by an employee to his agency upon becoming a candidate and upon termination of such candidacy. Subsection (d) provides that the provisions of this section do not apply to an individual who is an employee by reason of holding an elective office.

The committee intends that employees who become candidates for elective office be permitted to use their accrued annual leave for that purpose, or to go on leave without pay for that purpose, with the added provision that an employee contesting for full-time elective office must be in leave without pay status upon qualifying as a candidate or 90 days prior to an election in which he is a candidate, whichever is later. The right to use accrued annual leave for purposes related to an employee's candidacy is granted notwithstanding the usual right of an agency to grant leave requests, but does not require the agency to advance annual leave which has not been earned.

The committee intends that the right to leave, either accrued annual leave or leave without pay, shall pertain only to bona fide candidates in order to permit activities related to candidacy. Thus, an agency would not be required to grant leave for purposes unrelated to an employee's candidacy.

Section 7327 establishes the Board on Political Activities of Federal Employees.

Subsection (a) establishes the Board and provides that its function shall be to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of title 5. Thus, the Board's authority is adjudicatory only, with actual investigatory, prosecutorial, and enforcement authority being given to the Civil Service Commission under section 7328.

Subsection (b) provides that the Board be composed of three members appointed by the President by and with the advice and consent of the Senate.

Subsection (c) provides that the members shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment to the Board, are employees as defined under section 7322(1) of title 5, as amended by the bill.

Paragraph (1) of subsection (d) provides that the members are appointed for a term of 3 years, and the terms are staggered so that one member's term expires each year. An individual appointed to fill a vacancy may be appointed only for the unexpired term of the member he succeeds.

Paragraph (2) of subsection (d) provides that if a member of the Board ceases to be an employee due to separation from the service, he may not continue as a member of the Board for longer than 60 days after he becomes separated.

Subsection (e) provides that the Board shall meet at the call of the Chairman.

Subsection (f) provides that all decisions of the Board with respect to the exercise of its duties and powers must be made by a majority vote of the Board.

Subsection (g) prohibits a member of the Board from delegating, except as otherwise expressly provided, his vote or any decision making authority vested in the Board.

Subsection (h) requires the Board to prepare and publish in the Federal Register written rules for the conduct of its activities. Subsection (h) further provides that the Board's official seal shall be judicially recognized and requires the Board to have its office in or near the District of Columbia. The Board, however, may meet and exercise its powers anywhere in the United States, and it is intended that adjudicatory hearings will be held by the Board at locations which take into consideration the convenience of the parties.

Subsection (i) requires the Civil Service Commission to provide clerical and professional personnel and administrative support. It is intended that personnel such as secretaries and attorneys will be furnished to the Board from the Commission and that administrative expenses such as travel expenses for Board members will be the responsibility of the Commission. The Chairman of the Board is required to determine what clerical and professional personnel and administrative support are appropriate and necessary, and personnel furnished to the Board are responsible to the Chairman of the Board.

Subsection (j) requires the Administrator, General Services Administration, to furnish suitable office space, appropriately furnished and equipped.

Paragraph (1) of subsection (k) provides that members shall receive no additional pay on account of their service on the Board. Par-

agraph (2) of subsection (k) provides that members are entitled to leave without loss of or reduction in pay, leave, or performance or efficiency rating during a period of absence while in the actual performance of the Board's business.

Section 7328 provides for enforcement of the prohibitions on political activity and establishes procedures for the investigation and adjudication of violations of such prohibitions.

Subsection (a) requires the Civil Service Commission to investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of title 5, as amended by the bill. It is not the committee's intent that enforcement efforts by the Commission be limited to responding to formal reports or allegations, but that efforts include steps necessary to insure that the prohibitions are observed by employees.

Susbection (b) requires the Commission to provide an employee under investigation with the opportunity to make a statement and submit documentary evidence concerning matters under investigation. This subsection also authorizes Commission employees lawfully assigned to investigate violations of subchapter III to administer oaths in the course of an investigation.

Paragraph (1) of section 7328(c) requires the Commission, if it appears after investigation that a violation has not occurred, to so notify the employee and the employing agency.

If it appears to the Commission after investigation that a violation has occurred, the Commission is required under paragraph (2) of section 7328(c) to submit to the Board and serve upon the employee a notice which must: (A) set forth specifically and in detail the charges; (B) advise the employee of the penalties which may be imposed; (C) specify a period of not less than 30 days within which the employee may file with the Board a written answer to the charges; and (D) advise the employee that unless a written answer is filed within the prescribed time, the Board is authorized to treat the failure to answer as an admission of the charges set forth in the notice and as a waiver by the employee of the right to a hearing on the charges.

Paragraph (3) of section 7328(c) establishes a separate procedure for cases concerning elected officials or employees appointed by the President against whom the Board has no authority to direct disciplinary action. The only individuals to whom the procedure under paragraph (3) applies are: (A) the Vice President; (B) an employee appointed by the President by and with the advice and consent of the Senate; (C) an employee whose appointment is expressly required by statute to be made by the President; (D) the Mayor of the District of Columbia; or (E) the Chairman or a member of the Council of the District of Columbia. If it appears to the Commission that a violation of section 7323, 7324, or 7325 has been committed by one of these individuals, it is required to refer the case to the Attorney General and to report the nature and details of the violation to the President and to the Congress.

Subsection (d) prescribes the procedures for hearings concerning violations of section 7323, 7324, and 7325.

Paragraph (1) of section 7328(d) provides that if a written answer is not filed within the time allowed, the Board is authorized to issue its final decision and order without further proceedings.

If an answer is filed, paragraph (2) requires a hearing on the record conducted by a hearing examiner. Except as otherwise expressly provided under subchapter III, the hearing shall be conducted in accordance with the requirements of subchapter II of chapter 5 of title 5. Paragraph (2) requires that the hearing be commenced within 30 days after the answer is filed, and that it be conducted without unreasonable delay. As soon as possible after the conclusion of the hearing, the hearing examiner is required to serve his recommended decision upon the Board, the Commission, and the employee, with notice that exceptions to such decision may be filed within 30 days. The Board is required to issue its final decision within 60 days after the recommended decision is served.

The last sentence in paragraph (2) provides that an employee shall not be removed from active duty by reason of the alleged violation of subchapter III before the effective date of the Board's final order.

Subsection (e) authorizes the Board to issue subpenas, order depositions, and compel testimony of an employee.

Paragraph (1) of section 7328(e) authorizes any member of the Board, upon written request of the Commission or an employee who is charged, to require by subpena the attendance and testimony of witnesses and the production of documentary or other evidence, which is relevant to the proceeding or investigation. Paragraph (1) further authorizes any member of the Board and any hearing examiner authorized by the Board to administer oaths, examine witnesses, and receive evidence. In the case of a refusal to obey a subpena, the Board is authorized to seek judicial enforcement in the United States district court for the judicial district where the subpena is served or where the person subject to the subpena resides. Failure to obey a court order enforcing the subpena may be punished as a contempt of court.

Paragraph (2) of section 7328(e) authorizes the Board (or a member designated by the Board) to order the taking of written depositions which shall be subscribed by the deponent.

Paragraph (3) of section 7328(e) authorizes the Board to compel the testimony or production of evidence by an employee notwithstanding any claim of the privilege against self-incrimination. Paragraph (3) further provides that no employee, having claimed the privilege against self-incrimination, shall be prosecuted or subjected to any penalty or forfeiture for or on account of the matter about which the employee has testified or produced evidence and, in addition, that no compelled testimony or evidence shall be used as evidence in any criminal proceeding (other than a proceeding for perjury) against the employee in any court.

Subsectioin (f) provides for judicial review of an order of the Board. An employee upon whom a penalty is imposed is permitted 30 days from the issuance of the Board's order to institute an action for review in the United States District Court for the District of Columbia or in the district court for the judicial district in which the employee resides or is employed. An order of the Board may be stayed only upon an order of the court.

Upon receiving the required copy of the summons and complaint, the Board is required to certify and file with the court the record of the proceeding. If, upon application, the court determines to its sat-

isfaction that (1) additional evidence may materially effect the result of the proceeding, and (2) there were reasonable grounds for failure to adduce the evidence at the administrative hearing, it may order further proceedings before the Board, and if further proceedings are ordered, the Board may modify its original findings of fact or its order and shall file with the court such modified findings or order. The Board's findings of fact are conclusive if supported by substantial evidence. If the court determines that the order is not in accordance with law it shall remand the proceeding to the Board with appropriate instructions and may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

Subsection (g) provides that the Commission or the Board, in its discretion, may proceed with an investigation or proceeding notwithstanding the fact that a concurrent criminal investigation is in progress. While it has generally been the practice in the past to hold a civil investigation in abeyance pending the results of a criminal investigation into the same or related matters, the result often has been a delay of 12 to 18 months in the civil investigation. In view of this experience, it is the Committee's belief that in most instances prompt resolution of proceedings under subchapter III is of primary importance.

Section 7329 sets forth the penalties which the Board may order in the case of an employee who is found to have violated sections 7323, 7324, and 7325, and specifies the manner in which the penalty shall be imposed.

Subsection (a) provides that, subject to and in accordance with the procedures for investigation and hearing under section 7328, the Board shall, upon finding that an employee has violated any provision of section 7323, 7324, or 7325 of title 5, enter a final order directing disciplinary action against the employee. In accordance with section 7327(f), a majority vote of the Board is required.

The three paragraphs of subsection (a) set forth the range of disciplinary action which the Board may order. Under paragraph (1) the Board may order the removal of an employee and, in addition if removal is ordered, the Board shall prescribe a period of time during which the employee may not be reemployed in any position (other than an elected position) in which the employee would be subject to the provisions of subchapter III.

Under paragraph (2) of subsection (a) the Board may order the suspension without pay of an employee for such period as the Board may prescribe. Under paragraph (3) of subsection (a) the Board may, in its discretion order lesser forms of penalties as it deems appropriate.

Subsection (b) requires the Board to notify the Commission, the employee, and the employing agency of any penalty it has imposed. It is then the responsibility of the employing agency to effect the disciplinary action, and that agency is required to certify to the Board the measures it has undertaken to implement the penalty ordered by the Board.

Subsection (a) of section 7330 requires the Commission to establish and conduct a continuing program to inform all employees of their

rights of political participation and to educate employees with respect to those political activities which are prohibited. Subsection (a) requires the Commission to annually inform each employee, individually in writing, of his political rights and the restrictions not be less than 60 days prior to the earliest primary election for State or Federal elective office in the State where an employee is employed. If a State has no primary election, the date of the earliest general election applies. For purposes of this section, the term "State" includes the District of Columbia, and the Commonwealths, territories, and possessions of the United States. The manner in which the required information is provided to each employee is left to the discretion of the Commission.

Subsection (b) requires the Commission to submit, on or before March 30 of each calendar year, a report regarding the discharge of its responsibilities under subchapter III during the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report is required to include information concerning; (1) the number of investigations conducted under section 7328 and the results of those investigations; (2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the educational program required under subsection (a); and (3) an evaluation of the educational program which describes the manner in which the Commission has carried out the program and the effectiveness of the program with regard to insuring that employees understand their political rights and the restrictions under subchapter III.

Section 7331 requires the Civil Service Commission to prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter.

Subsection (b) of section 2 of the bill contains several technical and conforming amendments to title 5, United States Code.

Paragraph (1) amends section 8332(k)(1), relating to civil service retirement coverage, section 8706(e), relating to civil service life insurance coverage, and section 8906(e)(2), relating to civil service health insurance coverage, by inserting a reference to leave without pay granted under section 7326(a) of title 5, as amended by this bill, in each of those sections. The effect of these amendments is to permit an employee who is a candidate and who is granted leave without pay under section 7326(a) of title 5, as amended by the bill, to elect, within 60 days after entering on leave without pay, to continue under the civil service retirement, life insurance, or health insurance programs by arranging through his employing agency to pay currently into the appropriate fund an amount equal to the employee and the agency contributions. The provisions of subsection (b) of section 2 relating to retirement, health insurance, and retirement coverage, accord the same treatment to employees who enter on leave without pay for purposes of engaging in candidacy for elective office as is presently accorded to employees who enter on leave without pay to serve as officers of employee organizations.

Paragraph (2) amends section 3302 of title 5, relating to the President's authority to prescribe rules for necessary exceptions from

certain provisions of title 5, by striking out the references to sections 7321 and 7322 in existing subchapter III of chapter 73 of title 5. Under the new subchapter III, as revised by the bill, all exceptions from the provisions of that subchapter are expressly set forth in the subchapter itself.

Paragraph (3) amends section 1308(a) of title 5, relating to annual reports of the Civil Service Commission, by striking out paragraph (3) relating to reports of the Commission concerning its actions under existing section 7325 of title 5. The reporting requirements of section 7330 of title 5, as provided by the bill, supersede the existing reporting requirements. The remaining paragraph of section 1308(a) is appropriately redesignated.

Paragraph (4) corrects an existing technical error in the second sentence of section 8332(k)(1) by striking out "second" and inserting in lieu thereof "last".

Paragraph (5) amends the section analysis for subchapter III of chapter 73 of title 5 to reflect the changes made by section 2(a) of the bill.

Section 2(c) of the bill amends sections 602 and 607 of title 18, United States Code, relating to solicitations and making of political contributions, by adding a new sentence at the end of each section to provide that those sections do not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title. Since section 7324 of the bill, relating to solicitations and making of political contributions, permits employees to engage in certain activities which are presently prohibited under sections 602 and 607, this amendment is necessary to insure that an employee is not criminally liable for an activity that is permissible under the bill. The amendments to the criminal provisions pertain only to activities by "employees" as defined under section 7322(1) of title 5.

Paragraph (2) of subsection (c) adds a new section to chapter 29 of title 18, making it a crime punishable by imprisonment for not less than two nor more than three years or a fine of not more than $5,000 or more for anyone to, by the commission of or threat of physical violence to, or economic sanction against, any person, obtain or endeavor to obtain any contribution for an officer or employee of the United States or a person receiving salary or compensation from money derived from the Treasury of the United States.

Section 2(d) amends section 6 of the Voting Rights Act of 1965 (42 U.S.C. 1973d), relating to the appointment of Federal voting examiners, by striking out "the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity", and inserting "the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities".

Section 2(e) amends sections 103(a)(4)(D) and 203(a)(4)(D) of the District of Columbia Public Education Act, relating to the employment of officers and educational employees of Federal City College and the Washington Technical Institute, by striking out "sections 7324 through 7327 of title 5" and inserting "section 7325 of title 5".

Section 2(f) provides that the amendments made by section 2 of the bill shall take effect on the ninetieth day after the date of enactment of the act, except for the provisions of section 7326(a)(2), as amended, which shall take effect 120 days after enactment.

Section 2(g) requires the Civil Service Commission to, no later than 60 days after enactment, prepare and transmit to the Congress a report containing standards and criteria by which determinations will be made as to which elective offices will be considered part-time elective offices for the purposes of administering the mandatory leave without pay provisions of section 7326(a)(2).

Cost

Under the provisions of H.R. 8617, the investigation of alleged violations will be conducted by the Civil Service Commission, as they now are. Adjudication of cases arising under the act will move to the new Board established for that purpose, which will receive personnel and administrative support from the Civil Service Commission and the General Services Administration. Based on past experience, the committee does not contemplate a great number of cases arising that would require adjudication, however. In fiscal year 1974, for example, the Commission, under its present procedures, processed 37 complaints, closing 17 cases without investigation and 14 subsequent to investigation. Four suspensions and two removals were effected as the result of formal charges. Consequently, the committee does not anticipate any significant cost to the Federal Government arising out of this legislation. Additional costs will be incurred as the result of the educational endeavor required of the Commission, but the committee has no information on which to base an estimate.

It is the committee's hope that such standards and criteria will not be so narrowly drawn as to exclude great numbers of elective offices.

Agency Views

U.S. Civil Service Commission,
Washington, D.C., November 4, 1975.

Hon. Gale McGee,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in reply to your letter requesting the Commission's views on S. 372, a bill "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, and for other purposes." This letter also reflects the Commission's views on H.R. 8617, a related bill now pending before your committee.

The Commission opposes enactment of these bills for several reasons.

In our opinion, the primary thrust of S. 372 and H.R. 8617 is to repeal the existing restrictions on political activities as set forth at 5 U.S.C. 7324(a)(2). This provision prohibits Federal employees and employees of the District of Columbia from participation in partisan political management and partisan political campaigns.

A secondary thrust of S. 372 is to revise and expand 5 U.S.C. 7323 so as to clarify responsibilities and procedures under this section. The Commission does not disagree with the basic intent of the latter provision. We do note in passing that this section of the bill appears to give the Commission jurisdiction to proceed in regard to Members of Congress, employees of Congress, and officers of the uniformed services (page 4, lines 14, 15). Inasmuch as such jurisdiction would be rather unusual we are uncertain if this was the actual intent of the bill.

The Commission's major area of concern, however, is with the primary thrust of S. 372 and H.R. 8617 which would allow to employees virtually unlimited political activity, both partisan and nonpartisan, even at the national level. This goes far beyond the proposals to liberalize the political activity restrictions as recommended by the Commission on Political Activity of Government Personnel.

Where advancement in the public service is predicated exclusively upon merit, the entire society benefits from a more efficient and honest public service. Since 1883, this Commission, acting at the direction of the President and under Congressional enactments, has endeavored to insure that Federal employment and Federal personnel management are anchored on the principle of merit, free from the influence of political partisanship.

We are convinced that some restriction on the ability of public employees to identify themselves prominently with partisan political party success is essential to an effective merit system. While the political activity of specific employees may appear to be innocuous in itself, the effect of such activity generally is that public employees become identified with the aspirations of political parties and candidates, and partisan considerations are injected into the career service. The identification of a civil servant with a political party through active participation in party affairs compromises that employee in the eye of the public, and most certainly in the eyes of an opposing party during a change in administrations. Competition among employees for advancement and favor based on their contributions of money or services to political parties would also detract from the efficient administration of public business. Our conclusion is that the intrusion of partisan considerations into the career Federal service, even in appearance, would constitute a devastating blow to merit concepts, and to employee morale as well.

We, of course, favor the retention of the prohibition on the misuse of official authority to influence elections, as well as the restrictions on the solicitation and exchange of political contributions among Federal officers and employees. However, in our view, those limitations alone, even as revised and expanded by S. 372, and to a lesser extent by H.R. 8617, are wholly inadequate to protect employees from the subtle pressures that would impel them to engage in other forms of political activity in order to protect or enhance their employment situation. Without the protection of a public policy that limits the political activities of public employees, an employee would be vulnerable to indirect influences to support the political party or candidates favored by those in a position to affect the employee's government career. Under current restrictions everyone knows that a covered employee cannot serve political purposes, except at the risk of loss of employment. This protection of the Federal employee would be discarded by the proposed legislation.

We think it significant that after nearly a year of study of the Hatch Act, the Commission on Political Activity of Government Personnel concluded that protection of a career system based on merit not only "requires strong sanctions against coercion . . . [but] also requires some limits on the role of the Government employee in politics." Volume I Report of the Commission on Political Activity of Government Personnel—Recommendations, page 3.

Apparently employees, too, feel some apprehension regarding the effect of amendments that would permit more political activity on their part. A survey of Federal employees, conducted by the same Commission in 1967, disclosed that more than half (52%) of those contacted believed that such changes would affect promotions, decisions, job assignments, and similar actions. Volume II, Report of the Commission on Political Activity of Government Personnel—Research, pages 21 and 78 (1968). We believe the employees' fears stem from a realistic view of politics in relation to the public service.

The foregoing should in no way, of course, be construed as a total indictment against political activity of Federal employees. We would note, for example, that under existing law Federal employees are free to engage in a wide variety of activities. The Hatch Act does not circumscribe the entire field of political activity, but, rather, carefully directs its prohibitions to what Congress regarded as particular sources of danger to the public service, namely, direct participation by employees in the management and campaigns of major political parties. A wide range of freedom to participate in the political processes of the Nation, State, and the local community is permitted under the existing law.

Accordingly, the Commission strongly opposes enactment of these bills.

The Office of Management and Budget advises that enactment of S. 372 or H.R. 8617 would not be in accord with the program of the President.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON, *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., November 25, 1975.

Hon. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the Committee's requests for the views of this Office on S. 372 and H.R. 8617, both bills concerned with the Hatch Act.

The principal purpose of these bills is to repeal the restrictions in existing law on active participation by Federal employees in partisan political campaigning and managing.

We are opposed to the elimination of such restrictions. As noted in the report and testimony of the Civil Service Commission, the effect on such repeal would be to allow Federal employees virtually unlimited partisan political activity. We believe the identification of Federal employees with political parties through their active role in party affairs would inevitably introduce partisan considerations into the administration of Federal programs. This would seriously undermine public confidence in the integrity of Government operations and would adversely affect employees morale and efficiency as well.

Moreover, we note that H.R. 8617 would require the Civil Service

Commission to submit proposed implementing regulations to Congress, subject to disapproval by either House within 30 days. This provision violates the doctrine of separation of powers and represents an unconstitutional exercise of Congressional power.

Accordingly, for the reasons stated above, we strongly recommend against enactment of S. 372 or H.R. 8617. Enactment of these bills would not be in accord with the program of the President.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., November 13, 1975.

B-138229

Hon. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate

DEAR MR. CHAIRMAN: By letter of October 31, 1975, you requested our views and comments on H.R. 8617, 94th Cong., 1st Sess., an Act "[t]o restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

The legislation would amend subchapter III—Political Activities—of chapter 73 of title 5, United States Code. On June 10, 1975, we reported to the House Committee on Post Office and Civil Service on H.R. 3000, 94th Cong., 1st Sess. Subsequently, H.R. 8617 was introduced as a clean bill in lieu of H.R. 3000 as approved by the unanimous voice vote of the Subcommittee on Employee Political Rights and Intergovernmental Programs.

We noted in our report on H.R. 3000 that its enactment would shift emphasis from removal of Federal employees for violations of the "Hatch Act" to lesser penalties, and correspondingly reduce the protection of Federal civilian employees from improper political solicitations.

Additionally, we stated our concern incident to increasing political activity on the part of Federal employees, including candidacy for nomination or election to public office, without involving their official authority or influence. H.R. 8617 represents a substantial effort to establish a system that would bring about increased voluntary political participation by Federal employees without involving their official authority or influence. On balance, however, we believe, as perviously stated, that active partipation by a Federal employee in political activities could involve or give the appearance of a conflict-of-interest situation. Accordingly, it is recommended that the legislation not be enacted.

Sincerely yours,

ROBERT F. KELLER,
Deputy Comptroller General of the United States.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic):

TITLE 5, UNITED STATES CODE

* * * * * * *

PART II—THE UNITED STATES CIVIL SERVICE COMMISSION

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Chapter 13—Special Authority

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§ 1308. Annual reports

(a) The Civil Service Commission shall make an annual report to the President for transmittal to Congress. The report shall include—

(1) a statement of the Commission's actions in the administration of the competitive service, the rules and regulations and exceptions thereto in force, the reasons for exceptions to the rules the practical effects of the rules and regulations, and any recommendations for the more effectual accomplishment of the purposes of the provisions of this title that relate to the administration of the competitive service;

(2) the results of the incentive awards program authorized by chapter 45 of this title with related recommendations; *and*

[(3) at the end of each fiscal year, the names, addresses, and nature of employment of the individuals on whom the Commission has imposed a penalty for prohibited political activity under section 7325 of this title with a statement of the facts on which action was taken, and the penalty imposed; and]

[(4)](*3*) a statement, in the form determined by the Commission with the approval of the President, on the training of employees under chapter 41 of this title, including—

(A) a summary of information concerning the operation and results of the training programs and plans of the agencies;

(B) a summary of information received by the Commission from the agencies under section 4113(b) of this title; and

(C) the recommendations and other matters considered appropriate by the President or the Commission or required by Congress.

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Part III—Employees

* * * * * * *

Subpart B—Employment and Retention

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Chapter 33—Examination, Selection, and Placement

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Subchapter I—Examination, Certification, and Appointment

* * * * * * *

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3306(a)(1), 3321, 7152, [7153, 7321, and 7322] *and 7153* of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

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Subpart F—Employee Relations

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Chapter 73—Suitability, Security, and Conduct

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Subchapter III—Political Activities

Sec.

[
7321. Political contributions and services.
7322. Political use of authority or influence; prohibition.
7323. Political contributions; prohibition.
7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
7325. Penalties.
7326. Nonpartisan political activity permitted.
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]

Sec.
7321. Political participation.
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7324. Solicitation; prohibition.
7325. Political activities on duty; prohibition.
7326. Leave for candidates for elective office.
7327. Board on Political Activities of Federal Employees.

7328. Investigation; procedures; hearing.
7329. Penalties.
7330. Educational program; reports.
7331. Regulations.

* * * * * * *

[Subchapter III—Political Activities

[§ 7321. Political contributions and services

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so.

[§ 7322. Political use of authority or influence; prohibition

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

[§ 7323. Political contributions; prohibition

[An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

[§ 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

[(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

[(1) use his official authority or influence for the purpose of interferring with or affecting the result of an election; or

[(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

[(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

[(d) Subsection (a)(2) of this section does not apply to—

[(1) an employee paid from the appropriation for the office of the President;

[(2) the head or the assistant head of an Executive department or military department;

[(3) an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

[(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

[(5) the Recorder of Deeds of the District of Columbia.

[§ 7325. Penalties

[An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Civil Service Commission finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Commission.

[§ 7326. Nonpartisan political activity permitted

[Section 7324(a)(2) of this title does not prohibit political activity in connection with—

[(1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

[(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

[§ 7327. Political activity permitted; employees residing in certain municipalities

[(a) Section 7324(a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

[(b) The Civil Service Commission may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Commission considers it to be in their domestic interest, when—

[(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

[(2) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.]

Subchapter III—Political Activities

§ 7321. *Political participation*

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

§ 7322. *Definitions*

For the purpose of this subchapter—

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

(A) an Executive agency,

(B) the government of the District of Columbia,

(C) the competitive service, or

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

but does not include a member of the uniformed services;

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

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

(B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to such office;

(3) "political contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

(B) includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any such purpose; and

(C) includes the payment by any person, other than a candidate or a political organization, of compensation for the personal services of another person which are rendered to such candidate or political organization without charge for any such purpose;

(4) "superior" means an employee (other than the President or the Vice President) who exercises supervision of, or control or administrative direction over, another employee;

(5) "elective office" means any elective public office and any elective office of any political party or affiliated organization; and

(6) "Board" means the Board on Political Activities of Federal Employees established under section 7327 of this title.

§ 7323. Use of official authority or influence; prohibition

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purpose of—

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

(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

(A) any individual for the purpose of interferring with the right of any individual to vote as such individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

(B) any person to give or withhold any political contribution; or

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

(b) Nothing in this section authorizes the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.

(c) For the purpose of subsection (a) of this section, use of official authority or influence includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling).

§ 7324. Solicitation; prohibition

An employee may not—

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

(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

(3) knowingly give or hand over a political contribution to a superior of such employee; or

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

(A) from another employee (or a member of another employee's immediate family) with respect to whom such employee is a superior; or

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

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

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

§7325. Political activities on duty; prohibition

(a) An employee may not engage in political activity—

(1) while such employee is on duty,

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing, or

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

(b) The provisions of subsection (a) of this section shall not apply to—

(1) the President and the Vice President;

(2) an individual—

(A) paid from the appropriation for the White House Office,

(B) paid from funds to enable the Vice President to provide assistance to the President, or

(C) on special assignment to the White House Office,

unless such individual holds a career or career-conditional appointment in the competitive service.

(3) the Mayor of the District of Columbia, the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act.

§ 7326. Leave for candidates for elective office

(a)(1) An employee who is a candidate for elective office shall, upon the request of such employee, be granted leave without pay for the purpose of allowing such employee to engage in activities relating to such candidacy.

(2) Any employee who is a candidate for elective office shall be placed on leave without pay effective beginning on whichever of the following dates is the later:

(A) the 90th day before any election (including a primary election, other than a primary election in which such employee is not a candidate) for that elective office, or

(B) the day following the date on which the employee became a candidate for elective office.

Such leave shall terminate on the day following the election or the day following the date on which the employee is no longer a candidate for elective office, whichever first occurs, unless the employee is otherwise on leave. The Civil Service Commissioin shall, upon application, exempt from the application of this paragraph any employee who is a candidate for any part-time elective office.

(b) Nothwithstanding section 6302(d) of this title, an employee who is a candidate for elective office shall, upon the request of such employee, be granted accrued annual leave for the purpose of allowing such employee to engage in activities relating to such candidacy. Such leave shall be in addition to leave without pay of such employee under subsection (a) of this section.

(c) An employee shall promptly notify the agency in which he is employed upon becoming a candidate for elective office and upon the termination of such candidacy.

(d) The provisions of this section shall not apply in the case of an individual who is an employee by reason of holding an elective public office.

§ 7327. Board on Political Activities of Federal Employees

(a) There is established a board to be known as the Board on Political Activities of Federal Employees. It shall be the function of the Board to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of this title.

(b) The Board shall be composed of 3 members, appointed by the President, by and with the advice and consent of the Senate. One member shall be designated by the President as Chairman of the Board.

(c) Members of the Board shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment, are employees (as defined under section 7322(1) of this title), except that not more than 2 individuals of the same political party may be appointed as members. Employees of the Civil Service Commission shall be ineligible to be appointed to or to hold office as members of the Board.

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

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

(B) one member, designated by the President, shall be appointed for a term of 2 years, and

(C) one member, designated by the President, shall be appointed for a term of 1 year.

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

(2) If an employee who was appointed as a member of the Board is separated from service as an employee he may not continue as a member of the Board after the 60-day period beginning on the date so separated.

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

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

(g) A member of the Board may not delegate to any person his vote nor, except as expressly provided by this subchapter, may any decision-making authority vested in the Board by the provisions of this subchapter be delegated to any member or person.

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

(i) The Civil Service Commission shall provide such clerical and professional personnel, and administrative support, as the Chairman of the Board considers appropriate and necessary to carry out the Board's functions under this subchapter. Such personnel shall be responsible to the Chairman of the Board.

(j) The Administrator of the General Services Administration shall furnish the Board suitable office space appropriately furnished and equipped, as determined by the Administrator.

(k)(1) Members of the Board shall receive no additional pay on account of their service on the Board.

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

§ 7328. Investigation; procedures; hearing

(a) The Civil Service Commission shall investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of this title. Any such investigation shall terminate not later than 90 days after the date of its commencement, except that such 90-day limitation may be extended upon the written approval of the Board for the period specified in such approval. If the Commission does not make the notification required under subsection (c) of this section before the close of the period for investigation, subsections (c) (2) and (3) and (d) of this section, and section 7329 of this title, shall not apply thereafter to the employee involved with respect to the activities under investigation.

(b) As a part of the investigation of the activities of an employee, the Commission shall provide such employee an opportunity to make a statement concerning the matters under investigation and to support such statement with any documents the employee wishes to submit. An employee of the Commission lawfully assigned to investigate a violation of this subchapter may administer an oath to a witness attending to testify or depose in the course of the investigation.

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

(2) Except as provided in paragraph (3) of this subsection, if it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has occurred, the Commission shall submit to the Board and serve upon the employee a written notice by certified mail (or if notice cannot be served in such manner, then by any method calculated to reasonably apprise the employee)—

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

(B) advising the employee of the penalties provided under section 7329 of this title;

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

(D) advising the employee that unless the employee answers the charges, in writing, within the time allowed therefor, the Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.

(3) If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has been committed by—

(A) the Vice President;

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

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

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

(E) the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act:

the Commission shall refer the case to the Attorney General for prosecution under title 18, and shall report the nature and details of the violation to the President and to the Congress.

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

(2) If an answer is filed within the time allowed, the charges shall be determined by the Board on the record after a hearing conducted by a hearing examiner appointed under section 3105 of this title, and, except as otherwise expressly provided under this subchapter, in accordance with the requirements of subchapter II of chapter 5 of this title, notwithstanding any exception therein for matters involving the tenure of any employee. The hearing shall be commenced within 30 days after the answer is filed with the Board and shall be conducted without unreasonable delay. As soon as practicable after the conclusion of the hearing, the examiner shall serve upon the Board, the Commission, and the employee such examiner's recommended decision with notice to the Commission and the employee of opportunity to file with the Board, within 30 days after the date of such notice, exceptions to the recommended decision. The Board shall issue its final decision and order in the proceeding no later than 60 days after the date the recommended decision is served. The employee shall not be removed from active duty status by reason of the alleged violation of this subchapter at any time before the effective date specified by the Board.

(e)(1) At any stage of a proceeding or investigation under this subchapter, the Board may, at the written request of the Commission or the employee, require by subpena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the proceeding or investigation at any designated place, from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may issue subpenas and members of the Board and any hearing examiner authorized by the Board may administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpena, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to

obey the order of the court may be punished by the court as a contempt thereof.

(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(3)(A) After requesting in writing and obtaining the approval of the Attorney General, the Board may determine that an employee's attendance and testimony are necessary to the carrying out of the Board's functions under this subchapter. For purposes of the preceding sentence, if the Atttorney General does not notify the Board in writing within 30 days after the date on which a request for such approval is made that the Board does not have his approval, then such approval is deemed to have been given. Such 30-day period shall be extended an additional 10 days of the attorney General submits in writing to the Board the reason for such extension.

(B) If the Board makes a determination under subparagraph (A) with respect to any employee, such employee may not be excused from attending and testifying or from producing documentary or other evidence in obedience to a subpena of the Board on the ground that the testimony or evidence required of the emplyoee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled under this paragraph, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony or evidence so compelled be used as evidence in any criminal proceeding against the employee in any court, except that no employee shall be exempt from prosecution and punishment for perjury committed in so testifying.

(f) An employee upon whom a penalty is imposed by an order of the Board under subsection (d) of this section may, within 30 days after the date on which the order was issued, institute an action for judicial review of the Board's order in the United States District Court for the District of Columbia or in the United States district court for the judicial district in which the employee resides or is employed. The institution of an action for judicial review shall not operate as a stay of the Board's order, unless the court specifically orders such stay. A copy of the summons and complaint shall be served as otherwise prescribed by law and, in addition, upon the Board which shall then certify and file with the court the record upon which the Board's order was based. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce the evidence at the hearing conducted under subsection (d)(2) of this section, the court may direct that the additional evidence be taken before the Board in the manner and on

the terms and conditions fixed by the court. The Board may modify its findings of fact or order, in the light of the additional evidence, and shall file with the court such modified findings or order. The Board's findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Board's order if it determines that it is in accordance with law. If the court determines that the order is not in accordance with law—

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

(2) it may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

(g) The Commission or the Board, in its discretion, may proceed with any investigation or proceeding instituted under this subchapter notwithstanding that the Commission or the head of an employing agency or department has reported the alleged violation to the Attorney General as required by section 535 of title 28.

§ 7329. Penalties

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

(1) removed from such employee's pension, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title) for such period as the Board may prescribe;

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

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

(b) The Board shall notify the Commission, the employee, and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.

§ 7330. Educational program; reports

(a) The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 60 days before the earliest primary or general election for State or Federal elective office held in such State.

(b) On or before March 30 of each calendar year, the Commission shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of investigations conducted under section 7328 of this title and the results of such investigations;

(2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the program required under subsection (a) of this section; and

(3) an evaluation which describes—

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

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

§ 7331. Regulations

The Civil Service Commission shall prescribe such rules and regulations as may be necessary to carry out its responsibilities under this subchapter. However, no regulation or rule of the Commission or any amendment thereto shall take effect unless—

(1) the Commission transmits such rule, regulation, or amendments to the Congress; and

(2) neither House of Congress has disapproved such rule, regulation, or amendment within 30 legislative days from the date of transmittal to the Congress.

* * * * * * *

Chapter 83—Retirement

* * * * * * *

Subchapter III—Civil Service Retirement

* * * * * * *

§ 8332. Creditable service

(a) * * *

* * * * * * *

(k) (1) An employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, which 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, not withstanding the [second] *last* sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

* * * * * * *

Chapter 87—Life Insurance

* * * * * * *

§ 8706. Termination of insurance

(a) * * *

* * * * * * *

(e) Notwithstanding subsections (a)–(c) of this section, an employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

* * * * * * *

Chapter 89—Health Insurance

* * * * * * *

§ 8906. Contributions

(a) * * *

* * * * * * *

(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Commission. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on *leave without pay granted under section 7326(a) of this title, or who enters on* approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

* * * * * * *

TITLE 18, UNITED STATES CODE

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Chapter 29.—Elections and Political Activities

* * * * * * *

"614 Extortion of political contributions from Federal personnel.".

* * * * * * *

§ 602. Solicitation of political contributions

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person, shall be fined not more than $5,000 or imprisoned not more than three years or both. *This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.*

* * * * * * *

§ 607. Making political contributions

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than $5,000 or imprisoned not more than three years, or both. *This section does not apply to any activity of an employee, as defined in section 7322(1) of title 5, unless such activity is prohibited by section 7324 of that title.*

* * * * * * *

"§ 614. Extortion of political contributions from Federal personnel

Whoever, by the commission of or threat of physical violence to, or economic sanction against, any person, obtains, or endeavors to obtain, from an officer or employee of the United States or of any department or agency thereof, or from a person receiving any salary or compensation for services from money derived from the Treasury of the United States, any contribution for the promotion of a political object, shall be imprisoned not less than two nor more than three years, or fined not more than $5,000, or both.

* * * * * * *

SECTION 6 OF THE VOTING RIGHTS ACT OF 1965

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision

named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivisions as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except [the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 188i), prohibiting partisan political activity] *the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities: Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oath.

DISTRICT OF COLUMBIA PUBLIC EDUCATION ACT

* * * * * * *

TITLE I—FEDERAL CITY COLLEGE

* * * * * * *

SEC. 103. (a) The Board is vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Federal City College.

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Federal City College.

(3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Federal City College.

(4) To employ and compensate such officers as it determines necessary for the Federal City College, and such educational employees for the Federal City College as the president thereof

may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) section 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and [sections 7324 through 7327] *section 7325* of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81 of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code (relating to dual pay and dual employment),

but the employment and compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) section 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference).

* * * * * * *

TITLE II—WASHINGTON TECHNICAL INSTITUTE

* * * * * * *

SEC. 203. (a) The Board is hereby vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Washington Technical Institute.

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Washington Technical Institute.

(3) To appoint and compensate, without regard to the civil service laws or chapter 51 and subchapter III of chapter 53 of title 5, United States Code, a president for the Washington Technical Institute.

(4) To employ and compensate such officers as it determines necessary for the Washington Technical Institute, and such educational employees for the Washington Technical Institute as the

president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to—

(A) the civil service laws,

(B) chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification of positions in Government service),

(C) sections 6301 through 6305 and 6307 through 6311 of title 5, United States Code (relating to annual and sick leave for Federal employees),

(D) chapter 15 and [sections 7324 through 7327] *section 7325* of title 5, United States Code (relating to political activities of Government employees),

(E) section 3323 and subchapter III of chapter 81 of title 5, United States Code (relating to civil service retirement), and

(F) sections 3326, 3501, 3502, 5531 through 5533, and 6303 of title 5, United States Code, relating to dual pay and dual employment),

but the employment and the compensation of such officers and educational employees shall be subject to—

(i) sections 7902, 8101 through 8138, and 8145 through 8150 of title 5, United States Code, and sections 292 and 1920 through 1922 of title 18, United States Code (relating to compensation for work injuries),

(ii) chapter 87 of title 5, United States Code (relating to Government employees group life insurance),

(iii) chapter 89 of title 5, United States Code (relating to health insurance for Government employees), and

(iv) sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of title 5, United States Code (relating to veteran's preference).

* * * * * * *

MINORITY VIEWS ON H.R. 8617

The legislation is labeled by its proponents as a measure to "restore" the "rights" of Federal civilian and Postal Service employees to participate in this nation's "political processes."

What it would in fact do, however, is to open up the entire Federal government to partisan politics by Federal employees and concentrate excessive political power in the hands of their leaders. It would cripple and emasculate the Hatch Act—the cornerstone of the merit system—which has served this nation so well in banning partisan politics from the merit system and in shielding Civil Service workers from the pressures and threats of politicians.

H.R. 8617 is a giant step backward. If enacted, it will have a most corrosive and erosive effect for it will inevitably lead to political favoritism. Our present merit system will then return to the spoils system of the pre-Hatch Act period.

At a time when the American people already hold their government in such low esteem, any action by the Congress which would further lower the people's confidence in that government would be a grave disservice to the nation. We must strive to preserve the nonpartisan integrity and impartiality of the public service and its employees. H.R. 8617 would do just the opposite and should be defeated.

Why the Hatch Act Was Enacted

The Hatch Act was enacted into law in 1939 amidst a climate of political corruption in the Federal workforce. Under the New Deal, the Works Progress Administration (WPA) funded wholly or partially over 3 million public works jobs in areas of high unemployment. Public indignation grew over reports of widespread financial solicitation by Democratic Party officials from WPA workers as a condition of continued WPA employment, salary advancement, and favorable job assignment.

As a result of these allegations of political corruption, the Senate created a special investigating committee headed by Senator Morris Sheppard of Texas. The Sheppard Committee's report of January 3, 1939, contained numerous documented cases of political coercion that occurred in 10 states. Committee investigators obtained affidavits from WPA workers which showed extensive solicitation of financial contributions from WPA workers by WPA supervisors closely associated with local political organizations which, in turn, were affiliated with the National Democratic Party.

Continued employment on WPA projects, as well as promotions and favorable work assignments, were often contingent upon direct financial contributions to local party organizations or the purchase of tickets to various fund-raising functions.

In Kentucky, for example, the committee found that $70,000 had been raised for the Governor's campaign from State employees whose

salaries had been partly or wholly derived from funds paid by the U.S. Treasury, and that $24,000 had been raised for a Senator's campaign from WPA employees and from other State employees receiving Federal money.

The committee found particular abuses by administrative personnel in the WPA in Kentucky; specifically, they had made a systematic canvass of certified WPA workers, that workers had been hired and fired on the basis of political affiliation, and that WPA workers had been solicited for political contributions.

Based on these findings, the Sheppard Committee recommended that Congress pass legislation to prohibit the political coercion of all Federal employees. The spectacular evidence of patronage politics prompted Congress to respond quickly and the Hatch Act was enacted in the same year.

Hatch Act Assures Impartial Governmental

The law was designed to protect Federal employees from being coerced to participate in partisan political activity such as fund raising, campaigning, and soliciting votes. Further, the statute made it illegal to use "official authority or influence to coerce the political action" of Federal employees. Federal employees were insulated from becoming pawns of any political party, thus insuring that the laws of the land would be administered impartially by employees who owed their appointments and tenure in the Federal Government only to the merit system and not to any partisan political party.

This was the purpose and intent of the law. It has served both employees and the public well.

Hatch Act Is More Needed Today

Now, 36 years later, proponents of H.R. 8617 seek to remove these time-tested protections of Federal employees. We in the Congress are being asked to ignore the sordid political past which prompted the enactment of the original law.

This is a mistake. The proponents of this wholesale change in the law argue that times have changed since 1939, that employees are more sophisticated, and, therefore, repeal of the important Hatch Act provisions is necessary.

Times have changed—but let us examine to what extent they have changed.

For example, it is estimated that in 1939, there were 920,000 Federal employees as opposed to 2.8 million today; the total budget in 1940 was $9.5 billion as opposed to $324 billion in 1975; public assistance—welfare and government payment to individuals—totaled $1.5 billion in 1940 while the estimate in 1975 is close to $147 billion; and the average salary of a Federal employee in 1939 was $1,871 as opposed to $14,480 today.

Indeed, times have changed." The Federal government is vastly larger than it was in 1939 when the Hatch Act became law—it employs three times more workers and has a budget 34 times larger. Accordingly, the potential for abuses in the Civil Service merit system is far greater today than it was 36 years ago.

The question is, has human behavior changed to the extent that employees are no longer vulnerable to coercion—subtle or otherwise—from ambitious partisan political employees who hold important positions in government? We do not think so. In fact, the Hatch Act is more necessary today than when it was first enacted into law.

Legislation Will Not Stop Coercion

If Federal employees have become more sophisticated since the 1930's, they have also become more cynical. In 1967, a full 25 percent flatly told the Survey Research Center of the University of Michigan—an impartial, widely respected professional organization—that they would not report the illegal activities of coworkers or supervisors.

In an increasingly sophisticated and cynical post-Watergate atmosphere, it becomes more and more unlikely that such subtle political activities as indirect coercion of employees will be reported.

Though a few union leaders boasted in House subcommittee hearings this year that their organizations could combat coercion in the public sector as successfully as it has been done in the private sector, subtle coercion is extremely difficult to prove. It is unlikely that even the most strenuous of union efforts would curb indirect coercion—the subtle pressure that any Federal employee would inevitably feel were his supervisor a politician. Furthermore, unions would not be able to assist the hundreds of thousands of Federal employees who are not union members. Thus, Federal employees, stripped of their protection, will be "sitting ducks."

Rank and File Oppose Change

The impetus for this bill does not come from Federal employees themselves, who will lose most by the passage of this bill.

Given a choice between the Hatch Act and H.R. 8617, employees would prefer the Hatch Act. Congressmen representing the nation's second and third largest civil servant constituencies report that their own surveys and mail show an overwhelming proportion of the rank and file Civil Service employees do not want the bill. Of 20,000 individuals who responded to a questionnaire which Representative Joseph L. Fisher (D.-Va.) mailed to his Northern Virginia constituents (including one-third to 40 percent who were civil servants), 59 percent expressed opposition to any change in the Hatch Act. His mail indicated that Civil Service employees who wanted the status quo outnumbered others eight or ten to one.

Representative Gilbert Gude (R.-Md.) told the Senate Post Office and Civil Service Committee: "I think his (Congressman Fisher's) poll clearly shows what I felt was the case in my district and what I think is the case generally with Civil Service employees across the country."

Still another House Member, Representative Elizabeth Holtzman (D.-N.Y.), said the results of a questionnaire she sent to her constituents showed the vote was two to one against weakening the Hatch Act. "I think that my constituents accurately perceive the need for continued protection to the public and the Federal Civil Service afforded by much of the Hatch Act," she commented. Her incisive

remarks on H.R. 8617 (*Congressional Record*, November 18, 1975, Pages H11390–91) underscore the dangers in partisan political activities if engaged in by Federal employees.

Clayton Jones, President of the Federal Executive Institute Alumni Association, reporting on the results of his organization's questionnaire, said that out of 3,000 career Civil Service employees who were polled by mail, only two individuals expressed support for legislation to change the Hatch Act.

In its 1967 study, the Survey Research Center of the University of Michigan found strong sentiment among Federal employees for keeping the Hatch Act unchanged. In surveying the attitudes of Federal employees toward the Hatch Act, 14 categories of responses were allowed. The category which ranked number one with the highest response was: "The Hatch Act should remain as is; do not favor changes." Obviously, Civil Service employees do not want to throw out the present Hatch Act.

Joseph Young, the veteran columnist of the *Washington Star* who has covered the "government beat" for more than 25 years, made this observation:

> Federal and postal employe union leaders are all in favor of overhauling the law restricting the political activities of government workers, but it's doubtful that most employes are.
>
> The unions favor overhaul because it would increase their clout with Congress and the political party in power in the White House.
>
> But it would mean the end of the merit system as we know it today.
>
> The attacks on the merit system that occurred during the Nixon administration would be mere child's play compared to what would happen if the Hatch Act were radically changed.

Nathan T. Wolkomir, President of the largest independent union of career employees—the widely respected National Federation of Federal Employees—said:

> There is no question in my mind that this is a further attempt by the AFL–CIO to have terrific political impact on the Hill.

And John McCart, head of the AFL–CIO's public-employee section, agrees:

> I suppose that to the extent we make our people more aware of the political process, you could say that we could acquire more political clout. But what's wrong with that? Our union's whole history is related to politics.

And so, if the AFL–CIO has its way, union will soon be engaged in exacting political favors from union members in the Federal service.

Our Nation's history, though, shows that "politics" should have no place in the impartial administration of Federal laws—no place in the Civil Service—regardless of the AFL–CIO desire to open the public service to unrestricted political activity.

Employees do not want this or any other change in the Hatch Act. Mr. Wolkomir testified that his union, the NFFE, conducted a poll

of its members which showed 89 percent expressing strong support for continuing the Act "as is." In its 1974 convention, NFFE unanimously adopted a resolution "that the NFFE continue to vigorously oppose efforts to weaken the protection provided by the Hatch Act.

Even the Present Provisions Are Violated

If the incentive to engage in abuses of the merit system were sufficiently great, even the most stringent enforcement mechanism conceivably would not deter such abuses. Even in the absence of powerful incentives, some abuses of the merit system appear inevitable.

More than a few witnesses testifying before the House panel considered this legislation, complained of discrimination in appointments and promotions, discrimination against minorities, and favoritism toward members of fraternal organizations. Since these witnesses were for the most part responsible individuals, elected to posts of some importance, their statements cannot be dismissed as puffery or paranoia. The conclusion that must be drawn is that there is some abuse of the merit system.

Even the Hatch Act, with its sweeping proscriptions against political activity and its stiff mandatory penalties, is persistently violated.

A Hatch Act violation which made the front pages in 1971 was the case of six officials of the General Services Administration who were charged with soliciting subordinates to buy tickets to a "Salute to the President Dinner." The Civil Service Commission found the six, all Civil Service employees, had violated the Hatch Act.

The Survey Research Center found that at least 1.5 percent of all Federal employees have been asked by their supervisors to contribute money to political campaigns, while another 1.2 percent have been requested to participate in political activities in violation of the law.

Some would claim this evidence demonstrates that the Hatch Act prohibitions against partisan politicking are not working and should be repealed. Little thought is needed to see that repeal would only worsen the situation. Repeal the the prohibitions and abuse becomes more profitable; if it is more profitable, more abuses will follow.

Federal Workers Not "Second-Class Citizens"

Proponents of H.R. 8617 have advanced the specious claim that the Hatch Act reduces Federal employees to the status of "second-class citizens," depriving them of their First Amendment rights of free speech and free association.

The right to participate in political activities is not, and never has been, absolute. In *U.S. Civil Service Commission* v. *National Association of Letter Carriers*, the Supreme Court recently sustained the constitutionality of that provision in title 5, United States Code, which prohibits Federal employees from taking an active part in political management or in political campaigns, the very provision H.R. 8617 would repeal.

The Court held that:

> A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal

positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

There is another consideration in this judgment: It is not only important that the government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative government is not to be eroded to a disastrous extent.

The Supreme Court has repeatedly held that the interests of society must be balanced against the interests of the individual. In this case, it is reasonable, and the lesson of history shows it is necessary, to curtail the political activities of Federal employees in the interests of society and also in the interests of employees. The Fisher poll shows that Federal employees know this. Impartial administration of the law without regard to personal convictions or political affiliations is required for a fair and efficient government.

Even if intensive involvement in politics does not taint an employee's administration of the law (an unlikely situation), it would certainly taint the public's perception of government affairs. More than a few citizens, one suspects, would be less willing to comply voluntarily with Internal Revenue Service regulations, were the Regional Director of the Revenue Service also the manager of a governor's campaign.

Moreover, the interests of the vast majority of Federal employees, those with no burning desire to become involved in partisan affairs, seem to require that restraints be placed upon the ambitions of their more politically inclined co-workers.

Political Rights of Federal Employees

Nor are the First Amendment rights of Federal employees impaired. While there are prohibited activities under the Hatch Act, there are at least as many permissible activities. An employee may register and vote in any election; express his opinion privately and publicly on political subjects and candidates; display a political picture, sticker, badge, or button; participate in the nonpartisan activities of a civic, community, social, labor, or professional organization; be a member of a political party and participate in its activities to the extent consistent with the law; attend a political convention, rally, fund-raising function, or other political gathering sign a petition as an individual; be politically active in connection with a question not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character; and serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law.

In addition, the Civil Service Commission has determined that in certain municipalities in Maryland and Virginia in the vicinity of of the District of Columbia, or a municipality in which the majority of voters are employed by the Government of the United States, it is in the domestic interest of employees for them to participate in local

elections. In these designated municipalities, an employee is permitted to run in a partisan election if he runs as an independent candidate.

Employees who reside in areas which do not qualify under the criteria cited above, may also run for public office and engage in political activity, but only in a nonpartisan election.

The Hatch Act does not deny a citizen his right to manage a political campaign or to run for partisan office. Nor does it deny the qualified citizen the privilege of a secure, well-paying post in the Civil Service. The act merely recognizes that one cannot administer the law impartially while advocating a partisan platform, that one has no inherent right under the Constitution to be a Federal employee and a political activist at the same time.

Nathan Wolkomir, President of the National Federation of Federal Employees, has capsuled the issue more bluntly:

> Claims that the Hatch Act makes "second-class citizens" of Federal employees is just so much eyewash. Federal employees are not denied reasonable and appropriate participation in the political process. Oddly, many of those who moan most loudly about this moth-eaten cliche fail to exercise the basic and most elementary action of a citizen, namely, to register and vote.

Robert E. Hampton, Chairman of the U.S. Civil Service Commission, testified before the Senate Post Office and Civil Service Committee that a record number of people in recent years have expressed interest in Federal employment and most of them were well aware of the Hatch Act restrictions on their political activity if they accepted a Federal job. Evidently, these individuals don't think the Hatch Act makes them "second-class citizens," Chairman Hampton said, and the political restrictions are not a deterrent to their seeking Federal employment.

Postal Worker versus Sears Roebuck Employee

The question has been raised as to how a Postal employee differs from an employee of Sears Roebuck. Why should the political activity of the Postal employee be restricted while that of the Sears employee is not?

There is a major difference between these two types of employees. Government employees, unlike private enterprise employees, are prominently identified with public programs and the impartial implementation of legislation which may have been bitterly contested by partisan forces. Briefly put, the Postal employee (or any Government employee) is a representative of the U.S. Government, not of a political party. His work is of major importance to all citizens.

The Postal employee in particular is the one government employee with whom many people in our country come into contact every day. He is the one who delivers the Social Security check; he is the one who delivers bill payments to small businesses with a critical cash-flow; he is the one who delivers the advertisements for one-day-only sales; he is the one who delivers the political campaign advertisements for parties and candidates. In short, he is a person who is intimately aware of a postal patron's interests and business.

He could, if partisan considerations were involved, engage in a form of coercion by "accidentally" delaying delivery of mail in a way which would benefit his candidate. For example, a political brochure "accidentally" delivered on November 5 is of no value to the candidate who mailed it. And late delivery of a Social Security check can cause real hardship for those dependent upon its prompt arrival.

As set forth above, such actions would have a serious effect not only on the efficient delivery of the mail but also on the public's perception of the manner in which government business is conducted. The public servant would seem to be more an employee of a political party.

Indeed, a Philadelphia official of the National Association of Letter Carriers whose members, the official points out, deliver mail to every home in America, has been quoted as saying:

> Our people have the ability to meet and contact people that other people don't have. We could be effective if we were unshackled. We do some talking right now, but we're not supposed to.

The Sears employee, on the other hand, is an employee of a private, competitive business. The public does not pay his salary, does not expect him to be impartial, does not look to him to execute public laws and programs, and does not depend on him for the many basic services which are now provided by the government. A dissatisfied Sears customer can always turn to another store.

In regard to government services, such as the Postal Service, however, the "customer" does not have a similar option. It is, therefore, inappropriate to compare a Postal employee with an employee of Sears Roebuck, or to compare any government employee with an employee of a private, competitive business.

Coercion Differs From Discrimination

Enforcement of the Hatch Act anti-coercion provisions is an extremely difficult task and cannot in any way be compared with the enforcement of antidiscrimination laws.

Racism is ugly, a social toxin, universally condemned. Political participation is a virtue, a social tonic, as prized by many Americans as racism is abhorred. Discrimination may be documented with the statistician's tools, eradicated with a sweeping directive. Coercion can be established only after exhaustive investigation and painstaking cross-examination, and must be eradicated case by case.

Too, coercion is a far more subtle thing. A vague remark, the wave of an arm, effusive praise, or its sudden absence, is sufficient to influence the activity of a Federal employee properly concerned with his own future. And who can fault him? He is aware that his supervisor, when making an appointment or transfer, may choose one of three equally qualified candidates. Under these circumstances, merit system abuse is almost impossible to establish. As one witness said: Substantiating charges of subtle coercion is "like trying to put your finger on a greasy marble."

Who can demonstrate that one was selected because he contributed generously to a campaign the supervisor managed? That another was passed over because he had once sported a button touting the opposition? And if one candidate for a promotion tells his supervisor, when no one else can hear, that the increased salary will make it much easier for him to pitch in come election time, who will ever know?

Fifty-two percent of Federal employees interviewed by the Survey Research Center felt that "promotion decisions and job assignments would change if Federal employees were allowed to be more active in politics." Few who feel this way would dare attend a fund-raiser for the opposition party, if their supervisor happened to be the State party chairman. And many who ordinarily would not even contribute to a political party might seriously consider putting up posters or driving people to the polls, just to give their boss a hand.

And what about the employee whose union holds one view, and pressures him to actively support it, while his supervisor holds a different view?

Ironically, enforcement of the law merely compounds the problem; if a supervisor who had abused the merit system was not successfully prosecuted, every employee who had ever entertained the notion that partisan activity counts would then be convinced that his darkest suspicions had been correct all along.

Public Perception of Impartial Government

Even if intensive involvement in politics does not taint a public employee's administration of the law, it would certainly taint the public's perception of government affairs.

Consider the public's perception of government affairs if the following Federal employees were engaged in partisan political activity. The illustrations were cited in the Senate Post Office and Civil Service Committee hearings by Carl F. Goodman, General Counsel of the Civil Service Commission:

> A "superior" is known to be actively campaigning for candidate X. One of his subordinates, who is generally known to be personally close to the superior, or who is known to be the superior's "right-hand-man," but is actually not a superior to the employees, approaches other employees in front of the building, or in a parking lot, or at their residences, (H.R. 8617 prohibits fund solicitation in Federal buildings) and solicits contributions for candidate X.
>
> The solicited employees must decide if it is expedient for them to contribute, being aware of the possibility that the superior may learn whether or not a contribution was made.
>
> They would also be aware that it would be extremely difficult, if not for all practical purposes impossible, to prove that any particular employee is promoted or passed over for promotion because he made a political contribution, or failed to.
>
> There is no evidence to indicate that the superior instructed or even suggested to the subordinate that contributions should be solicited * * * unlikely that such evidence could be obtained.
>
> * * * * * * * *
>
> An employee is aware of a vacancy which would be a promotion for him. He also is aware that the person who will

make the selection is actively supporting particular candidate. Add to that the fact that another employee who will be in competition for the vacancy is also working actively on behalf of the same candidate.

Our first employee must now make a decision with respect to his own activity. Can he really afford not to also campaign for that candidate? Or can he afford to exercise his "right" of choice by actively campaigning for the opposition?

What is at play here is internal coercion—the employee is caught between the proverbial rock and the hard place.

Today he need not be concerned about making this no-win choice—he is hatched; he is protected.

* * * * * * *

How about the employee engaged in political management who suddenly finds that the opposition candidate is his boss; or worse yet that the candidate he just successfully helped defeat now is boss and is responsible for his promotions, work assignments, leave, etc.?

Are all political activists of such pure heart that they can and will completely overlook the fact that subordinates deprived them of elective offices they worked so hard to obtain?

Still more illustrations can be offered:

If the General Counsel of the Civil Service Commission were known to be an active campaigner and fund-raiser for a political party, who would believe his report as to that party's abuse of the merit system?

What would be the public reaction to an Internal Revenue Service agent who investigates tax fraud, and in the same community solicits campaign funds so he or a friend can run for office?

The Commissioner of the Internal Revenue Service in testimony before the Senate Committee, stated:

> I think the American people would quickly lose confidence in the integrity of an internal revenue system which permitted its employees to be avid political partisans one day and expect them to be perceived the next as wholly non-partisan by both political friends and foes.

The list could go on endlessly: the Federal Prosecutor handling fraud cases; the farm agent distributing cash assistance; the Small Business Administration employees approving or rejecting a loan; the contracting officer and the grant officer whose day-to-day decisions are so very important.

In the Executive Branch as a whole, the public's perception of the equitable, impartial, non-partisan integrity of the system is of major importance.

The Lesson From Watergate

Representative Elizabeth Holtzman has emphasized,

> If there is one lesson we should have learned from Watergate, it is that we must strive to reduce, rather than increase, political influence in the Federal law enforcement and investigative agencies. This bill would, instead, authorize and invite the politicizing of the Justice Department, FBI, U.S. Attorney's Offices and Internal Revenue Service, as well as the CIA, National Security Agency and Defense Intelligence Agency. The dangers are two-fold: that law enforcement and investigative powers will be used to serve political ends, and that law enforcement and investigative offices, which should be wholly merit operations, will instead return to the spoils system. In addition, the administration of justice must not only be free of political influence in fact; it must be perceived as fair and impartial as well.

It is significant that in its final report in June, 1974, the Senate Select Committee on Presidential Campaign Activities—the Senate Watergate Committee—recommended that Congress amend the Hatch Act to place all Justice Department officials—including the Attorney General—under its purview. At present, certain Justice Department officials are exempt from Hatch Act coverage. The Watergate committee, however, stated it believes that all Justice Department officials should administer the nation's laws totally removed from all political considerations.

The Watergate Committee's recommendation to extend the Hatch Act to all Justice Department employees, including the Attorney General, is also in the report of the Watergate Special Prosecution Force issued in October 1975. Deputy Attorney General Harold R. Tyler, Jr., said such an action would add "a certain amount of public confidence."

Fallacious Comparison With Other Countries

Proponents of H.R. 8617 assert that the United States is the only free world country to so severely restrict the political activities of its government employees.

But compared to Japan, which prohibits all forms of political activity and political expression, with the single exception of the vote, the United States is a paragon of liberalism and tolerance. As one might expect, for the past 30 years Japan has benefited from a strictly professional and scrupulously nonpartisan Civil Service, while the United States has had more than its share of blemishes, particularly at the State and local level.

We do not think the United States should restrict the political activities of its employees to the same degree as Japan. We are two different nations, with different governments, histories, cultures, customs, and legal codes.

If the Civil Service laws of Japan should not serve as a model for the United States, neither should those of Britain, Germany, Canada, France, or any other nation. Aside from the obvious historical differences, our system of checks and balances is fundamentally different from other countries.

Though the differences between the United States and other free world nations are many, the most significant, for our purposes, is this: for every administrative office filled by a political appointee in

other countries, dozens are filled with appointees in the United States. This is no flaw in our system of government, but a necessity. The will of the nation, as interpreted by the Chief Executive, could not otherwise be translated into action. But political appointees can undermine the administration of the law as well as promote it, if the partisan pressures they inevitably exert result in the politicization of the Civil Service. No other nation possesses Civil Service is susceptible to this risk.

Making the Hatch Act Clearer

Some critics claim that the Hatch Act, which incorporates into statute over 3,000 administrative decisions, is vague and overbroad. The answer to this criticism is that the Federal employee who is determined to participate in politics to the extent permitted by law does not have to spend his weekends in the darkened aisles of vast law libraries, paging through volume after volume of musty Civil Service reports. All the work has been done for him.

Commission determinations are summarized in the Civil Service Regulations, which list 13 permissible and 13 prohibited activities in clear, comprehensible language.

If the regulations are themselves indecipherable—and in the opinion of the Supreme Court, they are not—the appropriate prescription is an editor's pen, not H.R. 8617.

If an employee is worried that the activity he would like to engage in may be prohibited by the Hatch Act, he can obtain advice from the Information Office of the Civil Service Commission and remove the last traces of doubt as to the legality of his action.

Since the regulations are, in fact, widely distributed and reasonably clear, it is unlikely that many employees refrain from participating in permissible activities because they fear running afoul of the law.

Irony of H.R. 8617

It seems ironic that in the present post-Watergate atmosphere, some Members of Congress are urging prosecution of violations of the merit system, while they are, at the same time, urging repeal of the Hatch Act, thereby inviting untold abuses of the merit system. This bill can only heighten the public cynicism toward our institutions.

In recent weeks, concern has been voiced by some Congressional critics that the nomination of a politically experienced official to a sensitive agency might "politicize" that agency. How ironic, therefore, if these same critics now remain silent when a bill like H.R. 8617 threatens to politicize not one agency but the entire Federal government with its 2.8 million Civil Service and Postal Service employees.

Although only a handful of Federal employees would seek to become involved in partisan affairs, if H.R. 8617 becomes law, all will be subjected to the subtle coercive forces that would be unleased. In the minds of many employees, there is little doubt that such coercive forces would exist.

When asked by the Survey Research Center of the University of Michigan whether repeal of the Hatch Act would "change things like job appointment and job promotion," a majority replied in the affirmative. And every citizen in the country would suffer if the politicization of the Civil Service leads to a deterioration in the quality of service government can provide. Then America would be left with what Chairman Hampton of the Civil Service Commission has described as "a second-class Civil Service."

H.R. 8617 Should Be Defeated

This bill, if enacted, will be disastrous for the Federal employees, the Civil Service merit system, and the American public.

It will strip away the protection which the employees have enjoyed under the Hatch Act for the past 36 years.

It will seriously damage the integrity of the merit system and the efficiency of the nonpartisan, independent Civil Service.

And it will be most unfair to the American people who will be saddled eventually with a second class Civil Service open to the evils of the old spoils system.

H.R. 8617 should be defeated.

Hiram L. Fong.
Henry Bellmon.

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-943

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT

MARCH 22, 1976—Ordered to be printed

Mr. HENDERSON, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 8617]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 3, 7, 8, 13, 21, 23, 24, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 71, 72, 74, 75, and 76.

That the House recede from its disagreement to the amendments of the Senate numbered 4, 5, 10, 11, 16, 17, 18, 19, 20, 29, 70, and 73, and agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment as follows:

In the matter proposed to be inserted by the Senate amendment, strike out "or any individual" and insert in lieu thereof the following: *of any individual*; and the Senate agree to the same.

Amendment numbered 9:

That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment as follows:

In the matter proposed to be inserted by the Senate amendment, strike out "authorizes" and insert in lieu thereof the following: *shall be construed to authorize*; and the Senate agree to the same.

57-006

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

"(b) (1) *In addition to the prohibitions of subsection (a) of this subsection, an employee to whom this paragraph applies may not solicit, accept, or receive a political contribution from, or give a political contribution to, an employee, a Member of Congress, or an officer of a uniformed service.*

"(2) *Paragraph (1) of this subsection shall apply to any employee of the Internal Revenue Service, the Department of Justice, or the Central Intelligence Agency, other than—*

"(A) *an employee of such an agency who is in a position which is not a sensitive position,*

"(B) *an employee of such an agency who is in a sensitive position with respect to which the head of such agency has designated, by regulation, that if any person holding such position engaged in activities prohibited by paragraph (1) of this subsection or by section 7325(d) (1) of this title it would not adversely affect the integrity of the Government, or the public's confidence in the integrity of the Government, or*

"(C) *an individual appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued in the nationwide administration of Federal laws.*

For the purpose of this paragraph, 'sensitive position' means any position designated as a sensitive position pursuant to Executive Order Numbered 10450 or under any superceding Federal statute or Executive order.

"(3) *Regulations referred to in subparagraph (A) of this paragraph shall be prescribed not later than 90 days after the effective date of this section. Thereafter any revision of such regulations shall be prescribed not later than March 1 of the year in which such revision is to take effect. Such regulations shall become effective the first day after the close of the first period of 30 calendar days of continuous session of Congress after the date on which such regulations are transmitted to the Congress, unless both Houses of Congress adopt a concurrent resolution disapproving such regulations. Continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-day period.*"

And the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment as follows:

In the matter proposed to be inserted by the Senate amendment, insert after "political activity" the following: *otherwise prohibited by or under law*; and the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

"(d) (1) *In addition to the prohibitions of subsection (a) of this section, an employee of the Internal Revenue Service, the Department of Justice, or the Central Intelligence Agency to whom the prohibitions of section 7324(b) of this title apply may not take an active part in political management or political campaigns unless such part—*

"(A) *is in connection with (i) an election and preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, or (ii) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States; or*

"(B) *is permitted by regulations prescribed by the Civil Service Commission and involves the municipality or political subdivision in which such employee resides, when—*

"(i) *the municipality or political subdivision is in Maryland or Virginia in the immediate vicinity of the District of Columbia or is a municipality in which a majority of voters are employed by the Government of the United States; and*

"(ii) *the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees to permit political participation.*

"(2) *For the purpose of this subsection, 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of the employees in the competitive service before July 19, 1940, by the determinations of the Civil Service Commission under the rules prescribed by the President.*

And the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment as follows:

Restore the matter proposed to be stricken out by the Senate amendment, and on page 9, line 20, of the House engrossed bill, strike out the quotation marks following "1 year."; and the Senate agree to the same.

Amendment numbered 31:

That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following: *filed within the time allowed therefor,* ; and the Senate agree to the same.

Amendment number 57:

That the House recede from its disagreement to the amendment of the Senate numbered 57, and agree to the same with an amendment as follows:

In the matter proposed to be inserted by the Senate amendment, strike out "Commission" and insert the following: *Board*; and the Senate agree to the same.

Amendment numbered 65:

That the House recede from its disagreement to the amendment of the Senate numbered 65, and agree to the same with amendments as follows:

In the matter proposed to be inserted by the Senate amendment, strike out "ninety days" and insert in lieu thereof *30 days*, and strike out "Commission" each place it appears and insert in lieu thereof *Board*; and the Senate agree to the same.

DAVID N. HENDERSON,
DOMINICK V. DANIELS,
ROBERT N. C. NIX,
JIM HANLEY,
CHAS. H. WILSON of California,
W. CLAY,
GLADYS NOON SPELLMAN,
HERBERT E. HARRIS II,
STEPHEN J. SOLARZ,
Managers on the Part of the House.
GALE W. MCGEE,
Q. BURDICK,
TED STEVENS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8617) to restore to Federal civilian and Postal Service employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TECHNICAL, CLERICAL, CLARIFING, OR CONFORMING CHANGES

The following Senate amendments made technical, clerical, clarifying, or conforming changes: 1, 2, 3, 4, 5, 7, 8, 10, 11, 13, 17, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 71, 72, and 74.

With respect to these amendments either the House recedes, the Senate recedes, or the House recedes with an amendment in order to conform to other action agreed upon by the committee of conference.

PERSONAL SERVICES

AMENDMENT NO. 6

This amendment expressly includes the provision of personal services within the meaning of "political contributions", as defined for purposes of subchapter III of chapter 73 of title 5 (the Hatch Act), as amended by the House bill.

The House bill does not contain a similar provision, although the House Report specifically states that the term "political contributions" is intended to include the rendering of personal services.

The House recedes with a clerical amendment. It should be noted that it is the understanding of the conferees that the Senate amendment does not prohibit an employee from voluntarily contributing his personal services for political purposes except to the same extent that political contributions are otherwise prohibited by the House bill, including the prohibition against the giving of a political contribution to or the acceptance of a political contribution by the superior of an employee. It is also the understanding of the conferees that an employee contributing his personal services or a candidate or other person accepting such contribution shall not be required under the provisions of the bill to place a dollar value on such contribution.

Use of Official Information

AMENDMENT NO. 9

This amendment provides that section 7323 of title 5, United States Code, as proposed to be added by the House bill, does not authorize the use by any employee of any information coming to him in the course of his employment or official duties if such use is otherwise prohibited by law.

The House bill does not contain a similar provision.

The House recedes with a conforming amendment.

Political Contributions by or to Justice, IRS, and CIA Employees

AMENDMENT NO. 12

The House bill provides in effect that, subject to the provisions of section 7324 of title 5, as proposed to be added by the House bill, employees of the Justice Department, the CIA, or the IRS (as in the case of other Federal employees) may solicit and give political contributions.

Senate amendment No. 12, in addition to the prohibitions of the House bill, prohibits employees of the Justice Department, the CIA, and the IRS from requesting, or receiving from, or giving to, an employee, a Member of Congress, or an officer of a uniformed service, a political contribution, thus retaining existing law (5 U.S.C. 7323) for such employees with regard to political contributions.

The House recedes with an amendment which narrows the Senate amendment with respect to the number of employees of the Justice Department, the CIA, and the IRS who are subject to the additional prohibitions. Employees exempted include: (A) employees in non-sensitive positions; (B) employees in sensitive positions when the agency head determines, by regulation, that active political participation by incumbents of those positions would not adversely affect the integrity of the Government or the public's confidence in the integrity of the Government; and (C) individuals appointed by the President, by and with the advice and consent of the Senate, who determine policies to be determined in the nationwide administration of Federal laws. The amendment further provides that such regulations must be prescribed not later than 90 days after the effective date of section 7324, and that such regulations become effective 30 legislative days thereafter unless disapproved by both Houses of Congress.

It is the understanding of the conferees that the term "sensitive position" includes any position which the head of the Justice Department, the CIA, or the IRS is required to designate as sensitive under section 3(b) of Executive Order No. 10450, as amended. It is the further understanding of the conferees that under subchapter I-3 of chapter 732 of the Federal Personnel Manual, those positions required to be designated as sensitive include positions which require fiduciary,

public contact, or other duties that demand the highest degree of public trust.

Other Political Activities of Justice, IRS, and CIA Employees

AMENDMENT NO. 15

The House bill provides in effect that subject to the specific prohibitions of sections 7323, 7325, and 7326 of title 5, as proposed to be added by the House bill, employees of the Justice Department, the CIA, or the IRS (as in the case of other Federal employees) may actively engage in political activities and run for elective office.

Senate Amendment No. 15 continues the present provisions of subchapter III of chapter 73 of title 5 (the Hatch Act), relating to employees taking an active part in political management or political campaigns, with respect to employees of the Justice Department, the CIA, and the IRS.

The House recedes with an amendment which provides that employees of the Justice Department, the IRS, and the CIA with respect to whom the prohibitions of section 7324(b)(1) of title 5, as proposed to be added by the House bill, apply will remain subject to the present provisions of existing law which relate to employees taking an active part in political management or political campaigns.

Political Activities by Employees of the White House and Vice Presidential Staffs

AMENDMENT NO. 14

The House bill exempts certain employees of the White House and Vice Presidential staffs from the provisions of section 7325(a) of title 5, as proposed to be added by the House bill, prohibiting political activity while on duty, while on Government property, or while in uniform.

Senate amendment No. 14 provides that such an exemption shall not be construed as an authorization for the individuals so exempted to engage in political activity.

The House recedes with an amendment, inserting *otherwise prohibited by or under law* after "political activity" in the matter proposed to be inserted by the Senate amendment.

Leave To Run for Elective Office

AMENDMENT NO. 16

The House bill provides that an agency must, upon request, grant accrued annual leave and leave-without-pay to an employee running for elective office. The House bill also provides that an employee who is a candidate for elective office must go on leave-without-pay not later than 90 days before an election.

Senate amendment No. 16 strikes out the provisions of the House bill which require that leave-without-pay must be granted upon request and that a candidate must take leave-without-pay 90 days before an election.

The House recedes.

Board on Political Activities of Federal Employees

AMENDMENT NO. 22

The House bill separates prosecutorial and adjudicatory responsibility now held by the Civil Service Commission by establishing an independent 3-member board and by granting to such board the authority to hear and decide cases regarding violations of section 7323, 7324, and 7325 of title 5, as proposed to be added by the House bill. The Civil Service Commission retains the investigatory, educational, and enforcement authority with respect to political activity.

Senate amendment No. 22 provides that the Commission, not the Board, is responsible for hearing and deciding cases involving violations of prohibitions on political activity.

The House recedes with an amendment under which the provisions of the House bill are restored, and which corrects a clerical error in such provisions.

Notices of Violations

AMENDMENT NO. 25

The House bill provides that service of a written notice of any alleged violation of sections 7323, 7324, or 7325 of title 5, as proposed to be added by the House bill, shall be made by certified mail, return receipt requested.

Senate amendment No. 25 eliminates the requirement for a return receipt request with a certified notice, leaving it to the Civil Service Commission to determine the requirements with respect to such notice.

The Senate recedes.

Penalties For Misuse of Official Authority or Influence

AMENDMENT NO. 65

The House bill provides for the imposition of appropriate penalties by the Board in the case of an employee who has violated sections 7323, 7324, or 7325 of title 5, as proposed to be added by the House bill.

Senate amendment No. 65 provides a minimum penalty of a 90-day suspension for an employee found to have violated the restrictions on misuse of official authority or influence and the imposition of appropriate penalties for violations of the restrictions on soliciting political contributions and engaging in political activity while on duty, while on government property, or while in uniform.

The House recedes, with amendments striking out "ninety days" in the matter proposed to be inserted by the Senate amendment and inserting in lieu thereof *30 days* and striking out "Commission" each

time it appears in the matter proposed to be inserted by the Senate amendment and inserting in lieu thereof *Board*.

Penalties for Repeat Offenders

AMENDMENT NO. 66

This amendment provides that an employee, who has been found to have violated on two occasions section 7323, 7324, or 7325 of title 5, as proposed to be added by the House bill, must be removed from employment and is thereafter barred from Federal employment.

The House bill has no similar provision.

The Senate recedes.

Time Limitation for Providing Certain Information

AMENDMENT NO. 70

The House bill requires the Commission to annually inform each employee, in writing, of prohibited and permissible political activities. Such information must be provided not later than 60 days before the earliest primary or general election in the State where the employee is employed.

Senate amendment No. 70 requires that such information be provided not later than 120 days before such an election.

The House recedes.

Effective Date

AMENDMENT NO. 73

The House bill provides that the amendments made by this Act shall take effect 90 days after the date of enactment.

Senate amendment No. 73 provides that the amendments made by this Act shall take effect on January 1, 1977.

The House recedes.

Restriction on When Pay Increases for Members of Congress Take Effect

AMENDMENT NO. 75

This amendment provides that any provision for any pay increase for Members of Congress shall not take effect before the first day of the next Congress.

The House bill does not contain a similar provision.

The Senate recedes.

Requirement of Separate Resolution on Pay Increases for Members of Congress

AMENDMENT NO. 76

This amendment requires that if the President submits an alternative plan with respect to a comparability pay adjustment, the alterna-

tive plan will not be effective with respect to the rate of pay of Members of Congress unless either House adopts a separate resolution disapproving the application of such plan to the pay of Members of Congress in addition to any resolution under section 5305 of title 5. This amendment also provides that the rate of pay of officers and employees of the Congress and other officers and employees in the legislative branch may not exceed the rate of pay for Members of Congress.

The House bill does not contain a similar provision.

The Senate recedes.

DAVID N. HENDERSON,
DOMINICK V. DANIELS,
ROBERT N. C. NIX,
JIM HANLEY,
CHAS. H. WILSON of California,
W. CLAY,
GLADYS NOON SPELLMAN,
HERBERT E. HARRIS II,
STEPHEN J. SOLARZ,
Managers on the Part of the House.
GALE W. MCGEE,
Q. BURDICK,
TED STEVENS,
Managers on the Part of the Senate.

H. R. 8617

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees' Political Activities Act of 1976".

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

"SUBCHAPTER III—POLITICAL ACTIVITIES

"§ 7321. Political participation

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

"§ 7322. Definitions

"For the purpose of this subchapter—

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

"(A) an Executive agency,

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

"(C) the competitive service, or

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

but does not include a member of the uniformed services;

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

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

"(B) received political contributions or made expenditures, or has given consent for any other person to receive political contributions or make expenditures, with a view to bringing about such individual's nomination for election, or election, to such office;

"(3) 'political contribution'—

"(A) means a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

"(B) includes a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a political contribution for any such purpose;

"(C) includes the payment by any person, other than a candidate or a political organization of compensation for the personal services of another person which are rendered to such candidate or political organization without charge for any such purpose; and

"(D) includes the provision of personal services for the purpose of influencing the nomination for election, or election, of any individual to elective office or for the purpose of otherwise influencing the results of any election;

"(4) 'superior' means an employee (other than the President or the Vice President) who exercises supervision of, or control or administrative direction over, another employee;

"(5) 'elective office' means any elective public office and any elective office of any political party or affiliated organization; and

"(6) 'Board' means the Board on Political Activities of Federal Employees established under section 7327 of this title.

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

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of such employee for the purpose of—

"(1) interfering with or affecting the result of any election; or

"(2) intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence—

"(A) any individual for the purpose of interfering with the right of any individual to vote as such individual may choose, or of causing any individual to vote, or not to vote, for any candidate or measure in any election;

"(B) any person to give or withhold any political contribution; or

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

"(b) Nothing in this section shall be construed to authorize the use by any employee of any information coming to him in the course of his employment or official duties for any purpose where otherwise prohibited by law.

"(c) For the purpose of subsection (a) of this section, 'use of official authority or influence' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, compensation, grant, contract, license, or ruling), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, compensation, grant, contract, license, or ruling).

"§ 7324. Solicitation; prohibition

"(a) An employee may not—

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

"(2) solicit, accept, or receive a political contribution to vote or refrain from voting, or to vote for or against any candidate or measure, in any election;

"(3) knowingly give or hand over a political contribution to a superior of such employee; or

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

"(A) from another employee (or a member of another employee's immediate family) with respect to whom such employee is a superior; or

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

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

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

"(b)(1) In addition to the prohibitions of subsection (a) of this section, an employee to whom this paragraph applies may not solicit, accept, or receive a political contribution from, or give a political contribution to, an employee, a Member of Congress, or an officer of a uniformed service.

"(2) Paragraph (1) of this subsection shall apply to any employee of the Internal Revenue Service, the Department of Justice, or the Central Intelligence Agency, other than—

"(A) an employee of such an agency who is in a position which is not a sensitive position,

"(B) an employee of such an agency who is in a sensitive position with respect to which the head of such agency has designated, by regulation, that if any person holding such position engaged in activities prohibited by paragraph (1) of this subsection or by section 7325(d)(1) of this title it would not adversely affect the integrity of the Government, or the public's confidence in the integrity of the Government, or

"(C) an individual appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued in the nationwide administration of Federal laws.

For the purpose of this paragraph, 'sensitive position' means any position designated as a sensitive position pursuant to Executive Order Numbered 10450 or under any superseding Federal statute or Executive order.

"(3) Regulations referred to in subparagraph (B) of this paragraph shall be prescribed not later than 90 days after the effective date of this section. Thereafter any revision of such regulations shall be prescribed not later than March 1 of the year in which such revision is to take effect. Such regulations shall become effective the first day after the close of the first period of 30 calendar days of continuous session of Congress after the date on which such regulations are transmitted to the Congress, unless both Houses of Congress adopt a concurrent resolution disapproving such regulations. Continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-day period.

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

"(a) An employee may not engage in political activity—

"(1) while such employee is on duty,

"(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the

Government of the United States, in the government of the District of Columbia, or in any agency or instrumentality of the foregoing, or

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

"(b) The provisions of subsection (a) of this section shall not apply to—

"(1) the President and the Vice President;

"(2) an individual—

"(A) paid from the appropriation for the White House Office,

"(B) paid from funds to enable the Vice President to provide assistance to the President, or

"(C) on special assignment to the White House Office,

unless such individual holds a career or career-conditional appointment in the competitive service; or

"(3) the Mayor of the District of Columbia, the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act.

"(c) Nothing in this section shall be construed to authorize an individual designated in subsection (b)(2) to engage in political activity otherwise prohibited by or under law.

"(d)(1) In addition to the prohibitions of subsection (a) of this section, an employee of the Internal Revenue Service, the Department of Justice, or the Central Intelligence Agency to whom the prohibitions of section 7324(b) of this title apply may not take an active part in political management or political campaigns unless such part—

"(A) is in connection with (i) an election and preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, or (ii) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States; or

"(B) is permitted by regulations prescribed by the Civil Service Commission and involves the municipality or political subdivision in which such employee resides, when—

"(i) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia or is a municipality in which a majority of voters are employed by the Government of the United States; and

"(ii) the Commission determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees to permit political participation.

"(2) For the purpose of this subsection, 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by the determinations of the Civil Service Commission under the rules prescribed by the President.

"§ 7326. Candidates for elective office; leave, notification by employees

"(a) Notwithstanding section 6302(d) of this title, an employee who is a candidate for elective office shall, upon the request of such

employee, be granted accrued annual leave for the purpose of allowing such employee to engage in activities relating to such candidacy.

"(b) An employee shall promptly notify the agency in which he is employed upon becoming a candidate for elective office and upon the termination of such candidacy.

"(c) The foregoing provisions of this section shall not apply in the case of an individual who is an employee by reason of holding an elective public office.

"§ 7327. Board on Political Activities of Federal Employees

"(a) There is established a board to be known as the Board on Political Activities of Federal Employees. It shall be the function of the Board to hear and decide cases regarding violations of sections 7323, 7324, and 7325 of this title.

"(b) The Board shall be composed of 3 members, appointed by the President, by and with the advice and consent of the Senate. One member shall be designated by the President as Chairman of the Board.

"(c) Members of the Board shall be chosen on the basis of their professional qualifications from among individuals who, at the time of their appointment, are employees (as defined under section 7322(1) of this title), except that not more than 2 individuals of the same political party may be appointed as members. Employees of the Civil Service Commission shall be ineligible to be appointed to or to hold office as members of the Board.

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

"(A) the Chairman shall be appointed for a term of 3 years,

"(B) one member, designated by the President, shall be appointed for a term of 2 years, and

"(C) one member, designated by the President, shall be appointed for a term of 1 year.

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

"(2) If an employee who was appointed as a member of the Board is separated from service as an employee, he may not continue as a member of the Board after the 60-day period beginning on the date so separated.

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

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

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

"(h) The Board shall prepare and publish in the Federal Register written rules for the conduct of its activities, shall have an official seal which shall be judicially noticed, and shall have its office in or near the District of Columbia (but it may meet or exercise any of its powers anywhere in the United States).

"(i) The Civil Service Commission shall provide such clerical and professional personnel, and administrative support, as the Chairman of the Board considers appropriate and necessary to carry out the Board's functions under this subchapter. Such personnel shall be responsible to the Chairman of the Board.

"(j) The Administrator of the General Services Administration shall furnish the Board suitable office space appropriately furnished and equipped, as determined by the Administrator.

"(k) (1) Members of the Board shall receive no additional pay on account of their service on the Board.

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

"§ 7328. Investigation; procedures; hearing

"(a) The Civil Service Commission shall investigate reports and allegations of any activity prohibited by section 7323, 7324, or 7325 of this title. Any such investigation shall terminate not later than 90 days after the date of its commencement, except that such 90-day limitation may be extended upon the written approval of the Board for the period specified in such approval. If the Commission does not make the notification required under subsection (c) of this section before the close of the period for investigation, subsections (c) (2) and (3) and (d) of this section, and section 7329 of this title, shall not apply thereafter to the employee involved with respect to the activities under investigation.

"(b) As a part of the investigation of the activities of an employee, the Commission shall provide such employee an opportunity to make a statement concerning the matters under investigation and to support such statement with any documents the employee wishes to submit. An employee of the Commission lawfully assigned to investigate a violation of this subchapter may administer an oath to a witness attending to testify or depose in the course of the investigation.

"(c) (1) If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has not occurred, it shall so notify the employee and the agency in which the employee is employed.

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

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

"(B) advising the employee of the penalties provided under section 7329 of this title;

"(C) specifying a period of not less than 30 days within which the employee may file with the Board a written answer to the charges in the manner prescribed by rules issued by the Board; and

"(D) advising the employee that unless the employee answers the charges, in writing, within the time allowed therefor, the Board is authorized to treat such failure as an admission by the employee of the charges set forth in the notice and a waiver by the employee of the right to a hearing on the charges.

"(3) If it appears to the Commission after investigation that a violation of section 7323, 7324, or 7325 of this title has been committed by—

"(A) the Vice President;

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

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

"(D) the Mayor of the District of Columbia; or

"(E) the Chairman or a member of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act;

the Commission shall refer the case to the Attorney General for prosecution under title 18, and shall report the nature and details of the violation to the President and to the Congress.

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

"(2) If an answer is filed within the time allowed therefor, the charges shall be determined by the Board on the record after a hearing conducted by a hearing examiner appointed under section 3105 of this title, and, except as otherwise expressly provided under this subchapter, in accordance with the requirements of subchapter II of chapter 5 of this title, notwithstanding any exception therein for matters involving the tenure of an employee. The hearing shall be commenced within 30 days after the answer is filed with the Board and shall be conducted without unreasonable delay. As soon as practicable after the conclusion of the hearing, the examiner shall serve upon the Board, the Commission, and the employee such examiner's recommended decision with notice to the Commission and the employee of opportunity to file with the Board, within 30 days after the date of such notice, exceptions to the recommended decision. The Board shall issue its final decision and order in the proceeding no later than 60 days after the date the recommended decision is served. The employee shall not be removed from active duty status by reason of the alleged violation of this subchapter at any time before the effective date specified by the Board.

"(e)(1) At any stage of a proceeding or investigation under this subchapter, the Board may, at the written request of the Commission or the employee, require by subpena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the proceeding or investigation at any designated place, from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may issue subpenas, and members of the Board and any hearing examiner authorized by the Board may administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpena, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may, upon application by the Board, issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(2) The Board (or a member designated by the Board) may order the taking of depositions at any stage of a proceeding or investigation under this subchapter. Depositions shall be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

"(3)(A) After requesting in writing and obtaining the approval of the Attorney General, the Board may determine that an employee's attendance and testimony are necessary to the carrying out of the Board's functions under this subchapter. For purposes of the preceding

sentence, if the Attorney General does not notify the Board in writing within 30 days after the date on which a request for such approval is made that the Board does not have his approval, then such approval is deemed to have been given. Such 30-day period shall be extended an additional 10 days if the Attorney General submits in writing to the Board the reason for such extension.

"(B) If the Board makes a determination under subparagraph (A) with respect to any employee, such employee may not be excused from attending and testifying or from producing documentary or other evidence in obedience to a subpena of the Board on the ground that the testimony or evidence required of the employee may tend to incriminate the employee or subject the employee to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled to testify or produce evidence. No employee shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the employee is compelled under this paragraph, after having claimed the privilege against self-incrimination, to testify or produce evidence, nor shall testimony or evidence so compelled be used as evidence in any criminal proceeding against the employee in any court, except that no employee shall be exempt from prosecution and punishment for perjury committed in so testifying.

"(f) An employee upon whom a penalty is imposed by an order of the Board under subsection (d) of this section may, within 30 days after the date on which the order was issued, institute an action for judicial review of the Board's order in the United States District Court for the District of Columbia or in the United States district court for the judicial district in which the employee resides or is employed. The institution of an action for judicial review shall not operate as a stay of the Board's order, unless the court specifically orders such stay. A copy of the summons and complaint shall be served as otherwise prescribed by law and, in addition, upon the Board which shall then certify and file with the court the record upon which the Board's order was based. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce the evidence at the hearing conducted under subsection (d)(2) of this section, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or order, in the light of the additional evidence, and shall file with the court such modified findings or order. The Board's findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Board's order if it determines that it is in accordance with law. If the court determines that the order is not in accordance with law—

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

"(2) it may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the employee.

"(g) The Commission or the Board, in its discretion, may proceed with any investigation or proceeding instituted under this subchapter notwithstanding that the Commission or the head of an employing agency or department has reported the alleged violation to the Attorney General as required by section 535 of title 28.

"§ 7329. Penalties

"(a) Subject to and in accordance with section 7328 of this title, an employee who is found to have violated any provision of—

"(1) section 7323 of this title shall, upon a final order of the Board, be suspended without pay from such employee's position for a period not less than 30 days, or shall be permanently removed in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title);

"(2) section 7324 or 7325 of this title shall, upon a final order of the Board, be—

"(A) removed from such employee's position, in which event that employee may not thereafter hold any position (other than an elected position) as an employee (as defined in section 7322(1) of this title) for such period as the Board may prescribe;

"(B) suspended without pay from such employee's position for such period as the Board may prescribe; or

"(C) disciplined in such other manner as the Board shall deem appropriate.

"(b) The Board shall notify the Commission, the employee, and the employing agency of any penalty it has imposed under this section. The employing agency shall certify to the Board the measures undertaken to implement the penalty.

"§ 7330. Educational program; reports

"(a) The Commission shall establish and conduct a continuing program to inform all employees of their rights of political participation and to educate employees with respect to those political activities which are prohibited. The Commission shall inform each employee individually in writing, at least once each calendar year, of such employee's political rights and of the restrictions under this subchapter. The Commission may determine, for each State, the most appropriate date for providing information required by this subsection. Such information, however, shall be provided to employees employed or holding office in any State not later than 120 days before the earliest primary or general election for State or Federal elective office held in such State.

"(b) On or before March 30 of each calendar year, the Commission shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President pro tempore of the Senate for referral to the appropriate committees of the Congress. The report shall include—

"(1) the number of investigations conducted under section 7328 of this title and the results of such investigations;

"(2) the name and position or title of each individual involved, and the funds expended by the Commission, in carrying out the program required under subsection (a) of this section; and

"(3) an evaluation which describes—

"(A) the manner in which such program is being carried out; and

"(B) the effectiveness of such program in carrying out the purposes set forth in subsection (a) of this section.

"§ 7331. Regulations

"The Civil Service Commission shall prescribe such rules and regulations as may be necessary to carry out its responsibilities under this

subchapter. However, no regulation or rule of the Commission or any amendment thereto shall take effect unless—

"(1) the Commission transmits such rule, regulation, or amendments to the Congress; and

"(2) neither House of Congress has disapproved such rule, regulation, or amendment within 30 legislative days from the date of transmittal to the Congress.".

(b) (1) Section 3302 of title 5, United States Code, is amended by striking out "7153, 7321, and 7322" and inserting in lieu thereof "and 7153".

(2) Section 1308(a) of title 5, United States Code, is amended—

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

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

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

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

(4) The section analysis for subchapter III of chapter 73 of title 5, United States Code, is amended to read as 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. Candidates for elective office; leave, notification by employees.
"7327. Board on Political Activities of Federal Employees.
"7328. Investigation; procedures; hearing.
"7329. Penalties.
"7330. Educational program; reports.
"7331. Regulations.".

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

(2) Chapter 29 of title 18 of the United States Code is amended—

(A) by adding at the end the following new section:

"§ 618. Extortion of political contributions from Federal personnel

"Whoever, by the commission of or threat of physical violence to, or economic sanction against, any person, obtains, or endeavors to obtain, from an officer or employee of the United States or of any department or agency thereof, or from a person receiving any salary or compensation for services from money derived from the Treasury of the United States, any contribution for the promotion of a political object, shall be imprisoned not less than two nor more than three years, or fined not more than $5,000, or both."; and

(B) by adding at the end of the table of sections for such chapter the following new item:

"618. Extortion of political contributions from Federal personnel."

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

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

(f) The amendments made by this section shall take effect on January 1, 1977.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

FOR IMMEDIATE RELEASE APRIL 12, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

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

The public expects that government service will be provided in a neutral, nonpartisan fashion. This bill would produce an opposite result.

Thomas Jefferson foresaw the dangers of Federal employees electioneering, and some of the explicit Hatch Act rules were first applied in 1907 by President Theodore Roosevelt. In 1939, as an outgrowth of concern over political coercion of Federal employees, the Hatch Act itself was enacted.

The amendments which this bill make to the Hatch Act would deny the lessons of history.

If, as contemplated by H.R. 8617, the prohibitions against political campaigning were removed, we would be endangering the entire concept of employee independence and freedom from coercion which has been largely successful in preventing undue political influence in Government programs or personnel management. If this bill were to become law, I believe pressures could be brought to bear on Federal employees in extremely subtle ways beyond the reach of any anti-coercion statute so that they would inevitably feel compelled to engage in partisan political activity. This would be bad for the employee, bad for the government, and bad for the public.

Proponents of this bill argue that the Hatch Act limits the rights of Federal employees. The Hatch Act does in fact restrict the right of employees to fully engage in partisan politics. It was intended, for good reason, to do precisely that. Most people, including most Federal employees, not only understand the reasons for these restrictions, but support them.

However, present law does not bar all political activity on the part of Federal employees. They may register and vote in any election, express opinions on political issues or candidates, be members of and make contributions to political parties, and attend political rallies and conventions, and engage in a variety of other political activities. What they may not -- and, in my view, should not -- do is attempt to be partisan political activists and impartial Government employees at the same time.

more

The U.S. Supreme Court in 1973 in affirming the validity of the Hatch Act, noted that it represented

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

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

H.R. 8617 is bad law in other respects. The bill's provisions for the exercise of a Congressional right of disapproval of executive agency regulations are Constitutionally objectionable. In addition, it would shift the responsibility for adjudicating Hatch Act violations from the Civil Service Commission to a new Board composed of Federal employees. No convincing evidence exists to justify this shift. However, the fundamental objection to this bill is that politicizing the Civil Service is intolerable.

I, therefore, must veto the measure.

GERALD R. FORD

THE WHITE HOUSE,
APRIL 12, 1976

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FOR IMMEDIATE RELEASE APRIL 12, 1976

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

STATEMENT OF THE PRESIDENT
UPON HIS VETO
OF THE HATCH ACT AMENDMENTS

THE OVAL OFFICE

1:48 P.M. EST

I am returning to Congress today without my signature a bill that would lift the ban against partisan political activity by Federal civil servants. For almost 40 years under the Hatch Act civil servants have been allowed an active role in the Democratic process. They can vote, they can attend rallies and conventions, they can contribute to the candidates of their choice.

However, the Hatch Act has also prohibited civil servants from engaging in other far more partisan activities, such as political campaigns. The prohibition against the partisan politics in the Civil Service was written into the law for two very sound and worthwhile reasons: to assure the American people that their affairs were being conducted with an eye on the public interest, not a partisan interest, and to protect civil servants themselves from undue political coercion.

I believe that the concerns that have been valid for the last four decades are still valid today. The public business of our Government must be conducted without the taint of partisan politics. I am, therefore, returning this bill to the Congress without my approval.

END (AT 1:49 P.M. EST)

April 1, 1976

Dear Mr. Director:

The following bills were received at the White House on April 1st:

S. 3060
H.R. 49
H.R. 200
H.R. 8617

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

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