

THE WHITE HOUSE
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MEMORANDUM FOR EXECUTIVE OFFICE OF THE PRESIDENT STAFF

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SUBJECT: POLITICAL ACTIVITY GUIDANCE

On October 6, 1993, President Clinton signed the Hatch Act Reform Amendments of 1993, which expanded the scope of permissible political activities of many Federal employees, including employees of the Executive Office of the President ("EOP"). This memorandum is to advise you of recent changes in the implementing regulations, 5 C.F.R. § 734, affecting your ability to engage in political activity as a member of the White House staff. It supersedes guidance provided through a memorandum from this Office on April 6, 1994 ("Political Activity").

Under the new regulations implementing the Amendments, most Federal employees may participate in political activities, subject to certain restrictions. However, some government employees are still prohibited from actively participating in political management and political campaigns.¹ Moreover, detailees from other agencies maintain the status they enjoy at their home agency, and thus might be subject to certain restrictions on political activity even while working at the White House. Accordingly, this memorandum sets forth a description of permissible and impermissible activities for all White House employees, including those who are prohibited from actively participating in political management and political campaigns.

It is important that you adhere to these guidelines. Please check with your supervising officer and with the White House Counsel's Office if you have any questions regarding your ability to engage in political activity.

¹ See discussion at pages 4-5.

I. RESTRICTIONS APPLICABLE TO ALL EMPLOYEES²

Under the Hatch Act amendments, certain restrictions apply to all federal employees.

A. Impermissible Activities

Staff members may not:

- (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election;
- (2) intimidate, threaten, command or coerce any Federal employee to engage in or not engage in any political activity;
- (3) ever knowingly solicit, accept or receive a political cash contribution from any person, including a subordinate or other federal employee;³
- (4) ever knowingly solicit, accept or receive a political contribution of volunteer services from a company or organization (as opposed to from an individual);⁴

² It is important to understand that for the purposes of this section, the official responsibilities that customarily have been performed by the Political Affairs Office constitute "official" and not "political" activities. Therefore, the restraints cited here do not in general affect the activities, office maintenance, or other costs undertaken or incurred in the discharge of such responsibilities.

³ A staff member may solicit, accept or receive political contributions only if all three of the following conditions are met: 1) the staff member solicits, accepts or receives the contribution from either a member of the same Federal labor organization, or from a fellow member of a Federal employee organization that had a multicandidate political action committee (PAC) as of October 6, 1993; 2) the solicitation is for a contribution to the PAC of a Federal labor organization or Federal employee organization described above; and 3) the person from whom the gift is solicited, accepted or received is not a subordinate employee.

⁴ Political contributions do not included "individualized uncompensated volunteer services;" federal employees therefore may solicit, accept, or receive an individual's services as well as direct or supervise volunteers. Federal employees may not, however, solicit or accept the services of an organization or

- (5) run for the nomination or as a candidate for election to a partisan political office;
- (6) knowingly solicit or discourage 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 staff member's office; or,
- (7) knowingly solicit or discourage 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.

B. Permissible Activities

Staff members may:

- (1) register and vote;
- (2) make financial contributions to a party or candidate campaign committee;
- (3) attend a political convention, rally, fundraising function, or other political gathering;
- (4) express their opinion on political subjects;
- (5) wear campaign buttons (though not while on duty)⁵;
- (6) display bumper stickers on their personal vehicles;
- (7) sign a nominating petition;
- (8) take an active part as an independent candidate, or in support of an independent candidate;
- (9) be politically active in connection with a question that is not specifically identified with a political party, such as a constitutional amendment, a referendum, or a municipal ordinance;

business, including soliciting an organization or business to make any of their employees available for campaign activities.

⁵ Under the law as written, certain high level political appointees are allowed to engage in on-the-job political activity, but Congress has indicated that it would be highly inappropriate for these officials to wear political buttons or other political paraphernalia while on duty.

This list of prohibited and permitted activities is not exhaustive. Staff members who have questions regarding any activity should direct inquiries to the Counsel's Office.

II. EMPLOYEES RESTRICTED FROM ACTIVE PARTICIPATION IN POLITICAL MANAGEMENT AND POLITICAL CAMPAIGNS

Active participation in political management and political campaigns is still prohibited for employees, unless appointed by the President, by and with the advice of the Senate, in the following agencies: the Federal Election Commission, Federal Bureau of Investigation, Secret Service, Central Intelligence Agency, National Security Council, National Security Agency, Defense Intelligence Agency, Merit Systems Protection Board, Office of Special Counsel, Office of Criminal Investigation of the IRS, Office of Investigative Programs of the U.S. Customs Service, the Office of Law Enforcement of the Bureau of Alcohol, Tobacco and Firearms. Also covered by this exception are Senior Executive Service "career appointees," administrative law judges, Contract Appeals Board Members, and employees of the Criminal Division of the Justice Department⁶ (unless appointed by the President, by and with the advice and consent of the Senate). 5 U.S.C. § 7323, as amended.

These employees -- whether employed in the Executive Office of the President, or on detail from another agency -- may not:

- (1) take an active part in partisan political management or partisan political campaigns;
- (2) serve as an officer of a political party, a member of a national, State or local committee of a political party, or an officer or member of a committee of a partisan political club;
- (3) organize a political organization or club;
- (4) solicit, receive, or accept political contributions or funds to be used for a partisan political purpose, including funds for Federal employee PACs⁷;

⁶ Under recent policy guidance from the Department of Justice (DOJ), the Attorney General has restricted the political activities of all DOJ political appointees consistent with the limitations of the agencies identified above.

⁷ The prohibition regarding soliciting or receiving funds for federal employee PACs applies only to the agencies described immediately above. In addition, employees of the Federal Election Commission (other than those appointed by the President, by and with the advice and consent of the Senate) are

- (5) sell tickets to, organize, or actively participate in any political fundraising activity;
- (6) do voluntary campaign work, such as addressing and stuffing envelopes;
- (7) solicit votes for or against a partisan candidate or circulate a candidate nominating petition;
- (8) serve as a recorder, poll-watcher, or challenger on behalf of a political party or partisan candidate;
- (9) drive voters to the polls for a partisan candidate or political party;
- (10) in concert with a political committee or organization, endorse or oppose a partisan candidate in a political advertisement, broadcast or campaign literature;
- (11) serve as a delegate to, organize or actively participate in the activities of a political convention;
- (12) serve on a standing committee of a political convention;
- (13) address a convention, rally, caucus or similar gathering of a political party in support of or in opposition to a partisan candidate for public office;
- (14) intimidate, threaten, command, or coerce, any Federal employee to engage in, or not to engage in, any political activity -- including voting or refusing to vote for any candidate or measure, making or refusing to make a political contribution, or working or refusing to work on behalf of any candidate.

III. EMPLOYEES ALLOWED TO ENGAGE IN POLITICAL ACTIVITIES

Under the regulations implementing the Amendments, Federal employees, with the exception of those employed at the agencies discussed above, are now allowed to take an active part in political management and political campaigns. However, even staff members who are allowed to engage in partisan political activities are subject to certain restrictions. We have set forth below guidelines to help ensure that political activities

specifically prohibited from requesting, receiving, or giving a political contribution to an employee, a Member of Congress, or an officer of the uniformed services.

undertaken by White House personnel are within the limits prescribed by law and White House policy.

A. GENERAL RESTRICTIONS

Generally, unless specifically permitted by statute, no federal employee may:

- 1) engage in political activity while the employee is on duty;
- 2) engage in political activity in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Federal government;
- 3) engage in any political activity while wearing a uniform or official insignia identifying the office or position of the employee; or
- 4) engage in political activity while using government vehicles, including White House vehicles.

Certain employees are exempt from the above restrictions, as long as the costs associated with their political activity are not paid for by U.S. Government funds. To be exempt from the above restrictions, an employee must meet both of the following criteria:

- (1) the employee's duties and responsibilities must continue outside normal duty hours and while away from normal duty post; and
- (2) the employee must be: a) paid from an appropriation for the EOP, or b) appointed by the President, by and with the consent of the Senate, to a policy-determination position located within the United States, involving either foreign relations or the nationwide administration of Federal laws.

Most EOP employees' duties meet the criteria for permitting political activity while on duty and in a federal building. However, if your position does not meet the criteria set forth above, you are absolutely prohibited from engaging in political activity while on duty or in a federal building.

B. POLITICAL OFFICE

Under the Hatch Act amendments, most employees may run for any office or position within a political party or affiliated organization. However, employees are still barred from running

for the nomination or as a candidate for election to a partisan political office.

C. USE OF LEAVE

(1) Some White House staff members, as leave-earning employees, are entitled to specific amounts of annual leave. As discussed below, such leave may be used for political purposes; however, one cannot take an "advance" on annual leave to engage in political activities. Those White House staff members not entitled to annual leave (e.g., commissioned officers) may use a ceiling of 15 days of compensatory leave (i.e., the equivalent of vacation time) for political purposes.

(2) All White House staff members must perform their official duties for a minimum of 40 hours per week or 80 hours per two-week pay period in order to receive their full Federal salary. If a staff member does not complete 40 hours of official duty in any week, the difference between the number of hours completed and 40 hours must be covered by annual leave, leave without pay, official holidays or made up in the second week of that pay period. The difference cannot be made up in a subsequent pay period.

(3) White House staff members who complete a minimum of 40 hours of official duty during any full week (Monday-Sunday) may be absent from their official duty station for no more than one weekday (Monday-Friday) for the purposes of engaging in political activity without taking annual leave or leave without pay. If a staff member desires to be absent for political purposes for more than one weekday in any week, each additional weekday must be covered by annual leave or leave without pay, regardless of the number of official hours worked during that week. In other words, it is not permissible for a staff member to put in 40 hours of official duty in the first three days of the week and then take the remaining two weekdays off for campaigning without using annual leave or leave without pay.

(4) Sick leave cannot be used to cover an absence from official duty for the purpose of engaging in political activity.

(5) White House staff members are permitted to take leave without pay to cover absences from official duties for the purposes of engaging in political activity.

(6) When annual leave, compensatory leave or leave without pay is used for political purposes:

(a) Staff members must submit a request for leave for political purposes in advance of the leave period to their White House department supervisor for approval.

(b) Following approval, the office supervisor should forward the request to the Deputy Assistant for Management and Administration for approval in advance of the leave period.

(c) Finally, the Deputy Assistant for Management and Administration should forward the request to the Counsel's Office for approval prior to the leave period. Staff members must receive specific approval from the Counsel's Office to earn outside income.

(7) Staff members may use only eight hours of compensatory leave for political activity during any 7-day period unless additional leave is approved by Counsel's Office.

D. USE OF GOVERNMENT VEHICLES

Generally, government vehicles -- including White House vehicles -- may not be used for political purposes. This means that White House cars may not be used to transport staff members or materials to or from any political committee office or event. White House vehicles also may not be used to transport staff members or political materials to airports or any other locations if the purpose of the trip is political.

The only exception, excluding official use for compelling security considerations,⁸ is for travel to or from a political event in the following circumstances:

- (1) the White House staff member is the Chief of Staff or an EOP agency head; and
- (2) the use of the vehicle will occur during the regular work week (Monday through Friday, excluding weekends and holidays); and
- (3) the political or candidate campaign committee pays for the anticipated cost of the vehicle prior to the travel.

Because of the special requirements surrounding departures and arrivals from Andrews Air Force Base, White House vehicles may be used to transport White House staff members to that facility when they are accompanying the President, Vice

⁸ Compelling security considerations requiring use of a government vehicle include, for example, a recent threat to the life or safety of a staff member or overriding national security concerns. Specific approval must be requested from and provided by the Counsel's Office prior to the use of a government vehicle for compelling security considerations.

President, or First Lady on a political trip. Additionally, where the President is participating in a political event in the Washington, D.C. area or other location where White House cars are available for official purposes, White House cars may be used for the Presidential motorcade to the extent essential to the security and support of the President.

White House messengers should not be used to deliver or pick up materials from the DNC or any other political committee.

E. MEETINGS IN GOVERNMENT BUILDINGS

(1) Meetings involving campaign or political officials and White House staff members may be held in a White House staff member's office, the West Wing or the Old Executive Office Building, or, if it is a luncheon or breakfast meeting, in the White House Mess, provided that such meetings do not interfere with the conduct of Government business. Such gatherings must be organized by staff members who are permitted to engage in political activity in a federal building. White House offices and meeting rooms should not be used for meetings or events organized by a campaign or political committee.

(2) Campaign fundraising activities of any kind are prohibited in or from federal buildings.

(3) Campaign-sponsored or other political activities (receptions, dinners, meetings, but not fundraisers) may be held in the Executive Residence at the White House provided that either the President, Mrs. Clinton, or some other family member attends the event. Campaign or other political events (other than fundraisers) also may be held at the Vice President's Residence, so long as the Vice President, Mrs. Gore, or some other family member attends the event. The cost of campaign or political events at either residence must be paid by the proper campaign or political committee in accordance with the guidelines that have been established for the use of these residences for non-official purposes.

F. USE OF COMMUNICATIONS SYSTEMS AND COPYING MACHINES

(1) In those limited circumstances in which government communications systems -- telephone, e-mail (which automatically is backed up as a potential presidential record), telegraph, teletype, telecopy or radio -- are used for campaign-related purposes, appropriate reimbursement or payment at the "usual or normal charge," 11 C.F.R. § 100.7(a)(1)(iii)(A), must be made by a proper political campaign committee.

(2) Because of the need for liaison between limited numbers of White House staff members and a political committee, telephones may be used for local calls. However, White House

telephones must not be used, even locally, for regular committee activities such as recruiting volunteers or fundraising.

(3) Government credit cards must not be used for campaign-related or other political calls, whether made from within or outside the White House.

(4) Government operators should not be used to place campaign-related or other political long distance calls.

(5) Campaign-related political long distance telephone calls made from the White House may be made only if charged to a credit card issued by the proper campaign or political committee (or on telephones installed and maintained by such committees for exclusive use in dealing with campaign or political matters, should such phones be installed).

(6) The incoming WATS System (800 #) may not be used to call into the White House about campaign or political matters.

(7) White House Communications Agency ("WHCA") facilities provided outside the White House in connection with travel may continue to be used during mixed and wholly political trips. The facilities must be used exclusively for communications relating to trip planning and arrangements and not for direct political purposes such as campaign fundraising and crowd-building. The Government will be reimbursed for the use of these facilities.

(8) Except in limited instances approved by the White House Counsel's Office, Government copying machines may not be used to reproduce materials for transmittal to a campaign or political committee.

G. TRAVEL

Government funds must not be used for the political travel of staff members.

Any political or "mixed" official and political travel by White House staff must be approved in advance by the Counsel's Office using a political travel form. No reimbursement from appropriated funds will be made for non-approved travel expenses. Principles governing the allocation of travel expenses are set forth in a February 17, 1994 memorandum from this office.

H. USE OF PHOTOGRAPHS

(1) White House photographers may continue to photograph all Presidential, First Lady, and Vice Presidential activities for the purpose of creating an archival record of this Administration. However, as a general rule, photographs taken by White House photographers at political events may not be used for

distribution to individuals attending such events or for any other political or campaign purpose.

(2) Photographs taken at events in the Executive Residence (other than political-sponsored events), at West Wing and East Wing meetings, and at non-political events outside the White House may be distributed consistent with regular practices.

(3) A campaign or political committee will be expected to provide a photographer at all campaign and political events for which it desires to distribute photographs to the participants. White House photographers will not photograph receiving lines or greetings at campaign or political events, except to the extent necessary for archival purposes.

(4) A campaign or political committee may purchase, for its use, photographs taken by White House photographers in those limited circumstances where those photographs provide the only source for a particular picture. All photograph purchase requests from the campaign or political committee must be directed to the Director of the White House Photo Office. A record of all campaign photo requests will be maintained by the Director of the White House Photo Office, who will be responsible for billing the campaign or political committee for all photo orders on a monthly basis at the normal rate and according to the procedures established by the Government for the purchase of such pictures.

I. CORRESPONDENCE

(1) Campaign correspondence must not be produced at the White House, nor can White House stationery, stamps or related supplies be used in the preparation of such correspondence at another location.

(2) Federal law prohibits the receipt of contributions in Federal buildings. Occasionally, contributions intended for a campaign committee may be addressed to the White House and delivered with other mail. Such contributions should be handled by returning the contributions to the sender with an explanation of the applicable Federal law and a statement of the appropriate recipient's address. (Appropriate language may be obtained from the White House Counsel's Office.) There should be no acknowledgement of receipt of a contribution from the White House to the contributor. If the contribution is accompanied by a letter that deals primarily with governmental issues, a response dealing with those issues may be prepared and sent from the White House; however, there must be no reference to the contribution.

J. RECOMMENDATIONS

While encouraging political participation by Federal employees, the Hatch Act Amendments are designed to shield employees from favoritism or retaliation based on their political affiliation.

A staff member may not solicit a recommendation from a member of Congress, any elected official of a state, any official of a political party, or any other organization or individual on the basis of the staff member's political affiliation. This prohibition applies to recommendations pertaining to any personnel matter, not just job applications. In addition to prohibiting employees from soliciting recommendations based on political affiliation, the law prohibits any of the sources listed above from supplying such recommendations.

The law provides that personnel actions with respect to a Federal employee or applicant for Federal employment shall be taken without regard to any recommendation or statement made by any of these prohibited sources. If an agency receives a prohibited recommendation, it must return it to its source, indicating that it is impermissible for the agency to consider it.

Recommendations from any of the prohibited sources may be accepted by an agency only if they consist solely of an evaluation of the employee's work performance, ability, aptitude, general qualifications, general character or residence. Also, if the law requires a recommendation from a prohibited source -- for instance, for the purpose of obtaining a security clearance -- an agency may accept such a recommendation.

K. CRIMINAL STATUTES

A number of criminal statutes prohibit the use of Federal programs, property, or employment for political purposes. Violation of these criminal statutes is punishable by imprisonment and/or the payment of a substantial fine. Certain staff members may also be subject to investigation and possible prosecution by an Independent Counsel in connection with alleged violations of these statutes. This section highlights those actions that may have criminal consequences.

(1) Solicitation of Campaign Contributions

Solicitation of campaign contributions from Federal employees (except for contributions to Federal employee PACs discussed in Part III(B), above) is prohibited, as is the solicitation or receipt of contributions in Federal buildings or on Federal property. Moreover, solicitation of campaign contributions from a Member of Congress or an officer of a uniformed service is also prohibited. Unless specifically approved by the Counsel's Office and the Political

Affairs Office, no White House staff member shall sign a fundraising letter on behalf of any Federal candidate.

(2) Use of Coercion

A new federal law makes it illegal for any person to attempt to or to actually intimidate, threaten, command or coerce a Federal employee to engage in or not engage in any political activity. This prohibition includes, but is not limited to, coercing an employee to vote or not vote for any candidate or ballot measure, make any political contribution, or work or refuse to work on behalf of any candidate. Violators can be fined up to \$5000 or imprisoned for three years, or both.