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July 10, 2020

[REDACTED]

VIA ELECTRONIC MAIL: [REDACTED]

Re: OSC File No. AD- [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 certain organizations are “partisan political groups” under the Hatch Act and what actions the Hatch Act prohibits with regard to both partisan political groups and other organizations. You also stated that you are a “further restricted employee,” *i.e.*, you work for an agency, or in a position, described in 5 U.S.C. § 7323(b).

Of the nine organizations that you asked about, only the Sunrise Movement is a partisan political group under the Hatch Act. Therefore, and as further described below, you may not actively participate in any of the Sunrise Movement’s activities. With regard to the other eight groups, the only restrictions imposed by the Hatch Act are that you may not solicit, accept, or receive political contributions as part of a group’s political fundraising efforts at any time, or engage in any group’s political activity while you are on duty or in the federal workplace.² Below we first define the scope of the term “partisan political group,” then classify the specific groups about which you asked, and finally answer your questions about engaging in specific activities with these groups.

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

² Generally, the Hatch Act does not prohibit you from actively participating with organizations that are *not* partisan political groups, including fundraising for those organizations. But if such an organization engages in some partisan political activity, the Hatch Act imposes restrictions on your participation in that political activity. For example, the Hatch Act prohibits employees from soliciting, accepting, or receiving a political contribution, which is anything of value made for the purpose of promoting or opposing a political party, partisan political group, or candidate for partisan political office. *See* 5 U.S.C. § 7323(a)(2); 5 C.F.R. § 734.101. Thus, if an organization hosts a fundraiser to support, for example, a candidate for partisan political office, then you may not invite others to, or share information about, that fundraiser. Similarly, because the Hatch Act prohibits employees from engaging in political activity while on duty or in the federal workplace, 5 U.S.C. § 7324(a)(1)-(2), you could not, for example, distribute flyers in the workplace advertising the organization’s endorsement of a partisan political candidate.

1. The scope of the term “partisan political group”

The Hatch Act governs the political activity of federal civilian executive branch employees.³ As defined in the Hatch Act regulations, “political activity” is an activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁴ And “partisan political group” is 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.⁵ We address each in turn.

A. *Groups affiliated with a political party or candidate for partisan political office*

The first category of partisan political groups covers those groups that are affiliated with a political party or candidate for partisan political office. “Affiliate” means “to associate as a member” or “bring . . . into close connection as a member or branch.”⁶ Thus, any entity that is recognized by a national or state political party as a club, auxiliary, authorized committee, or other affiliated organization is a partisan political group. Examples at the national level include the Democratic Congressional Campaign Committee and National Republican Congressional Committee; examples at the state level in Maryland, where most of the groups about which you asked are located, include the Montgomery County Young Republicans⁷ and Montgomery County Young Democrats.⁸

B. *Groups organized for a partisan purpose*

The second category of partisan political groups covers those groups that are organized for a partisan purpose. “Partisan” means “related to a political party.”⁹ Accordingly, organizations formed to support or oppose one or more political parties—or a party’s candidates for partisan political office—are partisan political groups, even if they are not formally affiliated with a political party. To determine whether an organization is formed for a partisan purpose, OSC will consider, for example: whether the organization’s founding charter, bylaws, or mission statement refer to a political party; whether any amendments to the organization’s charter, bylaws, or mission statement refer to a political party; and whether the organization publicly identifies itself as supporting or opposing a political party.¹⁰

³ See generally 5 U.S.C. §§ 7321-7326.

⁴ 5 C.F.R. § 734.101.

⁵ *Id.*

⁶ Affiliate definition, Merriam-Webster, <https://www.merriam-webster.com/dictionary/affiliate>.

⁷ See Montgomery County Republican Party Clubs, <https://www.mcgop.com/clubs> (last visited May 27, 2020).

⁸ See Montgomery County Democratic Party Clubs, <https://mcdcc.org/clubs/> (last visited May 27, 2020).

⁹ 5 C.F.R. § 734.101.

¹⁰ Notwithstanding this general rule, there may be individual cases where an organization originally organized for a partisan purpose has evolved in its activities such that it no longer meets that definition. See *In re Floyd*, 1 P.A.R. 145, 152 (1947) (The Civil Service Commission held that an employee did not violate the Hatch Act through active involvement in an organization “established as a political club” where the “political force [of the] organization [was] negligible, and much of the time nonfunctioning. On the other hand, it ha[d] developed a definite social and civic side which [was] nonpolitical.”) Employees with questions about whether a group is organized for a partisan purpose, and therefore a partisan political group, should contact OSC for additional guidance.

Examples of groups organized for a partisan purpose at the national level include the National Federation of Republican Women (NFRW) and the Young Democrats of America (YDA). The NFRW was once an auxiliary of the Republican National Committee (RNC), which would have made it a partisan political group under the category described above, but is now “financially and organizationally independent.”¹¹ Although the NFRW may not be formally affiliated with the RNC, it nevertheless works to “elect Republicans to office at all levels.”¹² It is therefore organized for the partisan purpose of promoting the Republican Party. The YDA similarly began within a political party, the Democratic National Committee (DNC), but has since become an independent political organization. Even though the YDA is nominally independent from the DNC, its mission is to support the Democratic Party. Accordingly, it is also organized for a partisan purpose. So, under the Hatch Act, both groups are partisan political groups.

C. Groups that engage in partisan political activity

The final category of partisan political groups covers those groups that engage in partisan political activity. Notably, this prong of the partisan political group definition does not specify the amount of political activity that an organization need engage in to be considered a partisan political group. Thus, although the definition appears broad, not every organization that engages in *any* partisan political activity is a partisan political group.

The Hatch Act regulations assume that even if an organization engages in partisan political activity it might not be a partisan political group. For example, 5 C.F.R. § 734.306, Example 6, states that, for purposes of the Hatch Act, “officials of labor organizations [*i.e.*, federal employee unions] who have been given official time to perform representational duties are on duty.” Therefore, such officials may not engage in political activity while on such official time, but they are not prohibited from performing union duties that do not involve political activity. This acknowledgment that employees may perform certain union duties without violating the Hatch Act necessarily assumes that federal employee unions are not partisan political groups, even though some federal employee unions unquestionably engage in some political activity.¹³

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 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,

¹¹ National Federation of Republican Women, History, <https://www.nfrw.org/history> (last visited May 27, 2020).

¹² *Id.*

¹³ The U.S. Office of Personnel Management (OPM), which issued the Hatch Act regulations, even cited to cases involving union officials when issuing its interim Hatch Act regulations in 1994, so OPM clearly was aware that unions may engage in some political activity. Political Activities of Federal Employees, 59 Fed. Reg. 48,765, at 47,768-69 (interim regulation, Sept. 23, 1994) (codified at 5 C.F.R. pt. 734) (citing *Blaylock v. U.S. Merit Sys. Prot. Bd.*, 851 F.2d 1348 (11th Cir. 1988) and *Biller v. U.S. Merit Sys. Prot. Bd.*, 863 F.2d 1079 (2d Cir. 1988), both of which involved “a national president of a public employee union”).

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.

OSC often applies these factors to organizations that are tax-exempt under various sections of the Internal Revenue Code (IRC). On one end of the spectrum, organizations that are tax-exempt under IRC section 501(c)(3) presumptively are not partisan political groups because of statutory provisions that bar them from engaging in political activity.¹⁴ On the other end, organizations that are tax-exempt under IRC section 527 presumptively are partisan political groups because they are “organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures . . . [for] influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization.”¹⁵ Other organizations, such as those that are tax-exempt under IRC section 501(c)(4), may engage in some partisan political activity even though that activity may not be the organization’s sole purpose. Accordingly, those organizations cannot be so easily classified and must be analyzed on a case-by-case basis.

We now apply this framework to the specific groups you asked about. Of those, only the Sunrise Movement is a partisan political group, meaning that you may not actively participate in the Sunrise Movement’s activities. For the remainder, you may actively participate in each group *except* that you may not solicit, accept, or receive political contributions as part of a group’s political fundraising efforts at any time, or participate in the group’s political activity, if any, while you are on duty or in the federal workplace.

2. Classification of the groups about which you asked

A. *Sunrise Movement*

The Sunrise Movement is a national organization whose purpose is to “make climate change an urgent priority across America, end the corrupting influence of fossil fuel executives on our politics, and elect leaders who stand up for the health and wellbeing of all people.”¹⁶ The Sunrise Movement’s website prominently advertises its goal of electing candidates to partisan political office.¹⁷ While we are unable to access the Sunrise Movement’s bylaws or charter, both the organization’s current goals, as stated on its website, and reporting about its founding¹⁸ show that it was organized for the purpose of promoting or opposing candidates for partisan political office. Accordingly, the Sunrise Movement is a partisan political group.

¹⁴ See Internal Revenue Service, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations, <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations> (“all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office”) (last visited April 17, 2020).

¹⁵ 26 U.S.C. § 527(e)(1)-(2).

¹⁶ Sunrise Movement, www.sunrisemovement.org/about (last visited April 16, 2020).

¹⁷ *Id.* (noting that the Sunrise Movement’s strategies include “mak[ing] climate change matter in the midterm election” and “win[ning] governing power by bringing it home through the 2020 general election”).

¹⁸ See Michael Sandoval, *Sunrise Movement Challenges House Democratic Leadership On ‘Green New Deal,’* The Fairfield Sun Times, Nov. 21, 2018 (“The Sunrise Movement . . . launched with the goal of influencing the 2018 midterm elections, heavily emphasizing climate policies.”).

B. Howard County Climate Action

Howard County Climate Action is a “grassroots organization working to inspire and engage the people of Howard County to take action to address the climate crisis.”¹⁹ The organization’s website and outreach materials generally describe the organization’s efforts to influence legislation and encourage individuals to take actions to reduce their carbon footprint. We found no evidence suggesting that the group was organized for a partisan purpose or engages in political activity. Accordingly, Howard County Climate Action is not a partisan political group.

C. Transition Howard County

Transition Howard County is an “an all-volunteer organization that is focused on making the communities of Howard County more resilient and sustainable” by encouraging residents to adopt sustainable living practices.²⁰ As with Howard County Climate Action, there is no evidence to suggest that the group was organized for a partisan purpose or engages in political activity. Accordingly, Transition Howard County is not a partisan political group.

D. Citizens’ Climate Lobby

Citizens’ Climate Lobby is a “non-profit, nonpartisan, grassroots advocacy organization focused on national policies to address climate change.”²¹ The organization engages in extensive citizen and lawmaker engagement around climate policies. But the organization is by all accounts committed to bipartisan climate solutions and we found no evidence that it was organized for a partisan purpose or engages in political activity. Accordingly, Citizens’ Climate Lobby is not a partisan political group.

E. Less Plastic Please

Less Plastic Please is an organization in Montgomery County, Maryland, whose “mission is to promote ways to reduce plastic consumption and avoid excess waste.”²² We could only find information about the group on its Facebook page. Based on our review of that page, Less Plastic Please is focused on the issue of reducing plastic consumption, not on activities directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. The organization also was not formed for a partisan purpose. Therefore, Less Plastic Please is not a partisan political group.

F. Sierra Club

The Sierra Club is a national organization whose purposes are to “explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth’s ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the

¹⁹ Howard County Climate Action, www.hococlimateaction.org/home/about-us (last visited April 16, 2020).

²⁰ Transition Howard County, www.transitionhoco.org/about (last visited April 16, 2020).

²¹ Citizens’ Climate Lobby, www.citizensclimatelobby.org/about-ccl/ (last visited April 16, 2020).

²² Less Plastic Please, www.facebook.com/pg/lessplasticpleasehocomd/about/ (last visited April 16, 2020).

natural and human environment; and to use all lawful means to carry out these objectives.”²³ The Sierra Club is a nonprofit organization under section 501(c)(4) of the Internal Revenue Code. The organization’s bylaws do not refer to the organization engaging in any political activity and the functions described on its website principally relate to public engagement, awareness, and advocacy focused on environmental issues. Most political activity that occurs under the aegis of the Sierra Club is conducted by the Sierra Club Political Committee, which is a separate political action committee. Accordingly, the Sierra Club is not a partisan political group—but the affiliated Sierra Club Political Committee is a partisan political group.

G. Howard County Climate Collaboration

Howard County Climate Collaboration is an organization in Howard County, Maryland, whose goal is to “engage the community in discussions around climate change and sustainability.”²⁴ We could only find information about the group on its Facebook page. Based on our review of that page, Howard County Climate Collaboration is focused on citizen engagement and lobbying elected officials, not on activities directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. The organization also does not appear to have been formed for a partisan purpose. Therefore, Howard County Climate Collaboration is not a partisan political group.

H. Climate Stewards of Greater Annapolis

Climate Stewards of Greater Annapolis is an organization in Anne Arundel County, Maryland, whose goal is to promote “action and education” around climate change and to “coordinate diverse actions that aim to reverse climate change and reduce its impacts.”²⁵ The organization’s website provides educational materials and lists ways for volunteers to get involved in state and local initiatives related to climate change. We found no evidence suggesting that the group was organized for a partisan purpose or engages in political activity. Accordingly, Climate Stewards of Greater Annapolis is not a partisan political group.

I. Chesapeake Climate Action Network

Chesapeake Climate Action Network (CCAN) is an organization whose mission is to “build and mobilize a powerful grassroots movement in this unique region that surrounds our nation’s capital to call for state, national and international policies that will put us on a path to climate stability.”²⁶ CCAN is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code. Its activities are principally focused on educating citizens and lawmakers about clean energy and climate change issues. We found no evidence suggesting that CCAN was organized for a partisan purpose or engages in political activity. Accordingly, CCAN is not a partisan political group.

²³ Sierra Club, *Bylaws & Standing Rules of the Sierra Club 2* (2013).

²⁴ Howard County Climate Collaboration, www.facebook.com/pages/category/Environmental-Conservation-Organization/Howard-County-Climate-Collaboration-1262997200535058/ (last visited April 16, 2020).

²⁵ Climate Stewards of Greater Annapolis, www.csgannapolis.org (last visited April 17, 2020).

²⁶ Chesapeake Climate Action Network, www.chesapeakeclimate.org/about-us/ (last visited April 17, 2020).

3. Your permitted involvement with the groups

We now address the questions that you asked about the scope of your participation in the above groups. Because the Sunrise Movement is a partisan political group, the Hatch Act prohibits you from taking an active part in its activities or otherwise acting in concert with the group. Accordingly, you may not, among other things: solicit, accept, or receive donations to the Sunrise Movement; offer your home as a venue for Sunrise Movement meetings; drive Sunrise Movement leaders to group meetings or events; vote on matters at Sunrise Movement meetings; build and/or maintain the Sunrise Movement's website; manage the Sunrise Movement's social media accounts; express your opinion publicly in concert with some activity organized by the organization, such as by speaking at a Sunrise Movement rally; march or demonstrate as part of a Sunrise Movement-sponsored event; perform clerical work for the Sunrise Movement; hold office in, or plan or manage meetings for, the Sunrise Movement; contact local legislators or other government officials as part of any effort organized by the Sunrise Movement; accept an informal leadership role in the Sunrise Movement; or publicly represent the Sunrise Movement.

Certain activities that you asked about do not rise to the level of active participation in the Sunrise Movement. Accordingly, the Hatch Act does not prohibit you from: being a member of the Sunrise Movement; personally donating to the Sunrise Movement; attending meetings open to all Sunrise Movement members; attending a Sunrise Movement-sponsored rally as a spectator; and publicly stating that you are a member of the Sunrise Movement.

For the remaining groups, the Hatch Act does not limit your involvement or participation in the groups, except that you may not solicit, accept, or receive political contributions as part of a group's political fundraising efforts at any time, or participate in any group's political activity while you are on duty or in the federal workplace.

Please note that this advisory only relates to the Hatch Act and does not address any other laws, rules, or regulations that may apply to your involvement in these groups. If you have questions about any other such laws, rules, or regulations, then we recommend that you consult with one of your agency's ethics officials.

Sincerely,

/s/

Ana Galindo-Marrone
Chief, Hatch Act Unit