



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

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Frequently Asked Questions Regarding Social Media and the Hatch Act¹

In light of the many questions the Office of Special Counsel (OSC) has received concerning the Hatch Act's application to social media activity, OSC provides the following guidance on the issue, in the form of frequently asked questions concerning less restricted and further restricted federal employees (see Questions 1 through 8) as well as federal agencies (see Questions 9 through 11).

Note: The following guidance refers primarily to Facebook and Twitter due to the popularity of those sites for social networking, but the advice provided in response to these questions applies equally to all other social media platforms, such as Tumblr, Myspace, LinkedIn, etc. Please contact OSC at hatchact@osc.gov or (800) 854-2824 if you have a question not addressed by the following scenarios.

For Individual, Federal Employees:

- 1. If a federal employee has listed his official title on his Facebook profile, may he also fill in the "political views" field?**

Answer (All Employees): Yes. Although the Hatch Act and its attendant regulations prohibit federal employees from using their official titles while engaging in "political activity," that is, activity directed toward the success or failure of a political party, partisan candidate, or partisan political group, simply identifying political party affiliation on their social media profiles, which also contains their official title or position, without more, is not "political activity."

- 2. May a federal employee advocate for or against a political party, partisan political group, or candidate for partisan public office in posts on a blog, Facebook, Twitter, or any other social media platform?**

Answer (Less Restricted Employees): Yes, but subject to the following limitations. The Hatch Act does not prohibit federal employees from expressing their opinions concerning partisan political candidates and political parties. However, the Act prohibits them from engaging in "political activity," that is, activity directed at the success or failure of a political party, partisan political candidate, or partisan political group, while they are on duty or in a building occupied in the discharge of official duties by a federal officer or

¹ This advisory opinion supersedes the social media advisory that was previously published on August 10, 2010, and contains revised responses concerning further restricted employees' use of social media while maintaining compliance with the Hatch Act (see Questions 2, 3 and 5).

employee. Thus, federal employees are prohibited from advocating for or against a political party, partisan political group, or candidate for partisan public office through a blog, Facebook, Twitter, or any other social media platform while they are on duty or in the federal workplace. However, doing so off duty and away from the federal workplace would not violate the Hatch Act.

The Hatch Act also prohibits federal employees from using their official authority or influence to affect the result of an election. Therefore, although employees may advocate for or against political parties, partisan political groups, or candidates for partisan public office while off duty and away from the federal workplace, they may not refer to their official titles or positions with the government while engaged in such efforts. Note, however, that OSC would not consider the inclusion of a federal employee's official title or position on one's social media profile, without more, to be an improper use of his official authority to bolster the statements he posts.

Finally, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Thus, at no time should they suggest or ask anyone to make contributions to a political party, partisan political candidate, or partisan political group. Further, they should not provide links to the contribution page of any of those entities' websites.

Answer (Further Restricted Employees):² Yes, but with an added limitation. In addition to the guidelines set forth above for less restricted employees, the Hatch Act prohibits further restricted employees from taking an active part in partisan political management and partisan political campaigns. This means further restricted employees may not engage in political activity on behalf of or in concert with a political party, partisan political group, or candidate for partisan public office. For instance, taking an "active part" would include: distributing material created by a partisan candidate, political party, or partisan political group; speaking at a political rally organized or sponsored by such entities; or serving as a campaign volunteer. It also would include engaging in political activity through a medium sponsored or controlled by a political party, partisan political group, or partisan candidate, such as by endorsing a candidate in a commercial sponsored by one of these entities.

Thus, the Hatch Act would prohibit a further restricted employee from posting or linking to campaign material or the website of a political party, partisan candidate, or partisan political

² Further Restricted Employees include employees from the following agencies, agency components, or in the following positions: 1) Central Intelligence Agency; 2) Criminal Division of the Department of Justice; 3) Defense Intelligence Agency; 4) Election Assistance Commission; 5) Federal Bureau of Investigation; 6) Federal Election Commission; 7) Merit Systems Protection Board; 8) National Geospatial-Intelligence Agency; 9) National Security Agency; 10) National Security Council; 11) National Security Division of the Department of Justice; 12) Office of Criminal Investigation of the Internal Revenue Service; 13) Office of the Director of National Intelligence; 14) Office of Investigative Programs of the United States Customs Service; 15) Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; 16) Office of Special Counsel; 17) Secret Service; as well as persons employed as; 18) Senior Executive Service; 19) Administrative Law Judges; 20) Contract Appeals Board Members; and 21) Administrative Appeals Judges. See 5 U.S.C. § 7323(b)(2) and (3).

group. In addition, a further restricted employee may not “share” or “re-share” these entities’ Facebook pages or any posts on those pages, or “retweet” posts from these entities’ Twitter accounts. OSC views these activities as active participation in partisan political campaigning because the employee is disseminating these entities’ partisan political material.

Moreover, a further restricted employee may not post or comment on these entities’ Facebook pages or “tweet” at their Twitter accounts because OSC would consider such activity to be engaging in political activity through a medium sponsored or controlled by a political party, partisan political group, or partisan candidate.

3. May federal employees who are “friends” with their subordinate employees or have “followers” who are subordinate employees advocate for or against a political party, partisan political group, or candidate for partisan public office on their Facebook pages or Twitter accounts?

Answer (Less Restricted Employees): Yes, but subject to the following guidelines. Although the Hatch Act prohibits using one’s official authority or influence to affect the result of an election, OSC does not view this activity as violating the Hatch Act, provided the supervisor’s statements are directed at all of his Facebook “friends” or Twitter “followers,” *e.g.*, if he posted his opinion concerning a candidate in his Facebook “status” field.

On the other hand, such statements would violate the Hatch Act if the supervisor specifically directed them toward his subordinate employees, or to a subset of friends that includes subordinates, *e.g.*, by sending a Facebook “message” to a subordinate employee, posting a partisan political comment on a subordinate employee’s Facebook “wall,” “direct messaging” a subordinate employee, or sending a “tweet” directed at (containing the twitter handle of) the subordinate employee. In this situation, OSC would view the supervisor’s actions as purposefully targeting subordinates with the message, as opposed to the scenario described above, in which the subordinates see the supervisor’s opinions by chance.

Similar to the guidance above concerning Facebook and Twitter’s messaging functions, a supervisor may never send to subordinate employees an e-mail that is directed at the success or failure of a political party, partisan political group, or partisan candidate. OSC would view such an e-mail as one that purposefully targets subordinates, and thus, it would be an improper use of the supervisor’s official authority or influence to affect the result of an election.

Answer (Further Restricted Employees): Yes. The same answer applies to further restricted employees but subject to the following caveat. Specifically, the Hatch Act prohibits further restricted employees from taking an active part in partisan political management or partisan political campaigns. Thus, the guidance provided to further restricted employees in response to Question 2, above, also applies here.

- 4. What should a federal employee do if someone posts a comment on the employee's social media page, such as his Facebook page or Twitter feed, that solicits contributions to a political party, partisan political group, or partisan candidate, posts a link to the contribution webpage for such entities, or otherwise solicits political contributions?**

Answer (All Employees): Although the Hatch Act prohibits federal employees from soliciting, accepting, or receiving political contributions at any time, they are not responsible for the acts of a third party, even if the third party's actions appear on their social media webpage. Thus, if a federal employee's "friend" posts a link to the contribution page of a political party, partisan candidate, or partisan political group, or otherwise solicits political contributions, the employee does not need to take any action. The same advice applies to any tweets directed at a federal employee. However, the federal employee should not "like," "share," or "retweet" the solicitation, or respond in any way that would tend to encourage other readers to donate.

- 5. May a federal employee become a "friend" of, or "like," the Facebook page, or "follow" the Twitter account of a political party, partisan political group, or partisan candidate?**

Answer (Less Restricted Employees): Yes, but subject to the following limitations. Specifically, the Hatch Act prohibits federal employees from engaging in political activity while on duty or in a federal building. Thus, if they are a "friend" of, or "like," a political party, partisan political group, or partisan candidate on Facebook, or "follow" such entities on Twitter, they should not engage in activities with respect those entities' social media accounts that would constitute "political activity" during duty hours or while in the federal workplace. Political activity is defined as any activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. This would include, for example, suggesting that others "like," "friend," or "follow" the party, group, or candidate, accepting an invitation to a partisan political event, or forwarding the invitation to others.

In addition, the Hatch Act prohibits federal employees from soliciting, accepting, or receiving political contributions at any time. Thus, if an employee receives an invitation from the party, group, or candidate to a fundraising event via Facebook or Twitter, the employee would be prohibited from sharing that invitation with others.

Answer (Further Restricted Employees): Yes, but with an added limitation. In addition to the guidelines set forth above for less restricted employees, the Hatch Act prohibits further restricted employees from taking an active part in partisan political management and partisan political campaigns. Therefore, the guidance provided to further restricted employees in response to Question 2, above, also applies here.

- 6. May a federal employee continue to “follow” the official White House Twitter account, or be a “friend” of, or “like,” the official White House Facebook page, after the President has become a candidate for reelection?³**

Answer (All Employees): Yes, a federal employee may continue to follow the official White House Twitter account, *i.e.*, the account the President uses to comment on his official functions, even after the President begins his reelection campaign. The same is true for being a “friend” of, or “liking” the official White House page on Facebook.

- 7. May a federal employee use an alias to create a blog, Facebook page or Twitter account and “friend,” “like,” or “follow” a political party, partisan political group, or partisan candidate?**

Answer (All Employees): Yes; however, be advised that employees remain subject to the Hatch Act even when they act under an alias. Therefore, the advice provided in response to all other questions herein, particularly Questions 1 through 6, apply regardless of whether or not the federal employee is acting under an alias.

- 8. May a federal employee create a Facebook or Twitter page in his official capacity and advocate for or against a political party, partisan political group, or partisan candidate on the page?**

Answer (All Employees): No. Any page created in an employee’s official capacity (*e.g.*, a Cabinet member) must be limited to official business matters and remain politically neutral. Thus, the Hatch Act would prohibit a federal employee from posting on his or her official Facebook or Twitter account information directed at the success or failure of a political party, candidate for partisan political office, or partisan political group, including providing links to webpages that contain such information. The Hatch Act also would prohibit a federal employee from becoming a “friend” of, “liking,” or “following” political parties, partisan political campaigns, or partisan political groups on their official social media accounts. Moreover, advocating for or against a political party, partisan group, or partisan candidate on such a page would constitute a violation of the Hatch Act’s prohibition against using one’s official authority to interfere with or affect the result of an election. Therefore, such advocacy must be confined to the employee’s personal Facebook page or Twitter account, subject to the limitations described in response to Questions 2, 3 and 5 above.

³ Note that neither the Twitter account @barackobama nor the Facebook page found at www.facebook.com/barackobama is an official Presidential account. Both of these are maintained by Obama for America, the 2012 campaign of President Obama. Thus, with respect to the @barackobama Twitter account and the “Barack Obama” Facebook page, please see OSC’s responses to Question 5, “May a federal employee become a ‘friend’ of, or ‘like,’ the Facebook page, or ‘follow’ the Twitter account of a political party, partisan political group, or partisan candidate.”

For Federal Agencies:

- 9. May a federal agency have a Facebook page or Twitter profile that includes information or links to information concerning a political party, candidate for partisan political office, or partisan political group?**

Answer: No. An agency's Facebook or Twitter account, like its official website, should only be used to share information about the agency's official business and mission and should remain politically neutral. Thus, the Hatch Act would prohibit an agency from posting on its Facebook or Twitter account information directed at the success or failure of a political party, candidate for partisan political office, or partisan political group, including providing links to webpages that contain such information. The Hatch Act also would prohibit an agency from becoming a "friend" of, "liking," or "following" political parties, partisan political campaigns, or partisan political groups.

- 10. May a federal agency's Facebook page or Twitter account include information or links to information concerning the President's reelection campaign?**

Answer: No. An agency's Facebook page or Twitter account should only be used to share information about the agency's official business and must remain politically neutral. When the President is engaged in campaign activity to support his bid for reelection, he is not acting in his official capacity as the nation's Chief Executive Officer. Thus, while the agency's Facebook page or Twitter account may include news about the President when he is acting in his capacity as the Chief Executive, it may not display information or links to information concerning his candidacy for reelection.

- 11. May a news article about a federal agency official's (e.g., Secretary or Administrator) speech at a political fundraiser or a rally for a partisan political candidate be posted on the agency's Facebook page or Twitter account?**

Answer: No. An agency's Facebook page or Twitter account, like its official website, should only be used to share information about the agency's official business and must remain politically neutral. When an agency official engages in political activity, that is, activity directed toward the success or failure of a political party, partisan candidate, or partisan political group, he is acting in his personal, and not his official, capacity. Thus, while the agency may post news concerning the official's efforts to carry out the agency's mission on the agency's Facebook page or Twitter account, an article about the official's speech or attendance at a partisan political event should not be posted on the agency's Facebook page or Twitter account.