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[REDACTED]

VIA ELECTRONIC MAIL: [REDACTED]

Re: OSC File No. [REDACTED]

Dear [REDACTED],

This letter responds to your request for an advisory opinion concerning the Hatch Act.¹ In your request you seek clarification as to how the Hatch Act's on-duty political activity prohibition applies to workplace conversations.² A comprehensive discussion of what constitutes political activity under the Hatch Act, as well as examples of permissible and prohibited conduct, is presented below.

The Hatch Act governs the political activity of federal civilian executive branch employees and prohibits them from, among other things, engaging in political activity while on duty, in a federal room or building, while wearing an official uniform or insignia, or using a government vehicle.³ Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁴ This prohibition applies to all forms of communication, including in-person conversations, written materials (e.g., bulletin boards and newsletters), and electronic communications (e.g., email, text message, and social media).

¹ Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act.

² [REDACTED]

³ 5 U.S.C. § 7324 and § 7324(a)(1). The Hatch Act also prohibits employees from: using their official authority or influence to affect the results of an election; knowingly soliciting, accepting, or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office. 5 U.S.C. § 7323(a).

⁴ 5 C.F.R. § 734.101.

As applied to communications in the workplace, all federal employees may generally discuss current events, policy issues, and matters of public interest while they are at work or on duty. Such discussions are usually not “political activity. Similarly, the mere use of terms like conservative or liberal to describe a person or policy would not constitute political activity for purposes of the Hatch Act. Thus, even while on duty or at work, employees may, for example, say, “I agree with healthcare reform,” “I oppose vaccine mandates,” or “I support conservative policies.” These kinds of discussions are permissible under the Hatch Act, provided employees do not show support for or opposition to a political party, partisan political group, or candidate for partisan political office. An example of a prohibited workplace conversation is “If you support tax reform, vote for candidate X or support Y political party.”

Note, however, that the definition of political activity is broader than express advocacy for or against a political party, partisan political group, or candidate for partisan political office. In some cases, discussion that appears to be about current events or policy issues can be political activity. In other words, an employee cannot circumvent the Hatch Act’s prohibition against on-duty political activity by merely avoiding express advocacy for, or against, a political party, partisan political group, or candidate for partisan political office. It is not necessary that an employee explicitly name a political party, partisan political group, or candidate for partisan political office in order for a discussion to be political activity.

OSC considers all relevant facts and circumstances when investigating allegations that a discussion purportedly about current events or policy issues is, in fact, political activity. Among other factors, OSC looks to: (1) the content of the discussion; (2) the timing of the discussion; (3) the size and composition of the audience; (4) the relationship of the participants involved; (5) the context in which the discussion occurred; (6) the medium used (e.g., email, in-person discussion); and (7) whether a candidate or party is mentioned even if there is no express advocacy for or against the candidate or party. The following two examples illustrate how these factors may apply to conduct that takes place while on duty or in the federal workplace.

Example 1: While on their lunch break, several employees discuss a recent proposal to eliminate their agency. The proposal was made by a candidate for partisan political office. However, the candidate’s name does not come up during the discussion and the discussion instead focuses on the negative effect that elimination of the agency would have upon the general public. Even though this proposal was made by a candidate for partisan political office, nothing about this discussion suggests that it is political activity prohibited by the Hatch Act.

Example 2: The day before the election, an employee who is on duty shares an editorial on social media that is critical of the proposal from Example 1. The editorial is several months old, and the employee specifically tags 50 coworkers in the post and adds “Something to think about tomorrow.” Although the editorial deals solely with a policy issue—the elimination of a federal agency—and neither the editorial nor the social media post explicitly advocates against

the candidate, the employee's post, which is clearly about the election and directed at swaying voters, is political activity prohibited by the Hatch Act.

Please note that this opinion addresses only the Hatch Act, and you should consult your agency ethics officials about any other rules or regulations that could apply.

Should you have any questions, please contact OSC attorney Kelley Resendes at [REDACTED].

Sincerely,

[REDACTED]

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel