

## **POLITICAL ACTIVITIES**

### **I. REFERENCES**

- A. 2 U.S.C. § 441a. Federal Election Campaigns: Limitation on Contributions and Expenditures.
- B. 5 U.S.C. §§ 7321-7326. Restrictions on Political Activities by Government Civilian Employees.
- C. 10 U.S.C. § 888: UCMJ Art. 88, Contempt Toward Officials;
- D. 10 U.S.C. § 973: Duties of Officers on Active Duty; Performance of Civil Functions Restricted.
- E. 18 U.S.C. Chapter 29, Elections and Political Activities; 18 U.S.C. § 1913
- F. 5 C.F.R. Parts 733, 734, Political Activities of Federal Employees
- G. 5 C.F.R. Part 2635, Subparts G & H, Standards of Ethical Conduct for Employees of the Executive Branch.
- H. DoD 5500.7-R, Joint Ethics Regulation, Chapters 2, 3, 5 & 6.
- I. DoD Directive 1344.10, Political Activities by Members of the Armed Forces, February 19, 2008.
- J. DoD Instruction 1334.01, Wearing of the Uniform, October 26, 2005.

- K. USD(P&R) Memorandum, subject: Policy Guidance for Visits to Installations by Candidates for Political Office, November 4, 2008, as modified by SECDEF Message dated April 27, 2010, DoD Public Affairs Policy Guidance Concerning Political Campaigns and Elections. *(These policies are currently in revision and will be rescinded upon publication of the 2012 DoD Public Affairs Guidance for Political Campaigns and Elections).*
  
- L. Partisan Political Activity Rules for “Less Restricted” DoD Civilians, August 2011.  
([http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/hatch\\_act\\_q\\_a\\_less\\_restricted.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/hatch_act_q_a_less_restricted.pdf))
  
- M. Partisan Political Activity Rules for “Further Restricted” DoD Civilians, August 2011.  
([http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/hatch\\_act\\_q\\_a\\_further\\_restricted.pdf](http://www.dod.mil/dodgc/defense_ethics/resource_library/hatch_act_q_a_further_restricted.pdf))
  
- N. Air Force. Air Force Instruction 51-902, Political Activities by Members of the U.S. Air Force, 12 November 2010.
  
- O. Army. AR 600-20 Army Command Policy, 18 March 2008 (Rapid Action Revision (RAR) 4 August 2011), paragraph 5-3 “Political Activities” and Appendix B.
  
- P. Navy. Secretary of the Navy Instruction 5720.44B, Department of the Navy Public Affairs Policy and Navy Regulations, 1 November 2005.
  
- Q. “Politicians in the Ranks: A Review of the Law and Policy Governing Civil Office Holders in Military Service.” Colonel T. Strong, 2004. This paper was submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree, U.S. Army War College, Carlisle Barracks, Pennsylvania.  
(<http://www.strategicstudiesinstitute.army.mil/pdffiles/ksil259.pdf>).

## II. CONFLICTS OF POLITICAL INTERESTS

- A. General Statutory Restrictions Involving Elections and Political Activities.
  - 1. Limitations on amount of political contributions. 2 U.S.C. § 441a.

2. No solicitation of fellow Federal employees for campaign contributions. 18 U.S.C. § 602.
3. No contributing to any other Federal employee who is the contributor's employer or employing authority. 18 U.S.C. § 603.
4. No threats or intimidation to secure contributions. 18 U.S.C. §§ 601 & 606.
5. No solicitation or receipt of contributions in any room occupied in discharge of official duties, or in any navy yard, fort, or arsenal. 18 U.S.C. § 607.
6. No paying/receiving of pay to vote or withhold vote. 18 U.S.C. § 597.
7. No promising of benefits that depend on an Act of Congress, as reward for political activity. 18 U.S.C. § 600.
8. No intimidation of voters. 18 U.S.C. § 594.
9. No coercing political activities of Federal employees. 18 U.S.C. § 610.
10. No interference with rights under Uniformed and Overseas Citizens Absentee Voting Act. 18 U.S.C. § 608.
11. No assembling troops at polls. 18 U.S.C. § 592.
12. No election interference by armed forces. 18 U.S.C. § 593.
13. No polling of armed forces. 18 U.S.C. § 596.
14. No use of military authority to influence votes of other military members. 18 U.S.C. § 609.

B. Political Activities by Members of the Armed Forces (DoD Directive 1344.10)

1. Applicability.
  - a. Most provisions apply only to members of the Armed Forces on active duty. Includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a Service school by law or by the Secretary concerned. See 10 USC § 101. For purposes of this directive only, active duty also includes full-time National Guard duty.
  - b. Members of the Armed Forces include retirees and members of the Reserve Components not on active duty including, for paragraph 4.3., members of the National Guard even when in non-Federal status.
  - c. Includes enlisted members and officers.
2. Spirit and intent: “Activities not expressly prohibited may be contrary to the spirit and intent of this Directive. Any activity that may be reasonably viewed as directly or indirectly associating the Department of Defense or Department of Homeland Security (in the case of the Coast Guard). . . with a partisan political activity or is otherwise contrary to the spirit and intention of this Directive shall be avoided.” Paragraph 4.1.5.
3. **Permitted political activities** (paragraph 4.1). Very limited “private citizen” standard. A member of the Armed Forces on active duty may:
  - a. Register, vote, and express personal opinions.
  - b. Encourage other military members to exercise voting rights.
  - c. Join a political club (even if partisan) and attend political meetings when not in uniform. (See DoD Instruction 1334.01 (Reference J)).
  - d. Serve as an election official, if such service is not as a representative of a partisan political party, does not interfere with military duties, is performed while not in uniform, and the Secretary concerned has given approval.

- e. Sign petitions for specific legislative action or to place a candidate's name on the ballot.
  - f. Write letters to the editor expressing personal views (so long as not part of organized letter writing campaign or solicitation of votes for or against a political party or partisan political cause or candidate). Requires a disclaimer that the views are those of the individual and not DoD.
  - g. Make monetary contributions to a political organization, party, or committee.
  - h. Display normal-sized bumper stickers on one's private vehicles.
  - i. Attend a partisan or nonpartisan political fundraising activity, meeting, rally, debate, convention, or activity when not in uniform and when no appearance of sponsorship or endorsement can reasonably be drawn.
  - j. Participate fully in the Federal Voting Assistance Program.
4. **Prohibited political activities** (paragraph 4.1.2). A member of the Armed Forces on active duty shall not:
- a. Participate in partisan political fundraising activities, rallies, conventions, management of campaigns, or debates. The prohibition is broad and does not depend on whether a member is in uniform or even whether an inference of official endorsement can be drawn. (Participation includes more than mere attendance as a spectator).
  - b. Use official authority to influence or interfere with an election or to solicit votes or contributions for a particular candidate or issue.
  - c. Publish partisan political articles or letters that solicit votes for or against a partisan political party, candidate, or cause. Letters to the editor may be allowed as noted above in paragraph 3.f..

- d. Serve in any official capacity with or be a sponsor of a partisan political club.
- e. Speak before a partisan political gathering.
- f. Participate in any radio, television, or other program or group discussion as an advocate for or against a partisan political party, candidate, or cause.
- g. Serve in official capacity/sponsor a partisan political club.
- h. Conduct a political opinion survey or distribute partisan political literature.
- i. Work for a partisan political committee or candidate during and while closing out a campaign.
- j. Solicit or otherwise engage in fundraising activity for any political candidate or cause in Federal offices, facilities, or on military reservations.
- k. March or ride in partisan political parades.
- l. Display a large partisan political sign, banner, or poster (as distinguished from a bumper sticker) on a private vehicle.
- m. Display a large partisan political sign visible to the public at one's residence on a military installation (even if in privatized housing).
- n. Participate in organized efforts to provide voters transportation to polling places if the effort is associated with a partisan political party.
- o. Sell tickets for or actively promote partisan political dinners and similar fundraising events.

- p. Attend partisan political events as an official representative of the Armed Forces, ,except as a member of a joint Armed Forces color guard at the opening ceremonies of the national conventions, or as otherwise authorized by the Secretary concerned..
  - q. Make a campaign contribution to or receive or solicit a campaign contribution from any other member of the Armed Forces on active duty.
5. Subject to any other restrictions in law, a member of the Armed Forces not on active duty may take the actions or participate in the activities permitted in paragraph 4.1.1, and may take the actions or participate in the activities prohibited in paragraph 4.1.2, provided that the member is not in uniform and does not otherwise act in a manner that could reasonable give rise to the inference of official sponsorship, approval, or endorsement.
6. Nonpartisan political activity. Participation in local nonpartisan political activities is allowed, so long as:
- a. Not in uniform.
  - b. No use of Government property or resources.
  - c. No interference with duty.
  - d. No implied Government position or involvement.
7. Nomination or candidacy for covered civil offices set out in paragraph 4.2.1.
- a. A regular member, or a retired regular or Reserve Component member on active duty under a call or order to active duty for more than 270 days many not be a nominee or candidate for a covered civil office unless the Secretary concerned grants permission. The Secretary concerned may not delegate the authority to grant or deny this permission.
  - b. If a member noted immediately above becomes a nominee or candidate for a covered office prior to entering active duty, then he or she must submit a written request for permission from the Secretary concerned before entering active duty.

- c. A retired regular or Reserve Component member on active duty under a call or order to active duty for 270 days or fewer may remain or become a candidate or nominee for covered civil office provided there is no interference with the performance of military duty.
  - d. Any nominee or candidate for covered civil office who is either granted permission or not otherwise prohibited from being a nominee or candidate for covered civil office must complete the acknowledgement of limitations in enclosure 4 and forward it to the first general or flag officer in his or her chain of command. Those who do not require permission must complete the acknowledgement within 15 days of becoming a nominee or candidate or within 15 days of entry on active duty if already a nominee or candidate.
8. Additional limitations on nomination or candidacy and campaigning.
- a. Any nominee or candidate for covered civil office who is on active duty and who is either granted permission to be or not otherwise prohibited from being a nominee or candidate for covered civil office may not participate in any campaign activities. This prohibition is broad and includes open and active campaigning and all behind-the-scenes activities. Such members may not:
    - (1) Direct, control, manage, or otherwise participate in their campaigns.
    - (2) Make statements to or answer questions from the media regarding political issues or policies or activities unless specifically authorized.
    - (3) Publish or allow to be published partisan political articles, literature, or documents they have signed, written or approved that solicit votes for or against a partisan political party, candidate, issue, or cause.
  - b. Any nominee or candidate for covered civil office who is on active duty and who is either granted permission or not otherwise prohibited from being a nominee or candidate for covered civil office must:

- (a) Take affirmative, documented efforts to inform those who work for them that they (the nominees or candidates) may not direct, control, manage, or otherwise participate in campaign activities on their own behalf.
    - (b) Take all reasonable efforts to prevent current anticipated advertisements that they control from being publicly displayed or running in any media. This includes Web sites. Web sites created before entry on active duty may not be updated or revised any may be ordered shut down by the Secretary concerned.
  - c. Members not on active duty who are nominees or candidates for covered offices may, in their campaign literature (including Web sites, videos, television, and conventional print advertisements):
    - (1) Use or mention their military rank or grade and military service affiliation, but they must clearly indicate their retired or reserve status.
    - (2) Include their current or former specific military duty, title, or position, or photographs in military uniform, when displayed with other non-military biographical details. This must be accompanied by a clearly displayed disclaimer that the information or photographs do not imply official endorsement.
      - (a) Use of photographs, drawings, and other similar media formats of the member in uniform cannot be the primary graphic representation in any campaign material.
      - (b) Depictions of the member in uniform cannot misrepresent their actual performance of duty.
- 9. Holding and exercising the functions of public office (citations refer to DoDD 1344.10).

	Regular	Reg Ret / RC Less than or = 270	Reg Ret / RC > 270
Hold Fed Office	NO (4.4.2.)	YES, provided no interference w/ duty (4.4.3.)	NO (4.4.4.)
Execute Fed Office	NO (4.4.2.)	YES, provided no interference w/ duty (4.4.3.)	NO (4.4.4.)
Hold non-Fed Office	NO (4.5.2.)	YES, provided no interference w/ duty (4.5.4.)	NO, unless Secretary grants permission after determining no interference w/duty (4.5.3.2.)
Execute non-Fed Office	NO (4.5.2.)	YES, provided no interference w/ duty (4.5.4.)	NO (4.5.3.)

a. Federal Civil Office.

- (1) Limitations apply to these covered offices: elective offices; offices that require appointment by President (no longer requires Senate confirmation too), and certain executive schedule positions.
- (2) A regular member, or retired regular or Reserve Component member on active duty under a call or order to active duty for more than 270 days, may not hold or exercise the functions of a covered Federal office.
- (3) A retired regular or Reserve Component member on active duty under a call or order to active duty for 270 days or fewer may hold and exercise the functions of a covered Federal office provided there is no interference with the performance of military duty.

b. Non-Federal Civil Office.

- (1) Limitations apply to these covered offices: an office in a State; the District of Columbia; a territory, possession, or commonwealth of the United States; or any political subdivision thereof.
- (2) A regular member may not hold or exercise the functions of a covered non-Federal office.
- (3) A retired regular or Reserve Component member on active duty under a call or order to active duty for more than 270

days may hold a covered office if the Secretary concerned grants permission. The Secretary concerned may not delegate the authority to make this decision.

- (a) This is a change from the 2004 directive.
  - (b) The 2004 directive established the presumption that the Service member could hold the office unless the Secretary concerned prohibited it.
  - (c) Under the new directive, the Service member cannot hold the office unless the Secretary concerned first grants affirmative permission.
- (4) A retired regular or Reserve Component member on active duty under a call or order to active duty for more than 270 days who has permission to hold a covered non-Federal office may not exercise the functions of that office.
  - (5) A retired regular or Reserve Component member on active duty under a call or order to active duty for fewer than 270 days may hold and exercise the functions of a covered office provided there is no interference with the performance of military duties.
  - (6) Any member on active duty authorized to hold or not otherwise prohibited from holding or exercising the functions of a covered office is still subject to the prohibitions of subparagraph 4.1.2.

C. Political Activity of Civilian Employees (5 C.F.R. Parts 733 and 734). The Hatch Act (Act) is the law that restricts the partisan political activity of civilian executive branch employees of the Federal Government.

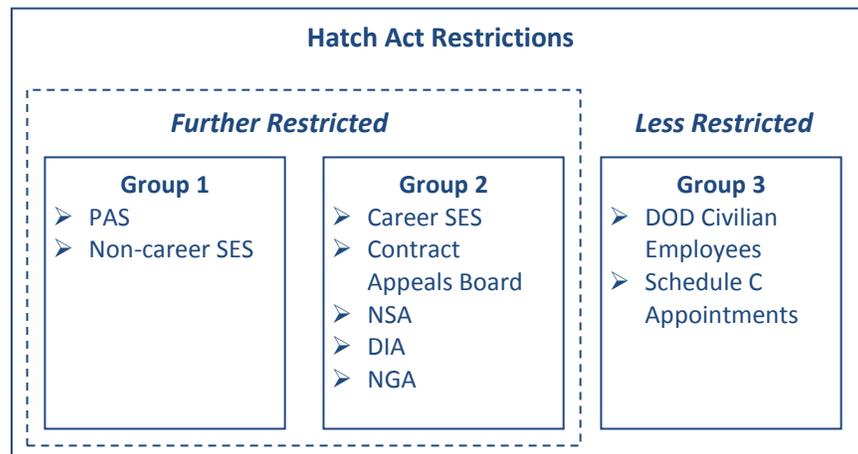
1. General Information

- a. For purposes of the Act, “Political Activity” is defined as an activity directed toward the success or failure of a political party, candidate for partisan political office or partisan political group.

- b. The Act does not prohibit employees from participating in or being candidates in nonpartisan elections. A nonpartisan election is one in which none of the candidates is to be nominated or elected as representing a political party, i.e., none of the candidates are running, for example, as representatives of the Democratic or Republican party. Employees who are interested in running for state or local office should first check with their local board of elections to clarify the nonpartisan status of the election. Employees who are candidates for public office in nonpartisan elections are not barred by the Act from soliciting, accepting, or receiving political contributions for their own campaigns.

A nonpartisan election can also include an election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum question, or a municipal ordinance (e.g., gun control, gay marriage, tax issues, climate change, and DC statehood).

- c. Coverage by the Act. At DoD, there are 2 sets of rules for 3 groups of employees. The first set of restrictions applies to: (1) individuals appointed by the President and confirmed by the Senate and individuals serving in non-career SES positions, who are further restricted by DoD policy; (2) career members of the SES, contract appeals board members, and all employees of the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and the National Geo-Spatial-Intelligence Agency (NGA). The second, and more lenient set of restrictions, applies to all other employees (including Schedule C political appointments). Employees in Groups 1 and 2 are prohibited from taking an active part in partisan political management or political campaigns and are referred to as “Further Restricted” employees. Employees in Group 3 are referred to as “Less Restricted.”



**2. Prohibited Political Activities Applicable to All DoD civilian employees**

**All DoD civilian employees are prohibited from:**

(a) using their official authority or influence for the purpose of interfering with or affecting the result of an election; including coercing subordinates to participate in political activity, using one's official title while participating in political activity; using agency social media for political purposes;

(b) knowingly, personally soliciting, accepting or receiving a political contribution from any person; including hosting or serving as a POC for a fundraising event for a political party or candidate for partisan political office; signing a solicitation letter, collecting money at a fundraising event, soliciting donations through a phone bank;

(c) running for the nomination or as a candidate for election to a partisan political office (an election where candidates are running with party affiliation, usually as Democrats or Republicans);

(d) participating in political activity while on-duty or in any room or building occupied in the discharge of official duties by an individual employed by DoD;

(i) On-duty. An employee is on duty during the time period when he or she is: (1) in a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay) or (2) representing an agency or instrumentality of the United States Government in an official capacity.

(ii) Employees are prohibited 24/7 from sending or forwarding political/campaign literature, materials, information (including jokes) while using their DoD email account or while using a DoD computer.

<http://www.osc.gov/documents/hatchact/federal/Obama%20email.pdf>

(iii) All DoD employees are prohibited from displaying political/campaign literature, materials, and information in their DoD workspace (including non-official pictures of a President running for reelection).

<http://www.osc.gov/documents/hatchact/federal/2011-04->

**05%20FAQ%20Re%20Presidential%20photographs%20and%20candidacy%20for%20reelection.pdf**

- (e) engaging in political activity while wearing a uniform or official insignia identifying the office or position of the DoD employee;
- (f) engaging in political activity while using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof;
- (g) knowingly soliciting or discouraging the participation in any political activity of any person who has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employee's office; and
- (h) knowingly soliciting or discouraging the participation in any political activity of any person who is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employee's office.

3. **Additional Prohibited Political Activities – “Further Restricted” Employees**

- a. “Further Restricted” employees are prohibited from engaging in any political activity which is "in concert" with a political party, partisan political group or candidate for partisan political office. “In concert” activity is any activity that is sponsored or supported by a political party, partisan political group or candidate for partisan political office. For example, Further Restricted employees are prohibited from: writing speeches or performing research on political issues for a partisan campaign; making speeches as a surrogate for a candidate for partisan political office; soliciting, accepting or receiving political contributions; holding office in a political party; hosting a fundraiser for a candidate for partisan political office; knocking on doors to solicit votes or handing out political leaflets for a candidate for partisan political office; serving as a delegate to a political party convention or doing any type of volunteer work for a candidate for partisan political office, including serving on a phone bank.

4. **Permitted Political Activities – All DoD civilian employees may:**

- a. Place a campaign sign in their yard;
- b. Place a campaign bumper sticker on their car (even if they park their car in a Government parking lot);
- c. Make a financial contribution to a political party or candidate running for partisan political office;
- d. Express personal opinions on candidates and political issues;
- e. Attend political events;
- f. Participate in nonpartisan elections;
- g. Assist in nonpartisan voter registration drives;
- h. Work for the city or county as a poll worker on Election Day; and
- i. Sign a nominating petition.

5. **Permitted political activities for “Less Restricted” employees.**

“Less Restricted” employees are permitted to engage in political activity while off-duty and outside of a Federal building (in their personal capacity), as follows:

- a. Volunteer to work on a partisan campaign; including attending and being active at political rallies and meetings, distributing campaign literature, writing speeches, joining and holding office in a political party or political organization, endorsing a candidate for partisan political office in a political advertisement (may not use DoD title), organizing and working at a fundraising event (no soliciting), serving as a delegate to a state, local or national political party convention and working to get out the vote on Election Day.
- b. Participate in election-related activities such as voting, serving as an election judge (for a political party or the city or county) driving voters to a polling place.

D. Role of U.S. Office of Special Counsel (OSC)

6. OSC’s Hatch Act Unit provides advisory opinions on political activity of civilian Federal employees. They do not provide advice on DoD’s rules concerning military members. Contact OSC attorneys by email at [hatchact@osc.gov](mailto:hatchact@osc.gov), or by phone at (202) 653-7143.
7. OSC retains exclusive jurisdiction to rule on matters affecting the political activities of civilian personnel.
8. Advisory Opinions online - <http://www.osc.gov/hatchact.htm>.

E. Policy Guidance for Use of DoD Resources and Visits to Installations by Candidates for Political Office

- i. Guidance is contained in USD(P&R) Memorandum, subject: Policy Guidance for Visits to Installations by Candidates for Political Office, November 4, 2008, as modified by SECDEF Message dated April 27, 2010, DoD Public Affairs Policy Guidance Concerning Political Campaigns and Elections. *(These policies are currently in revision and will be rescinded upon publication of the 2012 DoD Public Affairs Guidance for Political Campaigns and Elections).*

- ii. Applies to political campaigns only: Begins when candidate makes formal announcement, or files with election commission. Campaign ends one week after election.
- iii. Command newspapers—no campaign news or partisan discussions, cartoons, editorials, or commentaries.
- iv. Access to installation by candidates. See attached USD (P&R) memorandum noted above (Reference K – *these policies are currently in revision and will be rescinded upon publication of the 2012 DoD Public Affairs Guidance for Political Campaigns and Elections*).
- v. Off-installation political events—no support, except joint color guards at national political conventions.
- vi. Speeches, articles, and public comments of military personnel in capacity as service representatives must not contain political material.
- vii. DoD may not prohibit the use of a military facility for an official polling place for local, State, or Federal elections if that facility was designated as a polling place as of 31 December 2000 or had been used as a polling place since 1 January 1996. There is an exception for the Secretary concerned to waive the provision if he determines that local security conditions require prohibition of the designation or use of that facility as an official polling place for any election. (10 U.S.C. 2670(b))

b. Lobbying

- i. Anti-Lobbying Act, 18 U.S.C. 1913, prohibits grass roots lobbying efforts, i.e. encouraging citizens to contact their elected representatives about an issue. It does not prohibit agency officials expressing personal views regarding merits or deficiencies of legislation.
- ii. Recurring Appropriations Act provisions—e.g., DoD Appropriations Act for Fiscal Year 2004, P.L. 108-87, §§ 8001, 8012.
  - 1. No use of appropriated funds for “publicity or propaganda purposes not authorized by the Congress.”

2. No use of appropriated funds to “influence congressional action on any legislation or appropriation matters pending before the Congress.”

#### F. CONCLUSION

- a. For military personnel, use current version of DoDD 1344.10: February 19, 2008.
- b. For civilian personnel, use DEPSECDEF Memorandum “Civilian Employees’ Participation in Political Activities,” May 31, 2006, Section III).
- c. “Any activity that may be viewed as directly or indirectly associating the Department of Defense . . . with a partisan political activity or is otherwise contrary to the spirit and intention of [DoDD 1344.10] shall be avoided.” Paragraph 4.1.5.
- d. Members and employees shall give full time and attention to performance of official duties.