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San Francisco Bay Area Field Office

April 1, 2010

XXXXX XXXXX
XXXX Xx XXXX
XXXX XXX XXXXX

Re: OSC File No. AD-10-xxxx

Dear Xx xxxxxx:

This letter is in response to your request for an opinion concerning the Hatch Act. The U.S. Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Act. We understand that you are employed by the Internal Revenue Service (IRS) as a Xxxxxx and your spouse is currently a candidate in a partisan election. You have asked a series of questions regarding the types of activities you may engage in to support your spouse's partisan candidacy. Our guidance is set forth below.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal executive branch employees. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. Covered employees, however, are prohibited from, among other things, engaging in political activity while on duty, in a government building, while wearing an official uniform, or using a government vehicle. 5 U.S.C. § 7324. Political activity has been defined as activity directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group. 5 C.F.R. § 734.101.

As an employee of a federal executive branch agency, you are subject to the restrictions of the Hatch Act. Assuming that you are an IRS employee who is not further restricted by the Act (i.e., you are not a career SES, Administrative Law Judge, Admin Appeals Judge, or employee of the Office of Criminal Investigation), you may engage in partisan political management and partisan political campaigns. Therefore, the Hatch Act would not prohibit you from engaging in activity to support your spouse's campaign, so long as you refrain from engaging in any such activity while you are on duty, in a government building, wearing a government uniform/insignia, or using a government vehicle. Accordingly, the Hatch Act would prohibit you from circulating electronic messages (e-mails) regarding your spouse's candidacy while you are at work or on duty. However, if someone sends a message regarding your spouse's candidacy to your IRS e-mail account, the Hatch Act would not prohibit you from sending a response requesting that such messages be sent to your personal e-mail account.

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The Hatch Act also prohibits covered employees from knowingly soliciting, accepting or receiving political contributions from any person. 5 U.S.C. § 7323(a)(2). A political contribution is any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose. 5 U.S.C. § 7322(3); 5 C.F.R. § 734.101. The Hatch Act regulations define political purpose as an objective of promoting or opposing a political party, candidate for partisan political office or partisan political group. 5 C.F.R. § 734.101. Thus, the Hatch Act prohibits you from, at any time, soliciting, accepting or receiving contributions for your spouse's partisan campaign.

For example, you may not host or sponsor fundraising events, serve as the point of contact for a fundraiser, or invite others to a fundraiser. In addition, your name may not appear on invitations or any other materials for a fundraising event. Your spouse may host a fundraiser in the home you both share; however, you should not represent yourself as the co-host or sponsor of the event by, for example, greeting invitees at the door and welcoming them to the event. The Hatch Act regulations permit covered employees to provide behind the scenes assistance for fundraisers and provide names for fundraiser invitee lists. See 5 C.F.R. § 734.208 (example 9). However, if you provide names for a fundraiser invitee list, we advise you to provide names of individuals who are acquainted with your spouse, not individuals who are acquainted only with you in your capacity as an IRS employee.

In addition, the Hatch Act prohibits covered employees from using their official authority or influence for the purpose of affecting the results of an election. 5 U.S.C. § 7323 (a)(1). Therefore, you must not use your title, influence or authority as a federal employee when engaging in any activity to support your spouse's candidacy. You may support your spouse's campaign by asking others to vote for your spouse, making speeches at campaign events, making statements to the press and providing photographs of you and your spouse to the press. However, you should refrain from making reference to your employment with the federal government when engaging in any such activity.

Please note that this advice pertains solely to the Hatch Act. The IRS may have additional rules, policies or guidelines regarding the political activity of its employees. Therefore, you are encouraged to contact your agency's ethics advisor for further guidance. Please contact me at (510) 637-3464 ext. 5226 if you have any further questions.

Sincerely,

/s/

Peta-Gay Irving Brown
Attorney, Hatch Act Unit