



U.S. Law Restricts, Protects Federal Workers



Federal employees at a "Proud to Work for America" rally. © AP Images/Mary Altaffer

For more than 70 years, a U.S. law has promoted a politically neutral government workforce while protecting the constitutional rights of government workers.

The 1939 Hatch Act, named for its sponsor, Senator Carl Hatch, prohibits government employees from holding most elected public offices, participating in political campaigns, raising money for political candidates or considering political affiliations when hiring. Violations of the act carry penalties that range from a

warning letter to termination of employment.

The act also protects government workers by insulating them from political coercion. For instance, a civil servant cannot be fired, disciplined or discriminated against for refusing to work on a political campaign or to contribute to a political party or candidate. In addition, the Hatch Act restricts political patronage — awarding government jobs based on relationships with or influence of elected officials.

One section of the act exempts high-ranking officials appointed

by the president from the ban on political activities. This allows people like the president's personal advisers and Cabinet secretaries to continue to participate in their party's political activities.

Legal challenges to the act have alleged it infringes on a worker's First Amendment right to free speech, but the Supreme Court has upheld it twice. In 1947, in *United Public Workers of America v. Mitchell*, the Supreme Court weighed individual free speech rights against the "elemental need for order" in government operations and found the latter

more important. In 1973, the court rejected a similar challenge, *United States Civil Service Commission v. National Association of Letter Carriers*, with the same reasoning.

In 1993, Congress amended the law to keep elected officials from making unsolicited recommendations for federal employment and to impose tighter restrictions on a select group of workers engaged in law enforcement, intelligence and security operations.

It also expanded permissible activities for most government workers to include:

- running for public office in nonpartisan elections;
- assisting in voter-registration drives;
- contributing money to political organizations and attending political fundraisers;
- participating in political rallies and meetings; and
- distributing campaign literature.

However, employees remain banned from:

- using official authority to interfere with an election;
- soliciting or discouraging political activity of anyone with business before their agencies;
- soliciting political contributions;
- running for office in partisan elections; and
- engaging in political activity while on duty, in uniform, at work or in a government vehicle.

Depoliticizing the Civil Service

The Hatch Act responded to the alleged use of federal workers for partisan political purposes during President Franklin Roosevelt's administration (1933-1945), but its roots can be traced to civil service reforms in the 1880s and perhaps even to concerns raised shortly after the nation's founding.

In 1801, President Thomas Jefferson issued an executive order that federal workers should neither "influence the votes of others, nor take part in the business of electioneering." Throughout the 19th century, U.S. presidents used executive orders to restrict various political activities of government workers.

During the same period, the "spoils system" of rewarding political loyalty with government jobs expanded,



Senator Carl Hatch, far right, introduced the legislation in 1939. © Harris & Ewing

especially between 1865 and 1891 when the number of federal workers tripled, from 53,000 to 166,000 with many working short hours for high pay.

By the 1880s, Senator George Pendleton argued that "The spoils system needs to be killed or it will kill the republic." The Pendleton Act of 1883 helped to reduce greatly the patronage system.

In 1939, the Hatch Act combined the Pendleton Act restrictions with prohibitions in the various executive orders to create a comprehensive approach to removing politics from the civil service.

The U.S. Office of Special Counsel, an independent agency, enforces the Civil Service Reform Act, the Whistleblower Protection Act and the Hatch Act, and also advises government employees on whether contemplated political activities would be illegal. It issues more than 1,000 advisory opinions each year.