A RE-EVALUATION OF THE 
HATCH ACT OF 1939

by

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APPROVAL

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>APPROVAL</th>
<th>ii</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATEMENT OF PERMISSION TO USE.</td>
<td>iii</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>iv</td>
</tr>
<tr>
<td>TABLE OF CONTENTS</td>
<td>v</td>
</tr>
<tr>
<td>ABSTRACT</td>
<td>vii</td>
</tr>
</tbody>
</table>

## CHAPTER:

### 1. INTRODUCTION

- Research Question                           | 4
- Methodology                                  | 5
- Endnotes                                     | 7

### 2. HISTORICAL BACKGROUND

- Early History - Through 1841                | 8
- The 1870s                                    | 11
- The Pendleton Act of 1883                    | 13
- Civil Service Rule I of 1907                 | 15
- The Hatch Act of 1939                        | 17
- The Commission on Political Activity of Government Personnel | 21
- 1975 Veto                                    | 23
- Current Issues                               | 24
- Endnotes                                    | 26

### 3. PRESENT DAY ISSUES

- The Politics-Administration Dichotomy        | 29
- Professionalism                              | 34
- A Vague and Unenforceable Law                | 37
- Employee Protections                          | 42
- The Constitutional Issue                     | 45
- United Public Workers of America v. Mitchell | 45
### TABLE OF CONTENTS—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Civil Service Commission v. National Association of Letter Carriers</td>
<td>47</td>
</tr>
<tr>
<td>Endnotes</td>
<td>51</td>
</tr>
<tr>
<td>4. EMPIRICAL EVIDENCE</td>
<td>54</td>
</tr>
<tr>
<td>A Report Submitted by the Subcommittee on Civil Service in 1983</td>
<td>54</td>
</tr>
<tr>
<td>Research Design</td>
<td>57</td>
</tr>
<tr>
<td>Control Group</td>
<td>58</td>
</tr>
<tr>
<td>Survey Questionnaire</td>
<td>61</td>
</tr>
<tr>
<td>Findings</td>
<td>64</td>
</tr>
<tr>
<td>Part One</td>
<td>64</td>
</tr>
<tr>
<td>Part Two</td>
<td>65</td>
</tr>
<tr>
<td>Part Three</td>
<td>72</td>
</tr>
<tr>
<td>Part Four</td>
<td>78</td>
</tr>
<tr>
<td>Endnotes</td>
<td>80</td>
</tr>
<tr>
<td>5. CONCLUSION</td>
<td>81</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>85</td>
</tr>
<tr>
<td>APPENDIX</td>
<td>90</td>
</tr>
</tbody>
</table>
ABSTRACT

Since its inception, the Hatch Act of 1939 has been the subject of continuous controversy. Specifically, political activity restrictions that apply to federal employees in the areas of political management and campaigning are seen to be unnecessary and possibly unconstitutional. On the other hand, the Supreme Court has twice upheld the constitutionality of the restrictions, and Congress has opted to maintain restrictions over the years.

Nevertheless, there has been little evidence to support either side of the controversy. One study was done in 1983 by the House Subcommittee on Civil Service, and the findings seemed to indicate that states with liberal or no restrictions do not suffer any more abuses than states with more restrictions. Although instructive, the study was impressionistic and inconclusive.

The methodology and empirical evidence of a survey that is presented in this professional paper fills an existing information gap: the normative arguments which surround the existence of political activity restrictions are now balanced by documented research. By analyzing the experiences of ten states in the area of political activity restrictions, the evidence suggests that allowing employees to fully participate in political activities does not lead to an increase in abusive political behaviors. Further, whether or not a state has restrictions, there is no correlation between the presence of restrictions and the absence of abusive behavior. Based on this evidence, it is at least plausible that what applies at the state level will apply at the federal level.
CHAPTER 1

INTRODUCTION

The Hatch Act, named after Senator Carl Hatch of New Mexico, and signed into law by President Franklin D. Roosevelt on August 2, 1939, is described as "an Act to prevent pernicious political activities." No other law in the history of the United States has endured longer controversy than this Act. Indeed, it ranks among the most troublesome in our history.

The most contentious part of the 1939 Act has been, and still is, Section 9(a). The object of Supreme Court cases in 1946 and 1973, Section 9(a) has had continuous litigation in the federal and state court systems since its inception. The section reads as follows:

An employee in an Executive agency or an individual employed by the Government of the District of Columbia may not—(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or (2) take an active part in political management or political campaigns.

In 1940, Section 12 was enacted as an extension to the Hatch Act, applying the same restrictions to all state and local government employees paid from federal funds through grants or loans. It is Section 9(a), Section 12, and the subsequent "little Hatch Acts," enacted by the many states,
that restrict the full political rights of federal, state, and local government employees. Currently, this segment, 8.7 million of our population, constitutes approximately six percent of the registered voters in the U.S., or five percent of all eligible to vote. Perhaps the most important item to remember is that we are not speaking of political activity on the job that was eliminated by the Civil Service, or Pendleton Act of 1883. Rather, we are referring to active political participation exercised during an employee's free time, or off the job hours.

Section 9(a) extends a proscription on most political activities to all federal employees in the executive branch of federal government with the exception of: (1) the President; (2) the Vice-President; (3) persons whose compensation is paid from the appropriation for the office of the President; (4) heads and assistant heads of executive departments or military departments; (5) employees who are appointed by the President, by and with the consent of the Senate, who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of federal laws; and (6) certain elected officials of the District of Columbia. The proscription does not apply to the legislative or judicial branches of federal government, nor does it apply to the various state governments, with the exception of employees affected by Section 12.
The Pendleton Act addressed the dysfunctions of the "spoils system" as it had developed in government, where party success had been fused with public administration; the victorious party took over the bureaucracy, not just in policymaking, but by the reward of jobs to the victors after the election. The denial of voluntary activity in political management and campaigns to the government employees in their free time, however, was not intrinsic to this late 19th century civil service reform.

Specifically, the Pendleton Act intended to replace the "spoils system" with a merit system in the federal government, and set forth injunctions that defined and forbade pernicious political activities necessary for a salutary civil service under a merit system. Except for Section 9(a) restrictions, there is a close resemblance between the Pendleton Act and the subsequent Hatch Act.

Disregarding Section 9(a) for the moment, it is still illegal for civil servants to: (a) interfere with another person's right to vote; (b) promise employment as a reward for political activity; (c) solicit or receive political contributions from beneficiaries of federal funds; (d) furnish or receive lists of federal employees for political purposes; (e) use any federal funds or authority for interfering with another person's right to vote; and (f) belong to any revolutionary political party that advocates the violent overthrow of the U.S.
government. Furthermore, there are political activities
criminal statutes making it a crime for any U.S. government
employee to discharge, promote, degrade, or threaten to do
so to any other employee for neglecting to make any
contributions of money or other valuable thing for any
political purpose.  

Research Question

As a whole, the Hatch Act was conceived as a reaction
to some political behavior abuses that were evident in the
1930s. As such, it was, perhaps, enacted with the best of
intentions. However, while there are some who believe that
the Hatch Act Section 9(a) restrictions still serve a
useful purpose, there are many who deny the Hatch Act prima
facie, stating that it conflicts with constitutional
rights. Is there any evidence to prove that political
activity restrictions serve a useful purpose? Are Section
9(a) restrictions something that the United States, as the
world's most respected democracy, should retain as law?

Historically, the premise of civil service reform in
the United States has been merit and freedom from
pernicious political pressures, but U.S. citizenship
implies that a citizen is free to participate in the
politics of this country. The civil servant, being a
citizen of the United States first, the logical question
is: By what contrived reason is the civil servant less a
citizen for being an employee of the U.S. government? Is this not a contradiction? America is "the land of the free"; yet to be an employee of that government, or many state governments, one loses some of his/her freedom. This sounds paradoxical. Is this tenable?

Methodology

Empirical approaches to studying the controversy surrounding Hatch Act restrictions have been rare, but an attempt was made in 1983 by the U.S. House Subcommittee on Civil Service. It was only a beginning, and not completely satisfactory. The purpose of this paper is to clarify and add to the body of knowledge which the Subcommittee initiated. In a case study format, research on selected state experiences in the area of state employee political activities gives a documented account of recent attempts to allow state government employees to fully participate in political activities. Based on the results of this research at the state level, it is at least plausible that what holds true there should hold true at the federal level.

Starting from this premise, the rest of the paper is organized thus: Chapter 2 details the history of the regulation of political activities of government employees. Chapter 3 is devoted to a discussion of present-day issues as they relate to political activity restrictions. Chapter
4 outlines the methodology of the study in the area of state experiences with restrictions, and Chapter 5 summarizes the findings and draws some conclusions.
Endnotes

1 In 1966, Congress reenacted Section 9(a) into the Hatch Political Activities Act, to become law separate from the other sections of the 1939 Act. It is currently codified in United States Codes, Title 5, Chapter 73. For the purposes of this paper, it will be referred to as Section 9(a).


3 Currently codified in United States Code, Title 5, Chapter 15.


CHAPTER 2

HISTORICAL BACKGROUND

To comprehend Section 9(a), we must turn back the pages of history. This chapter details the history of the regulation of political activities of government employees; from the early days of the republic, the decades of the spoils system of government, late 19th and early 20th century period of civil service reforms, the Hatch Act of 1939, to the present.

Early History - Through 1841

The political activity of government employees has been a concern of elected officials since the earliest days of our republic. Thomas Jefferson, the nation's third president, was among the first to raise the issue. Speaking on the practice of awarding positions in the federal bureaucracy based on party identity, and the subsequent political activities in which these office-holders took an active part, Jefferson stated:

The right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given shall it have any effect to his prejudice; but it is to be expected that he will not attempt to influence the votes of others.1
Although Jefferson proposed restrictions to Congress, they were not implemented. During the first years of the republic's existence, public administration or the federal bureaucracy was not an object of laws or reform. Patronage, alluded to in Jefferson's early statement, had always been, to some degree, a part of administering the federal government. It was not until President Andrew Jackson's Administration that the practice took on new dimensions.

In 1829, President Andrew Jackson faced a civil service dominated by the values of property and wealth. As the spokesman for farmers and workers, he believed that in order to effect his programs, it was necessary to change the practice of retaining a permanent staff of government workers. To do this, he decided to redistribute federal offices. In a message to the Congress in December 1829, he spoke these famous lines:

There are, perhaps, few men who can for any great length of time enjoy office and power without being more or less under the influence of feelings unfavorable to the faithful discharge of their public duties. Their integrity may be proof against improper considerations immediately addressed to themselves, but they are apt to acquire a habit of looking with indifference upon the public interests and of tolerating conduct from which an unpracticed man would revolt. . . . The duties of all public officers are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance, and I cannot but believe that more is lost by the long continuance of men in office than is generally to be gained by their experience.2
In this same speech, he also stated:

Office is considered as a species of property, and government rather as a means of promoting individual interests than as an instrument created solely for the service of the people.3

What began as a restructuring of a rigid bureaucracy later metamorphosed into an unrestrained system of spoils. The political advantages of using government employment as a reward was later read into the Jacksonian ideal of "rotation in office." It evolved into an accepted method of plunder every time a new Administration took office, and eventually, the abuses of the spoils system became more and more apparent in the American scheme to keep the party in power. The argument was that government jobs were to be rewards for political activity; the attempt was to create party loyalty and to make the party system work.

The spoils system that occurred as a result, underscored the need for permanency in the bureaucracy, and for skill or merit as a basis of hiring for most government jobs. Political abuses became apparent as early as the 1840s due to the obvious corruption of the system, and the fact that under such a system, administration was abruptly halted upon the election of a new party to office.

Action to limit the political activities of government employees was taken by Secretary of State Daniel Webster in 1841. He proscribed, under penalty of removal, "partisan interference in popular elections in order that elections shall be free from undue influence of official station and
authority."^ Although Webster's prohibition did not apply to voluntary partisan political activity, that is, activity freely given with no hidden partisan agenda, the situation was summarized by George William Curtis, member, National Civil Service Reform League, thus: "The business of the nation and the legislation of Congress are subordinated to the distribution of plunder among eager partisans."^ There were few other attempts to control the political activities of federal employees during this period.

The 1870s

Reform had its roots in Republican Party actions of the 1870s. In December 1870, President Ulysses S. Grant recommended civil service reforms to be implemented through the Grant Commission. As a result, in 1871 Congress passed an appropriations bill to which a rider was attached. In part, the rider read as follows:

The President is authorized to proscribe such regulations for the admission of persons into the civil service of the U.S. as may best promote the efficiency thereof . . . and may prescribe their duties and establish regulations for the conduct of persons who may receive appointments in the civil service.^

The predecessor to what was later called the Civil Service Commission, the Grant Commission, faded away and died, in 1873, as Congress refused to appropriate further funds for it.
In 1877, President Rutherford B. Hayes appointed a Commission to investigate how the spoils system of the federal bureaucracy influenced state and municipal politics. Apparently, the greatest abuses were occurring at the local level, especially in the state of New York. Chester Alan Arthur, appointed by President Grant to be Customs Collector for the Port of New York in 1871, was found to be rewarding party workers with government jobs and expecting them to pay part of their salaries back into Republican Party campaign funds. Although this was only one instance of abuse found, as a result of the investigations, President Hayes issued an Executive Order in 1877 which provided that "No government employee should be required or permitted to take part in the management of political organizations, caucuses, conventions, or election campaigns." The order was aimed at preventing the coercion of government employees to engage in political activity. Ironically, Chester Arthur lost his job in New York, but was elected as Vice-President under President James Garfield. When Garfield was assassinated in 1881, Arthur became President. It was he who signed the milestone civil service reform legislation, the Pendleton Act, into law two years later.
The Pendleton Act of 1883

The Civil Service or Pendleton Act of 1883 was the culmination of the reform movement. The assassination of President James A. Garfield on July 2, 1881 by Charles J. Guiteau, a frustrated Republican Party worker who had failed to receive an appointment as U.S. Consul in Paris, provided added impetus.

Political affiliation as a qualification for high level policy positions has never been seriously questioned in our American democracy; a Republican appoints a Republican, and a Democrat appoints a Democrat. The principle of civil service reform during this period, however, seemed to be that political behavior at all levels of office should be controlled. Public distrust of the federal bureaucracy and the potential misuse of power by the uncontrolled bureaucrats placed the reformers in a quandary. Control over the bureaucracy by elected officials is, after all, a basic American democratic principle, and it was this principle that many opponents thought the civil service reforms undermined. Initially, it would appear, the merit system of employment espoused by the reformers was considered undemocratic by many.

Ultimately, the spoils system proved to be inefficient, although it did not die easily. Whereas, prior to the reforms, the President and the political parties could
not afford to neglect the opportunities occasioned by patronage, the selection process had become increasingly burdensome with the passage of time and the growth of the federal bureaucracy. Abuses within the system threatened to grow worse. Consequently, after Garfield was assassinated a bill for civil service reforms was introduced by Senator George Pendleton of Ohio.

It appears that civil service reform took on a distinctly partisan flavor in debates. Democrats, long out of office since James Buchanan in 1860, believed "reform" would simply ensure that Republicans would be retained in office at the expense of limited vacancies for the Democrats. (Later, with the Hatch Bill, Republicans favored it overwhelming, as they considered it a limitation on the Democrats' "political machine" behind President Franklin D. Roosevelt's Administration.) It appears, though, that the spoils system had outlived its usefulness.

Finally reaching the desk of President Chester A. Arthur in January 1883, the Civil Service Act, "An Act to regulate and improve the civil service of the United States," was passed into law. This Act, a benchmark in the development of modern civil service, established the Civil Service Commission (CSC), under direct authority of the President, to administer a merit system of employment in the federal government. It provided for open competitive
examinations, and forbade discrimination in employment for political reasons. In sum, it established the merit system as the basis for public employment in the federal bureaucracy, as opposed to political favor.

In 1886, President Grover Cleveland defined the CSC rules governing the political activities of federal employees. In establishing guidelines within which federal employees could participate in partisan political activities, it is clear that he meant for employees to have the right to engage in voluntary political activities. The Executive Order read, in part:

Individual interest and activity in political affairs are by no means condemned. Officeholders are neither disenfranchised nor forbidden the exercise of political rights, but their rights are not enlarged nor is their duty to party increased to pernicious activity by office holding.9

This order governed the political activities of government employees until President Theodore Roosevelt issued Civil Service Rule I in 1907.

Civil Service Rule I of 1907

The Pendleton Act of 1883 had created the CSC, consisting of three Commissioners. Theodore Roosevelt, long an advocate of civil service reform, obtained the appointment as a Commissioner in 1889, and served in this capacity until 1895. It was under Roosevelt's direction
that the CSC was institutionalized as an organization capable of enforcing the merit system.

He became frustrated with the CSC early in his tenure, due to the lack of enforcement authority in appointments to federal jobs. While only 10 percent of the appointments had come under CSC authority immediately following the enactment of the 1883 reforms, by Roosevelt's time still only 25 percent of all employees were classified. The other 75 percent of all federal appointments were still controlled by a spoils system.

In 1894, Roosevelt stated his ideas on the kind of rule which should be in effect. The outcome was Rule I. Section 9(a) of the Hatch Act is essentially the wording and intent of Rule I as promulgated by the CSC in 1907 under the direction of its author, former CSC Commissioner, and then President, Theodore Roosevelt. Rule I reads as follows:

No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. Persons who by the provisions of these rules are in the competitive service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns.10

This policy of proscribing political activity for the classified or merit system employees persisted in Section 9(a) of the Hatch Act. Thus, those whose appointments were in no part due to partisan political considerations, were
prohibited from political activity. Also, these employees were least reliant on political activity for their job security.

In summary, the basic reforms of 1883 substituted a merit system for political qualifications in executive branch employment. The law forbade federal employees from soliciting or receiving political contributions and from using official authority or influence to coerce the political activity of any person. Furthermore, the original rules prohibited discrimination in employment for political reasons. During Roosevelt's tenure, the CSC ensured that the extension of the merit system diminished patronage and, therefore, political activity on the job.11

The Hatch Act of 1939

The Hatch Act was born out of the resurgence of spoils activities in the 1930s. The federal workforce had grown during the depression years and at one point the Work Projects Administration (WPA), created to give unemployed Americans temporary jobs, hired as many as one-third of all the unemployed. In 1938, allegations were made that WPA funds were being used to influence votes in the 1938 Senatorial elections.

In 1938, Senator Morris Sheppard of Texas was appointed to head the Senate Special Committee to Investigate Senatorial Campaign Expenditures and Use of
Government Funds. The Sheppard Committee was directed to investigate any use or alleged use of federal funds to influence votes, and any violation or alleged violation of the Federal Corrupt Practices Act, the act which dealt with campaign expenditures of candidates for national elective office. In its final report to the Congress, following hundreds of meetings, public hearings, and field investigations, the Committee made several specific recommendations dealing with contributions and campaign expenditures, but offered no recommendation concerning the political activity of government employees.

By the middle of the Great Depression, approximately 61 percent of federal employees were under the merit system. The Sheppard Committee investigations had uncovered complaints and allegations of solicitation of funds from WPA employees, and allegations of intimidation and coercion by federal employees on behalf of Senatorial candidates. In all cases, non-classified employees, that is, politically appointed WPA employees not under the merit system, were found to be involved in the abuses. That is not to say that 39 percent of the federal workforce acted perniciously; in fact, less than two percent were found to be involved in such activities. The irony of this situation is that the Congress almost completely ignored the Committee recommendations concerning gross abuses in
campaign expenditures, as previously discussed, and focused on the abuses found within the WPA.

Senator Carl Hatch, of New Mexico, was a member of the Sheppard Committee, and an influential member of the Senate at the time. Early in his career he had developed a strong distaste for the political activities of government employees. Hence, he was an ardent supporter of Civil Service Rule I, and wished to see it written into law. When the Sheppard Committee findings were debated in Congress in 1939, he took the opportunity to author a bill which included the rule. As he stated to his colleagues in the Senate:

. . . classified civil service employees, and there are more than 500,000 of them, are prohibited from political activity in political campaigns. I believe in this rule; I believe it is a wholesome rule for government . . . no party would dare propose that it be abolished. Believing as we do that the rule is a wholesome one, the sponsors of this bill saw no reason why its provisions against political activity should not apply to all similar employees of the federal government. Therefore, we wrote this civil service rule into Section 9.13

The debate surrounding the birth of the Hatch Act indicates that no Congressman questioned the desirability of enjoining the despicable practices of coercion, intimidation, and misuse of public funds in the federal bureaucracy. Senate Bill 1871 was written in view of the political abuses of the WPA that were revealed by the Sheppard Committee in 1938, but as we have seen, the purpose of the investigation was not primarily to uncover
WPA abuses. The fact is that most of the Sheppard Committee recommendations, especially those concerning campaign expenditures, were not even discussed.\textsuperscript{15} Even though Hatch's prohibition of political activity by federal employees, contained in Section 9(a), was not a major point of discussion, it appears that no one knew how to just get rid of it. For many Congressmen it seemed right, and yet so wrong. Nonetheless, the bill passed through the Senate without much debate, and passed through the House after considerably more debate.

Upon reflection, the real issue seems to be that our nation was in the midst of the Great Depression, and that the Roosevelt Administration was so enmeshed in the daily lives of so many Americans, through New Deal policies, that the presence of an enormous political machine must have been overpowering. As discussed earlier, millions of Americans were employed in government programs, and if a job meant a vote, the apparent reasoning was that the Hatch Act, without Section 9(a), would not be effective. Congress might have cut off relief funds altogether, but they couldn't cut relief and stay in power. This was the "spoils" of 1939. Section 9(a) was small recompense for this, but effectively, it took away freedom of active political participation from the federal public employee.

In 1940, the Hatch Act was amended to include not only federal employees, but also state and local government
employees whose principal employment was in connection with any activity financed in whole or in part by loans or grants from the federal government. Such is how the Hatch Act in its entire force was born, and ever since, Section 9(a) has been the subject of countless efforts, in the courts and in the Congress, to repeal it. Yet, it was not until the 1960s that the Congress took a second look at the Hatch Act.

The Commission on Political Activity of Government Personnel

In 1966, a bill was passed to create a commission to study the effects of political activity laws imposed on public employees. The Commission on Political Activity of Government Personnel was given the mission of making

... a full and complete investigation and study of the federal laws which limit or discourage the participation of federal and state officers and employees in political activity with a view to determine the effect of such laws, the need for their revision or elimination, and appraisal of the extent to which undesirable results might accrue from their repeal.16

According to the Commission's report of Findings and Recommendations, in contention were the constitutional rights of free speech and association, against those principles that assure an impartial transaction of the public's business whereby employees are hired, promoted and dismissed on the basis of merit rather than political favoritism.17
Whereas no public hearings were held prior to the passage of the Hatch Act in 1939, the Commission conducted hearings and field investigations throughout the country, and studied the situation for well over a year prior to reporting back to Congress. This Commission had 15 recommendations to make, and according to Charles O. Jones from the University of Arizona, a member of the Commission, the main points can be summarized as follows:

(1) The present federal Hatch Act is confusing, ambiguous, restrictive, negative in character and possibly unconstitutional; (2) in its deliberations regarding changes . . . the prohibitions would only be those that Congress finds necessary to protect employees against actions that would threaten the integrity, efficiency and impartiality of the public service; (3) an effort should be made to strengthen the law on coercing public servants to participate in politics.18

The study was revealing to some, for it showed the lack of understanding that civil servants have of the Hatch Act. Also, it pointed out to lawmakers many inequities in the way the law is applied. A majority of the Commission, however, prevailed against loosening the bonds that prevent full political participation by federal employees, believing that any direct role of the employee in partisan politics would tarnish the public image of the impartial civil servant.

In 1974, a rider to the Federal Election Campaign Act Amendments allowed formerly "Hatched" state employees to participate, but not run, in partisan elections. The
following year, more revisions to the Hatch Act were debated by Congress.

1975 Veto

In 1975, the Congress held public hearings for the revision and repeal of Section 9(a) of the Hatch Act. In debates that followed, no new arguments or logic were added except, perhaps, that the passage of time had made Section 9(a) outdated. Those in opposition to changing the section placed hypothetical "what-ifs" into a modern perspective, but a review of the legislative hearings and debate shows that the rhetoric did not approach the original polemics of 1938-40. What was new since 1939? The United States was identified as the only remaining Western democracy that absolutely denies active political participation to their federal civil servants.

A revision bill was drafted, and in early 1976 the 95th House of Representatives passed it. It began:

A Bill, to restore to federal civilian employees their rights to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

Subsequently, the Senate passed the bill, but in April 1976, President Gerald Ford vetoed the Act. In 1977, Representative Clay from Michigan reintroduced an identical version of the bill President Ford had vetoed. After passing the House, it was simply tabled in the Senate.
To date, this is the history concerning regulations of political activities of federal employees, and in the words of Representative Patricia Schroeder, Chairwoman of the Subcommittee on Civil Service, "It does not seem likely that any legislative changes will be made in the near future."22

Current Issues

Where, then, does the next battlefield exist? Litigation brought by the Reagan Administration in late 1985 against three powerful public employee union presidents suggests that the battle lines are already being drawn.23 The crux of the case is that the three union presidents, all on leave without pay from their federal jobs, used their respective union publications to criticize the Reagan Administration and applaud Mondale during the 1984 presidential campaigns.

Kenneth Blaylock, National President of the American Federation of Government Employees, and one of the union officials named in the suit brought by the Reagan Administration, sees this latest action as part of an ongoing "covert war" against federal employees. According to Keith Sinzinger of the Washington Post, Blaylock says recent Reagan Administration actions such as contracting out are intended
. . . to render the federal government dysfunctional and then to reduce it. . . . Initiatives such as large scale drug testing, polygraph exams and censorship use the guise of 'national security' to discredit, humiliate and quiet the workforce.24

Even though the Merit System Protection Board ruled for the Administration, Marrick Masters and Leonard Bierman state that over the past few decades federal employee unions have assumed a de facto, if not quasi-legal, right to participate in partisan political activities.25 The law begs for further policy clarification, but the Supreme Court has never ruled on Hatch Act restrictions as they apply to public employee unions. The call, it seems, is for Congress not only to take action on restrictions as they apply to the unions, but also to re-evaluate restrictions on federal employees in general.

Having reviewed the history of the Hatch Act, the time is now to examine its normative assumptions and premises. This is the subject matter of the next chapter.
Endnotes


6Ibid., p. 38.

7U.S., Committee on Post Office and Civil Service, Documentary Background, op. cit., p. 80.


9U.S., Committee on Post Office and Civil Service, Documentary Background, op. cit., p. 81.


14 Ibid., debate over what is considered pernicious political activity, pp. 9258-9276.

15 U.S., Congress, Senate, Senator Barkley commenting that all the Sheppard Committee recommendations have not been discussed: Senate Bill 1871, Congressional Record, 76th Cong., 2nd sess., 27 June 1939, vol. 84, p. 9962.


20 In 1975, the House Subcommittee on Civil Service conducted a study of the prevailing practices in several other democratic nations with respect to the regulation of voluntary political activities by public employees. The results of the study are as follows: (1) In Sweden, civil servants enjoy the same political rights as other citizens; (2) in France, the majority of civil servants have complete freedom, while those who hold positions of responsibility (prefects and direct agents of the government) cannot stand for election within the area of their prefecture; (3) in Australia, civil servants have full political freedom; (4) in West Germany, civil servants have complete freedom; and (5) in Canada, civil servants are only restricted from actively participating in campaigns, other than for himself/herself, for the House of Commons.

22 Representative Patricia M. Schroeder, Chairwoman of the House Subcommittee on Civil Service, communication to author, 4 November 1985.


CHAPTER 3

PRESENT DAY ISSUES

The purpose of this chapter is to identify and examine five issues that must be discussed regarding political activity restrictions. As such, this normative discussion is intended to raise questions regarding the appropriateness of restrictions today in an atmosphere far different from the one existent in the 1930s. In retrospect, the Section 9(a) restrictions, perhaps, were thought to be necessary and served a useful purpose. But are they now outdated? The issues are:

(1) the policy-administration dichotomy;
(2) professionalism;
(3) the vague and unenforceable nature of the law;
(4) employee protections; and
(5) the constitutional issue.

The Politics-Administration Dichotomy

One notion surrounding the Hatch Act has been defended by many writers in public administration who have long extolled the virtues of the politically neutral civil servant. This individual carries out orders without regard to the party affiliation of the elected officials. Elected
officials determine policy and civil servants execute this policy in a mechanical fashion. This concept, the politics-administration dichotomy, was developed by turn-of-the-century civil service reformers.

According to Laurence O'Toole of Auburn University:

The first articles of the Constitution clearly delineate three branches of national government and assign apparently-distinct functions to each. Much of that fundamental document, however, indicates the multitudinous fashions in which the separateness of these powers . . . is softened by the need for joint action.¹

What the founders did not specify, formally, was the place of administration in this arrangement; the word "administration" does not appear in the Constitution.

During the initial years of our nation, the role of administrative agencies in the government did not appear to be a concern. It was not until the latter half of the 19th century, when problems with patronage and the need for skillful civil servants became apparent, that the doctrine of separation of powers was re-examined. According to David Rosenbloom, the rise of the administrative state has tended to collapse the functions of the three governmental branches into the administrative branch to compensate for a . . . model of government not well-suited to public policy aimed at widespread penetration of the economic and social life of the political community. It is weighted in favor of inertia and inflexibility. . . . In this country, it [the rise of the administrative state] represents an effort to reduce the inertial qualities of the system of separation of powers. In essence, all three governmental functions have been collapsed
into the administrative branch. Thus, public administrators make rules (legislation), implement these rules (an executive function), and adjudicate questions concerning their application and execution (a judicial function).  

Near the turn of the century, the rise of the administrative state, accompanied by an emphasis on the role of a strong executive, signalled a change in the status quo. Congress had become ascendant by the time of the late 19th century, and the potential shift in power to a dominant executive created, in many civil service reformers, a certain ambivalence in the status and direction of American public administration. As O'Toole states, reform leaders focused on a distinction between politics and administration as a way both to render comprehensible and also, it must be said, legitimate the unmistakable phenomenon before them. . . . The politics-administration framework seemed to hold the promise of uniting the reformers.  

The Hatch Act is premised on the ideals of the early reformers who were convinced that a rigid dichotomy between "deciding" and "executing" could be drawn. At the time, it appeared to be a way to deal with the rise of the administrative state, that is, keep public administration and the associated civil service "removed from the hurry and strife of politics."  

The perpetuation of the idea of this dichotomy relies on a mechanical concept of the human being. One excellent example comes from a recommendation of the second Hoover
Commission in 1955. The recommendation involved the creation of a senior civil service, an elite group that would be completely neutral politically, and prepared to serve any administration in office faithfully regardless of position or of political controversies.5

Congress did not accept this Hoover Commission recommendation. (Subsequently, the 96th Congress did accept this concept by enacting the 1978 Civil Service Reform Act that created a Senior Civil Service.)

Section 9(a) of the Hatch Act assumes not only that political neutrality is desirable, but that it is also attainable. In retrospect, 20th century developments in the real world of government indicate that there is not, nor can there be, a clear division between those who make policy and those who execute it. As Frederick Mosher points out:

How can a public service which is neutral in political matters and which is protected be responsive to a public which expresses its wishes through the machinery of elections, political parties and interest groups?6

It would be incorrect to conclude that the politics-administration construct is merely a myth that paraded as a truth in an earlier era of our nation's history, and served no useful purpose. Reformers fashioned this orthodoxy to deal with an immediate necessity, and if it was not always consistent, it was compelling enough to bring together different views about the operation of our government's
branches, and enact several basic policies that now form the core of the modern administrative system.

Today, the concept of such a dichotomy is bankrupt. According to Dwight Waldo, "In short, the dichotomy has collapsed." The dichotomy helped an earlier generation come to terms with and fashion an administrative state, but it no longer rings true. The politics-administration dichotomy does not occur, and political activity restrictions that rely on the precepts of this doctrine make them conceptually flawed. Restrictions based on some notion of an apolitical civil service simply are not in tune with reality.

In our democratic system, government employees are ultimately responsible to elected officials for executing policies that are frequently determined through a system of "sharing" between the administrative structure and the branches of government. A rigid politics-administration dichotomy is unrealistic. In this sense, the necessity for a responsive bureaucracy that is not inhibited by partisan political values is undisputed. What is disputed is the perceived historical association between the concept of neutrality and Hatch Act restrictions. The association is that the employee cannot do his job, free of personal political values, if he is politically active during off-duty hours.
As explained in Chapter 2, when President Jackson confronted a federal bureaucracy unsympathetic to the needs of his constituents, farmers and laborers, it was a responsive effort on his part when he introduced the philosophy of a system of "rotation in office," or as it came to be known, the spoils system. The administrator was then directly subject to the will of the people under Jackson's theory, but in practice, the system quickly reverted into spoils.

F.W. Riggs describes why this practice was replaced:

As American society became more industrialized and complex, it became apparent that the spoils system could not provide personnel with sufficient training and experience to staff very complicated modern services. . . . The problem was solved eventually, at least to some extent, by the introduction of "technical" examinations for the public service.

With the passage of the Pendleton Act of 1883, the orientation of the modern bureaucracy shifted toward "technical" services for a rapidly industrializing society. The civil service reform laws introduced competitive examinations stressing technical proficiency as the qualification for employment, and merit as the premise for tenure in job.

As Riggs explains, the modern bureaucracy was predicated on the economic system, where the market has adapted the bureaucracy to an interdependence with the private economy. The basic values in the bureaucracy as
such are determined by the industrialized society. Since the late 19th century, this market system has created the values underlying the system of public employment; other social values have been of secondary importance. This means that an individual has a free choice of selling his/her services to the bidder of his/her preference, based on the market for those services.

In the bureaucratic environment of government, technical services become easily transferrable between agencies, and in such an atmosphere, the civil servant is conditioned to transfer his/her professional loyalty whenever a change in employment takes place. Riggs suggests that this facile transference of loyalty is an essential characteristic of our administrative structure. It is not on the basis of political loyalties or other values that recruitment and retention in the civil service are based, in other words, but on the marketability or quality of technical proficiency and performance of task.

Harold Seidman also argues that political values do not figure into a civil servant's value construct where his profession is concerned. He points out that the priority system of loyalty is first, to the profession. "The American Civil Service emphasizes loyalty to one's profession, program, bureau and department . . . in that order."
Dedication to the profession, to the job at hand, and to a successful career, provide the answer to lingering questions concerning loyalties that the concept of neutrality was used to address. The Section 9(a) restrictions legislate civil service morals by espousing political value neutrality, and this is not only unrealistic, it is unacceptable. Professionalism characterizes today's civil service, and the conduct of employees is based not on personal political values, but rather, on the value of dedication to a profession. The neutral or non-political role of the government employee essentially says he/she serves with equal loyalty whichever political party controls the government. Their allegiance belongs to the profession and current job, regardless of personal political beliefs.

Given this discussion of professionalism, and the previous discussion of the politics-administration dichotomy concept, one criticism of Hatch Act reformers has been that they have often been remiss in fully justifying an easing of political activity restrictions. According to Milton Esman, a former Staff Officer of the Civil Service Commission, reformers are "too busy attacking the principle of political neutrality." The purpose of the next section is to address the law itself. Specifically, one argument which has been advanced by government employees, public union officials, legislators, and writers in public
administration is that the Hatch Act Section 9(a) restrictions are vague and unenforceable.

A Vague and Unenforceable Law

In 1973, Supreme Court Justice William O. Douglas wrote the dissenting opinion in U.S. Civil Service Commission v National Association of Letter Carriers, a case challenging the constitutionality of Section 9(a) of the Hatch Act. He wrote, in part:

The Act incorporates over 3,000 rulings of the Civil Service Commission between 1883 and 1940 and many hundreds of rulings since. But even with that gloss on the Act, the critical phrases lack precision. . . . The prohibitions in the Act are worded in generalities that lack precision with the result that it is hazardous for an employee if he even ventures to speak on a political matter since he will not know when his words or acts relating to political subjects will offend.14

Justice Douglas is echoing a concern that has questioned the credibility of the Hatch Act almost from its beginnings. Passed with good intentions, it nonetheless has become a welter of confusion for employees and administrators alike.

According to Philip L. Martin,

The challenge against the Hatch Act is based first on the interpretation that it was intended only to protect public employees from involuntary political activity, and second, that the promulgation of rules and regulations to enforce the law have exceeded the original purpose.15

Hatch Act proscriptions have been interpreted to prohibit a wide variety of political activities, but the
interpretations have been accompanied by a confusing array of qualifications and exemptions.16

A classic example of confusing qualifications to a Section 9(a) restriction, cited by many Hatch Act critics, is the one involving political campaign parades. The law specifically prohibits active participation in political campaigns, but the CSC decided that if a government employee is a member of a band that is generally for hire as a musical group, he may play at a political parade or rally. Evidently, this exemption is based on an assumption that a trumpet player, Democrat or Republican, will play no differently for his own party activity than for the other party.

The point is that the law is vague, and has been interpreted such that it would be impossible to provide a listing of what activities an employee could engage in. For instance, would active participation include a supervisor who wore a campaign button to the office? It is not entirely clear. How far is the reach of the law? One rule, concerning political activity by indirection, states:

Employees are accountable for political activity by persons other than themselves including wives or husbands if, in fact, the employees are accomplishing by collusion and indirection what they may not do openly and directly.17

From a recent correspondence with the Office of Special Counsel (OSC) of the Merit System Protection Board (MSPB), the agency charged with enforcing Hatch Act
restrictions, an OSC attorney admitted it was not possible to provide a listing that would identify each and every type of political or campaign activity which the law has been interpreted to prohibit, e.g., stuffing envelopes, working a telephone bank, typing letters, etc.  

Instead, the OSC issues the warning that ignorance of the law does not excuse an employee's violation of the Hatch Act, and reliance on incorrect or unofficial information also does not excuse a violation. The OSC will issue advisory opinions for employees who have specific questions pertaining to the application of the law.  

An interesting interpretation of how we have arrived at this situation of doubt and uncertainty is provided by Philip Martin in his article, "The Hatch Act in Court: Some Recent Developments." Martin's analysis of the legislative debate and records surrounding the birth of Section 9(a) led him to the conclusion that, while legislators wanted to protect employees from coercion and involuntary political activity, they also wanted to ease previous CSC restrictions and protect the freedoms of speech and association. They intentionally wrote the legislation in a broad and loosely worded style in order that a liberal interpretation be permitted. Notwithstanding the late Senator Hatch's known proclivity for harsh political activity restrictions, more recent members of Congress have argued that the basic intent of the legislation has not been implemented. What has happened is that the vague language has been used to
have an opposite effect — a narrower definition which has led to greater restrictions. 20

The situation is one which often happens with vague, loosely worded legislation: the administering agency applies the law without clear Congressional intent. A major dissatisfaction, therefore, has been that government employees are being denied constitutional rights because the original intent of the law has been clouded.

This climate of doubt and uncertainty, first discovered by the Commission on Political Activity of Government Personnel in 1966, often results in an employee failing to even vote, by reasoning that the only way to stay out of trouble is to stay completely away from elections. As the old axiom goes, "When in doubt, do nothing." Perhaps the greatest injustice to our democracy is that employees, not sure of what they can or cannot do, do nothing. One individual, testifying before the House Subcommittee on Civil Service in 1975, stated:

The vagueness and confusion of the present statute makes it a 'sword of Damocles' hanging over the heads of millions of federal and state employees. That uncertainty inhibits them in the exercise of rights protected by the First Amendment, and encourages them to exercise self-censorship beyond the actual prohibitions of the statute because it is difficult, if not impossible, to determine the reach of the law with confidence. 21

Aside from the fact that Section 9(a) has been found to be vague, and oftentimes nebulous, there is also evidence that a manifest reason for political activity
restrictions in the first place, protecting employees, is not realized. The desire of Hatch Act advocates to protect employees from such abuses as coercion is laudable, but the experience has been that these kinds of cases are hard to prove. In light of this dilemma, the chosen alternative has been to insulate the employee from active political participation per se.

In 1969, John Macy, a former Chairman of the CSC for eight years, was asked to summarize his experience with convictions for coercion violations. He stated, "There have been a number of cases brought before the Commission, but to my knowledge there have been few convictions. . . . I am unable to cite any."22 By 1986, seven years after the establishment of the OSC, convictions have been rare -- 33 in all -- and most of these have involved blatant violations such as running for office and holding an official position in a political party campaign.23

Some might say that the small number of convictions must be an indication that the restrictions are working, but this is not the case. We do not have, after all, a "government of angels." The difficulty lies in the fact that

. . . the evidence required to prosecute a conviction imposes a burden of proof beyond any reasonable doubt on the government's Petitioner, rather than a standard of substantial evidence.24

The false assumption is that there should be a wholesale deprivation of any occasion to misuse office, and by
denying the tool, as such, you do not have to worry about policing. But, to the extent that it is possible to develop workable policies on coercion and other employee protections, an employee could be given more political activity rights. As Jay Shafritz states:

. . . it is at least plausible that employee protections against arbitrary adverse actions and the Supreme Court rulings in *Elrod v. Burns* and *Branti v. Finkel* have made coercion increasingly unlikely.\(^{25}\)

**Employee Protections**

Subsequent to the civil service reforms initiated in the late 19th century, various limitations were placed on the civil liberties of civil servants, not only towards the goal of a politically neutral federal workforce, but also to impose the transcendental idea that public employees should meet a higher moral standard than the public in general. Under the so-called doctrine of privilege, Arch Dotson reasons that:

The principle evolved that because no one has a right to public employment, that is, because it is a privilege, it follows that public employees have no constitutional rights in the job. . . . Essentially, this formed the background against which Hatch law advocates advanced their restrictions successfully.\(^{26}\)

Public employees could thereby be denied all sorts of constitutional rights and, especially, could be prohibited from overt political activity such as political management and campaigning.
This doctrine has withered considerably over the past decades since the Hatch Act was made law, mainly as a result of extensive litigation. Accordingly, there has been a gradual shift in direction from demand for total neutrality — no civil rights for public employees — to normal rights and obligations. As documented by David H. Rosenbloom, in the place of old restrictions the courts appear to be applying a case-by-case approach, and he perceives that this approach serves to sharpen definitions of restrictions that for so long have been broad and open for variable interpretation.27 As such, Rosenbloom states the result has been that, "Political neutrality is becoming more narrowly defined as partisan neutrality."28

Considering the Hatch Act's premise of protecting government employees from coercion, and most especially, partisan related patronage actions, the present and potential impact of Elrod v. Burns and Branti v. Finkel on the institution of patronage employment would be difficult to overestimate.29 Specifically, to the extent that Section 9(a) was created to end politically motivated personnel actions and associated merit system abuses, and historical documentation reflects this was the major reason, the Supreme Court rulings in these two cases offer a more equitable and reasonable way of protecting employees while allowing their constitutional rights of freedom of speech and association.
In *Elrod*, the Court held that a politically motivated discharge of a non-policy making or non-confidential employee violates that employee's First Amendment rights. Further, *Branti* clarified that the label of "policymaker" or "confidential" employee is to be based on a demonstration of whether party affiliation is a requirement for effective performance of prescribed duties. Thus, while not ruling out the use of patronage completely, the Court created a two part test to be used in future decisions. Essentially, a doctrine of balance was created: vital state interests, on the one hand, and an employee's First Amendment rights, on the other. In summary, a politically motivated discharge will be found unconstitutional unless it can be proven that political affiliation serves a vital state interest in the performance of duties.

*Elrod* and *Branti* have served notice that government employment is not to be awarded or denied on the basis of partisan considerations. Attempts to use jobs as an incentive for partisan political activity, except for policy making or confidential positions, will not be tolerated. In this sense, Section 9(a) of the Hatch Act is unnecessary. Government employees, for the most part, do not have to fear that their jobs will be lost due to political motivations, and where Section 9(a) has survived due to a belief that it protects employees from politically-motivated actions, there is no longer a justification, in
light of Elrod and Branti, for taking away political freedoms to enhance the freedom from partisan abuses. Charles O. Jones reminds us:

Reasonable men will differ on precise prohibitions, but if they agree that political rights should not be denied without full justification, the result will be a vast improvement over existing conditions.30

The Elrod and Branti rulings have provided a basis upon which the partisan neutrality of the civil service can be maintained. In effect, the Court ruled that most government employees have grounds for litigation if their employment is threatened by a spoils or patronage related personnel action. This should cause us to question the need for Hatch Act restrictions. The Hatch Act presumes that the prohibition on active political participation will protect employees from the exact situations we find in Elrod and Branti. Why, then, deny constitutional rights to avoid abuses which the Hatch Act is presumed to prevent, but for which the Supreme Court has already supplied a remedy? The Supreme Court has, in 1946 and 1973, addressed this issue of constitutionality.

The Constitutional Issue

United Public Workers of America v. Mitchell

In 1946, the Hatch Act, specifically Section 9(a), came before the Supreme Court for a decision on its constitutionality. Briefly, a skilled laborer in the mint
in Philadelphia had served as a ward committeeman of the Democratic Party and was active as a poll worker on election day. As required by the Hatch Act, he was removed from his position by the CSC for having taken an active part in political management or in political campaigns. The defendant in this case was Harry B. Mitchell, Chairman of the Civil Service Commission.

The only question the Court was to decide was the constitutionality of Section 9(a) -- whether or not a federal employee could be denied the constitutional rights of political activity. Speaking for the defendant, Ralph F. Fuchs advanced the following argument:

To hold the restriction which is here involved violate of the First Amendment would require the substantiation of judicial judgement for that of the Congress. . . . Congress may elect to deal with the sources of evils which are properly of concern to it, even to the extent of controlling activity or conditions which otherwise would be beyond its power to reach.31

Writing for the majority of the Court, Justice Reed stated:

. . . this Court must balance the extent of the guarantees of freedom against a Congressional enactment to protect a democratic society against the supposed evil of political partisanship by employees of government. . . .32 The regulation of such activities as Poole carried on has the approval of long practice by the Commission [CSC], court decisions upon similar problems and a large body of informed public opinion. Congress and the administrative agencies have authority over the discipline and efficiency of the public service. . . .33 The essential rights of the First Amendment in some instances are subject to the elemental need for order without
which the guarantees of civil rights to others would be a mockery.\textsuperscript{34}

It is difficult to understand, given the background presented in the case, that the restrictions are constitutional. It appears that it is the drag of historical practices that prompted the Court to take a burden of administrative law and make it judicial law. Ultimately, this was a political question, and the Court, in this instance, said it would not substitute its judgment for that of the Congress.

\textbf{U.S. Civil Service Commission v. National Association of Letter Carriers}

In 1946, in \textit{United Public Workers v. Mitchell}, the Supreme Court confirmed that Congress can constitutionally forbid federal employees from engaging in political management and political campaigning, as set forth in Section 9(a) of the Hatch Act. However, in 1972, the U.S. District Court for the District of Columbia heard a case brought by six federal employees, members of the National Association of Letter Carriers, asserting that Section 9(a) was unconstitutional on its face. The District Court agreed. In 1973, the Supreme Court accepted an appeal from the U.S. government.

In overturning the District Court decision, the Supreme Court stated that the Constitution did not invalidate a law barring political activities set forth in
Section 9(a). Justice White, writing for the majority, stated:

The federal service should depend upon meritorious performance rather than political service, and it is the judgement of history that the political influence of federal employees on others and on the electoral process should be limited.35

If the Court decision were one upholding the Pendleton Act of 1883, the majority opinion might apply. For this law did away with spoils in the federal bureaucracy, and it is spoils that Justice White addresses. Though the Pendleton Act did away with spoils, the majority opinion redefines spoils activity as the "appearance" of partiality on behalf of the public employee:

. . . it is not only important that the government and its employees in fact avoid practicing political activities, it is also critical that they appear to the public to be avoiding it if confidence in the system of representative government is not to be eroded to a disastrous extent.36

Writing for the minority in this six-to-three decision, Justice Douglas stated:

. . . it is of no concern of government what an employee does in his or her spare time, whether religion, recreation, social work, or politics is his hobby -- unless what he or she does impairs efficiency or other facets of the merits of his job. . . . But his political creed, like his religion, is irrelevant.37

How, then, does one summarize the continuous contention over Section 9(a) of the Hatch Act? In two major decisions, the Supreme Court has upheld the restrictions by defending a Congressional desire to promote efficiency and
impartiality in the civil service by eliminating the supposed evil of political partisanship. Civil servants are specifically enjoined from active political participation which to other Americans is guaranteed by the Constitution. Frederick Mosher's view is that there exists a curious paradox:

While the restrictions are rationalized and defended on the grounds of democracy—government by and in the interests of the whole people—they operate to deprive a substantial proportion of all employed people of democratic rights.38

The Hatch Act came about as the result of a confluence of a number of historical events at a unique period of our nation's history, but times have changed. The historical argument for keeping Section 9(a) restrictions is unsatisfactory. It has been almost 14 years to the day since the Supreme Court upheld the status quo, and in the words of Philip Martin,

This is a most unsatisfactory conclusion because modification of the political prohibitions contained in the Hatch Act is necessary to remove the second-class citizenship of affected government employees.39

Government works in a different context than it did in the 1930s and before. A professional civil service, an established merit system and liberal employee protections from adverse personnel actions are just a few examples of a new era of civil service. Established legislation dies hard, but it seems far-fetched to imagine that repealing Section 9(a) would lead us back to the spoils system.
Apart from normative arguments, there has been little research done to either substantiate the need for the Section 9(a) restrictions, or to question the utility of the law as it is currently being applied. Thus, although a strong conviction that the restrictions are unnecessary exists, the argument cannot be taken beyond the normative stages. The purpose of the following research is to remedy that shortcoming.
Endnotes

1 O'Toole, op. cit., p. 17.


3 O'Toole, op. cit., p. 18.

4 Woodrow Wilson, "The Study of Administration," Political Science Quarterly 2, no. 6 (June 1887), p. 204.


10 Ibid., p. 5.

11 Ibid., p. 50.


The Civil Service Commission, in the early 1960s, exempted areas in the immediate vicinity of Washington, D.C. from certain Hatch Act restrictions. These areas are heavily populated by federal employees, and the Commission, in essence, amended the Hatch Act so that federal employees could run for office in a "non-partisan" election. Many complaints arose out of this exemption, basically due to the question of what is non-partisan. The City of Chicago's elections for local office are non-partisan, for example, but anybody in the City can supply a breakdown of the seats by party.


John R. Erck, Attorney, Office of Special Counsel, communication to author, 12 June 1986.


U.S., Committee on Post Office and Civil Service, *Documentary Background*, op. cit., p. 86.

Charles O. Jones, "Remember the Hatch Act?" *Nation* 209, no. 9 (September 1969), p. 413.

Erck, op. cit.


30 Jones, "Remember the Hatch Act?" op. cit., p. 413.


32 Ibid., p. 521.

33 Ibid., p. 524.

34 Ibid., p. 527.


36 Ibid., p. 2890.

37 Ibid., p. 2906.


CHAPTER 4

EMPIRICAL EVIDENCE

This chapter will examine the methodology and results of a study which was done to determine the potential impacts of federal employees more actively participating in our national political arena. The study fills an existing information gap; the normative arguments both for and against the Hatch Act are now balanced by empirical research.

A Report Submitted by the Subcommittee on Civil Service in 1983

Prior to 1974, the Hatch Act limited the political activities of state and local government employees whose principal employment was funded through grants or loans by the federal government. Specifically,

... the Act prohibited these employees from being a candidate for elective office in a partisan election and from using their official authority or influence to interfere with an election. Also, it barred employees from taking an active part in partisan political management or political campaigns.1

With the passage of the Federal Election Campaign Act of 1974, the Hatch Act was amended as it applied to these employees. The restrictions against taking part in partisan political management and campaigning were removed.
Currently, unless the state or local government has imposed restrictions, the federal Hatch Act requires only that affected employees may not: (1) be a candidate for public office in a partisan election; (2) use official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for office; and (3) directly or indirectly coerce contributions from subordinates in support of a political party or candidate.\(^2\)

The Subcommittee, in considering proposals to revise the Hatch Act, was interested in gathering information concerning the extent to which states had revised their political activity restrictions since the Hatch Act amendments. In addition, they wanted to learn of any impacts or effects in those states which had eliminated or reduced restrictions.

The first part of the study was accomplished by a comprehensive state-by-state review of statutes and administrative rules and regulations. The second part of the study was done by telephone interviews with a number of state officials in states which had eliminated or reduced political activity restrictions.

Basically, the results of the study are as follows:

1. By conducting a comparative analysis of pre-1974 and current (1983) restrictions, the Subcommittee found a wide and diverse variety of statutes and restrictions
among the 50 states. To aid them in making comparisons between the states over time, they grouped the laws or restrictions into nine categories or types of political activities which a state may or may not prohibit (see page 62). These nine categories of activities, then, were an attempt to standardize the various activities associated with political management and campaigning.

(2) Using the nine categories as criteria, the Subcommittee identified 14 states which, since 1975, had changed their political activity restrictions. With the exception of one state, Wyoming, the changes were toward liberalizing restrictions. Of the remaining 13 states, eight states still have restrictions which are equal to or greater than the Hatch Act as it applies to employees in federally funded positions, and five states have no restrictions.

(3) The telephone inquiries yielded three general observations. First, some of the officials indicated that the 1974 amendments to the Hatch Act were the primary incentive for state legislatures to liberalize political activity restrictions. Second, liberalization efforts had contributed toward greater participation in the political process by state employees. Finally, aside from an increase in political activity, no other effects or impacts were
noted, including "any increase in the improper use of
authority and coercive tactics by public employees."3

The Subcommittee report is a beginning. Although it
is instructive, it is impressionistic and inconclusive.
There was no documentation given for any of the observa-
tions by state officials. We wonder which states the
Subcommittee contacted, which officials in the state
government were interviewed, what questions were asked, and
whether the answers given were based on subjective percep-
tions or backed by documented experience. In general, we
wonder if a member of Congress, reading this report, would
take it very seriously when a vote to repeal Section 9(a)
of the Hatch Act was taken.

The following study, using the Subcommittee report as
base data, is an effort toward a better understanding of
the potential effects and impacts of federal employees
taking an active role in political activities. Selected
state experiences in the area of employee political
activities will be useful in future Congressional debates
on Section 9(a) of the Hatch Act.

Research Design

Using the data which the Subcommittee on Civil Service
compiled, this research design takes the findings of the
1983 report one step further. The five states which
liberalized restrictions to full participation for state
employees in political activities offer an excellent opportunity to see what the effects of liberalization have been. The general research hypothesis is that these five states have had no experiences of abusive political activity as a result of liberalizing restrictions. As such, this evidence allows us to question the supposed correlation between the presence of restrictions and the absence of abusive political behavior. Thus, it is possible to question the utility and efficacy of political activity restrictions.

The research design is based upon two groups of states. The experimental group consists of the five states which, between 1974 and 1983, that is, between the time when the Hatch Act was amended and when the Subcommittee study was done, liberalized political activity restrictions to full participation rights for state employees. These states were: Alabama, Arkansas, Michigan, Montana, and North Dakota. The second group, the control group, consists of five states which, during the same period, maintained restrictions such that state employees did not have full participation rights. These states were: Georgia, Louisiana, Maine, Mississippi, and Washington.

Control Group

The control group states were selected on the basis of a variable which Daniel Elazar sets forth in his work,
states that in order to gain an understanding of

. . . the way in which states functioning as political systems influence the operations of the general government, and the way in which the states—still functioning as political systems—adapt national programs to their own needs and interests . . . it is first necessary to understand the fundamental social and political factors that serve to shape the states and the political setting in which they operate.5

One factor, political culture, is described as "the particular pattern of orientation to political action in which each political system is embedded."6 Every state has certain traditions which dominate their predisposition toward proper government action, and these traditions are culturally based. Every state has a unique political culture, but certain aggregations of political culture patterns allow comparisons to be made between states. Based on this, it is possible to draw a continuum of political cultures, from moralistic to individualistic to traditionalistic, and placing the states on the continuum will result in groupings of states with similar political cultures.

The individualistic political culture, represented by Montana in the experimental group and Washington in the control group,

. . . emphasizes the conception of the democratic order as a marketplace. . . . government is instituted for strictly utilitarian reasons, to handle those functions demanded by the people it is created to serve.7
In this political culture, the bureaucracy is looked at with a certain ambivalence. On the one hand it is undesirable because it limits political favors, but on the other it is good because it enhances efficiency.

The moralistic political culture, represented by Michigan and North Dakota in the experimental group and Maine in the control group, is one where politics . . . is considered one of the great activities of humanity, in its search for the good society, . . . public activity centered on some notion of the public good and properly devoted to the advancement of the public interest. 8

Here, the bureaucracy is considered as a tool to promote the general welfare, and is looked at positively.

The traditionalistic political culture, represented by Arkansas and Alabama in the experimental group and Georgia, Louisiana and Mississippi in the control group, . . . reflects an older, precommercial attitude that accepts a substantially hierarchial society as part of the ordered nature of things. . . . Those at the top of the social structure are expected to take a special and dominant role in government. 9

In this case, bureaucracy, by its very nature, interferes with an established web of informal relationships that lie at the root of the political culture. As such, the bureaucracy is viewed negatively.

The control group, then, is a selection of states which exhibit, collectively, rather similar political cultures to the experimental states. Although political culture is only one variable, "it is particularly important
as the historical source of differences in habits, perspectives, and attitudes that influence political life in the various states," according to Elazar.

Initial contacts with the 10 states, to determine the agency which dealt with political activity restrictions, were made through the State Attorney General's office. In some of the states there is an Assistant Attorney General who handles political activity restrictions enforcement, and in the other states there is an agency responsible for enforcement. In all the states contacted, there are only one or two officials who deal directly, on a day-to-day basis, with employee political activities. Finding the official who would be the most knowledgeable of the state's experience with employee political activities often took six or seven telephone conversations, but in all cases the process yielded the best source of information. At this point, they all agreed to support the research by responding to a survey questionnaire.

Survey Questionnaire

The purposes of the survey questionnaire (see Appendix) are to: (1) document the impressionistic findings of the 1983 Subcommittee report, and (2) gather information to test the hypothesis that the five states which allowed full political participation rights to employees, between 1975 and 1983, have had no experiences of abusive political behavior as a result thereof.
Part one of the questionnaire is a verification of the report's listing of restrictions, if any, which apply to the 10 selected states. The restrictions are a result of the comprehensive state-by-state review done by the Subcommittee. They are as follows:

1. Can't be a candidate in a partisan election;
2. Can't be a candidate in a non-partisan election;
3. Can't hold office in political parties, organizations or clubs;
4. Can't take an active part in the management of political clubs, organizations, parties or campaigns;
5. Can't be a candidate for or serve as delegate, alternate or proxy at political party conventions;
6. Can't do volunteer work for partisan candidates, campaign committees or political parties;
7. Can't solicit or collect political contributions;
8. Can't campaign for candidates in a partisan election;
9. Can't attend political meetings or rallies nor serve on committees that organize political campaigns.

Once the official completed part one, he/she answered one of two sets of questions and statements calling for narrative answers in part two. Full-participation states, that is, states with no restrictions, were asked to explain: (1) the rationale behind the liberalization efforts; (2) whether the 1974 amendment to the Hatch Act was an incentive for the legislature to liberalize restrictions; (3) any indications of the liberalization
leading to greater participation in the political process by state employees; (4) any other impacts or effects due to the liberalization; and (5) the overall perception of the state experience as a result of full participation.

States with restrictions were asked to explain: (1) the rationale for not allowing full participation; (2) unique circumstances in the state, including political culture, that would account for the presence of restrictions; (3) any future plans to liberalize restrictions; and (4) the perception of what might occur if state employees were given full participation.

Part three consists of a listing of abuses which Hatch Act Section 9(a) advocates have traditionally sought to censor by imposing restrictions. The abuses are: (1) the use of official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for elective office; (2) the direct or indirect coercion of contributions from employees in support of a political party or candidate; (3) the direct or indirect coercion of political activity from employees in support of a political party or candidate; and (4) the granting or denial of public employment based on partisan political considerations. If there were past experiences of abusive political behavior, officials were asked to document them by briefly explaining the situation and when they occurred, explain the actions taken, and explain the
final results. If there had been no past experience, officials were asked to explain their perception of why this is so. Finally, they were asked to explain their perception of the relationship between a lack of restrictions and abusive political behavior.

The final part of the questionnaire asked all officials to explain their perception of what might occur if federal employees were allowed to fully participate in the political process.

Findings

Of the ten states, officials in nine responded in writing to the survey questionnaire while one suggested that the questions be answered over the phone. In addition, it was necessary to have a follow-up telephone conversation with the nine who provided written answers in order to clarify certain points. The following findings are set forth in the order that the survey questionnaire was prepared and presented to the state officials.

Part One

Based on the state officials' responses, the Subcommittee correctly identified the political activity restrictions which apply in the ten states. In only one state, Maine, one of the control group states, have restrictions changed since the report was published in 1983. In this case, it went from having restrictions in
eight of the nine categories to having only two restrictions, as the result of state legislative actions in 1985. Maine is the only control group state that has moved toward liberalizing restrictions; the other four have maintained the status quo throughout the years. Yet, even though Maine has liberalized restrictions, it still represents a state that has not allowed full participation in political activities to state employees.

In summary, the Subcommittee report's listing of restrictions, state-by-state, is verified for these ten states, and allows the identification of the two groups of states: the experimental group (those states with no restrictions) and the control group (those states with restrictions). Part two of the survey asks the official to answer questions based on which group the state is in.

Part Two

States with full-participation rights answered Section C of the survey questionnaire, and states with restrictions answered Section D (see questionnaire in Appendix, Sections C and D). The following are the results of this part of the questionnaire for states with full participation rights:

Question 1 asked the officials to explain the rationale behind the liberalization efforts. In general, there was no apparent common rationale. Three officials were not aware of any specific reasons behind the liberalization efforts, but did indicate that a general trend was
noticeable in other states toward reducing restrictions, and that this trend, coupled with a lack of experience in abusive political behavior on the part of state employees, prompted the respective state legislatures to reevaluate the statutes. The two remaining officials were more specific. Tommy Flowers, a Deputy Personnel Director in Alabama, wrote that "The argument put forth in support of liberalization was that state employees should enjoy the same political rights and entitlements as other citizens." James Lee, the Public Information Officer for the Arkansas Attorney General's Office, indicated that the effort was to "clean up the statutes and codes: The overall feeling was that there were many outdated laws."

Question 2 asked the officials if the federal government's amending of the Hatch Act in 1975 was an incentive for the legislature to liberalize restrictions. Only one official stated that the federal example was a direct incentive, while three officials said that it was an indirect incentive. Thus, four of the five states attributed the 1975 amendment of the Hatch Act as being one factor which the state legislatures took into consideration when looking at their own restrictions. In Alabama, the liberalization of the restrictions was the result of the efforts by the Alabama State Employees Association to acquire the right to full political participation for its members.
Question 3 asked the officials if there have been any indications that reducing restrictions has led to greater participation in the political process by state employees. Three of the five indicated that there is a noticeable increase in participation, particularly through lobbying efforts by state employee unions. The remaining two officials didn't see any marked changes. Brad Whitman, the Supervisor of Information for the Secretary of State in Michigan, stated that "Employee levels of participation don't seem to be any higher or lower than the general public. State employees have not gotten mixed up in politics." One clarification which was common to most of the answers is that there is no hard data upon which the answer can be based. Sandra Warren, an Assistant Attorney General in North Dakota, summed it up as follows: "We would have no way of gauging this empirically, as the state does not keep these kinds of statistics, but there is some indication and a general feeling of increased participation."

Question 4 asked the officials for their assessment of other impacts and effects of employees fully participating in the political process. Although this question was worded to elicit impacts and effects, positive or negative, four of the five officials stated that there were no other impacts, but all four clarified their answers by stating that public employee unions and associations have become
more active in lobbying the legislature and issue campaigning. (Section 9(a), however, does not apply to union activities per se, but to the political activities of employees as individuals.) In three of the states this increased union activity does not appear to have had any adverse impacts, but in Arkansas, James Lee states that "this affects the public image of the state employee because the lobbying is mostly for increases in salary and benefits." In Alabama, Tommy Flowers says that although there have been no problems with employees more fully participating so far:

We feel that this is an area which must be looked at closely, at least in the near future, in order to detect potential abuses. As a result, we have had to devote more department time and effort towards this task of oversight.

Question 5 asked the state officials for an overall perception of the state experience as a result of full participation. All five officials indicated that there have been no apparent problems. Overall, the liberalization of restrictions is seen as good. First, it has encouraged more political participation, and second, it has allowed state employees to act, according to James Lee, "as any other taxpayer, not singled out of the citizenry by having restrictions." Although two of the officials express personal reservations about full participation rights, they both indicate that there have been no signs of adverse impacts as a result of liberalizing restrictions.
In summary, based on the experience and perceptions of officials from the five states that liberalized restrictions to full participation between 1975 and 1983, it appears that the Subcommittee's report of general observations, as a result of their cursory study, is basically correct. First, although the federal example of amending the Hatch Act, as it applied to federally funded state employees, in 1975 does not appear to be the primary incentive for state liberalization efforts, it was a factor which was taken into consideration. Second, while full participation rights account for increased employee participation in some states, an increase in participation has not been noticed in others. And third, effects or impacts other than increased political participation do not appear to be significant, with the exception of a more active role by public employee unions and associations.

The following are the results of the questionnaire for states with collectively similar political cultures, but having political activity restrictions:

Question 1 asked the officials to explain the rationale for not allowing state employees full participation rights, including the rationale behind specific restrictions. Overwhelmingly, the responses had to do with the public image of the state government, and protecting employees from coercion by their supervisors and coworkers. In the words of Carson Melvin, Director of the Georgia
State Merit System, "It is an old axiom that says, 'the squeaking wheel gets the grease,' and it is a matter of simple observation that political campaigns usually squeak very loudly." Two officials specifically related the rationale behind the restriction on collecting or soliciting political contributions by saying that it was an unsavory activity, detracting from the image of an impartial administration of government.

Question 2 asked the officials if there were unique circumstances in their state, including political culture, which might account for the restrictions. Two officials, both from southern states, answered affirmatively, noting a history of political favoritism and the southern tradition of "old boy networks" in elective politics and government administration.

Question 3 asked the officials if there were any plans to liberalize restrictions in the near future. None of the officials were aware of any changes being considered.

Question 4 asked the officials for their perception of what might occur if state employees were allowed full participation rights. Three officials stated that nothing would occur. Frank Johnson, a previous Director of Employee Relations for the State of Maine, states that "Frankly, I do not think anything would occur -- the restrictions aren't necessary, but I do not make the laws." John Emsinger, Special Assistant to the Attorney General in
Mississippi, states that "Even though allowing employees full participation would probably not lead to major problems, the citizens of Mississippi and the elected officials are comfortable with the way things are now." On the other hand, the two remaining officials, again both from southern states, indicated there would be increased politicization of public employment, abusive political behavior by state employees, and resentment and suspicion from the public. The explanations were directly related to the political histories of their states, Georgia and Louisiana.

In summary, based on the experience and perceptions of officials from five states which have maintained political activity restrictions over the years, the rationale for restrictions is similar to the historical argument for keeping the Hatch Act intact at the federal level -- to maintain a neutral, impartial image of government in the eyes of the public. None of the officials thought that any changes in restrictions would be forthcoming in the near future, but three of the officials could not foresee any major problems if changes did occur. Officials in Georgia and Louisiana, however, indicated that there would be problems, apparently due to the political culture and colorful political histories of their states.

The results of part two of the survey point out that:

(1) states with full participation rights apparently have
not suffered any major problems as a result of granting the rights; and (2) states with restrictions base the rationalization for restrictions on public image and employee protections, even though a majority of the officials from these states did not perceive problems if the restrictions were abandoned. The next part of the survey will provide the data with which we may judge whether or not the presence of restrictions is related to the absence of documented political behavior abuses.

Part Three

This part of the survey questionnaire (see questionnaire in Appendix, Section E), was directed to the state officials in all ten states. As stated earlier, the purpose was to gather information to test the hypothesis that the five states which allowed full political participation rights to employees, between 1975 and 1983, have had no experiences of abusive political behavior as a result thereof. To control for these five states' experiences, the same kind of information was gathered from the five states with similar political cultures which have maintained restrictions.

In 1983, the Subcommittee reported that there was no indication of adverse effects from states which liberalized restrictions since 1975. However, for the reasons given earlier in this chapter (see page 57), the findings are impressionistic and inconclusive. The following informa-
tion is an attempt to: (1) provide documentation for political abuses which have occurred, if any; and (2) control for the experiences of the five states which form the experimental group. If it is found that the experimental states have been free from abusive political behaviors since allowing full participation rights, and if the control group states have had a similar experience, then we may logically question the correlation between restrictions and abusive political behavior, the two variables.

In the experimental group, the officials from Montana, North Dakota and Michigan stated that there has never been any experience of abusive political behavior in their states, either prior to or since granting full participation rights to state employees. The officials from Alabama and Arkansas stated that allegations arise frequently, but to date, no one has been prosecuted. According to Tommy Flowers from Alabama,

> There have been allegations of political abuse both before and after the state law governing the liberalization of employees' political activity, but the allegations are too numerous and occurrences difficult to document.

James Lee, from Arkansas, stated that "Incidents occur every election season. So far, no one has been prosecuted for violations of the Arkansas Political Activities Act."

Asked to explain their perception of why abuses do not occur, the officials from Montana, North Dakota and Michigan generally alluded to the fact that state employees
are no different than other citizens when it comes to political activity. Elwood English, Chief Legal Counsel for the Montana Secretary of State, says that

Political activities of public employees have tended to reflect the rest of the state's population. Generally, your average citizen does not get too involved in politics, and we have found that when state employees do get involved, activities have been held to a reasonable level.

The factor which seems to single Alabama and Arkansas out of this group is that both states have a history of strong and active public employee unions and associations. Officials perceived that these organizations have found a legitimate niche in the political landscape of their states, and that abuses would be dysfunctional to their goals.

When asked of their perception of a direct relationship between abusive political behavior and a lack of restrictions, none of the officials stated that there was any relationship. Four of the five officials, however, qualified their answer by stating that it was based on their own personal experience in their respective states.

In the control group, the officials from Maine and Mississippi were also unaware of any abuses that had ever occurred in their states. Officials in Washington and Louisiana indicated that abuses had occurred in the past, but in both cases, they stated that the abuses took place prior to the installation of a State Merit System in the early 1960s. Since that time, abuses have not occurred.
As Richard Heath, Senior Assistant Attorney General in Washington, explains,

Political patronage was the major reason for the adoption of this state's civil service reform laws in 1961. Since that time, political considerations cannot be taken into account in the employment process.

Asked to explain their perceptions of why abuses do not occur, the officials from Washington and Louisiana indicated that a strong merit system of employment was the major reason. According to Robert Boland, General Counsel to the Louisiana Secretary of State, Civil Service Division, "Strong, enforceable regulations that prohibit political favoritism and coercion in the civil service employment systems have been successful in the prevention of abusive behavior in Louisiana." The official from Maine, Frank Johnson, reemphasizes the fact that public employees are "... average citizens. They do a job for the government eight hours a day, but the rest of the time is spent just as any other typical citizen would spend it." John Emsinger explains that Mississippi has been effective in preventing abuses by having precise restrictions:

State employees have demonstrated a lot of interest and concern on who can participate in political activities, and to what degree. We try to make it very clear what employees can and cannot do by providing concise interpretations to the Personnel people, and consistent advice for employees who contact my office with questions. I believe this has as much to do with a lack of problems as anything else.
In Georgia, we find the only state official who offers a documented experience of political activity abuse. In 1984, the elected Commissioner of the Department of Labor was found to be guilty of misuse of funds and personnel, and subsequently served two years in prison for state and federal crimes. The testimony in the case indicates that in some instances political activity had been solicited by the Commissioner, and in other instances political activity was gratuitous by the employees in expectation of future reward. The testimony also confirmed that abusive political behavior had been widespread in the department for a number of years. During the first several months of his appointment, the new Commissioner dismissed several employees for political behavior in violation of merit system rules.

When asked of their perception of a direct relationship between abusive political behavior and lack of restrictions, all the officials except Carson Melvin from Georgia saw no direct relationship. The officials from Washington and Louisiana stressed a strong merit system which acted to prevent abuses, and the official from Maine, Frank Johnson, stated his perception as follows:

There has been nothing to prove that political activity restrictions serve to prevent or reduce abusive behaviors. Our experience in Maine has made it quite clear in my mind that with or without restrictions there would be no abuses.
On the other hand, when asked for his perception of a direct relationship between abuse and lack of restrictions, Carson Melvin answered:

A qualified 'yes.' The presence of restrictions tends to attract as employees those people who want to remain politically neutral and simultaneously tends to repel those individuals who enjoy the cut-and-shoot exchange of the political arena.

In summary, the results of part three of the survey questionnaire provide evidence that, overall, political abuses are not a problem. The officials from nine of the ten states could not cite any specific experiences, and although two officials noted that allegations were frequent, and two officials noted that abuses occurred prior to the installation of a State Merit System, there have been no prosecutions. The odd experience is in the State of Georgia, and here, only one documented experience was cited. Based on this evidence, it is clear that the correlation between the presence of restrictions and the absence of abusive political behavior is not tenable.

Since this information gathered from the various states is to be used as a case study for the debate on the utility and efficacy of political activity restrictions at the federal level, part four of the survey questionnaire was included to elicit perceptions from the state officials about granting full participation rights to federal employees.
Part Four

This part of the questionnaire asked the officials to explain, based on their experience, their perception of what would occur if federal employees were given the right to fully participate in the political process. Four of the five officials from states with full participation rights think nothing would happen. According to James Lee, from Arkansas, "Given the lack of cohesiveness among federal employees, I see no wholesale abuses resulting from a repeal or relaxing of the Hatch Act." Elwood English, from Montana, stated his perception as follows: "They would no doubt reflect the levels of dedication, conviction, energy, ignorance and apathy found in the general public." The official from Alabama did not feel that his knowledge of the federal system was sufficient to adequately speculate on the ramifications.

In states where restrictions exist, three of the five officials also felt that the effects would be negligible. One official speculated that there would possibly be a slight increase in political activity by the big federal employee unions, and another speculated initial confusion on the part of politicians trying to figure out how to treat this new, potentially active segment, but no major problems were noted. Richard Heath, from Washington, states:
With appropriate controls to keep politics out of the employment process, i.e., removing politics as a factor in who is hired or fired, I doubt there would be any significant problems in allowing federal employees to participate in the political process.

The remaining two officials related a somewhat more pessimistic outlook. Robert Boland, from Louisiana, thinks the "possibility for polarization of the bureaucracy exists," although he offers no further explanation. The official from Georgia, Carson Melvin, has the following to say:

It has been my experience that most political activists are also gregarious people who insist on proselyting. The results of having such people in the work force are all too predictable, i.e., the federal service will become increasingly politicized. That, in turn, will lead to a resurrection of the conditions which led to the enactment of the Pendleton Act and similar laws.

Based on this information, it appears that there is a general agreement among seven of the ten officials that there would be no significant problems. One official had no opinion, one saw the possibility of a polarization of the bureaucracy, and one speculated a return to the "spoils system" of government. The officials in these three latter states are from Alabama, Louisiana and Georgia, in that order. Perhaps there is something unique to the political cultures of these states, but the overall findings do not lend credence to the fears that these officials raise.
Endnotes


5 Ibid., p. 109.

6 Ibid.

7 Ibid., p. 115.

8 Ibid., p. 117.

9 Ibid., p. 118.

10 Ibid., p. 110.


12 This and subsequent quotes in the chapter are from the written and oral responses to the survey questionnaire.
CHAPTER 5

CONCLUSION

We have compared ten state experiences, in the area of political activity restrictions, on the basis of the knowledge and perceptions of state officials who are actively involved with oversight and enforcement of state statutes and regulations relating to the political activity of state employees. Overall, the evidence suggests that states are relatively free from abusive behavior whether or not specific restrictions are in place. The five states which granted full participation rights to employees between 1975 and 1983 have not experienced any significant problems. Further, only one state which has maintained restrictions, Georgia, provides a documented experience of abusive political behavior. The shared experiences between the two groups of states, collectively similar in political cultures, suggest that the two variables examined, political activity restrictions and abusive political behavior, cannot be correlated. The historical advocacy of political activity restrictions, in other words, premised on the expectation that they prevent political activity abuses, is unfounded.
Whereas the 1983 Subcommittee report suggested that states that liberalized restrictions to full participation had suffered no significant problems, this study provides information that serves to validate their initial finding. Further, this study also indicates that a majority of the officials in states which do have restrictions do not perceive major problems if their states allowed for full participation. Any reservations about liberalizing restrictions came from two southern states, Louisiana and Georgia, where the officials emphasized a history of political abuses. The results of part three of the questionnaire, however, indicate that abuses seldom occur. Only one documented experience is found. In the end, the rationale for keeping restrictions based on some conception of preventing political behavior abuses is flawed. Barring state employees from active political management and campaigning serves no useful purpose.

By no means exhaustive, the above study does, however, provide information on how states have actually fared after allowing employees the right to full participation in political activities. Based on this information, it is at least plausible that what holds true at the state level may well hold true at the federal level. The federal government is different in many respects from state governments, but the differences relate to the size and scope of the institutions. A major argument presented in
this paper, and reflected by the survey results, is that government employees should be treated as individuals, not as part of a monolith, and in this respect, federal employees are no different from state employees. There are numerous examples of how the federal government has benefitted in the past from public personnel administration practices and innovations incubated at the state level. In this sense, states have been laboratories and proving grounds for public administration advances which are eventually adopted by the federal government.

One of the problems that is overlooked seems to be that of where the real control is exercised. The power of the federal government is in the purse. Taxing the free citizen and then denying that citizen his/her political freedoms is an usurpation of rights. Can we attach strings to our money by saying that public employees paid from tax revenues cannot be politically active? Consider the employee who works for a company that is contracted by the federal government, or the farmer who receives federal subsidies, or the automobile manufacturer who is loaned federal money in order to stay solvent. Just where are we drawing the line?

Perhaps the real problem is that the American public does not really know what the Hatch Act is all about. It seems that we only hear of the law when someone in Congress writes a bill to revise or repeal it. Typically, the
newspapers and journals editorially advise the public that changing the law will return 19th century spoils to the federal government. The President then vetoes the Act, or the proposals for change seem to get lost in the complex legislative machinery. The public, in ignorance, acquiesces.

In the end, the prohibitions set forth in Section 9(a) of the Hatch Act should not remain law. This paper has presented the historical background of political activity restrictions, a discussion of pertinent issues concerning the underlying concepts of restrictions, and an empirical study of selected state experiences with restrictions. The evidence suggests that: (1) restrictions are based on antiquated reasoning; (2) the philosophy of administration has changed since; (3) the civil service has been professionalized; (4) the courts have laid down strict and specific service conditions; and (5) there is no strong empirical evidence to support the contention that political activity restrictions are necessary, or that their repeal would take us back to a spoils system of government.

Thus, changes in the law are past due, but this is only possible if American legislators and the courts start looking at the civil service realistically. The ultimate myth is that for some reason civil servants are not citizens, not neighbors, not friends, not taxpayers, not contributing members of our society -- but, they are.
BIBLIOGRAPHY


Jones, Charles O. "Remember the Hatch Act?" *Nation* 209, no. 9 (September 1969), pp. 410-413.


U.S. Congress. Senate. Senator Barkley commenting that all the Sheppard Committee recommendations have not been discussed: Senate Bill 1871. Congressional Record. 76th Cong., 2nd sess., 27 June 1939. Vol. 84, p. 9962.


APPENDIX
SURVEY QUESTIONNAIRE

The following is a list of questions prepared to collect information for a comparative analysis of selected states' experiences.

YOUR NAME: ________________________________

TITLE: ________________________________

DEPT./DIV.: ________________________________

Explain briefly what your role has been, past or present, in the area of political activity restrictions affecting state employees:

SECTION A:

The following categories of restrictions are based in an effort to standardize the often varied and diverse statutes and regulations. Indicate which restrictions apply in your state by marking the space on the left:

___ (1) No restrictions -- full participation.
___ (2) Can't be a candidate in a partisan election.
___ (3) Can't be a candidate in a non-partisan election.
___ (4) Can't hold office in political parties, organizations or clubs.
___ (5) Can't take an active part in the management of political parties, organizations, clubs or campaigns.
___ (6) Can't be a candidate or serve as delegate, alternate or proxy at political party conventions.
___ (7) Can't do volunteer work for partisan candidates, campaign committees or political parties.
___ (8) Can't solicit or collect political contributions.
___ (9) Can't campaign for candidates in a partisan election.
___ (10) Can't attend political meetings or rallies nor serve on committees that organize political campaign activities.
___ (11) Other:
SECTION B:

Between 1975 and 1983, between the time the Hatch Act was amended and the time when the Subcommittee study was done, were restrictions liberalized in your state to allow for full participation by state employees in the political process? __ YES __ NO

Since 1983, have restrictions been liberalized in your state to allow for full participation by state employees in the political process? __ YES __ NO

**************************************************************************
If the answer to either of the above is YES, complete Sections C, E and F; otherwise, complete Sections D, E and F.
**************************************************************************

SECTION C:

(1) Briefly explain the rationale behind the liberalization efforts:

(2) Was the 1975 amendment to the federal Hatch Act an incentive for the legislature to liberalize the restrictions? __ YES __ NO (Please explain.)

(3) Have there been any indications that the liberalization of restrictions has led toward greater participation in the political process by state employees? __ YES __ NO (Please explain.)

(4) Have there been any other impacts or effects as a result of employees having the right to fully participate in the political process? __ YES __ NO (Please explain.)
(5) What is your overall perception of the experience your state has had as a result of full participation?

SECTION D:

(1) Briefly explain the rationale for not allowing state employees to fully participate in the political process, including the rationale for specific restrictions which currently apply:

(2) Are there unique circumstances in your state, including political culture, which might account for the existence of restrictions? ___ YES ___ NO (Please explain.)

(3) To your knowledge, are there any plans to liberalize restrictions in the future? ___YES ___ NO (Please explain.)

(4) What is your perception of what might occur if state employees were allowed to fully participate in the political process in your state?

___ Nothing
___ Increased politicization of public employment.
___ Abusive political behavior by state employees.
___ Resentment and suspicion from the public.
___ Breakdown in relations between elected officials and the bureaucracy.
___ Other:
SECTION E:

Historically, proponents of the Hatch Act have advocated political activity restrictions for public employees based on the expectation that the prohibition of certain political activities will prevent abusive political behaviors.

(1) The following categories define specific areas of abusive political behavior which proponents sought to prevent. If there have been documented experiences in your state, indicate by marking the space to the left.

- The use of official authority or influence for the purpose of interfering with or affecting the results of an election or a nomination for elective office.
- The direct or indirect coercion of contributions from employees in support of a political party or candidate.
- The direct or indirect coercion of political activity from employees in support of a political party or candidate.
- The granting or denial of public employment based on partisan political considerations.
- Other (please explain):

(2) For each experience: (a) Explain the situation briefly; (b) indicate the approximate date, and if applicable, indicate if it occurred prior to or since restrictions were liberalized; (c) explain the actions taken, and; (d) explain the final results.

(3) If there have been no documented experiences, explain your perception of why abuses do not occur.
(4) Is it your perception that abusive political behavior is directly related to a lack of political activity restrictions? ___ YES ___ NO (Please explain.)

SECTION F:

Based on your experience at the state level, what is your perception of what would occur if federal employees were given the right to fully participate in the political process?

******************************************************************

Thank you for your support, and please indicate if you would like a copy of the results of this survey:

___ YES ___ NO

******************************************************************