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July 29, 2020



VIA ELECTRONIC MAIL: [REDACTED]

Re: OSC File No. AD-20- [REDACTED]

Dear [REDACTED]

This letter from the U.S. Office of Special Counsel (OSC) responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether MoveOn.org Civic Action and MoveOn.org Political Action are “partisan political groups” under the Hatch Act. For the reasons described below, we have concluded that both organizations are partisan political groups. Accordingly, the Hatch Act prohibits employees of [REDACTED] from taking any actions in concert with either group, including by forwarding, sharing, promoting, or otherwise assisting either organization in support of its initiatives.

The Hatch Act governs the political activity of federal civilian executive branch employees.² “Political activity” is activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.³ A “partisan political group” is defined in the Hatch Act regulations as any committee, club, or other organization that (a) is affiliated with a political party or candidate for partisan political office, (b) is organized for a partisan purpose, or (c) engages in partisan political activity.⁴ [REDACTED] employees are “further restricted” under the Hatch Act and may not take an active part in, or otherwise act in concert with, partisan political groups.⁵

The third prong of the partisan political group definition is relevant here. Under that prong, an organization is a partisan political group if it engages in partisan political activity. Because not all organizations that engage in some political activity are partisan political groups, OSC will consider several factors when determining whether an organization is a partisan political group due to its political activity. These factors include, but are not limited to, the

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue advisory opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 7321-7326.

³ 5 C.F.R. § 734.101.

⁴ *Id.*

⁵ See 5 U.S.C. § 7323(b)(2); 5 C.F.R. §§ 734.401 [REDACTED], 409.

following: the organization’s stated purpose, as reflected in its bylaws or charter, on its website, and in its other public materials; whether the organization expends its resources on political activity; whether the organization prominently advertises its political activity; the relationship between the organization and its affiliates, if any, that engage in political activity, such as whether they share a website, staff, or office space; and whether the organization has indicated on any government filings that it engages in political activity.⁶

We first address MoveOn.org Political Action, which is unquestionably a partisan political group. MoveOn.org Political Action is a Political Action Committee (PAC) registered with the Federal Election Commission (FEC).⁷ Its most recent Statement of Organization filed with the FEC notes that the PAC “supports/opposes more than one Federal candidate” for partisan political office,⁸ and its most recent quarterly filing with the FEC shows that the organization spent hundreds of thousands of dollars supporting or opposing such candidates.⁹ Such PACs exist for the purpose of supporting or opposing candidates for partisan political office or, in other words, for the purpose of engaging in partisan political activity as defined in the Hatch Act. For that reason, OSC has consistently held that PACs are partisan political groups.¹⁰ We reach the same conclusion with respect to MoveOn.org Political Action.

MoveOn.org Civic Action, which is a tax-exempt social welfare organization under section 501(c)(4) of the Internal Revenue Code, is legally distinct from MoveOn.org Political Action. However, the two organizations go to great lengths to operate under a single shared brand identity—“MoveOn.”¹¹ Nearly all of the organizations’ public communications refer to MoveOn as though it is a single entity.¹² And in recent years, the blending of the two organizations has only increased. Each used to have its own logo; they now share a logo and brand identity.¹³ Each used to have its own website;¹⁴ they now share a website,¹⁵ along with a Facebook account,¹⁶ Twitter account,¹⁷ and Instagram account.¹⁸ Each used to have its own

⁶ See OSC Advisory Opinion dated July 10, 2020.

⁷ See FEC Form 1, Statement of Organization for MoveOn.org Political Action 1 (Oct. 13, 2014), available at <https://docquery.fec.gov/pdf/849/14978176849/14978176849.pdf#navpanes=0>.

⁸ *Id.* at 2.

⁹ See FEC Form 3X, Report of Receipts and Disbursements for MoveOn.org Political Action 5 (July 13, 2020), available at <https://docquery.fec.gov/pdf/344/202007159249864344/202007159249864344.pdf#navpanes=0>.

¹⁰ See, e.g., OSC Advisory Opinion dated Apr. 13, 2005, available at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Establishing%20or%20Holding%20Office%20Within%20a%20PAC.pdf>.

¹¹ The organizations’ success at operating under a single brand identity is illustrated by the fact that you asked whether “MoveOn.org” is a partisan political group, even though there is no single “MoveOn.org” entity. References in this Advisory Opinion to “MoveOn,” in isolation, are to the shared brand identity and not to either of the constituent organizations.

¹² See, e.g., Nick Berning, An Updated Logo and Website for MoveOn Members (Apr. 24, 2018), <https://front.moveon.org/an-updated-logo-and-website-for-moveon-members/>.

¹³ See *id.*

¹⁴ See FEC Form 1, Statement of Organization for MoveOn.org Political Action 1 (Oct. 13, 2014), available at <https://docquery.fec.gov/pdf/849/14978176849/14978176849.pdf#navpanes=0> (noting that MoveOn.org Political Action’s website is www.moveonpac.org, which is now defunct).

¹⁵ MoveOn Home Page, <https://www.moveon.org/> (last visited July 21, 2020).

¹⁶ <https://www.facebook.com/moveon>.

¹⁷ <https://twitter.com/moveon>.

¹⁸ <https://www.instagram.com/moveon>.

Executive Director; they are now led by the same individual.¹⁹ The press release announcing the new Executive Director contains numerous references to her leading “MoveOn” and only one to the fact that she was hired as executive director for two distinct organizations,²⁰ while a related blog post she authored about her new role mentioned only “MoveOn” and made no mention of the two different groups that she leads.²¹

The website that the organizations jointly operate provides numerous examples of their consolidated operations. Many pages of the website advertise political activity undertaken by the organizations acting as MoveOn without attempting to distinguish between MoveOn.org Civic Action and MoveOn.org Political Action. The candidate endorsement page, for example, refers only to MoveOn, not the individual groups. That page states that “MoveOn is committed to making sure that a progressive, inspiring, and competitive Democratic nominee . . . emerges from the presidential primaries to defeat Donald Trump” and that “MoveOn plans on endorsing and electing progressive Democrats to the Senate and House.”²² The only reference to MoveOn.org Civic Action on the page is a disclaimer stating that the page is a “joint website of MoveOn.org Civic Action and MoveOn.org Political Action.”²³ Descriptions of the candidate endorsement process similarly refer to endorsements as being the result of votes by “MoveOn members” without distinguishing between the two constituent MoveOn groups.²⁴ And of the over 20 electoral campaigns described on the “Highlights of MoveOn’s Electoral Work,” only one refers to MoveOn.org Political Action rather than the collective MoveOn.²⁵

Even purportedly separate parts of the MoveOn website show just how deeply intertwined MoveOn.org Civic Action is with MoveOn.org Political Action. The MoveOn.org Civic Action Privacy Policy²⁶ refers to its website as <http://civic.moveon.org> which, rather than being a standalone site, automatically redirects to the joint MoveOn website. As of this writing, the primary graphic that greets visitors to that site is one advertising MoveOn.org Political Action’s seven endorsed candidates for U.S. Senate. The Privacy Policy also repeatedly refers to MoveOn or MoveOn.org without distinguishing between the two MoveOn groups and, at one point, refers to MoveOn.org Civic Action and MoveOn.org Political Action as “the ‘MoveOn Entities.’”²⁷ Pursuant to the policy, both MoveOn.org Civic Action and MoveOn.org Political Action also share most members’ personal information with each other.²⁸ Finally, job vacancies posted to the joint website refer to employment with MoveOn rather than with either of the legal entities that presumably would hire prospective candidates.²⁹

¹⁹ See Nick Berning, Rahna Epting Will Be MoveOn’s Next Leader (May 29, 2019), <https://front.moveon.org/rahna-epting-will-be-moveons-next-leader/>.

²⁰ See *id.*

²¹ See Posting of MoveOn.org to Medium, <https://medium.com/@MoveOn.org/a-note-from-moveons-new-executive-director-rahna-epting-3df8bbc21177> (Oct. 17, 2019).

²² Our Candidates, <https://candidates.moveon.org/> (last visited July 21, 2020).

²³ *Id.*

²⁴ MoveOn’s State & Local Endorsement Process, <https://act.moveon.org/survey/localendorsementprocess> (last visited July 21, 2020).

²⁵ MoveOn’s Electoral Work, <https://front.moveon.org/moveons-electoral-work/> (last visited July 21, 2020).

²⁶ Privacy Policy, https://front.moveon.org/privacy-policy/?utm_source=petitionfooter (last visited July 21, 2020).

²⁷ *Id.*; see also MoveOn SMS Terms & Conditions, <https://front.moveon.org/moveon-sms-terms-conditions/> (referring to MoveOn without distinguishing between its constituent organizations).

²⁸ Privacy Policy, https://front.moveon.org/privacy-policy/?utm_source=petitionfooter (last visited July 21, 2020).

²⁹ See, e.g., MoveOn Careers, https://front.moveon.org/careers/?gh_jid=2231495 (last visited July 21, 2020).

This is sufficient evidence to establish that MoveOn.org Civic Action is a partisan political group because it engages in partisan political activity. In conjunction with MoveOn.org Political Action, which is itself a partisan political group, MoveOn.org Civic Action expends resources on political activity and prominently advertises that political activity through joint operation of the MoveOn.org website. The relationship between the two organizations, including the fact that they share an executive director, is such that they are largely indistinguishable to the general public. By all accounts, they hold themselves out as MoveOn, a single entity.³⁰ In light of MoveOn.Org Civic Action's efforts to associate itself with a partisan political group and the extensive political activity that the two organizations engage in as MoveOn, we have concluded that MoveOn.org Civic Action is a partisan political group under the Hatch Act.³¹ Therefore, [REDACTED] employees may not actively participate in the management or activities of either MoveOn.Org Civic Action or MoveOn.org Political Action.

Please contact Hatch Act Unit attorney Eric Johnson at (202) 804-7044 if you have any additional questions.

Sincerely,

[REDACTED]

Deputy Chief, Hatch Act Unit

³⁰ See MoveOn Careers, <https://front.moveon.org/careers/> (noting that "MoveOn is a truly inclusive, diverse, progressive organization," singular, rather than two distinct organizations) (last visited July 21, 2020). Even on pages laying out terms and conditions, where you might expect the organizations to be clear about which is agreeing to what terms and conditions, the organizations regularly refer to MoveOn as though it is a single legal entity.

³¹ This analysis is focused solely on whether MoveOn.org Civic Action and MoveOn.org Political Action are partisan political groups as that term is defined in the Hatch Act. We did not consider whether either organization is a partisan or political group for purposes of any other law or regulation, and this advisory should not be read as suggesting or implying that a similar conclusion would be reached if either organization's activities were analyzed under the provisions of any other such law or regulation.