

**Testimony of Carolyn Lerner, Special Counsel
and Ana Galindo-Marrone, Chief, Hatch Act Unit
U.S. Office of Special Counsel**

**U.S. House of Representatives
Committee on Oversight and Government Reform**

**“White House Office of Political Affairs: Is Supporting Candidates and Campaign Fund-
Raising an Appropriate Use of a Government Office?”**

July 16, 2014, 10:00 A.M.

Chairman Issa, Ranking Member Cummings, and Members of the Committee:

Thank you for the opportunity to testify today about the U.S. Office of Special Counsel (OSC), and our enforcement of the Hatch Act. I am joined today by Ana Galindo-Marrone, Chief of OSC’s Hatch Act Unit.

OSC’s primary mission is to protect the merit system and provide a safe and secure channel for government whistleblowers who report waste, fraud, abuse, and threats to public health and safety. The agency also protects veterans and service members from discrimination under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Finally, OSC enforces the Hatch Act, which was enacted in 1939 to restrict the partisan political activity of federal employees and certain employees of state and local governments.

This is the fourth time I have had the opportunity to testify before the Oversight Committee, including a few weeks ago in June. My testimony in May 2012 provided the Committee with recommendations for strengthening and modernizing the Hatch Act. Our discussions and your subsequent successful legislative efforts resulted in the first significant modifications to the Hatch Act in two decades.

The Hatch Act Modernization Act of 2012 (P.L. 112-230), sponsored by Ranking Member Cummings, Representative Chaffetz, Congresswoman Norton, and others, largely removed the Hatch Act’s prohibition on state and local employees running for partisan elective office. This important reform reduced unnecessary federal involvement in state and local elections, and has allowed OSC to better allocate its scarce resources toward more effective Hatch Act enforcement. The Modernization Act also promotes fairness by providing for a range of penalties in federal sector Hatch Act cases and allows District of Columbia employees to run as independents in partisan local elections. I thank the Committee for its efforts to pass this important law and for its ongoing interest in OSC’s Hatch Act enforcement efforts.

Our testimony today will focus on: (1) OSC’s recent enforcement actions, (2) education and outreach efforts, and (3) the White House Office of Political Strategy and Outreach.

Significant Enforcement Actions

Our testimony provides a summary of recent enforcement actions, both to highlight the importance of the law and to serve as a reminder to federal employees of the Hatch Act's restrictions on certain partisan political activity.

In general, the Hatch Act prohibits all federal employees from soliciting, accepting, or receiving political contributions from any person and, with limited exceptions, engaging in any political activity while on duty or in the federal workplace. Federal employees, including high-ranking officials, may not engage in political activity in their official capacity or otherwise use their official authority for the purpose of interfering with or affecting the result of an election. Some federal employees are further restricted under the Hatch Act, meaning they may not take an active part in partisan political management or partisan political campaigns.

Recent cases that illustrate these restrictions include the following:

- In June 2014, OSC entered into a settlement agreement with an Internal Revenue Service (IRS) employee. The employee agreed to a 100-day unpaid suspension for violating the Hatch Act. The agreement resolved a formal Hatch Act complaint OSC filed with the Merit Systems Protection Board (MSPB) in April 2014. OSC's complaint alleged that, when fielding taxpayers' questions on an IRS customer service help line, the employee repeatedly urged taxpayers to reelect President Barack Obama in 2012 by delivering a chant based on the spelling of the employee's last name. In the settlement agreement, the IRS employee acknowledged that he had used his authority and influence as an IRS customer service representative for a political purpose and did so while at work.
- In May 2014, the MSPB granted OSC's request to remove a U.S. Postal Service (USPS) employee from federal service for violating the Hatch Act. Specifically, OSC's complaint alleged that the employee twice ran in partisan elections for a seat in the U.S. House of Representatives. In addition, he solicited political contributions for his campaigns. OSC and USPS repeatedly warned the worker that his actions violated the Hatch Act and requested that he comply with the law either by withdrawing from the elections or ending his federal employment. Despite these repeated warnings, the employee refused to comply with the law. This was the first MSPB decision under the Hatch Act Modernization Act, which took effect in early 2013.
- Under an April 2014 settlement agreement with OSC, an attorney at the Federal Election Commission (FEC) agreed to resign and is barred from employment within the federal executive branch for two years after admitting to violations of the Hatch Act. The FEC referred to OSC evidence that the employee posted dozens of partisan political tweets, including many soliciting campaign contributions to President Obama's 2012 reelection campaign and other political campaigns. The employee also participated in an internet broadcast via webcam from an FEC facility, criticizing the Republican Party and presidential candidate Mitt Romney. Following a joint investigation between OSC and the FEC Office of

Inspector General, the employee admitted to violating the Hatch Act and resigned.

- Under an April 2014 settlement agreement with OSC, a federal civilian employee with the U.S. Air Force agreed to serve a 40-day suspension without pay for repeatedly violating the Hatch Act's prohibitions against engaging in political activity while on duty and in the workplace, despite warnings to stop his behavior. The employee sent numerous partisan political e-mails in opposition to then-candidate President Obama using a government account to a list of as many as 60 federal employees. The employee sent each e-mail while on duty in the months leading up to the 2012 election. The employee admitted knowing about the Hatch Act's restrictions, and even after receiving warnings from his supervisors, persisted in sending more e-mails.
- Under an April 2014 settlement agreement with OSC, an IRS tax advisory specialist in Kentucky served a 14-day suspension for promoting her partisan political views to a taxpayer she was assisting during the 2012 presidential election season. The employee told a taxpayer she was "for" the Democrats because "Republicans already [sic] trying to cap my pension and . . . they're going to take women back 40 years." She continued to explain that her mom always said, "'If you vote for a Republican, the rich are going to get richer and the poor are going to get poorer.' And I went, 'You're right.' I found that out." The employee's supervisor had advised her about the Hatch Act's restrictions just weeks before the conversation. The employee told the taxpayer, "I'm not supposed to voice my opinion, so you didn't hear me saying that." In the settlement agreement, the employee admitted to violating the Hatch Act's restrictions against engaging in political activity while on duty and in the workplace and using her official authority or influence to affect the result of an election.

In addition to these recent actions, in September 2012, in response to a Hatch Act complaint filed by Chairman Issa and others, OSC sent findings to President Obama from its investigation of improper political activity by Secretary of Health and Human Services Kathleen Sebelius. OSC concluded that Secretary Sebelius violated the Hatch Act when she made extemporaneous partisan remarks in a speech delivered in her official capacity on February 25, 2012. The Hatch Act allows federal employees, including officials appointed by the President and confirmed by the Senate, to make partisan remarks when speaking in their personal capacity, but not when using their official title or when speaking about agency business.

After the event in question, the Department of Health and Human Services (HHS) reclassified the trip from official to political and issued a statement to that effect. The Democratic National Committee reimbursed the U.S. Treasury for all costs and expenses associated with Secretary Sebelius's travel to the event. OSC found no evidence that Secretary Sebelius made any other political statements in her official capacity. Nevertheless, this was the first time OSC found a sitting cabinet secretary in violation of the Hatch Act. It again serves as a reminder to employees, at all levels, of the importance of adhering to the Hatch Act's restrictions.

Education and Outreach

To better educate the federal workforce and prevent Hatch Act violations from occurring in the first place, OSC conducts training and outreach sessions for employees. During fiscal year 2014, OSC has been working, with limited resources, to ensure that federal, state, D.C., and local government employees understand their rights and responsibilities under the Hatch Act by: (1) conducting trainings at federal agencies and national conferences; (2) updating our website, including maintaining a comprehensive list of frequently asked questions and select OSC advisory opinions; and (3) using a listserv to quickly inform federal agency ethics officials of recent Hatch Act decisions, developments, enforcement actions, and guidance.

In this fiscal year alone, OSC has conducted 21 outreach presentations to diverse federal populations. This includes rank and file employees, senior officials and political appointees, and union groups. As we move closer to the 2014 mid-term elections, we expect to increase the number of outreach and training events nationwide. The number conducted to date is already more than double the number of events in 2013. OSC also works with Federal News Radio and other media outlets to promote Hatch Act education and compliance.

In addition, OSC provides technical assistance to agencies, employees, and the public at large through its nationwide advisory program. We provide Hatch Act information and assistance to congressional offices, cabinet members, the media, and local, state, and federal government officials. To assist with this effort, OSC maintains telephone and email Hatch Act advisory hotlines, and responds to over a thousand formal and informal inquiries annually.

Over the course of several administrations, it also has been OSC's practice to brief White House lawyers on the Hatch Act, who in turn conduct Hatch Act trainings for White House staff. Our meetings typically occur at the start of a new administration. We provide updates as needed during the election season. OSC is also available to White House personnel to provide technical assistance or informal advisory opinions in response to specific questions or concerns.

Consistent with this practice, on March 20, 2014, OSC conducted an outreach session for White House lawyers to provide guidance on a number of pertinent Hatch Act topics. At the session, OSC discussed our latest guidance on "use of official authority" restrictions. This includes rules on use of official title at partisan events, guidelines for speeches given in an employee's official capacity, and answering campaign questions at official events. In addition, OSC covered rules on solicitation, reminding employees that speaking at fundraisers is permissible, while soliciting donations at events or hosting fundraisers is not. OSC discussed the limitation on political activity on duty or in the federal workplace. Only commissioned officers in the White House may engage in a limited amount of political activity on duty or in a federal building. All other employees are barred from such activity. OSC updated White House staff on social media restrictions and discussed the distinction between official and personal social media accounts. Finally, OSC discussed rules concerning official versus political travel, including OSC's latest advisory opinion on this issue.

White House Office of Political Strategy and Outreach

OSC received copies of correspondence between Chairman Issa and the White House concerning the establishment of the Office of Political Strategy and Outreach (OPSO). The White House did not consult with OSC about establishing the OPSO. However, based on our review of the White House correspondence to the Committee, it appears that the White House adhered to OSC guidance in determining the scope of activity for the office. To the extent that OPSO's activities are limited to those described in the White House correspondence, OPSO appears to be operating in a manner that is consistent with Hatch Act restrictions.

OSC will continue to fulfill the dual advisory and enforcement role assigned to it by Congress under the Hatch Act. If the White House seeks additional guidance or clarification on any activities of the OPSO, we will provide advisory assistance to ensure compliance with Hatch Act restrictions. If OSC is presented with credible evidence of a violation, OSC would initiate an investigation to determine if any activity exceeds permissible Hatch Act boundaries.

We thank you again for the opportunity to testify today, and would be happy to answer the Committee's questions.

Carolyn N. Lerner, Special Counsel

The Honorable Carolyn N. Lerner heads the United States Office of Special Counsel. Her five-year term began in June 2011. Prior to her appointment as Special Counsel, Ms. Lerner was a partner in the Washington, D.C., civil rights and employment law firm Heller, Huron, Chertkof, Lerner, Simon & Salzman, where she represented individuals in discrimination and employment matters, as well as non-profit organizations on a wide variety of issues. She previously served as the federal court appointed monitor of the consent decree in *Neal v. D.C. Department of Corrections*, a sexual harassment and retaliation class action.

Prior to becoming Special Counsel, Ms. Lerner taught mediation as an adjunct professor at George Washington University School of Law, and was mediator for the United States District Court for the District of Columbia and the D.C. Office of Human Rights.

Ms. Lerner earned her undergraduate degree from the University of Michigan, where she was selected to be a Truman Scholar, and her law degree from New York University (NYU) School of Law, where she was a Root-Tilden-Snow public interest scholar. After law school, she served two years as a law clerk to the Honorable Julian Abele Cook, Jr., Chief U.S. District Court Judge for the Eastern District of Michigan.

Ana Galindo-Marrone, Chief, Hatch Act Unit

Ana Galindo-Marrone began her employment at OSC in 1998, and in 1999 she joined the prosecution division. She has been chief of the Hatch Act Unit since 2000. The Unit enforces compliance with the Act by investigating complaint allegations and litigating Hatch Act cases before the Merit Systems Protection Board. In addition, the Unit is responsible for a nationwide program that provides Hatch Act advisory opinions to federal, state, and local officials, as well as the public at large.

Ms. Galindo-Marrone has been a frequent presenter at conferences and forums on the Hatch Act and OSC's enforcement program. She has been a guest on several radio shows, including The Kojo Nnamdi Show, FEDtalk, Federal Drive, and In Depth. She also has testified or served as a technical consultant before several congressional committees considering Hatch Act reform, including the June 21, 2011, House Committee on Oversight and Government Reform hearing, "The Hatch Act: The Challenges of Separating Politics from Policy."

Prior to joining OSC, Ms. Galindo-Marrone was a staff attorney for the School Board of Miami-Dade County, Florida. Ms. Galindo-Marrone, who is a native of Miami, Florida, received her law degree, cum laude, from the University of Miami School of Law.