Legal Issues for Scientists Interested in Electoral Politics

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Scientists are engaging in politics in new ways

**Scientific American Endorses Joe Biden**

We’ve never backed a presidential candidate in our 175-year history—until now

By THE EDITORS | Scientific American October 2020 Issue
The Hatch Act

- Primary federal statute that regulates political activity of federal employees

- FUNDAMENTALLY SUPPORTS THE RIGHT OF FEDERAL EMPLOYEES TO ENGAGE IN THE POLITICAL AS PRIVATE CITIZENS IN THEIR PERSONAL TIME
Which scientists need to be concerned with Hatch Act restrictions?

- Broad application to those directly employed by the federal government (some exceptions)

- “Less restricted” and “further restricted” employees:
  - **Further restricted** is typically:
    - Law enforcement
    - National security
    - Election regulation
    - Career appointees in the Senior Executive Service
  - **Less restricted**: everyone else
Less Restricted Employees

Generally subject to the following restrictions on political activity:

» Participating in political activities while “on duty,” in uniform, or in a government building or vehicle
» Using official authority or influence to interfere with an election
» Fundraising for political candidates
» Running for office in a partisan election
» Soliciting or discouraging political participation by those who have matters pending before the employee’s employing office
Further Restricted Employees

Subject to all the restrictions “less restricted” employees are subject to

Additionally cannot:

» Take an active part in political management or in a political campaign
» Establish or serve as an officer of a political organization or as a delegate to a political party convention, or address a political event
» Solicit, accept or receive any political contributions, or organize or promote a fundraising event
» Campaign or canvass for votes for or against a partisan political candidate
» Endorse or oppose a candidate for partisan political office in a political advertisement or campaign literature, if done in concert with the candidate, a political party, or a partisan political group
» Initiate or circulate a partisan nominating petition
» Act as a poll worker
» Drive voters to the polls
Non-Partisan Political Activities

Not all political activity is partisan, and the Hatch Act doesn’t prohibit employees from engaging in non-partisan political activity.

Examples:
- Local school board
- Constitutional amendment
- Proposed municipal ordinance
Photo credit Evan Vucci, Associated Press
NASA Orders Kerry Photos Offline

By Keith Cowing on July 29, 2004, 11:19 PM. 0 Comments

26 July 2004: John Kerry Visits NASA Kennedy Space Center - Photos

➤ Update: The U.S. Office of Special Counsel has told NASA to remove all images of Kerry’s visit to KSC from all NASA web sites - immediately - due to Hatch Act concerns. These images have now been removed.

Luckily, you can download the original pictures here: 1|2|3|4|5|6|7|8|9|

Just as you think this silly story is going away some bureaucrat finds a way to breathe new life back into it.

➤ CLARIFICATION 1:00 PM EDT: NASA sources are now saying that NASA’s General Counsel ordered the images removed - not the U.S. Office of Special Counsel.

➤ YET ANOTHER CLARIFICATION 4:00 PM EDT: After reviewing all of the Kerry photos to ensure NASA’s apolitical position, NASA has decided to put the photos of John Kerry in the OPF back online. The photos of the political rally at the visitors center will remain offline.
First Amendment Considerations

General rule of thumb is that a government employee’s speech is protected if:

» They are speaking as a private citizen,
» About a matter of public concern, and
» It does not interfere with their job

Important exceptions:
» “High level employees”
» Classified information
What does it mean for speech to be protected?

Your government employer may not, because of your speech:
- Fire, demote, or suspend you
- Significantly change the terms of your employment
- Take other action that would deter a reasonable person from speaking

Speech must be a “substantial or motivating factor” behind the adverse action
Political Donations and Contributions

- Generally allowed out of personal funds
- Can take many forms:
  - Financial donations
  - Goods and services provided for no fee or at reduced cost
  - Paying money for an event, fundraiser, or merchandise
- Considerations regarding federal grant funds:
  - Federal money a scientists has received as personal salary is considered personal funds
  - Federal grant funds (and resources acquired with those funds) are used only for their intended purpose under the grant
Participating in Political Campaigns

“Less restricted” employees have a right to participate in political campaigns

On their own time, they can:

- Volunteer by canvassing, driving voters to the polls, or serving as poll workers
- Display buttons, stickers, signs etc. for a candidate (not at work!)
- Circulate nominating petitions (again, not at work!)
- Publicly endorse or oppose a candidate
- Speak at a rally
- Take an active part in campaign management
Expressing Political Opinions in Public

The Hatch Act doesn’t prevent “less restricted” federal employees from expressing partisan political opinions, as long as they are NOT “on the job” i.e.:
» On duty
» In a federal building or vehicle (even if not on duty)
» Otherwise exercising federal authority

This includes online fora such as social media and blogs

“Further restricted” employees subject to some additional limitations
What does “on the job” mean during COVID?

- Federal workers generally considered “on duty” when they are teleworking or any time they are performing official duties, even if from home.

- Employees should not engage in partisan political activities during that time.
Federal employee status does not affect a U.S. citizen’s right to:

» Register with a political party
» Vote as they choose

If you are going to miss work to vote, most likely need to request leave

Non-citizens may still volunteer and use their residences to host non-fundraising events
Tips and Best Practices

- Use your own funds and resources to engage in political activity, and do so on your own time.
- Maintain a clear separation between personal and professional:
  - Keep good records of working hours.
  - Keep personal vs. professional email and social media accounts separate.
  - Don’t use government equipment for personal political activities.
  - Avoid wearing agency logo or other insignia when engaging in political activity.
- Consider speaking in your personal capacity.
- Consider using disclaimers.
- Understand your institution’s policies around political speech.
How to Respond if Targeted

▷ Remember: institutional counsel only represents the institution

▷ If facing internal retaliation, understand internal channels available for complaints and implications of using them

▷ If facing external targeting:
  ▷ May be best to ignore certain hostile messages
  ▷ Congressional inquiries, subpoenas, records requests, and threatening messages should never be ignored—contact CSLDF or another lawyer
Resources

- A POCKET GUIDE FOR SCIENTISTS
  - Handling Political Harassment and Intimidation
- A POCKET GUIDE FOR SCIENTISTS
  - Participating in Political Activities: Guidelines for Federally Employed and Federally Funded Scientists
- A POCKET GUIDE FOR SCIENTISTS
  - Advocating for Science in a Politicized Environment
- KNOW YOUR RIGHTS
  - Scientific Activism and Protests