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U.S. Postal Service, and Labor Policy

on

"Hatch Act: Options for Reform"

Office of the Attorney General
for the District of Columbia

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2247 Rayburn House Office Building
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Good morning Mr. Chairman and Subcommittee members. I am Irv Nathan, Attorney General for the District of Columbia. I am pleased that I was invited here to testify today on proposals to reform the Hatch Act, and to speak in favor of reforms that would treat the citizens of the District of Columbia like the citizens of states and localities all across the country, allowing them to choose their elected officials, whether in partisan or non-partisan elections, without inappropriate federal restrictions.

First, as a former General Counsel of this great House, let me say how pleased I am to be back in this institution for which I have such respect and admiration. I am confident that the People's House will recognize, as it did last Congress, that reforms are needed in a law that was passed almost three quarters of a century ago to bring it into accord with modern-day realities and the needs of our electorate.

Second, I need to make clear how different the District of Columbia of today is from the District of Columbia of 1939 when the Hatch Act was first passed. Back then, the District had no elected officials. It was governed by three Commissioners who were appointed by the President and confirmed by the Senate. In the intervening years, with the arrival of partial Home Rule, we have an elected mayor, an elected city council, an elected School Board, and elected Advisory Neighborhood Commissioners. We also have an elected representative to this

body. Recently through the referendum provisions of our Home Rule charter, the citizens of the District of Columbia voted to make the office of the Attorney General an elected office. We raise more than 6 billion dollars locally, approximately 70% of our budget, from local taxes on our own citizens, transactions and property.

While we certainly support the basic purposes of the Hatch Act--to ensure that executive branch officials funded by federal dollars carry out their functions in a non-partisan fashion and do not use their offices to interfere with elections or raise campaign funds--we do not believe that employees of the District of Columbia Government should be treated like federal Executive branch employees. Rather, we believe that employees of the executive branch of the District of Columbia Government should be treated under the Hatch Act provisions that govern state and local officials whose employment is financed in part by federal funds. Similar to the federal legislative and judicial branches, the District's legislative and judicial branches should not be covered by the Hatch Act. Further, even District executive officials should not be prohibited by federal law from running for elective offices.

The principal distinction in the existing law and in the reforms proposed is that if considered as federal employees, no District official--other than the Mayor,

City Councilmembers or the Recorder of Deeds[1]-- can run for an elective office in a partisan election while if treated under the proposed reforms as all other state and local employees funded in part by federal funds all District employees could run for an elected office, whether in a partisan or non-partisan election.

Let me illustrate the unfairness, absurdity and damage to our citizens of the current law by reference to our Advisory Neighborhood Commissioners. These are elected, unpaid, part-time officeholders of the District of Columbia whose task is to represent their neighbors in improving the neighborhood and making recommendations to the District of Columbia Government. Under the current definitions of the Hatch Act and by including all District employees and officeholders as the equivalent of federal executive branch employees, ANC commissioners are barred by the Hatch Act from running in a partisan election. This means that a Commissioner, having been elected by his or her neighbors in a non-partisan election, may not run for Mayor or the City Council or the Congress without first resigning from the ANC office. This result is so absurd that the Office of Special Counsel, which is charged with enforcing the Hatch Act, has rendered an opinion that while ANC commissioners (even though they are not paid and only serve part-time) may not run in a partisan election, the OSC is unsure whether or how it can enforce this provision should an ANC member violate the

[1] In 1993, the Hatch Act was amended to permit three categories of officeholders to run for elected office in a partisan election. No coherent reason appears why the Recorder of Deeds is included.

law. By its action, or more accurately, its inaction, the OSC has made clear that it would prefer not to devote its limited resources to violations of this kind. This type of approach only breeds disrespect for the law, when it cannot be enforced with a straight face.

The issue has been brought home to me compellingly as a result of the recent referendum making the office of the Attorney General an elected one. In 2010, the Council of the District of Columbia passed the "Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010." The legislation changed the position of Attorney General from one appointed by the Mayor (as I was) to one elected in a partisan election, beginning with partisan primaries in 2014, with the elected Attorney General to take office in 2015 for a four-year term and partisan elections every four years after that . Under the current Hatch Act, which treats all DC employees as federal executive branch officials, neither I nor any District employee or officeholder (other than the Mayor, Councilmembers, or the Recorder of Deeds) could run for the elected Attorney General position. Members of our local courts, which contain many well qualified candidates, could not run for the elected Attorney General position either. In order to be a candidate in an election for the Attorney General, I and other highly qualified deputies in my office (as well as any other District Government employees) would have to resign our employment before seeking office. And, of

course, unless the law is changed, the person elected as Attorney General in 2014 would have to resign the position in order to run for re-election.

H.R. 4152, and its companion bill in the Senate, S. 2170, would go a long way towards alleviating problems the current Hatch Act places on the District of Columbia and its employees. H.R. 4152 would amend the Hatch Act to treat the District of Columbia as a state or local agency, instead of its current designation as the equivalent of a federal executive branch agency. The legislation would also make clear that state and local employees, whose employment is financed in whole or in part by federal funds, can be a candidate for elective office, whether the election is held on a partisan or a non-partisan basis. The effect of these proposed changes would be that District Government employees would face no federal Hatch Act barriers if they choose to run for local, partisan office. It means that ANC Commissioners would be allowed to run for higher office, in the City Council or even Congress, without having to resign the positions to which they were first elected by their neighbors. (Indeed, because ANC Commissioners are unpaid, they receive no federal funds and, if the amendments pass, they will no longer be covered in any way by the Hatch Act.) It also means that an appointed Attorney General or his talented, experienced deputies could run for the office of Attorney General. And, of course, it also means that a future elected Attorney General will be able to run for re-election without having to resign from office. As

I stated earlier, the legislation should be amended so that similar to Congress, the Hatch Act does not apply to the District's legislative or judicial branches.

I also agree with comments previously voiced by the head of the Office of Special Counsel, Carolyn Lerner, that Congress should amend the Hatch Act to address the realities of the modern workplace, such as telework, social media and other internet-related issues. These issues are of great importance to District Government employees, many of whom telecommute, and should be addressed so that the Hatch Act is as sensible as possible.

If the reforms embodied in these proposed bills are enacted, as modified by our modest additional suggestions, District executive branch employees will no longer be treated like federal executive branch employees, but will be covered both under the provisions of the federal Hatch Act that applies to federally funded state and local employees and by the D.C. equivalent of the Hatch Act, namely the "Prohibition on Government Employee Engagement in Political Activity Act of 2010."[2] These laws serve all of the basic purposes of the Hatch Act to avoid partisanship in carrying out normal government functions while permitting citizens to have an unfettered choice of their candidates in elections. As the Chairman of this Committee so eloquently stated during the debate on the District of Columbia Hatch Act Reform Act of 2009 in the last Congress, "[H]ome rule by the District

[2] D.C. Law 18-335. This law became effective on March 31, 2011, but does not apply until "enactment by the Congress of an act excluding the District of Columbia from the coverage of 5 U.S.C. §§ 7321 through 7326 (Hatch Act)" and "upon inclusion of its fiscal effect in an approved budget and financial plan."

of Columbia will not be complete until we harmonize as many rights and responsibilities as we can to the District."[3]

It is my belief that H.R. 4152 and its companion Senate bill, with the previously suggested amendments, will help eliminate the unnecessary and ill-advised barriers of the current Hatch Act which prevent District of Columbia employees from seeking partisan elected local office and restrict the choices of our citizens for candidates for the limited number of elected positions we have in the District. I also believe that the legislation will move the District closer towards the important goal of greater Home Rule for our citizens.

Thank you for the opportunity to testify. I am happy to answer any questions you may have.

[3] 155 Cong. Rec. H9299 (daily ed. September 8, 2009) (statement of Rep. Issa).

Irvin B. Nathan – Attorney General for the District of Columbia

Irvin B. Nathan is the Attorney General for the District of Columbia. He was appointed to this position by Mayor Vincent Gray in January 2011 for a four-year term and unanimously confirmed by the Council of the District of Columbia. Prior to his arrival at the Office of Attorney General, he was the General Counsel of the United States House of Representatives, where he served from November 2007 until January 2, 2011. For more than 30 years, he practiced with the Washington, DC law firm of Arnold and Porter, where he was a senior litigating partner and head of the firm's white-collar criminal defense practice. He has served as a Deputy Assistant Attorney General and Principal Associate Deputy Attorney General in the United States Department of Justice. He also served as the Vice Chair of the Board of Professional Responsibility of the District of Columbia and as an adjunct professor at the Georgetown University Law Center and the University of San Diego Law School. He is a graduate of the Johns Hopkins University and Columbia University Law School.