

## **Hatch Act Compliance Fact Sheet for Members and Volunteers**

Civilian employees of the federal government, the District of Columbia government or the U.S. Postal Service (each, an “Employee”) are subject to the Hatch Act (5 U.S.C. §§ 7321-7326) (the “Act”), which imposes certain restrictions on engaging in “political activity.” Set forth below is a summary of certain key provisions of the Act applicable to Arlington Democrats members and volunteers who are Employees. This summary is not intended to be, and does not constitute, legal advice. If you have specific questions about the Act’s application, they should be directed to agency ethics officials or the U.S. Office of Special Counsel (available at 202-804-7000 and <http://www.usa.gov/federal-agencies/office-of-special-counsel>). Please note that the Office of Special Counsel website contains considerable helpful information for Employees about the Act and its accompanying regulations.

### **What is “Political Activity?”**

The regulations issued under the Act (5 C.F.R. Part 734) define “political activity” as any “activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.” Political activity does not include discussing privately or publicly legislation or ballot initiatives and issues, such as gun safety or immigration, nor does it include attending an issue march or rally like the March for Our Lives or the Women’s March. The regulations emphasize that Employees are permitted to “be politically active in connection with a question which is not specifically identified with a political party [or candidate], such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character.” 5 C.F.R. § 734.203(b).

On the other hand, what an Employee clearly may not do under the Act is (i) “knowingly solicit, accept, or receive a political contribution from any person” (with certain very limited exceptions) or (ii) “run for the nomination or as a candidate for election to a partisan political office.” While an Employee may not run as a partisan candidate for public office, an Employee generally may run for local office in Arlington or the other Washington, D.C. suburbs as an independent (including in an election where other candidates represent political parties), and generally may solicit, accept and receive contributions as such an independent candidate. What constitutes “running” for political office is discussed in more detail in the Hatch Act for Candidates Fact Sheet under the Resources for Potential Candidates tab.

### **What Political Activities are Permitted?**

Notwithstanding the broad definition of “political activity,” the regulations permit most Employees to participate in political organizations and political campaigns. However, Employees of certain intelligence or enforcement agencies, career SES Employees, and Employees who are administrative law judges (collectively, “Restricted Employees”) are subject to further limits on engaging in political activity. For example, Restricted Employees may not be officers of the Arlington Democrats or any other political party organization, may not run for partisan political office in Arlington as an independent and may not manage or volunteer for a partisan political campaign. A Restricted Employee may not even provide rides to the polls on behalf of the Arlington Democrats. If you are a Restricted Employee, you are encouraged to consult with your

agency ethics counsel or the Office of Special Counsel. The discussion below is only intended to provide information to Employees who are not Restricted Employees.

An Employee may (a) be a member or officer of a political party, political committee or other political group, (b) attend and participate fully in the business of nominating caucuses of political parties, and (c) serve as a delegate, alternate or proxy to a political convention. 5 C.F.R. § 734.204. In addition, subject to the prohibitions discussed below on political activity while on duty or in the workplace, an Employee may (i) display pictures, signs, stickers, badges or buttons associated with political parties, candidates for partisan political office or partisan political groups, (ii) initiate or circulate a nominating petition for a candidate for partisan political office, (iii) canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office, (iv) endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature or similar material, (v) address a convention, caucus, rally or similar gathering of a political party or political group in support of or in opposition to a partisan political candidate or a candidate for political party office, and (vi) take an active part in managing the political campaign of a partisan political candidate or candidate for political party office. 5 C.F.R. § 734.205. Lastly, an Employee may act as a poll watcher or an elections officer, and may drive voters to the polls for a political party or partisan political candidate. 5 C.F.R. § 734.206.

### **What Prohibitions on Political Activity Apply while on Duty or in the Workplace?**

The regulations provide that an Employee may not engage in political activity (a) while on duty (including while teleworking), (b) in a government room or building (including break rooms, cafeterias, conference rooms and gyms), (c) when wearing an official uniform or badge or (d) when using a government vehicle or a private vehicle for official use. 5 C.F.R. § 734.306. For example, while on duty or in the workplace, an Employee may not wear a political button or t-shirt, display a political poster or candidate photo, or make an online political donation. Not surprisingly, an Employee may not engage in political activities conducted through social media, including “liking,” sharing or retweeting a political message, even if using a personal electronic device, if the Employee is on duty or in a government building. As an example of permitted activity, an employee may display a political bumper sticker on his or her car if it is being used solely for personal purposes including commuting to and from a government office.

### **What are the Rules Related to Fundraising?**

As noted above, an Employee may not solicit, accept or receive partisan political campaign contributions at any time. This rule means that an Employee may not ask for partisan political donations by telephone, mail, email or social media, and may not allow his or her official title to be used in connection with fundraising. In addition, an Employee may not host a political fundraiser, invite others to attend such a fundraiser or personally solicit contributions in a speech at a political fundraiser. Interestingly, an example in the regulations states that a spouse who is not an Employee may host such a fundraiser and the Employee may attend, but may not personally solicit contributions to the fundraiser. 5 C.F.R. § 734.303.

## **What are the Potential Consequences for Violating the Hatch Act?**

The U.S. Office of Special Counsel has exclusive authority to investigate allegations of political activity prohibited by the Act. It also has sole authority to prosecute alleged violations before the U.S. Merit Systems Protection Board, and render advisory opinions concerning the applicability of 5 C.F.R. Part 734 to political activities by Employees. In the event of a violation of the Act by an Employee, the Merit Systems Protection Board may order removal of the Employee, reduction in grade, debarment from federal or D.C. employment for a period of up to five years, suspension, reprimand and/or a civil penalty of up to \$1,000.