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The Deputy Attorney General

Washington, D.C. 20530

July 14, 2014

MEMORANDUM FOR A.I. DEPARTMENT OF JUSTICE CAREER EMPLOYEES

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Restrictions on Political Activities

This memorandum serves as our periodic reminder to all Department of Justice (Department) employees that we must be familiar with the rules governing participation in partisan political activities and ensure that politics does not compromise the integrity of our work. The public trusts that we will enforce the laws of the United States in a neutral and impartial manner, without the actual or apparent influence of political agendas. With that objective in mind, the purpose of this memorandum is to outline the restrictions on political participation applicable to all employees as well as the additional restrictions imposed on certain employees within the Department.

Hatch Act

The Hatch Act, 5 USC 7323(a) and 7324(a) generally prohibits Department employees from engaging in partisan political activity while on duty, in a federal facility or using federal property. Political activity is activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. The statute applies to all federal employees, with some variation in the specific restrictions based on an employee's position. "Less restricted" employees generally are able to participate actively in political management or partisan political campaigns, while off-duty. "Further restricted" employees are held to stricter rules that preclude similar participation in political activities. The following Department of Justice employees are "further restricted": all career Senior Executive Service (SES) employees; administrative law judges; employees in the Criminal Division, the Federal Bureau of Investigation, and the National Security Division; and criminal investigators and explosives enforcement officers in ATF.<sup>1</sup>

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<sup>1</sup> Under Department policy, all political appointees are subject to the restrictions applicable to further restricted employees. I have issued separate guidance for political appointees.

Restrictions Applicable to All Department Employees

Department employees *may not*:

- A. Engage in political activity (to include wearing a political button or displaying campaign materials) while on duty, while in a government-occupied office or building, while wearing an official uniform or insignia, or while using a government vehicle; however, an employee may put a bumper sticker on a personal vehicle and park the vehicle in a government-owned or subsidized parking lot, but may not use the vehicle in the course of official business; and employees may display signs on their lawns and in their residences, and in similar personal circumstances;
- B. Use their official authority or influence to interfere with or affect the result of an election;
- C. Solicit, accept or receive a political contribution;<sup>2</sup> solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate; allow their official titles to be used in connection with fund-raising activities; or host a fundraising event;
- D. Run for nomination or election to public office in a partisan election;<sup>3</sup>
- E. Solicit or discourage the political activity of any person who is a participant in any matter before the Department.

Additional Restrictions Applicable to All Career SES, Administrative Law Judges, CRM, FBI and NSD Employees, and Criminal Investigators and Explosives Enforcement Officers in ATF

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<sup>2</sup> The only statutory exception is for soliciting, accepting or receiving a political contribution to a multi-candidate political committee from a fellow member of a federal labor organization or certain other employee organizations, as long as the solicited employee is not a subordinate and the activity does not violate E above.

<sup>3</sup> Under a new regulation promulgated by OPM, federally-employed residents of the District of Columbia may participate in the following activities: (1) run as an independent candidate in a local election to partisan political office; (2) solicit, accept, or receive political contributions as, or on behalf of, an independent candidate for partisan political office in a local election; (3) accept or receive political contributions on behalf of an individual who is a candidate for local partisan political office and who represents a political party; (4) solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office; and (5) solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party. None of these activities may be done while on duty, in a government building, using government equipment, wearing items that identify an employee's agency or operating a government vehicle. There are several additional caveats to this new rule and we advise you contact your ethics official for further guidance. 5 CFR 733.107(c) and 5 CFR 733.103.

In addition to the restrictions noted above, these individuals *may not*:

F. Distribute fliers printed by a candidate's campaign committee, a political party or partisan political group;

G. Serve as an officer of a political party, a member of a national, state or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions; this restriction includes advising a partisan political party or group on political strategies, areas of law and policies;

H. Organize or reorganize a political party organization or partisan political group;

I. Serve as a delegate, alternate, or proxy to a political party convention;

J. Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group;

K. Organize, sell tickets to, promote, or actively participate in a campaign event, convention or fund-raising activity of a candidate for partisan political office or of a political party or partisan political group; active participation includes making a speech at an event, appearing on the program, on the dais or in the receiving line of an event, or allowing your name to be used in connection with the promotion of the event; (passive participation is allowed and means merely attending a fund-raising or campaign event; acceptance of a gift of free or discounted attendance may be approved if it meets an exception to the gift rules and, for political appointees, is not prohibited by the Ethics Pledge, Executive Order 13490);

L. Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, political party or partisan political group;

M. Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;

N. Initiate or circulate a partisan nominating petition;

O. Act as recorder, watcher, challenger or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office;

P. Drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

### Social Media

It is important to note that the use of social media (e.g., Facebook, LinkedIn, Twitter, etc.) raises particular issues when it comes to political activity, and employees who utilize social media should become familiar with the restrictions that apply. A number of recent instances of misuse of social media in connection with political activities serve as reminders that employees must be vigilant in following the rules. The U.S. Office of Special Counsel (OSC) recently confirmed that an employee, who used his Twitter account to post over 30 “tweets” soliciting contributions for a partisan candidate, violated the Hatch Act. There have also been several instances of employees sending politically-charged emails to colleagues while on duty, also a violation of the Hatch Act. OSC has imposed suspensions up to 180 days for recent violations.

In order to avoid Hatch Act violations in using social media, please review the specific, detailed guidance on use of social media in connection with political activities, which is available on the Department’s website. <http://dojnet.doj.gov/jmd/ethics/hatch-act-materials.php>

### Candidate Photographs

Displaying photographs of candidates for partisan office is considered partisan political activity, and therefore is not permitted in the federal workplace. There are limited exceptions to this ban, including official photographs of the President (when the President is a candidate for re-election), and for some personal photographs of a candidate which generally include the employee in the photograph. Be cautious when using photo-based social media sites such as Instagram and Tumblr, as the Hatch Act restrictions may apply to photographs posted on those sites as well (and also may apply if posted while on duty, in a government workplace, or using government equipment).

If you have candidate photographs in your office or workspace and have any question whether you may display the photographs, please contact your ethics official.

If you have questions concerning any of these rules or policies, please contact your Deputy Designated Agency Ethics Official (DDAEO), or the Departmental Ethics Office, at (202) 514-8196.