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Frequently Asked Questions Regarding Social Media and the Hatch Act[2]

In light of the many questions the Office of Special Counsel (OSC) has received concerning Social Media, 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 one through eleven) as well as federal agencies (see questions twelve through fourteen).

Note: This guidance refers primarily to Facebook and Twitter in the following questions 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, such as Myspace, Linkedin, etc. Please contact OSC at (202) 254-3650 if you have a question not addressed by the following scenarios.

For Individual, Federal Employees:

1. **May a federal employee write a blog on which he or she expresses support or opposition to partisan political candidates and political parties?**

   Answer (Less Restricted Employees): Yes, but subject to the following limitations. Federal employees are not prohibited from expressing their opinions concerning partisan political candidates and political parties. However, they are prohibited 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 on duty or in a building occupied in the discharge of official duties by a federal officer or employee. Thus, federal employees are prohibited from writing such a blog while on duty or in their federal workplace. However, doing so outside of duty hours and in another location 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, they should not identify their official titles or use their statuses as federal employees to bolster the opinions concerning political parties, partisan candidates, or partisan groups that they post on their blogs.

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[1] This advisory opinion supersedes the social media advisories that were previously published on July 14 and 27, 2010.

[2] This version of OSC's guidance contains revised responses concerning using Facebook or Twitter to "follow," be a "fan" of, or "like" political parties, partisan political groups, and partisan candidates.

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

Answer (Further Restricted Employees):[3] Yes, but with an added limitation. In addition to the guidelines set forth above for less restricted employees, note that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. Taking an "active part" would include distributing campaign literature. Thus, a further restricted employee would be prohibited from posting anything on his or her blog that was created by, or leads to information created by, the party, partisan candidate, or partisan campaign, because OSC would consider such activity to be the equivalent of distributing literature for those entities.

2. **If a federal employee has listed his official title on his Facebook profile page, may he fill in the field provided for "political views" on his Facebook profile?**

Answer (Less Restricted Employees): Yes. Although the Hatch Act and its attendant regulations prohibit federal employees from using their official titles while engaging in political activity, simply identifying the political party that they support on their Facebook profiles, without more, is not "political activity," that is, activity directed toward the success or failure of a political party, partisan candidate, or partisan political group.

Answer (Further Restricted Employees): Yes. The same answer applies to further restricted employees.

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[3] 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 Election Commission; 6) Federal Bureau of Investigation; 7) Merit Systems Protection Board; 8) National Security Agency; 9) National Geospatial-Intelligence Agency; 10) National Security Council; 11) National Security Division of the Department of Justice; 12) Office of the Director of National Intelligence; 13) Office of Special Counsel; 14) Office of Criminal Investigation of the Internal Revenue Service; 15) Office of Investigative Programs of the United States Customs Service; 16) Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; 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).

3. **May federal employees advocate for or against a political party, partisan political group, or candidate for partisan public office on their Facebook pages or on the pages of others?**

   Answer (Less Restricted Employees): Yes, to the extent such activity is not expressly prohibited by the Hatch Act. As explained previously, federal employees may not solicit, accept, or receive campaign contributions at any time. Further, they may not use their official authority or influence to affect the result of an election. Finally, they may not engage in political activity while on duty or in a federal workplace. Thus, they may not ask or encourage readers to make contributions to a political party, partisan political group, or partisan candidate, or post a link to the contribution page of any of those groups' or individuals' websites, on their Facebook pages or the pages of others.

   Moreover, they may not refer to their official positions with the government in an effort to bolster the political advocacy statements they post on Facebook. Note, however, that OSC would not consider the inclusion of a federal employee's official title on his Facebook profile, without more, to be an improper use of his official authority to bolster the statements he posts on Facebook.

   Finally, federal employees must not post comments or opinions on Facebook that advocate for or against a political party, partisan political group, or candidate for partisan public office, while they are on duty or in the federal workplace. They may, however, do so after duty hours and in another location.

   Answer (Further Restricted Employees): The same answer applies to further restricted employees, but with one added restriction. Specifically, further restricted employees are prohibited from taking an active part in partisan political management or partisan political campaigns. Thus, they should not post on Facebook links to the website of a political party, partisan political group, or partisan political candidate, because such activity is akin to distributing literature on behalf of those entities or individuals.

4. **May federal employees who are "friends" with their subordinate employees advocate for or against a political party, partisan political group, or candidate for partisan public office on their Facebook pages?**

   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," *e.g.*, if he posted his opinion concerning a candidate in his Facebook "status" field. We see this activity as being akin to the supervisor placing a sign in his yard that promotes a candidate but that, incidentally, may be seen by his subordinates.

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." 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's messaging function, 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, further restricted employees are prohibited from taking an active part in partisan political management or partisan political campaigns. Thus, they should not post on Facebook links to the website of a political party, partisan political group, or partisan political candidate, because such activity is akin to distributing literature on behalf of those entities or individuals.

5. **May a federal employee post a link to the website of a political party, partisan candidate, or partisan political group on his or another's Facebook page or blog?**

Answer (Less Restricted Employees): Yes, but with some limitations. Specifically, as explained above, federal employees are prohibited from soliciting, accepting, or receiving political contributions at any time. Therefore, they may post a link that leads to the home page of a political party, partisan candidate, or partisan political group. The link, however, may not lead directly to the page of the website on which readers can contribute money to the party, group, or candidate.

In addition, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Posting links to the websites of political parties, partisan political groups, or partisan political candidates is akin to leafleting, that is, circulating literature for those groups and individuals. Thus, they may not post such links during duty hours or while in the federal workplace.

Answer (Further Restricted Employees): No. As explained previously, further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. As stated above, posting a link to the website of a political party or partisan political campaign is akin to leafleting, that is, distributing political literature on behalf of that party or campaign. Thus, the Hatch Act

prohibits further restricted employees from posting such links on Facebook pages or blogs.

6. **What should a federal employee do if one of his Facebook friends posts a comment on the employee's Facebook page that solicits contributions to a political party, partisan political group, or partisan candidate, posts a link to the contribution page, or otherwise solicits political contributions?**

   Answer (Less Restricted Employees): Although federal employees are prohibited 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 Facebook pages. 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. However, he should not post any comments that would tend to encourage other readers to donate.

   Answer (Further Restricted Employees): The same answer applies to further restricted employees.

7. **May a federal employee become a "friend" or "fan" of, or "like," the Facebook page of a political party, partisan political group, or partisan candidate?**

   Answer (Less Restricted Employees): Yes, but subject to the following limitations. Specifically, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Thus, if they are a "friend" or "fan" of, or "like," a party, partisan group, or partisan candidate's campaign on Facebook, they should not engage in activities with respect those entities' Facebook pages 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 become a "fan" of the party, group, or candidate, accepting an invitation to a partisan political event, or forwarding the invitation to others.

   In addition, federal employees are prohibited 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): A further restricted employee may become a "friend" or "fan" of, or "like," a party, partisan group, or candidate's Facebook page, <u>but only if</u> he adjusts his privacy settings such that his lists of "friends," "likes," "interests," and "pages" that provide links to those entities' pages are visible <u>only</u> to the employee.

The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If a further restricted employee becomes a "friend" or "fan" of, or "likes," a party, partisan group, or candidate's Facebook page, the employee's page would include links to those entities' pages, which others could use to get information. Therefore, OSC views such activity as not just an endorsement of the party, group, or candidate, but also akin to circulating those entities' literature. Thus, a further restricted employee may be a "friend: or "fan" of, or "like," a party, partisan group, or candidate on Facebook in order to receive updates from them, but must take measures to prevent others from accessing such material through his Facebook page.

8. **May a federal employee continue to "follow" the official White House Twitter account, or be a "fan" or "friend" of, or "like," the official White House Facebook page, after the President has become a candidate for reelection?**[4]

   Answer (Less Restricted 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 "fan" or "friend" of, or "liking" the official White House page on Facebook.

   Answer (Further Restricted Employees): Yes. The same answer applies to further restricted employees.

9. **May a federal employee "follow" the Twitter account of a political party, partisan political group, or partisan candidate's campaign?**

   Answer (Less Restricted Employees): Yes. A federal employee may "follow" a political party, partisan political group, or partisan candidate on Twitter. However, he must not engage in any activity on Twitter with respect to those entities that would otherwise violate the Hatch Act, *i.e.*, activities that would constitute soliciting, accepting, or receiving political contributions at any time, or that would constitute political activity while on duty or in a federal building.

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[4] Note that the Twitter account @barackobama is not an official Presidential account. Nor is the Facebook page found at www.facebook.com/barackobama. Both of these are maintained by Organizing for America, which is a component of the Democratic National Committee, and therefore a partisan political group. Thus, with respect to the @barackobama Twitter account and the "Barack Obama" Facebook page, please see OSC's responses to the questions, "May a federal employee 'follow' the Twitter account of a political party, partisan political group, or partisan candidate's campaign?"and, "May a federal employee become a "friend" or "fan" of, or "like," the Facebook page of a political party, partisan political group, or partisan candidate?"

Answer (Further Restricted Employees): Yes, but only if the employee's list of whom he follows is hidden from his followers. The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If an employee follows the Twitter account of a political party, partisan political group, or partisan candidate, the employee's account would include a link to the accounts of whomever he follows. Others could use that link to get information about the party, partisan group, or partisan campaign. Therefore, OSC views such activity as not just an endorsement of those entities, but also akin to circulating their literature. Thus, a further restricted employee may follow a party, partisan group, or partisan candidate on Twitter in order to receive information and updates from those entities, but he must take measures to prevent others from accessing partisan or campaign material through his Twitter account.

10. May a federal employee use an alias to create a Facebook page or Twitter account and be a "fan" of, "like," or "follow" a political party, partisan political group, or partisan candidate?

Answer (Less Restricted Employees): Yes; however, be advised that employees remain subject to the Hatch Act even when they act under an alias. Specifically, federal employees are prohibited from engaging in political activity while on duty or in a federal building. Thus, if they "follow" on Twitter or are a "fan" of, or "like" a party, partisan group, or partisan candidate on Facebook, they should not engage in activities with respect those entities that would constitute "political activity" during duty hours or while in the federal workplace. As explained above, 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 "follow," "like" or become a "fan" of the party, partisan group, or candidate, accepting an invitation to a partisan political event, or forwarding the invitation to others.

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

Answer (Further Restricted Employees): Likewise, further restricted employees are subject to the same restrictions regardless of whether they act under an alias. Thus, they may "follow" or "like" a party, partisan group, or partisan candidate under an alias in Facebook or Twitter, but only if he adjusts his privacy settings such that whom he "follows" on Twitter or "likes" or is a "fan" of on Facebook is hidden from others. The rationale for this condition is that further restricted employees are prohibited from taking an active part in partisan political management and partisan political campaigns. If an employee follows the Twitter account of a political party, partisan political group, or partisan candidate, the employee's account would include a link to the accounts of

whomever he follows. Likewise, if he is a "fan" of or "likes" one of those entities on Facebook, a link to those entities' pages would appear on his page. Others could use those links to get information about the party, partisan group, or candidate. Thus, further restricted employees must adjust their privacy settings accordingly.

11. 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 must remain politically neutral. 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. Thus, such advocacy must be confined to the employee's personal Facebook page or Twitter account, subject to the limitations described in response to Questions # 3 and # 5 above.

For Federal Agencies:

12. May a federal agency have a Facebook page that includes a link to the website of a political party, candidate for partisan political office, or partisan political group?

Answer: No. An agency's Facebook page, 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 a federal employee or official from posting on an agency's Facebook page information about political parties, candidates for partisan political office, or partisan political groups, including links to websites of such individuals or entities.

13. May the agency's Facebook page include a link to the website of the President's reelection campaign, political party, or other partisan political group?

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

14. 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?

Answer: No. An agency's Facebook page, 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, an article about the official's speech or attendance at a partisan political event should not be posted on the agency's Facebook page.