FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

PART I

HEARINGS

BEFORE THE

SUBCOMMITTEE ON EMPLOYEE POLITICAL RIGHTS AND INTERGOVERNMENTAL PROGRAMS

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 3000

A BILL TO RESTORE TO FEDERAL CIVILIAN EMPLOYEES THEIR RIGHTS TO PARTICIPATE, AS PRIVATE CITIZENS, IN THE POLITICAL LIFE OF THE NATION, TO PROTECT FEDERAL CIVILIAN EMPLOYEES FROM IMPROPER POLITICAL SOLICITATIONS, AND FOR OTHER PURPOSES

MARCH 25, APRIL 8, 9, 10, 1975

Serial No. 94–17

Printed for the use of the
Committee on Post Office and Civil Service

U.S. GOVERNMENT PRINTING OFFICE
52-137 WASHINGTON : 1975

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

DAVID N. HENDERSON, North Carolina, *Chairman*
MORRIS K. UDALL, Arizona, *Vice Chairman*

DOMINICK V. DANIELS, New Jersey
ROBERT N. C. NIX, Pennsylvania
JAMES M. HANLEY, New York
CHARLES H. WILSON, California
RICHARD C. WHITE, Texas
WILLIAM D. FORD, Michigan
WILLIAM (BILL) CLAY, Missouri
PATRICIA SCHROEDER, Colorado
WILLIAM LEHMAN, Florida
GLADYS N. SPELLMAN, Maryland
STEPHEN L. NEAL, North Carolina
HERBERT E. HARRIS, Virginia
WILLIAM M. BRODHEAD, Michigan
PAUL SIMON, Illinois
NORMAN Y. MINETA, California
JOHN W. JENRETTE, Jr., South Carolina
STEPHEN J. SOLARZ, New York

EDWARD J. DERWINSKI, Illinois
ALBERT W. JOHNSON, Pennsylvania
JOHN H. ROUSSELOT, California
ANDREW J. HINSHAW, California
JAMES M. COLLINS, Texas
GENE TAYLOR, Missouri
BENJAMIN A. GILMAN, New York
ROBIN L. BEARD, Tennessee
TRENT LOTT, Mississippi

JOHN H. MARTINY, *Chief Counsel*
VICTOR C. SMIROLDO, *Staff Director and Counsel*
THEODORE J. KAZY, *Associate Staff Director*
ROBERT E. LOCKHART, *Counsel*
ROY C. MESKER, *Senior Staff Assistant*

SUBCOMMITTEE ON EMPLOYEE POLITICAL RIGHTS AND INTERGOVERNMENTAL PROGRAMS

WILLIAM (BILL) CLAY, Missouri, *Chairman*

GLADYS N. SPELLMAN, Maryland
STEPHEN J. SOLARZ, New York
CHARLES H. WILSON, California
HERBERT E. HARRIS, Virginia
PATRICIA SCHROEDER, Colorado

BENJAMIN A. GILMAN, New York
JOHN H. ROUSSELOT, California

Ex Officio Voting Members

DAVID N. HENDERSON, North Carolina
EDWARD J. DERWINSKI, Illinois

LLOYD A. JOHNSON, *Subcommittee Staff Director*, Room 603, HOB Annex—Ext. 59124

CONTENTS

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

TUESDAY, MARCH 25, 1975

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE POLITICAL RIGHTS
AND INTERGOVERNMENTAL PROGRAMS,
Washington, D.C.

The subcommittee met at 10 a.m. in room 210, Cannon House Office Building, Hon. William Clay (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN WILLIAM CLAY

Mr. CLAY. The hearing will come to order.

This morning the Subcommittee on Employee Political Rights and Intergovernmental Programs begins the first of several days of public hearings on H.R. 3000, the Federal Employees Political Activities Act of 1975, and related legislation.

The Hatch Act (secs. 7321 through 7327 of title 5, U.S.C.) limits the campaign contributions and prohibits coercion of employees of the Federal Government; promises of employment or threats of deprivation of employment for political reasons and active participation in political activities. Its enactment in 1939 was a congressional effort to prevent improper political pressure upon Federal civilian employees. Given the conditions of the time, its enactment assured a competitive, classified merit system which inspired public confidence. It also protected these public servants from undue political influence by overzealous superior officials.

In the 35 years that have passed since the enactment of the Hatch Act, little has been done to bring the law into conformity with the problems, opportunities and realities of the 1970's. The vagueness of the act leads many Federal employees to "play it safe" by not becoming involved in political activities. The act tends to infringe upon the constitutionally guaranteed right to free speech and free association by Federal employees. Indeed, the sad and cruel reality is that the act systematically denies meaningful political participation to a select group of people—Federal civilian and postal employees.

Of course, it is essential to preserve integrity in governmental affairs and to maintain and to develop an impartial civil service. It is possible to do so while broadening and more explicitly defining the extent to which Federal civilian and postal employees may participate in the political process. A balance can and must be struck between these two imperatives.

In addition to H.R. 3000, whose reintroduction has been cosponsored by 55 of my colleagues in the House of Representatives, similar bills have been introduced by other Members of Congress. Each of these legislative proposals seeks to amend the Hatch Act by protecting Federal civilian employees from improper political influence and coercion while defining permissible political activities.

H.R. 3000 would enable Federal civilian and postal employees to participate more actively in the democratic political process. It authorizes voluntary political contributions by employees. It permits employees to express their views and to participate in political management of campaigns. It defines the meaning of political management and campaigns to include the following activities: candidacy for service in political conventions; participation in political meetings, caucuses and primaries; preparing for, organizing or conducting a political meeting or rally; membership in political clubs; distributing campaign literature and distributing or wearing campaign badges and buttons; having a publishing, editorial or managerial connection with political publications; participating in a political parade; circulating nominating petitions; and candidacy for any public office.

I do not suggest that this legislation provides the complete and final answer to this problem. It is extremely complex and of longstanding duration. It does however represent one approach to the issue of making full participation in the political process a reality for all Americans.

I know that I speak for the subcommittee when I state that it is important that we welcome and solicit the views of others in seeking to constructively address this too long neglected problem. In order to facilitate this process, the subcommittee will be conducting public hearings on H.R. 3000 and related legislation in Washington, D.C., on April 8, 9, and 10. In addition, field hearings will be conducted in the following cities on the dates indicated: Annandale, Va.; April 14, 1975; Riverside, Md., April 15, 1975; St. Louis, Mo., April 19, 1975; Cleveland, Ohio, April 21, 1975; New York, N.Y., May 2 and 3, 1975.

Responsibility for administration of the Hatch Act rests with our first witness, the U.S. Civil Service Commission, represented by its Chairman, Hon. Robert E. Hampton. Earlier, the Commission responded to several questions posed by the subcommittee. Without objection, the replies to these questions will be inserted into the record at this point.

[The information referred to follows:]

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D.C., February 28, 1975.

Hon. WILLIAM L. CLAY,
Chairman, Subcommittee on Employee Political Rights and Intergovernmental Programs, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CLAY: This is in response to your letter of February 12, 1975, requesting information concerning the Commission's enforcement activities with respect to alleged violations of the Hatch Act on the part of Federal employees.

The responses to your specific questions are enclosed herewith. We have not yet been able to complete extracting the statistics necessary to respond to question 5 concerning a breakdown by year, type of complaint, executive agency, and geographical region, of the average length of time between the filing and final

disposition of complaints of alleged violations of the Hatch Act by Federal employees. The General Counsel informs me that we should be able to provide a full response by March 5, 1975.

I trust that the information contained in the enclosures is responsive to the concerns which you have expressed. We are looking forward to the opportunity to testify before the Subcommittee on March 25, 1975, concerning the revisions of the Hatch Act which are being proposed in the Congress.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

Enclosures.

1. PROCEDURE BY WHICH THE COMMISSION PROCESSES COMPLAINTS OF ALLEGED VIOLATIONS

The Commission's General Counsel has been delegated the authority and responsibility for pursuing complaints of alleged prohibited political activity. Section 733.131 of title 5, Code of Federal Regulations, provides that the Commission ". . . will determine whether to investigate an allegation of prohibited activity that it receives from an agency or from any other sources." When a complaint is received, it is assigned to an attorney on the General Counsel's staff for review to determine whether the individual complained of would be subject to the Hatch Act and whether the activity alleged would constitute a violation. Frequently it is necessary to request additional information from the complainant or to make initial inquiries to determine employment status, the partisan or nonpartisan nature of an election, etc.

The attorney to whom the complaint is assigned makes a recommendation as to whether an investigation should be conducted. The attorney's recommendation is then reviewed by the Senior Attorney or the Assistant General Counsel for Political Activity. If it is determined that no inquiry is warranted, the complainant is so advised. If an inquiry is warranted, an investigation will be conducted to obtain the necessary affidavits, election records, and other documentation. The investigation is conducted either by an attorney from the Office of the General Counsel or by one of the Commission's investigators in the field. The latter usually occurs when the work-load is heavy.

After review of the report of investigation, the General Counsel may close the case or issue a letter of charges to the employee. An employee who is charged with a violation may answer the charges personally and/or in writing within 15 days of the date the letter of charges is received. If, after consideration of the employee's answer, the General Counsel determines that further proceedings are warranted, the case is submitted to the Commission's Administrative Law Judge, who schedules a hearing. The hearing is conducted at a location convenient to the employee and the witnesses, generally in or near the city where the employee is stationed. The hearing is an adversary proceeding, with the witnesses subject to cross-examination. The employee is furnished a transcript of the hearing without charge.

Following the hearing, the Administrative Law Judge prepares a recommended decision as to the violation and the appropriate penalty, which is then forwarded to the Commission, with the record of the hearing. The Commission makes its decision on the basis of the record and notifies the employee and the employing agency. If the Commission determines that a violation has occurred, the penalty is removal from the services, unless the Commission unanimously agrees that a lesser penalty is warranted.

2. COMPLAINTS OF ALLEGED VIOLATIONS OF THE HATCH ACT ON THE PART OF FEDERAL EMPLOYEES FILED WITH THE COMMISSION DURING THE PAST 5 YEARS

The statistics provided herein generally reflect only those complaints which were docketed, and do not include those which on their face indicated that no violation had occurred. A significant number of the complaints docketed each year are closed on the basis of an initial inquiry to obtain pertinent information, but prior to actual investigation, while others are closed upon the basis of the evidence developed during the investigation indicating that further proceedings are not warranted. The information is provided for fiscal years 1970 through

1974, inclusive, and for fiscal year 1975 to date. During that period from July 1, 1969 to the present, the Commission has docketed 320 complaints of alleged violations on the part of the Federal employees. The types of complaints have been categorized into the broad areas which encompass the more specific activities. This method was discussed and agreed upon by Mr. Lynn R. Collins, Acting Assistant General Counsel, and Mr. Lloyd A. Johnson, the Subcommittee Staff Director.

FISCAL YEAR 1970

The Commission processed 59 complaints, involving employees of 10 executive agencies and departments in 17 states, the District of Columbia, and Puerto Rico, as follows:

Type of complaint:	
Candidacy	6
Campaigning	27
Campaigning/Management	3
Management	9
Soliciting contributions	11
Misuse of official authority	0
Unspecified	3
Employing agency:	
Agriculture	3
Air Force	3
Army	1
IRS	0
Navy	2
Postal Service	44
SBA	2
VA	1
Commerce	1
FHA	1
State:	
Alabama	2
California	2
Colorado	2
Connecticut	1
Delaware	1
District of Columbia	1
Idaho	1
Kentucky	3
Maine	1
Massachusetts	3
New Jersey	1
New York	4
Ohio	7
Oklahoma	2
Pennsylvania	9
Puerto Rico	16
Texas	1
Utah	1
Virginia	1

FISCAL YEAR 1971

The Commission processed 65 complaints, involving employees of 10 executive agencies and departments and the District of Columbia government, in 25 states and the District of Columbia, as follows:

Type of complaint:	
Candidacy	17
Campaigning	32
Campaigning/management	0
Management	4
Soliciting contributions	2
Misuse of official authority	1
Unspecified	7
Employing agency:	
Agriculture	1
Air Force	9
Army	13
District of Columbia Government	1
HEW	2
Labor	1
Marine Corps	1
NASA	1
Navy	2
Postal Service	27
VA	5
Unidentified	2
State:	
Alabama	1
Alaska	2
State—Continued	
Arizona	10
Arkansas	3
California	1
District of Columbia	3
Florida	2
Georgia	6
Indiana	1
Iowa	1
Kentucky	1
Louisiana	1
Maryland	5
Massachusetts	1
Michigan	1
Minnesota	1
Nebraska	1
New Jersey	1
New Mexico	2
New York	4
North Carolina	2
Ohio	3
Oklahoma	3
South Carolina	2
Texas	2
Washington	3

FISCAL YEAR 1972

The Commission processed 56 complaints, involving employees of 15 executive agencies and departments in 22 states and the District of Columbia.

Type of complaint:	
Candidacy	15
Campaigning	15
Campaigning/management	1
Management	7
Soliciting contributions	8
Misuse of official authority	2
Unspecified	8
Employing agency:	
Agriculture	5
Air Force	4
Army	4
Defense (other)	3
GSA	7
HEW	1
HUD	1
IRS	1
Justice	1
Marine Corps	1
Navy	3
OEO	1
Postal Service	20
Transportation	1
VA	3
State:	
Alabama	2
California	2
District of Columbia	4
Georgia	1
Illinois	1
Kansas	1
Kentucky	1
Louisiana	1
Maryland	2
Massachusetts	5
Missouri	3
New Jersey	2
New York	4
North Carolina	5
Ohio	1
Oregon	1
Pennsylvania	3
South Carolina	1
Texas	7
Utah	1
Virginia	5
Washington	1
Wisconsin	1
Unidentified	1

FISCAL YEAR 1973

The Commission processed 51 complaints, involving employees of 13 executive agencies and departments in 23 states, the District of Columbia, Guam, and Puerto Rico, as follows:

Type of complaint:	
Candidacy	15
Campaigning	20
Campaigning/management	0
Management	12
Soliciting contributions	0
Misuse of official authority	1
Unspecified	3
Employing agency:	
Agriculture	7
Air Force	2
Army	8
Defense	1
GSA	1
HEW	1
HUD	3
IRS	2
Navy	4
Postal Service	13
SBA	1
Transportation	1
VA	1
Unidentified	6
State:	
Arizona	1
Arkansas	1
State—Continued	
California	5
District of Columbia	1
Florida	2
Georgia	2
Guam	1
Illinois	1
Kansas	2
Kentucky	2
Louisiana	1
Massachusetts	2
Michigan	2
Mississippi	1
Missouri	1
Nevada	1
New York	3
North Carolina	2
Oregon	1
Pennsylvania	5
Oklahoma	2
Puerto Rico	1
Rhode Island	1
South Dakota	1
Tennessee	2
Texas	4
Unidentified	3

FISCAL YEAR 1974

The Commission processed 37 complaints, involving employees of 12 executive agencies and departments, the District of Columbia government, and the National Guard, in 14 states, the District of Columbia, and Puerto Rico, as follows:

Type of complaint:	
Candidacy	12
Campaigning	6
Campaigning/management	2
Management	8
Soliciting contributions	4
Misuse of official authority	0
Employing agency:	
Agriculture	6
Air Force	3
Army	6
Defense	1
District of Columbia government	1
EPA	1
GPO	1
Interior	1
IRS	6
National Guard [1]	1
OEO	1
Employing agency—Continued	
Postal Service	7
Transportation	1
VA	1
State:	
Alabama	2
District of Columbia	3
Georgia	1
Illinois	2
Kentucky	1
Massachusetts	1
Missouri	1
New York	3
North Carolina	6
Oklahoma	4
Pennsylvania	4
Puerto Rico	1
South Carolina	1
Texas	3
Utah	3
Wisconsin	1

[1] Expected service appeal case.

FISCAL YEAR 1975

The Commission, thus far, has processed 52 complaints, involving employees of 12 executive agencies and departments, and the National Guard, in 22 states and the District of Columbia, as follows:

Type of complaint:	
Candidacy	11
Campaigning	22
Campaigning/management	2
Management	12
Soliciting contributions	0
Misuse of official authority	1
Unspecified	4
Employing agency:	
Agriculture	3
Army	9
Coast Guard	1
FDA	1
FEA	1
GSA	1
IRS	1
National Guard [1]	1
Navy	7
OEO	1
Postal Service	23
SBA	2
VA	1
State:	
Arkansas	1
California	2
State—Continued	
District of Columbia	1
Florida	2
Georgia	2
Hawaii	1
Kansas	1
Kentucky	1
Maryland	5
Massachusetts	1
Michigan	1
Missouri	4
Nebraska	1
New Hampshire	1
New Mexico	1
New York	6
North Carolina	3
Pennsylvania	1
Tennessee	1
Texas	1
Washington	1
West Virginia	1
Wyoming	1
Unidentified	2

[1] Excepted service appeal.

3. FINAL DISPOSITIONS OF COMPLAINTS OF ALLEGED VIOLATIONS OF THE HATCH ACT ON THE PART OF FEDERAL EMPLOYEES MADE BY THE COMMISSION DURING THE PAST 5 YEARS

During the period from July 1, 1969, through the present date, the Commission made final dispositions in 327 cases involving alleged prohibited political activity on the part of Federal employees.

FISCAL YEAR 1970

The Commission made final disposition of 67 cases, involving employees of 11 executive agencies and departments in 21 states, the District of Columbia, and Puerto Rico, as follows:

Closed without investigation: 38
Type of complaint:
- Candidacy ---- 4
- Campaigning ---- 23
- Campaigning/Management ---- 2
- Management ---- 5
- Soliciting contributions ---- 3
- Misuse of official authority ---- 0
- Unspecified ---- 0

Employing Agency:
- Agriculture ---- 2
- Air Force ---- 2
- Commerce ---- 1
- IRS ---- 1
- Navy ---- 3
- Postal Service ---- 28
- SBA ---- 1

State:
- Alabama ---- 1
- Colorado ---- 2
- Connecticut ---- 1
- District of Columbia ---- 1
- Idaho ---- 1
- Kentucky ---- 2
- Maine ---- 1
- New York ---- 3
- Ohio ---- 2
- Oklahoma ---- 1
- Pennsylvania ---- 4
- Puerto Rico ---- 16
- Texas ---- 1
- Utah ---- 1
- Virginia ---- 1

Closed subsequent to investigation: 21
Type of complaint:
- Candidacy ---- 3
- Campaigning ---- 4
- Campaigning/management ---- 1
- Management ---- 6
- Soliciting contributions ---- 3
- Misuse of official authority ---- 0
- Unspecified ---- 4

Employing agency:
- Agriculture ---- 1
- Army ---- 4
- Defense ---- 1
- HEW ---- 1
- Postal Service ---- 12
- SBA ---- 1
- VA ---- 1

State:
- Alabama ---- 2
- Delaware ---- 1
- Massachusetts ---- 3
- Minnesota ---- 1
- New Jersey ---- 1
- North Dakota ---- 2
- Ohio ---- 3
- Oklahoma ---- 2
- Pennsylvania ---- 4
- Texas ---- 2

Suspensions: 7
Type of complaint:
- Candacy, 1—60 days.
- Campaigning, 4. 1—90 days. 2—45 days.
- Soliciting contributions, 2—30 days.

Employing agency:
- Army ---- 4
- IRS ---- 1
- Postal Service ---- 2

State:
- Alabama ---- 3
- Colorado ---- 1
- Hawaii ---- 1
- Tennessee ---- 1
- Pennsylvania ---- 1

Removals: 1
Type of complaint: Candidacy.
Employing agency: Navy.
State: Washington.

FISCAL YEAR 1971

The Commission made final disposition of 74 cases, involving employees of 11 executive agencies and departments and the District of Columbia government in 26 states and the District of Columbia, as follows:

Closed without investigation: 28
Type of complaint:
- Candidacy ---- 9
- Campaigning ---- 7
- Campaigning management ---- 1
- Management ---- 4
- Soliciting contributions ---- 4
- Misuse of official authority ---- 1
- Unspecified ---- 2

Employing agency:
- Air Force ---- 2
- Army ---- 2
- District of Columbia government ---- 1
- Justice ---- 1
- Postal Service ---- 17
- VA ---- 3
- Unspecified ---- 2

FISCAL YEAR 1971—Continued

State:
- Alabama 2
- Arkansas 2
- District of Columbia 1
- Florida 1
- Iowa 1
- Louisiana 2
- Maryland 2
- Massachusetts 1
- Michigan 1
- Minnesota 1
- Nebraska 1
- New Mexico 1
- New York 2
- North Carolina 1
- Ohio 1
- Pennsylvania 4
- Utah 1
- Washington 2

Closed subsequent to investigation: 44

Type of complaint:
- Candidacy 8
- Campaigning 26
- Campaigning/management 0
- Management 3
- Soliciting contributions 3
- Misuse of official authority 0
- Unspecified 4

Employing agency:
- Agriculture 1
- Air Force 7
- Army 12
- FHA 1
- HEW 2
- Labor 1
- Marine Corps 1
- NASA 1
- Postal Service 17
- VA 1

State:
- Alaska 2
- Arizona 10
- Arkansas 1
- California 4
- District of Columbia 2
- Florida 1
- Georgia 5
- Kentucky 2
- Maryland 3
- Massachusetts 1
- New Mexico 1
- New York 1
- New Carolina 1
- Ohio 4
- Oklahoma 2
- Texas 2
- Washington 1
- Unspecified 1

Suspensions: 2

Type of complaint:
- Campaigning, 1—45 days.
- Management, 1—60 days.

Removals: 0

Employing agency:
- Postal Service.

State:
- Alabama.
- New York.

FISCAL YEAR 1972

The Commission made final disposition of 54 cases, involving employees of 12 executive agencies and departments, the District of Columbia government, and National Guard in 18 states and the District of Columbia, as follows:

Closed without investigation: 13

Type of complaint:
- Candidacy 2
- Campaigning 4
- Management 1
- Soliciting contributions 1
- Misuse of official authority 2
- Unspecified 3

Employing agency:
- GSA 1
- HEW 1
- IRS 1
- Justice 1
- Marine Corps 1
- Postal Service 3
- Transportation 1
- VA 3
- Unspecified 1

State:
- California 1
- District of Columbia 1
- Kansas 1
- Kentucky 1
- Louisiana 2
- Massachusetts 2
- Missouri 2
- New Jersey 1
- New York 1
- North Carolina 1

Closed subsequent to investigation: 20

Type of complaint:
- Candidacy 4
- Campaigning 10
- Management 3
- Unspecified 3

FISCAL YEAR 1972—Continued

Employing agency:
- Air Force 1
- Army 2
- Defense 1
- Navy 5
- Postal Service 11

State:
- California 1
- Illinois 1
- Indiana 1
- Maryland 1
- Massachusetts 3
- New York 2
- North Carolina 4
- Pennsylvania 2
- South Carolina 3
- Washington 1
- Unspecified 1

Suspensions: 18
Type of complaint:
- Candidacy, 3—30 days.
- Soliciting contributions, 15.
  1, 120 days; 3, 90 days; 1, 60 days; 1, 45 days; 9, 30 days.

Employing agency:
- Air Force 1
- District of Columbia government 1
- GSA 6
- National Guard 9
- VA 1

State:
- Alabama 9
- District of Columbia 1
- Georgia 1
- New York 1
- Virginia 6

Letters of charges dismissed: 1
Type of complaint: Soliciting contributions.
Employing agency: National Guard.
State: Alabama.
Removals: 0

FISCAL YEAR 1973

The Commission made final disposition of 56 cases, involving employees of 12 executive agencies and departments, in 25 states, the District of Columbia, and Puerto Rico, as follows:

Closed without investigation: 9
Type of complaint:
- Candidacy 5
- Campaigning 1
- Management 2
- Unspecified 1

Employing agency:
- Army 3
- HUD 1
- Navy 2
- Postal Service 2
- SBA 1

State:
- Arkansas 1
- California 1
- Massachusetts 1
- Michigan 2
- Oregon 1
- Puerto Rico 1
- Rhode Island 1
- Utah 1

Closed subsequent to investigation: 42
Type of complaint:
- Candidacy 12
- Campaigning 14
- Management 8
- Soliciting contributions 2
- Misuse of official authority 1
- Unspecified 5

Employing agency:
- Agriculture 8
- Air Force 4
- Army 8
- Defense 2
- HUD 1
- IRS 2
- Navy 1
- OEO 1
- Postal Service 13
- Transportation 1
- VA 1

State:
- Alabama 2
- Arizona 1
- California 3
- District of Columbia 3
- Florida 1
- Georgia 3
- Illinois 1
- Kansas 2
- Kentucky 2
- Louisiana 1
- Maryland 1
- Massachusetts 1
- Missouri 1
- New Jersey 1
- New York 1
- North Carolina 2
- Oklahoma 1
- Pennsylvania 2
- Tennessee 2
- Texas 10
- Wisconsin 1

FISCAL YEAR 1974

The Commission made final disposition of 37 cases, involving employees of 12 executive agencies and departments and the National Guard, in 18 States, Guam, and Puerto Rico, as follows:

Closed without investigation: 17

Type of complaint:
- Candidacy 6
- Campaigning 2
- Campaigning/management 1
- Management 1
- Soliciting contributions 2
- Miscellaneous 1
- Unspecified 4

Employing agency:
- Agriculture 4
- Army 1
- EPA 1
- IRS 6
- Postal Service 3
- Transportation 1
- Unspecified 1

State:
- Alabama 1
- District of Columbia 1
- Georgia 1
- Illinois 1
- Massachusetts 1
- New York 1
- North Carolina 2
- Pennsylvania 4
- South Carolina 1
- South Dakota 1
- Utah 3

Closed subsequent to investigation: 14

Type of complaint:
- Candidacy 4
- Campaigning 4
- Management 4
- Soliciting contributions 2

Employing agency:
- Agriculture 5
- Army 2
- GPO 1
- GSA 1
- HUD 1
- Postal Service 3

State:
- California 1
- District of Columbia 1
- Kentucky 1
- Mississippi 1
- Missouri 1
- New York 1
- North Carolina 1
- Oklahoma 1
- Pennsylvania 4
- Puerto Rico 1
- Texas 1

Suspensions: 4

Type of complaint:
- Candidacy, 1–45 days, 2–39 days; Management, 1–60 days. 3

Employing agency:
- Army 1
- National Guard (excepted service appeal) 1
- Navy 1
- Postal Service 1

State:
- Guam 1
- Nevada 1
- Pennsylvania 1
- Texas (excepted service appeal) 1

Removals: 2

Type of complaint: Candidacy, 2.
Employing agency: HEW, 1; Postal Service 1.
State: Florida, New York.

FISCAL YEAR 1975

The Commission, thus far in FY 1975, has made final disposition of 38 cases involving employees of 11 executive agencies and departments and National Guard, in 23 states and the District of Columbia, as follows:

Closed without investigation: 22

Type of complaint:
- Candidacy 11
- Campaigning 5
- Management 2
- Unspecified 4

Employing agency:
- Army 5
- FDA 1
- GSA 1
- National Guard 1
- Navy 3
- OEO 1
- Postal Service 7
- SBA 1
- Transportation 1
- Unspecified 1

States:
- Arkansas 1
- California 1
- District of Columbia 1
- Florida 2
- Georgia 2
- Hawaii 1
- Illinois 1
- Kansas 1
- Kentucky 1
- Maryland 2
- Massachusetts 1

FISCAL YEAR 1975—Continued

States—Continued
- Missouri — 1
- Nebraska — 1
- New Mexico — 1
- New York — 1
- South Carolina — 1
- West Virginia — 1
- Unspecified — 1

Closed subsequent to investigation: 14

Type of complaint:
- Candidacy — 5
- Campaigning — 2
- Management — 7

Employing agency:
- Air Force — 2
- Army — 6
- Coast Guard — 1
- Postal Service — 4
- VA — 1

State:
- Alabama — 1
- Georgia — 1
- New Hampshire — 1
- North Carolina — 6
- Oklahoma — 2
- Texas — 1
- Washington — 1
- Wisconsin — 1

Charges dismissed: 1
- Type of complaint: Management.
- Employing agency: Postal Service.
- State: Illinois.

Suspensions: 1
- Type of complaint: Campaigning/Management, 60 days.
- Employing agency: Army.
- State: New York.

Removals: 0

4. COMPLAINTS OF ALLEGED VIOLATIONS OF THE HATCH ACT ON THE PART OF FEDERAL EMPLOYEES CURRENTLY PENDING BEFORE THE COMMISSION

As of the date of this response there are 30 complaints of alleged violations of the Hatch Act on the part of Federal and District of Columbia government employees pending before the Commission. These complaints involve employees of 9 executive agencies and departments and the District of Columbia government, in 16 states and the District of Columbia, as follows:

Type of complaint:
- Candidacy — 6
- Campaigning — 18
- Campaigning/management — 3
- Management — 2
- Misuse of official authority — 1

Employing agency:
- Agriculture — 3
- Army — 1
- District of Columbia government — 1
- FEA — 1
- HEW — 1
- IRS — 1
- Navy — 4
- Postal Service — 16
- SBA — 1
- VA — 1

State:
- Arkansas — 1
- California — 3
- District of Columbia — 2
- Georgia — 1
- Kansas — 1
- Maryland — 4
- Michigan — 1
- Missouri — 3
- New York — 5
- Pennsylvania — 2
- South Dakota — 1
- Tennessee — 1
- Texas — 1
- Virginia — 1
- West Virginia — 1
- Wisconsin — 1
- Wyoming — 1

6. PERSONNEL RESOURCES OF THE COMMISSION ASSIGNED THE FULL-TIME RESPONSIBILITY FOR PROCESSING COMPLAINT OF ALLEGED VIOLATIONS OF THE HATCH ACT

All of the personnel of the Commission who are assigned the full-time responsibility for processing complaints of alleged violations of the Hatch Act are located in Washington, D.C. The following is a list of personnel so assigned, by position title and General Schedule classification for fiscal years 1970 through 1974, and at present. Since promotions and within-grade increases occur intermittently throughout any given year, no attempt has been made to indicate the within-grade step level of the personnel at the various GS grade levels. It should also be noted that the personnel so assigned in fiscal years 1970, 1971, and 1972, also performed duties in connection with the Commission's litigation function (non-Hatch Act) and, in addition, the personnel listed for all fiscal years, including the present, had responsibility for State and local political activity cases, as well as political activity advisory and informational services.

Fiscal year 1970:		
Assistant General Counsel for Enforcement and Litigation	GS–15	1
Senior attorney—Enforcement	GS–14	1
Senior attorney—Information	GS–14	1
Trial attorney	GS–13	2
do	GS–12	2
do	GS–11	1
do	GS– 9	1
Legal clerk trainee	GS–11	1
Staff assistant	GS– 7	1
Secretary/stenographer	GS– 6	1
do	GS– 5	1
Clerk/stenographer	GS– 4	1
Clerk/typist	GS– 3	1
Fiscal year 1971:		
Assistant general Counsel for Enforcement and Litigation	GS–15	1
Senior attorney—Enforcement	GS–14	1
Senior attorney—Information	GS–14	1
Trial attorney	GS–13	2
do	GS–12	3
do	GS–11	1
Legal Clerk Trainee	GS– 9	1
Staff assistant	GS– 7	1
Secretary/Stenographer	GS– 6	1
Do	GS– 5	1
Clerk/stenographer	GS– 5	1
Do	GS– 3	1
Clerk/typist	GS– 3	1
Fiscal year 1972:		
Assistant General Counsel for Enforcement	GS–15	1
Senior attorney—enforcement	GS–14	1
Senior attorney—information	GS–14	1
Trial attorney	GS–13	3
Do	GS–12	2
Do	GS–11	2
Fiscal year 1972—Continued		
Staff assistant	GS– 9	1
Secretary/stenographer	GS– 6	1
Do	GS– 5	1
Clerk stenographer	GS– 4	2
Clerk/typist	GS– 4	1
Fiscal year 1973:		
Assistant General Counsel for Enforcement	GS–15	1
Senior attorney—enforcement	GS–14	1
Senior attorney—information	GS–14	1
Trial attorney	GS–13	3
Do	GS–12	1
Staff assistant	GS– 9	1
Secretary/stenographer	GS– 6	1
Do	GS– 5	1
Clerk/stenographer	GS– 5	1
Do	GS– 4	1
Fiscal year 1974:		
Assistant General Counsel for Political Activity [1]	GS–15	1
Senior attorney—enforcement	GS–14	1
Trial attorney	GS–14	1
Do	GS–13	1
Do	GS–12	1
Do	GS–11	1
Legal clerk trainee	GS–17	2
Staff assistant	GS–10	1
Secretary/Stenographer	GS– 6	1
Do	GS– 5	2
Present:		
Acting Assistant General Counsel for Political Activity and Litigation [2]	GS–16	1
Deputy assistant General Counsel	GS–15	1
Senior attorney	GS–14	1
Trial attorney	GS–13	1
Do	GS–12	1
Secretary/stenographer	GS– 6	1
Do	GS– 5	2

[1] Incumbent served in the position at GS–14 level.
[2] Incumbent detailed to position at the GS–15 level.

In addition to the above-listed personnel, the following also spend significant proportions of time with political activity cases:

Administrative law judge	GS–16	1
Secretary/stenographer	GS– 5	1

Of course, because of their delegated authorities, the General Counsel (GS–18) and the Deputy General Counsel review Hatch Act cases, reports of investigation, and sign "close-out" letters, and the General Counsel must approve and sign all letters of charges.

Also, as noted in Enclosure 1, cases are occasionally referred to the field for investigation by personnel of the Commission's Bureau of Personnel Investigations. These investigators are generally classified at the GS–11 or GS–12 level, and the time spent on the investigation, as well as related travel and other expenses, is charged to the political activity budget.

7. MONEY AUTHORIZED, REQUESTED, AND ACTUALLY EXPENDED FOR ENFORCEMEENT ACTIVITIES OF THE COMMISSION IN PROCESSING COMPLAINTS OF ALLEGED HATCH ACT VIOLATIONS ON THE PART OF FEDERAL EMPLOYEES

Funds were first provided for enforcement of prohibitions against pernicious political activities at the time of approval of the amended Hatch Act on July 19, 1940. For the 1941 fiscal year, which was the first year appropriations were specifically provided, the Congress prescribed a maximum appropriation of $100,000. Against this amount, the Bureau of the Budget set up a reserve of $60,000, leaving available for expenditure $40,000 during the 1941 fiscal year. Actual expenditures during the fiscal year were $34,357.39. (This figure represents expenditures for processing all Hatch Act cases—Federal, State, and local—since the accounting procedures did not separate expenditures for Federal cases). Thus, information regarding expenditures for only Federal cases is not available for the requested years 1941, 1946, and 1951. For fiscal year 1945, the requested limitation was $90,000; it was $50,000 for fiscal year 1951. We have, as of this time, been unable to obtain the figures for actual expenditures in those two years. The information with respect to the other designated years is as follows:

	Fiscal year—		
	1956	1961	1966
Limitation requested	$65,000	$77,000	$95,000
Personnel costs	28,757	41,558	35,492
Travel [1]	4,506	7,641	9,089
Advisory services [1]	7,558	11,138	19,558
Other [1]	177	5,025	7,890
Total expenditure	40,998	65,362	72,029

[1] The designated items include costs of travel, advisory and informational services, fringe benefits, printing, reporting service, etc., in connection with State and local, as well as Federal enforcement, information, and advisory opinions.

	Fiscal year—			
	1971	1972	1973	1974
Budget and appropriation [1]	$292,000	$262,600	$321,000	$325,400
Expenditure:				
Federal cases [2]	72,800	65,300	71,000	63,700
Political activity advisory and information services (Federal, State, and local)	144,500	120,400	77,800	84,300

[1] The budget and appropriation figure includes funds budgeted for processing State and local cases also.
[2] Federal case expenditures includes a proportional percentage of travel costs. An exact accounting of the cost of travel for processing Federal cases is not available, since they have frequently been processed on itineraries with State and local cases.

8. ADDITIONAL STATUTORY AUTHORITY, IF ANY, WHICH WOULD ASSIST THE COMMISSION IN FACILITATING THE PROCESSING OF HATCH ACT CASES

At the present time the Commission does not have subpoena power in Federal cases, although Civil Service Rule 5.3 requires that employees furnish information and testimony to the Commission upon request in cases pending before the Commission. However, election records and other documentation, and the testimony of individuals not themselves Federal employees cannot be required. The Commission does have statutory subpoena power in cases involving Hatch Act

violations on the part of State and local employees. The lack of subpoena power in Federal cases has not been a significant burden in most instances, but it is an item which deserves consideration.

With respect to other possible statutory authorities, we would desire additional time for giving the matter careful thought. The draft legislation which we are preparing will undoubtedly contain items which we deem significant in facilitating the processing of cases.

CODE OF FEDERAL REGULATIONS

TITLE 5—ADMINISTRATIVE PERSONNEL

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

SUBPART A—THE COMPETITIVE SERVICE

PROCEDURE

§ 733.131 Investigation.

An agency shall promptly inform the Commission of any instance of prohibited political activity on the part of an employee in the competitive service. The Commission will determine whether to investigate an allegation of prohibited activity that it receives from an agency or from any other source. The employing agency will be notified before the investigation is started.

§ 733.132 Charges.

After review of the report of investigation, the General Counsel of the Commission may close the case or issue charges. The charges shall set forth the alleged political activity specifically and in detail. The charges shall be served on the employee at least 30 days before the date of the adverse action that is proposed. The employee may be represented by counsel at this and every other stage of the proceedings. The employee is entitled to be retained in an active-duty status until a final decision is made by the Commission.

§ 733.133 Answer.

(a) The employee may answer the charges within 15 days from the day he receives them. He may answer personally, in writing, or both personally and in writing, and may furnish affidavits in support of his answer.

(b) After review of the answer or after the time for answering has expired, the General Counsel may close the case or refer it to an examiner of the Commission for further proceedings.

§ 733.134 Motions.

An application or request for an order or ruling not otherwise specifically provided for in this subpart shall be made by motion addressed to the Commission or the examiner. The motion and supporting reasons shall be served on the parties. Objections to a motion shall be submitted within 10 days after the motion is served, except that a motion for continuance or extension of the time may be ruled upon ex parte.

§ 733.135 Hearings.

(a) Unless the employee and the General Counsel agree to waive a hearing, the examiner shall schedule a hearing considering the convenience of the parties as to time and place. The hearing examiner shall notify the parties of the date and place of the hearing at least 10 days in advance.

(b) Testimony is under oath or affirmation. Witnesses who testify are subject to cross-examination. Each party is responsible for securing the attendance of his witnesses. The examiner may allow the introduction of affidavits.

(c) The hearing is recorded by a reporter designated by the Commission. The Commission furnishes a copy of the transcript to the employee without charge.

§ 733.136 Powers of the examiner.

The examiner may:

(a) Administer oaths and affirmations;

(b) Rule on offers of proof and receive relevant evidence;

(c) Fix the time and place of hearing;

(d) Regulate the course of the hearing;

(e) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing;

(f) Hold conferences for simplification of the issues, or for any other purpose;

(g) Dispose of procedural requests or similar matters;
(h) Authorize, and set the time for, the filing of briefs, memorandums of law, or other documents as may be required in the proceedings;
(i) Grant continuances and extensions of time; and
(j) Take any other action in the course of the proceedings consistent with the purpose of this subpart.

§ 733.137 Decision.

Following the hearing, or the receipt of the file when hearing is waived, the examiner shall prepare and forward to the Commission his recommended decision and the record on which it is based. The Commission makes its decision on this record and notifies the employee and the employing agency. If the Commission's decision is that the employee engaged in prohibited political activity, the penalty is removal from the service, unless the Commission unanimously agrees that a less severe penalty is justified. Suspension without pay for 30 days is the minimum penalty.

SUBPART B—THE EXCEPTED SERVICE

§ 733.202 Agency procedure.

(a) An agency shall process cases of alleged political activity by an employee in the excepted service under procedures like those in §§ 733.132 and 733.133.
(b) After review of the answer or after the time for answering has expired, the agency makes its decision and notifies the employee. If the agency's decision is that the employee engaged in prohibited political activity the penalty is removal from the service. The agency shall inform the employee of his right to appeal to the Commission.

§ 733.203 Appeal to the Commission.

When the agency decision is to remove an employee in the excepted service, the employee may appeal to the Commission. The time limit for filing an appeal is 15 days from the date of receipt of the notice of the agency decision.

§ 733.204 Commission procedure.

In adjudicating an appeal under this subpart, the Commission follows the procedures set out in §§ 733.134—733.137.

SUBPART C—THE JOB CORPS

§ 733.302 Procedure.

An action against an individual covered by this subpart is processed by the Commission under the procedures set out in §§ 733.131–733.137.

SUBPART D—THE U.S. POSTAL SERVICE

§ 733.402 Procedure.

The procedures of section 733.131–733.137 apply to an action taken by the Civil Service Commission against an employee over whom it has jurisdiction under this subpart.

10. METROPOLITAN AREAS IN WHICH EMPLOYEES OF FEDERAL EXECUTIVE AGENCIES ARE SITUATED, AND THE NUMBER OF EMPLOYEES LOCATED IN EACH OF THESE AREAS

Following is a list of the cities and metropolitan areas which had the highest concentrations of Federal employees as of December 31, 1973.

Albany-Schenectady-Troy, N.Y.	9,510	Biloxi-Gulfport, Miss.	5,972
Albuquerque, N. Mex.	11,625	Birmingham, Ala.	8,499
Anaheim-S. An-Gar Gr Calif.	8,518	Boston, Mass.	36,903
Anchorage, Alaska	7,264	Buffalo, N.Y.	10,145
Atlanta, Ga.	30,376	Champaign-Urbana, Ill.	2,913
Atlantic City, N.J.	3,094	Charleston, S.C.	14,022
Augusta, Ga.-South Carolina	5,664	Charlotte, N.C.	3,071
Austin, Tex.	6,436	Chattanooga, Tenn.-Georgia	7,178
Bakersfield, Calif.	9,013	Chicago, Ill.	71,477
Baltimore, Md.	54,571	Cincinnati, Ohio-Kentucky-Indiana	13,683
Battle Creek, Mich.	3,474	Cleveland, Ohio	20,861

Colorado Springs, Colo	7, 253
Columbia, S.C	6, 175
Columbus, Ga.-Alabama	5, 093
Columbus, Ohio	12, 444
Corpus Christi, Tex	6, 705
Dallas, Tex.-Fort Worth	27, 265
Davnspt-R Is-Mol Iowa-Illinois	8, 801
Dayton, Ohio	25, 090
Denver, Colo	28, 792
Des Moines, Iowa	4, 533
Detroit, Mich	29, 958
El Paso, Tex	7, 059
Fayetteville, N.C	5, 635
Florence, Ala	2, 947
Fort Lauderdale-Hollywood, Fla	3, 178
Fresno, Calif	6, 648
Greensboro-Winston-Salem-High Point, N.C	4. 140
Harrisburg, Pa	12, 369
Hartford, Conn	6, 017
Honolulu, Hawaii	24, 940
Houston, Tex	18, 742
Huntsville, Ala	16, 250
Indianapolis, Ind	16, 906
Jackson, Miss	3, 879
Jacksonville, Fla	11, 243
Jersey City, N.J	8, 606
Kansas City, Mo-Kansas	22, 727
Killeen-Temple, Tex	5, 508
Knoxville, Tenn	6, 779
Las Vegas, Nev	3, 714
Lawrence-Haverl, Mass-New Hampshire	5, 351
Lawton, Okla	4, 124
Lexington, Ky	7, 177
Little Rock-North Little Rock, Ark	7, 074
Long Branch Asbury Park, N.J	9, 284
Los Angeles-Long Beach, Calif	65, 867
Louisville, Ky-Indiana	10, 373
Macon, Ga	17, 267
Madison, Wis	3, 606
Melb-Titus-Cocoa, Fla	5, 411
Memphis, Tenn-Arkansas	14, 852
Miami, Fla	13, 301
Milwaukee, Wis	8, 335
Minneapolis-St. Paul, Minn	18, 318
Montgomery, Ala	5, 540
Nashville, Tenn	7, 496
Nassau-Suffolk, N.Y	19, 201
New Haven, Conn	4, 312
New London-Norwich, Conn.-Rhode Island	3, 873
New Orleans, La	12, 873
New York, N.Y	106, 329
Newark, N.J	23, 790
Newport News-Hampton, Va	14, 457
Norfolk-Va., Beach-Ports, Va	31, 948
Northeast, Pennsylvania	9, 447
Oklahoma City, Okla	31, 829
Omaha, Nebr.-Iowa	8, 084
Orlando, Fla	5, 142
Ox-Simi Val-Ventura, Calif	10, 314
Pensacola, Fla	8, 385
Petersburg-Col Hts-Hope, Va	3, 719
Philadelphia, Pa.-New Jersey	76, 735
Phoenix, Ariz	11, 003
Pittsburgh, Pa	19, 208
Portland, Ore.-Washington	14, 874
Prov-Warwick-Paw RI-Massachusetts	8, 934
Pueblo, Colo	3, 339
Raleigh, N.C	5, 957
Richmond, Va	9, 560
River-San Bern-Ont., Calif	12, 652
Roanoke, Va	3, 108
Rochester, N.Y	5, 567
Sacramento, Calif	26, 533
Salinas-Sea-Mont, Calif	5, 265
St. Louis, Mo.-Illinois	35, 432
Salt Lake City, Utah	33, 585
San Antonio, Tex	38, 588
San Diego, Calif	33, 213
San Francisco-Oakland, Calif	69, 417
San Jose, Calif	9, 579
San Juan, Puerto Rico	3, 735
San Bar-San Mar-Lom, Calif	3, 318
Seattle-Everett, Wash	17, 131
Shreveport, La	3, 568
Sprng-Ch-Holy Mass.-Connecticut	4, 244
Stockton, Calif	6, 306
Syracuse, N.Y	4, 920
Tacoma, Wash	8, 156
Tampa-St. Petersburg, Fla	9, 778
Texarkana, Tex.-Arkansas	5, 707
Toledo, Ohio-Michigan	3, 348
Topeka, Kans	3, 300
Trenton, N.J	2, 956
Tucson, Ariz	5, 515
Tulsa, Okla	4, 042
Utica-Rome, N.Y	4, 957
Val-Fairf.-Napa, Calif	11, 445
Wash., D.C.-Maryland-Virginia	316, 017
District of Columbia	192, 849
Charles County, Md	2, 575
Montgomery County, Md	36, 796
Prince Georges County, Md	22, 288
Alexandria City, Va	6, 750
Fairfax City, Va	422
Falls Church City, Va	520
Arlington County, Va	37, 514
Fairfax County, Va	13, 107
Loudoun County, Va	1, 230
Prince William County, Va	1, 966
Wichita, Kans	3, 871
Wilmington, Del.-New Jersey-Maryland	5, 312

11. METROPOLITAN AREAS WHICH THE COMMISSION HAS DESIGNATED AS FEDERALLY PRIVILEGED UNDER 5 U.S.C. § 7327 AND 5 CFR § 733.124, WITH VOTING PERCENTAGES

Pursuant to a discussion between Lloyd A. Johnson, the Subcommittee Staff Director, and Ralph B. Eddy of the General Counsel's Staff, the statistics cited below indicate the percentage of the total electorate in the privileged localities which is Federally connected, i.e., employees plus spouses. These figures are, at best, close approximations based on information obtained from the America Votes series printed by Congressional Quarterly, *Annual Reports of Federal Civilian Employment by Geographic Area* as compiled by the U.S. Civil Service Commission, and certain on-site inquiries conducted by Attorneys from the General Counsel's Office of the Commission. No meaningful statistics are available for the municipalities for 1964, in that employee statistics prior to 1968 were kept on a "county" basis rather than a "city" basis. Further, as to those localities in the Washington, D.C. metropolitan area the Standard Metropolitan Statistical Area (SMSA) provides the most useful and meaningful figures. The SMSA has therefore been utilized for the D.C. area figures.

(a) Those areas which the Commission has designated as privileged localities are as follows:

In Maryland: Annapolis, Anne Arundel County, Berwyn Heights, Bethesda, Bladensburg, Bowie, Brentwood, Capitol Heights, Cheverly, Chevy Chase, sections 1 and 2, Chevy Chase, section 3, Chevy Chase, section 4, Martin's Additions, 1, 2, 3, 4 to Chevy Chase, Chevy Chase View, College Park, Cottage City, District Heights, Edmonston, Fairmont Heights, Forest Heights, Garrett Park, Glenarden, Glen Echo, Greenbelt, Howard County, Hyattsville, Kensington, Landover Hills, Montgomery County, Morningside, Mount Rainier, North Beach, North Brentwood, North Chevy Chase, Northwest Park, Prince Georges County, Riverdale, Rockville, Seat Pleasant, Somerset, Takoma Park, University Park, Washington Grove.

In Virginia: Alexandria, Arlington County, Clifton, Fairfax County, Town of Fairfax, Falls Church, Herndon, Loudoun County, Portsmouth, Prince William County, Vienna.

Other Municipalities: Anchorage, Alaska; Benicia, Calif.; Bremerton, Wash.; Centerville, Ga.; Crane, Indiana; District of Columbia; Elmer City, Wash.; Huachuca City, Ariz.; New Johnsonville, Tenn.; Norris, Tenn.

(b)(1) The percentage of Federal employees in the Washington, D.C., Md., Va., Standard Metropolitan Statistical Area total electorate is as follows: 1964, 40%; 1968, 38.7%; 1972, 33.7%.

(b)(2) The approximate percentage of the total electorate which is Federally connected in the "Other Municipalities" category is as follows:

Other municipalities	Date privilege granted	1968 (percent)	1972 (percent)
Anchorage, Alaska	Dec. 29, 1947	18	38
Benicia, Calif	Feb. 20, 1948	68	64
Bremerton, Wash	Feb. 27, 1946	60	66
Centerville, Ga	Sept. 16, 1971	75	51
Crane, Ind	Aug. 3, 1967	79	75
District of Columbia	May 16, 1974	----------	60
Elmer City, Wash	Oct. 28, 1947	55	53
Huachuca City, Ariz	Apr. 9, 1959	50	50
New Johnsonville, Ind	Apr. 26, 1956	80	51
Norris, Tenn	May 6, 1959	48	51
Port Orchard, Wash	Feb. 27, 1946	53	68
Shrewsbury Township, N.J	July 2, 1968	70	70
Sierra Vista, Ariz	Oct. 5, 1955	75	53
Warner Robins, Ga	Mar 19, 1948	60	60

Mr. CLAY. Mr. Solarz, do you have any comments or opening statement?

Mr. SOLARZ. I would only point out, Mr. Chairman, that I think these hearings are the beginning of what I hope will be a historic process in this Congress. We are considering in this legislation moving toward the enactment of new laws which will at the same time provide needed protections to the members of the civil service and the Federal Government and at the same time give them an opportunity to more fully and meaningfully and effectively participate in the political processes by which our country is governed, and I want to commend you for your initiative not only in drafting the legislation which our committee will be considering, but also for arranging for these hearings to be held in Washington and around the country so that we can in the most meaningful way possible make a reasonable, responsible judgment about the best way to proceed in this matter.

Mr. CLAY. Thank you.

Mr. Wilson?

Mr. WILSON. Mr. Chairman, I think the significant thing we have to keep in mind is that the legislation being proposed is not a repeal of the Hatch Act. Constantly I read in the press that we propose to repeal the Hatch Act. As you stated in your opening statement, we are trying to bring it up to date and make it more in line with what the times demand.

Then the only other thing is that I want to know where is Riverside, Md.?

Mr. CLAY. It's in Prince Georges County.

Mr. WILSON. I have no other comments. I appreciate the way that you're handling these hearings.

Mr. CLAY. Thank you, Mr. Wilson.

Mr. Harris?

Mr. HARRIS. Mr. Chairman, I would like to add my comments with respect to the method by which you're proceeding on this. I know in my district and in northern Virginia we have a great number of individuals, men and women, directly affected by this legislation, many of whom I have worked with and participated with in community and civic activities in the past. I think it's good government and an impressive demonstration of good government to have hearings out where the people are, and I support very much having the hearings in beautiful Annandale. I know you all will enjoy the festivities out there but we expect——

Mr. CLAY. Is that a junket we're going on?

Mr. HARRIS [continuing]. Yes, it is. We'll have a bus that leaves from the horseshoe here and you will never forget it, Mr. Chairman. You will remember your evening in Annandale, I'm sure, for a long time.

But I do think it's important to get the reaction of the civil servants on this. There can be a misconception of how easy it is to neuterize a Federal employee. I don't think it's that easy. I think this person out there who deals in the matters of the Federal Government in his daily life doesn't stop being that type of person when he goes home and his activities in the community are usually very consistent. The notion that this is the type of person who somehow can foreclose himself in the interest of his local government, his community activities, and the State and Federal processes going on around him that influence his life so very intimately I think is a misconception of the type of individual we're dealing with.

I hope this record will demonstrate this concept as it relates to the many Federal employees that I have worked with over the years through many community and civic activities.

Mr. CLAY. Thank you.

Mr. Chairman, we certainly are happy to have you as our first witness this morning and if you will identify those accompanying you—and I see you have a prepared statement. You may either read it or proceed as you see fit.

STATEMENT OF HON. ROBERT E. HAMPTON, CHAIRMAN, CIVIL SERVICE COMMISSION, ACCOMPANIED BY ANTHONY L. MONDELLO, GENERAL COUNSEL, AND LYNN R. COLLINS, ASSISTANT GENERAL COUNSEL

Mr. HAMPTON. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the subcommittee, we appreciate having this opportunity to present our views that the proposed legislation, H.R. 3000, would have serious adverse effects on our ability to maintain a merit system, and would go far to destroy valuable employee protections which result from current restrictions on the political activity of Government employees. With me today are Anthony L. Mondello, General Counsel of the Commission, who is charged with the overall enforcement and interpretation of the Hatch Act; and Lynn R. Collins, Deputy Assistant General Counsel, who is in charge of the day-to-day operational aspects of the Hatch Act enforcement and information programs. Mr. Mondello and Mr. Collins are here to assist in answering specific questions in the areas of their experience.

First, I would like to put the existing political activity laws into perspective. More specifically, I would like to state clearly what the Hatch Act does not do, what it does, and what its principal objectives and purposes are. I think that the law is sometimes misunderstood and that there is a tendency to ascribe characteristics to it which it simply does not have. So let me try to be clear on a few points.

First, in limiting the partisan political activities of Federal workers, the law does not single out persons who advocate particular political viewpoints. Rather, the Hatch Act applies exactly the same way regardless of the political viewpoint being advocated. The Hatch Act ideal is nonpartisan.

Second, the Hatch Act is not a sweeping prohibition of all political activities; most importantly, it does not prohibit or inhibit the adherence to, or the expression of, any individual beliefs or opinions on political subjects or candidates. Not one employee's vote goes uncast because of the Hatch Act, nor one idea unexpressed.

Indeed, it is fair to say that the act in its present form is actually designed to protect, and we think it clearly has the effect of protecting, these important values. For by limiting the Government employee's involvement in partisan political activities, the Hatch Act serves to assure that employees will not be compelled, or feel themselves compelled, to engage in unwanted partisan political activities in order to curry political favor with their superiors and thereby enhance their prospects for continued employment or for advancement. Pressures of this sort can be brought to bear on employees in extremely subtle ways

beyond the reach of any anticoercion regulation, no matter how tightly drawn it may be. In many instances, the employee may feel that his prospects for job advancement would be enhanced by political activity alingned with the partisan views of his superiors, even though his superiors may have done nothing or said nothing to provide an objective basis for such feelings. The Hatch Act insures that the employee will not feel these pressures—real or imagined—by removing his capacity to respond to them by working for what he perceives to be his superior's partisan political interests.

The point is that in a very real sense the Hatch Act provisions serve to protect employees by immunizing them from pressures that might otherwise cause them to engage in political activities not of their own choosing. This is an important consideration, in my judgment, since I think the act is too frequently viewed solely as a restrictive measure without full understanding of its protective features.

Of course, the Hatch Act is principally designed to serve the objective of an impartial and efficient civil service—a goal which I am sure we all embrace. The act achieves this purpose in a variety of ways. For example, by limiting the Government employee's involvement in partisan politics, the Hatch Act reduces the likelihood that the employee will allow partisan political views to interfere with the impartial execution of the Government's business in accordance with the policies mandated by Congress.

Also, by precluding active partisan activity, such as in party management or political campaigns, the act makes it impossible for the party in power to turn the Federal work force into an organized instrument for affecting the outcome of elections. This concern figured importantly in the enactment of the Hatch Act in 1939 because such abuses had in fact been widespread in the 1936 and 1938 elections.

Finally, equally important with the concern that partisan political activity may detract from the impartiality of the performance of Government employees is the concern that such activities, being observed by the public, will erode public confidence in the impartial administration of the Federal Government. The problem, of course, is that when the public sees a Federal employee who is prominently identified with partisan politics, and at the same time charged with responsibility for the impartial, nonpartisan execution of public duties, it will inevitably have doubts about that employee's impartiality. It seems clear to me that anything which undermines the public's confidence in the impartiality and efficiency of the civil service should be of paramount concern to the Congress.

We cannot say with total certainty that the consequences which Congress feared when it enacted the Hatch Act will result if the act is now repealed. We do think, however, that all of the evidence points clearly in the direction that the act has been a success and has done much to preserve the integrity of the civil service. The Hatch Act expresses an idea fundamental to the public service, which is quite similar to the anticorruptive aims of the bribery and conflict of interest statutes. If repeal of those statutes were proposed, we could not say with any greater certainty than we do here, that the ills they are designed to protect against would reappear. But we are just as confident that the evidence clearly indicates that they have worked well in protecting the integrity of the public service. The fundamental idea

behind both sets of statutes is that an employee cannot, and should not, serve two masters—and the idea holds true even if one of those masters is a partisan political party.

It should be clear that legislation such as H.R. 3000 very definitely involves a gamble that greater freedom to engage in partisan politics will not result in the undermining of the civil service system's integrity. Your former colleague, Ancher Nelsen, saw this very clearly, and it is worth quoting his view that the gamble was too great. Writing in the Report of the Commission on Political Activity of Government Personnel, he said:

> The possible benefits to be gained by allowing a desirous few to participate in partisan political candidacy and political management activity, when weighed against the dangers that such activity poses to an impartial, efficient public service and the hundreds of thousands of employees in it, is simply not worth the inherent risk in such action. The benefits of the impartial public service, whether they be of tenure, job assignments, and promotions on merit, or simply freedom from the many insidious types of pressures present in partisan operations, compensates the employee many times over in return for the relatively few restrictions placed on his action.

In any case, in considering whether Congressman Nelsen's admonition should be heeded, it should be borne in mind that from the earliest days of our Republic the threat of partisan politics improperly affecting government administration has been met through regulations, in various forms, limiting the political activities of Federal employees.

President George Washington observed a "fitness test" in his selection of the higher officers of his administration which leaned on competence and ability, and ignored selection on the basis of political affiliation. By the time the two-party system took root, stronger measures were required. Accordingly, in 1802, President Jefferson issued instructions to have his Federal department heads proclaim to their personnel the President's dissatisfaction with their participation in electioneering, which he, one of the authors of the Constitution, viewed as inconsistent with their constitutional duties.

These admonishments were for the most part ignored during that 60-year slice of American history (from the 1820's to the 1880's and known as the spoils era) during which virtually the entire Government was turned out of office upon each change of administration. Partisan politics had such a stranglehold on Government offices, that it is not at all strange to note that the era culminated in the assassination of President Garfield by a disappointed officeseeker. It was these events which gave brith to the Pendleton Act—the Civil Service Act of 1883—which created the Civil Service Commission and charged it with the responsibility for making merit the order of the day, and ridding the public service of partisanship.

From that time on, as had been true since President Washington's time, restrictions on political activity by Federal employees were imposed by executive branch action almost exclusively—either through Presidential Executive order or by civil service rules and regulations covering competitive service employees.

During the 1930's, principally as a result of Government expansion to combat the depression, there existed in the Federal Government, side by side with employees in the competitive service who were subject to political activity restrictions, a group approximating 40 percent of all employees who were in the excepted service and who were not subject

to restrictions. The congressional reaction to the widely publicized injection of these excepted Federal employees into partisan political activities in the elections of 1936 and 1938 was passage of the Hatch Act in 1939. The act placed upon virtually all employees the precise restrictions which a series of Presidents had formerly placed on competitive service employees alone.

H.R. 3000 would have Congress turn its back on these significant developments in our country's history of politics and the civil service.

In 1940, the act was amended to extend its provisions to State and local employees whose principal employment is in connection with federally financed activities. The provisions applicable to State and local employees were recently amended by section 401 of the Federal Election Campaign Act Amendments of 1974 in such a way that the prior prohibitions against political management and political campaigning were deleted. Inserted in their stead was a prohibition against candidacy for elective office. This recent change in the law, as applied to State and local employees, was enacted without public hearings of any kind.

You cannot have worked in the Federal Government for as long as I have without having some views which result from personal observations of political matters as they affect the personnel management system. My experience suggests that partisan political activity holds a special place in American society. Except for relatively few activities, which are regarded as corrupt practices, there is hardly any form of political activity which is not regarded as legitimate and respected.

I have also noticed that if the opportunity to assert partisan political influence or power is available, it will be exercised. This seems to be the one void that someone is always willing to fill. Application of these observations to the public employment sector—whether you accept them as my observations or the observations anyone can make from the American history that I have sketched above—makes very plain that whatever political activity is permitted to Federal employees will quickly become that which is required of them. And it is my opinion that this is true even of the most enlightened administrations and even under the most stringent provisions prohibiting coercion or arm twisting. There may always be those political appointees or administrators who, for one reason or another, believe that either their personal interest, or their philosophical interests, will be served by working for partisan political candidates representing the party in power. While such persons may not coerce their subordinates, they will make it well known where they stand on this issue. For a subordinate to actively support the opposition candidate under such circumstances would require unusual courage. It is equally true that for a subordinate under such circumstances to refrain from supporting his superior's choice of candidate will also require courage. And I am not talking about a superior who is an arm twister, just are who proudly wears his partisan political label and makes it easy for his subordinates to join his partisan political efforts.

Indeed, there is a more subtle form of coercion which only prohibitory legislation like the Hatch Act can deal with. This is the internal pressure which is applied by the civil servant to himself in the hope of advancing his or her career. Knowing the partisan political views of the people who must make promotion decisions, and facing

a vacancy for which the employee is in competition at the time of a political election, and believing that others in competition may be engaging in partisan political activity for the same party as that of the selecting officer, the employee will be under great pressure both to refrain from supporting candidates of the opposition and to actively support candidates favored by his superior. And what of the employee caught in the switches because he believes administrations may change and is uncertain whether the promotion action will occur prior to election day in November or after Inauguration Day in January? Can we safely say that even the most enlightened administrator, faced with last minute promotion decisions before leaving office, will not consider the partisan political activities of the employee which either sought to keep him in Washington or assisted in sending him home? History tells us we cannot. And my 25 years in Government which includes service in the White House, in agencies, and in the Civil Service Commission, and which spans administrations of both major political parties, tells me that we must not.

I suggested before that it is an empty hope that provisions against coercion can alone protect the merit system against political invasion. The fact is that it is the prohibition against active participation in partisan political management and partisan political campaigns which constitute the most significant safeguard against coercion—whether from superiors in the civil service or from outsiders. Actually, the prohibition against coercion has seen little use, and would be very difficult to apply. Almost without exception, those who use undue political pressure do so in ways which, though very effective, fall far short of violating the seemingly stiff prohibitions against coercion. And again, virtually without exception, those same pressure tactics constitute violation of the prohibitions against party management and campaigning. In one such case supervisors, without language of coercion or encouragement, let their subordinates know of an opportunity to contribute to a political party by attending a widely advertised political dinner. Some of these subordinates, in turn, passed the word along to their own subordinates. Some did not. Some of them made contributions, and some did not. No subordinate was willing to testify that he had been coerced or pressured in any way. No retaliatory action was provable against those who failed to take advantage of the opportunity offered. While use of the anticoercion provisions of the statute would have been unavailing, those involved were disciplined for having taken part in party fund management.

The validity of this perspective can be seen from examination of part 733 of the Commission's regulations. For your convenience we have appended a copy of that part to this statement and I invite your attention specifically to section 733.122. That section contains a list of 13 forms of political activity which violate the Hatch Act. These are a distillation of the Commission's major determinations in cases arising under the Hatch Act and the civil service rules. All of them constitute violations of the prohibitions against active participation in partisan political management and campaigning. None of them are, or need be, stated in terms of coercion. The simple fact is that we seldom see cases of coercion being brought before the Commission. Only one such case has occurred in recent years, and it involved military personnel in the excepted service where a general gave flat

orders—coercive declarations—about who would contribute and how much to what party or candidate.

It has been our experience that what really limits the exercise of political influence in the civil service is the fact that employees realize that partisan political activity will subject them to removal. The person who wishes an employee to do his political bidding has no greater threat than that. Employees, thus, have a real incentive to disclose unlawful activity. Moreover, through the years it has become widely accepted that it is unfair to employees for a superior to seek their political assistance and thereby expose them to the risk of dismissal. So that currently, and only because the Hatch Act is law, most employees know that they need not respond to political requests or suggestions, and most superiors, whether or not they are subject to the Hatch Act, know that it is indefensible conduct even to raise the question.

This entire fabric, which has been largely successful in keeping undue political influence from affecting Government programs or Government personnel management, would be destroyed if the prohibitions against political management and campaigning were removed.

We have emphasized the protection the Hatch Act affords Federal employees in part because we regard as exaggerated the claims that most employees want the restrictions removed. When this matter was last surveyed by the Commission on Political Activity about 1967, the result was the other way around. Generally, more than 60 percent of those surveyed reported that they would not perform any additional political activity if the restrictions were removed and generally less than 10 percent reported that they would be come "a lot more active." We suggest that to whatever extent the proposed bill is designed to give Federal employees what they want, it would be well to conduct a current survey to learn if this view has changed and, if so, in what direction. I suggest to you that most Federal employees wish to retain the protections the Hatch Act affords them.

You no longer have the concern whether Congress should act in order to protect the constitutional rights of employees with respect to the Hatch Act. The Supreme Court reaffirmed its constitutionality in a decision (*U.S. Civil Service Commission* v. *National Association of Letter Carriers, AFL–CIO, 1973*) the court characterized as a confirmation of the judgment of history. I close this portion of my remarks with quotations from that decision which seem particularly relevant this morning.

> Such decision on our part (i.e., affirming the constitutionality of the Hatch Act) would no more than confirm the judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that Federal service should depend upon meritorious performance rather than political service, and that the political influence of Federal employees on others and on the electoral process should be limited.
>
> It seems fundamental in the first place that employees in the Executive Branch of the government, or those working for any of its agencies should administer the law in accordance with the will of Congress, rather than in accordance with their own will or the will of a political party. They are expected to enforce the law and execute the programs of the government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of government—the impartial execution of the laws—it is essential that Federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

Because of the strong views we hold on the need for retaining the basic Hatch Act restrictions against participation in party management and political campaigns, we are opposed to the key operative provisions of H.R. 3000.

We will be happy to try to answer any questions you have.

Mr. CLAY. Thank you, Mr. Chairman.

Are you familiar with an organization called Federal Executives League?

Mr. HAMPTON. Yes, sir.

Mr. CLAY. Can you tell us a little bit about that organization?

Mr. HAMPTON. It's a new organization that is just in the process of being formed. They are having, I think, their first constitutional meeting in April.

Mr. CLAY. What's the composition of the group in terms of, say, the grade levels?

Mr. HAMPTON. I believe that most of them are probably supergrade.

Mr. CLAY. Supergrades?

Mr. HAMPTON. Yes. I do not know how many members there are. They haven't adopted a constitution yet. They have had some resolutions, but it's a brandnew organization.

Mr. CLAY. Well, the reason for my asking is that they wrote a letter that strongly disagreed with the position that you have taken in terms of revision of the Hatch Act. In fact, they refer to it as the "hatchet" act.

Mr. HAMPTON. Yes, I saw that.

Mr. CLAY. And they cite a point which I would like you to comment on. They say that the 40-year history of the National Labor Relations Act proves quite conclusively that a law can be framed and enforced to catch in the net those, no matter how subtle or scheming, who interfere with employees' statutory rights.

What's your comment in regards to the history of the National Labor Relations Act in dealing with those kinds of subtle things that occur, et cetera?

Mr. HAMPTON. Well, I think you're dealing—the National Labor Relations affairs are dealing with an employer-employee relationship in which there's a collective bargaining agreement. Many of the cases at issue probably come up in relationship to the enforcement of that agreement.

That statement wasn't specific enough and I'm not that expert enough on the affairs of the NLRB to get the nexus of the relationship between the Hatch Act and the labor relations aspects before the Board.

Mr. CLAY. But you are familiar with a bill sponsored by Representative Thompson of New Jersey that proposes to put all public employees under the National Labor Relations Act, aren't you?

Mr. HAMPTON. I'm not familiar with all of the provisions of it. I'm aware of a number of them.

Mr. CLAY. You're aware that there's a substantial amount of support in this Congress and in all possibility that may become law this year?

Mr. HAMPTON. I know that we will be having continuing discussions on the labor relations law affecting the Federal employees.

Mr. CLAY. You speak of all these subtleties that could be used in terms of coercion to force people to participate in politics against their will. Two weeks ago when you were here I think it was, you explained—not to this committee but another committee which I sat on—some quite elaborate plans that have been developed in the civil service system that tends to deal with and eliminate kinds of subtle pressures and coercion in terms of eliminating sex and race discrimination.

Do you think that you could be successful in eliminating those kinds of coercion and those kinds of attitudes and at the same time not be successful if you put your mind to it to develop a plan that would eliminate and protect against those subtle coercions in the area of political activities?

Mr. HAMPTON. Well, in the field of discrimination, I think that we only eliminate the need for what protections the law gives us by constant education and being sure that every manager recognizes his responsibility. One of the things we do in the Hatch Act is that we felt from everything that we heard back in the 1960's that there was a great misunderstanding and that a lot of people had far more freedoms to participate in political activities than they had recognized.

So we did embark on the same kind of an educational program so that employees would have a better understanding.

I'm not sure that, as I say, it's a risk. I don't know how far people will go if these restrictions on the Federal employees are lifted, but I'm sure there are a lot of people who are going to try to see that if they are lifted that they are going to be the requirements and that they are going to, one way or another—and it doesn't have to be the spoken word—that is, in the sense that it can be construed as being coercive—will try to use that power.

Mr. MONDELLO. May I add a comment, Mr. Chairman?

Mr. CLAY. Yes.

Mr. MONDELLO. There are differences between the EEO area and this area of political activities that to me are very sharp and clear. For example, discrimination is not only prohibited by statutory law, but in the ways in which it applies in the Federal service probably discrimination is also a denial of constitutional right of equal protection.

Mr. CLAY. Those are the same two contentions that we are making. One, we basically feel it's a denial of constitutional rights.

Mr. MONDELLO. Well, the Supreme Court has answered that question.

Mr. CLAY. And the second is that it ought to be made illegal through the legislative process.

Mr. MONDELLO. I think, first of all, the Supreme Court has made very clear that the Hatch Act as it currently exists is not a constitutional denial of anybody's right.

Mr. CLAY. In the opinion that was cited, I think what was said is it was not illegal in itself. The law that was passed was based on legitimate reasons, but it didn't say we didn't have the power to revise or repeal that act.

Mr. MONDELLO. Absolutely. Congress has the power to change that.

Mr. CLAY. So we're not dealing with whether or not there's a constitutional right of persons to participate in the electoral process.

Mr. MONDELLO. I think what the Supreme Court said was that if Congress chooses to deny to Federal employees the right to conduct themselves with regard to certain political activities they will not violate the constitution.

Mr. CLAY. Now the record is straight. Let's don't say that the Supreme Court said that there is no constitutional right for public employees to participate in the electoral process, so the record is straight now with that explanation.

Mr. MONDELLO. But the point I was trying to make was this: Discrimination is lousy and everybody knows it, but if you take off the one bar that exists in the statutes about political activity, political activity is favored in this country and everybody knows that, too. So the only real mechanism for a controlling anticoercion statute is these very provisions that prohibit particular forms of political activity.

So if you're comparing the EEO area and this area, they are really startling different areas in this regard.

Another thing is the civil rights community is unhappy about the single complaint involving discrimination because sometimes you simply cannot prove, although you have very strong suspicions, that a given individual is a discriminator. Now to assist in that area, in the EEO area, we have a number of legitimate techniques to deal with this. One is the patterns and practices of discrimination, when you notice that a black or a catholic or whatever has never been promoted in a particular organizational area, you can take that into account. Moreover, you can keep statistics on results and everybody knows now that if you can show disparate results you can get into court with a discrimination case and your burden then is not to prove the kind of coercion that we have to prove here. It's to merely prove pattern and practices and other events of that character and you can win your discrimination case far short of the kind of proof that we would require in an anticoercion case under the Hatch Act.

So I think the example is not apt and for us, coercion, whether it occurs or not, is a question of fact and we have to prove it. You take the laid off on these variety of descriptions of activities that are currently prohibited by the Hatch Act and you may not be able to prove any coercion.

Mr. CLAY. Thank you.

Realizing your strong opposition to H.R. 3000 and the proposed revisions eliminating prohibition against political activities and also realizing your many years of dedicated service nad your expertise in this area, assuming that the will of this Congress is to enact H.R. 3000, what would be your recommendations in terms of strengthening the penalty provisions in here to prevent precisely the kind of coercion that you spoke so eloquently of this morning?

Mr. MONDELLO. I have had the task within the Commission of making recommendations to the Commission about precisely whatever changes we come up with with regard to the Hatch Act; and we are yet to discover a foolproof way of fastening onto or being able to control coercion.

One of the things that Mr. Collins and I have been kicking around is to raise certain presumptions, which is a possibility. So you can say whenever a superior talks to a subordinate about a given subject matter, including political activity, that a presumption will be made

that he was trying to coerce him. Now you can't make that irrebuttable assumption. The people will have an opportunity to present proof about that. But it might be that you could work out classes of presumptions of this character to, in effect, take the place of proof and really what they do is they shift the burden to the supervisor or superior to show that he had other intent rather than the coercion of a person to do political activity.

But again, if political activity is not prohibited in any way, you are looking toward coercion to do something that everybody agrees is right to do then, and it makes for a more difficult case. We have not so far—and I have seen nobody else yet with whom I have discussed these outside of the Commission—who have come up with any thing that you could regard as adequate to handle political activity restrictions only through anticoercion provisions.

Mr. CLAY. Do you have any specific recommendations as to what we can do to discourage the kind of coercion that we are speaking of?

Mr. MONDELLO. Well, I suppose we could generate some. I can assist your staff in knowing just what my office has come up with. But I don't regard them as satisfactory and I don't know anybody else who has. It's a very difficult problem. The really nice thing about the current Hatch Act is that Congress saw that the only way to prevent the kinds of things that really gall you and do permit people to become something less than impartial was to place a flat prohibition.

Now, they were careful to leave certain things untouched and we in our regulations have a roster of some 13 items that everybody is free to do, including voting and carrying on and doing a variety of things, but what Congress made the difference was you can do anything nonpartisan; you could do anything civic; you could vote, register, sign petitions, do things like that; but you had to act as an individual and not do them in concert with others because the moment you're acting together with others and identifying yourself as a proponent of party success, then the public could look at you and say, "Oh, he's that Democrat or that Republican that was running for high office or party manager or what have you," and then when he goes into his job where he's dishing out contracts for the Federal Establishment people won't forget that he ran for this office or that office; and the confusion in the public mind, the threat of loss of impartiality, is very strong.

Mr. CLAY. Is there any prohibition against ex-elected officials being hired in the civil service system?

Mr. MONDELLO. No.

Mr. CLAY. Are there many in the civil service system?

Mr. MONDELLO. I'm sure there are.

Mr. CLAY. Doesn't the public get the same impression that that's the guy that was a Democratic Congressman or a Democratic member of the board of aldermen?

Mr. MONDELLO. These are people who have been elected through—two-thirds or more of all elections in the United States are nonpartisan and many of these people——

Mr. CLAY. That's unfortunate, isn't it?

Mr. MONDELLO. It depends on where you sit, Mr. Chairman.

Mr. CLAY. Mr. Wilson?

Mr. WILSON. Are military personnel under your jurisdiction as far as political activities are concerned?

Mr. HAMPTON. No, sir. These particular military personnel that I referred to in my statement were National Guard which are in the excepted service by act of Congress and they are subject to the Hatch Act restrictions.

Mr. WILSON. Military personnel on active duty are not under your jurisdiction?

Mr. HAMPTON. No, sir.

Mr. WILSON. Who controls their political activity, the Department of Defense?

Mr. MONDELLO. Yes; the Department of Defense and the military departments all have their own regulations concerning these.

Mr. WILSON. The reason I mentioned it is that during the past election there were several prisoners of war, former POW's, that were running for office and some of them were still on active duty, apparently violating the law.

In 1967, this Commission on Political Activity of Government Personnel—I think you made reference to it in your statement, made eight recommendations which in its judgment would have permitted greater political activity of Federal personnel while preserving the merit system. The Civil Service Commission was intimately involved in its work.

Which of these eight recommendations has the Commission implemented?

Mr. MONDELLO. I've got the volume I of the findings and recommendations of that Commission report. The only way I know is to tick them off and I'll tell you what the Commission's reaction was.

Mr. WILSON. Did you accept any recommendations or implement any of them?

Mr. MONDELLO. We accepted a number of them and we have drafted legislation on occasions that would have the point of complying, so to speak, with some of them and ignoring others. But twice that legislation has gone through the legislative process in the executive branch and has not achieved consensus. As a matter of fact, the two times it went through and was commented on by agencies, there were very strong areas of opposition to one or another provision. So that this pot has been boiling in my office now for almost 5 years and we have written at least two, and I think three, different revisions, but they haven't brought consensus yet.

Mr. WILSON. Well, you apparently use the report of the Commission when it's convenient to use it but ignore those parts that you disagree with.

Mr. MONDELLO. Mr. Wilson, I think the parts we disagree with of that Commission's report are the parts where there was the greatest disagreement within the Commission itself and with respect to which—in fact, on one thing they split 50–50, six members each—and they describe that in the course of their report.

The question was whether there should be candidacy for local office and holding political office, and that's what split them six to six.

Another one where they split almost just one apart, 7 to 5 or some such figure, was on the extent to which you should allow Federal empolyees or State and local employees to become lower level party officials, such as holding a post in the ward or precinct committeeman.

But those splits in the Commission were talked about in the minority

reports from Mr. Ramspect and Mr. Ancher Nelsen, and the Commission up to this point hadn't accepted the ones that would permit them to be political party officers.

Mr. WILSON. Now you quoted Congressman Nelsen, a former Congressman, Ancher Nelsen, in your statement, Mr. Hampton, but you didn't quote Arnold Olson or any of those who have a different view.

Mr. HAMPTON. No, sir. I was just pointing out those that we agreed with.

Mr. WILSON. I see.

Mr. MONDELLO. Also, I think we wanted to point out that Congressman Nelson, as distinguished from all of his other colleagues, was I think the only one who stated what you would be doing in any major modification of the Hatch Act as a gamble, which is what we think it really is, and he was the only one who said that, and that's why we had to quote him and nobody else on that one.

Mr. WILSON. I think this same Commission recommended that the Civil Service Commission study the potential of establishing an office of employee's counsel. Presumably such an office would have given Federal employees assistance when they had a complaint with the Commission. Was such a study undertaken?

Mr. HAMPTON. Not in that exact sense. The Office of the General Counsel serves as the principal advisor to all employees and Government agencies on the Hatch Act matters. We did open the complaints office where people could raise complaints, but it wasn't limited to Hatch Act questions alone.

Mr. WILSON. Would it be more fair to the employees if they had their own counsel rather than the Commission counsel since obviously your counsel is biased?

Mr. MONDELLO. May I answer that?

Mr. WILSON. Certainly.

Mr. MONDELLO. The function of the Office of General Counsel is to be helpful in the sense that if someone comes to us and writes us and says, "I want to run for a particular office in a particular locale," we respond very quickly to him and tell him—and I think this is helpful to him—whether if he did what he expresses a desire to do we would regard it as a violation of the Hatch Act.

There are many people around this country who have received letters of that kind from us who we have told, "No, this would not be a violation of the Hatch Act," and they have proudly displayed it wherever the question has arisen.

The Supreme Court commended the practice because, while I suppose you might say I have biases about how I think the Hatch Act is violated or not violated given a particular set of facts, that doesn't strap the individual. It's just an advisory to him. But if it helps him, he certainly can use it. And we thought that because of some of the ambiguities of the statute it would be wise for us to furnish such a service to the American public and we answer letters of that kind to anybody who writes them.

Mr. WILSON. Well, the Commission conducted the survey, didn't they, to try to determine what Federal employees knew about the Hatch Act and so forth?

Mr. MONDELLO. Yes, the Political Activities Commission.

Mr. WILSON. The purpose was to show that there was a very large percentage of Federal employees who don't understand what their rights are under the Hatch Act and what they were prohibited from doing?

Mr. MONDELLO. Yes, sir. At the time the survey was conducted we didn't have these lists of do's and don'ts which we put out, I guess, about 1970 or 1971 in the regulations, and actually we felt that whatever your committee or the Congress decides, if there are still some don'ts that they ought to be spelled out right in the statutes rather than use the rather broad expression that was used in 1939.

Mr. WILSON. I was surprised in reading your statement that you have geographical areas that are exempted from certain provisions of the Hatch Act. There's a large number in Maryland and not as large a number in Virginia, and then you have a few others in given parts of the country.

Doesn't this give these employees a rather unfair advantage over other Federal employees insofar as political activities are concerned?

Mr. MONDELLO. Well, there is a difference certainly between them and other Federal employees, but this is brought about specifically as a result of the provisions of section 7327 of title 5.

Mr. WILSON. Why do you have any exemptions at all?

Mr. MONDELLO. Well, apparently, as a matter of history, I forget which President it was back in the early 1900's—one of them decided—President Wilson decided that the area called Somerset just outside of town here ought to have such a privilege and he created it by Executive order, and a variety of other Presidents thereafter have kept adding communities to that and finally, as part of the Hatch Act amendments, the Congress itself thought that was a useful idea and put it in the statute, and we have been acting under it ever since.

I think the defense of that really is that there are communities throughout the United States where, because of say a large Navy installation in the town, you either work for the Navy or you don't work at all. It's the biggest business in town and the result is that Federal employees, if they weren't allowed this additional facility for becoming politically active and locally wouldn't have any say in the local government and you would have a majority of the people in the vicinity being pushed around by a very small minority, and I think it was to redress that imbalance, that the Congress passed it.

Mr. WILSON. Getting back to Mr. Clay's bill, have you reported to the committee specifically those parts of the bill which you are opposed to, or are you opposed to everything in it? Of course, we are trying to refine it. There may be parts in it that are not perfect yet, but that's the purpose of holding these hearings. We'd like your assistance in trying to write a bill, unless you think everything is perfect the way it is now.

Mr. HAMPTON. We don't think everything is perfect and in our comments we commented on a number of bills—H.R. 3000, 1306, 1675 and some other particular bills—but I don't think that we have made a section by section analysis.

Mr. WILSON. Don't you think that would be more helpful if you went through the bill and made a section by section analysis and told us what specifically you were in opposition to? You have given us a

lot of theory and talked about the protections that are guaranteed to employees, but you could be more helpful to the committee I think if you were to go right through the bill and tell us what is wrong. I think that is a goal that you should assume.

Mr. HAMPTON. We will be glad to do that, Mr. Wilson.

Mr. WILSON. That's all I have at this time, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Wilson.

Mr. Rousselot?

Mr. ROUSSELOT. Thank you, Mr. Chairman.

I regret that I'm shuttling again between Banking and Currency and here, but I appreciate the chance to discuss this issue because at one time I was a civil servant in the Federal Government and I do think that there are some points to be made.

Mr. Hampton, on page 2 of your statement, you speak to pressures which can be brought to bear on Federal employees in extremely subtle ways beyond the reach of any anticoercion regulation.

Could you comment on that?

Mr. HAMPTON. Well, what we have found in looking at the Hatch Act particularly—and I used a case illustration later on in my text—is that you don't really have to do a lot of arm-twisting in terms of saying, "I want you to do this or I don't want you to do that," and that in this particular case it was a question of letting people know that there was going to be a political dinner and that they would have an opportunity to buy chances on a ticket because I think it was a $500-a-plate dinner and they would raffle off this particular ticket or tickets, however many they sold.

Mr. ROUSSELOT. So if your boss is selling those, you want to learn to get along with your boss and it's not always easy even in private business to withstand that type of subtle pressure. Is that what you're saying?

Mr. HAMPTON. Well, in this particular case, their opportunity to participate was brought to their attention and when we started investigating the case and in trying to build a case on the question of coercion, no one would testify that they were coerced or arm twisted. So the only way that we could enforce the Hatch Act was to use the restrictions that were on the activities of the individual who made available these opportunities and by applying that the employees who did that were disciplined. But if you take away the——

Mr. ROUSSELOT. The employees were disciplined?

Mr. HAMPTON. The employees not who bought the tickets, but those who took a part in the activities of bringing it to their attention and taking the money, and that is one of the restricted activities.

The point we're trying to make there is that anticoercion provisions alone do not provide any protections to the employee, but that what stops this practice is that the individuals who made the solicitation were disciplined under the restrictions on activities.

Mr. ROUSSELOT. Have you got many examples of this type of thing to provide us with for the record at this point?

Mr. HAMPTON. Do we have a number of examples? That's the most recent one.

Mr. MONDELLO. We could furnish that.

Mr. ROUSSELOT. Are you concerned that this law would open up Federal employees for that kind of subtle practice?

Mr. HAMPTON. The point we were trying to make is that the restrictions on activities serve as a protection to the individuals. Now you take away those restrictions and——

Mr. ROUSSELOT. So this law does remove those restrictions?

Mr. HAMPTON. On what we principally use to enforce the Hatch Act.

Mr. ROUSSELOT. So let us say if an honest civil servant, didn't want to join the CREEP, for instance, you're just trying to prevent that kind of thing from happening?

Mr. MONDELLO. Mr. Rousselot, there——

Mr. ROUSSELOT. Well, I just use that because that's a current example.

Mr. MONDELLO. There are a good many Federal employees who read very broadly what the Hatch Act is all about, so that if somebody asks them to perform some kind of activity and it is remotely possibly included under the Hatch Act they simply say, "I'm hatched," and it's kind of a shorthand way, as used by a lot of employees to say, "Leave me alone. I'll do what I want to do that's either political or close to it, and I just don't want your weight on me." So you simply say, "I'm hatched," and everybody leaves you alone, and perhaps it's overused, but that's the way it goes.

Mr. HAMPTON. Despite the restrictions that are in the present law, we still have violations of the Hatch Act. The question in my mind is that even under the kinds of restrictions that we now have, what happens when you remove those restrictions? How is an enforcement agency—are we going to be able to allow people to exercise this freely without coercion being applied?

Mr. ROUSSELOT. OK.

Mr. HAMPTON. I don't know the answer to that.

Mr. ROUSSELOT. When you submit those other examples, can you show how removal of some of those restrictions might just open this kind of thing up? If you could, I'd appreciate it.

Mr. MONDELLO. Yes, I think we can do that.

Mr. ROUSSELOT. Mr. Hampton, has the administration or the Civil Service Commission received any subtle suggestions or pressure from any group of employees of the Federal Government to amend the Hatch Act? In other words, have the employees come to you and said, "Gee, we really need greater freedom?"

Mr. MONDELLO. We have received some mail in which individuals will say that the Hatch Act is making me a second-class citizen and let's do away with it. There were about 8 or 10 plaintiffs that brought the case to the Supreme Court that said the same thing.

But no, sir, I don't think there's a groundswell of opinion, if that's what you're getting at.

Mr. ROUSSELOT. If a lot of civil servants came to you and said, We're really being denied our basic rights of participation in Federal elections because it's been shown they can participate in local elections—has there been a groundswell of that kind of thing?

Mr. MONDELLO. No, sir

Mr. WILSON. Would the gentleman yield on that?

Mr. ROUSSELOT. Well, I would be delighted to.

Mr. WILSON. Don't you consider the members of the employee unions to be representative of a fairly significant number of employees, and haven't they passed resolutions at their conventions to ask for revision of the Hatch Act?

Mr. HAMPTON. Well, the major unions, with the exception of one, stand on the position of amending the Hatch Act.

Mr. WILSON. Well, then, your answer to Mr. Rousselot would be, yes, that there is a great groundswell?

Mr. ROUSSELOT. Assuming that's been accompanied by various plebiscites to back that up. Has the membership been polled or is it just the idea of the very capable and effective lobbyists in Washington for that organization who feel they can utilize their ability to get more action?

Mr. WILSON. If the gentleman has attended one of these union meetings he found democracy in action.

Mr. ROUSSELOT. Yes, I have, as a matter of fact. I have been to a couple of elections and I'd be glad to discuss that with you another time if you want to talk about elections.

Then, to the best of your knowledge, other than the letters from the various union leaders here in Washington who represent various groups, there hasn't been a substantial groundswell from individual civil servants who have said, "Gee, we've just got to have the lifting of the Hatch Act?"

Mr. HAMPTON. That's right.

Mr. ROUSSELOT. I appreciate it, Mr. Chairman.

If the Hatch Act is amended as suggested in H.R. 3000, do you think it's possible that the party in power at the White House could turn the Federal work force into an organized instrument for affecting the outcome of an election?

Mr. HAMPTON. Well, before the Hatch Act restrictions, that was what was done.

Mr. ROUSSELOT. In other words, we have history to prove that that was in fact the case prior to the Hatch Act?

Mr. HAMPTON. That's correct.

Mr. ROUSSELOT. Now obviously the argument will be raised, but now we have additional protections in the law to prevent the firing of people as the final discipline if they don't respond to persuasion or whatever you want to call it. Is it possible that there are enough protections against the ultimate discipline of dismissal to protect the individual who doesn't want to participate?

Mr. HAMPTON. I'm not sure how this would manifest itself, whether it would be if an individual became prominently identified and was anathema to the political management, how that would be treated; whether he would be denied a promotion that would be due him, whether he would be isolated in a sense.

Mr. ROUSSELOT. Set aside?

Mr. HAMPTON. Set aside. Whether his job would be abolished or what. I mean, there are many legitimate activities that management can take in managing the work force that could be turned to serve another purpose, and that is one of the things that we found in our investigations of agencies.

Mr. ROUSSELOT. Do you think of the most current example that we have been given—because there were tremendous concerns about the abuse of power from the White House under former President Nixon—that had the Hatch Act been amended as it is here that that abuse of power could have been utilized to persuade more civil servants to engage in political action in the direction that President Nixon wanted them to, but the fact of the matter is, the Hatch Act prevented that from happening?

Mr. HAMPTON. I think that's one of the risks. I can't say, you know, 100 percent that that's what would happen.

Mr. ROUSSELOT. Well, the only reason I bring that up is because there was a tremendous amount of discussion, and I think correctly so, and a great concern that there was a tremendous network of power being established within the White House. That network might have been established if this bill had been in effect that is before us. It might have further enhanced the ability of that power to be distributed from the White House, had this Hatch Act not been in effect. Is that possible?

Mr. HAMPTON. I think it would be possible, yes.

Mr. ROUSSELOT. I thank the gentleman.

Mr. CLAY. Thank you.

Mr. Harris?

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. Hampton, I went over your statement and I was really trying to put it in the context of the real world here and I wasn't able to do it.

You make the statement on page 2 that whereby limiting Government empolyees' involvement in partisan political activity, the Hatch Act serves to assure that employees will not be compelled or feel themselves compelled to engage in unwanted partisan political activities in order to curry political favor with their superiors and thereby enhance their prospects for continued employment or for advancement.

Do you feel that the Hatch Act has assured this?

Mr. HAMPTON. Yes, I do.

Mr. HARRIS. These comments which have been made with regard to contributions and activities and what have you, have all been wrong? They just haven't happened?

Mr. HAMPTON. I didn't understand you.

Mr. HARRIS. You don't feel like any Federal employees have been compelled by these subtle pressures to make contributions or to participate——

Mr. HAMPTON. I think some have.

Mr. HARRIS. Well, then, the act hasn't assured this at all then, has it?

Mr. HAMPTON. The act has assured it in the sense that we are able to prove that the individuals who made the solicitation have violated the act because there's a restriction on raising funds and receiving them in a Government building, and that's how you enforce that. But we couldn't use the coercion aspects of the Hatch Act.

Mr. HARRIS. Let me phrase that statement in the context of the Federal regulations. If I may read your Federal regulations to you, it says:

> All employees are free to engage in political activities to the widest extent consistent with the restrictions imposed by law in this subpart. Each employee retains the right to register, vote, express his opinion as an individual privately and publicly on political subjects and candidates. He may exhibit a political picture, sticker, badge, or button and participate in nonpartisan activities, be a member of a political party or other political organization, to participate in its activities to the extent that it's consistent with the law, attend political conventions, make a financial contribution to a political party or organization, etc.

In your regulations, a Federal employee can do all these things under the existing law; is that correct?

Mr. HAMPTON. That's correct.

Mr. HARRIS. Then how does the Hatch Act prevent these subtle pressures from being exercised with respect to all these activities?

Mr. HAMPTON. Because it says that the person who would be the trigger, in a sense, cannot do certain things to compel them to do those things.

Mr. HARRIS. I couldn't agree with you more. That is exactly the point. So why, then, do we draw the line and say if in fact he holds an office in a partisan committee that somehow these same laws that protect him from being compelled to do that wouldn't operate just exactly the same? I'm asking the difference: what is the difference between his being a member of a committee and making a financial contribution to a political party or taking an active role as a candidate?

Mr. HAMPTON. Well, I think the difference—and I'd like for Mr. Mondello to expand on this because he sees many cases that I never see—is that the restrictions apply to people within the Federal community, and from an enforcement point of view, if someone in a sense participates in these kinds of activities you can get to that someone. That someone is usually the leader in the activity.

I mean, I use the case of the supervisors who made it known to their subordinates that they could attend this dinner and they could do that, but we couldn't get them on a coercion situation because there was not coercion, at least that we could prove, but we could penalize those people because it says they are restricted from doing these activities and that activity was the participation in the fundraising of the party which was what they did.

You might want to elaborate.

Mr. MONDELLO. Yes. We took our cue in drawing up these regulations from the Supreme Court's decision in the Mitchell case in 1947 which was the first one that upheld the constitutionality of the act. The Court made it plain that what the Hatch Act tries to get at is the avoidance of prominent identification with party success.

If you look through this roster of the 13 or so items that you were reading from and compare them with those things that are prohibited, you find a number of ingredients running through here. For the most part, those that are permitted are permitted for an individual as an individual. Those that are prohibited are generally those that he would do in concert with others with the design to achieve party success.

Although prominent identification isn't mentioned, it's implicit in the way these things are drawn up. You can, for example, attend a political convention, rally or fund-raising function. You can just be there. But you cannot be a delegate at such convention. It's the delegates who rise up to speak and get on public TV and become prominently identified. Spectators don't. You can be down there and be a spectator but if you participate further, then you're acting in concert with your partisan fellows.

Mr. HARRIS. I understand the division of the regulations. This isn't what I'm asking you. The main objection that you have articulated here to the amendments to the Hatch Act as being proposed is that somehow this opens the employee up to subtle pressures to do those things that the amendments would permit him to do, yet under the

existing law he is permitted to do a number of things in the political affairs and he can be subjected to the same subtle pressures to do those things as he could do these things. I just don't see how that situation is changed.

Mr. MONDELLO. Well, if the pressures, however subtle, are those that he can talk about to somebody like the Civil Service Commission, maybe we could do something about that. If he wishes to contribute as an individual he can do that. If somebody tries to put the arm on him and he comes to us and can point out who that somebody is and we can generate enough evidence, we can make a case against him because then even if it's just been discussed and talked about and nobody uses language of coercion, direction, and ordering, we can do something because the very activity then becomes one in concert, and is a form of campaigning or aiding the party coffers. You really have a different kind of case when you have these restrictions than if you take them off. Then there's nothing illegal about anything in the political activity area.

Mr. HARRIS. You're talking about the compellor as distinguished from the compellee?

Mr. MONDELLO. Yes; he's the one that we would want to go against.

Mr. HARRIS. This law in no way, as it's proposed here before us, changes the responsibilities or the restrictions on the Assistant Secretary; does it?

Mr. MONDELLO. Some Assistant Secretaries are outside the area of the Hatch Act. Others are not.

Mr. HARRIS. Well, the direct Assistant Secretaries—I'm talking about the non-civil-service appointees. His responsibilities are not changed under this act, are they, his requirements, his restrictions, under the proposed legislation?

Mr. COLLINS. Mr. Harris, if I understand your question, are you saying that these people who are political appointees who are serving in high level Government positions would not be affected if this amendment to the Hatch Act were enacted?

Mr. HARRIS. Well, this doesn't change any restrictions on them.

Mr. COLLINS. These people are in the excepted service and except for those that are the Presidential appointees who have the advice and consent of the Senate they are subject to the restrictions of the Hatch Act as are the Federal employees. If this amendment were to be enacted and these activities were then permitted, such as taking an active part in campaigning and management and fund raising, then these people would be affected because they would no longer be subject to those same restrictions as the competitive Federal employees would no longer be subject to those restrictions. So it would affect them.

Mr. HARRIS. The Assistant Secretary of Agriculture, he is prohibited from engaging in partisan political activities?

Mr. MONDELLO. Yes, ordinarily, unless he's one of the exceptions which are very narrow. He's in the excepted service but he's covered by the act.

Mr. HARRIS. How about the Secretary of Agriculture?

Mr. MONDELLO. No; he would not be covered.

Mr. HARRIS. Well, the enactment of this legislation does not change his status in any way; does it?

Mr. MONDELLO. No.

Mr. HARRIS. It does not lessen or impose any additional requirements on him?

Mr. MONDELLO. No.

Mr. HAMPTON. In the coercion area, I think it does.

Mr. MONDELLO. You're assuming that the coercion remains about the same as it is.

Mr. HARRIS. I think our act makes the requirements on the coercion even stiffer.

Mr. CLAY. Will you yield on that?

Mr. HARRIS. Yes.

Mr. CLAY. In other words, the Secretary of Agriculture when he wears a big button for Nixon or whoever he's wearing it for, isn't that a little subtle implication to all of the people who work under him, all the way down to the lower secretary and custodian?

Mr. HAMPTON. Could be.

Mr. CLAY. The same thing you have been saying all day about why we have to keep the Hatch Act as it is you are now saying that the top man in the department can campaign for and wear buttons, and can do all these things, and it has no effect on all the other people working there?

Mr. MONDELLO. We're not saying it has no effect. We are saying that Congress told us we have no jurisdiction over such people. It excluded them from the Hatch Act.

Mr. CLAY. But Congress, I assume, is getting ready to tell you that we are going to change this Hatch Act. Now what we're trying to get from you is how should we change it. What kinds of things should we put into this proposed bill that would even make it stronger in terms of preventing the coercion?

Mr. HARRIS. Mr. Chairman, I don't want to lose this point because it's one that we can fuzz up here. In fact, if the Secretary of Agriculture has a political leaning or a political bias of some kind, perish the thought, but if that be the case, might this employee then think it would be a good idea to sign a political petition as an individual; might he think it would be a good idea through a subtle act of some kind to make a financial contribution to a political party; might he think it would be a good idea to display a political sticker, picture, or badge or button? And these are all things under the existing act you permit him to do.

I don't understand the subtle distinction between what he could be suddenly coerced to do and all these things that he's now permitted to do under the Hatch Act. Yet the minute we amend the Hatch Act to allow him participation in a more visible way, that somehow makes him more susceptible to coercion.

Mr. MONDELLO. Absolutely. It makes it all legal. It means that the very activity that he's——

Mr. HARRIS. Wearing a political button is already legal.

Mr. MONDELLO. I understand that, but that's a matter of individual choice. Right now the employee can say no, if anybody wants him to do any of those things that he can do. We assume that he's doing these things as an individual, which the Constitution gives him the right to do and nobody has interfered with that.

Mr. HARRIS. The only question is, the things we could permit him to do under this bill, why is he not able to say no to those exactly the same way?

Mr. MONDELLO. I think he loses the capacity to say no because what is asked of him is something that's perfectly permissible.

Mr. HARRIS. So are these. These are perfectly permissible for him to do and he could be subjected to the same subtle coercion to these as to those things permitted under the law.

Mr. MONDELLO. Not without the counter-foil of the restrictions, because they do permit him to say no. You would leave him with nothing that would permit him to say no.

Mr. HARRIS. Nothing?

Mr. MONDELLO. Virtually. He's standing alone. Here he has a lot of things he can do if he wishes to do them, and many do. I couldn't tell you right now, for example, whether any of the subtle pressures are effective now to make people contribute. I don't know the motivations of Federal employees who do indeed contribute to political parties. But you take away the other restrictions and you make it almost impossible for them to resist.

Mr. HARRIS. Why does it make them impossible to resist?

Why is it impossible for him to say, no, I will not be an elected member of the Republican committee, and it is possible for him to say no, I will not put a bumper sticker on that says "Elect Ford." Why is the one thing possible for him to do and the other thing impossible for him to do?

Mr. HAMPTON. Well, the person who puts this pressure on him is taking part in concert in a political campaign and he is subject to restrictions.

Mr. HARRIS. Unless he's the Secretary of Agriculture.

Mr. HAMPTON. The other thing is that many people well know about these restrictions so they don't ask, but you remove the restrictions and it's an open season and they will be asked.

Mr. HARRIS. Mr. Chairman, I have one or two other questions.

Mr. CLAY. Go ahead.

Mr. HARRIS. When you speak of the area of coercion with respect to political activity by Federal employees, now in my area I have had Independent candidates endorsed by the Republican Party run against me and I have had Independent candidates endorsed by the Democratic Party run with me which, as I understand it, is permissible under the Hatch Act.

Mr. MONDELLO. That's correct. They are running as Independents.

Mr. HARRIS. Now I want to understand the great big change that this bill would bring about which says that instead of running as an independent endorsed by the Democratic Party or an independent endorsed by the Republican Party, now he can run as a Democratic candidate or a Republican candidate. Now that has a certain basic attraction to him because it sounds more honest, but I just wondered what is the fundamental change that would occur by doing this and how all of a sudden that then makes him subject to subtle coercion when it didn't before.

Mr. MONDELLO. Well, on the subtle coercion point, I think all I can say to you is I have been unable to articulate any reason that sounds very good even to me, and I have undertaken with Mr. Wilson to comment on the precise sections of all of your bill and we will try to articulate and describe those effects. With respect to running as independents in partisan elections, the closer you get to anybody to run in

partisan elections, the less fundamental will be the capacity to protect him under this bill, but that special area was carved out as a result of what happened under section 7327. That was Congress will and we follow it and we have allowed it to go as far as we can let it go. If you run as a nonpartisan you can run as an independent.

Mr. HARRIS. But the party can endorse you?

Mr. MONDELLO. Yes.

Mr. HARRIS. Has the Commission any recommendations with respect to changes in the Hatch Act?

Mr. HAMPTON. Well, as I say, we have a number of different things that we haven't achieved an consensus of. One of the things is dealing with the question that we were just discussing, the anticoercion type of things, and hearing what you have had to say gives me some ideas of what you might put in there. It could be not just say you can't be coerced, but these kinds of activities on the part of people holding supervisory jobs are not permissible, and instead of saying in coercion these kinds of things make up coercion, but anyway, that's just an idea and a thought. That's one of the things we're considering.

Another thing is to clarify some of the substantive provisions of the law by setting forth the kinds of activities that are permitted and prohibited, some of those that are currently incorporated in our regulations.

In defining the law's coverage, we had suggestions before to include the members of the Civil Service Commission who, fortunately, in the 14 years I have been there have never gotten themselves involved in campaigns anyway, but that the members of the Postal Board of Governors were to be included among those people that would be covered by whatever Hatch Act comes forth. We had other people in certain other independent agencies covered, but there was no consensus on that.

Providing a greater range of uniform penalties in the Federal, State and local cases. We also were thinking about reducing the minimum penalty to 5 days suspension without pay rather than 30 days, which is the present one. Also, establishing an intermediate penalty in State and local cases. In the State and local cases the only penalty is either removal or no penalty at all. We were also thinking about eliminating indefinite bar for employment and substituting a 3-year bar in the Federal cases.

Certain applications of procedural aspects—the Commission has no subpena power in Federal cases, which we do have in State and local cases.

These are just some of the things that we were thinking about and, as I say, we are in our third draft. This has been going on for 5 years. We have never been able to get any draft cleared or any consensus which I think goes to looking, you know, at 100 years of history and the risk factor, and that's why we are not able to—I mean, we are speculating on what might happen if these changes are made and we are not really sure what will happen. We go back in history to what happened when they weren't there, and we see activities and many uses of the Federal work force that wouldn't be countenanced today at all.

So I think what Mr. Wilson said is in getting on with this in terms of ascertaining what the situation is today and working with the

committee and coming up with something constructive that meets the need, because actually the thing that concerns me the most about the Hatch Act is prominent identification and what happens to the individual who becomes prominently identified. I personally feel that an individual should be free to do everything that he possibly wants to do, but I think that the one thing—when this comes to the question of prominent identification, that he loses something because he can be compelled or he can be affected in a way that is involuntary, and I think that's a real thing that I have seen over many years in the political arena.

Mr. HARRIS. I appreciate your comments, Mr. Hampton, but as of this time, you have no recommendations. Is that right?

Mr. HAMPTON. I have no recommendations to present to the Congress. I have a third draft that is in process of being considered and I think the best way to get to some of these things would be to comment specifically on the provisions of the bill as suggested by Mr. Wilson.

Mr. HARRIS. I hope then, in some small way, my comments and questions today might prod you to start doing that.

Mr. HAMPTON. I think you had some good ideas.

Mr. HARRIS. You referred to the Commission on Political Activity of Government Personnel and I'd like to quote to you from volume II of that which says: "Fears are often expressed about federal supervisors putting the touch on subordinates for political contributions and campaign help to try to persuade them how to vote. Virtually no evidence of this arises in the study." Did you note this comment in their report?

Mr. HAMPTON. I haven't read the report in question.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Mrs. Schroeder?

Mrs. SCHROEDER. Thank you, Mr. Chairman.

I have a real problem with what you're saying because I hear you saying that what we need for Federal employees are spine transplants. In other words, they just can't hold up under this pressure. I don't see why you think civil servants would be different than people who are working for North American, Lockheed, or Penn Central Railroad or Boeing or McGraw-Hill. There's so many private companies that are engaged very heavily in Federal money or Federal grants or getting money that way.

Why would Federal employees be different than the almost quasi-public corporation employees?

Mr. HAMPTON. I think most Federal employees have a public trust, an obligation to the implementation of laws, the administration of laws. I think impartiality in that process is important. I think it's a very difficult role many times in administering a law to separate your personal feelings or your sense of justice in being objective and you wish you could change the law because you think the decision ultimately isn't what it should be.

Mrs. SCHROEDER. But I don't think you can do that now. I don't think the Hatch Act makes people objective.

Mr. HAMPTON. No, but I think the visibility of having the person involved in the administration of the program and the general feeling

that exists that he wouldn't be impartial, that he would be treating someone favorable because that person shares his political philosophy is a real one.

Mrs. SCHROEDER. And you don't think that there's any way to insure against that kind of thing?

Mr. HAMPTON. Well, all I can say is I think that the Hatch Act has been very successful.

Mrs. SCHROEDER. Could you tell me how many supervisors have been disciplined under the Hatch Act for compelling people in, say, the last 5 years?

Mr. HAMPTON. Early in my testimony, one of the things that I laid out was that the coercion aspects or the armtwisting thing very seldom is before the Commission because of the difficulty of being able to prove it.

Mrs. SCHROEDER. And how many——

Mr. HAMPTON. But we have used the restriction type of situation to get at the compellor. We do have a lot of facts and figures of these cases that were provided to the committee and it breaks down those cases to types of cases and what they were.

Mrs. SCHROEDER. And how were they disciplined? How big a discipline? What kind of discipline procedure would you have?

Mr. HAMPTON. Removal and in some cases suspension.

Mrs. SCHROEDER. But you can remember exactly how many removals or suspensions there's been in the last 5 years?

Mr. HAMPTON. It's in that data. We have all of that in our data that we made available to the committee. I don't have the figure in my head.

Mrs. SCHROEDER. How do you think this is different from asking employees to buy Government bonds, the coercion put upon employees to buy Government bonds and participate in those kind of Government programs?

Mr. HAMPTON. They are not supposed to coerce them to buy bonds.

Mrs. SCHROEDER. I think an awful lot of employees would find that—have you had any cases of that type of thing in front of the Commission, that kind of coercion?

Mr. HAMPTON. Not in any recent years. I mean, we have issued a certain number of rules and regulations on bonds and combined fund campaigns and so forth where we have had complaints about this, and we did regulate in that particular area.

But in testifying before the Ervin committee and here, we did not have any significant number of grievances or complaints in that area, and I'm speaking now of testimony that was given some years ago.

Mrs. SCHROEDER. It seems to me that it should be very possible to fashion a bill that would be much better than where we are because, to be very honest, I'm not very impressed that there's been any very active cohesing of this kind of compelling activity by supervisors by the Commission. It seems to me new legislation might really help, if we came up with amending the Hatch Act, to make it like an employees' bill of political rights and then have very specific caveats against supervisors, that violated this, very similar to what you have against supervisors under the NLRB—that type of thing, whether it be fines or suspensions, et cetera—and a procedure for carrying it out. I think you would really be better off than you are now.

Mr. HAMPTON. That was one of the things that occurred to me when Mr. Harris was talking, that in terms of coercive things—and I think Mr. Mondello mentioned it earlier—what kinds of activities can be construed as coercive or subtle pressure. He may want to comment on that further because we have been kicking that idea around.

Mr. MONDELLO. We were thinking of creating presumptions that would lie against the supervisor if he simply raised the topic with the subordinate about the things. It's possible, of course, to trim up the anticoercive language so it would reach out farther and do that consistent with the ordinary due process rights of those who are suspected because they have a right to appeal from any discipline, but it's a difficult area.

Mrs. SCHROEDER. But it's not that difficult, though, because having practiced under the NLRB for years I know full well if a supervisor even calls an employee to his office that's supposed to be a traumatic experience and from then on anything that he says changes entirely the burden of proof because what he says in his office with the employee alone—the employee is supposedly under a different kind of pressure than if the guy just walks by him on the floor and says, "Hey, Charlie, what are you doing with a button," or some joke.

There are all sorts of those kinds of standards that have been set out in employee/employer relations under the NLRB that spell out what coercion is and how it is different in different scenarios and under different types of instances, and I think it would be very easy to transpose that and have that as a protection. So you allow people full participation as a citizen and say that anyone who interferes with this economically—that is, any supervisor who has some kind of authority over him or interferes with this can be punished—I think you have the best of both possible worlds.

Mr. MONDELLO. If that could be done. I remind you that the Political Activities Commission wanted to do it. They discussed doing it and never came up with a strengthened anticoercion provision. They discussed it for a long time. Maybe they didn't know the NLRB experience. It's a very difficult job.

The whole purpose of the presumption, of course, is to do just what you were suggesting it is wise to do; namely, to shift the burden of proof and put it on the supervisor so that certain conduct takes place. If he sees the employee alone in the room and talks about a certain matter, then he has to come up with a good bona fide reason why, other than politics, he brought the man into the room. And I appreciate that, but nobody has ever yet sat down and written a decent anticoercion provision of that character or any other that would profitably take the place of what's on the books now. Now you're suggesting we ought to try that. I'm perfectly happy to try it and we will discuss it with your staff.

Mrs. SCHROEDER. I'm suggesting that you just look at the NLRB Act. The 8A1 provisions are very simple. I think it's about three sentences, and out of that this whole body was developed. It isn't complex. You are not to call an employee in and specifically recommend or—it's not just coerce—they have also got all sorts of things in there. It recognizes that when your boss speaks to you, which is not exactly a one-to-one, chummy relationship—so it's put in there, but within

a matter of a couple sentences we have really created a tremendous body of law and I think it's working very, very effectively.

I would hope that they would look at that because I think that's probably the way it will go.

Mr. MONDELLO. We certainly will. Even these bills haven't done that.

Mrs. SCHROEDER. Well, that's precisely why I haven't cosponsored it because I really feel the 881 provision should be incorporated into this with that kind of safety valve.

Mr. MONDELLO. We will certainly look at that.

Mrs. SCHROEDER. Thank you.

I have no further questions, Mr. Chairman.

Mr. CLAY. Thank you.

Mr. Hampton, did I hear you correctly when you responded to Mr. Harris and said that you had not read the report of the Commission on Political Activity of Government Personnel?

Mr. HAMPTON. I haven't read it recently.

Mr. CLAY. You haven't read it recently. You referred to it constantly in your remarks this morning. Perhaps we ought to give a brief review of some of the things that that report actually said so that we can refresh your mind and maybe ask you what your opinion is on it.

First, it says in the opinion of the Commission, the best protection the Government can provide for its personnel is to prohibit those activities that impede the role of the career system based on merit. This requires strong sanctions against coercion. It also requires some limits on the role of the Government employee in politics. It was the unanimous view of the Commission's members, however, that these limits should be clearly and specifically expressed and beyond those limits political participation should be permitted as fully as for all other citizens.

Would you care to comment on that?

Mr. HAMPTON. I would agree with that.

Mr. CLAY. Their rights should be permitted as fully as all other citizens.

Mr. MONDELLO. Within those limits.

Mr. HAMPTON. Within those limits.

Mr. CLAY. But the limits that they are referring to, as I understand the report as I have read it, is that a Federal employee should not be able to seek public office where it requires his full-time efforts. All through the report it talks about the right of public employees to seek public office except at the Federal level, which was what they were dealing with. It says—and particularly on the basis that Mr. Harris was speaking of, it says under the present Hatch Act the Civil Service Commission establishes different rules for political participation by Government employees in areas of concentrated Federal Government employee employment. It also draws the distinction between partisan and nonpartisan candidates and elections. This Commission was in substantial agreement that the rights of government employees should not be determined on a geographical basis.

ment employee employment. It also draws the distinction between partisan and nonpartisan elections was often illusory, tended to promote so-called nopartisan slates which in reality were partisan, thereby contributing to a political fragmentation which might threaten the two-party system.

As a substitute for these tests, this Commission suggests that with the approval of the agency head a Federal employee be permitted to hold any local office which is not full time and the compensation for which is nominal. That's what they were referring to in terms of limitations.

Would you care to comment on the Commission's substantial agreement that there ought to be no prohibition against employee's participation in politics?

Mr. HAMPTON. As I said, I haven't read that whole report and I would be hesitant to comment on something that's taken out of a portion of it without having looked at the whole thing.

Mr. CLAY. Would you care to comment on another recommendation of that Commission which says public employees should be permitted to express their opinions freely in private and public on any political subject or candidate?

Mr. HAMPTON. I agree with that.

Mr. CLAY. But they can't do that now.

Mr. HAMPTON. Yes; they can.

Mr. CLAY. You mean publicly at a meeting of a ward organization a Federal employee can get up and express his opinion on a candidate?

Mr. MONDELLO. Yes, sir.

Mr. CLAY. But he can't recommend that someone else vote for that candidate; is that correct?

Mr. MONDELLO. He can't as part of a campaign; no, sir.

Mr. CLAY. Well, at a ward meeting I assume it would be part of a campaign.

Mr. MONDELLO. He can attend a political party meeting. He can address the group. He can tell them which candidate he prefers and which he doesn't prefer. He can vote on that candidate. But when he steps outside that meeting and begins soliciting votes on a concerted basis, that's campaigning and that's prohibited.

Mr. CLAY. If he steps outside that meeting and expresses his opinion?

Mr. MONDELLO. He can express his individual opinion to his neighbors, his friends, publicly.

Mr. CLAY. All right. Let me ask you——

Mr. MONDELLO. Mr. Chairman, may I comment on your earlier question?

Mr. CLAY. Yes.

Mr. MONDELLO. The portion you were reading from at that last bit, this Commission was in substantial agreement as to Government employees' rights should not be determined on a geographical basis that came after the 10th recommendation we were talking about, candidacy for local office and holding a political office, and they went on thereafter and described the nature of the split amongst them. But that came after this second recommendation which says that the law relating to political activity of Government personnel to specified and readibly understandable terms, those political activities which are prohibited, and specifically permit all others. I think there they're not talking of the anticoercive provision alone. They were thinking that they were going to make more liberal, in favor of employee's participation in politics, the running for local office. They were not going to kiss off all of the prohibitions of the Hatch Act. They were simply going to open them up in particular areas.

So that their second recommendation was their feeling of umbrage at the idea that you simply had a simple, little expression in the statute that said no participation in political management or campaigns, and that didn't tell employees anything. So the second recommendation was one which said to whatever extent you keep these prohibitions, spell them out in the statute so that everybody knows what the rules of the game are.

So they really did intend to retain prohibitions of specific political activity and at the same time allow people to run for what they call local offices where the compensation was nominal. So they were doing both at once.

Mr. CLAY. Yes. You have leaned quite heavily on recommendations of this Commission where it tends to support your position, but they made a number of recommendations in 1967. Have you implemented any of those recommendations?

Mr. MONDELLO. Certainly not through legislation.

Mr. CLAY. Have you attempted to through legislation?

Mr. MONDELLO. Yes, sir. In the bills that we drew up, the two earlier provisions that went the full course through all the agencies with all the comments coming back, we picked up out of these 10 recommendations about 6 of them, and the question wasn't whether the recommendations coincided with the Commission's position. Our people testified and presented lots of evidence. They took—our office before I was there got all of the case histories on the books so the Political Activities Commission could deal with it. We didn't have any firm position.

When they came out with theirs, our Commission in the process of passing on these provisions—we had to make decisions whether we would buy their recommendations or whether we wouldn't, and a changing body of Commissioners over the course of these years has several times looked at these recommendations in the eye and bought some and not bought others.

Now, as I suggested before, the ones we did not buy were—as a matter of fact, in the first revision, we did buy one that the later Commission changed by the time of the second revision. That was the one about running for local office. Our feeling about that was simply, okay, let's open it up; let Congress experiment with this. If it goes too far, we'll get the scandals we had in 1938 all over again and we will run back to Congress and say, "Please close it down."

Mr. CLAY. Or 1972.

Let me ask you about another recommendation. They said up to a million dollars should be appropriated annually for the enforcement of the law, in contrast to the $100,000, or less, appropriated annually since 1939.

The question is: In view of the fact that you have only filed one violation of the Hatch Act in recent years, as stated earlier, in terms of coercion, do you think that there's a possibility that you don't have enough funds or investigators, and so forth, to find more examples of coercion?

Mr. HAMPTON. Well, usually those are brought to our attention by the individuals. I don't think it's a question of sending out investigators looking for them. Our appropriation, I think, has tripled in this area. I'm not sure, but I think we provided to the committee our

appropriation. But Mr. Collins, who deals with this on a day-to-day basis, may want to add further to that.

Mr. COLLINS. Mr. Chairman, the appropriations which we received, as Chairman Hampton pointed out, have been set forth in the material furnished to you with our letter of February 28, and the expenditure of funds in connection with those appropriations for processing of cases involving Federal employees.

We act on a complaint basis. We don't have the manpower, nor have we ever thought it necessary to have the manpower, to have people going throughout the country inquiring of employees whether they have been subjected to activities which would be violations of the Hatch Act that they wished to report.

Since 1968, after the Commission on Political Activity of Government Personnel's recommendation that employees should be made more aware, not only of what was prohibited to them, but, particularly, what was permitted to them, we established in the Office of the General Counsel—that was prior to my being there—an information program where our office did attempt to address Federal groups, personnel associations, and so forth, and explain the purpose of the Hatch Act, the implications of it, the restrictions, and the permitted activities by the Federal employees; and we do receive complaints and we act on them.

Mr. CLAY. You mentioned the informational aspect of this. How many people have full-time responsibility for disseminating what the rules and regulations are for the 2½ million Federal employees?

Mr. COLLINS. At the present time?

Mr. CLAY. Yes.

Mr. COLLINS. At the present time, in the General Counsel's office, we have four.

Mr. CLAY. Four people full time?

Mr. COLLINS. Right. But we also utilize our regional offices for dissemination of much of our published material.

Mr. CLAY. How many people would you estimate in the regional offices have this full-time responsibility?

Mr. COLLINS. It wouldn't be a full-time responsibility. They would do it in the course of their business in dealing with other Federal agencies and State and local agencies.

Mr. CLAY. Do you think that 's adequate?

Mr. COLLINS. It's difficult for me to assess what the effectiveness of the information program has been. We have done what we felt we could do. What we have done is attempt to acquaint those in responsible positions in Federal, State, and local agencies with the provisions of the law and request that they assure that this information is filtered down to the rank and file employees.

We receive questions daily from employees who want to know if a proposed activity would be a violation of the Hatch Act and, as Mr. Mondello pointed out to you, we do respond to those and I had an occasion last year to have the attorney general of the State of South Carolina say to me that he was pleased to note in his dealings with us that we were the only Federal agency he had ever dealt with that gave an advisory opinion as to whether or not something would

be a violation of the law which they administer, and he felt that was very helpful, and we do that scores of times daily either by telephone or by letter.

Mr. MONDELLO. Mr. Chairman, part of the information program we get out is either 100,000 or 200,000 posters—I guess 100,000 of each—State and local and Federal—these are sent out through the attorneys general of the State and the Governors of the State for the State and local people who are federally funded, so to speak. In the Federal Government we send them out to all the agencies and they have to be posted prominently.

We also put out political fact sheets, the kind of thing you fold up and put in your pocket. It is pocket sized by design, which gives the general rundown of all the do's and don'ts. Federal agencies piggyback these with GAO fact sheets and distribute them to their employees that way.

So a good deal of information gets out. The unions are knowledgeable about the Hatch Act and they do some of this also.

But to answer your first question more directly, if we go from a complaint system which we currently have and which, for the most part, is effective because when two people are running against each other for office and one of them accuses the other of violating the Hatch Act he's not at all fearful of coming to us and telling us so, and then we have the investigation. If we go to a policing mode where you have only anticoercion provisions of whatever character, and you want us to go out and find the cases because of the fear that people won't speak up against their superiors, that would be a much more costly effort.

I don't know how many people it would take, but there are any variety of similar police programs in the government that we could use as examples and try to come up with some figures.

Mr. CLAY. I have one last question. Mr. Wilson asked if it had not been for the Hatch Act President Nixon possibly would have turned the civil service system into a spoils system and your response was yes, it was possible.

Are you saying that the Hatch Act prevented Mr. Nixon from using the system as a spoils system?

Mr. HAMPTON. Well, the way he asked the question was that would it have been possible. That's the way I understood the question; that if there had been no Hatch Act, to force Federal employees to participate more in the election—and that is a possibility and that is the risk factor.

Mr. CLAY. But the inference there is that the Hatch Act prevented that precise thing from taking place, and I would like to ask——

Mr. HAMPTON. I'm not even sure they had the inclination. I'm just saying——

Mr. CLAY. You mean with him going into the CIA and encouraging people to burglarize the offices of the opposition party, in using all the top level civil servants in this country to campaign for him, you don't think that he had that inclination?

Mr. HAMPTON. I said I don't know whether he had it or not.

Mr. CLAY. Well, my question to you is: Do you know of any instance where anybody was approached by the White House or Mr. Nixon himself in the Civil Service who resisted?

Mr. HAMPTON. I don't know of anybody that was particularly—no one came to me and said that they were approached and resisted.

Mr. CLAY. Then how can you imply that the Hatch Act protected the civil servants from that kind of pressure?

Mr. HAMPTON. Because I think the Hatch Act is protecting because when we did not have the Hatch Act that's what happened.

Mr. CLAY. Well, we had a lot of other factors, too, that went into it prior to 1939. You didn't have the kind of labor organization in the Federal employees that you have now and that's an opposite kind of resistance to the kinds of coercion that supervisors would imply because these people now have something to fall back on in terms of legal representation, in terms of people who know what the laws are and know what their rights are and are willing and prepared to protect them in that instance. So I don't think we can equate 1939 with 1975.

Are there any more questions? Mr. Wilson?

Mr. WILSON. As a followup to the last question asked, how long was the Malek manual in effect before you became aware of it?

Mr. HAMPTON. Well, as far as I know, the Malek manual was never in effect. I think it was a draft document and I don't think it was ever——

Mr. WILSON. It was never distributed?

Mr. HAMPTON. To my knowledge, it was never a document put in final form and circulated.

Mr. MONDELLO. Mr. Wilson, maybe I know more than the Chairman about this because there are some things—he hasn't been as close to these investigations as I have.

We looked for the Malek manual when the select committee, the Ervin committee, first informed me that they had it. They had been reading parts of it and commenting on it. I wanted a copy and we had a devil of a time getting it because they had a special rule about who they could share documents with.

But knowing that there was such a document, I then told the people who were investigating in the agencies to go look for it and we didn't find it. On occasion we had some people who were very cooperative with us, including some we charged, and we drilled them about, did you ever see the manual and was it used and was it there, and the answer was no.

Now it's true it looks like it's in draft form. Nobody has ever seen a completed copy of it. We have never been able to discover that it was used as the Bible that it was apparently designed for. So it may be that the intervention came at just the right time and it never did get effected.

Mr. WILSON. Well, the very fact that there was a print showed there was an inclination by Mr. Nixon or his people to turn the Federal Government into a spoils system.

Mr. MONDELLO. It was a Xerox typed copy. I don't think anybody ever physically printed it. But as I say, we just never discovered it and the first we heard about it was from the select committee.

Mr. WILSON. But Malek was the top personnel manager of the administration.

Mr. MONDELLO. I don't know what his role was with the White House. He became Deputy Director for OMB.

Mr. WILSON. He was a political appointee.

You mentioned, Mr. Hampton, that you have been on the Commission 14 years.

Mr. HAMPTON. That's correct.

Mr. WILSON. And that you weren't aware of any political activity by members of the Commission itself. This is very possible. I suspect when people become members of the Commission they are like judges and leave politics behind them. Doesn't the law require that there be no more than two Commissioners of any one political party?

Mr. HAMPTON. That's correct.

Mr. WILSON. So people are appointed because of their political affiliation. You're a Republican, I assume, and Mr. Andolsek is a Democrat and Mrs. Spain is a Republican. And I don't know about your particular case, but in the case of Mr. Andolsek he was appointed because he was an active Democrat. He had worked for a Democratic Congressman and it was pretty much of a partisan appointment, wasn't it?

Mr. HAMPTON. He had had many years of experience in the executive branch as a career civil servant and he served as an administrative assistant to a Member of the Congress and he served as a counsel on one of the committees.

Mr. WILSON. Mrs. Spain, what was her background? She was a political appointee, wasn't she?

Mr. HAMPTON. She came out of the business community. She was president of a manufacturing company in Cincinnati, Ohio.

Mr. WILSON. But had she been active in the Republican Party in Cincinnati?

Mr. HAMPTON. I don't really think so. In fact, I don't think really many people ever appointed to the Commission have had a lot of political activity.

Mr. WILSON. Actually, you and Mr. Andolsek both have been on the Commission for a considerable time. Has there been more than one change since 1967?

Mr. HAMPTON. I think there have been four others.

Mr. WILSON. Four different ones?

Mr. HAMPTON. Yes.

Mr. WILSON. Mrs. Spain replaced a Democrat, didn't she?

Mr. HAMPTON. She replaced Mr. Johnson.

Mr. MONDELLO. He was from California.

Mr. HAMPTON. Mr. Johnson replaced Mr. Macy for his term and Commissioner Andolsek replaced Mr. Roth.

Mr. WILSON. Thank you, Mr. Chairman.

Mr. CLAY. Mr. Harris?

Mr. HARRIS. Thank you, Mr. Chairman.

With respect to the regulations, the section on permissible activities, you have a subsection A in which apparently the attempt is to make it clear to the Federal employee what he can do. Then you have the subparagraph B which says that paragraph A of this section does not authorize an employee to engage in political activities in violation of the law while on duty or while in the uniform that identifies him as a Federal employee.

Now previously I have had problems understanding what that sentence meant. Paragraph A does not authorize an employee to engage in political activity in violation of the law, period, does it?

Mr. MONDELLO. Yes.

Mr. HARRIS. It doesn't just limit him to political activity in violation of the law while he's on duty or while in uniform?

Mr. MONDELLO. I have an idea that the necessity for the first sentence of paragraph B is that if while on duty he did some of these things you might indeed be violating the law.

Mr. HARRIS. Certainly it is not what it says.

Mr. COLLINS. I'd like to comment on that, Mr. Harris. I think what subparagraph B says is that paragraph A of the section does not authorize an employee to engage in political activity in violation of the law or while on duty or while in uniform that identifies him as an employee. So if there are any of these things that the Hatch Act would permit which might be somehow in violation of any other law, the Hatch Act would not permit that activity. If there is another law, that would prohibit it.

Mr. HARRIS. In all seriousness now, the Commission apparently has told Federal employees in paragraph A what they can do and that next section in paragraph B says, "Don't trust us. There may be some of these activities that are in violation of the law." Is that what it says?

Mr. MONDELLO. I would be perfectly happy to answer that question, but not sitting here just taking a quick look at it now.

Mr. HARRIS. Let me go to the next sentence because this is one that bothers me. The next sentence then says:

> The head of an agency may prohibit or limit the participation of an employee or class of employees of his agency in an activity permitted by paragraph A of this section if participation in the activity would interfere with the efficient performance of official duties or create a conflict or apparent conflict of interest.

Now does that sentence then say that anything that's permitted in paragraph A can be prohibited by an agency head with respect to his agency if he thinks this might create an apparent conflict?

Mr. MONDELLO. Yes. Let me give you an example of how that occurred once. Everybody can wear bumper stickers on their car and this kind of thing, political buttons on their uniform or dress, so long as they don't deal with the public directly. There was an occasion in one of the border States where there had been a murder that developed from some political activity—bad blood of this kind—truly—and——

Mr. HARRIS. Political activity is already prohibited in the Government.

Mr. MONDELLO. This was at a military post in a machine shop where there were 40 employees. It got to be a series of arguments and it turned out that those who were in favor of Mr. Wallace had a sticker that they used to put on their lunch pail or something and others wore a Humphrey tie or something of this character, and it got to the point where the bickering in this one unit was so great that the work wasn't being done. The machines would be standing there turning but the worker wouldn't be at the machines and they would be fussing with each other about politics. And finally, it got to the point where fights began to break out.

At that time the head of the local installation said, "No more. Take off those bumper stickers that you put on your lunch boxes and stop wearing the ties," and he just stepped in in order to see if they could turn out widgets rather than have this kind of fuss.

Mr. HARRIS. It sounds a little bit like an anti-Humphrey man.

Mr. MONDELLO. But that's the kind of thing that this would permit an agency head to do and that was incorporated also in the Commission's recommendations, that he be permitted to do this.

Mr. HARRIS. I wonder what good paragraph A is to the average Federal employee if in fact the head of any agency can say that, in his opinion, a political activity would interfere with the efficient performance of official duties.

Mr. MONDELLO. I don't think we leave it to his opinion.

Mr. HARRIS. Well, it says so.

Mr. MONDELLO. No, it doesn't. In my judgment——

Mr. HARRIS. It says if participation in the activity would interfere with the efficient performance of official duties or create a conflict or apparent conflict of interest.

Mr. MONDELLO. Not if he thinks it would, but if it did; and on that he has to deal with us, and I don't think we will have any trouble with any agency head who has——

Mr. CLAY. Could we have them put a more detailed explanation in writing?

Mr. HARRIS. Yes. Thank you, Mr. Chairman. I see we have a quorum call.

Mr. CLAY. The members of the minority have left several questions here they would like you to respond to in writing, so we will get those to you.

We want to thank you for coming out this morning and being as helpful as you were.

The subcommittee will adjourn until April 8.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

[The letter which follows was received for inclusion in the record, subsequent to the appearance of the Civil Service Commission witnesses.]

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 15, 1975.

HON. WILLIAM L. CLAY,
Chairman, Subcommittee on Employee Political Rights and Intergovernmental Programs, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CLAY: This is in response to the questions submitted by the minority members of the Subcommittee on Employee Political Rights and Intergovernmental Programs, as set forth in your letter of April 1, 1975.

Question 1. Please comment on the view shared by some that because of what has happened recently in the Federal government, i.e., improper hirings in the General Services Administration and the Department of Housing and Urban Development, that an effort should be made to strengthen the "Hatch Act" rather than the opposite.

Answer. We would point out first, that the Hatch Act does not reach those individuals who engage in improper hiring practices, since such activity does not fall within the category of either misuse of official authority or influence to affect the result of an election, [5 U.S.C. 7324(a)(1)], or taking an active part in political management or campaigns [5 U.S.C. 7324(a)(2)]. However, such activity is, in our view, symptomatic of the influence of partisan politics encroaching on the merit system. It evidences the tendency which can exist to elevate political affiliation and activity to a position of primary consideration in the process of selecting individuals for the Federal service. Therefore, we do not consider it unrealistic to assume that should Federal employees be permitted unrestricted participation in the areas of partisan political management and campaigning, such participation, or lack of it, on behalf of or in opposition to a particular political party or candidate, would soon become a pri-

mary consideration not only in the hiring of applicants, but also in the assignment, promotion, and treatment of those who are already employees. As I stated to the members of the Subcommittee in my testimony of March 25, 1975, we are convinced that whatever degree of participation is permitted to Federal employees will soon become that which is required of them, even in the most enlightened administrations and under the most rigid anti-coercion provisions.

Of course, there is another, possibly equally important, consideration which must be dealt with. That consideration is the maintenance of public confidence in the impartiality of the Federal service. We view this as a particularly significant concern in light of the revelations in the recent past concerning the activities of those charged with administering Federal agencies and programs. It seems inconsistent to us that on the one hand efforts are made to strengthen protections against politically motivated abuses of authority, and on the other hand Federal employees are to be permitted to freely participate in all aspects of partisan political management and campaigning, thereby increasing opportunities for abuse.

Question 2. Now that State and local employees are no longer prohibited from political management and campaigning, what do you expect to happen? What are the reports to date on these employees?

Answer. At this point in time, it is difficult for us to assess what the impact of section 401 of the Federal Election Campaign Act Amendments of 1974, will be. We would, of course, expect that in States which have political activity laws more restrictive than the amended Hatch Act, there will be a trend toward easing the restrictions, consistent with the recent Hatch Act amendments. In those States which have limited or no restrictions on the political activity of employees, we would expect more partisan activity on the part of employees working in Federally funded programs, though we cannot predict to what extent such activity will be increased. We also anticipate that, to some extent, employees who openly engage in campaign activities will be more subjected to subtle forms of political discrimination by managers who support another party or candidate. We also believe that employees are more likely to be "pressured" by supervisors to engage in campaign activities in support of particular candidates.

Our assumptions as to what likely will occur are based on the knowledge we have gained through our experiences with State and local government agencies where there have been few or no political activity limitations. Our experience has taught us that employees can be a powerful political tool in the hands of an incumbent State or local administration, and there is frequently no hesitation to use them as such.

Because, as we explained in our earlier testimony, there are pressures which can be brought to bear on employees outside the reach of the coercion prohibition, their only real protection against involuntary participation has been the management and campaigning provision. We expect, therefore, that even more subtle demands will be placed upon employees to participate, similar to those which have frequently been placed on them in some States and local units of government to make financial contributions. The management and campaigning provision was not a deterrent with respect to the latter, since employees have never been prohibited from making such contributions. And, in several instances, States have been sophisticated enough in the operation of their solicitation and collection system to insure that those charged with the responsibility to solicit or collect contributions from employees are not themselves employed in Federally funded activities and are therefore not within the jurisdiction of the Hatch Act. It is not unreasonable for us to anticipate, therefore, that similar systems will be organized to insure participation of employees in campaign activities now that such participation is no longer restricted.

Because section 401 has only been in effect since January 1, 1975, and because this is not an active election year in many jurisdictions, we have no specific reports to date on the impact which the amendments have had on State and local employees.

Question 3. How do we protect the public when a Federal employee who is a contracting officer is prominently identified with partisan politics?

Answer. This question raises once again the issue of the public's perception of the impartiality of those who administer Federal programs. While employees charged with such responsibility, including contracting officers, might make decisions which are politically motivated, such fact does not always become public knowledge. In those instances, even restrictions on the employee's politi-

cal participation have not protected the public against the employee's political biases.

The biggest threat, as we see it, is the undermining of public confidence which will occur if employees are free to actively participate in partisan activities. An employee, particularly a contracting officer or one charged with administering a particular government program in a given locality, who becomes prominently identified with a political party through his participation in party management, or campaigns and elections, will not be able to make any significant program decisions without members of the public questioning his or her impartiality.

While it is sometimes overlooked today, the desire to create and maintain an image of impartiality for the Federal Civil Service was a motivating factor in the passage of the Hatch Act and in the promulgation of the Civil Service Rule restricting the political activities of government employees.

I appreciate your giving me this opportunity to express my views on the questions presented.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

TUESDAY, APRIL 8, 1975

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE POLITICAL RIGHTS AND
INTERGOVERNMENTAL PROGRAMS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 311 of the Cannon House Office Building, Hon. William Clay (chairman of the subcommittee) presiding.

Mr. CLAY. The Subcommittee on Employee Political Rights and Intergovernmental Programs will come to order.

The first witness this morning is Hon. Edward I. Koch, Member of Congress, from the State of New York.

Good morning, Mr. Koch.

STATEMENT OF HON. EDWARD I. KOCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. KOCH. Members of the committee——

Mr. CLAY. I understand you have a prepared statement. Without objections, it will be included in the record at this point, and you may proceed as you see fit.

[The complete statement follows:]

PREPARED STATEMENT OF EDWARD I. KOCH

Mr. Chairman, I appreciate the opportunity to testify today on the need to remove political restrictions against federal employees under the Hatch Act.

In January, 1973, I introduced legislation to restore the political rights of federal, state, and local employees while still protecting them at work from financial solicitation and other political harassment. A provision of last year's campaign reform bill (The Federal Election Campaign Act Amendments of 1974, P.L. 93-443) removes most Hatch Act restrictions against state and local employees. As of January 1, 1975, the nearly three million state and local government employees can serve as officers of political parties and as delegates to the national conventions, can solicit votes on behalf of candidates, and so on down the long list of previously prohibited endeavors under the Hatch Act's dictum of "no active participation in political management or in political campaigns." The restrictions against coercion of fellow employees, solicitation of funds on-the-job, or any other abuse of official authority to influence elections remain in force, as they should.

As a member of the House Administration Committee last year, which drafted the campaign reform bill, I was pleased to support and assist in the adoption of this provision. I withheld from offering an amendment to include federal employees as well in order to assure the adoption of the state and local provision. It was then and is now my hope that the Congress will also restore the political rights of federal employees.

According to the Library of Congress and Joint Committee on Reduction of Federal Expenditures, there are approximately 2.8 million federal civil servants and postal employees in the United States today. The District of Columbia and seven states—California, Illinois, Maryland, New York, Pennsylvania, Texas, and Virginia—each have more than 100,000 federal employees. New York City alone has over 98,000. Since 1939, these government employees have been largely prohibited from participating actively in partisan political activities by the Hatch Act.

These 2,800,000 federal employees are no less deserving of equal rights under the law than are state, local, and private sector employees. Congress should clear up the obvious discrimination and inconsistency in the law.

Mr. Chairman, I am delighted that you have introduced H.R. 3000, the Federal Employees Political Activities Act of 1975, and that you are holding these hearings on your bill and related Hatch Act reform legislation. I am a co-sponsor of your bill, as you know, and I have also reintroduced my own similar bill from the last Congress, H.R. 1326.

It is high time that federal employees are considered old enough and intelligent enough to participate fully in the process of elections. This country has no right to make its public employees second class citizens. But the Hatch Act, by limiting their political activities, has effectively put them into that category. The nature and scope of activities prohibited, as well as the sheer numbers of persons affected by these restrictions, have led various commentators to criticize the Hatch Act as being at variance with the First Amendment guarantee of freedom of political expression and the American commitment to participatory democracy.

The constitutionality of the Hatch Act has been challenged in the judicial arena. In July, 1972, the U.S. District Court for the District of Columbia (National Association of Letter Carriers v. U.S. Civil Service Commission) ruled that the Hatch Act is "constitutionally vague" and has a "chilling effect", because many civil employees do not know either if they are covered or what they are prohibited from doing. According to the Court, many persons did not engage in *any* political activity out of fear rather than because they had to.

This decision, if left, would have repealed the Hatch Act.

However, the Supreme Court, in June, 1973, reversed the decision by a 6–3 margin. But the Court still emphasized that "Congress is free to strike a different balance if it chooses."

In 1966, Congress created the Commission on Political Activity of Government Personnel, known as the Hatch Act Commission, to study all federal laws restricting political participation by government employees. In its final report, in December, 1967, the Commission noted the need for substantial reform of the Hatch Act, particularly in the areas of clarifying its vagueness and reducing its application to the fewest employees. As the Commission noted, most government employees are so confused by the more than 3,000 specific prohibitions issued over the years by the executive branch and have so little idea what they are permitted to do that they tend to avoid taking part in any political activity at all. Congress has taken the initiative in recent years in expanding other groups' opportunities for political activity through its civil rights legislation and the 18-year-old vote. It is time that Congress restores to federal government employees their right to free political expression and acts on the recommendations made by the Commission that it created.

The Chairman's bill, H.R. 3000, and my bill, H.R. 1326, would amend Title 5 of the United States Code so as to permit federal officers and employees to take an active part in political management and in political campaigns. We would retain the very important prohibition against the use of official authority to influence elections, while extending to the government employees their full rights to participate actively in politics as private citizens. The bills list nine specific activities included under "an active part in political management or political campaigns," in addition to the right to vote or to express an opinion orally on political subjects, which even the existing provisions allow. The nine new rights can be summarized as follows:

1. Unrestricted participation in political conventions, including service as a delegate or officer;
2. Unrestricted participation in the deliberations of any primary meeting or caucus;
3. Unrestricted participation in a political meeting or rally, including preliminary arrangements;
4. Unrestricted membership in political clubs, including initial organizing;

5. Unrestricted wearing of campaign badges and distributing of campaign literature;

6. Unrestricted written expression or association with any publication, except that no letter, editorial, or article shall mention the writer's official employment;

7. Unrestricted organization or participation in a political parade;

8. Unrestricted initiating or signing of nomination petitions, including canvassing for signatures of others; and

9. Unrestricted candidacy for nomination or election to any political office—National, State, county, or municipal.

My bill, H.R. 1326, is largely similar to H.R. 3000, introduced by Chairman Clay. Section 3 of H.R. 3000 is comparable to Section 1 of my bill; the respective listings of nine items incorporated under "an active part in political management or in political campaigns," enumerated above, are virtually identical. H.R. 1326 would retain the existing provisions of the U.S. Code (Sections 7323 and 7325) which already cover prohibited solicitations and penalties. However, I am very concerned that we retain effective safeguards against the politicization of the bureaucracy while at the same time giving public employees full political rights as private citizens. I support the additional sections in H.R. 3000, not included in my bill, which strengthen further the ability of the Civil Service Commission and the Attorney General to deal with violations.

For over 35 years we have relegated our public servants to being "second class citizens." Existing restrictions on the political activities of federal employees are, in my judgment, unfair and long overdue for revision. But at the same time, we must protect the neutrality of the government bureaucracy. We must also guard against possible coercion directed against public employees to participate involuntarily in politics. The solution is to replace the Hatch Act with legislation that contains adequate safeguards against abuses while granting federal employees their rights to participate as private citizens in American political life.

The Committee has before it bills that seek to accomplish this purpose. I am hopeful that you will favorably report out such legislation.

Mr. KOCH. Thank you, Mr. Chairman. I especially want to express my appreciation for your permitting me to testify at the opening of the session, so that I can attend the Appropriations Committee hearing as well. I am very obliged to you.

Mr. Chairman, I served on the House Administration Committee last year before going to the Appropriations Committee, and we had drafted a campaign reform bill. In that bill we placed a provision which removed State and local employees from coverage under the Hatch Act. It was my intention at that time to have an amendment prepared to include Federal employees in that provision, but at the importuning of those who wanted to make certain that the State and local employees now barred under the Hatch Act would be given this first class citizenship again, and because there was a greater disagreement with respect to its application to Federal employees, I withheld my amendment.

But it is inconsistent, Mr. Chairman, for this Congress to permit State and municipal employees, who were barred under the Hatch Act, because they received in some part Federal moneys, to now become first class citizens which obviously we would all applaud, and at the same time, maintain second class citizenship for the employees over which we have a direct responsibility, Federal employees.

That is why I am so pleased to be a cosponsor of H.R. 3000, which is the legislation that you have introduced with members of the committee. As you know, the Supreme Court not very long ago determined that the Hatch Act's limitations on Federal, State and municipal em-

ployees, was constitutional, and that if there were to be a change, it would have to come as a result of congressional legislation, legislation that is long overdue.

I am particularly pleased, Mr. Chairman, that your bill really specifies the nine major activities which would be returned as a matter of right to Federal employees. I would just like to briefly comment on them and summarize them.

Your bill, as well as the measure I introduced back in 1973, provides for the following rights:

1. Unrestricted participation in political conventions, including service as a delegate or officer;
2. Unrestricted participation in the deliberations of any primary meeting or caucus;
3. Unrestricted participation in a political meeting or rally, including preliminary arrangements;
4. Unrestricted membership in political clubs, including initial organizing;
5. Unrestricted wearing of campaign badges and distributing of campaign literature;
6. Unrestricted writen expression or association with any publication, except that no letter, editorial, or article shall mention the writer's official employment;
7. Unrestricted organization or participation in a political parade;
8. Unrestricted initiating or signing of nominating petitions, including canvassing for signatures of others; and
9. Unrestricted candidacy for nomination or election to any political office—national, State, county, or municipal.

Now, while these rights are those that should without hesitation be given to employees, there is one area that we cannot overlook, which the Hatch Act intentionally and originally covered, that is, employees should be protected from solicitations by those who possibly could impact them in an adverse way.

And therefore, those sections of the Hatch Act which would prevent and prohibit solicitations from the Federal employees, would be kept in full force and effect.

Just to conclude, Mr. Chairman, I am convinced that every piece of legislation, if it is good legislation, reaches a point in time when there is just no stopping it, and I believe that that point in time has come for several reasons. One, it is good legislation; two, the country, in my judgment, supports it; and three, Mr. Chairman, I believe that the changes in the various committee structures of this Congress, with new and younger Members—not necessarily in terms of years, because you and I, came about the same time—indicate that the Congress has opened its doors and it is about time that we let the Federal employees enter those doors. It is a special pleasure for me, I must say, to appear before a committee chaired by someone who came to Congress when I did.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Koch.

I think it can be said without fear of contradiction that the Congress which we both came to at the same time, perhaps brought the most gifted Members ever to come into the House.

Mr. Koch, on page 6 of your statement, you say, "We must also guard against possible coercion directed against public employees to participate involuntarily in politics."

How would you see us providing stronger protection for Federal employees against improper influence and coercion by unscrupulous supervisors?

Mr. KOCH. I believe, Mr. Chairman, that there should not be any knowing solicitation of a Federal employee by anyone in Government.

The legislation should contain penalties. In all candor, I believe that penalties, wherever possible, should be of a civil nature. I am not one of those who believes that every transgression should carry a criminal prison sanction.

There are people who believe that no matter what transgression occurs, somehow or another, you have to have one year in jail. I just don't believe that. I think there are situations where you have intentional wrongdoing where that might be necessary.

But the kind of sanction that I have in mind, Mr. Chairman, in the ordinary case, where it is not willful, would be a civil sanction of a penalty, involving a money fine.

Mr. CLAY. So, in other words, what you are saying is the penalties don't have to be that harsh. You think the Federal employee today is intelligent enough to protect himself against coercion?

Mr. KOCH. I think, Mr. Chairman, that the days are over when Federal employees could be pushed around and coerced in to support ing someone simply because they are worried about their job, or their appointment.

Notwithstanding that, there have to be sanctions in the law, but again, it is no longer a question of a Federal Government being in the position of a father to people in Government service. It is an employer. Our employees are full grown. They know their rights and while sanctions should be there, the best sanction is that the Federal employee is going to stand outside and scream when somebody tries to put the arm on him.

Mr. CLAY. In effect, what you are saying is that conditions today are not precisely the same as they were in 1939 when the Hatch Act was put in.

Mr. KOCH. They are much different, Mr. Chairman.

Mr. CLAY. Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

I realize that the gentleman has to get to another meeting. We won't keep you too long. There are a couple of things I would like to ask you about.

First, may I commend the gentleman who has sponsored nothing but good legislation which I generally coauthor without studying the bill too closely; because your legislation is always good, particularly good for people.

We have had opposition, strong opposition to H.R. 3000 by the Civil Service Commission. They now administer the Hatch Act.

Would you feel we should probably have some other organization, some other commission, or body administer it rather than the Civil Service Commission?

Mr. KOCH. I don't believe I am qualified to pass on that. My initial reaction, though, without any expertise on that aspect of this legisla-

tion is that there are many times when an agency, is reluctant to acquiesce to change.

If you have to change, then the Commission has to read the new law, and it has to become acquainted with a program that is different than that which it has been administering over the years. But I believe that all Government employees will do that which is correct under the law.

So, if the law makes it clear that sanctions under the Hatch Act are removed and participation in political activity is permitted, I believe, that law will be executed by the Civil Service Commission.

Again, I don't have any expertise, but I am reluctant to remove authority from a commission, simply because it expresses a contrary point of view. If it doesn't carry out the law, then there would be time to change that.

Mr. WILSON. They are pretty much recognized as a management body, however, and they could be rather one-sided in the interpretation or the administration of the law. Mr. Clay and I, and Mr. Gilman were in Europe during the recess in connection with postal matters and we asked about the Government employees that participate in politics.

In Germany, I had, say, about 40 members of the Bundestag are public employees——

Mr. CLAY. 60 percent.

Mr. WILSON. A large percentage of them are teachers. Apparently teachers get in and pass laws for better retirement for themselves, so that when they do return to the teaching profession, why, they haven't lost anything during the time they served in the government.

The only requirement the law makes, is the public employees must support the constitution of the country. That seems to me a very reasonable requirement. It is strange that we have this feeling in this country, in some circles, that public employees shouldn't have the right to participate in politics.

Mr. KOCH. I am in total accord with you.

Mr. WILSON. Thank you very much, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Wilson.

Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Koch, I too want to thank you for your testimony this morning and for highlighting some of the important aspects of this legislation now before us.

As you know, there has been a great deal of criticism about allowing public employees to become too powerful by granting them the authority to participate in politics. Is there any danger to the separation of powers within the governmental structure by allowing people who are working within agencies to freely participate and to undertake a political lobby for a particular issue?

Mr. KOCH. Well, if we carry that the full range, then we should deprive them of the vote, so as to make certain they have no impact on the political process and nobody would suggest that we do that.

I, for one, believe that a concerned citizen should participate at every level of the political process so as to make it larger and more responsive, and to impact upon government itself. Having participated in the political life of my city since 1952, I never could understand why it was a sin for someone who happened to be a Government em-

ployee to carry a petition, to knock on somebody's door and say, "We want you to sign a petition to put Mr. X on the ballot." And they couldn't do it.

The fact is that most employees covered under the Hatch Act didn't know what they could or could not do, so they didn't do anything. That was the other aspect of it. They were never sure what would send them to jail. I wouldn't blame someone in public service from saying, "I can't do anything."

I think that was wrong. I think this legislation would correct that and I think it is long overdue.

Mr. GILMAN. It has been pointed out to me there is some authority for members of the public sector to individually or collectively petition Congress, also to sign nominating petitions in behalf of the——

Mr. KOCH. But not to carry them. You can sign a nominating petition, but I don't believe you can go out and carry, as you know, Mr. Gilman, we come from the same State. In order to get on the ballot, you have to have certain number, generally 5 percent of the registered voters to sign your petition to get you on the ballot.

It is my understanding that those who are "hatched" cannot take that petition and knock on a door to secure the 5 percent. That would be one illustration of the limitation. They, themselves, might sign the petition, sure.

Mr. GILMAN. Have you found a great deal of expressed need for this legislation from the rank and file, or is this primarily coming from organizational requests?

Mr. KOCH. No, no, I discuss lots of things with people in my district, as we all do, and everybody has his or her own particular area of interest. For people who are public employees, this ranks as No. 1.

In New York City alone, there are 98,000 Federal employees. So, based on just the few that I have spoken with, postal people particularly, and others, this is a No. 1 priority for them.

This is not legislation that has been dreamed up by legislators, the chairman of this committee, members of the committee who have cosponsored it and myself. This measure comes in response to a need expressed by those who are now in the unenviable position of being second-class citizens.

Mr. GILMAN. Mr. Koch, do you feel the enactment of this legislation would erode, in any manner, the Federal merit system?

Mr. KOCH. I don't see how, Mr. Chairman, You would have to really illustrate for me how permitting someone to engage in the political process could possibly erode the merit system I don't see how.

Mr. GILMAN. This has been a criticism that has been voiced on many occasions, that there is a danger that by allowing members to become involved politically that it would have an effect on the merit system.

Mr. KOCH. My own feeling is when this legislation is passed and we look back a year later, we are going to say, "Why did we wait from 1939 to 1975, why didn't we do this in 1940?"

Mr. GILMAN. Thank you, Mr. Koch, and thank you, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Koch. I know that this committee will be in your area, in New York City on May 2 and 3, and I am quite pleased to find out you are going to participate with us at that time at the hearings.

Mr. KOCH. Thank you. I thank you for extending the invitation.

Mr. CLAY. Mr. Solarz is here.

Mr. SOLARZ. That's OK, Mr. Chairman. I want to thank you for the opportunity to ask questions even though I arrived late.

This is the first time I have had an opportunity to confront my distinguished colleague from New York as a member of the committee before which he testified. I have only heard him speak eloquently on other occasions, but never in this particular setting.

I wonder if I could ask you, Congressman, a few questions which seem to me to go to the heart of the case which has been made against the kind of legislation we are considering this morning.

I think one of the unfortunate characteristics in the debate which is developing over this bill, is that neither side tends to address its arguments to the objections raised by the other, so they are sort of like two strangers passing in the night and not coming to grips with the substance of the different arguments, some of which on both sides seem to me to have some merit. I believe, therefore, we have to make an effort to reconcile conflicting considerations.

What is your view of the objection which has been raised, that in the event that we permit the wide variety of political activity which this legislation would authorize on the part of Federal employees, that inevitably, despite the restrictions in the legislation on the ability of Federal managers to willfully force their employees into political efforts on behalf of the parties or candidates that they support, that in a variety of subtle ways, Federal managers, by somehow communicating their own preferences, will put such substantial pressure on Federal employees who hope for promotion or better job assignments or any of the other privileges and prerogatives available under Federal employment, that they will, in effect, feel obligated in order to protect themselves, to engage in political activity which, left to their own choice, they would avoid?

Do you think there is any merit to that?

Mr. KOCH. Those situations will occur, surely. But will those situations prevail? In my judgment, no.

We have in Government today Republicans and Democrats, as well as those that are not affiliated with either of the two major parties. I would suspect that if in a Republican administration or a Democratic administration, administrators in some way or another sought to impress their will in a particular direction, the people from the other party will be aware of it.

It is not something that is going to be conceivable. If it is going to be done in any extensive way, people are going to be out there yelling and screaming and all you would have to do then is make an example of such an official who engaged in that type of coercion and take the appropriate punitive action. Am I not addressing myself to the point?

Mr. SOLARZ. I understand your point. That is to the extent that any Federal manager violates the prohibitions in the legislation, an opportunity for an exemplary dismissal——

Mr. KOCH. Not only that—the point I am hoping to make is that there are the watchdogs, namely the Federal employees themselves, who are not going to benefit as a result of having someone from another party increase their vote, and they are the ones who are going to be safeguarding the process.

Mr. SOLARZ. The point has been raised in some of the previous testimony we had to the effect that it would be possible for Federal managers, in a variety of subtle ways which deny legislative prescription, to communicate to their employees their own political preferences. They might, for instance, simply indicate they are attending a dinner on behalf of a candidate or a party. Then that employee under their jurisdiction, hoping to secure a measure of preference or influence, might feel obligated to purchase tickets to the dinner, even though no direct request was made, let along a specific directive that they purchase tickets.

Given the nature of the manager-employee relationship, you open up a Pandora's box here, which would put Federal employees in a very difficult position, and which this legislation, given the varieties which human behavior can take, can't really prescribe.

Mr. KOCH. My response to that is this: Some of that will occur, may occur, sure. On balance, it will be infinitesimal compared to the benefits this country will receive by opening up the political process to the largest number of people who should already have been part of that process.

Mr. SOLARZ. Let me go to that point. I gathered from the testimony I heard when I came in, it was your feeling this was a right that Federal employees not only ought to have, but that they would very much like to have.

My information is that based on actual surveys of Federal employees that were taken in 1967 by the Commission on Political Activity of Government Personnel and in 1972 by the National Federation of Federal Employees, that a substantial majority of Federal employees indicated they preferred the restrictions on political activity in the Hatch Act out of fear of what might happen if they were lifted.

Do you have any view of that?

Mr. KOCH. Yes, I do. My April 4, 1975, survey disputes those earlier surveys. I believe that the Federal employees today want in, in a total way, into the political process.

Mr. SOLARZ. Where was your survey conducted?

Mr. KOCH. At East 72d Street and Lexington Avenue at the subway station.

Mr. SOLARZ. Was this limited to Federal employees or passersby who couldn't avoid your incessant questions?

Mr. KOCH. I promised them all anonymity, so I am not at liberty to discuss the sample.

Mr. SOLARZ. I must say the Congressman is noted for going in subways, although I didn't know he also took public polls on that occasion. In my own experience in the subways in New York, I can only say that people rush by in such a hurry to get on the train, I hardly have time to tell them who I am, let alone to ask them questions.

One more question, Congressman. One of the objections we heard to this legislation, which seems to me to have at least some theoretical merit, was that one of our objectives in the Congress ought to be to promote a Federal civil service which will appear truly nonpartisan and impartial to the American people, that in terms of the faith which the American people have in the impartiality of the civil service, it is very important, the argument went, to prohibit political activities on

the part of Federal employees, because to the extent that the American people see theoretically impartial Federal personnel actively participating in the political process on behalf of Democrats or Republicans, one candidate rather than another, will unquestionably call into question the impartiality of the Federal civil service.

There is here a counterbalance to the theoretical right of the Federal employees to participate in the process, overriding the sense of confidence on the part of the American public in the civil service which could be impaired if we permitted political activity and participation.

What is your view on that?

Mr. KOCH. Well, if we extended that argument, we might take in Congressmen as well, and have them appointed and have unlimited tenure, so as to remove the partisan political aspect.

I happen to believe that employees, whether they be in the Federal Government or the city or State government, in terms of dealing with the public, will not impair public confidence in the cure service. Obviously, even among Federal employees there are a couple of nuts, but generally speaking, all these employees reflect the American population, a certain decency, a certain courtesy, a certain obligation of office which, in applying to Federal employees and Members of Congress as well, demands that they perform in a nonpartisan way.

I don't for a minute believe that a postal employee is going to stop delivering mail to Republican households if he happens to be a Democrat and wants to support the Democratic ticket. It just is inconceivable to me that their political partisanship off the job is going to impact on them on the job. I just don't accept that.

Mr. SOLARZ. Thank you, Mr. Chairman.

Thank you, Congressman, for your replies.

Mr. CLAY. Thank you.

I think we will have to impose the 5-minute rule on questioning, so we can get in all the witnesses that we have today.

Mr. Harris, do you have any questions?

Mr. HARRIS. Excuse me. I was at another subcommittee hearing. Excuse me for being late.

I heard your last comment, and I would tend to agree with it. As in past hearings, I can't quite understand the distinction, where the line is drawn now vis-a-vis political activity, some sort of a sacred demarcation line, over which a person's activity can interfere with his job, or subject him to what one witness called subtle coercion.

Above the line, this would happen. There is nothing in the law now, as I understand it, that makes a letter carrier vote independent. I mean, he can still be a Republican or Democrat. He can still, as I understand it, go to a mass meeting of the Democrats or Republicans, he can still run as a candidate as long as he runs as an independent, but as an independent, he can be endorsed by the Republicans or Democrats, so I really wonder if the question that we are debating here is such a fundamental one as far as how this is going to affect his job.

Mr. KOCH. I agree with the implication of your statement, Mr. Harris, and believe that the hodgepodge of regulations now applicable to Federal employees makes no sense at all. We have removed it in the last Congress as it affects city and State employees covered by the Hatch Act, because they received some Federal payment, and why

we should maintain it against those with whom we have the direct relationship, makes no sense at all.

Mr. HARRIS. Thank you, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Harris.

Mrs. SPELLMAN. Congressman Koch, I agree with you. Judging from your record of the past and the things that I have known about you before I came on board and since, I would almost go out on a limb, without reading your testimony, and say: "Right on."

Mr. KOCH. Thank you very much.

Mr. CLAY. Thank you. Thank you, Congressman.

The next witness this morning is Mr. Patrick Nilan, legislative director, American Postal Workers Union.

STATEMENT OF PATRICK J. NILAN, LEGISLATIVE DIRECTOR, AMERICAN POSTAL WORKERS UNION (AFL-CIO)

Mr. NILAN. Thank you. I would like to have Mrs. Reimann and our counsel, Frank Cafferky, join me at the witness table.

Mr. CLAY. Thank you. Do you have a prepared text, Mr. Nilan?

Mr. NILAN. We have a prepared statement, Mr. Chairman and what I would like to do in an effort to cooperate with the other organizations that are going to appear, is to have our complete statement and exhibits as well as a summary, which I gave Mr. Johnson, your staff counsel, this morning, concerning some suggested amendments, and also a current case on the Hatch Act, dated April 7, from our counsel, included in the record and then I will refer only to the most important aspects of our statement and be available for questions.

Mr. CLAY. You may proceed as you see fit.

Mr. NILAN. Thank you very much.

Mr. Chairman, members of the committee, again for the record, to my right is Mr. Frank Cafferky, counsel for the American Postal Workers Union. To my immediate left is Mr. Edward L. Bowley, our legislative aide, and to his left, Mrs. Victor Reimann who is the national president of the auxiliary to the American Postal Workers Union from Evansville, Ind. Mrs. Reimann also serves as the chairperson of the Board of the auxiliary to the AFL-CIO.

Mr. Chairman, we appreciate the sponsorship of H.R. 3000 by by yourself and more than 50 of your colleagues in the Congress.

I would also like to say our president, Francis S. Filbey, regrets he cannot be with us this morning as he is in Geneva, Switzerland, as a worker representative of the U.S. Government to the International Labor Organization. This Conference is very important to all working people in the United States and is concerned with the rights of workers in the public sector.

Mr. Chairman, in our statement, we make every effort to point out that we, as national officers representing the American Postal Workers Union and some 300,000 members nationally honestly believe that our membership is not only mature enough and intelligent enough to participate in the democratic processes of this great country of ours, but deserve amendment of the Hatch Act which has been long overdue.

We point out on pages 2 and 3, as our good friend Congressman Koch did, the provisions of your bill in general terms. We also suggest on page 3 that we have believed for a long time that the present

Hatch Act is an outstanding example of legislative overkill. Some alleged evils years back before any of us were employees of the Government saw in 1939 the enactment of legislation to correct the evils at that time. As a result, some of the most basic and fundamental constitutional rights of all postal and Federal workers have been denied to them for 35 years.

We recommend strongly, Mr. Chairman, that once age, residence, and registration qualifications have been met, the same rstrictions as on any other citizen in this great country of ours, then all Federal and postal workers should have the right to participate openly in the democratic process. We mention on page 4 that our immediate past and deceased former president, E. C. Hallbeck, was fond of pointing out that postal and Federal employees have been singled out not to participate in the political process but in the town ne'er-do-well has the opportunity if he or she should desire.

I hope we would agree that all Federal and postal employees are respected members of their communities and should have the right to participate openly in all of the political processes of this great country of ours.

One of the dangers in the present Hatch Act, is that hundreds of thousands of postal and Federal employees don't really understand the Hatch Act, despite our effort to inform them and they don't participate because of this concern. I received a letter a few days ago from the president of one of our large local unions stating he was going to have to ask members of the auxiliary to write letters to Congress, because if any of his members did it they would be in violation of the Hatch Act. We point out on page 7 a number of references, including a decision by the California Supreme Court, finding the Hatch Act in California unconstitutional. We provided for the committee the main arguments in that favorable decision. In the middle of page 7, we state:

> The National Convention of the American Postal Workers Union has repeatedly over the years, adopted resolutions similar to the one that follows:
> "Whereas the Hatch Act makes a federal employee only a second-class citizen, be it therefore
> *Resolved*, that our national officers seek legislation to amend those portions of the Hatch Act to guarantee us first-class citizenship."

Mr. Chairman, I can't help but respond also to the questions Mr. Gilman has raised and I believe Mr. Solarz concerning the attitude of the average postal or Federal employee. I can only speak on behalf of our 300,000 postal worker members. We have no problem as far as attitudes on wanting the Hatch Act amended. I have been legislative director of our union for almost 12 years, during which time I have tried to do everything possible to oppose the Hatch Act and to have remedial legislation enacted. My membership is well aware of my activities and this is consistent with numerous national convention resolutions by 2,000 delegates for more years than I like to remember. I have been fortunate that even though standing for election every 2 years, I have never been opposed for election since 1964 in my union. I am confident that if I was not reflecting the overwhelming opinion, of our members I would have had opposition, and could have been defeated. When we have organizations like my own union, the American Postal Workers Union, and our sister organizations being questioned

as to our reflecting our membership desires, I find very few times in the Halls of Congress when the president of the chamber of commerce or the president of, for example, the so-called Americans Against Unions' boss in government, or whatever it is, being questioned whether or not they reflect the feelings of people they represent.

I would suggest that we as elected representatives be given the same recognition that we do speak on behalf of our people. I know of no member of my union and no member has ever suggested to me that he is not in sympathy with amending the Hatch Act, or that he would oppose it being changed, as long as they are protected by built-in statutory protections against harassment, coercion, and any other form of political reprisals.

We believe, Mr. Chairman, your bill along with the existing protections in the Hatch Act, would take care of most of those protections which our people are concerned about.

On page 8 we refer, for example, to exhibit 1. That exhibit is concerned with two articles which are published in the Washington Star. Our good friend, Mr. Joseph Young, whom we have a great deal of respect for, in a very emphatic article on March 4, suggested he only met one Federal employee in the many years he has been a columnist that wanted the Hatch Act amended. In my reply of March 16, I replied to our good friend Mr. Young, that he was at our recent convention in Miami in August 1974 when 2,300 plus delegates unanimously approved a resolution to amend the Hatch Act. Certainly they are all postal workers and if they didn't believe in it, I'm sure at least one of them would have objected.

Exhibit 2 is a reprint of the July 1972 article which commented on the three judge panel here in Washington ruling the Hatch Act unconstitutional. While it's true the Supreme Court did subsequently rule it was, we believe the news report fairly reflected the reasoning behind the decision of the three judge panel in a 2 to 1 majority vote to declare it unconstitutional.

Finally, Mr. Chairman, we submitted exhibit 3 for the record, a very timely article in our opinion, by one of our members up in Highland, N.Y., who is a college student. He prepared his thesis on the basis of "The Hatch Act. Political Restraint of Government Employees, A Time For Change." It's a very articulate and, in our opinion, well-documented article, as it particularly addresses itself to the fallacies of section 9A of the present act. We appreciate our entire statement and these exhibits being included in the record.

Then we have offered, Mr. Chairman, and I am not going to refer to all of these amendments which are on 11 pages, double spaced, a number of changes in H.R. 3000. The first reference is a summary and analysis of H.R. 3000, providing for right of Federal employees to participate in political (partisan and nonpartisan) activities. These amendments, Mr. Chairman, in our opinion, would strengthen your bill, and would further protect postal and Federal workers from any possibility of political harassment or coercion.

The approach we have used, is to provide the committee with the provisions of the current law as on page 1, for example, 5 U.S.C. section 23, section 25. On page 1 of this, we present the law as it is. On page 2 of this summary, we analyze the proposed changes by your legislation H.R. 3000, and on the bottom of page 2 we suggest some changes. We

suggest that you add to line 4, page 2, after the words "political purposes," the phrase "on Federal property." This would allow any Federal employee to solocit or receive funds or other valuable material as the act refers to from another Federal employee, Member of Congress or the military while off duty off Federal property.

In other words, we don't want him getting involved on Federal property or when he is employed by the Government or Postal Service, but we believe he or she should have the right when they are off Federal property to function as any other citizen. Also, Mr. Chairman, we suggest on line 5, page 4 of your bill that after the phrase "to any candidate," the phrase "or his authorized representative." The present language provides the employee can only contribute directly to the candidate itself. The language doesn't appear clear. Our proposal would allow any authorized representative of any candidate to receive contributions again off Federal property.

Then we suggest changes to section 2B, again giving you the current law and also the proposed changes by your legislation. If I may refer in the middle of page 4, to our suggested changes, in title 5, CRF, so on and so forth, provides among other things that the Civil Service Commission will investigate violations of the Hatch Act. It sets up procedures for investigation, hearings and adjudications, of responsibility or guilt and penalties. These procedures satisfy us.

In addition, CSC regulation so on and so forth, specifically apply their jurisdiction and procedures to members of the Postal Service. We suggest the following language be substituted for the present section 2B, lines 12R9 and 12. On the top of page 5, we suggest the Civil Service Commission pursuant to its regulations contained in, and then the citation, "investigate and conduct hearings on all violations of this Act." This then would make it abundantly clear that the present wording of processing complaints in section 2B and upon a finding, contained in section 2C, that a complete investigation, and in our opinion, very important adversary hearing would be conducted.

Mr. Chairman, the only other reference I want to make is strengthening the language against political reprisals and harassment and coercion which has been a subject of concern to this committee. We refer then to section 2(d) in current law, and your proposed changes and then on page 6 we suggest some changes in regard to your bill, H.R. 3000.

Your bill subjects the Presidential appointee to possible criminal penalties only for solicitation, receiving, or giving contributions to another Federal employee and so forth for political purposes. It does not subject him to criminal penalties for using his political influence or official authority to interfere with or affect the outcome of an election.

Nor does H.R. 3000 prevent an executive employee from impeding or coercing another Federal employee in the proper exercise of his rights under H.R. 3000.

To remedy this, Mr. Chairman, we would suggest that you add the phrase, "for any violations of this Act as amended." Mr. Chairman, we could go on, but as I say again, we are trying to cooperate with you and the committee. We will appreciate, when you sit down to mark up the legislation, if you will consider each of the amendments which we have offered in our testimony here this morning.

The other item I want to refer to briefly is the April 7 statement by our counsel, Mr. Anthony F. Cafferky. This gives you a very brief insight as to what can happen when a member of our organization becomes concerned with community problems and tries to exercise his rights as a citizen. As a result he is separated completely from his employment, and also has to suffer immeasurable harm because of the present Hatch Act.

Finally, Mr. Chairman, I have been asked by the president of our Washington, D.C., local, Mr. Sidney Brooks, if we might also request that at this point we introduce a brief statement which he has offered for the record in support of your legislation.

Mr. CLAY. Without objection, the prepared statement which you have furnished the subcommittee, along with the exhibits you referred to, will be made a part of the record at this point.

PREPARED STATEMENT OF PATRICK J. NILAN, LEGISLATIVE DIRECTOR, AMERICAN POSTAL WORKERS UNION (AFL–CIO)

Mr. Chairman and members of the committee, I am very pleased to appear before the Committee this morning with our Legislative Aide, Edward L. Bowley and our Counsel, Anthony F. Cafferky in support of your bill, H.R. 3000 to grant "Political Freedom" to postal and federal workers by amending the Hatch Act.

Our General President Francis S. Filbey regrets that he cannot be with us this morning as he is in Geneva, Switzerland, as a worker representative of the United States Government to the International Labor Organization. This Conference is concerned with the rights of workers in the public sector.

We are deeply grateful to you, Mr. Chairman for the introduction of H.R. 3000 which would grant "political freedom" to all postal federal workers. We are also appreciative of the more than 55 co-sponsors to your bill as well as other sponsors of similar legislation.

First, Mr. Chairman we believe that after more than thirty-five years of flagrant and arbitrary prohibitions against political action and involvement by postal and federal workers in this great country of ours that such loyal employees are mature enough, intelligent enough and long suffering enough to have this unconscionable Hatch Act removed from their backs, once and for all.

Postal workers in addition to the H.R. 3000 and remaining Hatch Act built-in protections against reprisals, harassment and coercion for political involvement have an excellent National Contract grievance procedure to protect them against any such negating influence. Postal workers and their unions are ready, willing and able to participate fully in all respects of American political life and have absolutely no fear or even concern that this involvement could in any way compromise their employment or opportunities for advancement within the U.S. Postal Service.

H.R. 3000 and companion bills would not only retain existing protective shield against management or other reprisals for political action but would further strengthen penalties and punitive action against anyone who may consider any such ill advised coercion or harassment. The Clay Bill would provide the following political rights to postal and government workers and restore these rights denied them for thirty-five years to participate as private citizens in the political life of our Nation.

First: It permits employees to contribute voluntarily to candidates for public office.

Second: it permits employees to express their views and to participate in political management of campaigns, as private citizens, without the involvement of their official authority or influence.

Third: it specifically defines the meaning of political management and campaigns, to include: Candidacy for service in political conventions; Participation in political meetings, caucuses, and primaries; Preparing for, organizing or conducting a political meeting or rally; Membership in political clubs; Distributing campaign literature and distributing or wearing campaign badges and

buttons; Having a publishing, editorial, or managerial connection with political publications; Participating in a political parade; Circulating nomination petitions; and Candidacy for any public office.

FEDERAL EMPLOYEES DEMAND FIRST-CLASS CITIZENSHIP

Mr. Chairman, once again, attention is focused upon a law which is almost universally condemned. Except for the Civil Service Commission, everyone knowledgeable on the subject recognizes that the Hatch Act constitutes an outstanding example of legislative overkill. To correct some alleged evils, many of the most fundamental constitutional rights of all postal and federal employees are denied to them.

To say that the Hatch Act clearly constitutes an unreasonable restriction of the political activities of government employees is an understatement. As a matter of fact, once age, reidence and registration qualifications have been met, any restriction on the right of any citizen to participate freely and voluntarily in all the processes of government, including elections, would appear to be unreasonable. Some considerable credence has recently given further impetus to this point of view by recent court decisions invalidating unreasonable residence and other requirements. Having met reasonable qualifications, there would appear to be no good reason for denying an employee of the Federal Government any of the rights enjoyed by other citizens to participate in elections by taking part in whatever partisan political activity that he or she chooses.

The people represented by the American Postal Workers Union are informed, intelligent citizens who, given the opportunity, might reasonably be expected to show excellent judgment in selection of political candidates for office in this country and in participating in activities in support of them. Under the Hatch Act, these members do not have this opportunity. But, as our deceased former President, E. C. Hallbeck, was fond of pointing out, strangely enough, the town ner-do-well does.

Aside from the question of infringement upon a basic right of an employee to be politically active, the Hatch Act as it is presently interpreted by the Civil Service Commission, has created a climate of doubt and uncertainty that altogether too often resulted in Government employees failing to even exercise their right to a ballot. Seemingly, they reason that the best way to stay out of trouble is to stay completely free from elections. The suspicion arises that this same attitude on the part of others accounts for the fact that all elected public officials are not always what they should be.

Certainly, no one in this day and age would advocate a return to a "Spoils System." No one is advocating that Government employees should be subjected to the requirement that they make political contributions to any political party or candidate. It is not suggested that Government officials or employees should be permitted to use their official positions to promote the political ends of any party or candidate. Neither is it suggested that any post office or other Government agency should become a political stomping ground, or that any employee should be able to coerce, or be subject to coercion, on behalf of any party or candidate. All of these things either have been, or can be, covered by statute but it is not necessary to make political hybrids out of employees of the Federal government in order to prevent such occurrences.

Good government results from the largest possible participation in political life. It seems we have experienced a tendency over the years to drift away from such participation. As a matter of fact, barely half of the electorate even goes to the polls in the average election and a 65 percent vote in a presidential election is something to shout about. In contrast to this, participation in elections in nations of the British Commonwealth and Western Europe runs considerably higher.

A lot of other countries, such as Canada, when they first established Civil Service systems, had very broad bans on the political activity of Civil Service. But as the years have passed in most western countries, there has been a realization that it is no longer necessary to emasculate government employees politically in order to protect the Civil Service or the general public. This is true in Sweden, Canada, Germany, and Great Britain, just to cite a few. Great Britain, for example, enacted a law in 1953 under which blue collar employees and all of the lower grades of white collar Civil Service are exempted from any restraint on political activity. They can even run for the House of Commons. Of course, while running they have to take leave of absence—but the government is required to give it to them. If they are elected they then resign. If

they are defeated they can go back to work as a postal clerk or to whatever other job they do.

What earthly reason is there for saying that a postal employee should be barred from political activity. There might be some reason for barring some of the higher grades, people who are in a position to effect and implement policy. But many of these are exempted from the Hatch Act at the present time.

Persons exempt from the Hatch Act are: 1. President and Vice President. 2. Employees of the President's office. 3. Heads and Assistant Heads of the Executive Department. 4. Appointed officers by the President. Hatch Act restrictions on political management and political campaigning are all inclusive and the only undisputed right of government employees is the right to vote.

Many difficulties arise in conducting normal day-to-day union business because of the Hatch Act. The American Postal Workers Union represents approximately 350,000 employees, all of whom have a direct interest, particularly in electing officials sympathetic to their causes. They would like very much to start a voluntary political fund in order to assist in accomplishing this end. However, can the local union officers who are also employees of the Postal Service solicit contributions from their members, even during a union meeting? Myself and other elected national officers of APWU are on leave of absence without pay from the Postal Service and have been for as many as 15 or more years. Civil Service Interpretations (contained in their Pamphlet No. 20 on page 8) deem me still subject to the Hatch Act even though our legal counsel points out that this is an erroneous interpretation.

Perhaps the best statement in favor of lifting these restrictive measures was set out by the California Supreme Court in declaring a little Hatch Act of California unconstitutional.

"As the number of persons employed by government and governmental-assisted institutions continues to grow the necessity of preserving for them the maximum practicable right to participate in the political life of the republic grows with it."

"Restrictions on public employees, which, in some or all of their applications, advance no compelling public interest commensurate with the waiver of constitutional rights which they require imperil the continued operation of our institutions of representative government."

Mr. Chairman, we appreciate the active interest you have taken in this cause and we support your entire effort.

The National Convention of the American Postal Workers Union has repeatedly over the years, adopted resolutions similar to the one that follows:

"Whereas the Hatch Act makes a federal employee only a second-class citizen, be it therefore

Resolved, that our national officers seek legislation to amend those portions of the Hatch Act to guarantee us first-class citizenship."

For as long as I can remember, similar resolutions have been adopted by each convention of other employee unions without dissent.

The APWU's most recent convention had nearly 2,500 delegates. Other government unions had a similar number of delegates and yet, writers of the government column in the Washington Star recently indicated that they had not witnessed any real desire on the part of the rank-and-file to amend the Hatch Act. I would like to point out, Mr. Chairman, that those same writers sat in on those conventions as observers.

Before we conclude this presentation Mr. Chairman, we would like to have three exhibits included as a part of this statement for the record. We believe these Exhibits will be helpful to the Committee in your deliberations on a final version of H.R. 3000 which hopefully will be favorably reported and enacted into law.

"Exhibit No. 1" contains two reprints of articles from the Washington Star newspapers of March 4, 1975 and March 16, 1975. The pros and cons regarding revision of the Hatch Act were published in these Washington Spotlight columns by Mr. Joseph Young, a staff writer for the STAR. The March 16 column reports our answer in opposition to present Hatch Act restrictions and Mr. Young's March 4 column opposes Hatch Act changes. We believe our statements effectively respond to those opposed to anyliberalization of the existing statute.

"Exhibit No. 2" is a reprint of a front page story in the July 31, 1972 Washington Star & Daily News entitled "Hatch Act Political Ban Ruled Illegal". Even though the Supreme Court subsequently overruled the three-judge federal panel and decided the Hatch Act was constitutional, the July 31, 1972 news report does

explain the reasoning used by a majority of the Federal District Court panel in declaring the Act unconstitutional.

Finally Mr. Chairman, we are submitting "Exhibit No. 3" which we believe will be a great asset in your consideration of the pending legislation. This is, in our opinion an outstanding and in-depth documented analysis of the Hatch Act with emphasis on the statutory and judicial construction and history of the Act.

This excellent commentary entitled, "The Hatch Act, Political Restraint of Government Employees—A Time for Change" was prepared by a member of our own American Postal Workers Union, Mr. Frank E. Giordano of Highland, New York who is a college student. The thesis is very timely as it was submitted by Mr. Giordano less than a year ago on April 30, 1974.

Thank you Mr. Chairman and Members of the Committee for scheduling this hearing on H.R. 3000 and permitting us to express the views of the American Postal Workers Union (AFL–CIO) in support of this legislation and long overdue revision of the Hatch Act.

Myself, Mr. Bowley and Mr. Cafferky will be very happy to respond to any questions you may have concerning our testimony.

THE HATCH ACT

POLITICAL RESTRAINT OF GOVERNMENT EMPLOYEES—A TIME FOR CHANGE!

(Submitted by Frank Giordano, Apr. 30, 1974)

THE ACT

The most controversial and disputed section of the Hatch Act, Section 9a, will be the subject of this paper. Other sections will be discussed. The major emphasis, however, will be the constitutionality of Section 9a.

The Act was promulgated in an attempt to reform the Civil Service. It states, "It shall be unlawful for any person employed in the executive branch of the federal government, or any agency or department thereof to use his official authority or influence for the purpose of interfering with an election or effecting the results thereof. No officer or employee in the executive branch of the federal government or any agency thereof shall take an active part in political management or in political campaigns."[1] This includes:

1. State or local agency: The executive branch of any state or municipality or other political sub-division or agency or department thereof.

2. Federal agency: Any executive department, independent establishment or other agencies of United States; except the federal reserve system.

This section of the Act is deceptively brief. Nevertheless, the number of people it touches is vast in number. All employees of federal agencies and state agencies subsidized by federal funds come under its jurisdiction.

Persons exempt from the Hatch Act are: 1. President and Vice President. 2. Employees of the President's office. 3. Heads and assistant heads of the executive department. 4. Appointed officers by the President.[2]

Hatch Act restrictions on political management and political campaigning are all inclusive and the only undisputed right of government employees is the right to vote.

Programs preventing government employees from political activism are supported by those who believe political neutrality will help to create a more efficient Civil Service. Government employees have been looked upon as a separate group and subjected to restrictions which rarely apply to the rest of the body politic.

The movement toward requiring neutrality on the part of government developed for several reasons, the most prominent of which was the "spoils system". The spoils system was a disturbing element in the American method of administering public employment, Public employment in exchange for work in party organization and campaigning was a common occurrence.[3]

Supporters of political neutrality also argue that it prevents: 1. Competition between the party and the department head for the employee's loyalty. 2. Employee demoralization which results from rewards based on politics rather than

---

[1] U.S. Statutes at Large, Vol. 54, Part I.
[2] American Political Science Journal, 1941, p. 447.
[3] Esman, The Hatch Act—A Reappraisal, 60 Yale L.J. 998 (1951).

merit. 3. And it prevents the bureaucracy from becoming an internal political power bloc.[4]

The Hatch Political Activities Act was passed in 1939. Incorporated into the act were Civil Service restrictions passed under the Executive Order of 1882. Prior to and after 1882 several Executive Orders were passed focusing on political activity by government employees.[5]

The first constitutional challenge in reference to political neutrality of Civil Service employees came in Expartee Curtis.[6]

A shipyard employee was charged with violating the Act of 1887 c. 287 forbidding employees not appointed by the president or confirmed by the Senate from receiving or giving money for political purposes. The Supreme Court's decision upheld the right of Congress to regulate the political conduct of its employees. Justice Waite, author of the Court's opinion, charged that forcibly exacting contribution for political purposes would damage the overall operations of government. He stated that Congress is within bounds to prevent the possible destruction of government.[7] It is Congress's duty said Justice Waite to maintain of citizens, in this particular case, insuring an efficient Civil Service. The Court felt that the Act; 1. Protected government employees from being forced to make political contributions. 2. Prevent inferior employees from making liberal contributions that would help to keep them on the rolls, thus downgrading the Civil Service.[8]

Close examination of the Court's decision reveals the Court's failure to deal with the respondent's charge that his constitutional rights were violated. The major thrust of the Court's decision was that Congress had the right to infringe on constitutional guarantees, if, the subsequent results protected the majority of citizens, in this particular case, insuring an efficient Civil Service.[9] The Court stated it could not overrule a legislative act unless it was an excessive violation of constitutional freedoms. The difficult question to consider is what did the Court think was excessive. Moreover, one could clearly see that removing first amendment rights of government employees because campaign funds *may* be forcibly solicited is abusive.

In addition there has been no establishment of a clear and present danger. The doctrine set down by Curtis is later utilized in *United Public Workers v. Mitchell.*

The appellant in this case declared Section 9a of the Hatch Act unconstitutional, violating the appellant's first, ninth and tenth amendment rights. George Poole had his job in the United States Mint terminated because of his political activity.[10] Alluding to Expartee Curtis the Court ruled that Congress had the power to protect a free society from the evils of political partisanship on the part of Civil Service employees.[11] The Court did accept, however, the charge that Poole's rights had been violated. Nevertheless, they continued, no rights are absolute and the protection of the people in general take precedence over individual rights.[12] The Mitchell opinion also focuses on the need for order outweighing the rights of Civil Service employees.[13] Political contributions of energy to campaigns are disapproved by Congress and the president. Since they are responsible for the efficiency of the Civil Service and in their judgment restriction of political activity is in the best interest of democracy, the Court felt it could not object.[14]

In conclusion the Court argued that the sovereignty of the Federal government over the states supports Congress in the legislation of the Hatch Act. The federal government is sovereign because its powers are granted by the states and any infringement of constitutional rights is based on the power of the Union over the states to protect the national interests.[15]

---

[4] Madama, The Hatch Act—A unconstitutional Restraint, Albany L.J. 346 (19--).
[5] Irwin, Hatch Act decisions, 20.
[6] U.S. 106, 373.
[7] U.S. 106, 374.
[8] U.S. 106, 375.
[10] Eleven other Mint employees claimed they desired to participate in political activity and demanded a declaratory judgment. The Court refused stating they could not grant a judgment until an employee was actually threatened with loss of his job.
[11] Cushman, *Leading Constitutional Decisions*, p. 99.
[12] Constitutionality of the Hatch Act," Albany Law Journal, p. 349.
[13] U.S. 330, p. 98.
[14] U.S. 330, p. 96.
[15] *Oklahoma* v. *United States Civil Service Commission* was heard at the same time as *UPW* v. *Mitchell.* Here France Paris was a State employee, he was removed because of political activity. But, the State charged the Hatch Act was attempting to regulate the internal affairs of the State. The Supreme Court ruled that the Federal Government could do so by indirectly fixing the terms and conditions by which Federal money could be spent. U.S. 330.

The opinions stated by the Court in Expartee Curtis and UPW v Mitchell vigorously support Congress's right to maintain an effective Civil Service. They fail however, to seriously speak to the constitutional violations charged by the appellants. The dissenting opinions of Justice Bradley in Curtis and Justices Black and Douglas in Mitchell deal extensively with the procedural and substantive violations of the Constitution.

JUSTICE BRADLEY-EXPARTE CURTIS DISSENT

Justice Bradley understood that all available offices for candidate are open to all Americans and Congress cannot prohibit qualified candidates from seeking office. To prohibit by law active participation of citizens is according to Bradley a violation of their fundamental rights. Discouraging active participation by all citizens, he continued, because of a few is usurping the rights of citizens in a free society to express their own ideas.

Ideas and opinions are transmitted through the news media and in order to disseminate information, financial contributions are necessary. Taking away a man's right to associate with people in a political venture or contribute jointly with their associates is usurping this fundamental freedom.[16]

Bradley was cognizant of the possible evils in allowing partisan political participation. It was abundantly clear to him that violating the rights of a majority for a few was repugnant to the Constitution. Bradley stated that attempting to do good by evil means is unlawful.[17]

JUSTICE BLACK UNITED PUUBLIC WORKERS V MITCHELL-DISSENT

Government employees are paid through the public treasury, therefore they are to be without the political process, a vital necessity in a democratic system. Mr. Justice Black expertly pointed out that the Hatch Act is vague and broad in its prohibitions, namely Section 15 which lends support to 9a.[18] Section 15 includes into the Act Civil Service Commission rulings pertaining to the political activity of Civil Service employees.[19]

The Hatch Act allows public employees to express their opinions on all political candidates, unfortunately many of the decisions incorporated into the Act through Section 15 contradict that provision.[20] Publicly expressing political views at a party caucus or political gathering for a candidate, participating in a political parade, writing or publishing a letter signed or unsigned are prohibited.[21]

Prior to the passage of the Hatch Act Senator Brown challenged the validity of Section 15. The Senator doubted whether the vagueness and complexity of the act could be accepted into statute law. The Senate majority leader attempting to force legislation said that Senator Hatch had assured him that Sect 15 was not contrary to constitutional guarantees, thus the act was passed and along with it 3,000 cases ruled on by the Civil Service Commission establishing stare decisis.[22]

Pamphlet 20 is the main source of information on the Act and is distributed to all Civil Service employees. The information enclosed summarizes Hatch Act prohibitions in 7 pages and can hardly be considered a valid document.[23] Moreover, the contents of Pamphlet 20 is the only information made available for the defense in cases charging Hatch Act violations.

The legislature deemed it necessary to impose restrictions on political activism. In addition, the Court admits certain constitutional guarantees of government employees are being violated. Therefore, it is incumbent upon these branches, if they are determined to keep government employees neutral to establish the least evil method. The Hatch Act as it stands is broadly vague and fails to hit the mark.

Implanting fear into government employees who will always doubt what is or is not a violation of the Act is a subtle form of censorship. The Civil Service Commission also holds employees responsible for actions taken by their families concerning political activity leaving the employee with the right to vote in silence.

---

[16] U.S., 106, 376.
[17] U.S., 106, 375.
[18] U.S., 330, 99.
[19] Political Activity of Federal Officers and Employees, Pamphlet 20.
[20] Rose, A Critical Look at The Hatch Act, Harvard L.R. (1961) 520.
[21] Ibid., 521.
[22] Harvard L.R. 517.
[23] Ibid., 516.

Justice Black argued that the purpose of government is to encourage participation in the political process. To disallow certain Americans from speaking out is repugnant to republican form of government. Censorship of millions of people not only harms the people themselves but the body politic in general. Federal and State employees are like other citizens in every other way, how can one justify taking away their rights to participate in a free society.[26] Mr. Justice Douglas dissented in part devoting much of this attention to Court decisions concerning first amendment rights.

JUSTICE DOUGLAS UPW V MITCHELL—DISSENTING IN PART

Justice Douglas argues that Poole was involved in manual labor as a roller in the U.S. Mint and it would be unlikely for an individual at that level of employment to affect political decisions.[28] Prohibiting all employees in the Civil Service from political activity based upon the possibility of improper behavior was unnecessary and extreme. Douglas's views are similar to the British system of Civil Service. In Britain manual laborers are allowed to campaign and run for office. Those employees in high administrative positions which require a certain amount of discretionary power are prohibited from active politics.[27]

Justice Douglas believed that federal employees have the same rights as other citizens and should not be treated as second-class citizens. Government employees have the right to join together as free citizens for a common purpose; which is what any group in a society would do to advance their own ideas.

Justice Douglas noted that when controversy developed concerning individual liberty and community protection, the abridgement of constitutional rights would have to be justified by a clear and present danger.

In *Cantwell* v. *Connecticut* it stated that authorization of previous restraint upon individual rights of free speech and free press are not admissable under the Constitution.[29] In addition the state may not unduly suppress free communication of views under the guise of conserving desirable conditions. Since Cantwell, a Jehovah witness, going door to door preaching, did not pose a clear and present danger, the Court ruled that he could not be convicted of the offense.[30]

The case of *Cantwell v. Ct.* was ignored by the Court when considering the constitutionality of the Hatch Act. In several cases following the Hatch Act decision the Court forced the State to show more reasons why they needed to inhibit freedom of speech. *Speiser v. Randall.*[31] Moreover, in *Sheldon v. Tucker* the Court recognizing the government's purpose as being legitimate ruled that regardless of the desires of government, it cannot suppress personal liberties when an end can be more narrowly achieved.[32]

In view of these past developments the constitutionality of the Hatch Act is vulnerable to attack. The government in the future will have the burden of proof to show a less drastic means in which to provide an efficient Civil Service.

Government violations of fourteenth amendment rights were not discussed in any of the cases concerning the Hatch Act. The Act limiting political activism of Federal employees establishes categories and affords different treatment to those employees within these categories. For example, not all employees are prevented from actively participating in politics. Certain classifications are acceptable of the class specified is that from which "the evil to be feared." [33] Hatch Act provisions are in conflict with the "evil to be feared" doctrine since employees involved in the highest operation of government are exempt from the act. These employees are more in a position to cause harm if they were inclined to do so.

CONCLUSION

Congress has a duty to protect the public from an inefficient bureaucracy and to insure that government employees serve the public rather than their own interests. Although this is an awesome responsibility it does not give Congress the freedom to abridge first amendment rights in the name of democracy.

---

[26] U.S. 330, 110.
[28] U.S. 330, 101.
[27] Yale Law Review, 1937.
[29] U.S. 310, 308.
[30] Ibid., 311.
[31] U.S. 357, 513, 527.
[32] U.S. 364, 479.
[33] Albany L.R. 355.

Other alternatives are available that can accomplish the aims of the Hatch Act. If employees are advanced based on merit and efficiency, employee morale will be boosted, Non-partisan exams and competitive hiring reduce the threat of political favoritism.

While less evil alternative solutions curbing pernicious political activity are available, it is the duty of Congress to implement measures consonant with the American traditions of political activism.

Section 15 of the Hatch Act incorporating all previous Civil Service Commission decisions into the Act creates more evil than the good intended. The case of J. Cole can be used as an example of resultant evil from good intentions. Cole was a rural letter carrier and Jehovah Witness. He was fired because he subscribed to the Watchtower publication which advocated "anti-war" policies, a clear violation of first amendment rights.[34] In *Harper* v. *Board of Education* the Court declared that it had a higher duty to protect fundamental freedoms from violations of equal protection. "Classification which might invade or restrain fundamental freedoms must be colsely scrutinized and carefully confined. It is beyond dispute that first amendment rights must be considered fundamental freedoms."[35]

Good government results from the largest possible participation in political life. The Hatch Act usurps this fundamental liberty. Permitting government employees to become involved in the political process will help to create a healthier United States.

TABLE OF CASES

Cantwell v. *Connecticut*, U.S. 310
Expartec Curtis, U.S. 106
Harper v. *Board of Education*, U.S. 383
Oklahoma v. *United States Civil Service Commission*, U.S. 330
Sheldon v. *Tucker*, U.S. 364
Speiser v. *Randall*, U.S. 357
United Public Workers v. *Mitchell*, U.S. 330

BIBLIOGRAPHY

Cushman, Robert E. *Leading Constitutional Decisions*, Appleton-Century-Crofts, Inc., 1958.

Heady, Ferrel. "American Government and Politics: The Hatch Act Decisions," *The American Political Science Review*, 1947.

Howard, L. V. "Government and Politics: Federal Restrictions on the Political Activity of Government Employees," *The American Political Science Review*, 1941.

Irwin, James W. "Hatch Act Decisions: Political Activity Cases of the U.S. Civil Service Commission," U.S. Government Printing Office, 1949.

Laski, Harold J. "The British Civil Service," *Yale Law Review* 26, 1937.

"Political Activity of Federal Officers and Employees," Pamphlet 20.

Rose, Henry. "A Critical Look at the Hatch Act," *Harvard Law Review*, 1961, 1962.

U.S. Statutes at Large, Vol. 54, Part I.

WASHINGTON, D.C. LOCAL, AMERICAN POSTAL WORKERS UNION, AFL–CIO

Congressman Clay, members of the subcommittee on employees political rights and intergovernmental programs of the Committee on Post Office and Civil Service.

My name is Sidney Brooks, president of the American Postal Workers Union, AFL–CIO, Washington, D.C. local. On behalf of the over nine thousand postal employees in the D.C. Post Office, including Maryland and Virginia, we wish to commend this committee for conducting hearings of this antiquated law that enslaves workers in the public sector.

Employees working for private hospitals may engage in political activities; public hospitals may be restricted. Clericals hired by private firm with public contracts may engage in political activity; postal clericals likewise may be restricted. Teachers and school board personnel may engage in political activity;

[34] U.S. 383. 663 (1966).
[35] Albany L.R., 355.

personnel in most other public institutions may be "hatched", yet all of these employees are paid from public tax revenues.

Between 1946 and 1966 alone, State and local government employment increased by 5.4 million. It is now over 9 million, well beyond the number contemplated by Congress in 1940. Since 1940, public employees have increased their organizational and political maturity at the State and local levels. Further, unionization, collective bargaining agreements, merits system ruler, election reform legislation, an alert press and increased public scrutiny, limit patronage adequately protest the public employee from the political pressures which existed in 1940 when Congress first extended the Hatch Act to cover State and local employees.

Public employees, are a part of American society, which entails paying Federal and State taxes, waiting for those who must determine their salaries, wages and the conditions under which they must work. It is preposterous then that public employees are prohibited from exercising the basic rights of other American citizens guaranteed under the Constitution of the United States. If States and city personnel systems are permitted to improve local Hatch Act restraints on the public worker, then elected official must initiate legislation to prohibit jurisdiction from imposing State taxes, local taxes and Federal taxes on the public employees.

[From the Washington Star of Mar. 16, 1975, Federal Spotlight]

OPPONENT OF HATCH ACT SPEAKS OUT

(By Joseph Young)

In a recent column we expressed the view that pending legislation to overhaul the Hatch Act would have a disastrous effect on federal career employees and the merit system, jeopardizing jobs and careers.

The column drew a lot of reaction, both pro and con. While we haven't changed our views, we feel it is only fair to give equal space to those who favor giving freedom of political action to government workers.

Expressing the viewpoint of those favoring overhaul of the Hatch Act is a letter from Patrick J. Nilan, legislative director of the AFL-CIO American Postal Workers Union (APWU) and one of the ablest lobbyists in town.

Nilan writes: "As old friends and admirers we are astonished and saddened by your recent defense of the Hatch Act. The views you expressed repudiate the very concept of fundamental liberties on which our form of government is based. They also reflect a dismal judgment of federal employes generally.

"What's more you have tried to buttress your argument with personal observations that are demonstrably wrong.

"You say that in more than 25 years of covering the government beat, with the exception of one individual in Virginia, you have never encountered a government worker who wanted the Hatch Act meaningfully changed.

"Yet only last August, Joe, while covering the APWU national convention at Miami Beach, you personally saw 2,325 union delegates—government workers all—vote unanimously for *repeal* of the Hatch Act. Not a single voice was raised in its defense from the floor. Indeed, you have been a personal witness to similar unanimity at earlier conventions, ours and others.

"Surely you are familiar with the tough penalty provisions written into H.R. 3000 by its sponsor, Rep. William Clay, D-Mo. Political firings, forced fund-raising, even arm-twisting by the boss all are punishable by asserted degrees of chastisement ranging from a minimum 30-day suspension without pay to full federal prosecution in the courts.

"To suggest, as you do, that whenever a new administration takes over with a change in political parties that politically-active employees would 'face the ax' is to suggest that the rule of law does not exist and that the lessons of Watergate will have no future impact on the body politic. That kind of scare talk is pure rubbish.

"But there is an even more grievous element in your rationale: inherent throughout your column is the clear implication that the overwhelming majority of federal workers are politically gutless drudges, timid and enfeebled, condemned in your own words to lack-luster careers by a fear of their bosses, and eager to avoid exercising the most precious civil right ever devised by a free society—the right to participate in the action and passion of their times.

"The Hatch Act as it now stands not only abridges those rights, it flouts the deepest traditions of political activism in America. It is a form of repressive overkill. It has no compelling interest commensurate with the waiver of constitutional rights involved in its continuing application. As federal employes we resent our second-class status as citizens and we are not afraid to pursue our rights to political action or to exercise it regardless of what party may be in power.

"Joe, we still love you, but it strikes us as ironic that a union of federal employes should have to make these arguments to, of all people, a Washington journalist!"

[From the Washington Star, Mar. 4, 1975]

HATCH ACT CHANGES ARE A BAD IDEA

(By Joseph Young)

Their intentions undoubtedly are the best. But the three Washington-area members of Congress who have co-sponsored legislation to overhaul the Hatch Act to give federal employes wide freedom of political activities may be doing the employes a grave disservice.

With one exception, in our more than 25 years of covering the government beat, we have never encountered a government worker who wanted the Hatch Act meaningfully changed. The one exception was an employe who was active in politics in a southern Virginia community before he came to Washington to get a federal job.

Federal and postal employe union leaders are all in favor of overhauling the law restricting the political activities of government workers, but it's doubtful that most employes are.

The unions favor overhaul because it would increase their clout with Congress and the political party in power in the White House.

But it would mean the end of the merit system as we know it today.

The attacks on the merit system that occurred during the Nixon administration would be mere child's play compared to what would happen if the Hatch Act were radically changed.

Rep. William Clay, D-Mo., chairman of the House Civil Service subcommittee on the Hatch Act, has sponsored legislation that would drastically revise the law in order to permit government workers to participate actively in politics.

Among those co-sponsoring the bill are Democratic Reps. Herbert Harris and Joseph Fisher of Northern Virginia and Gladys Spellman of Prince Georges County.

They are trying to be as fair as possible on the legislation and have arranged special night hearings of the subcommittee on April 14 to hear from federal employes who live in Northern Virginia and April 15 for workers in nearby Maryland.

The bill, while giving employes wide freedom of political activity, also has provisions to protect them from being forced to engage in politics if they don't want to.

However, as Chairman Robert Hampton of the Civil Service Commission has pointed out, this is a contradiction in terms. If federal employes were given the right to freely engage in politics, they would be on shaky ground indeed if they refused their bosses' orders to engage in political activities.

Actually, as Hampton notes, these would not have to be overt orders, but merely subtle ones.

In other words, employes hoping for meaningful careers and promotions would know that they would have to play the political game to get ahead.

But even then their careers would be jeopardized. For whenever a new administration took over with a change in political parties, these employes would face the ax.

As for those employes who refused to get involved in politics, their jobs probably would be safe enough, but they would have to resign themselves to run-of-the-mill jobs and lacklustre careers.

So no one would win but the politicians, who would use government workers to help perpetuate themselves in office.

Government workers should make their views known to their representatives in Congress, who will be glad to hear them.

[From the Evening Star and the Washington Daily News, July 31, 1972]

HATCH ACT POLITICAL BAN RULED ILLEGAL

(By Barry Kalb)

A three-judge federal panel today ruled, 2–1, that the Civil Service Commission has been acting unconstitutionally in forbidding federal employees from engaging in certain types of political activity.

The judges concluded that provisions of the Hatch Act prohibiting federal employees from taking "an active part in political management or in political campaigns," are "impermissibly vague and over-broad," and ordered the commission to stop enforcing these provisions.

However, implementation of today's ruling, which potentially affects millions of federal employees over the country, was stayed pending an expected appeal to the Supreme Court.

The Justice Department had no immediate comment on whether such an appeal would be made, although it seems likely. The high court is currently in recess and would have to hold a special session if it decides to tackle such a sweeping question before the upcoming national elections.

The Hatch Act generally prohibits federal and postal employees from actively engaging in partisan politics. This prohibition includes serving as officers of any political organization or being candidates for most offices, serving as precinct captains or in any other political capacity.

Employees are also prevented from working actively for any political candidate, distributing campaign literature or making speeches on behalf of candidates.

Today's ruling did not state specifically what types of activity should be allowed. It left open the question of whether federal employees can run for elective office.

Presumably, if the ruling is upheld by the Supreme Court, Congress would have to enact new legislation stating permissible areas of political activity.

The suit was filed by the National Association of Letter Carriers, a union of postal employees with about 200,000 members, several county Democratic and Republican central committees in the Washington area, plus five individuals, all of whom stated that they were affected by the provisions of the act.

The U.S. Civil Service Commission and its three commissioners, chairman Robert E. Hampton, James E. Johnson and Ludwig J. Andolsek, were all named as defendants.

When the suit challenging the act was filed in March 1971, it asked that state employees covered by the Hatch Act also be included in any final decision.

FEDERAL EMPLOYEES AFFECTED

But today's decision, written by U.S. District Court Judge Gerhard A. Gesell, with District Court Judge Barrington D. Parker concurring and U.S. Court of Appeals Judge George E. MacKinnon dissenting, set aside the question of state employees and affects only federal employees.

Gesell, while upholding the need for some kind of check on political activity by federal civil servants, stated that the prohibitions in the Hatch Act provisions in question "are worded in generalities that lack precision."

"There is no standard," Gesell wrote. "No one can read the act and ascertain what it prohibits."

He called the issue "a classic case of a statute which in its application has 'chilling effect' unacceptable under the First Amendment."

He said the Civil Service Commission "has acted responsibly in attempting to apply the provisions of the act fairly, but that its efforts were thwarted because the commission "was given no authority under the act to accommodate rigidly incorporated prior rulings to the rapidly evolving court interpretations of the First Amendment."

Gesell concluded that because of the statute's vagueness, federal employees could never be sure when they were violating its provisions, and stated:

"Ours is not a form of government that will prosper if citizens, particularly federal government servants, must live by the mottos 'Better be safe than sorry, and 'Don't stick your neck out.'"

Gesell suggested, but did not order, that the solution to the problem would be for Congress to state "with utmost clarity" which areas of political activity are impermissible.

ACT NOT VAGUE

MacKinnon, in a 26-page dissent, said he felt that the act was not overly vague and that "the reasonable federal employee is provided an ascertainable standard of conduct that does not impermissibly infringe on his First Amendment freedoms."

He said he would merely order the commission to clarify its rulings on the subject.

Parker reserved the right to file a separate concurring opinion in the case, although his office said it is not known at this time whether he will do so.

The suit was one part of a two-pronged attack on the Hatch Act by employee groups. Unions also have been seeking legislation in Congress to give government workers more political freedom, but no bills have emerged from committee in this session—partly because of concern on the part of some legislators about voter reaction, and partly because the lawmakers wanted to see what the court would do.

SUMMARY AND ANALYSIS OF H.R. 3000 PROVIDING FOR RIGHT OF FEDERAL EMPLOYEES TO ACTIVELY PARTICIPATE IN POLITICAL (PARTISAN AND NON-PARTISAN) ACTIVITIES

H.R. 3000 (Cong. Clay Bill) is a bona fide attempt to effectively give all Federal workers, including Postal Service employees, the full and complete political rights enjoyed by every American citizen since the very foundation of our Republic approximately two hundred years ago but denied to them for the past thirty-six years merely because they work for the Federal government or for a state government or agency which receives federal funds. It is a sincere attempt to restore to federal and postal employees their rights under the First Amendment of the Constitution.

SECTION 2(a)

Current law (5 U.S.C. Sec. 7323)

The present law prohibits any Federal employee from solicitation, receiving (with or without solicitation) or giving anything (money or other things) of value to or from another 1) federal employee, 2) member of Congress, 3) a member of the Armed Forces. Violations of this Section results in automatic discharge. Unlike violations of Sec. 7324 (taking an active part in partisan political campaign) the CSC has no discretion to impose a lesser penalty. Presidential appointees are exempt from this provision.

Proposed changes—H.R. 3000

H.R. 3000 would also prevent a federal employee, including Postal employees, from soliciting, receiving (with or without solicitation) or giving anything of value to 1) another federal employee, 2) members of Congress, or 3) member of the Armed Forces, for political purposes. This proposal also includes presidential appointees (excluded by the current Act). However, it specifically allows a federal employee to voluntarily make a contribution (money or otherwise "to any candidate for public office". This is a major substantive change. Another major change is that whereas the present Act makes a violation subject to automatic expulsion, H.R. 3000 provides for a minimum of 30 days suspension and expulsion only if all CSC members unanimously agree.

Suggested changes: APWU

1. Add to Line 4 (p 2) after the words "political purposes" the phrase "on federal property". This would allow any federal employee to solicit or receive funds or other valuable material from another federal employee, member of Congress, or the military while off-duty off federal property.

2. Add to Line 5 (p. 4) after the phrase "to any candidate" the phrase "or his authorized representative". As the present language is drawn an employee may only contribute *directly* to the candidate himself. Though this certainly is not the intention, the language is clear. Our proposals would allow any authorized representative of any candidate to receive contributions off federal property.

SECTION 2(b)

Current law

As mentioned above, the present law provides that any federal employee who solicits, receives or gives anything of value to or from another Federal employee,

member of Congress or member of the military is subject to automatic expulsion: the CSC has no other choice after a finding of guilt.

Proposed changes—H.R. 3000

This gives the CSC the responsibility to enforce violations of the no solicitation, receiving or contribution provisions of Sec. 2(a). It provides that they shall investigate (when a complaint is made) and "upon a finding" that Sec. 2(a) provisions are violated by federal employees they shall impose a penalty of no less than 90 days suspension up to expulsion. In the case of presidential appointees they must notify the agency head and President, recommend a penalty, and refer the case to the Attorney General for possible prosecution.

Suggested changes—APWU

Title 5 CFR Part 733–101–402 provides that, among other things, the CSC will investigate violations of the Hatch Act. It sets up procedures for Investigation, Notice, Hearings, and Adjudications of responsibility or guilt and penalties. These procedures satisfy us. In addition CSC Regs., Sec. 733–401 and 402 specifically apply this jurisdiction and procedures to members of the Postal Service. With an abundance of caution and without raising anyone's feathers I suggest that the following language be substituted for the present Sec. 2(b), Lines 9–12. The remaining sections 2c (1) (2) (3) are acceptable.

"The Civil Service Commission pursuant to its regulations contained in 5 CFR Sec. 733, 131–137 shall investigate and conduct hearings on all alleged violations of this Act."

This makes abundantly clear that the present wording of "processing complaints" in Sec. 2(b) and "upon a finding" contained in Sec. 2(c) means a complete investigation and adversary hearing as is contained in the present CSC regulations.

SECTION 2(d)

Current law

The Hatch Act presently contains no criminal penalties for its wilfull violations, only removal for solicitation, receiving or giving contributions (Sec. 7323) or suspension or removal for actively participating in partisan politics (Sec. 7324).

Proposed change—H.R. 3000

This change proposes to subject a presidential appointee who solicits, receives or contributes to or from another federal employee, member of Congress or the armed forces, not only to whatever penalty (suspension or expulsion) the CSC recommends but also to criminal penalties if the Attorney General chooses to prosecute. (The criminal penalties of this section (18 USC 602) apply to members of and candidates for Congress as well as to federal employees. HR 3000, however, applied only to federal and presidential employees. Therefore, the criminal penalties in HR 3000 apply only to the former who violate the solicitation, receiving provisions of HR 3000.) These criminal penalties are felonies and include a maximum fine of $5,000 and/or three years imprisonment (18 USC 602). (Under Sec. (6) 7325 of HR 3000 the Attorney General does not have to prosecute if 1) he determines no factual basis exists, or 2) that "the cause of justice will not be served." The latter will be most widely used when the occasion arises.)

Suggested changes—APWU

HR 3000 subjects a presidential appointee to possible criminal penalties only for solicitation, receiving or giving contributions to another federal employee, etc., for political purposes. It does not subject him to criminal penalties for using his political influence or official authority to interfere with or effect the outcome of an election. Nor does HR 3000 prevent an executive employee from impeding or coercing another federal employee in the proper exercise of his rights under HR 3000. To remedy this I would suggest that we add the phrase "for any violation of this Act as amended" at the end of line 2, page 3.

SECTION 3(a)

Current law

The present law as stated and interpreted by the CSC in a myriad of cases over the years prevents any federal or D.C. employee from 1) using his influence to interfere with or effect the outcome of an election, or 2) take any active part in a partisan political campaign, management or otherwise. The CSC has interpreted this section to prohibit virtually every act from obtaining signatures on a petition to passing out partisan literature at the polls. More than not the violator

was subject to expulsion unless all members of the CSC agreed to a lesser penalty. (HR 3000 reverses this and requires that all members must agree to expel—one dissenting member can prevent expulsion—not so under the present Act.)

Proposed changes—H.R. 3000

Sec. 3(a) of H.R. 3000 is identical with the current law, Sec. 7324(a)(1) in all respects. However, the following language should be inserted as an additional sentence after the word "selection" in line 17:

"Nor shall such employee interfere with, restrain, impede or coerce, in any way, any other employee covered by the provisions of this Act in the proper exercise of any right guaranteed under this Act, including denying or interfering with such employee's right or opportunity for job advancement, because of such political activity or the lack thereof."

Sec. 3(b) virtually repeals all prohibitions on active participation in political campaigns by federal-Postal employees which were specifically prevented by the Hatch Act or by the CSC interpretation. It gives a carte blanche to all lawful political activities as the phrase "active part in political campaigns" only attempts to delineate the most obvious acts using the word "includes".

SECTION 3(c)

This is the very essence of the bill and is eminently satisfactory to us. This subsection allows all of the major political activities which are currently proscribed for federal employees. However, I would add the following language as part of Sec. 3(c)9(1), after the word "office" on page 5, line 8:

"Provided, that such employee who is elected or appointed to a full time, full salaried national, state, county or municipal office shall take a continuous leave of absence, without pay, during this term of office."

SECTION 4

Current law

The present law provides (Sec. 7325) that anyone who 1) uses his official position or authority to influence or interfere with an election or 2) takes an active part in a political campaign shall be removed from his job unless all members vote for a lesser penalty. Sec. 7323 of the current law requires automatic removal, upon conviction, of an employee (except presidential appointees) who solicits, receives or gives contributions to or from another employee, member of Congress or the armed forces. These are stringent provisions.

Proposed changes—H.R. 3000

The Clay bill provide that any Federal employee who solicits, receives, etc., contributions or uses his influence or authority to influence an election must receive at least a thirty day suspension up to expulsion. However, in this bill one dissenting CSC member can block expulsion—unlike the present Act. As to the presidential appointees the CSC can only recommend a penalty to the employee's agency head and the President and refer the case to the Attorney General for possible criminal prosecution.

Suggested changes—APWU

We suggest no changes in this section.

SECTION 5

Current law

Sec. 7326.—This section allows 1) active participation including candidacy in political activity in non-partisan elections and 2) active support of an issue not specifically identified with either political party and 3) support of local referendums, ordinances and constitutional amendments.

Section 7327.—This section allows active participation, including candidacy, in political campaigns of independent candidates in Maryland, Virginia, or D.C., and any political sub-division or municipality where the majority of the voters are government employees.

I can not see any real difference between these two sections.

Proposed changes—HR 3000

The Clay bill repeals these sections and effectively allows (in other sections) any federal employee to take an active part in any state, local, municipal or Federal campaign involving any office or issue of either party.

Suggested changes—APWU

We support it in toto.

SECTION 6

Current Law

As previously mentioned, Title 18 USC Sec. 602 provides criminal penalties ($5,000 fine and/or three years imprisonment) for a member or candidate for Congress, etc., or federal employee who directly or indirectly solicits, receives, etc., political contributions from any other member or employee of Congress or federal employee for political purposes.

Proposed changes—HR 3000

This section is clearly ambiguous as it applies the criminal penalties of 18 USC Sec. 602. Sec. 602 clearly states that any individual holding or aspiring to any named position (Congress, delegate, etc.) including federal employees who violates the solicitation provision is subject to criminal penalties without exception. The Clay provisions here amend this section by adding to Title 18 not repealing it. The added language of Sec. 6 here merely states that if a federal employee, including a presidential appointee, violates the no solicitation provisions the Attorney General *may* prosecute unless he determines (1) the facts will not support a conviction (a power he has always had in every criminal prosecution) or (2) that prosecution will not serve the ends of justice. This amendment clearly appears to effectively repeal Title 18, Sec. 602.

Suggested changes—APWU

We should seek to clarify what Sec. 6 amendment seeks to do (1) repeal Title 18, Sec. 602 or (2) modify it and if so in what way.

PATRICK J. NILAN,
Legislative Director, American Postal Workers Union.

Mr. NILAN. Thank you, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Nilan. I think it was an excellent statement you gave and you made some very good recommendations for change in the proposed bill, which this committee will take under advisement. On page 6 of your printed statement, you say there might be some reason for barring some of the higher grades, people who are in a position to affect and implement policy. Many of them are exempted from the Hatch Act at the present time. Could you elaborate on that for us? Are you suggesting that some persons in the Federal Government ought to be prohibited from participating in political activities?

Mr. NILAN. I believe what we are trying to say there in so many words, Mr. Chairman—and we did prepare the amendment after we prepared the statement—we are suggesting there may be some of those on the higher levels that could exert influence down the pipeline on the worker without political restrictions or restraining action against them. Those in the so-called Presidential appointee class should have somewhat more severe penalties for violations that could occur under the act. We are not suggesting any of them be excluded as long as there is penalties on those who may permit this harassment, but the statement was prepared prior to the amendment. That's why there may appear to be an inconsistency.

Mr. CLAY. Some individuals suggest the passage of this legislation is simply a device for the unions, in order to enlarge their power base. What are your views on this matter?

Mr. NILAN. I don't know how it would enlarge our power base, Mr. Chairman. We are now and would continue to work on the Hill trying to do our legislative thing with Members of the Congress. We are asking that you give our people a little opportunity to do the same on the rank and file level. I don't see any argument with that. If that

argument is going to be used, for example, that 600,000 postal workers are going to become overnight a devastating political influence on the Congress or the administration, as the case may be, you could say the same thing about the autoworkers or the steelworkers or any group of workers. But I see no reason. We have got Republicans as well as we have Democrats in our membership, and I'm sure that they would function in their own area of political activity, and certainly would not enhance the power base as I understand it. I would hope, of course, that they might assist us in having more influence on the enactment of our legislative program, regardless of whom they may support.

Mr. CLAY. Would enactment of this legislation tend to erode the Federal merit system?

Mr. NILAN. It wouldn't, certainly wouldn't, as far as postal workers are concerned. One of the main reasons that we have no such fear or any problem is that when our people are given political freedom, and are given equality, freedom and justice then we also have a national contract with the U.S. Postal Service and if there is any harassment or coercion of any kind, under the definition of a grievance in our national contract, we have additional opportunities to take care of such problems within our organization, and through our contractual relationship with the Postal Service. So we have no great concern in any areas, insofar as such activities would be concerned.

And in doing that, we would certainly be able to protect our people for merit, as far as opportunities for advancement to better jobs are concerned. If it becomes obvious that an employee is being held back or being discouraged from taking a better position, we take the postal official through the grievance procedure starting at step 1 and right up the line, ending at arbitration. We see no problem on it. I see no problem either in the Federal service. Actually, I think it would enhance the opportunity for all to be more active. The merit system is an aside in this issue. I don't see any conflict between the two.

Mr. CLAY. Thank you. Mrs. Spellman.

Mrs. SPELLMAN. Do you think there ought to be a statement included to prevent the employer from making inquiry as to the voter registration of the employee?

Mr. NILAN. Making inquiry as to the registration of a postal worker, for example, by somebody further up the line? I don't think it's any of their business. Frankly, if one of our people were involved, we could consider it as a possible violation of our employee rights section in our national agreement. We would want an explanation from him on such an inquiry. However, it may be desirable to restrict this sort of inquiry.

Mrs. SPELLMAN. I was interested in the reprint, the large reprint of the article in the Evening Star-News, on the Hatch Act's political bans having been ruled illegal for a period of time. I know there was discussion about the fact that the act was vague. Do you feel it is less vague, as we have it here presently?

Mr. NILAN. Do I feel the legislation——

Mrs. SPELLMAN. The proposed legislation is less vague than the Hatch Act.

Mr. NILAN. Well, I would certainly concur in that. In the Hatch Act, one of the big problems is as I tried to mention earlier, our peo-

ple simply don't understand it and it's difficult to explain possible violations to them. As a result they prefer not to do anything, or to take any chances with it. We believe the legislation as drafted and our counsel here I'm sure would verify it that as written and with some of the amendments we suggest, which we believe would tighten it up to the point where we would, I say again, have no fear of political reprisals, coercion, or anything else.

Mrs. SPELLMAN. I'm hearing from people who are concerned that, perhaps, we are opening up a Pandora's box. There are other cases where it is a comfort for people to be able to say, "We can be involved," and they then take a good look to see how far they can go. Even my own husband, when I used to run for office in the past, couldn't wear one of my buttons or have a bumper sticker on his car. Now he is retired, and he has no excuses. There are those who feel that maybe we ought to move more slowly. I have heard Federal employees say that they would be willing to have the legislation open to enable them to participate in local and State political matters, but they are concerned about opening it up at the Federal level, where they are now working.

How would you feel about that?

Mr. NILAN. Well, Mrs. Spellman, we appreciate the concern and also your question. We honestly believe that after some 35 years of having this yoke on our back, even though perhaps in the 1930's, there was some basis for it, but now our labor organizations in both the Federal and the Postal Service, have matured, we have contracts, we have grievance procedures, to protect our members in addition to the law. There is nothing in this act that would in any way require a Federal or postal employee to participate in politics. They don't have to get involved if they don't want to. We are proposing all of the needed protections for that individual who may not want to get involved and to give him the right not to get involved, but at the same time guaranteeing the right of those who do want to get involved to have that opportunity.

This is the American system. You are freeing some 2½ million citizens that, I say again, are usually well respected in their communities, who help out in community drives and participate, and permit them to get involved all the way if they like to. I think that after the mess down here in Washington the last couple of years, we ought to do everything possible to get more people involved in the political system, particularly those that are known to be responsible. We would do everything we could, through our contract, through our general counsel's office, and in every other way, to protect a member of our organization or any employee who came to us and said, "I don't want to participate," we would really go to bat for him all the way, regardless of Democrat, Republican, or independent.

Mrs. SPELLMAN. Just one more question. Do you feel that a Federal employee running for Federal office should take a leave of absence?

Mr. NILAN. It would appear that most would prefer to be in a nonpay status and continue on that basis until such time as he or she is defeated or elected.

Mrs. SPELLMAN. Do you feel a Governor, who is running for office, should take leave of his office? Do you feel a Member of Congress who is running for the Senate should take a leave of absence?

Mr. NILAN. I would say in my opinion any candidate running for full-time office should take a leave of absence.

Mrs. SPELLMAN. Thank you.

Mr. CLAY. Thank you, Mrs. Spellman. Mr. Solarz.

Mr. SOLARZ. Thank you. Mr. Chairman, I wonder if you could give us your view about the extent to which if this legislation were enacted, it would be possible for managers in the Federal civil service to, through a variety of subtle ways, to put substantial pressure on Federal employees, to participate against their will in political activities.

Mr. NILAN. We have suggested, Mr. Solarz, on page 7 of our amendments which I don't believe we got to, proposed changes to H.R. 3000, section 3(a) of H.R. 3000, identical with the current law, section 7324A1 in all respects. However, the following language should be inserted, there is an additional sentence after the word "selection," in line 17, "nor were such employee interferred with, restrained, impeded, or coerced in any way, any other employee covered by the provisions of this Act, in the proper exercise of any right guaranteed under this Act, including denying or interferring with such employee's rights or opportunities for job advancement because of such political activity or lack thereof."

We suggest this additional language to be even further protection to avoid any such problem. I say again we in the Postal Service should have no problem, because of the law and our contracts, we should have no problem. If some supervisor tried to lay it on a postal worker, I can assure you we would get him one way or the other.

Mr. SOLARZ. Let me say, I'm sympathetic to what this bill is trying to accomplish, but it seems to me, it's important to try to come to grips with some of the objections that have been raised to it. I understand that case to be not so much that you can't prescribe, direct interference in the lives of Federal employees with respect to their political activities; surely you can prohibit a Federal manager from ordering one of his employees to work for a candidate or to contribute, but how do you deal with the situation where an employee knows his possibilities for advancement, promotion, preference, depends upon goodwill of a particular manager of the Federal civil service who himself is actively supporting a particular candidate or party and who in an effort to generate as much goodwill as possible for himself, feels obligated to participate in political activities designed to impress his manager. Were it not for this consideration he wouldn't want to have anything to do with this.

Is there any way to deal with the problem? Is it a serious problem? Is it an imaginable question?

Mr. NILAN. I think it's a matter of legitimate concern. We are, after all, talking about freeing people who for 35 years have had no opportunity to function. It's going to be a new experience for most of them, but I don't believe it's a serious problem, because of not only the language of H.R. 3000 but also some of the amendments we have offered. We have a way, in that, a lot of times we win grievances based primarily on a pattern of how a supervisor operates. If he is doing it in one instance he certainly isn't going to stop there, and usually it's fairly easy to develop a pattern of it.

Our guys wouldn't sit still for it. We are a little different breed of cat than others. They wouldn't take it. We have no problem with it.

Mr. SOLARZ. I have one last question. What is your view of the argument that if this legislation is enacted, and Federal employees do begin to actively participate in the political process in our country, that this will somehow impair the faith which the American people, the confidence the people have in the impartiality of the system, once they see Federal employees ringing doorbells, making speeches, and what have you, for particular parties and candidates. They will lose what now may be a sense of confidence on the part of the American people, that the Federal administration is impartial and nonpartisan.

Mr. NILAN. Let me put it another way. I don't believe that if you had a doctor out ringing doorbells and getting petitions signed, that a person whose door he came to would question his ethics or ability to perform, just because he is supporting a Democrat or Republican. This would not bother me as far as his medical service. I think the same applies to a postal clerk, special delivery messenger or the letter carrier; I don't believe there would be any problem in this area. After all, I haven't noticed the Congress and the American people screaming to change the elective process of the President of the United States or to change our way of handling elections in the last couple of years. I believe people would like to have their neighbor, Federal employee, postal worker, letter carrier, contribute. I think they would have confidence in him.

I think they would appreciate getting suggestions which they presently don't receive.

Mr. SOLARZ. Thank you very much.

Mr. CLAY. Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman. Mr. Nilan, you commented about it in your statement, but I wanted to emphasize again who is supporting H.R. 3000 and who isn't. The Civil Service Commission said that the only employees supporting it are young, and the rest of the people are against it.

Now, I have been to your conventions. I had the feeling that in your conventions the people run the conventions. I have never seen your leaders put anything over on them or tell them what to do. In fact, they tell you what to do pretty much. What percentage of the clerks in the Postal Service are members of your union?

Mr. NILAN. I would say on the clerical side, somewhere around 85, 87 percent are organized.

Mr. WILSON. You haven't found any dissension amoung your membership insofar as their opinions about the Hatch Act, have you?

Mr. NILAN. No. Mr. Wilson, as you know, you were at both, I believe, our 1972 convention in New Orleans, and our 1974 Miami convention. The New Orleans convention was a real swinging affair, they really took us on—as a matter of fact, as I recall it, the only resolutions the 2,300 delegates did not start raising the roof about on the convention floor was the legislative program. The only argument was many of our delegates—you may recall this—wanted to make the amendment to the Hatch Act the No. 1 paramount issue in lieu of the right to strike. This is certainly an example of how strongly our people feel. Many delegates took the floor at that convention and stated that they wanted amendments to the Hatch Act to be made the No. 1 paramount issue even above and beyond the so-called right-to-strike legislation.

This was a perfect example of how strong our people feel about it.

Mr. WILSON. That was the impression I had and have had. I'm sure we will learn the same things from the other unions when testify. Would you feel comfortable if the Civil Service Commission continued to administer the Hatch Act or would you prefer seeing some other body administer it?

Mr. NILAN. Well, we have thought about this. I would like to believe that when H.R. 3000 becomes law and particularly with some of our suggested amendments that the Civil Service Commission, in spite of the fact that the three Commissioners reflect the divisions within the political system, would do an acceptable job of administering the law. I would say this: The Congress should monitor how the Commission implements the act and of course we would monitor it also, and if we found because of political or other considerations the Civil Service Commission appeared not to be rigidly enforcing it that we would be the first ones up here asking Congress to establish some sort of ex parte board or some kind of judicial review board in lieu of the Commission.

Mr. WILSON. You have more confidence in them than I do. As a matter of fact, I'm researching legislation to abolish the Civil Service Commission's appeal procedures. Let some other group handle grievances when it gets to the appeal stage.

Mr. NILAN. I said I would like to believe and I would hope, but again, our organization woud certainly monitor the activities of the Commission.

Mr. WILSON. One other question, Mr. Nilan. I don't know whether I understood your answer to Mrs. Spellman's question, when she asked if you thought the Members of Congress should go on leave of absence when they run for reelection. I may have misunderstood. You said you thought everybody should go on a leave of absence?

Mr. NILAN. If Mrs. Spellman asked the question that way, I'm afraid I missed it. We certainly have no objection to our friends on Congress staying on payroll when they run for reelection.

Mr. WILSON. No more than you remaining on yours——

Mr. NILAN. Right. Thank you for clarifying that, Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Wilson.

Mr. Harris.

Mr. HARRIS. Thank you. Mr. Chairman. I wonder if you would describe for me in a little bit further detail how you vote policy in your union, what is your policy development program and the process you use for participation?

Mr. NILAN. We have—as a matter of fact, I have no compunction about stating we probably have the most democratic type of labor union among those that I am familiar with. All of our decisions are made, for example, on legislative activity by being initiated at the grassroots level. They come out of the local unions where the memberships develop resolutions or programs, which from there usually go to our State organizations where they are approved or disapproved. After that resolutions are forwarded to our national conventions which meet every 2 years and at that time the delegates to the convention, through committee recommendations come on the convention floor. The convention works its will and determines the final program of our union. We have national conventions every 2 years. Each of our

national officers stand for reelection. By referendum, not by delegates and we are elected every 2 years.

I'm convinced between that this is an excellent method of bringing leadership decisions to the top from the bottom as well as referendum elections every 2 years, on one hand the membership is dictating to us what they want done; and on the other hand we better deliver the way they want things done, because if we don't in the referendum election we will be out of business.

Mr. HARRIS. I really don't think this has been discussed in the hearing too much, but it has occurred to me and I was wondering if you gave it any thought, with regard to recruitment of Federal employees. Not only the young employees but the other person that is going from private industry to Federal employment. Is the Hatch Act as it currenly exists a hurdle for the recruitment of competent, active employees, the Federal service should be seeking? Have you considered that angle?

Mr. NILAN. We have not considered it, other than to tell you in recent years, particularly since the Postal Reorganization Act, we have been getting a lot of younger people into the Postal Service as employees. I know I was just this past weekend at a legislative seminar in Kansas City and we had two or three young women there and a couple of young men that had come from the private sector and industrial unions. When we got around to H.R. 3000, one man, one gal got up and stated that when they came into the Postal Service they didn't realize the prohibitions that there were upon their political activities. One woman particularly, said she had been active in some political action committee in the automobile plant she was in, and she said, "I didn't realize until the first election came around a year ago I was prohibited from actively getting involved anymore.

They also got into the question of union security, and she said:

> I didn't realize this either. You see, when you come in now into the Postal Service, while I'm sure they give you some information, but until you actually get involved you don't really understand how many things you're prohibited from and what you are giving up to be a postal employee. By that time it's too late usually.

I think your point is well-taken. I don't know how it would affect them being recruited, but I do know for a fact once they get in, particularly some of the younger people, they are amazed at the things they have to live under in order to continue to be employees of the Postal Service.

Mr. HARRIS. I have some personal experience with it. It seems to buttress the argument. I remember there was a good deal of recruitment going on around town back in 1961, there had been a change in administration and what have you, and I know a number of young lawyers that were being recruited, trying to be recruited and bring some new blood into some of the departments.

They just simply wouldn't do it because it meant they would have to give up too many of the rights they had enjoyed and experienced a great deal where they lived. I feel that this is one of the real adverse things about the Hatch Act, it does put an extra hurdle on recruiting, especially the bright, active type of person, into the Federal service. And the Postal Service, too.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you. Mr. Collins?

Mr. COLLINS. Nilan, do you know of many people that have been fired or terminated in service because of political activity while the Hatch Act has been in operation?

Mr. NILAN. There have been some very glaring examples of it.

Mr. COLLINS. It's a very rare occasion, isn't it? It's a very, very rare occasion?

Mr. NILAN. No. No. I don't agree with that. Sometimes rather than getting fired an employee will quit. We had a lady last year, president of our Motor Vehicle Craft out in Las Vegas, had no problems and was a fine employee. Apparently she wanted to test the Hatch Act, and she participated in what she considered her political rights. She happened to be a delegate to the Democratic convention in Miami which triggered an immediate investigation. She was under orders to be fired but she resigned. Frequently people resign rather than go through the final act of being separated. We gave you one example of a recent action here, of a special delivery messenger. Perhaps counsel here can tell us others.

I know of numerous instances of suspensions—my office back in Minneapolis before I came to Washington, had 20 or 25 people under Hatch Act investigation—because they were veterans and the Postal Service didn't follow correct procedures, they all were excused, but it's not a situation where it's unusual. Even if it were, there again would be reasons to relax the act so our people could legally participate in politics.

Mr. COLLINS. You would say maybe there might have been as many as a hundred that would be involved out of your 350,000 employees, members?

Mr. NILAN. I wouldn't.

Mr. COLLINS. I think Henry Jackson once said to the victor belongs the spoils. There are some politicians that still believe that. If they got involved in politics, don't you think it's possible that 100,000 of them could be terminated instead of 100?

Mr. NILAN. Not in my opinion. We wouldn't permit it to happen.

Mr. COLLINS. You wouldn't? The Government? Right now this system is different.

Mr. NILAN. Before you came in, Mr. Collins, we talked not only about the law but our national contract with the Postal Service in which we have a grievance procedure and one definition of a grievance is protection of employee rights. If this law would be amended and we had any problems with it, our members could grieve under the law or our contract. We could initiate charges against postal officials through our grievance procedure route and take care of them in those ways. We would have no problem, once the law is relaxed. Just give us the freedom, just give us the right. We will go from there.

Mr. COLLINS. You don't have any problem right now?

Mr. NILAN. We have a problem now. The problem is we are restricted, our people are restricted, they are afraid of getting "hatched," they're afraid of participating on either the Republican or Democratic side, the fear of the Good Lord is thrust into them on the basis of being "hatched."

We do have a big problem now.

Mr. COLLINS. You talk about their business. I have always heard it called the Postal Service. In that service you have a responsibility.

If you want to get into politics, you can do like I did; I resigned from my job, sold my stock, got completely out of the company, and went into politics. Would that be a good way for postal people to go into politics, too?

Mr. NILAN. No. 1, I doubt if they have any stock to sell. All they have is a little bread. They make one paycheck every other week. They don't have stock or bond problems as other people do. If they want to get involved, they don't have to give up nothing, because they don't have a great deal to start with.

Mr. COLLINS. What does the average postal worker make now?

Mr. NILAN. I would say $10,500 to $11,000 and I certainly suggest that is nominal.

Mr. COLLINS. Your opinion is it would be a great thing to have all of them actively participate in grass roots political campaigns?

Mr. NILAN. Mr. Collins, I would like to see every citizen of this country involved in the political process. Every single one of them, mothers, fathers, sisters, daughters, brothers, I think it a crying shame in this country when you get something like if I recall correctly 35 to 38 percent of those eligible to vote in the election and what happened here in 2 years and then only 3 percent voted? I would like to see every eligible person be given the opportunity to vote. Including postal and Federal employees.

Mr. COLLINS. You didn't say they are not eligible to vote.

Mr. NILAN. I mean to participate in the political process and vote in larger numbers.

Mr. COLLINS. I think they ought to vote, too. Should they be working on the grass roots and working in political campaigns.

Mr. NILAN. Some of them might be campaigning for you.

Mr. COLLINS. Most of them are free men there, but on the other hand I would hate to see any of them involved in politics.

Mr. CLAY. Thank you. We thank you for presenting testimony. The next witness is Mr. James Rademacher, president of the National Association of Letter Carriers.

Mr. CLAY. Will you identify yourself for the record, and your associates?

STATEMENT OF JAMES H. RADEMACHER, PRESIDENT, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, ACCOMPANIED BY JOSEPH VACCA, EXECUTIVE VICE PRESIDENT; AUSTIN B. CARLSON, VICE PRESIDENT; AND JOSEPH H. JOHNSON, NATIONAL BUSINESS AGENT

Mr. RADEMACHER. My name is James H. Rademacher, president of the National Association of Letter Carriers, AFL-CIO.

On my right is our executive vice president, Mr. Joseph Vacca. On my immediate left is Mr. Austin B. Carlson, our vice president, and to the extreme left, national business agent, Joseph H. Johnson, who is the regional director for this particular region.

We had hoped that this morning our newly appointed assistant for legislative affairs, Jerry Waldie, could be with us, but he is teaching a political seminar in Chicago and could not join us.

Mr. Chairman and subcommittee members, we are greatly disturbed by the sudden emotion that has been expressed by representatives of

the U.S. Civil Service Commission, a newspaper columnist and at least one union leader, all of whom seem to be more concerned over an issue far less important than the issue of freedom of speech.

Our union would anticipate that representatives of the Commission would have the authority and actually would enforce the law and prevent what is now the fear of the opponents of H.R. 3000—reduction in the protections which exist in the Hatch Act. We must not permit the smokescreen of fear to hide the real issue involved in the restrictions contained in the Hatch Act.

It must be remembered that our union, joined by other interested parties, pursued our strong belief that the Hatch Act was unconstitutional into the U.S. District Court—District of Columbia—in 1972. It was then, and is now, the opinion of the NALC that the Hatch Act bars millions of Federal employees from engaging in a wide and ill-defined range of public affair activities.

We were pleased when the three-member court, by vote of 2 to 1, held the political activity portion of the act to be both vague and overbroad. Declaring the act unconstitutional, the district court found that a single sentence of the Hatch Act which prohibits Federal employees from taking "an active part in political management or in political campaigns," is so vague as to be unconstitutional on its face. The district court found that "no one can read the Act and ascertain what it prohibits."

This is not the first time that such an argument had been set forth, for more than a quarter century earlier, Mr. Justice Black made this observation in the case of *United Public Works* v. *Mitchell*:

> What federal employees can or cannot do, consistently with the various Civil Service regulations, rules, warnings, etc., is a matter of so great uncertainty that no person can even make an intelligent guess. This was demonstrated by the government's briefs and oral arguments in this case.

Unfortunately, on June 25, 1973, the Supreme Court reversed the judgment of the district court by a 6 to 3 margin.

To historians who have studied the background of enactment of the Hatch Act, political pressures resulting allegedly from use of Federal emergency relief funds for political purposes in the 1938 congressional elections brought severe pressure for further regulation of the political activities of Government employees.

The main thrust of the legislation was to protect Government workers from pressures to participate against their will in political activity and from the threat of discrimination on the basis of political affiliation.

Members of this subcommittee may be surprised to learn that the NALC believes that the Hatch Act, by and large, is an admirable piece of legislation. There are widespread misunderstandings as to the genuine purposes of the Hatch Act. That act was intended to prevent coercion or intimidation by Government officials of employees or recipients of Government grants to change party affiliation or to support political party interest. Without the prevention of such misuse of official authority, our fundamental democratic political processes can become corrupted.

Accordingly the NALC unreservedly endorses the objectives of the Hatch Act and urges that its prohibitions against these evils be

reviewed and strengthened where necessary, with a particular view to making their enforcement more effective and less cumbersome.

The provisions of the Hatch Act which our union challenges are sections 9 and 15, and we declare that these restraints upon voluntary, partisan political activity by millions of public servants are unnecessary, unwise, and unconstitutional. Once the act's independent prohibitions against coercion, intimidation, and misuse of official authority are effectively enforced, there should be no further need to stifle the fundamental freedoms of millions of public servants as the Hatch Act currently does.

Although the legislative history of the Hatch Act cast doubt on whether the 1940 Congress realized it or not, the Civil Service Commission had made some 3,000 determinations under the Civil Service rules between 1886 and 1940. Congress, in section 15 of the act, incorporated all of these determinations and forged them into the inflexible steel of statutory law. In effect, the Hatch Act, since 1940, has consisted of the thousands of incorporated determinations which have never been published or otherwise been made readily available to the millions of affected Government employees.

One would actually have to be closely associated with the affected Government worker to truly understand the chilling effect the language of the Hatch Act has upon the Federal worker.

For example, our union is currently initiating a nonpartisan political action fund. It has been in existence for the past 6 months. We have realized contributions which as of this date, average a nickel per member.

There is no question but what resistance comes about because of the fear inherent in the minds of our members that they are subject to the Hatch Act with its unreasonable provisions and penalties.

Despite the propaganda, which is periodically issued by the Civil Service Commission and some agency heads, advising employees of permissible activities under the act, there remains the fear of violation by publication of item 13(b) of section 733.11.

The first paragraph of this section states:

> All employees are free to engage in political activity to the widest extent consistent with the restriction imposed by law and this subpart . . .

Thereafter, item 13(b) concludes the information concerning permissible activity with these words:

> If participation in the activity would interfere with the efficient performance of official duty, or create a conflict or apparent conflit of interest.

The head of an agency may prohibit or limit the participation in the activities otherwise declared permissible. Absolute double-talk.

In short, the old shell game is being resorted to by this language; namely, the agency head can always subtly or overtly coerce an employee, when he seeks to engage in even a limited political activity.

Accordingly, there simply is no validity to the argument that the Ha tch Act presently provides any real political liberties to employees.

One of the failings of the act, perhaps not intended by the Congress, is the way in which the provisions of it are brought to the attention of those covered by the Hatch Act.

52-137—75——7

For example, the U.S. Postal Service on September 19, 1974, published in its weekly Postal Bulletin an item entitled, "Political Activity Restrictions." The announcement began with these words:

> This announcement is intended to instruct and guide Postal Service employees as to the applicability to them of the provisions of the Federal law, commonly known as the Hatch Act, which prohibits Federal employees from taking an active part in political campaigns.

Immediately, employees detect (1) legal restrictions concerning their political activities; (2) the employer's attitude, completely negative, concerning the Hatch Act. While the act remains in existence, there should be an unbiased presentation of information concerning political activities of Federal workers by, first of all, informing employees of their rights as well as restrictions.

In addition to the positive amendments which are contained in the "Federal Employees' Political Activities Act of 1975," we are asking for a further amendment which strikes from section 7325, the authority for the Civil Service Commission to impose a penalty of not less than 30 days' suspension for violation of whatever remains of the Hatch Act.

It has proven to be very unfair, when assessing discipline, to insist that irrespective of the degree of violation, an employee must suffer no less than 30 days' suspension without pay. We feel certain there have been many instances where through innocence of the act employees have been fined 30 days' pay for violation of the Hatch Act, where a mere warning would have been sufficient.

I would like to clarify our position in this matter. If there is anything that remains of the Hatch Act, which relates to the rights of employees or to permissive activity of employees, then we would urge the elimination of the 30-day mandatory suspension. If this bill, as amended, is adopted by the Congress, we would urge stronger discipline.

I have heard the question this morning, should the Civil Service Commission continue to be the agency to enforce the act?

I say, no. I say the Department of Justice should be the one to enforce this act, and there should be severe penalties up to removal, if all that remains of the act is the prohibition against coercing or intimidating employees.

In conclusion, Mr. Chairman and subcommittee members, I want to reiterate the objections of our union to the Hatch Act.

Briefly stated, the act inhibits an individual Government employee from full participation in our democratic process and further, inhibits trade union members from playing an appropriate role in shaping policy and endorsing candidates. In many cases, restrictive provisions of the act deprive political parties of the wisdom and advice of knowledgeable and highly skilled public servants who know the workings of their Government more intimately than ordinary citizens because they are a living part of that Government.

I must confess that the Hatch Act, as it is interpreted today, serves as a convenient shield behind which the apathetic citizen in the Federal service can hide himself. Thousands of Federal and postal employees use the Hatch Act as an excuse for doing nothing whatsoever at election time.

A story of the late and greatly-loved Speaker of the House, Mr. Sam Rayburn, makes the point of this contention. A newly-elected postmaster in Mr. Rayburn's district told him he could no longer help him at election because of the laws against political activity. "Young man," the Speaker growled, "as postmaster, you can get into a lot more trouble by political inactivity."

I feel this example is applicable to the Nation as a whole. Our country could get into serious trouble because of the political inactivity of its citizens. Our record of participation in elections is the worst of any first-class democracy in the world. Even in Presidential election years, less than 60 percent of our eligible citizens bother to vote, as opposed to an average 88 percent in West Germany, 83 percent in France and 79 percent in England.

In quoting Chairman William Clay on the subject of the Hatch Act, when he declared: ". . . for too long Federal civilian and postal employees have been denied meaningful political participation," we have one comment—too long is long enough.

Let the amendments be now.

We appreciate this opportunity to express ourselves in behalf of our 235,000 members, all of whom are entitled to equality and the right to participate in all activities of their free government.

Mr. CLAY. Thank you.

Mr. Rademacher, do you agree with the statement made by Mr. Nilan, who testified just before you, when he said that there were sufficient protections under the grievance procedures to protect Federal or postal employees from improper coercion?

Mr. RADEMACHER. I would like to amend that thought, having been closer to the scene of our grievance procedure. I wouldn't want to rely solely on the grievance procedure. I would like to see some enforcement through an official law.

Mr. CLAY. When you talk of the Justice Department being the enforcement agency, are you saying they should go out and do all the investigation, administrative investigations, or should this information be turned over to them after all that has been compiled?

Mr. RADEMACHER. I think you make a good point, Mr. Chairman. Certainly, the Justice Department is extremely tied up today, and the information could be developed for it, but I think to keep the matter out of the hands of the employing agency, as Congressman Wilson has so named them, that the Justice Department ought to be in the position to make the final decision and not the employing agency.

Mr. CLAY. Thank you. Mrs. Spellman?

Mrs. SPELLMAN. Thank you, very much. I don't have any questions.

Mr. CLAY. Mr. Collins?

Mr. COLLINS. Thank you, Mr. Chairman.

You made reference to Mr. Sam. I think he was probably the greatest Speaker we ever had in the House, but I want to go back to that situation. At the time that man was named postmaster, he was named at the recommendation of the Congress, which was the old system. Today we, as Congressmen, have absolutely no input at all into naming a postmaster. Which system do you think is preferable?

Mr. RADEMACHER. The current system.

Mr. COLLINS. Your illustration, like the one where Mr. Sam named him and then resented the fact he was no longer in politics. What was the intent there?

Mr. RADEMACHER. I was trying to make the point how serious inactivity can be. I know prior to the enactment of the Postal Reorganization Act, many Congressmen informed me of their concern over the appointment of rural letter carriers and postmasters, and then comes election time and they run and hide, because they were using the excuse of the Hatch Act. They just can be helpful. It proved that they didn't even know what rates that they did have.

You can't ever turn a Congressman down or any other person interested in your assistance by saying the Hatch Act prevents me from doing something. That exactly makes the point that Federal employees are so uninformed and misinformed, there is such a child-like effect of this law that the employees just don't know what they can do and what they can't do, nor the postmaster in Sam Rayburn's district. He was using that where he could have helped Sam.

Mr. COLLINS. I think it was a good thing that we took the postmastership out of the congressional consideration the way it used to be. I wonder if we are not going to change the whole thing now.

As I understand it, there are several things a man can do, a woman can do, if she is working for the Government service. If I am wrong on these, would you correct me? First, is she can register and vote in all elections. That is right, isn't it?

Mr. RADEMACHER. Yes, sir.

Mr. COLLINS. Second, they can make a voluntary contribution to a political party?

Mr. RADEMACHER. Correct.

Mr. COLLINS. They can express a private political opinion?

Mr. RADEMACHER. That is true.

Mr. COLLINS. That is going pretty far. They can wear a political badge or button, I understand, everywhere but in the Congressional Library?

Mr. RADEMACHER. No further than any other citizen of our country can go.

Mr. COLLINS. That is more than 99½ percent of the people in my district do during the campaign. They can put on a political bumper sticker on the automobile. You are going through the things that the average campaign does. They put a bumper sticker on, they wear a button, they might give you $10, and they will express a private opinion. That is about as far as most of them go.

What you really want is for them to go take over the political convention. Is that what you have in mind?

Mr. RADEMACHER. I am not the least argumentative or concerned about the permissive activities. I am here to protest and ask a change and elimination of the prohibited activities.

Mr. COLLINS. Do you believe that everybody should have a fair and equal voice in every institution?

Mr. RADEMACHER. I certainly do.

Mr. COLLINS. Let me ask you why you wrote this in your paper here. In January of 1975, you said:

> We will not publish any statements which undermine union negotiators or in which in any way subvert the adopted position of the unions, and the voice of

the diversionists must be stilled for the preservation of democracy into it, in spite of it.

This is January 1975, on page 5. That doesn't look like to me you are encouraging negative reaction within your own union.

Mr. RADEMACHER. So all the members of the committee might know what you are referring to, that is the "Postal Record," the official publication of our union. I am the editor. That was an editorial. The background is known by our members. When we mandate a specific action, we are obligated to take that action and there can be no interference until the action is taken.

None of my members have objected. But this is the second time I have had to respond to Congress. I didn't mind. I am glad to defend our position here, which is not a violation of free speech. It is very evident it isn't, because of the very next issue, a few of my members asked for my scalp and we printed that request.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. CLAY. Thank you. Mr. Solarz?

Mr. SOLARZ. Mr. Rademacher, what is your view of the extent to which Federal employees genuinely favor the repeal of the Hatch Act or at least the repeal of the restrictions on political activity presently contained in the Hatch Act? I ask that question because it had been my assumption that most Federal employes would obviously seek to have maximum opportunities which were available to every other citizen in the country, to participate in the political process, even if they didn't choose to avail themselves of the opportunities.

Yet, I notice here a memorandum prepared by the Library of Congress on the arguments for an against the Hatch Act. In surveys which were taken, one by the National Federation of Federal Employees in 1972 and another by the Commission on Political Activity of Government Personnel in 1967, a majority of those Federal employees surveyed appeared to fear the kind of subtle pressures which could be put on them if the restrictions on political activity in the Hatch Act were removed.

Do you have any basis for offering this committee a judgment as to what the personal preference of Federal employees would be in this regard?

Mr. RADEMACHER. It all depends on the type of union, militancy of it, the education of that union, to its membership, and I am not here to quarrel with any other union. I know that if I asked the right kind of questions, I will get the right kind of answers. I agree with Mr. Nilan. The demand that we make here today is a mandate of our convention. There were 5,000 delegates that voiced overwhelming approval, in fact, it was unanimous and the record will so indicate, of the unions objective being to eliminate the restrictive provisions.

I was in the chair. I took the vote. I didn't even comment on it. The members commented to me. We have had letter carriers fired. It is not a question of how many have been fired or how many have been dismissed. How many would have been, if they had exercised their rights.

These are questions that one can't just answer on the basis of facts and figures. You have got to know in each instance, for instance, what was the question that was asked in a survey of Federal employees? Was it, "Do you want to be coerced or intimidated?" "Of course not."

"Do you want to eliminate the flag and motherhood?" "Of course not."

It all depends what the question is.

In our union, our people have been taught that the Congress is sensitive to the needs of the people. Our members serve the American people just as the Congress does. And we do not want our voice stilled. We have been aggressive. Whether it is the right to strike, the union shop or this particular movement here, we have sounded off, because we believe that our members should not be denied inalienable rights that were granted by our forefathers, just because something happened in 1938 where Congress had to take some kind of immediate action. And now as the time goes on more and more people are finding that action isn't necessary in the 1970's.

Mr. SOLARZ. I think you make a very good point about how the kind of questions which one asks can determine the kinds of answers one gets, and I will make an effort to find out what the precise phraseology of the questions were, because I would think it would be unfortunate for this to pass in the record of the debates of the Congress, as an unquestioned fact without a real understanding of what precisely the questions were.

Mr. COLLINS. Will the gentleman yield on that point?

Mr. SOLARZ. Certainly.

Mr. COLLINS. A question on the committee of activities of Government personnel was whether or not you wanted to eliminate the Hatch Act in its entirety. When they say a majority, the survey revealed that 48 percent were in favor of keeping the Hatch Act, but 47 percent answered that question in terms of wanting to eliminate it.

Further down in the survey they said over 60 percent wanted to change some provision of the Hatch Act and particularly some that prohibited their participation in political activities.

Mr. SOLARZ. And presumably if one put to them a question in which they were asked, whether they would like the right to participate in political activities, if there were clear restrictions against efforts to coerce them into participating, you might have a different result.

I thank the Chairman for pointing that out. One of the arguments I have head made against the Hatch Act is that it is inherently ambiguous and Federal employees are unclear as to what their rights are in terms of political activity.

Now, I really understand the thrust of the argument against the Hatch Act, in terms of the extent to which it restricts the right to participate. It is a fundamental question of principle here. I understand that argument very clearly. I am not sure that I fully understand the argument about ambiguity. As I look at the Code of Federal Regulations, where what is permissible and what is prohibited seem to be set out fairly straightforward, I am not clear where the ambiguity comes in. I would appreciate it, Mr. Rademacher, if you could perhaps give us some examples of the kind of ambiguous situations that have developed where Federal employees have been confused by virtue of the ambiguities in the regulations or the legislation.

Mr. RADEMACHER. When we presented our case, Mr. Congressman, to the Supreme Court, our counsel had to review 3,000 decisions. He

found in there, where a letter carrier had been fired in the 1940's, because his wife was working for a political party during the day of elections, and brought his lunch out to his route, and he was fired. I would like to just read a very brief statement which was made by——

Mr. SOLARZ. He was fired for what?

Mr. RADEMACHER. For political activity.

Mr. SOLARZ. Because his wife brought him lunch?

Mr. RADEMACHER. Yes. And she was working that day for a political party at the polls. That is a matter of record. Judge Gerhard A. Gesell said——

Mr. SOLARZ. It must have been quite a lunch.

Mr. RADEMACHER. If I may just read this into the record. In his affirmative decision in the District court:

> The arguments advanced by the dissentor are not persuasive. In the delicate, precious area of free speech, the obligation of the courts to seek all possible, even if somewhat tortured, means to uphold admittedly fuzzy Congressional action must give way to other considerations. If the Congress undertakes to circumscribe speech, it cannot pass an act which, like this one, talks in riddles, prohibiting in one breath what it maybe argued to allow in another, leaving the citizen unguided, but at hazard for his job.

That is Judge Gesell's affirmative opinion in our court case.

Mr. SOLARZ. I gathered that in the briefs that your attorneys submitted to the court there was probably a detailed examination of the kind of incongruities and contradictory rulings that have been handed down by the Commission with respect to prescribed political activity.

I wonder whether or not it would be possible to make those briefs or that analysis available to the committee, because I think it would be very helpful in giving us a sense of the kind of problems which you refer to in that regard.

Mr. RADEMACHER. I would be very happy, Mr. Chairman, if you so desire, to provide this committee with our brief in the district court and subsequently in the Supreme Court, if that would be helpful.

Mr. CLAY. We would appreciate that. Have you concluded, Mr. Solarz?

Mr. SOLARZ. Yes. I think in addition, if you have any analysis of these 3,000 rulings that have been handed down, as a way of giving us a sense of the scope, I think that would be helpful, too. If it is in the brief, then there would be no necessity for such analysis, as well.

Mr. CLAY. Thank you.

Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

Mr. Rademacher, have you had an opportunity to study the recommendations that have been made by the APWU for changes in H.R. 3000?

Mr. RADEMACHER. No, I haven't Congressman Wilson.

Mr. WILSON. You couldn't comment upon those recommendations at this time, then?

Mr. RADEMACHER. No, I do not have them.

Mr. WILSON. I would appreciate if if you would, it would be good if we can get from those supporting H.R. 3000, a common feeling towards the bill. If you do have any differences of opinion, then we would like to know about it. It would be helpful to us.

Mr. RADEMACHER. We will be happy to send that to you promptly.

Mr. WILSON. Mr. Collins said you didn't think that, or he didn't think that the employee organizations or Federal employees should take over the national political conventions. Didn't you say that, Mr. Collins?

Mr. COLLINS. I think this is a very big thing under the Hatch Act, Mr. Wilson.

Mr. Wilson, Is it your feeling, Mr. Rademacher, that Federal employees should have the same rights at the political conventions of the Democrats and Republicans, as the U.S. Chamber of Commerce or the oil companies?

That seems reasonable, doesn't it?

Mr. RADEMACHER. It wouldn't be any thing new to have any group take over a convention. It's been done in the past, in most recent years. Some of the groups you mentioned are in the background at the conventions. I see nothing wrong, if democracy prevailed and our union was in the forefront of the political convention, I see nothing wrong with that.

Our members are all American citizens, and I think they have equal rights. I don't anticipate that happening, though. We are too busy solving other problems, like Kokomo and other things.

Mr. WILSON. It has been brought to my attention that George Meany wasn't able to take over the last Democratic Convention. I just can't believe that these very modest changes that are being suggested in the Hatch Act would result in Federal employees taking over the national conventions.

Mr. Solarz has asked about ambiguities in the present law. I think the survey that was made by the Commission on Political Activity of Government Personnel shows there is considerable confusion in the minds of Federal employees insofar as what they can and cannot do under the Hatch Act.

For example, making a speech at a rally held by a political party is prohibited; 16 percent thought they could; 69 percent said they could not. There was 14½ percent who didn't know for sure. So there is almost 30 percent who either didn't know or thought they could do it, even though that is one of the prohibited activities. Obviously, information on the Hatch Act is not gotten out and there is considerable confusion. That is what we are trying to clarify by the changes that are being suggested in the Hatch Act. Another example is driving people to the polls on election day, which is prohibited; 45 percent thought they could. And 40 percent said they could not and 14 percent were confused as to what they could do. So, again, there are several examples of where there is complete confusion among the Federal employees on what they can and cannot do.

Mr. Chairman, I have no other questions. I think Mr. Rademacher has made a fine statement, along with the other fine organizations, I think they have contributed greatly to the hearings today.

Thank you.

Mr. RADEMACHER. Thank you. One last point on Mr. Wilson's excellent observation itself, the regulations sometimes are worse than the law itself. As I pointed out, on page 5, all employees are told in bulletins by the Civil Service Commission, "employees are free to engage in political activity, to the widest extent consistent with the

restrictions imposed by law, and this subpart." Then they go on to say, "The head of an agency may prohibit the participation, if the participation would interfere with the efficient performance." A matter of judgment, not law. Interpretation. One person's interpretatiton of whether or not an employee can be free to engage, becomes a matter of interpretation by an official.

This is wrong. This is worse than the law itself, the authority of the Commission to determine whether or not the conflict of interest, or inefficiency in performance is related to the engaging in political activity.

So the whole thing needs cleaning up. It is a violation of rights all over the place.

Mr. CLAY. I tend to agree.

Mr. Harris?

Mr. HARRIS. Thank you, Mr. Chairman.

You just used my question. It is strange to me, and I questioned the Civil Service Commission with respect to this regulation, which after it lists 15 permitted activities, proceeded to say that—which is paragraph A, paragraph B proceeded to say that paragraph A of this section does not authorize the employee to engage in political activities in violation of the law. It seems to say "don't believe what you read in paragraph A, because we may not know."

Then it goes on to say that an agency can restrict further those activities that are permitted, if it determins there is an apparent conflict of interest.

I would like to ask you straight-off, pursuant to the line of questioning we have engaged in here, how many Federal employees do you think know what they can do and cannot do under the Hatch Act, just as a matter of overall statement. I am not going to ask you how many members of this subcommittee know or don't know what they can do?

Mr. RADEMACHER. I would say, Mr. Congressman, it would be a very small percentage, whether it is 5 or 10. That would be probably union leaders, shop stewards and others.

I have a question in my mind about them as you had about your colleagues.

Mr. HARRIS. I didn't say I had any. I would like to correct the record right there, Mr. Chairman. I said I wasn't going to ask. Let me first ask as an example now, suppose I am a Federal worker and the Republican Party is having a mass meeting to select a candidate, and in order for me to go to that mass meeting I have got to sign a little thing, saying I am a member of the Republican Party and I intend to vote for the candidate of the Republican Party. Can I go into that meeting and sign that thing, go into that meeting and speak at that meeting and vote for the candidate?

Mr. RADEMACHER. Yes. However, that "yes" can be contradicted because of one of the 3,000 interpretations that have been made, or because of regulations which say there might have been a conflict of interest.

Mr. HARRIS. Let me say, in my opinion, your answer is correct.

Mr. RADEMACHER. All of my answers?

Mr. HARRIS. Now, let me say, let me ask you, if the Democratic Party decided, instead of having that mass meeting, they would have

a local convention, in which people can go ahead and elect delegates to go to the convention and select a candidate, and I am still in the community and I want to go and speak in favor of my candidate and vote for him. Can I go ahead and attempt to be a delegate to that convention?

Mr. RADEMACHER. No. You cannot. Not in my opinion.

Mr. HARRIS. In my opinion, you are correct on that answer, too.

I am doing fundamentally the same thing. Suppose I am an independent candidate. I am an independent candidate under the Hatch Act and the Democrats are having a mass meeting, at which they are going to nominate a candidate, can I go to the mass meeting and ask them to endorse me as an independent candidate?

Mr. RADEMACHER. I would say that the law itself might protect you in that regard. But the regulations would prohibit you from doing so.

Mr. HARRIS. I just wondered, is there any question in anybody's mind why the Federal employee is confused as to what he can or can't do with regard to the situation? I doubt if there is anyone on the Commission that isn't confused too.

Thank you.

Mr. CLAY. I want to thank you, Mr. Rademacher, and your associates for your testimony.

Mr. RADEMACHER. Thank you. Without belaboring the point, your already having extended yourself to us, can I add a very significant paragraph, which quotes an outstanding Federal employee, a quote used in our court case, because I think it is related.

May I present that?

Mr. CLAY. Go right ahead.

Mr. RADEMACHER. Given by Roger W. Jones, who was a trusted adviser on Government personnel management policy to all Presidents of the United States since Franklin Roosevelt. He has been Chairman of the Civil Service Commission, Deputy Undersecretary of State, Deputy Director of the Budget, and a member of the Hatch Act Commission which will show you now the attitude after a man no longer had that job, and he is free to speak out. He said this at the District of Columbia court case of the NALC on the Hatch Act:

> Modern communications have wrought massive changes in political organizational tactics and activities. Not only political parties, but also all citizens live and operate in an open arena of information about local, State, and national matters and political debate upon them. The conditions of political participation have changed, the prohibitions of the Hatch Act have not. I believe that Government involvement in the lives of the American people has reached the point where too large a percentage of them is being restricted in the free exercise of political rights.

May I conclude, in behalf of my colleagues and our whole union, by making an observation that I have never made before. I have appeared for 20 years as a witness for our union, appeared before many subcommittees and many full committees, but I never have appeared before a committee or a subcommittee where there has been the maximum number participating as we see here this morning.

And I congratulate the committee.

Mr. CLAY. Thank you.

Our next witness is Mr. Robert White, president of the National Alliance of Postal and Federal Employees.

Mr. ROBERT WHITE. Thank you, Mr. Chairman.

Mr. CLAY. Will you identify your association for the record, please?

Mr. ROBERT WHITE. My name is Robert L. White. I am the national president of the National Alliance of Postal and Federal Employees.

Mr. CLAY. You have a written statement?

Mr. ROBERT WHITE. Yes. My statement will be very, very brief. If you have no objection, I will just read it.

Mr. CLAY. No objection.

STATEMENT OF ROBERT L. WHITE, PRESIDENT, NATIONAL ALLIANCE OF POSTAL AND FEDERAL EMPLOYEES, ACCOMPANIED BY WESLEY YOUNG AND JOHN W. WHITE

Mr. ROBERT WHITE. Thank you very much.

Mr. Chairman and members of the subcommittee, we are pleased to have this opportunity to present our views on the proposed legislation, H.R. 3000.

With me today is national vice president Wesley Young, and legislative director John W. White.

Our presentation will be very brief, because frankly, deciding what we feel to be the proper position on H.R. 3000 has caused us some concern. We can certainly appreciate one of the apparent intents behind the introducing of this bill, such as endeavoring to elevate Federal employees from the ranks of second-class citizens in the political arena of our country.

As members of a minority group that has been subjected to second-class citizenship in every category for too many years, we are unusually sensitive to, and aware of the adverse effects of being in the role of second-class citizens, so much so that sometimes we unwittingly develop opinions, or make decisions based strictly on an emotional reaction that erupts whenever second-class citizenship is remotely related to any area in which we may find ourselves.

We have attempted, however, not to become the victims of such emotionalism in analyzing the position that we should take on H.R. 3000. Except we cannot ignore some basic facts of life that history has taught us as members of a minority group.

If we are to survive in a society where laws, regardless as to how they are worded or as to the intent of the legislative body, can be interpreted by those in power to the detriment of those out of power for an indeterminable time, we must always attempt to take positions that recognize curves in the road, and what may be around such curves.

Mr. Chairman, speaking for the National Alliance of Postal and Federal Employees, I do not feel that we can support H.R. 3000 in its present form. We recognize the need for changes in the present Hatch Act, mostly in the area of greater clarification as to what can and cannot be done legally by Government employees.

To a certain extent, we feel that the present law, which admittedly does place some restrictions on Government employees, still provides such employees with a great deal of freedom to participate in the political arena. Perhaps many employees are not educated as to what they can legally do, while we know that many others are fully aware as to what they can do, but choose to exercise their freedom of choice as to whether or not to participate in public politics.

And I might add, Mr. Chairman, this is as we feel it should be.

Again, referring to our status as members of a minority group who inevitably bear the brunt of any adverse effects of many well-intended laws, we must recognize how the present law on political activity of Federal employees basically protects us in our positions as Federal employees, to the same extent that it does all other Federal employees.

In this country where racism is as prevalent, or more prevalent in the Federal Government than it is in the private employment sector, this is an additional, much needed safeguard for our people.

We fully support the basic principle of a complete merit system for all employment in the United States. But without a doubt, our civil service system should be totally free of any form of coercion or favoritism, from any person or group. It is inconceivable that employees would not be subjected to undue and coercive political pressures that could not or would not be proven as such at any time during their career in the Government service. Human nature being what it is, wherever power is available it will be exercised.

As members of a minority group, we feel that our best chance for achievement is in a free society. This means that we must carefully analyze any proposals that could at any time provide an individual or group of individuals with a legal right to stifle or eliminate human freedoms. This could happen in the Federal service, should complete political freedom, as designated in H.R. 3000, become law.

The National Alliance feels that some changes could be made to the Hatch Act which would remove some of the restrictions against individual participation in certain areas of partisan political activities. For example, in our opinion, there should be no restriction against any American citizen becoming a partisan candidate for an elective public office because such person happens to be an employee of the Federal Government.

Certainly such person would be granted a leave of absence for such purpose. Also, we can see no harm in any American citizen serving as a delegate, alternate, or proxy to a political party convention, or initiating or circulating a partisan nominating petition.

The examples that I have just given are areas in which we feel some adjustments in the Hatch Act could be made and should be promptly legislatively corrected. Perhaps all of the restrictions should be removed.

However, we feel that such action should be taken with a degree of caution, because as was stated earlier, we cannot completely ignore the events of history if we are to exercise any degree of wisdom as we plan and anticipate a future.

Mr. Chairman, we wish to thank you and the committee for this opportunity to present the views of our union on this proposed legislation.

We will be glad to answer any questions.

Mr. CLAY. Thank you, Mr. White.

On page 2 you say you do not feel you can support H.R. 3000 in its present form.

Then further in the statement, you state as your opinion "there should be no restrictions against any American citizen being a partisan candidate for an elective public office."

Further, you say that you can see "no harm in any American citizen serving as a delegate, alternate, or proxy to a political party convention, or initiating or circulating a partisan nominating petition."

Mr. ROBERT WHITE. That's right.

Mr. CLAY. This in our opinion is precisely what H.R. 3000 would tend to do.

I would like to know where your views disagree with the provisions of H.R. 3000.

Mr. ROBERT WHITE. Well, it goes a little further.

From the way I understand H.R. 3000, it goes a little further than the exceptions which we have made there, Mr. Chairman. Without trying to go into the code completely, certainly it does not involve the area of canvassing.

Once a person initiates a petition, that is one thing. Once that has been done, that merely provides for a person to be placed on a ballot perhaps, but when you get into the other area perhaps of the canvassing of neighborhoods and other parts of the political process that take place, then we feel perhaps there should be some restriction in that area.

Also, I don't see where there is any harm if a person acts as a delegate to, say, a national convention. I don't see where that can provide any real harm to a person as such.

Again, when a person finds himself in the area, though, of maybe being forced into actively taking a position for a candidate, that is when a person may subject himself to some coercive pressure from a person they may be working for. There are a few differences in what we are discussing, in what we think should be done, the way we interpret 3000, which would make it more open.

Mr. CLAY. In your statement you have eloquently pointed out you represent a unique group in this country's makeup, one of the minorities that has been discriminated against in our country.

Yet at the same time what I understand you to be saying is, if a member of a legislative body, either a local group, city council, or Member of this Congress, would get up and work against and vote against civil rights legislation, and other legislation that would be definitely in your interest, that even under those circumstances, you don't think that Federal employees whose rights are being neglected or abridged by elected officials ought to have the right to go out and campaign against the elected official who has voted against the best interest of minorities who happen to be working for Federal Government?

Mr. ROBERT WHITE. That could be offset, Mr. Chairman, by some of the other evils that we feel opening up the political activities could bring about. There is nothing that prohibits any employee, the way I interpret the Hatch Act, from actually voting and going to a certain point in supporting any candidates of their choice.

In fact, when you look at the permissible activities on which I heard some of the discussion earlier, it's hard to determine just what is actually prohibited, what would really be a violation of the law, if one wanted to participate actively in politics, being a Federal employee, and we know many of them are doing it even today.

There are very, very few instances where anybody has been prosecuted to the full extent because of any political activities. Only rarely

is this ever done. So we are not saying that we do not feel that we should have the right to campaign through proper actions and proper groups that we may be alined with, to support or not support any candidate that we feel is not legislating to our best advantage, but we do have to watch other ills that might develop out of some legislation which is coming up. In trying to correct one evil, we might create another, basically is what I am trying to say.

Mr. CLAY. I will repeat myself. As I interpret it, you don't believe it should be permissible for Federal employees to go out and actively participate for a candidate, in terms of taking people to the polls, for example? Is that correct?

Mr. ROBERT WHITE. I did not go into the details of what should be done. I did state there should be a clarification in what can and cannot be done. We merely took the position of saying that based on the way I have interpreted 3000 here, it would open up the political process broadly.

Mr. CLAY. That is a proper interpretation.

Mr. ROBERT WHITE. And we feel maybe it should not be completely opened at this particular time.

Mr. CLAY. I hope you recognize that voting is just a minute part of the political process. Unless you go out and educate people—in order to educate them you have to go out and canvass and talk to them—unless you go out and encourage them to vote on election day, actually take them to the polls in some examples, we are going to have the 35 percent of the people eligible to vote in this country casting their vote in national elections and probably a lower percent in local elections.

I would think and would hope that you would reconsider your position as president of the organization, and would come back to this committee with some firm recommendation as to how we can protect the Federal employees against possible coercion that you see now has a possibility of developing, if we open up the political process.

Mr. ROBERT WHITE. I am not too sure, Mr. Chairman, that there is any real way in which we can prevent coercion of employees. Having been an employee for some 38 years now, many things take place, many actions are done which are illegal, which are improper, and sometimes they can be straightened out, but coercion, all types of pressures of that nature—there is no way of legislating, I don't believe, against those types of things.

We have to try to, as I have tried to point out in my statement, just provide for an area where, speaking again as a minority, where we will not become the victims of some type of pressures which could be exerted based on some activities that we may say, the same pressure would not be exerted against, say, a person of another ethnic group.

This is done regardless of any laws we have on the books now or anything I can see you can put on the books.

Mr. White wanted to say something, if you don't mind.

Mr. CLAY. Yes.

Mr. JOHN WHITE. Thank you, President White.

Mr. Chairman, certainly I appreciate this opportunity to attempt to express some of the fears which concern our national president's position today. Having been in the audience I could not help but hear our good friend from California, when you were discussing Mr. Meany, and this gets into the area of some of our fears.

I will speak quite frankly. Sometimes I say the wrong thing, but Mr. Meany took a walk in the elections, he took a walk and yet he is representing the AFL-CIO, and generally the black people in America stood there, based on what Mr. Nixon——

Mr. WILSON. Mr. Chairman, would the gentleman yield?

Mr. CLAY. Yes.

Mr. WILSON. I think, Mr. White, you are misusing the comment I made, you are paraphrasing me incorrectly. I was just using an example of how Mr. Meany did not take over the Democratic Convention. I did not discuss my philosophy as concerns Mr. Meany and his support of Mr. Nixon.

I don't think it's appropriate—if you want to make a comment about your feelings toward Mr. Meany, that's one thing, but don't relate it to what I said, please.

Mr. JOHN WHITE. Mr. Chairman, as I said, I don't want to get in trouble, and we are talking about the freedom of speech here today, are we not?

Mr. CLAY. Also, we have to recognize we are going to confine ourselves to H.R. 3000, and there is nothing in H.R. 3000 that makes it compulsory to support a candidate. Mr. Meany exercised one of his fundamental rights that said you can support or not, and I would hope we can keep our remarks limited to H.R. 3000 and what impact it would have on Federal employees.

Mr. JOHN WHITE. I was attempting to make a comparison; Mr. Meany did leave the convention in Kansas City, Mo., as I recall it. He left it on the question of attempting to have fuller minority participation in the Democratic Party. That is why he left. This was the area of concern, the reason that he left.

He did not take over the party. I am happy because of it. But that is the reason he left. I am happy he left.

Thank you.

Mr. ROBERT WHITE. I wanted to clear up the position we have taken, Mr. Chairman. I heard one of the former speakers mention how long they had been representing groups of employees, and I can speak in terms of myself. I have been a president for 22 years, and I have been elected on a 2-year basis for this 22 years.

I have been opposed some 3 times, so I am also speaking representing a point of view of a certain segment of people that I represent.

I think it's much broader than maybe the actual membership, but there are views, there are concerns of our people which we have to bring to the light in instances like this, and when I say that we are not too much in opposition to some amendments to the Hatch Act, we are merely trying to point out some of the other things that may develop which may adversely affect us as a minority group, as an outgrowth of removal of all political activities against Federal employees.

I think the proper position for us to take——

Mr. CLAY. Yes, we agree with that, too.

Mrs. Spellman?

Mrs. SPELLMAN. I can fully understand your concerns. On the other hand, I note that you are concerned because you are members of a minority group and feel our best chance for achievement is in a free society.

I am quoting here. What better way to work for that free society than through the political process? That is, having people free to get out and work through the political process and their vote at the polls, voting for the rights that should be theirs.

I find that is a little bit difficult to understand in view of the testimony that I heard from Mr. White this morning at another subcommittee meeting before I came here.

Mr. ROBERT WHITE. The area we are still talking about, Madam Congresswoman, is this: I believe that the permissible activities under the present act, Hatch Act, are very, very—express quite a bit of limitation on the part of Federal employees.

I think some of them are using it as a skirt to hide behind. There is really not too much a Federal employee cannot do except perhaps get up in a public place and say, "I am a member of the Federal Government; I work in such and such an area and my position on this candidate is thus and so."

But nothing prohibits that employee from speaking as an individual. Many persons will know that person works for the Government and they still can express their opinion on a candidate, according to the Hatch Act, or on the issues. But the area that we have to watch against is the area whereby pressures from those who may be in power, to keep themselves in power, or their party in power, would exert pressures on Federal employees, which will be detrimental to the best interest of not only the merit system but certainly as far as minority employees are concerned.

We find ourselves in the position of not wanting to support a candidate who may be a member of a certain party, and my boss may be a part of this certain party; we may find ourselves in some hot water.

Mrs. SPELLMAN. If you were a public employee, a civil service employee, and I were standing on a platform saying "If I am reelected I will do this and I will do that," wouldn't you really want to stand up in that group of your peers and say, "She isn't doing anything of the sort, because we know what she will do from her past performance. We have watched her in office and she has produced none of those things nor is she inclined to go in that direction."

Wouldn't you want to be able to get up and say that?

Mr. ROBERT WHITE. Very true.

Perhaps we could do it through some other sources without subjecting ourselves to some repercussions that we might get, if this person should win. We have taken this kind of position. That is where you get your repercussion.

There are methods where we can express ourselves and our positions under the law.

Mrs. SPELLMAN. Mr. Nilan, in testifying earlier during the discussion period, said over and over again, "they wouldn't be able to do that to our people; we would see to it that they couldn't; we would take care of that."

Is your situation in your organization different; would you not be able to take care of members in your organization in the same way?

Mr. ROBERT WHITE. I don't think Mr. Nilan actually believes what he said. I think you will remember Mr. Rademacher came up a little later on and said he would rather have some other law to take care of it other than the grievance procedure.

We know how the grievance procedure works. We didn't negotiate it, but we know how it works.

I would say for my members I wouldn't want to depend on the grievance procedure to get them off of something like that.

Mrs. SPELLMAN. Thank you very much.

Mr. CLAY. Mr. Solarz.

Mr. SOLARZ. Mr. White, I hope you will forgive my naivete, but I wonder if you can let us know how many members you represent, and which Federal employees you do represent.

Mr. ROBERT WHITE. We are an industrial union, and we represent all postal and Federal employees; we have a membership in the area of some 25,000.

Mr. SOLARZ. I see.

Did I understand you to be saying in your testimony that enactment of this legislation by virtue of its repeal of the present restriction which exists on the right of Federal employees to participate in political process would create special problems for minority employees in the Federal Government?

Mr. ROBERT WHITE. I stated that it could, not that it would. It could. I state that about so many pieces of legislation which are passed, which are seemingly well-intended, but the persons who are in a position to enforce or interpretate such laws, are the ones who perhaps can bring about the adverse effects, say, on not only blacks, but on other minorities or any particular group of persons.

Mr. SOLARZ. Do you by any chance know offhand what percentage of the Federal civil service is composed of blacks, and Spanish-speaking Americans?

Mr. ROBERT WHITE. The total Federal service?

Mr. SOLARZ. Right.

Mr. ROBERT WHITE. Not offhand.

I believe it's in the area of 15 to 16 percent, I believe. I am trying to remember off the top of my head the last figures I saw. This total Federal and Postal Service you are speaking of?

Mr. SOLARZ. Yes.

Are you talking about the percentage black, or black and Spanish——

Mr. ROBERT WHITE. Total minorities.

Mr. SOLARZ. About 15 or 16 percent?

Mr. ROBERT WHITE. That's correct.

Mr. SOLARZ. I understand the theoretical distinction about something that would be a problem or could be a problem. I wonder if you could tell us in what way this might create a problem for minorities without at the same time creating a problem for other employees?

Mr. ROBERT WHITE. The same basic problems that we have today in trying to get promotions in the service, being last hired, first fired; these types of things.

If you are, say, a known supporter of some candidates who may be in the opposing party, the person lost, what would stop, say, the head of the agencies from taking certain action.

You could say, "Well, you have laws that say it cannot be done or should not be done," better put it that way, and in the meantime the action would have been taken against you and you find yourself on the outside trying to get it straightened out.

Mr. SOLARZ. Do you think it's conceivable that in the Federal civil service today that political pressures might be brought to bear on other employees?

In other words, if there is a problem of potential coercion of Federal employees, can you really envision a set of circumstances in which those problems would exist essentially for minority employees and not for others?

Mr. ROBERT WHITE. I wouldn't say only for any minority employees, but they would take the brunt of it. Certainly in answer to your question, do I feel that could actually happen in the Federal service today, yes, by all means; definitely.

We have a good example of it, plenty of examples of it right now in the Postal Service where many employees, black employees, are the subject of discrimination to the extent of being removed from service.

This is going on right today. The Postal Service is supposed to be in a better position than some of the other Federal agencies. I know it's going on in the other agencies.

We can speak in terms of trying to think and decide in the area of making sure that we do not become the victims of some type of suppressive action, then we have to govern—we have to think about all these possibilities.

Mr. SOLARZ. I realize, of course, you have to strike a balance. I think you ought to take into consideration the fact that if this legislation is enacted, it might very well enhance the capacity of your people, by permitting them to participate in the political process, to get through the Congress the kind of legislation which would deal with the very problems to which you point.

Mr. ROBERT WHITE. It could very easily happen.

Mr. CLAY. Thank you.

Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

Mr. White, what we are trying to do in H.R. 3000, as far as I can see, is exactly the very thing that you claim that you are supporting. The objections you found to it are based on your interpretations which are different than what is the purpose of the bill.

I find it difficult to understand any of your opposition. You seem to be in support of the principle thrust of this bill. Then in response to a question of Mr. Clay or Mrs. Spellman, one or the other, you said you just didn't think it was appropriate to make changes in the Hatch Act at this time.

When is the appropriate time to correct abuses?

Mr. ROBERT WHITE. We are speaking again, Mr. Wilson, of completely opening up the political process. I have stated that I think in the final paragraph, I think it should be taken with caution.

There certainly are some amendments that we could agree on at least that need to be brought about to the Hatch Act. I think we mentioned a couple of them here. But there are some limitations which I still am not too sure should be removed at this particular time.

That is the only area of concern. Maybe I am not fully cognizant of what H.R. 3000 states, but if it opens up the political process completely, then I think there are some areas of concern which we ought to look at carefully before we are fully and totally in accord with it.

Mr. WILSON. Would it be possible, Mr. White, for you, with your

attorney and with your officers, to completely study H.R. 3000 and make those recommendations to us that you think should be made for changes?

Let us know where we have gone too far. Let us know how we are hurting the merit system.

Incidentally, are you satisfied with the merit system now?

Mr. ROBERT WHITE. Am I satisfied with it?

Mr. WILSON. Yes.

Mr. ROBERT WHITE. No, not completely. I like the basic philosophy behind a merit system, but when you ask me if I am satisfied with it——

Mr. WILSON. You said one of your basic objections to the bill is it will destroy the merit system. I gather from your comments you are not too happy with the merit system.

Mr. ROBERT WHITE. The idea behind the system is wonderful.

Mr. WILSON. Let's talk about the way it works.

Mr. ROBERT WHITE. It's like a lot of other things, it doesn't work always the way it is on paper or sounds like it should, Mr. Chairman.

You are very, very familiar with the fact that under the merit system—a person is supposed to be dealt with based on their abilities, education, all these other factors.

As far as being hired, being promoted, whatever it comes to, we know this doesn't work as far as minorities are concerned. You are aware of this.

So we say, yes. The philosophy behind the merit system is good if it's applied properly, but we are not going to have it applied properly as long as we have human beings and human nature as it is. We recognize this.

Mr. WILSON. I dislike getting into an argument with you, Mr. White, but I talk to black leaders of the two major postal organizations, APW and the Letter Carriers, and I find that they are in complete disagreement with the philosophy you come forward with, not just on this bill, but on so many other things we have discussed. Have they sold out, or are they irresponsible people?

Mr. ROBERT WHITE. I am certainly not going to speak for any other persons who call themselves, or you referred to them as "black leaders." I didn't even say necessarily I was a black leader. Certainly I am not going to call a person who is serving in less than a national position in another organization a black leader. I am not going to try to get into any area of trying to decide why they think they are dealing in the way they are dealing or thinking.

I can only speak for myself and the membership which I represent. As I stated earlier, I don't come here either as a person talking off the top of my head. I have been in this position for a long time. I get certain mandates from my membership, the same as the others. When I speak on this position I speak from the position of the people I represent.

Mr. WILSON. Mr. White, I think finally you can be extremely helpful to us if you would go over the bill, section by section, and present to the committee the recommendations of your organization. Let us know where you think that the bill is bad. That is the purpose of these hearings.

We don't say that the bill is perfect. We are holding hearings to try to correct it, improve it, and get it into the shape that we can try to sell to the Congress. There is going to be a bill come out of the committee and we would like to have your backing and your support, and it would help us if you could let us know what your organization supports, what they can support and what they cannot support in the present bill.

Mr. ROBERT WHITE. We will be glad to do that.

Mr. CLAY. Thank you.

Mr. Harris?

Mr. HARRIS. Actually, I think this point is important. I join with Mr. Wilson in asking you for the specific recommendations, if you can provide it, to the subcommittee.

I, myself, am very sensitive to the problems which you have expressed. A lot of times a person may appear to do one thing and may actually do something else, either one in the law now or one proposed.

I think it should be put to the test to make sure we are not losing any protections and, No. 2, we are not losing anything. I think those comments are relevant. I will be looking forward with special interest to the recommendations you will be making on it. I think we better make sure it meets that test legislation we pass.

Thank you.

Mr. CLAY. Thank you, Mr. Harris.

I want to thank you, Mr. White, and your association for bringing forth your testimony this morning.

I am hopeful that you will follow the recommendations of Congressman Wilson and give us your analysis of the bill and what you think ought to be done.

Mr. ROBERT WHITE. We will do that.

Mr. CLAY. The last witness this morning is Mr. Don Ledbetter, president of the National Association of Postal Supervisors.

STATEMENT OF DONALD N. LEDBETTER, PRESIDENT, NATIONAL ASSOCIATION OF POSTAL SUPERVISORS, ACCOMPANIED BY JOSEPH J. MEUSE, ADMINISTRATIVE VICE PRESIDENT, AND BRUCE W. STERLING, NATIONAL SECRETARY

Mr. LEDBETTER. Mr. Chairman, with no reflection on the previous witness, my good friend, Bob White of the National Alliance, I want to say my colleagues and I are also here representing a minority group this morning, the postal supervisors.

My name is Donald Ledbetter. I am the president of the National Association of Postal Supervisors, composed of more than 34,000 of the approximately 38,000 supervisors in the postal field service, with members in all 50 States, Guam, Puerto Rico, and the Virgin Islands.

Our members are employed in post offices, branches, stations, motor vehicle facilities, maintenance units, air mail facilities, bulk mail centers, and in all other mail handling installations in the field service.

I am accompanied by our administrative vice president, Joseph J. Meuse, and our national secretary, Bruce W. Sterling.

I am here today to speak in support of H.R. 3000, introduced by you, Mr. Chairman, together with a number of other Members of the Congress.

As the president of the National Association of Postal Supervisors, I am particularly pleased that this legislation has been introduced. It has long been a goal of the postal supervisors to bring about changes in the Hatch Act which would allow employees of Federal agencies greater political freedom. The latest expression of our association on this issue was adopted as a resolution during our last national convention, which was last August, in Atlanta.

That resolution was stated as follows:

> Whereas postal employees' political activity is now restricted, be it resolved that NAPS take the necessary action to cause the revision of the Hatch Act in order to provide postal employees with the right of political freedom.

Mr. Chairman, I am satisfied that your bill does provide the freedom to engage in political activities which has been endorsed as a goal of the NAPS. Many of our members have desired to participate more fully in the political process than has been possible under the laws as they now exist.

H.R. 3000, if enacted into law, would grant to the large number of employees of the Federal agencies, the right to participate in politics to the extent they so choose. For that reason, I applaud the bill and I applaud you and the other members who have introduced this bill for your continuing concern for the well-being of Federal employees.

While endorsing the freedom of Federal employees to express themselves and work within the political process to the extent that they deem to be appropriate, I also want to urge that this committee give careful consideration to insuring that any such freedom is not abused.

Although we believe that the Hatch Act is too restrictive and has unnecessarily prevented a large number of people from exercising their full rights of citizenship, I think we must also recognize that it was enacted into law in response to very real and troublesome abuses.

I am concerned that a relaxation of the prohibitions upon political activities is accomplished in a manner that does not invite the reappearance of such abuses.

I am just as concerned that no postal supervisors be pressured to take part in the political process to an extent greater than such supervisors may desire as I am about the current restrictions which prevent members from taking part in that process to the extent that they desire.

To avoid such a problem, it may be appropriate to add to the pending legislation some form of overview and oversight responsibility, perhaps by the Congress itself.

The wrongful exertion of political pressure in order to obtain either campaign donations or campaign assistance can often be a very subtle process in which an employee may, rightly or wrongly, feel under an obligation to support a particular candidate. Such perception does interfere with the freedom of that employee's conscience.

I urge this committee to concern itself with such possibilities so that this legislation, rightfully designed to give freedom to employees, does not become a means of depriving employees of the freedom to not support any candidate except to the extent that such employees, as a matter of their own conscience, choose to do so.

That concludes our statement, Mr. Chairman.

Once again, let me express my appreciation for the concern which you have shown by the introduction of this legislation. I urge that it be enacted, subject to the reservations which I have expressed above.

We appreciate the opportunity to appear before you and the members of the subcommittee, and will be glad to respond to any questions, Mr. Chairman.

Mr. CLAY. Thank you.

In your statement you refer to the campaign donations and subtle process in which these donations are usually contained.

I assume that there are methods now that are very subtle in obtaining campaign donations from people, top-rank employees of the Federal Government.

Mr. LEDBETTER. There is not as much of this as there used to be. In fact, one of the reasons we are in favor of amending the act is because of the changes in the system of selection and promotion in the Postal Service that have taken place in the last 5 or 6 years.

Prior to the change in the selection of postmasters, for example, which was a part of the process in which Congress expressed its will and selected postmasters, there was a tremendous pressure within the post office to support candidates or certain parties. This is now diminished almost completely because the selection process has been changed completely, as you and the other members of the subcommittee know.

But, prior to that time, the pressure for contributions and for support had to be endured if you aspired to be postmaster in a post office. Of course, every employee or supervisor has the ambition, at least 99 percent do, to some day become postmaster of their particular office.

Mr. CLAY. Do you feel the provisions of this bill against coercion are adequate, or do you think we ought to even make them stronger?

Mr. LEDBETTER. Mr. Chairman, I think the bill is all right like it is. We are not really suggesting any amendment.

We just want to ask if the law is amended, that the Congress not turn its back then to any abuses that might occur.

Mr. CLAY. I assure you that this committee will maintain an oversight responsibility.

Mr. LEDBETTER. That is our feeling, Mr. Chairman, and we have confidence that the committee would do that.

Mr. CLAY. Thank you.

Mrs. Spellman?

Mrs. SPELLMAN. I think the quorum call will force me to pass up any questions.

The statement is very clear.

Mr. CLAY. Mr. Harris?

Mr. HARRIS. I would like to thank you for your testimony.

I think it is very relevant.

I appreciate the fact as we go on to a little bit of unchartered ground, which may not be as unchartered as much as we think, I think this is an excellent area for this committee to keep in mind.

Mr. CLAY. I would also like to compliment you and commend you for your testimony today. The committee stands adjourned until 9:30 tomorrow morning, in this room.

[Whereupon, at 12:20 p.m., the hearing was adjourned, to resume at 9:30 a.m. on Wednesday, April 9, 1975, in the same room.]

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

WEDNESDAY, APRIL 9, 1975

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE POLITICAL RIGHTS AND
INTERGOVERNMENTAL PROGRAMS,
Washington, D.C.

The subcommittee was reconvened, pursuant to adjournment, at 9:30 a.m., in room 311 of the Cannon House Office Building, Hon. William Clay (chairman of the subcommittee) presiding.

Mr. CLAY. The hearing will come to order.

Our first witness this morning is Hon. Walter E. Fauntroy of the District of Columbia, who cosponsored H.R. 3934, which is identical to the bill that we have introduced in this committee, H.R. 3000.

Mr. Fauntroy, we are happy to have you with us this morning. You may proceed as you see fit.

STATEMENT OF HON. WALTER E. FAUNTROY, MEMBER OF CONGRESS FROM THE DISTRICT OF COLUMBIA

Mr. FAUNTROY. Mr. Chairman, it is a pleasure to be here today to testify on this important issue.

I congratulate you and this committee for your willingness to finally begin to deal seriously with this most complex subject of the Hatch Act. As you know, you have a most difficult task of sorting through a longstanding troubled issue, keeping the good, discarding the bad and changing the obscure. That is quite a task.

Updating and clarifying of the Hatch Act is one of the more complex issues that must be dealt with. One which has been the center of controversy for the 35 years of its existence.

I commend you and the subcommittee for your holding hearings around the country to hear the views of some of the millions of Americans affected by this legislation.

Certainly, there is no greater concentration of citizens affected by this legislation than here in our Nation's Capital.

This year, the citizens of the District of Columbia began for the first time in over 100 years, to exercise a basic democratic right taken for granted by all others, the right to elect our own city officials. Unlike other cities, we began the exercise of that right with a handicap. Nearly 30 percent of our voting age citizens are forbidden from taking a meaningful part in the process.

Out of a voting age population of approximately 500,000 people, 134,000 Federal employees and 40,000 District employees are covered by the Hatch Act prohibitions.

The Hatch Act, in my judgment, is an unreasonable infringement upon the right of Government employees to participate in democratic government.

In addition to the specific prohibitions in the law itself, a maze of rules and regulations have sprung up governing the political behavior of most Federal employees and those working in local and State government programs which are partially or totally funded from Washington.

It has also led to supplemental regulation by individual Government departments, and the passage of "little Hatch Acts" by State legislatures over the years.

In the 35 years since the passage of the Hatch Act, the overly broad and vague language of the act, as interpreted by the Civil Service Commission, has prohibited affected employees from running in local elections, writing letters on political subjects to newspapers, becoming a delegate to a political convention, or running for office within a political party.

What was originally intended to protect Government employees from political coercion has turned into a dead hand, prohibiting them from voluntarily engaging in political activites clearly protected by the First Amendment to the Constitution.

Given the general vagueness of the law in several areas, the civil service and departmental regulations can be and often are deliberately confusing to the employee. The Code of Federal Regulations, for instance, under the section titled "Prohibited Activities"—section 733.122(b)—states: "Activities prohibited by paragraph (a) of this section include, but are not limited to—"

Then it goes on to list 13 items. The public employee must govern his conduct with reference to at least three authoritative sources of law—the act itself, the regulations, and informal rulings—all of which are ambiguously worded. Often the sources would appear to conflict with one another.

Coupled with the vagueness of the current law and its attendant regulations is the selective enforcement of the act. These have, as you earlier noted, led most Federal and District employees to feel constrained to play it safe by not becoming politically involved at any level, even in approved political activity.

In its overall effect, the act infringes on the right to freedom of speech and action for approximately 175,000 of my constituents and more than 330,000 Federal employees living in the Washington metropolitan area.

It has, as can plainly be seen here in the District of Columbia, created a category of second-class citizens in partisan campaigns, relegating "hatched" employees to minor or politically sterile roles.

At this time in our history when citizen involvement in the political process is so sorely needed, the current Hatch Act systematically excludes millions of responsible and politically knowledgeable citizens from participation.

The legislation before you, H.R. 3934, which I have cosponsored, recognizes the basic value of the original act, and addresses itself to

the abuses and vagueness of the act. It reflects the needs and realities of contemporary public service and balances those needs with the basic right of all Americans to participate in the partisan electoral process.

H.R. 3934 would not weaken those provisions of the Hatch Act which prohibit coercion of Government employees for political contributions or activities and political interference with the merit system in the civil service.

What is at issue in this legislation are the broad-ranging proscriptions against political management and campaigning in any form, in any partisan connection by any Federal employee. This bill would eliminate much of the vagueness of the act, defining permissible political activities.

Precision of regulations must be the touchstone in an area so closely touching our most precious freedom.

H.R. 3934 corrects these defects in the law. Government employees would be restored the right to participate in our political system in a meaningful way. This vagueness would be removed because the right of the employee to participate would be spelled out.

Specifically, this bill would enable Federal and District of Columbia government civilian and postal employees to participate in the workings of our political processes. First, it permits employees to contribute voluntarily to candidates for public office. Second, it permits employees to express their views and to participate in political management of campaigns, as private citizens without the involvement of their official authority or influence. Third, it specifically defines the meaning of political management and campaigns to include:

First, candidacy for service in political conventions;

Second, participation in political meetings, caucuses and primaries;

Third, preparing for, organizing or conducting a political meeting or rally;

Fourth, membership in political clubs;

Fifth, distributing campaign literature and distributing or wearing campaign badges and buttons;

Sixth, having a publishing, editorial, or managerial connection with political publications;

Seventh, participating in a political parade;

Eighth, circulating nominating petitions; and

Ninth, candidacy for any public office.

It is, as can plainly be seen, our intention to insure that while Federal and District employees are needfully and rightfully free from unwarranted political pressure and coercion, they are at the same time rightfully free to participate in the full political process, if they so choose.

Mr. Chairman, I want to thank you again for the opportunity to appear and to testify on what is a very important issue for particularly your people in the Nation's Capital and the surrounding jurisdictions.

Mr. CLAY. We thank you for that excellent statement, and we appreciate the fact that you have taken your time to come here this morning to confer with this committee.

In view of the fact that you are one of the four or five members of this Congress whose constituency is made up to a great extent of public employees, of Federal employees, we feel that your knowledge and information to this committee is very valuable and with that as a background, I would like to ask you several questions in view of the fact that you have so much at stake personally here.

I would like to ask your opinion on several matters that come before this committee from other witnesses, primarily those who are opposed to revision of the Hatch Act and I would like to know if your feelings concur or agree with theirs.

Several witnesses have told us that they have found that a vast majority of Federal employees are opposed to revisions that are being proposed in your bill, and in the bill, H.R. 3000.

Do you concur with that?

Mr. FAUNTROY. I certainly do not.

The overwhelming complaint that I have from my constituents who are employed by the Federal Government is that they are insulted by the fact that with the opportunity to elect our own local officials, for example, they are expressly prohibited from running for office in the city in which they reside and from taking an active role in the campaign of candidates whose judgments will very directly affect their lives.

So that the persons who have made that accusation probably have apparently not been talking to the people who live in Washington, D.C. The overwhelming majority of my constituents value the right to participate in local government.

I must admit that I am not aware of many residents of the District of Columbia who wish to seek Federal office, the Presidency, since we don't have but one delegate elected, and I just hope that that many will bother to run for that office.

I am hopeful, however, that this Congress, as I think it will in this Bicentennial session, the 94th Congress, will move to what I call, mend the crack in the Liberty Bell. As you know, there is a bell in Independence Hall in Philadelphia, Pa., that was molded over 200 years ago to proclaim liberty, freedom from taxation without representation.

That bell rang 200 years ago and signaled the freedom of American citizens to elect their own local and national officials. Of course, there is a crack in the bell, and through that crack falls some three-quarters of 1 million citizens who have to live here, who pay nearly $1 million in Federal taxes a year, but have no representation in either House.

Once the Congress acts responsibly and provides us that right to elect our own voting representatives in the House and representation in the Senate; it will add insult to the injury now imposed on the citizens, not to allow them to participate in both local and Federal elections.

Mr. CLAY. Some of the opponents of this bill have said in some very vague language, and I haven't been able to determine exactly how it would affect the merit system, but they have said that if this legislation is passed, that it would erode the Federal merit system.

Do you agree with that assumption?

Mr. FAUNTROY. I certainly do not, and it is for that reason that we have included in our bill, the specific prohibition on activities on the

part of Federal employees that affect the merit system, and the process for judging such cases is very clearly laid out with the CSC taking a very strong hand.

I don't think on the one hand that employees of the Federal Government are disposed toward allowing that kind of thing to happen and I take that view because of my experience in handling many complaints of equal opportunity and merit promotion cases in the District of Columbia.

I am sure that with the mechanism that this bill provides, anyone who has the audacity to affect the merit system under this law, would be quickly judged, and would be certainly singled out and embarrassed.

Mr. CLAY. Are you satisfied with the penalty clauses of this provision, or do you feel that there is need for strengthening the penalty clause as to make sure that there will be no coercion?

Mr. FAUNTROY. I would certainly not object, Mr. Chairman, to increasing the penalties, if by doing so we could allay the fears of some Members of the Congress that perhaps the changing of the act would allow coercion.

I think that the stiffer penalty might serve as a more effective deterrent to that kind of action, because it is not our intent to eliminate the initial purpose of the act, which was to protect Federal employees from that kind of coercion.

Mr. CLAY. You have been instrumental in identifying with the struggle for equal rights and civil rights in this community, and I am sure that you are known throughout the country as one of the leaders in the movement for equality of all people and especially the black people.

Do you see any reason why people of minority groups should have any fears or apprehensions about revising the Hatch Act to extend the rights of political freedom to all people, including Federal employees?

Mr. FAUNTROY. I certainly think not.

I think, if anything, it would free those minority employees to exercise more leverage on the political process and thus better protect themselves from abuse.

I have the feeling that the Hatch Act, with its confusion and its vagueness, has promoted more intimidation than obviously, I think, its shapers had intended to the extent that in this area I find many people playing it safe on a political process while, for example, their lives would be affected by who gets elected. They become so intimidated by the Hatch Act question, and its vagueness, that they withdraw.

I think this act will call forth employees to improve the system.

Mr. CLAY. Thank you.

Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

There is coercion, and there is coercion. The people who have opposed this legislation say that it will open up to many opportunities for employees to be coerced for political purposes.

I am aware as a result of complaints that have come to me of coercion that has been exerted upon employees for bond drives and the United Givers Fund, both very worthy things, but they have contests between the branches of government to see which department can sell the most bonds and we have heard there has been considerable coercion there.

So really, coercion has existed, possibly even political coercion, under the Hatch Act. So the risk of coercion is not an argument that stands up.

Mr. FAUNTROY. I think that the clarification of what is allowed and what is not allowed, that the legislation before you offers, would make it easier to identify unhealthy coercion.

For example, I think if we prohibited United Givers Fund drives in Federal buildings, as we intend to prohibit solicitation of funds for political campaigns as a function of one's work, that there would not be that competition that develops.

I think, however, it is a healthy competition for the region, particularly inasmuch as our area is so heavily impacted with Federal employees. But, I think if it was clear to everyone, if any superior or supervisor instructed or implied that if you do not contribute to his candidate's campaign, that he will see you later after the campaign; would be quickly judged and through the civil service mechanism, I think brought to light.

Mr. WILSON. Well, I certainly feel that the penalties we have in here should be sufficient.

If they are not, we can strengthen that part of the bill to be sure that absolute protection is afforded to Federal employees against political coercion. I can't believe that very many Federal employees of any department are going to allow this to happen when they know there are protections through very stiff penalties to those who violate the law.

I want to thank you very much. I regret that I was delayed coming here. I made the mistake of reading in the newspaper what time the meeting was starting this morning. Otherwise, I would have been here at the beginning of your statement.

You are to be commended for the bill you have introduced and the support you gave to this legislation.

Mr. FAUNTROY. Thank you.

Mr. CLAY. Mr. Wilson, you weren't the only one who got confused this morning. The chairman did, too.

Thank you very much. We appreciate your testimony.

The next witness is Mr. Dennis Garrison of the American Federation of Government Employees. Will you identify everyone for the record, please?

STATEMENT OF DENNIS GARRISON, EXECUTIVE VICE PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO, ACCOMPANIED BY L. M. PELLERZI, GENERAL COUNSEL, AFGE; STEPHEN KOCZAK, DIRECTOR OF RESEARCH, AFGE; AND CARL K. SADLER, LEGISLATIVE REPRESENTATIVE, AFGE

Mr. GARRISON. Thank you, Mr. Chairman, and members of the committee staff, we are pleased to have the opportunity to appear before this committee in behalf of our membership and to make our views known on this very important bill, H.R. 3000, that provides the Federal workers freedom for political activities.

I am happy to have with me this morning our general counsel on my right, Mr. Lew Pellerzi; and on my left the director of legislation, Mr. Carl Sadler; and the director of research, Mr. Steve Koczak.

We are gratified to appear today and to express our pleasure that Congressman Clay is the chairman of these hearings.

We can assure you that AFGE, representing over 650,000 employees of the Federal Government, applauds this subcommittee's determination to bring about the political emancipation of a large segment of the American public.

There are nearly 3 million Federal employees who suffer under the discrimination and limitations of the Hatch Act. The direct burdens resulting from this discrimination are apparent. But there are hidden burdens as well for those employees who fear invoking their rights, given them by the Lloyd-LaFollette Act of 1912, even to petition Congress and its committees.

One of the most pernicious aspects of the Hatch Act is the impact it has on the mentality and psychology of some Federal employees. This is not, of course, a matter of law. It is a matter of an attitude which has developed in Federal employees largely because they are constantly warned not to violate the Hatch Act, either directly or indirectly. The fear of reprisal for even speaking about legislation or for writing their legislative representatives should be immediately removed.

Federal employees will not be first class citizens until they are free to run for any public office and to participate fully in the political activities which are lawful for other citizens. The legislation which is needed is legislation which protects employees' right to freedom in the political area without fear of reprisal. The protection which the public needs is legislation which prevents the establishment of a spoils system built on political favoritism within the governmental apparatus and which assures the American public that it will be served impartially by its public employees regardless of differing political views.

AFGE has testified a number of times on proposed revisions of the Hatch Act. We appeal to Congress to rectify the longstanding injustices caused by that law. We believe H.R. 3000, which now has 54 cosponsors, is a great liberating piece of legislation. We request permission to insert into the record a brief historical paper describing the different meanings given to the term "political activity" since the creation of the Federal career merit system in 1883 under supervision of the Civil Service Commission.

We would like to turn now to a discussion of this bill. In discussing H.R. 3000, we will first outline our views on the issue of increased political participation for employees, then we will turn to the subjects of penalties for violations, enforcement, and protection of employees.

We support the provisions of H.R. 3000 which permit voluntary personal participation of a Federal employee in political activities. Section 3 of H.R. 3000 reiterates the present language of section 7324 of title 5, United States Code, under which an employee retains the right to vote as he chooses, to express his opinion on political subjects and candidates; it adds the important provision of asserting the right of an employee to take an active part in political management or in political campaigns in his role as a private citizen and without involving his official authority or influence.

AFGE has strongly supported for many years the passage of legislation which would permit the full participation of all Federal employees in political management and political campaigning. The sole restriction might be the statutory prohibition of specific conflict-of-interest situations which would interfere with a particular Federal employee's ability to perform his particular official duties with efficiency and integrity. For example, an employee clearly should not remain in an active duty status while campaigning for elective office if the clients of a Federal program he administers include many of the voters whose support he is seeking.

The U.S. Civil Service Commission could be authorized to issue, after consultation with employee unions, general regulations covering such conflicts of interest. Individual Federal agencies could be authorized to negotiate more specific regulations with the unions representing employees in that agency.

In section 3(c) regarding political management and political campaigns, we believe that if the right to run for public office is to have any practical meaning, it would be helpful if H.R. 3000 would explicitly require the agency to give the employee leave to campaign. This leave should take the form preferably of annual leave, if the employee desires, and in any case leave without pay if the employee does not have sufficient accrued annual leave.

If H.R. 3000 is enacted, Federal employees will be granted full political activity. This means that they can join political parties; write letters to political newspapers and formulate editorial and managerial policies of such journals; distribute campaign literature, badges and buttons, and manage such campaigns; solicit votes for candidates in political primaries and elections; serve as delegates to political conventions; and run for political offices.

We would like to turn now to our views on the subjects of penalties for violations of this law, enforcement, and protection of employees.

H.R. 3000 contains two provisions that protect Federal employees from coercion, although their full purpose is somewhat broader. These provisions also serve to protect the public service, the elective political process, and the general public against improper political activities on the part of Federal Government employees.

First, section 2(a) provides that an employee in an executive agency, including a Presidential appointee, may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An exception is made for voluntary contributions to candidates for public office.

It provides for flexible administrative penalties for violations of this provision, as found warranted by the Civil Service Commission, but not less than 30 days suspension without pay.

The remainder of section 2 provides for enforcement of this provision by the Commission, including processing complaints, making investigations, imposing appropriate administrative penalties on employees in the competitive service, reporting violations by Presidential appointees to the President and others for action, and referring all cases to the Attorney General for possible prosecution under the criminal code. Criminal penalties for prohibited solicitation of contributions may range up to a $5,000 fine or a prison term of 3 years, or both.

Second, section 3(a) provides that an employee in an executive agency or an individual employed by the government of the District of Columbia may not use his official authority or influence for the purpose of interfering with or affecting the results of an election.

However, unlike the earlier provision covering the solicitation of political contributions, H.R. 3000 does not establish detailed procedures for enforcing this second provision covering interference in elections.

Section 4 does, indeed, authorize the Commission to make findings of violations and to impose flexible administrative penalties in either case, but in the case of the use of official authority to influence an election no specific distinction is made between competitive and Presidential appointees; there is no reference to processing complaints and making investigations; and there is no provision for referral to Justice Department for criminal prosecution.

While we regard both as desirable provisions, we believe they could each be made more effective in terms of protecting employees from coercion in connection with political activities, if the following amendments were made:

1. Section 2(a) should provide for Commission action in the case of employees in the excepted service, other than Presidential appointees. We believe that there should be a uniform system of administration, enforcement, and penalties covering all employees in the executive branch.

Exempting excepted employees from the enforcement provisions might also add to the pressures to except additional employees from the competitive service.

2. The Civil Service Commission should be given express authority to develop and issue, after consultation with employee unions, such regulations as may be necessary to carry out the purposes of the bill.

3. The section 3 (a) prohibition against the use of official authority to interfere in elections should be expanded to include other parts of the political process enumerated in the bill, in addition to elections. It should expressly prohibit, for example, the use of official authority to coerce any political actions of any employee in the Executive branch.

4. The Commission should be directed to establish an adequate organization and seek adequate appropriations and other resources to effectively enforce the provisions of the bill. Such enforcement should be positive in nature and made a part of regular Commission inspections of agency activities.

5. Criminal penalties should be provided for violations of the prohibition against the use of official authority to affect an election or other parts of the political process, comparable to those penalties now provided in the case of solicitation of political contributions, and all such violations should be deferred to the Justice Department for possible criminal prosecution.

Appropriate amendments should, therefore, be made not only to section 602 of title 18, United States Code but also to such other sections of title 18 as 594, 595, 599, 600, and 606. The purpose of such amendments would be to provide comparable criminal penalties for misuse of official authority as well as for solicitation of contributions.

For example, intimidating or coercing an employee to support a candidate or to work in a political campaign should be subject to the same administrative and criminal penalties, and the same enforcement procedures, as intimidating or coercing a employee to make a political cotribution.

6. An employee should be guaranteed a hearing, if he so requests, before removal from the service by the Commission because of violations of any of these provisions.

The General Counsel of the AFGE would be pleased to work closely with this committee and its staff in developing these points in more detail, and in drafting appropriate statutory language, so that the provisions for administration, enforcement, violations, and penalties are made as effective and uniform as may be needed to protect Federal employees from coercion, as they exercise their long-sought rights to participate in political activities like their fellow citizens.

We urge the prompt passage of H.R. 3000 with amendments such as those we propose. We appreciate this opportunity to make our views known on this matter of vital concern to millions of Federal employees.

The Watergate experience of recent history reveals that, the power to abuse political office, as it did in 1883, exists primarily at the top echelons of the executive branch.

[The brief historical paper follows:]

A BRIEF HISTORY OF THE MEANING OF "POLITICAL ACTIVITY" (1883–1975) WITH SPECIAL REFERENCE TO THE HATCH ACT OF 1939

When the Civil Service Commission was established in 1883, the country was preoccupied with the abuses of "political activity" such as it had experienced under Presidents Ulysses S. Grant and Rutherford Burchard Hayes. Popularly, these abuses are known to history as the "Spoils System". The assassination of President James Abram Garfield by a disgruntled and unbalanced office seeker, Charles J. Guiteau, led to the national conclusion that the Federal Civil Service should be rendered as immune as possible from the excesses of the political system.

For this reason, immediately after its establishment in 1883, Civil Service Commission issued Rules I and II which reads as follows:

> Rule I. No person in said service shall use his official authority or influence either to coerce the political action of any person or body or to interfere with any election.
>
> Rule II. No person in the public service shall for that reason be under any obligation to contribute to any political fund, or to render any political service, and he will not be removed or otherwise prejudiced for refusing to do so.

It is significant that these first Civil Service Commission Rules placed major emphasis on the need for eliminating the type of political activity which had become the bane of the public service. It is also significant that these first two Rules placed no limitation on the genuinely voluntary political activity of any person, provided such activity did not involve coercion of any other person either to participate or not to participate in the political forum.

Although the United States was confronted with many domestic and international crises in the next half century (1883 to 1933), no major changes took place regarding the Congressional attitude toward "political activity". It is true that the Executive Branch, including President Theodore Roosevelt, construed strikes by postal employees as coming under the general concept of political activity and he issued executive orders to dismiss any postal employee with prejudice who participated in a strike. As a result of his action and actions by postal officials seeking to discipline postal employees solely for their petition-

ing Congress for legislation to protect their rights, the Lloyd-LaFollette Act was passed asserting the right of every Federal employee to communicate directly with Congress. The Lloyd-LaFollette Act, therefore, construes such "political activity" by Federal employees as both appropriate and legal.

THE HATCH ACT (1939)

The Hatch Act became law on August 2, 1939. It was passed by a Congress that was concerned by what it considered a dangerous growth in presidential powers during the first two administrations of Franklin Delano Roosevelt.

President Franklin Delano Roosevelt, upon election, found himself confronted with a major depression at home with near bankruptcy of the entire banking system and with a threat of the collapse, as he saw it, of the entire democratic political structure of the United States. It is also not irrelevant to recall that, Adolph Hitler and Franklin Delano Roosevelt came to power in the same month in 1933. Consequently, President Roosevelt also saw in the international area the United States and the world democratic states confronted with the question of survival.

Confronted with these powerful disruptive forces both at home and abroad, Franklin Roosevelt resorted to a series of emergency actions, including the National Recovery Act, the Agricultural Adjustment Act and other measures. These were declared unconstitutional by the Supreme Court. As a reaction to these judicial decisions, in 1937 Franklin Roosevelt sought to "pack the court". Failing this, in 1938 he sought to use the vast resources and expanded bureaucracy and funds of the Federal government to "purge" his political Congressional opponents in the primary and general elections. Following those elections, in which he failed to achieve his electoral goals, reports circulated that Franklin Roosevelt also intended to run for a third term to assure the continuance of his program.

Concurrently, the international crisis both in Europe and in Asia, (e.g. Spanish Civil War, Italian conquest of Ethiopia, Japanese invasion of China, German annexation of Austria, Nazi demilitarization of the Rhineland,) had led to a divisive and intense debate within the United States itself as to the "future wave" of the new totalitarian doctrines.

The Congress, therefore, became preoccupied not only with President Roosevelt's aims but also the "political activity" of adherents of totalitarianism. Thus, "political activity" took on a radically different meaning than it took in 1883.

To meet these multiple new kinds of "political concerns", the Congress in August 1939 passed the Hatch Act (we should remember that only a month later, September 1, 1939, Hitler invaded Poland and World War II began). Consequently, the Hatch Act defined "political activity" in the broadest terms possible in a context of crisis. A careful reading of all its provisions demonstrates the real rationale behind the drafters of this legislation. For example, Section 9A states, as follows:

> Sec. 9A. (1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organiztion which advocates the overthrow of our constitutional form of government in the United States.
>
> (2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

THE SITUATION IN 1975

Since the enactment of the Hatch Act, Congress and the Executive Branch have taken specific actions to exclude from political life the greater part of those "political activities" with which the authors of the Hatch Act were preoccupied. For example, Article 22 of the Constitution now limits the terms of office of any President to two. Article 24 has abolished the poll tax. Article 26 has reduced the voting age to eighteen. As for "national security", "conflict of interest", "conduct

unbecoming a Federal official", "disclosure of financial assets", these have been defined by statute and interpreted by the courts. Under these circumstances, it is evident that specific, explicit legislation already exists to deal with subversion of the public welfare either for ideological, political or economic reasons by officers and career employees of the Federal service. The sole issue that remains, however, is the ability of the sole elected political officer, the President, and his senior advisors, including members of the Cabinet and of the excepted service personnel, to coerce subordinates to achieve political results.

Mr. CLAY. We certainly want to thank you for a comprehensive review of provisions of H.R. 3000 and we certainly appreciate the recommendations that you have made for improving the bill.

I am sure that the committee will seriously consider these recommendations and in all probability will incorporate most of them into the original bill.

On page 5 of your statement, where you speak of the bill providing flexible administrative penalties for violations as found warranted by the CSC but not less than 30 days' suspension without pay, we have had testimony from members of the Commission indicating that perhaps in some instances 30 days' suspension without pay would be too harsh for very minor violations.

Would you tend to agree with that, that they ought to be given more flexibility in terms of penalties based on the seriousness of the act?

Mr. GARRISON. Well, I would think so, but I would believe, in any case, that it should not be less than 30 days.

Mr. CLAY. So you agree with the bill as it is presently written?

Mr. GARRISON. I do.

Mr. CLAY. We have also had criticisms from some opponents of this bill and in view of the fact that you represent an organization composed of some 650,000 Federal employees, I would like to have your response to this criticism.

Some individuals suggest that passage of this legislation is simply a device of unions in order to enlarge their power base.

What is your view on this matter?

Mr. GARRISON. Mr. Chairman, I think nothing could be further from the truth.

We work with Federal employees in the union and some out of the union and I cannot recall in the past several years that I have talked to a single Federal employee that did not want the repeal of the Hatch Act where they could act as any other citizen in the political arena.

Mr. CLAY. We are also hearing all kinds of figures of so-called facts from surveys that are supposedly being made to reflect what the general opinion is of Federal employees.

What assurance can you give us that your opinion accurately reflects the opinion of the general membership of your organization?

Mr. GARRISON. At our national convention where we represent, of course, full membership, there was a resolution passed for revision of the Hatch Act and it was a unanimous vote. We had not one vote against it.

And Mr. Chairman, this was not only in 1974. It happened in 1972 and 1970 and as far back as 1968 as I can remember.

Mr. CLAY. So in effect what you are saying is that representatives of your total membership at a convention have gone on record as saying that there needs to be some revision of the Hatch Act?

Mr. GARRISON. Yes, sir.

Mr. CLAY. Thank you.

Mr. Wilson?

Mr. WILSON. Mr. Garrison, what percentage of the Federal employees do you have in your organization, about 35 percent? Are there about 3 million Federal employees?

Mr. GARRISON. Less than 2 million. We represent about one-third of those. And about two-thirds of them are unionized, belong to some union, and we represent about one-third.

Mr. WILSON. I have been asking whether or not the organizations felt that the Civil Service Commission was an appropriate body to administer this act in the event we do amend the Hatch Act, as we hope to. The Letter Carriers suggested the Justice Department should administer the new law.

Do you have any feelings on it one way or another? Do you trust the Civil Service Commission?

Mr. PELLERZI. Well, Mr. Wilson, as we indicated in our statement, we think that the protections in the statutes should be greatly strengthened and, if I may allude to my personal experience, I enforced the Hatch Act for 3 years as General Counsel for the Civil Service Commission, and we weren't too effective for a number of reasons. One had to do with the level of appropriations.

The provisions in this bill providing for split enforcement in a sense, administrative enforcement by the Civil Service Commission, criminal enforcement by the Justice Department, in the real world brings up a problem which I think interferes with enforcement in both areas.

For instance, if you have a violation of the Hatch Act that could constitute a criminal violation, the standing directive of the executive branch is that that matter must first be referred to the Justice Department for possible criminal violation.

In the meantime you are sitting on a clear violation for which you could enforce an administrative penalty but you may wait a year or 18 months for the Justice Department to decide that that case is not a criminal case and refer it back to you.

In the meantime your evidence and your witnesses are cold.

I would think that under the type of procedures that we feel should be in this statute that enforcement should be in the Justice Department; or, if enforcement is left in an administrative area, then there ought to be mandatory penalties of removal prescribed by the Congress.

You find that—and I think the history of the Corrupt Practices Act shows that there were not appropriate—not appropriate—prosecutions under the Corrupt Practices Act prior to Watergate. I think here that the greatest care and attention should be provided to where the enforcement is and what the penalties are and I think you ought to look seriously at mandatory penalties for removal and particularly among the high level Federal employees.

Coercion in a bureaucracy comes down from the top and I know that when I first looked at the Hatch Act enforcements, 90 percent of the cases involved the very lowest level of employees. The coercion was coming down from above those levels and those people were not being prosecuted.

Mr. WILSON. I am inclined to agree with you that the Civil Service Commission should be administering this.

Just to get something straight, you said that all the people you knew in your organization were for repeal of the Hatch Act. I don't think we want to repeal the Hatch Act. We just want to amend it.

We are trying to amend it because there are many good parts of it. So you don't want them to repeal it.

Mr. PELLERZI. I think our position is we want to modify it to strengthen the prohibitions, to liberalize the participation of employees in the political process, and we don't want to do anything that is going to weaken or detract from the merit system.

Mr. WILSON. I was a little surprised—here on page 8 you say the General Counsel would be pleased to work closely with this committee and staff in developing the suggestions you have previously made—in drafting appropriate statutory language.

I was under the impression that all of the employee organizations have been invited to participate in the drafting of the original bill and I was a little surprised that you are waiting until now to come in and make your recommendations in this respect. It seems kind of late.

You have made some recommendations and you will now work with the staff and the committee and try to develop these changes to a more refined point?

Mr. PELLERZI. That's right.

Mr. WILSON. We are, as you know, getting set, I believe, next week to go out into the field and the first of these will be in Prince Georges County and Fairfax County.

I have a feeling that there are going to be people come there who are Federal employees who are going to be speaking against amending the Hatch Act. It would be interesting to know if they are being coerced into opposing H.R. 3000 by their supervisors. I don't know whether we will be able to find this out or not.

That is why it is so important that we know that your resolutions that you pass at your conventions actually are supported by your membership, that there is no deviation.

Obviously you will always have some sinners in any organization, but you can assure us, just as the postal organization, that when a resolution is adopted it isn't shoved down anybody's throat at a convention, it is the democratic process that is followed?

Mr. PELLERZI. That's right.

Mr. WILSON. And you can assure us that of the 650,000 people you represent at least 95 percent of them are in favor of your position?

Mr. PELLERZI. Overwhelming.

Mr. GARRISON. Mr. Chairman, I am sure you know that there is no way we can ram something down their throats, if we wanted to.

Mr. WILSON. I know that there are pretty rough sessions, and very democratic sessions.

Mr. GARRISON. I would like to give one illustration or example, if you please, where I think that it is so unfair and that is where we have support type contracts in the Government and our employees are

working side by side with the contractor employee and we are all being paid out of the same kitty, just a different pocket, and the contractor employee is allowed to participate in any manner that he wants to where the Federal employee working side by side with him is not allowed to get mixed up in the political activities.

And this is hundreds of thousands of employees that are allowed to do this where the other Federal employees are unable to participate.

Mr. CLAY. It is 1½ million employees under contract by the Federal Government who receive more than 50 percent of their income from the Government and are not prohibited from activities in politics.

Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman.

We appreciate your comments on this important measure and it should be extremely helpful to the committee to have the benefit of your thinking.

The Civil Service Commission previously testified that it would be most difficult to draft effective anticoercion regulations if the Hatch Act were amended as suggested in H.R. 3000 that is now before us. Could you comment on that statement?

Mr. GARRISON. I believe I will let our General Counsel for Civil Service Commission for several years, who worked with this problem—if he will comment.

Mr. PELLERZI. I look at that in this context: the original theory of the original Hatch Act was that in the realities of political life the only way you could insulate the career service and protect its integrity from political coercion was to bar certain activities. That is the theory of the Hatch Act, that you shall not do certain things if you are a public employee.

It was the wisdom of the Congress at that time that that was the only way you could be realistic about it.

We believe that the sophistication of the public and the media exposure, the opening of government through the Freedom of Information Act and the type of ethical and moral development in this Nation with respect to political processes over the years has made that type of theory no longer viable.

But in lieu of saying to the Federal employee "Thou shall not," what we are suggesting to this committee is that the committee say with respect to the prohibitions against coercion and with respect to the penalties that the committee say "Thou shall not" in a criminal law sense.

That leaves no doubt thou shall not coerce, thou shall not take reprisals, and I think if you use that fundamental focus on the approach, I see no reason at all why you can't construct regulations and criminal penalties in an enforcement system that will protect the integrity of the career service and prevent the manipulation of the bureaucracies to the advantage of the benefit of any political party or system. I think it can be done; just as the Hatch Act initially said to the Federal employee thou shall not do certain political things, I think we can now say to the leaders of the bureaucracies and to the Members of Congress and to whoever would be in a position to manipulate that bureaucracy that you shall not manipulate it, that you shall not coerce it, and do that in a way that would be effective.

I don't see that that is insurmountable at all.

Mr. GILMAN. We welcome having any suggestions or drafts in support of your recommendations.

Mr. PELLERZI. It is a very complicated subject and we will be glad and I will make myself available to your staff to give them whatever assistance they would like to have. It is very complicated.

Mr. GILMAN. Based on your suggestions, if you could submit these recommendations to the committee they would be extremely helpful to us.

Mr. PELLERZI. I would be glad to.

Mr. GARRISON. Our research director has done a lot of research work on this.

Mr. KOCZAK. I think that our attachment to this document goes into some of the corrections that have already taken place.

This act was passed in August of 1939 and it was a period of crisis and the Congress was preoccupied with all the turmoil both in the domestic American life and with the international situation.

World War II was about to begin then.

Since the enactment of the Hatch Act there has been a long series of protections already enacted by the Congress which take care of the specific fears which were then being covered by general legislation.

The Hatch Act was a catch-all legislation to try to include all kinds of specific activities for which there was no explicit legislation.

I believe that the Commission itself does have on the record, and Congress has enacted, laws on a whole series of other regulations which have addressed these problems which are covered generally by the Hatch Act, so that we no longer need the Hatch Act as a general blanket to cover certain types of activities.

I think this is one of the elements that the Commission has not kept in mind.

Conflict of interest has been rather clearly defined. We have a great deal of experience in political decisions on this.

Mr. CLAY. Thank you for your comments.

Gentlemen, do you believe that the amendments to the Hatch Act would result in a more willful participation or more forced participation in politics?

Mr. GARRISON. Much more.

Mr. CLAY. Could you explain that for us?

Mr. GARRISON. Well, my experience as a Federal employee and my experience in representing Federal employees for 16 or 17 years, some Federal workers really are afraid to get too mixed up in politics, and some Federal employees really hide behind the Hatch Act as a way to get out of participating or voting or any others which they say well, they are prohibited to participate, so they have no voice in the political activities.

Mr. CLAY. Of course, in the latter category, then, you are going to have those who are going to be forced to participate because they could no longer use it as a shield.

Would you agree with that?

Mr. PELLERZI. Not if we draft this bill properly, they shouldn't be able to be forced to participate.

Mr. CLAY. On page 4, Mr. Garrison, you say you want H.R. 3000 to grant leave for political purposes. Do you think there may be some critical areas in government where that could be a problem; for example, the Justice Department or Defense or some of the other

more critical areas, where it could disrupt some important activity by having a mandatory leave?

Mr. GARRISON. I really don't think it would disrupt any operations or any of the Federal activities.

I think that you always may find some provisions for accepting a position or to go on leave or to take leave without pay, whatever the case may be.

Mr. CLAY. Who should be the final judge, then, of who could take the leave?

Mr. GARRISON. Well, I would assume that it would be the agency who would be the one who would make the first ruling and, assuming it would be something in the bill that the Civil Service Commission would have the final say.

Mr. WILSON. I wonder if you would reintroduce yourselves to us. A couple of the members came in afterwards and do not realize you are not Mr. Webber.

Mr. GARRISON. I am Dennis Garrison, the national executive vice president.

Mr. Webber happened to be out of town, so I am filling in for him.

Mr. GILMAN. Thank you. I appreciate your clarifying the record.

You suggest at the bottom of page 3 of your testimony that the Civil Service Commission should consult with employees' unions over the conflict of interest problems. Could you explain what sort of consultation you are referring to, what sort of mechanism referred to——

Mr. GARRISON. Yes. Whatever regulation that was provided by the Commission, that was allowed, I would say, by the bill—I certainly think before the final regulation goes out by the Civil Service Commission that they should consult with Government employees' unions.

Mr. GILMAN. Well, are you then implying that the unions should have an opportunity to veto any proposed legislation, any proposed regulation?

Mr. GARRISON. Absolutely not.

Mr. CLAY. Will the gentleman yield?

This is a standard procedure in Government. We put it in all types of legislation giving those people affected by regulation the right to comment in writing about the regulation that would affect them. It doesn't give them any right to veto.

Mr. GILMAN. Is that what you are implying in your testimony?

Mr. GARRISON. Mr. Chairman, we have national rights with about 34 different agencies in the department already, and on all of the regulations that goes out the bulk of the Federal employees, we do have a right to be consulted and to make our recommendations known prior to the finalizing of the regulation that affects the Federal employees.

Mr. GILMAN. You have spent a considerable amount of time in reviewing the definition of political activity. Do you feel that the terms political activity and merit principle are mutually exclusive?

Mr. GARRISON. I don't think so, no.

Mr. GILMAN. Could you explain that for us?

Mr. PELLERZI. Yes, Mr. Gilman. The Hatch Act has permitted a certain degree of political activity by Federal employees consistent with merit principles. To look at the Federal bureaucracies today,

having lived under the Hatch Act, and say that it will be like that in the future if you open it up without the kind of protections that we are talking about may be questionable, however, we see no inconsistency between merit principles and political activities.

Political activity is a constitutional right.

The present Hatch Act and its enforcement by the CSC and by heads of agencies in the excepted service makes a distinction between taking an active part in political campaigns and taking an active part in political management and taking an active part as a candidate, and those three levels of activity, political campaigning on behalf of an individual Federal employee to get out into the street with a leaflet or whatever, to go to a convention, to take a role in that convention, and so on, is one type of activity; to manage a campaign, to be an officer of a political party, to be on a committee, to be a political manager, is another type of activity; and to be a candidate is a third type of activity.

It is obvious that the bill allows candidacy. The amendments to the Federal Campaign Act with respect to State-funded activities did not go that far.

But I would think that with appropriate safeguards built into the bill that all three of these levels are consistent with merit principle and indeed in the impacted areas in the District of Columbia here, and a half dozen other places in the country, the Civil Service Commission under the present act has authorized Federal employees to participate in political campaigns on a "nonpartisan basis" which is really not nonpartisan.

So the answer to that question is that you are not incompatible.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. CLAY. Mr. Harris?

Mr. HARRIS. I just have a couple of quick questions.

I appreciate your testimony; it is very much to this point.

As I was reflecting on this, it occurred to me that there are a number of political activities that are permitted to the Federal employee now; is that correct? He can make contributions to a candidate, if I understand it?

Mr. GARRISON. That's right. He can. And he can, of course, vote for the candidate of his choice. And——

Mr. HARRIS. He can speak at a meeting and that sort of thing.

My point is, as I reflect on it, it occurs to me that that type of activity is more susceptible to subtle coercion than the type of activity that is authorized in addition by this bill, and I would like to have your reaction to it.

It seems to me it would be hard to use coercion to have a guy run as a candidate for office, and actually the area that Mr. Clay's bill proposes to open up for the Federal employee actually says in the past you have been authorized to be one of the troops, we are going to let you assume some positions of leadership, and it seems to me—and I don't know how you would react to this, and I would like to hear it—it is harder to use coercion by a supervisor to get them to do that than the things he is already authorized to do.

Mr. PELLERZI. Well, I believe Mr. Wilson, in a question and Congressman Fauntroy said we know how subtle coercion can be and I think, Mr. Harris, that is what you are aiming at.

I think you are—based on my experience your perception of the problem is absolutely on target.

The kinds of things that are now permissible and the kinds of things that would in political parlance translate into mass services, mass participation, being down there at night stuffing the envelopes and ringing the doorbells and hauling people around and putting out a crowd at the rally, those things are subject to the type of subtle coercion we are talking about.

But I would say that in order to free them up and to insulate against the abuse of it, you have to deal with the bigger problem of people relationships. In answer to Mr. Gilman, a bigger problem involves employees at their level trying to distort this for purposes of promotion or career movement rather than coercion.

You have the idea of using this outside the merit system to advance their own interest.

Here again I think that the law has to be drawn so that you don't gain merit advantage or merit system advantage by political activity.

So I would answer your question by saying in effect that there is a certain degree of coercion that comes from just having that freed up within a hierarchal system and that is going to come when a supervisor's politic is known.

The people under him, just being human beings, are going to do certain things in his favor and if they can make some advancement in the career as a result of it, they are undoubtedly going to do it.

The system then permits it and the system has to be designed to stop that.

The type of coercion that you are talking about is the same type of thing that occurs when a new Attorney General is appointed; for example, when Tom Clark was appointed Attorney General he wore a bow tie and all of a sudden there were bow ties all over Justice.

Well, this kind of thing is going to take place.

When you have a supervisor who is known as a staunch Democrat or Republican and everybody is free to participate, this thing is going to happen.

But I think appropriate provisions of the law to make sure it doesn't result in somebody getting the promotion outside the merit system or it doesn't result in a reprisal against somebody who doesn't want to take part is what is going to have to be done at that very low level.

Mr. HARRIS. Thank you.

Mr. CLAY. Thank you for your excellent testimony this morning. We will be getting in touch with your staff in terms of getting together with what you think ought to be put into the bill.

Mr. GARRISON. We would be happy to cooperate with you.

Resolution, obviously, can come only from the Congress. The Supreme Court, in its decision of June, 1973, in the case *U.S. Civil Service Commission* v. *National Association of Letter Carriers*, held that the Hatch Act is constitutional, that the Congress is empowered to forbid employees from engaging in partisan political activity and that the language of the act is not overbroad or vague.

Writing for the Court, Justice White said:

> The problem in any case is to arrive at a balance between the interest of the employee as a citizen, in commenting upon matters of public concern, and the interest of the government, as an employer, in promoting the efficiency of the

services it performs through its employees. Although Congress is free to strike a different balance than it has if it so chooses.

Perhaps Congress at some time will come to a different view of the realities of political life and government service.

It is our hope that the Congress has now come to that "different view," and will act affirmatively to grant Federal workers the right to participate in the public affairs of their communities, their States and the Nation.

Any attempt to analyze the impact of the Hatch Act must start with a viewing of the law in relation to the historical period of its enactment.

In response to pressure to investigate alleged use of relief work funds for political purposes, Congress established a bipartisan committee in 1938. The deliberation of the "Sheppherd committee" resulted in 16 recommendations which formed the basis for the anticorruption bill introduced by Senator Hatch.

Mr. CLAY. The next witness will be Mr. Kenneth Lyons.

STATEMENT OF KENNETH LYONS, NATIONAL PRESIDENT, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY ALAN J. WHITNEY, EXECUTIVE VICE PRESIDENT; MICHAEL RISELLI, GENERAL COUNSEL; AND GARY ALTMAN, DIRECTOR, RESEARCH DEPARTMENT

Mr. LYONS. My name is Kenneth T. Lyons, national president of the National Association of Government Employees.

To my right is Alan Whitney, executive vice president; to my left is Michael Riselli, general counsel; and at the end of my table, to my left is Gary Altman, director of our research department.

Mr. Chairman, at the outset, may I express the thanks of our organization to the subcommittee for its initiative in addressing the critical question of the lack of political franchise of Federal employees.

Few subjects have generated more debate and less action than the advisability of amending or eliminating the statutory restrictions on Federal employee activity as set forth in the Hatch Act. Speaking for the National Association of Government Employees, we are happy indeed that this subcommittee has taken the all-important step of holding public hearings on this issue.

However, of these 16 proposals, only 8 related specifically to political activity, and they dealth essentially with the appropriating of funds for political purposes, the buying and selling of civil service positions and the contribution of political donations by Federal employees.

Although these points addressed by the Sheppherd committee were written into the Hatch Act, the law went further and restricted all partisan political activities by Federal employees and other public employees paid with federally administered funds. Initially, an employee found to have violated the act faced dismissal from his job, the penalties, however, have been lessened by amendments over the years.

Section 9a of the original law (codified in chapter 72, U.S.C., title 5) restricted political activity on the part of administrative or supervisory personnel. This section generated much debate in the House in 1939.

Congressman Hobbs, with only minor overstatement, warned:

> If you do this thing, you not only violate the Constitution, you not only violate every natural right of every citizen in the United States, but you divest him of citizenship and you have set up the process of disintegration whereby the government "of the people and for the people" will have begun to perish from the earth.

And Congressman Kennedy added:

> I think there should be another amendment to this bill, and that amendment should provide a lawyer for every W.P.A. worker because I do not know how any citizen can be xpected to know his rights if we pass this bill.

But the warnings of these perceptive individuals went unheeded, and the result has been to deprive Federal workers for nearly 40 years of one of the most basic and integral rights accompanying membership in a Democratic society. And the effect of the inequity has grown enormously: in 1939 the act appliedto about 500,000 e mploees; today, there are more than 2½ million Federal workers.

From our analysis of the debates preceding passage of the Hatch Act, it appears that only two extremes were considered: no restrictions at all and complete restriction on partisan political activity. That Congress responded to the clamor for reform by adopting the harshest extreme is regrettable, but not surprising. Had Congress attention been more appropriately focused on the corruption aspects of the issue, we believe that it most likely would have enacted more moderate legislation which would have done less damage to the important and sensitive first amendment rights of the individuals affected.

The decline of the so-called Little Hatch Act provides an analogous situation to the Federal statute, which exemplifies the growing public and legal sentiment against laws restricting the political activities of public employees. Most States have on their books legislation limiting political activity similar to the Hatch Act. However, there is a growing tendency on the part of State courts to question these statutes, with the central question being whether they strike an appropriate balance between the public's right to a politically untainted civil service and the individual's right to full citizenship.

A State has the authority, as does the Federal Government, to restrict the activities of its employees in the political sphere if this is done within reasonable bounds in accordance with the principles set forth in 1947 by the Supreme Court in its noted *Mitchell* decision. However, State courts have gone beyond the doctrine of *Mitchell* and further required that any limitations of first amendment rights must be justified by a clear public interest and directly threatened evils.

The California Supreme Court articulated this "rational relationship" requirement as follows:

> (1) That the political restraints rationally relate to the enhancement of public service,
> (2) That the benefits which the public gains by the restraints outweigh the resulting impairment of constitutional rights and,
> (3) That no alternative less subversive of constitutional rights are available.

State court decisions offer a variety of standards which Congress may consider in reevaluating the desired extent of Federal legislation in the area of political activity. More important, these standards

generally offer a different and more relevant rationale than that enunciated some 28 years ago in the *Mitchell* decision.

These respective State court rulings have required that there be a compelling public interest, or a rational relationship between those standards adopted and the legislative goals sought. This is a major step beyond the "reasonable limits" standard set forth in *Mitchell*.

In dealing with such sensitive issues as first amendment rights, we believe that the statutory provisions must be clearly defined so that there is no room for doubt or confusion. Also, the objective of efficiency and integrity in civil service must be carefully balanced against those negative effects which necessarily accompany the imposition of restrictions on political activity.

In our view, the present law does not constitute a proper balance. We concur with the Federal District Court in the case of *Manusco* v. *Taft*, when it said:

> Whatever the current status of *Mitchell* as law, it appears that the facts of *Mitchell*'s words are not the facts of life today.

In 1966, Congress established the Commission on Political Activity on Government Employees. The Commission was charged with the responsibility of making a complete study of laws which limit or discourage the participation of Federal employees in political activities.

After nearly a full year's work, and hearings held in six cities, the Commission offered 10 recommendations, which to this date have not been adopted. H.R. 3000 incorporates those recommendations which the Commission proposed. However, the bill also deals with the dilemma which was not resolved by the Commission, that is, whether Government employees should be allowed to run for public office. The National Association of Government Employees is in complete agreement with section 7324, which would permit a Federal employee to take an active part in political activity.

The State courts, in discussing the issue of candidacy for elected public office, stated that precautions should be taken against situations where a public service employee might run against his superior. Otherwise, they have not spoken authoritatively on the candidacy question.

It is conceivable that full-time candidacy could misdirect an employee's attention from his work and this should be prevented. The National Association of Government Employees believes that leaves of absence could be permitted to encourage political participation, as is done by some private employers.

While we believe it would be beneficial to liberalize those provisions restricting political activity, we also believe that the penalities for coercion and solicitation of contributions for political purposes while on duty are not strong enough and are in need of revision.

In the interest of achieving the objective enunciated by the Commission on political activity, that is, to enact narrow and specific legislation, we recommend that the subcommittee consider incorporating section 1622 of the Commission's proposed bill into section 7323 of H.R. 3000. The Commission proposal cites specific examples under the general heading of "Coercion, Solicitation, Illegal Payments, and Prohibited Activities," and would provide a useful standard for the guidance of employees.

To restate, Mr. Chairman. some of the points which we made in our 1967 testimony before the Commission, it is our positon that we are dealing here not only with the right of employees to participate on a partisan basis in the governmental affairs of their communities, but also with the right of their communities to the full participation of those individuals who can bring intelligence and dedication to bear on the critical problems facing our local jurisdictions.

If the political structure of a community is along partisan lines, then we feel that it works against good government to force Federal employees to limit their participation to nonpartisan activities.

The implication also has been advanced that Federal employees possess more political freedom under the existing law than many care to exercise.

Regrettably, we must agree that this is so. However, it constitutes no rationale for limiting anyone's political rights. We doubt that anyone would seriously suggest that because a substantial percentage of the eligible American electorate fails to vote in a general election it constitutes justification for restricting the political rights of the general public.

In conclusion, we believe that the interests of both the individual employee and of the public demand that Federal workers be accorded the basic right to participate fully, in a partisan fashion if they desire, in political activities.

With appropriate safeguards, there is little threat in this direction to the principles of impartiality, efficiency and merit which are the basic foundations of the career civil service.

Mr. CLAY. Thank you.

We have heard extensive testimony before this committee that in some way H.R. 3000 would be enacted that it would tend to erode the Federal merit system. Would you give us your opinion in regards to this?

Mr. WHITNEY. I would like to respond to that and also subscribe to a response to that same question which has been offered in earlier testimony.

We do not believe that this is an accurate assessment of the potential impact of the passage of this legislation. The merit system has many deficiencies as it stands today and in many employees' opinions, there is much to be desired and much progress must be made to achieve what the Civil Service Commission would have us believe presently exists, which is a merit system.

But nonetheless, with appropriate safeguards, there is little to fear, in our opinion, from this area.

Mr. CLAY. One of the greatest fears that has been expressed regarding the enactment of this bill is that there would be coercion on the part of supervisors toward personnel working under them.

Do you feel that if we took your recommendation of incorporating section 1622 of the Commission's proposed bill into our section 5 that this will be adequate protection against coercion?

Mr. LYONS. I think it would, and I further believe that you're bound to have some coercion. I think that that goes on constantly in our government service whether it would relate to violations of the Hatch Act, the merit system, or anything else.

But I do think you have enough safeguards here that certainly unions would be able to step in and protect the rights of the individuals.

Mr. ALTMAN. Looking back the last 3 or 4 years to the Commission's experience, in fact, there weren't many examples of coercion being brought before them. What the Commission says, "If new language is introduced into the bill, this would encourage employees to bring forth examples of coercion they think is being perpetrated against them."

So, we feel that the new language might serve as an advantage and that is why we recommend the examples in 1622 which, with one minor addition to include sections A and B, but only after 3(c) we would include, because that, in fact, deals with political activity which our bill does recommend.

Mr. CLAY. Thank you.

Mr. Harris.

Mr. HARRIS. I have no additional questions, Mr. Chairman. I appreciate the testimony very much.

Mr. CLAY. Thank you.

We certainly want to thank you for coming this morning and giving us your insight on this very controversial and very important area and we will be contacting you in terms of modifying and revising the proposed bill.

The next witness is Mr. Nathan Wolkomir, president of the National Federation of Federal Employees.

STATEMENT OF NATHAN T. WOLKOMIR, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY GEORGE TILTON, DEPUTY GENERAL COUNSEL

Mr. WOLKOMIR. For the record I am Dr. Nathan Wolkomir, president of the National Federation of Federal Employees, and with me is Mr. George Tilton, who is the deputy general counsel of the national federation.

The particular length of our statement today, of course, is because I feel like the man who is wearing the left shoe on the right foot today, but after our many years of experience in the Government I believe that our testimony or our statement if read in depth would give an insight slightly different than some of that heard this morning. There is a special significance in our appearance in these hearings in that we are the pioneer union of the career Federal employees and the largest independent union of such workers in the United States.

I say this, Mr. Chairman and members of the committee, because one of the most constructive and essential objectives achieved by the NFFE in our more than 58 years of service was to give our wholehearted support to those members of the U.S. Senate and House of Representatives who in the 1930's saw so clearly the need for the legislation which had been introduced by Senator Carl Hatch and which still bears his name.

Mr. Chairman, our support for that legislation then as now was based upon long, intimate, and sometimes very harsh experience. Indeed, the Hatch Act came into being because of an unqualified, demonstrated, and urgent need for that measure which was designed both in

the national interest and to protect career employees from a whole gamut of abuses to which they had been subjected despite enactment of the first Federal civil service law, the Pendleton Act, in 1883.

We believe that Federal employees should have the same basic freedoms accorded to all American citizens, modified only by reasonable and acceptable conditions which experience has shown are in the mutual interest of the employees, the Government, and the people they serve. Determining the nature and extent of those conditions can be and indeed is the subject of debate, and in effect is the subject of these important hearings.

We wish to express our conviction, based on long experience antecedent to enactment of the Hatch Act, that a strong law soundly administered is today more than ever essential. Graphic evidence to this effect, which I will present in our testimony as only one example of many, is available in events even now in todays' news spotlight.

At the same time, the NFFE not only recognizes but urges upon Federal employees the fullest participation in our cherished political process consonant with their role and special responsibilities as Federal employees. It is our understanding that it is the purpose of H.R. 3000 and the related bill to modify the present restrictions on Federal and by example, State and local employee participation in the electoral process. The extent to which present restrictions on such participation can be relaxed, however, without seriously compromising the purposes of the law, and indeed ultimately its employee protections, is a matter of concern to which the most careful consideration must be given.

There has come into circulation, repeatedly, a claim which we believe to be without merit, that the Hatch Act makes "second class citizens" of career Federal employees.

The NFFE does not share belief in the validity of this catch-phrase which does indeed have a certain convincing sound to it. But an examination of the facts of the case, as in the facts of life, does not bear out the charge that the Hatch Act places an unconscionable stigma upon Federal employees. Rather, that law affords them ample opportunity to take a meaningful part in the political process and at the same time it provides them with protections against improper, inappropriate and sometimes extortionate demands upon them for partisan political funds, campaign activities, and a wide variety of related chores.

I would call to the attention of this committee, the Hatch Act originally was sponsored by the NFFE in response to an imperative demand from our members and others who were witnesses to the innumerable abuses widespread prior to the enactment of the law.

Now, Mr. Chairman, we are told by some groups and by their spokesmen in various forums, that it would be possible and indeed essential to maintain those employee protections from politically motivated demands while at the same time removing virtually all meaningful restrictions against all-out partisan political campaigning by Federal civil service employees.

I speak for the scores of thousands of thoughtful public-spirited members of the NFFE when I state to the committee that neither I nor they believe that one can have his cake and eat it too.

All human experience, and certainly all experience in this area of activity, proves beyond doubt that you simply can't have it both ways

in the real world. It is, Mr. Chairman and members of the committee, an illusion to believe that with no holds barred, with Federal employees permitted to go all out, there would be no eventual fallout, no quid pro quo demanded, and, I should emphasize, no reaction of outrage from the taxpayers of this Nation.

The NFFE was cognizant from its inception in 1917 that the then existing civil service law, the Pendleton Act of 1883, and certain regulations restrictive of political activity which had been issued following its enactment, were simply not adequate to provide career Federal employees and the Federal service as a whole with the protections needed from improper partisan political pressures.

During the 1930's, the need for legislative action became imperative—so apparent, in fact that, Congress acted. On August 2, 1939, President Roosevelt signed the Hatch Act into law.

The National Federation of Federal Employees, which had mounted a massive, nationwide campaign on behalf of the merit system and in opposition to the extensive spoilsmanship of the times threw its support strongly behind Senator Carl Hatch's bill.

By and large, the evidence is persuasive that Federal employees want the Hatch Act to remain in full force and effect. Although the Hatch Act—as with any legislation on any problem—has not provided all of the answers, nor the perfect solution, certainly there can be no reasonable doubt that it has served an immensely important and indeed indispensable function in the three decades which have elapsed since its enactment.

I might note here for the record, Mr. Chairman, that at NFFE national conventions since enactment of the Hatch Act—including our most recent, namely, that of 1974—resolutions calling for strengthening of the protections of the law, and warning against its weakening, have been adopted, and usually by unanimous action. Also, a questionnaire sent to our locals on this issue several years ago elicited a similar firm response. Further detailed reference is made to these results elsewhere in my testimony.

However, this is not to say that improvements cannot be made in the present law.

There may be need for legislation: The only question—and I will grant it, was not formerly and is not now one which lends itself to easy solution or glib catchwords—it is the form the legislation should take. There was to be a meeting of minds on how to best resolve the equities in the situation; how to permit Federal employees to take part in the political process and at the same time to protect them from the kind of demands to which as public employees, they would be most acutely vulnerable.

The American people have become disillusioned—fed up—with the spectacle of public workers engaged in unlimited and uninhibited political campaigning for special candidates and parties—or working against them, including incumbents—for months and sometimes years before national elections. The career Federal employees felt themselves "naked to the world" as they were urgently pressed for funds and for services often by opposing candidates. There is no mistaking the portents of these demands; either come across, or your job or your promotion is in jeopardy depending up the results of the election.

This was an unconscionable situation; and it remains so because of lax enforcement by the Civil Service Commission and, in the recent

past, by the unwillingness of the Department of Justice to act on particularly flagrant Hatch Act violations.

Over the years, Mr. Chairman, there have been modifications in the Hatch Act which properly permit participation by Federal employees in certain strictly local elections and in areas of heavy Federal worker population.

Such modifications we have supported. But this, of course, is not what the organizations and others sponsoring the present proposed legislation have in mind. What they make plain is that they seek a situation in which virtually anything can go where participation is concerned but, they hasten to add, they want this while not giving up any of the protections now afforded by the Hatch Act to those who believe in the spirit as well as the letter of the civil service merit system.

If I may be permitted to say so, Mr. Chairman, they have the naive belief that it is possible to be "a little bit pregnant." Our view is that such a concept defies nature, it defies rationality, and it defies and negates the special nature of public employment.

I respectfully request the indulgence of the chairman and members of this subcommittee while quoting from the recent "Background" release issued by the subcommittee, as follows:

> H.R. 3000 would enable Federal civilian and postal employees to participate more actively in the democratic political process. It authorizes voluntary political contributions by employees. It permits employees to express their views and to participate in political management of campaigns without the involvement of their authority or influence. It defines the meaning of political management and campaigns to include the following activities: Candidacy for service in political conventions; participation in political meetings, caucuses and primaries; preparing for, organizing or conducting a political meeting or rally; membership in political clubs; distributing campaign literature and distributing or wearing campaign badges and buttons; having a publishing, editorial or managerial connection with political publications; participating in a political parade; circulating nominating petitions; and candidacy for any public office.

We call your attention to only three of the activities enumerated. They are namely: Preparing for, organizing or conducting a political meeting or rally; having a publishing, editorial or managerial connection with political publications; and candidacy for any public office.

Are we really naive enough to believe that sections 7323 and 7325 of the proposed prohibitions, enforcement, and penalties will bear any greater impact than similar controls have to date? We call the attention of the committee to the report prepared by a panel of the National Academy of Public Administration at the request of the Senate select committee. It is dated March 1974 and termed "Watergate: Its Implications for Responsible Government."

I quote from the epilog only, as follows:

> Most of this report has concerned, directly or indirectly, the subject of ethics of public service. So did most of the hearings before the Senate Select Committee. The investigative power of the Congress is a more effective instrument than the criminal procedures of the courts in exposing, and thereby protecting the public from, unethical behavior on the part of its officials.
>
> Many of the actions associated with Watergate, the burglary of offices, the forgery of a letter, the laundering of money through Mexico, etc., were clearly criminal. But in their relation to the national interest they were quite trivial. What was important was the attitudes of mind, the modes of conspiring, and the narrow goals of those behind them. Most of these kinds of matters lie beyond the range of criminal law.

Public officials are of course bound by the same criminal laws as apply to other citizens. But their obligations to the public as a whole entail an additional and more rigorous set of standards and constraints associated with the concept of public trust. Many practices which are permissible, even normal, in the private sector are, or should be, forbidden in government: the acceptance of certain kinds of gifts, the discussion of appointments under certain circumstances, the promise or threat of governmental action under some circumstances, the carrying and secreting of large amounts of cash, the withholding of information to which the public should be alerted, and, conversely, the leaking or other disclosure of other kinds of information which should be private.

One of the characteristics of many of those implicated in Watergate was their perception of the roles and responsibilities of government, a perception which was at best simplistic, and at worst venal and dangerous. A democratic government is not a family business, dominated by its patriarch; nor is it a military battalion, or a political campaign headquarters. It is a producing organization which belongs to its members; and it is the only such organization whose members include all the citizens within its jurisdiction. Those who work for and are paid by government are ultimately servants of the whole citizenry, which owns and supports the government.

Complementary to the ingenuousness of the appreciation of the sense of the word "public" in these recent developments was the apparent lack of understanding of "service." In a society in which sovereignty presumably rests in the people, it is indispensable that its officials be regarded and regard themselves as servants, not masters, of the people. They must have and exercise powers, but their powers are delegated, usually for temporary periods.

Mr. Chairman, we believe that the three separated proposals are particularly inopportune and untimely in view of the trauma through which our country has passed. There was much more to the Watergate syndrome than just that one break-in. It includes, for example, the odious so-called Malek plan, a detailed, specific, and almost incredibly arrogant program to subvert the civil service system. Moreover, we have seen what failure to enforce the laws enacted by Congress with respect to corporate and other political contributions as led to: a sordid picture in our national life.

I ask the members of this committee whether in their considered judgment this is the time in the history of our country to open the floodgates of all-out political campaigning and contributing by employees serving the whole people and for the weakening of the provisions of the Hatch Act from a return to the widespread abuses of yesteryear; provisions which although less than adequate now, are useful. Indeed, it is the confident belief of the NFFE that the kind of results which would inevitably flow from the deep changes in the Hatch Act called for would result in a strong and unfavorable reaction from the American people, as it certainly would from all thoughtful and pragmatic career employees. This reaction, of course, would not come from politically motivated lobbyists for special interests.

There are, we readily grant, some who sincerely believe that the Hatch Act in some improper way makes them what they insist on calling themselves, namely, "second class citizens."

But I can assure the committee that that is not the view of the NFFE and in our judgment it would not be the view of the overwhelming majority of all Federal employees who thought the issue through and who have had some experience with the kind of abuses which the Hatch Act seeks to curb and hopefully eliminate.

The Hatch Act, as I have indicated, did not get onto the statute books because Congress just awakened one morning and decided to pass that law. Rather, enactment of the Hatch Act was the culmination of many long decades of harsh, deplorable experiences and its

passage was supported by a very representative range of the American people, in the press and in the Congress, and certainly among employees, so many of whom had felt directly, and on the job, the pressures which we have been discussing.

The NFFE as an organization of patriotic and concerned men and women, and I as President of that union, yield to none, in our commitment to the political process which undergirds our great American democracy. But we also are only too keenly aware that that process itself, which provides for a nonpartisan career service in behalf of the whole people, can be and indeed all too frequently has been compromised by actions which violate the letter and the spirit of both the Pendleton Act and the Hatch Act—the latter so vitally complementing the former.

Moreover, the NFFE carries on a continuing campaign to urge all of our members and their families to take the most important action of all in the political process, namely, registering and voting in all elections at whatever level of government.

It is ironical to note that some who are so eager to emasculate the Hatch Act may be among the many millions of American citizens who, tragically in our view, fail to exercise the basic, all-important right of franchise.

I have reason to believe, Mr. Chairman, that while the overwhelming majority of members of the NFFE oppose tampering with the Hatch Act, either with its restrictions or its protections, they are for the most part very mindful of the right, privilege, and duty to register and vote.

To those who, for various reasons take the position that Federal employees cannot further their own special interests under the present Hatch Act restrictions, I would reply on at least two counts. First, when NFFE members og to the polls they do so as American citizens, concerned above all with the best interests of our country, and if I read them correctly after many years of direct contact with these employees, I can say without equivocation that they vote the national interest above all else.

The NFFE exists for the purpose of both bettering the lot of the Federal employee and to improve the Federal Government in its public service functions. We, therefore, feel any amendment to the Hatch Act to allow partisan political activity should have included a prohibition against the use of Government time for their purpose. Federal employees should not be barred from participating in political activities, whether they be the campaigning for partisan candidates, the circulation of nominating petitions, or the distribution of campaign material in elections. These activities, though, should not be permitted while in the on-duty employ of the Federal Government.

It is our contention, Mr. Chairman, that Federal employees should not be able to run for political office, themselves. They should resign employment if they are candidate minded.

In NFFE's opinion, the strength of the Hatch Act lies in its enjoinment of any employee of the Federal service against using his official authority or influence to coerce the political action of any person. Other sections proscribe requests by any Federal employee of another Federal employee for funds for political purposes.

These provisions buttress the merit system. Mr. Chairman, your have sought to strengthen other sections of the existing law by a revision of the language used. We endorse the liberalization but other changes are unquestionably a foreboding of evil.

The opportunity to exercise coercion or influence for political purposes was demonstrated in recent months when officials in the Federal Supply Service of the General Services Administration were found in voilation of the Hatch Act for having solicited contributions to a $500-a-plate "Salute to the President" dinner, by means of a lottery.

We believe this violation of the Hatch Act points up a deficiency in the presently existing law. Six FSS officials were found by the Civil Service Commission to have violated the Hatch Act and, as a result, received suspensions ranging from 30 days, the minimum, to 60 days. While these penalties resulted in a loss of pay and a notation in their personnel files, we do not believe that proper justice was dispensed for a flagrant violation of title 18 of the United States Code, where the facts are indisputable and unassailable.

We have contended that the Justice Department should conduct its own investigation of the matter and bring indictments against these officials if found warranted, as we believe they are. They are playing hide and seek today.

We believe that where the Civil Service Commission has unanimously found that a violation of the Hatch Act has occurred, but where dismissal of the employee is not ordered by the Commission, the Attorney General should be required to prosecute these cases.

It is crucial to the well being of our Government and all of its employees that there be an opportunity to investigate not solely those officials named, but the political fundraising, generally, in the agency or building involved. As in the GSA instance, much of the money raised is still not accounted for as to who purchased lottery tickets. These employees, too, are in violation of the Hatch Act. There is no doubt that a Justice Department inquiry should have been of a wider scope.

We believe that the injection of political influence into the merit system, no matter what administration should be in office, should not take a back seat in the orderly drive for justice. Only mandating in law for the Justice Department to begin criminal proceedings against those found by the CSC to be violative of the Hatch Act will assure that no white-wash can occur, and that all of the facts and truth will be ascertained.

In the main, the NFFE finds that the need for a strong statute, with strong penalties for its violation, is certain to be even more urgent in the future than it has been in the past. The Hatch Act, by and large, has proved an indispensable adjunct of the whole merit concept in public employment.

Mr. Chairman, in the preceding portion of our testimony, I have stated our views on the pending legislation and also have given special attention to certain recent events violative of the Hatch Act, such as the GSA cases, which we believe give graphic emphasis to the need for maintaining and indeed strengthening the legislative protections and certainly the administration of the law.

In the following portion of my testimony, I wish to develop somewhat more fully the background of our continuing support for a strong Hatch Act soundly administered—why we were among the original sponsors of the law and have supported it since its enactment—and why we are convinced that a weakening of its protections would be contrary to the best interests of all: the people of our country, the Government, and the employees directly concerned.

At the same time, the NFFE not only recognizes but urges upon Federal employees the fullest participation in our priceless democratic political process consonant with their role as Federal employees, serving all American citizens in so many ways from day to day and carrying on the vital business of Government from administration to administration.

When the NFFE was formed, a very large percentage of all Federal employees were still outside the civil service and their jobs were subject to patronage appointment and pressures.

Moreover, all Federal employees, whether or not their jobs were under civil service, were than and for many years thereafter subject to politically motivated pressures and virtually outright assessments for funds were the rule rather than the exception.

A first order of business for the newly organized NFFE in 1917 was to exert all influence and persuasiveness available to it, including a broad-scale national educational program which continues to the present day, designed to bring about the extension of civil service to cover large numbers of then "excepted" positions.

I shall not burden the record with a review of the long, arduous effort in that direction to which our union has devoted itself for the past 58 years, and of the varying degrees of success attained.

The NFFE was cognizant, from the outset, that the civil service law, the Pendleton Act of 1883, and certain regulations restrictive of political activity which had been issued following its enactment, were simply not adequate to provide career Federal employees and the Federal service as a whole with the protections from partisan political pressures which are so essential in the national and public interest.

This became especially urgent and insistently clear during the 1930's when, in the words of Prof. Paul P. Van Riper in his authoritative "History of the United States Civil Service," we experienced a prolonged "patronage binge." In the widely quoted book "Spoils," that period was referred to as "The New Gold Rush."

The imperative need for legislative action then became so obvious, so apparent to the Nation generally, that Congress acted. First, the merit system was broadly extended by legislative action to cover many thousands of previously "excepted" jobs and, in a concomitant step, the Hatch Political Activities Act was passed.

The NFFE, which had mounted a massive, nationwide campaign in behalf of the merit system and in opposition of the rampant spoilsmanship of the times—a campaign which drew almost universal editorial backing in the Nation's press—threw its support strongly behind Senator Carl Hatch's bill.

We reaffirm that unequivocal support. The NFFE views with grave concern violations of the spirit and/or letter of the Hatch Act as well as persistent efforts to deprive career employees of the protections of

the law and to throw the whole public service open to unbridled political activity.

At this point I repeat the record to again disclose that at successive national conventions of the NFFE, resolutions in support of maintenance of a strong and meaningful political activities law have been adopted unanimously.

Moreover, in order to secure a timely reading of the sentiment of our union on this highly important issue, and in anticipation of the then Commission on Political Activities of Government Employees study, we sent to our locals a questionnaire devoted solely to the Hatch Act.

An analysis of replies received reveals that a heavy 89 percent of the total expressed strong support for continuing the act "as is."

Approximately 10 percent would not object to very careful and minor modification of the act, principally to permit somewhat fuller participation in strictly local elections and especially in those areas with a substantial Federal employee population.

Only a scant 1 percent of those replying suggested that the act should be repealed.

On the basis of our more than half century of experience, and our daily close contacts with Federal employees at all levels and in virtually all Federal departments and agencies, it is our firm conviction that this cross-section of opinion expressed by Locals of the NFFE is equally representative of the views of career employees generally.

We are quite aware, of course, as I am sure the committee is, that while those who seek to destroy the Hatch Act for all practical purposes as a bulwark of the merit system, are relatively few in number they are very vocal and their arguments follow an old and familiar pattern.

Various propositions are put forward to support their contention that the Hatch Act should be repealed or emasculated beyond usefulness and viability, but they are almost invariably summed up by the cliche catchphrase that "the Hatch Act makes public employees second class citizens." This almost always is supposed to be the devastating clincher. But, like so many cliches, it has little genuine validity.

The Hatch Act in fact permits Federal employees about as much political activity as the average citizen engages in generally. But as a quid pro quo for relinquishing the right to engage in completely uninhibited political partisanship the public employee received in return—or should—freedom from strong-arm pressures for special favors, for heavy partisan political contributions, for a hundred and one partisan election chores on demand. And the public is served by employees who are concerned first, last, and all the time, with unbiased service to them and not to a political party or to any particular candidate or candidates.

The record is clear, however, that there are many situations in which the spirit and/or letter of the Hatch Act provisions are even now being violated.

Thus, we find career employees being pressured to buy tickets to fundraising dinners. Those getting these "delicate" invitations are by no means all top echelon "excepted" executives. The pressure finds its way far down the civil service line. And there is ample evidence for the conclusion that the well publicized dinners represent only the

top of a very large iceberg, and one that has been growing bigger in the past decade. We heartily endorse the conclusions of the Federal Election Commission.

Although the Hatch Act has not provided all of the answers nor the perfect solution, as we have indicated, certainly there can be no reasonable doubt that it has served an immensely important function in the three decades which have elapsed since its enactment, it would be impossible to find any period in all history more eventful and demanding of our public service, and most especially the Federal service. We have no doubt at all that the Hatch Act has played a singularly important role in helping to maintain the high standards of the Federal service during this critical period.

But demanding as have been those past decades, the years ahead are sure to be even more so. At every level of government the responsibilities devolving upon public employees will be large and of ever-increasing complexity. It is unthinkable that, this inevitably being the case, the protections afforded by the Hatch Act against spoilsmanship should be relaxed in any substantial degree or removed entirely, as some have irresponsibly suggested.

Moreover, and this point is of crucial importance: Every sign points to a continuing growth in the extent and scope of services rendered by public employees. This indeed may vary in degree from time to time and from administration to administration, but certainly all knowledgeable observers agree that the number of public employee is virtually bound to increase from decade to decade. The normal increase in population in our dynamically expanding country alone would require that, quite apart from the addition of new programs in a wide variety of fields. While the number of Federal employees has been gaining at a modest rate, continued increases are almost inescapable. At the same time, public employees at the city, county, and State level have been increasing at a very large, rapid and even explosive rate, and this trend shows no sign of leveling off and none at all of being reversed in any significant degree.

What this means is that in the years immediately ahead and indeed for the foreseeable future the total of all public employees will grow successively larger. The impact of these unions of employees on the course of political events, were those employees to be laid open to the kind of involvement contemplated by some of those seeking to weaken or repeal the Hatch Act, can easily be forecast. The public would quickly, and in our view properly, demand the enactment not only a new Political Activities Act but one with much stronger teeth and perhaps even a law which would in fact—as is not now the case—deprive public employees of their basic civil rights.

Thus, it is our considered view, based on long past experience, that the need for a law such as the Hatch Act—and energetic, fair, fearless, and evenhanded enforcement of that law—is certain to be even greater and more imperative in the future than it has been in the past.

In this whole connection we call attention to the incontrovertible fact that the real thrust of many proponents of major, substantive changes in the Hatch Act actually is, despite various attempts at rationalization, to render the law impotent.

The National Federation of Federal Employees does not believe such a step to be in the national interest, in the interest of a sound

merit system, or in the interest of the Federal Government, and certainly it would be contrary to the best interests of American citizens who are devoting their lives to effective public service.

We therefore urge maintenance of the strength and integrity of the law and rejection of proposals which would or could have the effect of weakening it.

We believe that the cause of good government would be served, also, if the Civil Service Commission would face up forthrightly to those actions, whether by groups or individuals, which while they may be just within the letter of the law are plainly and flagrantly in violation of its spirit, purpose, and overall intent.

We believe that, for the most part, CSC has taken a reasonable attitude with respect to participation by Federal employees in certain elections wholly local community in character, and with special reference to areas of substantial Federal concentration. We do not believe that the purposes of the Hatch Act would be compromised if CSC continues this policy, within the careful geographic and demographic limitations which have governed such actions in the past. Already modified have been some severe and probably overly rigid punitive provisions which were a source of early administrative difficulties, and hampered rather than aided enforcement. Expeditious action by the CSC is needed, however, when alerted to violations.

In the main, therefore, the NFFE finds that the need for a strong statute is certain to be even more urgent in the future than it has been in the past; that the Hatch Act, by and large, has proved an indispensable adjunct of the whole merit concept in public employment; that is administration has been generally fair and has not worked an unreasonable hardship on employees nor in fact unreasonably curtailed their civil rights.

Mr. Chairman and members of the committee, it is our considered judgment, based on experience and intimate daily contact with the problem as a whole, that weakening of the provisions of the Hatch Act would not in any way serve to aid in the long and continuing process of restoring faith and confidence in their Government by the American people.

Rather, the spectacle of public workers in the Federal departments and agencies up to their eyebrows in partisan political campaigning would tend to increase the criticism and the cynicism which now is so endemic throughout our country. I am fully aware that the proposed legislation would continue certain restrictions and protections. But in this legislation as in so much other legislative and executive action, it is necessary to look beyond the language of the law or the executive order and to analyze how those actions will be perceived by the public, by the public employees, and by those who will seek participation in the political process to an extent which conflicts with their primary nonpartisan duties and services to the Nation and all of its people.

We are aware, Mr. Chairman, that the position of the NFFE on this crucial matter may be seized upon by some as being regressive. It is always more popular, in some quarters at least, to take the position that American citizens are being deprived of rights which should be enjoyed without stint or let by all.

But now as in the past, the NFFE does not flinch from taking positions which lack demagogic appeal. It is our view that when an Ameri-

can citizen takes the oath of office he assumes, either by direct legislative or executive provision, some very special, vital responsibilities. His work places him in a position of public trust, it provides him with an opportunity to serve his country and all of its people without strings or outside obligations, and without compromise induced by fear or favor. His or her position should not be hostage to his political predilections and his advancement should be on the basis of merit alone, untainted by politically inspired "recommendations" or "referrals."

So long after the passage of the Pendleton Act of 1883 and the first Hatch Act of 1939, we find our Government still in the throes of spoilsmanship with thousands of positions still in the so-called "expected" service and presently confronted with proposals which surely would worsen that situation if the Hatch Act were to become a dead letter, as some would have it in a step by step campaign to eventually render it impotent for all practical purposes. In this area, I suggest that we can take a lesson from our British friends. For more than a century career Government service in the United Kingdom has meant just that. Efforts to strong-arm career employees for contributions or partisan political campaigning would become a national cause celebre. Any administration which sought to make Government positions the subject of political booty, would be brought down and the press would be diligent and persistent in its defense of the career service.

A point which should not be overlooked in consideration of the pending legislation is the effect it would have in acting as a signal at all levels of government that men and women serving all of the people are to be given what in practical working effect, will be carte blanche to politicize their activities and, in natural consequence, the activities of the public service departments and agencies in which they are employed. It cannot fail, in our judgment, to be regarded as a step backward toward the conditions and abuses which prevailed before enactment of the Pendleton and Hatch Acts.

I would point out here also, that the action taken on this legislation will be watched with close and concerned interest by both the public and the public employees in the many States, counties and municipalities nationwide which, also previously suffering from the same abuses which infected the Federal service, followed the example of the Congress by enacting "little Hatch Acts" to curb those unfortunate conditions at their levels of government. I am sure that members of the committee are aware of conditions which have prevailed recently in many cities and towns as their government institutions have become increasingly politicized. That this situation will worsen if the Hatch Act is emasculated cannot be doubted.

It will be but another step forward to further demands, such as the right to strike. A heavy responsibility lies upon both the legislative and the executive branches of the Federal Government to adopt progressive and equitable personnel policies and to actively seek and to give implementing attention to the input on these matters from the employees, whether through their unions and organizations or as individuals. For example, I regret to say that the present employee-management program which began with an Executive order in 1962 and has continued under Executive orders since then, does not provide the climate or the conditions to meet the special problems of personnel administration in the Federal sector. All of these conditions are affect-

ing the present credibility gap between branches of Government and the employees. All, including politicization, create wholesale raids on the career merit system.

SUMMARY

In summarizing, the actual administration of these programs as they have been given to the Civil Service Commission have clearly indicated to us that that they have not been administrating the service in light of the present Hatch Act. It was our organization that originally exposed the GSA twisting of the arm. For 18 months we got no response. We went to the Justice Department and they too ran a cursory investigation of the entire matter and nothing happened until we had to go to the press and expose this entire thing that we finally got the results that we did in GSA.

I have with me letters received this very morning about the same sort of actions going on in terms of political appointees, actually taking over career civil service jobs in the field. We heard previous testimony that this has only happened at the top level. This is not true. It is going on all over the country. And if we commit ourselves to this open, uncontrolled and, may I say, poorly administered right given back to the Civil Service Commission to endorse this program I can see nothing realistically than a repetition of what has happened before but exaggerated.

We are going to have more political activity rather than less and in a quick summation and off the top of my head I would like to say this: That for purposes of political muscle, there are those in the labor movement and those who are in the political arena who are endorsing a complete repeal of the Hatch Act for purposes of strength and influence and this is not the purpose of the Hatch Act and I don't believe any modification to it should be so revised.

Generally, I would appreciate very much if the committee would review our testimony. We also have added a history as an addendum to our testimony because despite the facts that politically we are on the opposite side of the fence when the Hatch Act was originally proposed we endorsed it in a public interest. We feel that we are in the same circumstances today considering the realistic aspects of the implications of Watergate and what is happening today in Government.

There were some questions asked earlier with reference to the correlation between the merit system and the Hatch Act. You cannot possibly differentiate between the two. They should be. Political activity can be defined as a distinct order from the merit system in Government.

But we cannot help by case study, hundreds of cases, indicate the fact that there is a separation of the two because the minute you have political influence any way invoked in our large operation of our image in Government, you cannot help but get the twisting of the arm and the effect on the merit system in Government and I think history last year and even this year actually validates our statement.

We favor six of your proposals and we certainly feel that the three that I have enumerated would have a devastating effect by enhancing the sort of things that are going on today in Government.

On behalf of the National Federation of Federal Employees and our scores of thousands of career employees in all departments and agencies, I want to express appreciation to this subcommittee for the

opportunity of presenting our views on a subject which we regard to be of prime importance, now and in the years ahead.

Mr. CLAY. Thank you. First of all, what percent of all the Federal employees do you represent?

Mr. WOLKOMIR. We represent approximately 150,000 of all Government employees. We are an industrial-type across-the-board union and in every key Government agency.

Mr. CLAY. And you are the largest independent union?

Mr. WOLKOMIR. Yes, sir.

Mr. CLAY. You have been in business for 58 years?

Mr. WOLKOMIR. People who have testified previously really came into being because we walked out of the AFL and became independent. May I state for some of the very reasons that we are discussing today.

Mr. CLAY. Can you give us a little composition of your union? You say it is an industrial union?

Mr. WOLKOMIR. Industrial type in the labor sense. We represent anybody. From the janitor, let us say, to the chief personnel in any particular agency.

Mr. CLAY. Catchall union?

Mr. WOLKOMIR. Yes, sir.

Mr. CLAY. Can you tell this committee of any other country in the free world that has the kinds of prohibitions against Federal employees participating in politics that we have in this country?

Mr. WOLKOMIR. The day that the labor movement in this country becomes a political party I can answer your question. In practically all of the foreign countries you find that the labor movement there are a political party rather than a pure labor movement per se. They do participate in partisan politics. They put up candidates and we have a peculiar set up in this country as compared to most of the European countries. They are labor parties just the same as Republicans and Democrats here. They are considered a partisan section of general movements in foreign countries. In some countries they do have peculiar setups. They have a relationship under a different type of control. For example, you take countries like Norway, Denmark and Sweden, they have a ombudsman sort of control.

But we find that generally in Great Britain you will find that there is no political ramifications at all involved to their career employees. In fact, it is forbidden and it would be actually a——

Mr. CLAY. They have three classifications of public employees in Great Britain, is that correct?

Mr. WOLKOMIR. That is right.

Mr. CLAY. So let's don't say they don't have——

Mr. WOLKOMIR. But the career employee and those in the foreign service are never involved in partisan politics. I say career employees, not armed services.

Mr. CLAY. You can equate the two when you send these guys off to these deserted islands. They have no interest in actively participating. But you still haven't been responsive to the question. Name a country in the free world that prohibits public employees from participating in politics to the extent we do in this country.

Mr. WOLKOMIR. You say to the extent we do in this country. Name the countries. I wish I knew them all today. I would use England. I would use Great Britain.

Mr. CLAY. Public servants run for public office in England. They campaign in England.

Mr. WOLKOMIR. I can't answer your question, sir. I would have to do a little further research on that. I would like to turn the question around.

Mr. CLAY. Well, the point of the question is why should we deny our public servants the right to actively participate in politics when all of the other democracies in the world allow their public servants and there haven't been any great catastrophies as a result of that.

Mr. WOLKOMIR. I don't believe that is fair. Because they smoke marihuana and sell it in Turkey too. Does that mean—I don't see any correlation.

Mr. CLAY. Aren't we supposed to be the epitome of democracies? Aren't we supposed to set the pace for the democratic process?

Mr. TILTON. Mr. Chairman, if I may respond to that also, the United States is one of the oldest continuous democracies in the world.

Mr. CLAY. You don't attribute that to the fact that we deny the basic right to participate in politics, do you?

Mr. TILTON. I don't know that we have to follow other nations. Maybe other nations should follow us.

Mr. WOLKOMIR. I believe the comparison and the question is not a fair question for this reason: just because other countries have revolutions and overthrow their governments because of one reason or another does that mean that is the right thing to do?

I would like to answer your question but I don't believe frankly that the comparison and the innuendo and the fact that just because other countries are doing it necessarily calls for our doing it. We have set an example of how our democracies work.

I will stand with reference to the Hatch Act. I think we would actually keep our democracies a lot more pure by not necessarily maintaining the Hatch Act as is. We recommend revisions to it. It needs some modifications.

Mr. CLAY. Do you know what has made this country so great is our ability to change, our ability to recognize injustices and to change accordingly? When we set this country up, women didn't have the right to vote and we heard the same arguments then that women should not have the right to vote because for some reason it was going to destroy our system of government. We heard it when blacks didn't have the right to vote. For some reason if blacks were given that right it would destroy our system of government. You made the statement that you gave us your emotional feelings about this thing. We are dealing in facts and figures. And I would like to know where in the world in a democracy has the right of public employees to participate actively in politics in some way destroyed the effectiveness of the democracy.

Mr. WOLKOMIR. Mr. Chairman, will you please tell me where else in the world we have a democracy?

Mr. CLAY. In Germany, West Germany, don't you?

Mr. WOLKOMIR. No. We differ in terms of our interpretation.

Mr. CLAY. I think we have a democracy in France, don't you?

Mr. WOLKOMIR. No, sir.

Mr. CLAY. Well then maybe we don't know what a democracy consists of.

Mr. WOLKOMIR. It could be.

Mr. CLAY. I would think it could be very simply defined as a government by the people, for the people, and of the people. Tell me which of the countries I have mentioned doesn't have that?

Mr. WOLKOMIR. In my mind there are so many contaminations that I will say none of them do. If we want to get into the political ramifications as to why, we can probably write dissertations on this.

Mr. CLAY. Well, we are not going to do it this morning. Let's be specific. On page 19 of your remarks you tell us about a sample selection of your survey. Could you tell us how did you go about assuring that it was an accurate measure?

Mr. WOLKOMIR. Prior to the time that the Commission on Political Activities had its hearings we had at our national convention in that year, prior to the time the Commission met, a resolution passed by our delegates in which they endorsed maintaining the Hatch Act but asked for certain revisions with six of the items that were mentioned in your program.

However, due to the Commission on Political Activities Study carlier in those days and then the Commission itself and the hearings that were forthcoming, I felt personally that we didn't really and truly have a complete cross-sectional view of our membership and consequently we made available to every member of questionnaire repeating the general resolution passed at our convention and asked them to reply by postcard with comments. We received approximately 30,000 answers from our people prior to our testimony and based upon the breakdown of that approximate 30,000 returns, this is the analysis and the replies that we got; 89 percent of them actually expressed strong support to leave the Hatch Act alone as is; 10 percent would not object to a very careful and some minor modification and 1 percent asked for repeal.

In September of last year we again had our national convention and of course the resolution on the Hatch Act came up again and again we got the same consensus of the vote of our delegates except that this time there were a lot of people making speeches but it was amazing that when the actual head count of the delegate vote was made they passed 100 percent unanimously the request for the maintenance of the Hatch Act with slight revision. What the revisions were, I assume, based upon past performance, we would continue to strive for the sort of recommendations made.

Does that answer your question, sir?

Mr. CLAY. Yes. It answers the question that leads to another question: If 89 percent of 30,000 people replied that they didn't want the Hatch Act tampered with, it raises a question in my mind if the experts in this field are correct when they say that 64 percent of all Federal employees don't understand the Hatch Act, what you are really saying when you say that 89 percent of 30,000 and 64 percent of them don't understand it or are opposed to revising the Hatch Act? Explain to this committee——

Mr. WOLKOMIR. I don't know where the 64-percent figure came from and I would like to know that they measured that they don't understand. Was this a——

Mr. CLAY. We have had testimony from the University of Michigan Institute of Social Research, we had testimony from Mr. Hampton the Chairman of the CSC. We have had testimony from a number

of labor union leaders and they all concur that somewhere in excess of 60 percent of Federal employees don't understand what the Hatch Act is about.

Mr. WOLKOMIR. Well, this may be the opinions of individuals. In my 30 years of working with the Commission, I don't know of a single survey that the Commission ran on what the interpretation of the Hatch Act was. I wouldn't question anything that the University of Michigan ran but I am sure it must have been a random sampling type of study where they took a sampling of people and based upon that they brought conclusions, and I have run hundreds of such tests of my own when I worked——

Mr. CLAY. Isn't that how most surveys are conducted?

Mr. WOLKOMIR. I said I am not questioning the University of Michigan survey. But with reference to any of the other statements made and if they refer to the 60-some-odd percent, I question the validity of that statement. How many of them really measured the knowledgeability of the Federal employees on the Hatch Act. How many really ran a check. Are they using the University of Michigan figures in quoting? You mentioned that the Commission made that statement. I don't recall them ever making a study in this field.

Mr. CLAY. Apparently they did or they wouldn't have testified to that effect. But the University of Michigan states that they drew a sample from 1,108 Federal merit system employees who in their opinion generalized on the statistical basis represented 1.641 Federal employees. A million. 1.6 million. And I would think that knowing the fallibility of surveys that there has to be some kind of an area—but certainly this is probably the most authentic kind of information that we could get.

Mr. WOLKOMIR. As a statistician, I would question the reliability of the study.

Mr. CLAY. Do you have your statistics here.

Mr. WOLKOMIR. In terms of my memory.

Mr. CLAY. 30,000 of a 150,000 and 150,000 as part of 2.5 million so you are talking about 0.016 percent of the total number of Federal employees in this country.

Mr. WOLKOMIR. I did not make a universal application of our findings. No statistics will. No one who makes a study confined to his own particular environment will draw conclusions from that and that is what you have done.

Mr. CLAY. I would think that that independent study would be much more valuable to this committee than one taken by your organization.

Mr. WOLKOMIR. You are missing the point. The point is that the University of Michigan study cannot draw universal conclusions from the study of 1,100 people.

Mr. CLAY. But yours can?

Mr. WOLKOMIR. No. That is exactly my opinion. I am trying to emphasize the fact that the study we made was limited to our members and I am not going to draw a universal conclusion. I can only speak from our experience and that is the only basis upon which I indicated the study. So I don't want in the record the fact that I am drawing any universal conclusion from our study and I don't want the University of Michigan study to indicate the facts that this is true of all Government employees.

Mr. CLAY. For the record let us indicate that your study covered less than 1 percent of the Federal employees.

Mr. WOLKOMIR. And three times more than their study.

Mr. CLAY. And less than 1 percent. Mr. Harris?

Mr. HARRIS. I want to express my appreciation for the comprehensive nature of your statement and for the service it does. As I understand your position, you agree with some of the provisions of the bill but with respect to others you disagree as far as opening up that type of participation.

Mr. WOLKOMIR. That is right.

Mr. HARRIS. If I may, let me refer to page 3 of your statement, where you made the statement that:

> The law affords them ample opportunity to take a meaningful part in the political process and at the same time provides them with protections against improper, inappropriate and sometimes extortionate demands upon them for partisan political funds, campaign activities, and a wide variety of related chores.

In what way does H.R. 3000 change this protection?

Mr. WOLKOMIR. The only change that I can see is the fact that you have indicated a $5,000 fine or imprisonment. Either/or. Leaving the administrative determination generally to the Civil Service Commission. And that is the only improvement I can see in terms of what presently exists in the Hatch Act. However, we would like to go further by saying that the Justice Department should be the main administrator of any curtailments or any controls placed upon violations of proposal of H.R. 3000. And we should drop the fine completely and leave the imprisonment sentence stand by itself.

Mr. HARRIS. H.R. 3000 doesn't diminish this protection anyway, does it?

Mr. WOLKOMIR. No, it doesn't. That part of it does enhance the protection except for again coming back to the credibility that we have in the administrative enforcement on the part of the Commission. The record has been absolutely horrible up to date.

Mr. HARRIS. The areas you feel that you disagree with in the committee's bill include the area for candidacy for any public office. Under the existing Hatch Act can a Federal employee be a candidate for public office?

Mr. WOLKOMIR. Yes. But he must resign from his position in Government or he can take leave of absence without pay, which is what we recommend. We also recommend——

Mr. HARRIS. I am talking about the existing law now. You say that is what he can do under the existing law. How does this bill change that?

Mr. WOLKOMIR. I don't see it frankly. It doesn't. We don't see any change in terms of the liberal aspect of the Hatch Act as interpreted now. May I state for the record also that I personally was accused of a violation of the Hatch Act because I did run for public office but it was not partisan office. And the Civil Service Commission made the determination that it was not partisan.

Mr. HARRIS. I guess I understand your position. I thought you were indicating in the statement that the thing you disagreed with with respect to H.R. 3000 was the fact that it did permit candidacy for public office.

Mr. WOLKOMIR. Yes. But with no restrictions attached to the permissiveness of candidacy for office. What we are saying is that in order to prevent the present status of what is happening in Government that if such an individual wants to be a candidate there are two factors and we mentioned it in our testimony. No. 1, there should be no political roles while they are on Government time. This should be restricted.

The other addition we state is that if an individual wants to be candidate for office, partisan type, he should either resign from his Government position or take a leave of absence completely from the environment.

Mr. HARRIS. So you don't disagree with the provisions that permits a Federal employee to be a candidate?

Mr. WOLKOMIR. Not at all. And I will say that the present Hatch Act permits him to do the same thing under those conditions.

Mr. HARRIS. You also state as No. 1 of these three points that you had questions about paragraph 4, organizing or conducting a political meeting orally.

Do you disagree with including that permission in the bill?

Mr. WOLKOMIR. Yes. And also with the managing of a publication. And the reason we disagree with it is that the very nature of an individual who winds up monitoring a program, a partisan politics meeting of some kind, the very nature of the fact that he is running and managing a political partisan type newspaper cannot help but contaminate his employment in government. That is the only reason. There is bound to be some coercion and bound to be some impact and some pressure on the employees when he plays that active a role in partisan politics.

Mr. HARRIS. Under the existing Hatch Act, can a Federal employee participate in a partisan mass meeting to nominate a candidate?

Mr. WOLKOMIR. I see no violation of the present Hatch Act. He could be very active at a rally.

Mr. HARRIS. Could he not be subjected to coercion?

Mr. WOLKOMIR. Probably. I am sure it has happened.

Mr. HARRIS. But if he organizes that meeting you feel like that is wrong?

Mr. WOLKOMIR. Yes. He is then monitoring the program. He is the so-called manager of the program. When he is active at a rally or a meeting he is part of the public, per se. But once he takes an activistic role as a leader then he is so much a part of the environment in which he is working——

Mr. HARRIS. Let me return to the point with regard to running for public office. You say in your statement on page 14 it is our contention that Federal employees should not be able to run for political office themselves. I thought I just understood you to say you thought it was all right for them to.

Mr. WOLKOMIR. But then we added a sentence that they should resign from employment if they are candidates.

Mr. HARRIS. Obviously. At that point they are not a Federal employee anymore. I am a little confused about your position. Should a Federal employee be able to run for office or not?

Mr. WOLKOMIR. On the position that he resigns from the Government.

Mr. HARRIS. Well, obviously he is. If he resigns from his Federal position he is not a Federal employee anymore.

Mr. WOLKOMIR. I think our difference is in the fact that should he be permitted to run for political office and still keep his position in the Government——

Mr. HARRIS. If he is a Federal employee, then he has to resign. The question is should the Federal employee be able to run for political office?

Mr. WOLKOMIR. Yes.

Mr. HARRIS. If he resigns?

Mr. WOLKOMIR. Yes. If he resigns or takes a leave of absence from his position.

Mr. HARRIS. Well, that is not what you said on page 14 with regard to leave of absence.

Mr. WOLKOMIR. I think I said or take leave without pay.

Mr. HARRIS. I am going to suggest that your statement on page 14 says that a Federal employee cannot run for public office. Your next sentence says—I think the two sentences are inconsistent. A Federal employee should not run for public office. But then I understood you to respond to me before, that you though a Federal employee should be able to run for public office if he takes a leave of absence.

Mr. WOLKOMIR. Yes. I don't see anything in controversy in those statements at all.

Mr. HARRIS. Do you want to amend the statement on page 14?

Mr. WOLKOMIR. Let us reverse it this way then. A Government employee should either resign from his position or take a leave of absence without pay if he is candidate minded.

Mr. HARRIS. Do you want to amend the statement that way?

Mr. WOLKOMIR. Yes, sir. It stands so amended.

Mr. HARRIS. Now that would be a change then from the existing situation as far as the Hatch Act is concerned. You would not allow him to run as a nonpartisan candidate unless he takes a leave of absence?

Mr. WOLKOMIR. Well, under the present Hatch Act he is permitted to run for nonpartisan politics even as a Government employee.

Mr. HARRIS. Right. But you have said he should either resign or take a leave of absence.

Mr. WOLKOMIR. As it refers to partisan politics.

Mr. HARRIS. You want to amend it now to where he runs as a partisan candidate?

Mr. WOLKOMIR. I realize the gymnastics that's going on and I don't appreciate this. I think our stand is clear. I have been around a long time. With reference to the fact that we have taken a stand here that is a little different than the other stand is something we feel strongly about because we realize what the realistic world is today.

Mr. HARRIS. What I am trying to determine is what your stand is.

Mr. WOLKOMIR. If you want it restated, we have made no mention of the present status of the Hatch Act and with reference to changes to the Hatch Act except the subject of this particular hearing, and that is H.R. 3000. And this is all the subject of this hearing. If we have recommendations in terms of what the bills refer to, fine. And if my language is not clear, then I will requote it by stating that the right of a Government employee to participate in nonpartisan politics should remain as it is presently interpreted under the Hatch Act. The right of an individual to run for a candidacy if he is a Government

employee, he should either resign from his position or take leave without pay if he is candidate minded in partisan politics.

Does that clarify it?

Mr. HARRIS. It does. If, in fact, he is going to be a nonpartisan candidate, you feel it is all right for him to stay as an employee and not take a leave of absence or resign; is that right?

Mr. WOLKOMIR. That is right. You appreciate the fact, Mr. Harris, that a nonpartisan candidate normally accepts that position without pay.

Mr. HARRIS. That is not true.

Mr. WOLKOMIR. Normally he accepts.

Mr. HARRIS. That is just not true.

Mr. WOLKOMIR. Having been the man of my community in our partisan politics and having been chief of several things in Illinois, I haven't taken a nickel in pay.

Mr. HARRIS. I think this is fine. But to say that a nonpartisan candidate normally runs for a position and doesn't accept pay for it—I am referring to boards of supervisors, city councils, what have you. We have all kinds of nonpartisan candidates for such positions. I have served with them. Government employees. The last Government employee who ran as a nonpartisan candidate was elected in my jurisdiction and received $10,000 a year in pay.

Mr. WOLKOMIR. If you don't mind I would like to get from the general counsel an interpretation of the present policy with reference to partisan politics.

Mr. HARRIS. I don't blame you. It is hard to understand the existing regulation. I don't have anything further.

Mr. CLAY. One last question: In your summary you made the statement that there were people in this Congress and people in the labor movement who were calling for complete repeal of the Hatch Act. Will you identify some of these people?

Mr. WOLKOMIR. Not for the purposes of this hearing I wouldn't. I will personally to you.

Mr. CLAY. Well, are they doing it publicly?

Mr. WOLKOMIR. Yes.

Mr. CLAY. Well, why would you hestiate to identify them publicly?

Mr. WOLKOMIR. We, sir, are a labor union and right now the situation of a labor movement is a dog-eat-dog and I am not about to name names here.

Mr. CLAY. Well, what was the purpose of making that statement? It certainly wasn't to give the impression that H.R. 3000 was calling for repeal of the Hatch Act, was it?

Mr. WOLKOMIR. No.

Mr. CLAY. I just want to get it straight for the record that we are asking to revise the Hatch Act and not to repeal it.

Mr. WOLKOMIR. My statement is that there are some.

Mr. CLAY. Some that are doing what?

Mr. WOLKOMIR. Exactly what you are implying.

Mr. CLAY. Some in a position to actually repeal the Hatch Act?

Mr. WOLKOMIR. Yes.

Mr. CLAY. Are there people in this Congress who would have the power to repeal it——

Mr. WOLKOMIR. Of course not. There are those who have their opinions.

I am not going to be quoted out of context.

Mr. CLAY. The record has your quote. We will send you a copy and you might want to revise it.

Thank you. We certainly appreciate your testimony this morning.

Mr. WOLKOMIR. Thank you.

Mr. CLAY. The next witness will be Mr. John A. McCart.

STATEMENT OF JOHN A. McCART, PUBLIC EMPLOYEE DEPARTMENT, AFL–CIO, EXECUTIVE DIRECTOR

Mr. MCCART. In view of the time, I'll be happy to briefly summarize our statement. I will dispense with the amenities with respect to the subcommittee and the chairman and the numerous Members of the House who have sponsored the pending legislation.

The fundamental issue confronting this subcommittee is the status of a significant number of citizens in a democracy with respect to the political life of the Nation. There is no denying the fact that the vast mass of citizens in our country enjoy political freedom.

On the other hand, a large number of workers, Federal and postal, are denied that same freedom. So the task of the subcommittee is to balance the equity between the rights of these individuals who work for the Government as citizens and the needs of the public service.

This, of course, at a time when there is the greatest need for citizen involvement in the political activities in the country. Let me give you just three examples: In the 1974 elections, 38 percent of the eligible voters participated. In 1972, the number was 56 percent, and in 1970, 45 percent. This tells a story of general citizenship apathy with respect to the exercise of franchise.

It is our conviction that amendments to the Hatch Act would do much to stimulate and correct this problem to the extent that Federal and postal workers would be encouraged, would be stimulated, to participate more fully in the steps in the political process as well as the responsibility for voting.

In enacting the amendments to the Federal Election Campaign Act of last year, the Congress included the provision excluding the previous restrictions on State and local government workers against political activity.

We believe that the decision last year by the Congress with respect to State and local government employees was wise. The time has now come for the Congress to act in similar fashion for postal and Federal workers.

Actually the whole issue of separation of merit and politics is very deeply grounded in the Federal civil service system. Its origin is the 1883 Civil Service Act. That act contains some very specific injunctions with respect to political coercion, political reprisal, and merger of political offices.

Although the Hatch Acts of 1939 and 1940 were enacted in a different climate and for a different purpose, they really represent an extension of the provisions of the Pendleton Act of 1883 with respect to political matters.

We believe that the time has come to review the Hatch statute in light of the 1883 act and the deeply ingrained merit concept that the 1883 act projected and to make some necessary changes.

Actually, I sense that a great deal of temerity in some of the testimony that has been presented by representatives of the executive branch, and in some few instances, by union representatives that somehow the whole system of civil service in our democracy will fall down around our shoulders like a pack of cards if this reasonably moderate legislation is enacted.

We in the Public Employee Department just don't see it that way. Assume the worst, assume that H.R. 3000 is enacted and that abuses become greater than they are today. The civil service system is not going to become extinct. Congress will be able to change whatever portions of the act needs changing. To do less, it seems to us, is really put our heads in the sand simply because we don't want to confront the problem of whether postal and Federal workers should now approach the same political status as their fellow citizens.

The chairman has made reference to the practices of other democracies. Our statement recites them in some detail. They include Great Britain, Sweden, Denmark, Canada, Australia, Austria——

Mr. CLAY. Excuse me. Just for the record, will you tell us what percentage of public employees in Great Britain are free to participate in politics at all levels.

Mr. MCCART. Two-thirds. It is just a very relatively small cadre of what the British term career civil service who are the highest ranking nonministerial individuals that are excluded from the political process.

Mr. HARRIS. They kind of do it the opposite from the way we do it.

Mr. MCCART. That is right.

Their blue-collar and white-collar national government populations are treated entirely differently than ours.

Mr. CLAY. Would you refer to the governments in West Germany and France as democracies?

Mr. MCCART. Of course.

Mr. HARRIS. You might include Canada.

Mr. MCCART. Yes. They're now free to be candidates for Parliament under a recent law.

Actually, the provisions of H.R. 3000 to a large extent mirror the recommendations of the bipartisan commission on political activities which made its report in 1970. There is one significant difference, the ability of Federal and postal employees to compete for partisan offices. We subscribe to that provision. We believe there should be certain safeguards surrounding that right. But we're convinced that it's a meritorious one.

The time for action, therefore, is long overdue. I have been exposed to the public sector of the trade union movement for 25 years. During that entire time I can recall convention after convention of not only my own union but the other unions with which I have been associated that have endorsed revision of the Hatch Act.

The time to act is now. We deeply appreciate the work of the subcommittee in this area. We hope you will see fit to report a bill favorably at a very early date.

Mr. HARRIS. Thank you very much. We appreciate your testimony, and I had read through it and noted the comments on page 6. We do have rollcall, and so if there aren't any questions, we'll adjourn the meeting and we'll meet tomorrow morning at 9:30 a.m.

[Whereupon at 12:10 p.m. the hearing was adjourned, to reconvene at 9:30 a.m., on Thursday, April 10, 1975.]

[The prepared statement submitted by Mr. McCart follows:]

PREPARED STATEMENT OF JOHN A. MCCART, EXECUTIVE DIRECTOR, PUBLIC EMPLOYEE DEPARTMENT, AFL-CIO

Mr. Chairman and members of the subcommittee, the Public Employee Department consists of 28 AFL-CIO unions representing more than 2.2 million Postal, Federal, State and local government employees.

We are grateful, indeed, to the chairman of this Subcommittee, Representative William L. Clay, and his 53 colleagues for introducing H.R. 3000 and other identical bills. These measures include badly needed revisions of a statute controlling political participation by Federal, State and local government workers.

All told, more than 2.5 million Federal employees are affected by the existing statutes limiting their involvement in politics. Thus, we cannot overemphasize the importance of the bills which are the subject of this hearing.

The fundamental question to be resolved by the Committee and Congress is whether the restrictions on political activity now in effect are warranted today to the same extent as in 1939. More than 30 years have elapsed since the original law was approved. Great social and economic changes have occurred in that period. Our society has become much more complex. The need for citizens to share in the political decisions of the nation grows each day. Maintenance of our social and political ideals dictates the broadest participation possible by the electorate. Never in the history of the country was there a greater need for intelligent appraisal of political issues and active participation in elections and related activities by more and more citizens.

One evidence of the need for encouraging our citizens to play a more active role in achieving good government is the discouraging participation of voters in national elections.

In 1974, for example, according to the Census Bureau, only 38 percent of the eligible voters cast ballots in the election. Two years earlier, the figure was approximately 6 percent. And in 1970, slightly more than 45 percent voted.

Revision of the Hatch Act would stimulate an awareness by Federal and Postal workers of the obligation they have as citizens in a democracy.

Last year, Congress enacted a series of amendments of the Federal Election Campaign Act. Section 401 of that statute—Public Law 93-443—removes all of the previous restrictions on political activity by State and local government employees, whose jobs are in whole or in part by Federal funds. The one exception is that they are still prohibited from competing as candidates for partisan political office.

We believe the decision reflected in Section 401 was wise. It should now be applied to Federal and Postal employees.

As you are aware, the separation of public service from politics has deep roots in the Federal Service. The basic Civil Service Act of January 16, 1883, contains explicit injunctions against pressure on Federal workers for financial contributions or other assistance for political purposes. It bans also use of a Federal employee's office to compel political action by another person. This legal basis of our merit system free of politics has been in effect for almost 90 years.

Rule IV promulgated by the Civil Service Commission amplifies the statutory requirements by proscribing involvement of Federal employees in political management of campaigns. The rule further forbids political considerations in any personnel action and discrimination against any applicant or employee because of party affiliation.

The economic tribulation experienced by our country in the 1930s resulted in legislative approval of several national programs designed to assist destitute citizens. Scandals related to some relief projects and internal party difficulties over patronage provided the background for Congressional action in 1939 and 1940 to prevent political abuse of citizens because of their dependence on government-sponsored benefits. These are now known as the "Hatch Act".

Subsection 9(a) of that Act consists largely of a repetition of Rule IV.1 of the Civil Service Commission, issued in another form shortly after passage of the Pendleton Act of 1883.

The remaining language describes the political officials excluded from the Hatch Act, and, as amended, sets forth details of enforcement of the law.

Section 15 of the Act buttresses the original restrictions in the Civil Service Act and the Commission's rules by making the Hatch Act applicable to persons covered by those two regulations. From this viewpoint, the Hatch Act is simply an extension of the principles enunciated by Congress in the 1883 statute.

However, it is necessary to analyze the attitudes which led to approval of the Hatch Act. While the obvious purpose was to insure retention of a merit system in Federal Service based upon the absence of partisan politics, the effect was to engender suspicion that politics has no place in civil service and individuals employed therein must hold themselves aloof from all but the most elementary political rights—voting and expressing opinions on political subjects and candidates. Even this latter right is somewhat obscure because of uncertainty in administration of the law.

The result of these actions has been to cast a pall over the rights of Federal and Postal workers as citizens in contrast to those enjoyed by others outside the Government. At times in the past, the negative effects of the laws and regulations have been highlighted. These employees have the impression, justified or not, that existing limitations on their political rights can be best observed by remaining completely apolitical. In short, the current law and the safest course is to take no part whatsoever in the political life of the community, rather than risk the severe censures imposed by the Hatch Act and the criminal code.

Rather than a philosophy that is completely negative and injunctive, we believe Federal employees as citizens should be encouraged to participate in political work—partisan or non-partisan—to the maximum extent consistent with retention of the merit system and the public interest.

Certainly, no one can quarrel with the philosophy expressed in the Civil Service Act and Rule IV. A highly laudable purpose was served by removing political considerations from appointment and separation from Federal jobs. Federal workers were assured that with competent performance they would have the job security necessary to make a meaningful contribution to public service.

The Civil Service Act has stood the test of time for almost 90 years. The concept of merit has become a part of the fabric of Federal Service. The public has come to view it as free of partisan considerations. We believe the time has come to make substantial changes in the Hatch Act, which will encourage Federal workers to accept their citizen responsibilities without doing violence to the merit principle. This position is practical.

POLITICAL PRACTICES ELSEWHERE

In preparing this presentation the Department felt the Subcommittee would be interested in practices prevailing in some other democracies with respect to political activities of public employees.

In Great Britain, for example, employees of the Crown are divided into three categories:

1. Service, maintenance and manipulative employees have the same political rights as other citizens of the United Kingdom, including minor supervisors.
2. An intermediate group—technical and clerical services and lower professional and administrative categories—may not be candidates in national elections, but are allowed, with permission of their agencies, to participate in politics, including the handling of funds. (A) Participation can take place at national and local level with permission. (B) Participation can take place at local level without permission.
3. Senior civil servants—those in the executive classes—are banned from participating in politics, and must resign their jobs to become political candidates.

Union of government employees take an active part in party affairs.

The effect of this system is that approximately two-thirds of British civil servants are permitted to engage in national and local partisan politics and to be candidates for office while retaining their status as public servants.

A public service employee in Australia must retire or resign to become a candidate for national or state parliament. However, if he is unsuccessful, he may be reemployed in public service without loss of benefits upon applying for his former job within two months of the election.

An individual worker is free to speak and work for candidates, subject only to the prohibition that he cannot use information obtained in the course of executing his official functions.

Unions representing national government workers participate in financial support and work for candidates endorsed by labor organizations.

Sweden has a liberal law dealing with political action by civil servants. They may join a political party, work actively in its behalf and become a candidate for Parliament or any municipal council. The Swedish Parliament contains a number of public workers who continue to receive part of their pay as public employees as well as the normal compensation attached to the legislative office they occupy.

Under the 1929 Constitution of Austria, national government workers are able to engage actively in partisan politics. If nominated to serve on a constitutional body, they may secure leave of absence. Upon election, the leave of absence is extended without loss of benefits.

A national government employee may be a candidate for office with the permission of the minister responsible for his department. If the request is approved, the employee is entitled to a minimum leave of absence of three months to campaign.

In Denmark, workers of the national government may participate in elections and compete as candidates for office. They may not use official leave to campaign. However, a leave of absence is available for this purpose and may be obtained to serve in the national legislature.

Until 1967 the Canadian statute banning politics in civil service was quite stringent. Then, a new law was enacted. It continues the bar against political actions by Canadian public employees. Significantly, however, the statute empowers the Public Service Commission to grant leave of absence for an employee to stand for election as a member of the House of Commons, or a provincial legislature. If elected, the individual ceases to be an employee.

The point of these examples is that western democracies have seen fit to enable their public employees to share the responsibilities of self-government to a substantial degree. The objective of their laws appears to be to free government workers as much as possible from political restrictions.

EMPLOYEE ATTITUDES AND OTHER OBSERVATIONS

The Committee is interested, of course, in the opinions of Federal employees themselves on this vital issue.

In developing a training conference with one of our affiliated unions several years ago, the organization which preceded the Department, and that union decided to explore with the participants their ideas on the relationship between the Civil Service merit system and political action. This was an honest effort to secure a "grass roots" reaction from Federal employees to the vital subject you are considering. No attempt was made to "direct" the discussion. We simply posed these questions to the group of approximately 35 students and solicited their verbal reactions.

1. Is there an essential conflict between political activity and the merit system?

2. Does the public interest demand complete political neutrality by public employees?

3. Are Federal employees able to discharge their full civic responsibilities under the current Hatch Act restrictions?

4. Should Federal employees have complete freedom to participate in political activities?

After about two hours' discussion, these conclusions emerged—the general answer to the four questions was "no". It was impossible to elicit specific recommendations for changes in the present statute, but it was clear that the Federal employees present—all of whom represented local unions—desired substantial modification of their present political status.

With this background, it becomes clear that Congress should take a bold step to encourage Federal workers to exercise their full political rights as citizens.

This philosophy is embodied in H.R. 3000. Removal of the serious obstacles and severe penalties now assessed for such activities will assure Federal workers that the national government has set an example by welcoming the exercise of the obligation of Federal employees to shed their passivity with respect to political involvement at all levels.

There is one significant difference between H.R. 3000 and proposed amendments to the Hatch Act in the past. The current bill removes the prohibition against Federal employees vying for office in partisan elections.

The Department believes this is a highly desirable feature of the legislation. With appropriate requirements for individuals to remain off the payroll, in a leave of absence status, during their candidacies or while occupying office, opportunities for abuse would be quite remote. Moreover, specific language could be incorporated in the bill to prevent Federal employee candidates from attempting to influence Federal workers or others because of their previous government employment.

We are optimistic that enactment of H.R. 3000 will cause neither disruption of the normal civil service system nor jeopardy to the status of Federal employees. This observation is based on the fact that the bill retains the existing safeguards against coercion of any kind in political matters.

In retrospect, the Hatch Act was a product of its time. Given the circumstances leading to its enactment, the statute met a pressing need.

Conditions have changed substantially in the intervening 36 years. We believe that in the light of the attitudes of the public on politics, the political rights of civil employees, and the necessity for retaining effective, impartial service to all citizens, Congress should approve fundamental changes in the Hatch Act. These objectives can be achieved through H.R. 3000. The Public Employee Department strongly recommends that the Committee act favorably on the bill.

FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975

THURSDAY, APRIL 10, 1975

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE POLITICAL RIGHTS
AND INTERGOVERNMENTAL PROGRAMS,
Washington, D.C.

The subcommittee met at 10 a.m. in room 311, Cannon House Office Building, Hon. William Clay (chairman of the subcommittee) presiding.

Mr. CLAY. The committee will come to order.

The first witness this morning in the continuation of hearings on H.R. 3000 will be Mr. Clarence Mitchell, the director of the Washington bureau of the National Association for the Advancement of Colored People.

Mr. Mitchell, we have a copy of your statement and you may proceed as you see fit.

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Thank you, Mr. Chairman, and if it is permissible I would just like to read this because it is brief. I tend to talk much longer when I talk extemporaneously.

Mr. CLAY. We have no time problem, so please take your time.

Mr. MITCHELL. I would like to say before I begin this testimony that it is a real cause of gratification to see you sitting here as chairman. I think the last time I was in this committee room your colleague, who was head of the committee—I always thought of it as Un-American Activities—I forget what the new name is.

Mr. CLAY. Internal Security.

Mr. MITCHELL. That is right. But in any event, I must say that it is really a heartwarming experience to be here before you and also to appear before my fellow statesperson, Congresswoman Spellman, who, as you know and many others know, has had a long and very constructive career before she came to Congress in so many things that were helpful to the people.

So I feel that as I talk here I am speaking in a forum where there is a genuine interest in trying to reform some of our faults, this being one of them.

As I said, I am director of the Washington bureau of the National Association for the Advancement of Colored People. I thank you for this opportunity to appear and present testimony on the Federal Employees' Political Activities Act of 1975, to restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, and to protect Federal civilian employees from improper political solicitations and other purposes.

We support changes in the Hatch Act so that persons in Government service may participate in the country's political processes without fear of reprisal or dismissal. As a practical matter, the act operates to prevent constructive political participation by many able persons who could make a real contribution to improving our system of electing public officials.

In many cases, Government employees hold positions of leadership and respect in their communities. Often their failure to join in supporting good government policies and candidates is not understood. In addition, many of them who are strongly motivated participate in election campaigns anyway, even though they run the risk of being penalized.

I offer as an example a case decided by the Civil Service Commission in 1974. I have deleted the names of the employees, but offer the full text of the decisions. I believe that is attached to my testimony.

To summarize it briefly, it is a situation where some employees, one of whom was directly employed by the Federal Government and the other was in a project that was being assisted by the Federal Government—they felt very strongly that they ought to be participants in the Democratic National Convention.

Mr. CLAY. Without objection, the exhibit will be included in the record in its totality, at the end of your remarks.

Mr. MITCHELL. Thank you, Mr. Chairman.

They felt that they should participate in the election process and did, in fact, succeed in getting elected as delegates to the Democratic National Convention in Florida.

They were duly warned that they would run the risk of losing their jobs if they did so participate, but at the time a case had been instituted in the U.S. district court, in the area where they were located, challenging the Hatch Act.

I am satisfied, having talked with one of them and being convinced that she was a very sincere person—I am satisfied that they were acting in good faith to vindicate a constitutional right as they saw it.

Interestingly, a U.S. district court in that instance gave a favorable decision, holding that the employees did have such a right to participate, but, as you know, the lower court was reversed by the U.S. Supreme Court.

I thought that the penalty of dismissing these people was unduly harsh. In addition, the Civil Service Commission even went after one who had transferred to a different job, and as the decision states, the Commission supported action on its own interpretation of the statute.

In the circumstances of the case, the parties stated that they were seeking to vindicate a constitutional right. When that right was not upheld, it would have been far more just to impose some penalty short of dismissal, indeed a more evenhanded result would have been a reprimand.

There is a serious question about whether the Civil Service Commission should be given the responsibility of making a final decision in matters of this kind. It would be more appropriate to let the Commission determine the facts and leave the question of what penalty, if any, should be imposed to an impartial tribunal.

I say that because these are serious questions of law, and the Commission, after all, is an administrative body. I assume that it is competent to make a finding of fact, but it seems to me that where you get into a question of whether an employee has violated a criminal law, that ought to be handled by the court or perhaps a master appointed under our judicial system.

I don't think any administrative agency should have the right to make a final determination when there is a Constitutional question involved.

It is noted that in H.R. 3934 and possibly other bills, there is a prohibition against affected employees requesting, receiving or giving "a thing of value for political purposes." There is, then, an exception permitting an employee to "freely and voluntarily make a contribution to any candidate for public office on his own volition." This phrasing seems to open the door for considerable disagreement on when an affected employee has violated this part of the proposed statute.

I realize, Mr. Chairman, you were tracking the statute as it now is in the first part of that, but it seems to me that you would have to read very carefully, and perhaps have some considerable insight to the background of the statute in order to make this exception as it is given here fully applicable and not subject to being misinterpreted by the body that would be trying to determine the fact of whether an employee has violated that particular section.

H.R. 3934, and perhaps other bills before the subcommittee, would provide for mandatory prosecution by the Attorney General upon receipt of a "finding by the Civil Service Commission of illegal activity under section 7323 of title 5" unless he—the Attorney General—shall determine that no factual basis for prosecution exists or the cause of justice will not be served by such prosecution.

Now, there I really have trouble because I feel that if the Civil Service Commission is set up as the finder of the fact and makes an absolute determination that the facts show that the law has been violated, it would be unusual for the Attorney General, upon his review of the Civil Service Commission's findings, to make a contrary finding that the facts were not as shown by the Commission.

This would then leave the Attorney General in the position of having to prosecute unless, as is provided, he finds that the ends of justice would not be served. And then, of course, he would have to report to Congress.

That is loaded with so many political possibilities for exploitation that I think it would not be good. As you know, Mr. Chairman, I have been around here for more than 30 years and I find that sometimes political considerations outweigh the merits of a given case. I would assume that if, in a matter of broad public interest, the Attorney General decided the ends of justice would not be served by pursuing the case and submitted a report to Congress, that might be very good speech material for people who might be of an opposite political party.

I think in these things it is better to err on the side of being a little too lenient than being too punitive.

As I said, this provision is far too severe. It must be remembered that the Hatch Act was passed at a time when fines and jail sentences were almost routinely added to new laws. There is little to show that such penalties have improved the quality of society nor have they kept wrongdoers from carrying out schemes against the public interest.

I am a very strong advocate of substituting a civil approach for a penal approach in a great many matters of this country. Indeed, anyone who looks at the civil rights legislation which I played some part in helping to get passed will see that we have leaned strongly in favor of equity approaches and remedies as opposed to criminal remedies.

My experience has been that criminal remedies usually are avoided, if possible, and it does seem a little bit out of line, in my judgment, if a person who commits a misdemeanor of some kind involving, say, pocketbook snatching or assault, would have the same kind of jail penalty as an individual who has been guilty of some infraction of the law where his infraction might be due to an error of judgment on his constitutional rights rather than intention, to commit a criminal act.

I think courts take that into consideration a great deal and therefore they are put in the position of seeming to give light penalties when people are charged with certain kinds of criminal offenses.

I have been giving some attention to that nationally with other members of the bar around the country, and it is my opinion that we ought to eliminate a great many of our criminal penalties that are attached to various statutes. I would hope that a criminal penalty would not be added in this case.

Instead of treating these matters as criminal offenses, it would be better to make dismissal from a post the maximum penalty. In cases where the offending employee, by unlawful action, caused others to suffer financial losses, a provision could be included requiring restitution.

It is difficult to see why a person who works for the Government should be required to give up the right to engage in full political participation when such a requirement should not and could not be imposed on a person in private indstry.

The key to the rights of Government employees should be whether their actions take place when they are on official duty and on Government premises. One or both of these requirements should be met before any penalty should be imposed.

Under the circumstances, we hope that the Hatch Act will be revised and that Government employees will be allowed full participation, including the right to take leave to seek public office if they desire to do so.

I do not believe that a person who is employed at any level of Government should be permitted to campaign for office while he is actually receiving his regular pay. For instance, if he works from 9 to 5 and gets off at 5 o'clock and campaigns, I don't think that is proper. I do think he ought to take whatever leave he has accumulated or leave without pay so that he is not in fact at his desk or in his office during the period that he is seeking election.

That concludes my statement, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Mitchell.

In regard to the last point that you made, are you saying it is your opinion that a person who files for public office ought to go off the payroll of the Federal Government during the period of the campaign?

Mr. MITCHELL. I think that would be an ethical thing to do. It would be very difficult to separate, say, a person who is a postmaster of a large city from the post office, itself, if, at 8 o'clock at night one sees him on television campaigning for a position and then the next morning when one goes to the post office sees him there running the affairs of that office.

To me, it is more a matter of judgment and I think that would be one way of keeping it from having the taint of a person using his appointed office to obtain an elected office.

Mr. CLAY. But in a practical sense, wouldn't you be placing an unbearable, an unreasonable condition on those who cannot afford to be off from work without pay?

I am talking now or thinking of those in the lower echelons, the man that delivers the mail as opposed to the postmaster. For a 3-month campaign, how could he be without pay?

Mr. MITCHELL. I think that that is a problem but it is my opinion that when a person runs for public office that person ought to be prepared to make some reasonable sacrifices.

Mr. HARRIS. He does.

Mr. MITCHELL. As you so well know.

And for that reason I would advocate a person being on leave.

Now, it might be that he could make a declaration that he intended to run, but not beginning his campaign right away, and thereby shorten the time that he would be without income from his job.

Of course, there might well be prudent people who had accumulated enough official leave to be out during that period.

Mr. CLAY. Well, what about those persons who would be seeking nonpaying positions? Would you still impose that kind of condition on them?

Mr. MITCHELL. Well, I think it is hard to imagine many nonpaying positions except something perhaps like a school board or a commission or something of that sort. I certainly would have no objection to a provision which would give to some administrative body the right to make a determination of whether the office was of sufficient importance to warrant being off the job.

Indeed, I think the statute which was enacted for areas adjacent to Washington, D.C. concerning local interest questions does make that kind of exception, so that, as far as I know, anybody running for the school board or something of that sort in some of these areas, where it is strictly a local question, would not have to give up the job at the time.

Mr. CLAY. Well, that is only in the impacted political areas here, and it is all right for nonpartisan positions. But in many of the smaller communities the city council positions are not paying positions. The mayors of many small cities are not paying positions, and they are partisan positions. And I just wanted to know if you wanted to impose those kind of restrictions.

Mr. MITCHELL. Well, as I said, I had really in mind people seeking paid positions.

Mr. CLAY. Congress?

Mr. MITCHELL. Congress—hopefully, not in Missouri—or the city council or State legislature, things of that sort, where the functions that they perform have a great impact on the whole legislative process.

I would certainly think if we revised my suggestion so that it would exempt nonpaid positions or matters that are strictly in an administrative area, such as school boards and things of that sort—I certainly don't see anything wrong with that.

Mr. CLAY. On page 2 of your statement you question whether the Civil Service Commission should be given the responsibility of making the final decision in matters, as you pointed out in this lawsuit. And then you suggested maybe these decisions should be left to an impartial tribunal.

Mr. MITCHELL. Yes. The Civil Service Commission now has what they call administrative law judges—in fact, I guess a number of Government agencies have that.

I have not been satisfied that those officials are really impartial in sitting as judges and handling affairs of an agency that does have some control over their function. So I would think we could do what was done in the Voting Rights Act of 1957 where judges were given the right to appoint masters, as indeed U.S. judges have the right to appoint masters in certain types of cases.

I would think there could be a panel from which such persons could be designated by a U.S. district judge to handle things of that sort.

Mr. CLAY. Mr. Mitchell, some minorities have expressed fears that broadening the political permissible activities may in some way make them vulnerable to improper coercion.

What is your opinion on that?

Mr. MITCHELL. I think people must have a little backbone in these matters. Federal employees enjoy the right of representation by unions, and many of them are people of very strong convictions anyway.

So I would think that in view of the fact that the statute gives them redress, that may be a risk, but I think the risk is outweighed by the value of giving to people the right to have actual participation in the political life of this country.

Mr. CLAY. Thank you.

Ms. Spellman.

Ms. SPELLMAN. As I sit here looking at Mr. Mitchell, I recall the last time we were together was at the Woodrow Wilson Institute for Scholars.

Mr. MITCHELL. That is right, on revenue sharing.

Ms. SPELLMAN. You are right. It was on revenue sharing.

As usual, you have given a very well prepared and very worthwhile statement and I appreciate that.

There were a number of questions I had as I was reading the statement but in each case you elaborated and made it very, very clear.

Mr. MITCHELL. Thank you.

Ms. SPELLMAN. I just want to ask one question of you. We want to be very sure that we have sufficient protection in this bill to prevent coercion and to prevent undue influence upon employees.

Do you find that there is that? Or, if not, where would you suggest we strengthen that?

Mr. MITCHELL. It is my opinion that by imposing penalties you really have a very strong deterrent. The bill goes a bit further than I have suggested in my testimony. In fact, under the bill a person found guilty of coercion, would be fined and put in jail as well as put off the job. I think dismissal from employment under a tightly drawn statute and implementing regulations would be a sufficient deterrent.

In these days where employees are represented by organized labor, I would assume that the first thing that would occur when coercion arose would be that the employee would go to his shop steward or some other official to whom he would report a grievance, and wheels would be set in motion to stop whatever was wrong.

Ms. SPELLMAN. So employees need not fear? People want to see an opening of the Hatch Act so they can participate but they are fearful we won't be able to give them proper protection. You don't see any reason to be concerned?

Mr. MITCHELL. As I said, I think free people must assume some risks to their lives, fortunes, and their safety. If they are unwilling to assume those risks, then you might find that you are not going to be free.

As I remember the history of the Hatch Act—it was passed in my early days in Washington—it was really designed to get at the possibility of minor-grade employees being coerced into voting for certain candidates.

At that time I think the Works Progress Administration, which was a New Deal agency, had a lot of people doing Government jobs and there were some who thought these people were being used to undermine candidates who were in office.

But this is a different day. I think that with the television, radio, and the sensitivity that people have to what their rights are, a person who attempts to coerce anybody is really in for an awful lot of trouble.

And, by the same token, it doesn't seem quite fair to me for the people who have the so-called supergrade jobs, who, after all, get money out of the same Treasury, to have the right that they have, whereas those who are at a lower level and maybe feel the pinch of social problems more severely, don't have an opportunity.

Ms. SPELLMAN. Thank you. I said I would ask only one question but I do want to make a comment.

Quite a few of the people who have testified have indicated that they felt that employees should take a leave of absence when they are running for office. I would not have expected that. I think that is interesting and I certainly am going to take a good look at that proposal.

Mr. MITCHELL. Well, we have that policy in our organization. A number of our people—they are not paid officials—who are branch presidents and that kind of thing, eventually wind up as members of city councils, sheriffs, or one thing and another. But under our policy it is expected that they would take a leave of absence while they are running for office and hopefully, if they win, they would then be subjected to scrutiny by our local board for the purpose of determining whether, by holding a public office, they would be in conflict with the things that are required of them in the organization.

It is a little bit different in that these people are not drawing a salary from our organization.

In my opinion, it is largely a question of judgment, and if anyone is deeply troubled by the notion that an employee is not able to make any money during the period that he is running for office, I would not feel that it was so important as to defeat the overall purpose of the bill.

Ms. SPELLMAN. Let me just ask this, then. If someone were to run for Congress, the congressional seat in Maryland, would I have an unfair advantage over this man or woman who was working for the Federal Government in another capacity, if I did not take leave as a Member of Congress?

Mr. MITCHELL. I think it would not give you an unfair advantage because, in your case, or in the case of most Members of Congress, they usually make some kind of a provision to run, and do make great financial sacrifices.

So that I think having made those financial sacrifices and being subject to the inconveniences they are subjected to, it doesn't seem to me improper or of any great advantage for the individual to continue serving.

Indeed, it would be contrary to the whole purpose of being elected to Congress because presumably, if all Members had to take leave to campaign, the legislative body couldn't function in their absence.

Ms. SPELLMAN. Thank you very much.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Mr. Solarz.

Mr. SOLARZ. Mr. Chairman, I yield to the distinguished successor to the former distinguished chairman of the Rules Committee, my good friend, Mr. Harris.

Mr. HARRIS. Thank you very much, Mr. Solarz.

I am on my third meeting now. My fourth one starts in two minutes and I have to leave and I regret that very much.

I wanted to compliment you on your statement but, to follow up again on some of your statement with respect to the requirement for leave of absence which concerns me a great deal, I do not believe it is a requirement of the Hatch Act now with those nonpartisan candidates. Is that true?

Mr. MITCHELL. That is correct, with respect to those that are adjacent to Washington; I am sure that is correct. And of course with respect to those employees who are exempt, that is correct.

Mr. HARRIS. I have some sensitivity with regard to local offices especially, where the effort here to open up the Hatch Act a little bit has a great deal of merit as far as gaining participation of leading citizens in the community in affairs of their local government.

And I do think the requirement that they take leave of absence for them to be a candidate really would vitiate the whole effort that we are making.

And I was wondering if you might not want to consider here that especially candidates for part-time positions should not be subjected to the requirement that they leave their jobs in order to be candidates. I am not so sure this logic would not apply to other positions in the campaign once you opened up the door.

Mr. MITCHELL. In shaping legislation you do have to have floors and ceilings on things. I would think with respect to the District of Columbia and with respect to a number of other Government enclaves around the country, we might have an exception, just as was done for adjacent areas in Maryland and Virginia.

But as I said, I don't have any strong feeling about it, and I am sure in our organization we would not have a very strong feeling about it if it meant increasing the opportunities for people to participate in political process. I am sure we would come down on the side of doing everything reasonable to make it possible for them to participate.

Mr. HARRIS. Thank you very much.

Thank you very much, Mr. Chairman and Mr. Solarz.

Mr. SOLARZ. Thank you, Mr. Harris.

We apparently have quite a few jaded adults who attend the hearings of our committee and it is not too often we get some representatives of the young generation to listen in on our deliberations. So I thought it perhaps appropriate, in view of the fact that we do have a representative of that generation here today, to take note of the fact that we have with us Miss Lori Ann Reffett who, I understand, is the youngest board member in Easter Seal history. And I can only say, Lori, you are already off to a good start and I hope you maintain your activities because really in many respects the future of our country depends upon the willingness of young people like yourself to play an active role in the lives of their communities. And I am sure you have already demonstrated you have a lot to offer and I have no doubt that you will continue to make a meaningful contribution in the future.

So if I may take the liberty of speaking on behalf of the other members of our committee, we are just delighted that you are here today and that you have indicated an interest in our work. I just hope that we can conduct ourselves in such a way that we can merit your confidence in the future.

Getting back to the business at hand, let me say, Mr. Mitchell, I have heard a lot about you over the years and I am delighted now to finally have the opportunity to meet you.

I thought your testimony was most persuasive. I just have one or two questions.

On page 3 of your statement you made the point that you could not see why someone who works with the Government should be required to give up the right to engage in political activity when such a requirement is not imposed on people who work in the private sector.

And I think that is an excellent point, and it suggested a possible course of action to me with respect to this legislation which I would like to try out.

If, in fact, workers in the public sector should be entitled to the same protections and privileges as workers in the private sector, it seems to me if we enact this legislation to a certain extent those who work in the public sector will be significantly better off than those that work in the private sector in the sense they will have the same rights to participate but they will have a measure of protection with respect to political coercion which workers in the private sector do not have.

Perhaps we ought to include in this bill, or it would be germane in another piece of legislation, a bill of rights for employees in the

private sector which would protect them from the same kind of potential coercion which we seek to protect Federal employees from in this bill.

Mr. MITCHELL. Before I answer that I would like to join you in expressing appreciation to the young lady whose name you mentioned. I will say to her when I was at her age I assumed that De Senectute did not mean as much to me when I read it then as it does now that I am 64.

But I will say, also, that in all seasons, spring, fall, winter, and summer, life is wonderful and it becomes more so if people of all ages and all stations become involved in the things she is involved in by being here.

Now, to answer the question, I would like to say it is my belief—I would have to check the specific part of the criminal code because I haven't read it recently, but provision in the criminal code, title 18, section 594, which makes it a crime to interfere with an individual's right to vote and participate in Federal elections.

I would assume that would be applicable to the people who interfere with private employees.

In addition I would assume that where employees are represented by a labor organization, again the same defenses would be made. But there is a class of private employees that I think would be vulnerable and I think indeed is now vulnerable, and that is the white collar junior executive group, which is so close to management and often lives in such close social contact that it is unlikely they would depart from the political concepts and views of management, or seek to run for office unless their superiors approve.

For example, I do know in my State there are some people who work for the telephone company who have run successfully for the State legislature, and some who work for the steel companies and others who have worked for large corporations.

Their views are not necessarily the same as those of the executives of the companies for which they work, but if it could be a greater safeguard for these employees to do something along that line, I think it would be a good idea. I do think it would have to be done in a separate statute.

Mr. SOLARZ. I think one would have to distinguish in this regard between efforts to interfere with the right to vote, on which I will take your argument for granted that it is already proscribed, with efforts to coerce employees in the political process through the form of campaign, et cetera, which the Hatch Act already proscribes and which the amendment to the Hatch Act would proscribe. What I am saying is if Federal employees deserve to be protected against such efforts, then perhaps private employees should be protected as well.

Does that make sense to you?

Mr. MITCHELL. It certainly does and there would appear to be some violation of the rights of people because we have these instances of private employees used as conduits for contributions to certain campaigns, and I think if we could give these people protection it would be a good idea.

Mr. SOLARZ. Mr. Mitchell, one last question. We had some testimony the other day from the Alliance of Postal and Federal Employees, and it was indicated there was some concern that if the restrictions in the Hatch Act on political activity were lifted, that this might open

up possibilities for coercion and discrimination which, while theoretically applicable to all Federal employees, might fall disproportionately on minority employees; and while I felt Mr. White basically supported the thrust of this legislation, he nonetheless was concerned that from a minority point of view this could open up a Pandora's box, that minorities being more vulnerable than others might require this kind of protection.

I wonder if you could give us the benefit of your own analysis about the extent to which, if there are problems here, they would fall disproportionately on minorities.

Mr. MITCHELL. I would certainly think if anybody is going to try to push people around, most likely they would start with minorities first.

The post office, as now constituted, and as I have known it over the last three decades, is one of the most repressive, antisocial, and lacking in sensitivity to the needs of employees of any of the Federal agencies.

I would say if a parade would be formed to try to repress employees, the postal people would probably be at the head of it.

Nevertheless, I think in the case of Pandora's box, there is very little in it now that frightens black people of this country. Everything that has been in there has been brought out to intimidate.

And I think that for the most part, while there might be some who might be frightened, my experience—and particularly if they tried it on my good friend and colleague, John White who is here in the audience now—my guess is they would have the biggest fight you could imagine and they would be very sorry they had opened Pandora's box. [Laughter.]

So I think the risk which is undoubtedly there is outweighted by the opportunity that this offers.

Mr. SOLARZ. Thank you very much, Mr. Mitchell.

Mr. CLAY. Thank you, Mr. Solarz.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

As I understand you, Mr. Mitchell, you believe a person should resign their job or take a leave of absence during the time they run for office.

Mr. MITCHELL. That is what I said, Mr. Collins; not resign, but take a leave of absence. But I added that if, in the judgment of the committee and others interested in it, they felt that was not fair I would not press that point.

Mr. COLLINS. I think that is an excellent attitude you have taken. In fact, a man in business at home—they would certainly demand that before he ran, because there are only two Federal jobs he is running for and they pay $42,000, and that is Congress and the U.S. Senate. If he runs for Federal office it is a major job, not like running for the school board. Although we realize the incumbent must stay on the job to still stay in, at the time he challenged he had to resign.

Or maybe my colleagues know of cases where they have run for a Federal office and did not require it.

Mr. MITCHELL. I think the reach of the statute—I don't know if the bill would eliminate that provision of existing law, but the reach of

the existing law catches people who are working for organizations which are financed by Federal funds.

Indeed, the case I have submitted as part of my statement involves that kind of principle. In that case the employees were running for delegates to the Democratic National Convention.

So the reach of the statute would go further than simply Congress and the Senate. However, as I say, I think that is largely a matter of judgment and I said before you came in, Mr. Collins, in our organization we have a number of volunteers who serve as presidents of our local branches. Under our rules, when they run for office they are supposed to take leave. If they are elected, then we have a process by which it is determined whether their duties as elected officials would be in conflict with the interests of our organization. If there is no conflict found by those who are authorized to make the determination, then——

Mr. COLLINS. I think you have a good set of ground rules. For instance, a judge—you would have someone like that resign if they were sitting on the judicial bench, I would imagine?

Mr. MITCHELL. It would depend on the circumstances. There was a distinguished judge in Kansas City, Mo., Carl Johnson, who, for many years, was president of our branch there. He ran for a judgeship and was overwhelmingly elected.

My best recollection is that he was thought to be such a distinguished person and was so important in the community that he continued to serve, and indeed we have on our board of directors, as many other private organizations do, judges of one kind or another.

One of the most distinguished of those was former Justice Murphy of the Supreme Court, who, while he was Governor of Michigan and while he was a judge in the State of Michigan, continued to serve on our national board. He resigned when he went on the Supreme Court.

Mr. COLLINS. Well, I never heard any criticism about any of those, so they apparently all carried it on with fine tradition.

Let me ask you something. If a Federal employee working in an office decided to run for office—now you are a practical man. If he ran for that office and he won, do you think he would treat the people in his office that supported him and the people that opposed him exactly the same in the future?

Mr. MITCHELL. Are you saying that if he runs for office and wins, then he would continue to serve——

Mr. COLLINS. Let's just say he ran for Congress and everybody in the office took a partisan position, as this Hatch Act suggests.

Do you think he is going to come out of there and treat everyone the same, the ones that helped him and the ones that opposed him?

Mr. MITCHELL. I think everything would depend on the integrity of the person.

There are some people—and I have some friends in Congress whose views I did not agree with at the time they were running for office. But once they took the oath of office they became the servants of all the people and I have had very friendly and effective relationships with them, and I think that is true of most people.

So I would say if a person is a person of integrity, I would assume that he would treat friends and foes alike.

I guess the best example of that I can give—I don't consider myself a foe of the President of the United States but I did make a very

analytical presentation of his record to Congress at the time he was nominated for Vice President.

I have not felt that it in any way put a strain on the relationship that I have with the President, and I am pleased to say that he has been most cordial, most understanding, which, in my judgment, is the mark of a great statesman.

Mr. COLLINS. Well, I am glad of that. The best politician I have ever known was in the opposition party and he would smile when he said it but he would say, "I just want you to remember during this campaign that I have a long memory."

I don't think it is as much a matter of integrity as it is of political philosophy.

I just cannot imagine the persons that worked actively against him getting a fair shake in the future and that is what worries us.

Mr. MITCHELL. Well, I will give you another story of the past. As you well remember, when Senator Wayne Morse was in the U.S. Senate, he was a very vigorous critic of the then Majority Leader Lyndon Johnson of the State of Texas.

I attended a luncheon which was a fund raising luncheon for Senator Morse. He was seeking reelection at the time in Oregon and finally won. The majority leader, Mr. Johnson, was present and made this speech. He said, "Wayne, you have been one of the most ardent critics that I have had in Congress. You have said everything bad about me that you could think of saying. I am willing to come out and campaign in Oregon in your election but all I want you to do is tell me which will help you most, if I campaign against you or for you."

I think people in politics for the most part realize that things that are said during an election and positions taken do not necessarily have a long-term significance, so most of the people who are really statesmen tend to treat opponents as well as proponents with an even hand.

Mr. COLLINS. There was a period in our State when most of the judges named had been campaign managers for the Senators in different areas. I know they were capable attorneys but there was a very strong correlation in their appointments.

Do you really believe if you had two guys to choose from and you were in a position—in this case, you see, all the Federal employees in the past had been completely neutral. But do you think you would be completely impartial if you had two fellows sitting there, if one had been your campaign manager and the other had been running up and down the street with a flag against you?

Mr. MITCHELL. I hope very much I would be. It would be too subjective for me to say absolutely that I would. I hope I would. I do know of people who have followed that principle.

I can remember, for example, when I first came around here in the Roosevelt administration. President Roosevelt appointed Knox and Stimson to his Cabinet, both of whom were Republicans.

I also remember that President Lyndon Johnson appointed to the Equal Employment Opportunities Commission Samuel Jackson, who was well known as a Republican from Kansas and who at that time was one of the early black advocates of the election of President Nixon. And Mr. Johnson knew that, but he appointed Mr. Jackson, nevertheless.

I would also say that under our system of appointing Federal judges, as you so well know, we do try to maintain a balance by appointing

some people who are not members of the party in power in the executive branch.

Also, many of our statutes provide for a mix of political parties in appointments to the administrative boards.

I think there are sufficient safeguards in the law. I think there is sufficient interest on the part of the public. And as I grow older, I have more faith in the ultimate decency of many people.

I think we could afford to take a chance on that.

Mr. COLLINS. The longer I am in Congress the more confidence I have in their honesty and their integrity, but I still believe they are very human. And most politicians are very closely associated with people and most of them are very closely associated with friends. And most of the successful people I know appear very loyal to their friends. And I say again I have been impressed with the integrity and honesty of the Members of the Congress but, by the nature of having to win through a popular vote, they do get balanced.

I very much appreciate all of your testimony. It was very good and from the heart and a splendid presentation.

Mr. MITCHELL. Thank you, Mr. Collins.

Mr. CLAY. Thank you, Mr. Collins.

Mr. Mitchell, we certainly want to thank you for the testimony you gave us. I am sure it will be quite helpful in helping us to make up our minds about the final version that this bill ought to take.

Mr. MITCHELL. Thank you, Mr. Chairman.

[The attachment to the prepared statement follows:]

UNITED STATES OF AMERICA

BEFORE THE UNITED STATES CIVIL SERVICE COMMISSION

* * * * * * *

FINAL DECISION AND ORDER

This proceeding involves charges that two employees violated section 1502(a)(3) of title 5, of the United States Code, a provision of the Federal statute known as the Hatch Act Political Activities Act. In notices issued to the individuals and to their employing agencies, the General Counsel of the U.S. Civil Service Commission alleged that the employee-respondents * * * served as delegates to, and participated in, the Democratic National Convention held in Miami Beach, Florida, from about July 10 through July 14, 1972. The charge against * * * also stated that she was a candidate for election to that office in the Primary Election held * * * on June 6, 1972.

The individua respondens admitted that they engaged in the political activity as alleged, but asserted that the Hatch Act and regulations under which the charges were brought were invalid and of no effect because they violate the Constitution of the United States. The * * * County Community Action Project, for which * * * then worked as Head Start Project Director, did not file an answer. Respondent * * * employer, the * * * State Department of Human Resources Development, filed an answer, by counsel, admitting some of the allegations set forth in the Letter of Charges.

A consolidated hearing was held * * * at which evidence was introduced by the parties. Written stipulations by counsel were also received. Thereafter, briefs were filed by Government counsel and by the attorneys for the individual respondents.

STATUTE AND REGULATIONS INVOLVED

The Hatch Act limits the political activity of most Federal employees and imposes similar restrictions on certain State and local government employees in executive agencies. Specifically, it applies to a "State or local employee," defined in the statute as "an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency. 5 U.S.C. 1501(4). The law provides certain exemptions not pertinent here.

Besides forbidding the use of coercion to solicit political contributions and the use of one's official authority to interfere with an election the statute provides:

"A State or local officer or employee may not—

"(1) * * *

"(2) * * *

"(3) take an active part in political management or in political campaigns." 5 U.S.C. 1502(a).

The latter restriction covers partisan political activity, for the law does not apply to elections or public questions that are not connected with national or State political parties or candidates. 5 U.S.C. 1503. An employee also "retains the right to express his opinions on political subjects and candidates." 5 U.S.C. 1502(b).

Another statute is pertinent to the case of * * * who is employed by the * * * County Community Action Project. The law provides that employees of private community action agencies receiving funds under the Economic Opportunity Act of 1964, as amended, are subject to the Hatch Act on the same basis as employees of governmental agencies. [Section 603(a), 42 U.S.C. 2943(a); 80 Stat. 1469, as amended.]

EMPLOYMENT

From documentary evidence and stipulations entered into by the parties through counsel, it is established that the individual respondents were subject to the prohibitions of the Hatch Act during the times relevant to the charges. The salient facts will be set forth briefly.

Mrs. * * * served from September 27, 1971 to July 12, 1972, as the full-time Administrative Assistant for the * * * County Community Action Project. That agency received approximately $507,900 in grants made by the Office of Economic Opportunity for the program year September 1, 1971 to August 31, 1972.

During the times pertinent to the charges Mrs. * * * worked full-time as a Manpower Services Representative with the * * * Department of Human Resources Development, a State agency which received Federal funds under the Manpower Act of 1965. (42 U.S.C. 2571 et seq.). Her employment was connected with activities financed pursuant to that Act.

Thus, the record shows jurisdiction in both cases, that is, each respondent was a "State or local officer or employee" at the times relevant to the charges. The next questions are concerned with the political activity charged.

THE POLITICAL ACTIVITY

The respondents do not dispute the factual allegations recited in the charges; they readily admit that they attended and participated as delegates in the Democratic National Convention at Miami Beach, Florida, in July 1972. * * * concedes that she was a candidate for that post in the primary election of June 6, 1972.

Candidacy for and service in the position of delegate to a political party convention are clear violations of the statutory proscriptions and the implementing regulations published by the Civil Service Commission. 5 CFR 151.122(a), 151.122(b) (1) and (11). The Commission has so held in a number of cases. See, for example, *In the Matter of John R. Hansen, Iowa State Highway Commission and the State of Iowa*, 3 P.A.R. 53 (1970)[1]; *In the Matter of Barney E. Hilburn and the Housing Authority of the City of Oakland, California*, 2 P.A.R. 701 (1964); *In the Matter of Larmon V. Stennis*, 1 P.A.R. 888 (1965).

PENALTY

In the absence of mitigating circumstances, active and conspicuous participation in the management of political party business—here, at the national level—warrants removal from employment. The record in these cases is devoid of evidence that would support a moderation of the penalty. *In the Matter of R. E. Palmore, et al., and the State of Kentucky*, 3 P.A.R. 137 (1972).

On the contrary, it appears that * * * engaged in the political activity after receiving notice that the Hatch Act forbade her service as a delegate to the

[1] The citation to P.A.R. refers to the Political Activity Reporter published by the Civil Service Commission, containing its Hatch Act decisions. The four-volume publication is available at State libraries, law schools, State Bar Associations, and at libraries of Federal courts.

national convention. The record shows that her agency reacted to newspaper publicity concerning her election as delegate by warning her that she would violate the Hatch Act by serving as a convention delegate. Though * * * at first indicated she would resign as a delegate, she informed the Department a week before the convention that she would attend as a delegate—apparently willing to challenge the constitutionality of the Hatch Act. (Gov. Ex. C).

With regard to * * *, it was admitted that the Executive Director of her agency contacted her at Miami Beach on the first day of the convention and advised her that she should withdraw from the convention, resign from her employment, or face dismissal from her job. She decided to continue serving as a delegate and participated in the convention proceedings.

Thus, the record in these cases shows substantial and willful violations that justify removal of the respondents from their employment. The respondents' belief that the restraints imposed on their political activity by the Hatch Act were unconstitutional does not mitigate the offenses; to rule otherwise would cause employees to expect that serious violations of the law would be officially countenanced or dealt with less severely whenever the offender acted under the belief that the statute abridges his constitutional rights.

In a related argument, respondents contend that even though the statute may not be held unconstitutional on its face,[2] it cannot be validly applied to the activity involved here: to bar their participation in a party convention on their own time—an open activity which, they argue, would not lead to corruption or political coercion of subordinates—is a violation of their constitutional rights. The Supreme Court considered a similar argument, among others, in the *Letter Carriers* case: "It may be urged that prohibitions against coercion are sufficient protection [for subordinate employees;] but for many years the joint judgment of the Executive and Congress has been that to protect the rights of federal employees with respect to his job and his political acts and beliefs it is not enough merely to forbid one employee from attempting to influence or coerce another." [Footnote omitted.] 41 L.W. at 5127.

The same thesis undoubtedly prompted Congress to extend these restrictions to State and local employees, who are expected likewise to administer Government-funded programs without bias or favoritism for or against any political party or its members. In any event, the opinion in *Letter Carriers*, supra, lends substantial support to the view that the prohibition in question here, relating to service as a convention delegate (even while on one's own time), is within the area of constitutionally permissible regulation. The constitutional arguments advanced by respondents are, accordingly, rejected.

Respondents' Exceptions

In their Exceptions to the Recommended Decision, respondents argue that the penalty of removal is too harsh in light of the fact that they acted in good faith in reliance on advice that the Hatch Act was unconstitutional, as demonstrated, respondents say, by a decision that had been issued by the U.S. District Court in the *Letter Carriers* case. But the main force of the argument is dispelled when it is seen that at the time * * * engaged in the political activity charged, the District Court had not announced its decision. Whereas the election of delegates took place on June 6, 1972, and the convention activity between July 10 and July 14, 1972, the District Court's decision was not released until July 31, 1972.[3] Hence, neither the respondent's nor their advisers could have relied on that decision as giving prior sanction to their political activity.

Another exception, earlier presented in respondents' brief as a constitutional argument and already discussed herein is reasserted as a matter in mitigation. Respondents say that their violations did not involve pernicious conduct, for which alone the removal penalty ought to be reserved. Therefore, they argue, it would be an arbitrary and indiscriminate exercise of the Commission's power to find that removal is warranted in this case and similar cases where the political activity is not one of the specific evil practices expressly condemned by the Act.

But that argument minimizes the broad reach of the statute, for the Act also prohibits other forms of partisan political activity that are not regarded

---

[2] On June 25, 1973, the U.S. Supreme Court announced its decision upholding the Hatch Act provisions covering Federal employees. *U.S. Civil Service Commission* v. *National Association of Letter Carriers*, 413 U.S. 548 (1973).

[3] *National Association of Letter Carriers, AFL–CIO*, v. *U.S. Civil Service Commission*, 346 F. Supp. 578 (D.D.C. 1972), rev'd 413 U.S. 548 (1973).

as inherently evil. The Commission finds that here the respondents' activities were substantial and knowing violations of the Act and that removal is warranted.

A final point is made that * * * has moved to a different job since the violation and that her removal from the new position is not authorized by law. There can be no doubt, however, that the Commission has the authority to make the determination that removal is warranted, irrespective of whether the employee is in a different position or employment when the decision is issued. The statute expressly requires that after a hearing on the charges the Commission shall determine whether a violation warrants removal and shall notify the employee and the agency of its conclusion. 5 U.S.C. 1505.

Section 1506 of title 5, United States Code, prescribes the consequences that may follow a Commission determination that removal of a State or local employee is warranted. Even if the employee changes his employment before a final decision is issued, the requirement of section 1505 that the Commission make a determination still applies. *In the Matter of Nello A. Tinori and the Department of City Planning and Urban Development of Monessen, Pennsylvania*, 3 P.A.R. 146 (1972); *In the Matter of Doxie Moore, the State of Indiana, et al.*, 2 P.A.R. 530 (1959). The separate question of whether an employee who has moved to a different agency ought to be removed from his new employment depends upon the application of section 1506.

FINAL DECISION AND ORDER

It is found that:

(1) The respondents * * * while principally employed in connection with a Federally financed activity, engaged in political activity in violation of section 1502(a)(3) of title 5, United States Code, as charged.

(2) The violations warrant removal of the respondents from their employment.

It is Ordered that this Final Decision and Order of the Commission be authenticated by the signature of an authorized official of this Commission and that due notice thereof be given to the parties in interest.

BY THE COMMISSION:

JAMES C. SPRY,
Executive Assistant to the Commissioners.

Washington, D.C.

Ms. SPELLMAN. Our next witness is Mr. John F. Leyden, president of the Professional Air Traffic Controllers Organization.

We welcome you here, Mr. Leyden, and are looking forward to your testimony.

STATEMENT OF JOHN F. LEYDEN, PRESIDENT, PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, ACCOMPANIED BY ALLAN MOSKOWITZ, LEGISLATIVE DIRECTOR

Mr. LEYDEN. Thank you. I guess I appropriately should say Madam Chairperson.

Ms. SPELLMAN. My son calls me Gladys Spellperson, the Freshperson Congressperson. [Laughter.]

Mr. LEYDEN. Here with me is our legislative director, Mr. Alan Moskowitz.

My statement is rather brief and if I may be permitted I would like to read it into the record.

Ms. SPELLMAN. You may proceed.

Mr. LEYDEN. Ms. Spellman and members of the subcommittee, PATCO appreciates the opportunity to testify before this subcommittee on H.R. 3000, the Federal Employees Political Activities Act of 1975.

This bill would reform the political limitations imposed on Federal employees by the Hatch Act and restore those basic political rights which are the essence of American citizenship.

For 35 years, the Hatch Act has purposefully deprived Federal employees the right of full political participation. While I don't think it necessary to repeat the history and reasoning behind the law, it is very relevant to note that the Federal employee-employer relationship has changed through the years to the point where those political machinations of the past are virtually impossible today. Federal employees no longer need the suffocating blanket provisions of the Hatch Act to protect them from political pressures; they are able to protect themselves in many ways through labor unions. H.R. 3000 can provide the rest.

The Hatch Act not only forces the employee to forego basic rights but also denies the employee the opportunity to take effective political action to retain these rights. Without the broader freedom of speech and the freedom of association, does the Government employee really have the requisites of freedom? Besides the right to vote and the ability to be a reluctant member of the silent majority, what political freedom does the Federal employee have?

Mr. Hampton stated in his testimony before this subcommittee that "not one employee's vote goes uncast because of the Hatch Act, nor one idea unexpressed." Is the mere right to vote the extent of democratic political activity? Citizens of the Soviet bloc have this right; would Mr. Hampton deem them politically free?

As to the expression of ideas, Mr. Hampton is correct if the employee talks to himself, his family or one or two friends. But if the employee dares to express his ideas to a larger gathering then he may be guilty of political association and thus in violation of the act. Rather than attempting to define the legally drawn line between the two situations, the employee may very well just abstain from meaningful political participation.

This abstention not only harms the individual; it is injurious to the health of the Nation. Democracy can only function properly where there is participation; the higher the proportion of citizens actively participating in the political process, the healthier society will be as a result of the diversity of opinion expressed and the participatory energies harnessed.

The ancient Greeks were well aware of this. There, full political participation was not merely a right but was rather a duty, the price one paid for citizenship and membership in the society.

History teaches that nothing is more dangerous to democracy than large "silent majorities," silent either through apathy or restriction.

There are 2½ million Federal employees, politically aware and concerned. Considering the paucity in numbers in the recent years' elections, society desperately needs the energies, time, and active participation in our political processes that this large group, long dormant, could contribute. To purposely continue the bar on full Federal employee political activity would not only cheat these employees of their full citizenship, but would also deny our Nation the potential vitality inherent in their numbers.

I might interject that the act's emphasis on individual action, while barring participation in most collective form, has the effect of politically isolating the employee, rendering him virtually ineffective in a

nation of 200 million people where organization and number are essential to influence and the equivalent of power.

Going beyond the right to vote and the free expression of ideas, there is the issue of candidacy for public office. Isn't this a basic right and dream, that any American citizen could theoretically run for President, let alone city council? Not if you are a Federal employee, answers the Hatch Act. When each separate infringement of political freedom is united to form the bulwark of the Hatch Act, the image of the Federal employee that comes to mind is not the stereotype of completely "bound and gagged," but rather the reality of weak-limbed and whispering.

The political inhibitions involved in the Hatch Act are too numerous to discuss in their entirety, but one deserves to be highlighted.

The most wasteful and arbitrary demarcation in the act is the one which bars partisan activity, yet endorses independent or nonpartisan political action. First, in the contemporary sphere of affairs, what issue or election can truly be called nonpartisan? Even if partisan flags are not officially unfurled, each party takes a stance and works toward its desired end. Second, by limiting the Federal employee to nonpartisan elections, he is excluded from participation in the great majority of elections and barred from shaping the great issues of his day. This amounts to unreasonable discrimination.

Furthermore, if the employee resides in a geographical area deemed to be heavily populated by Federal employees, such as the suburbs of the District of Columbia, he may legally be a candidate in a local partisan election. But he must be an independent candidate. But his independent candidacy may be legally endorsed by any or all of the partisan political parties.

While I can admit the logic of this procedure in terms of the basic framework of the Hatch Act, it still remains a sham and allows, or forces, the employee to do indirectly what he is unable to do directly.

Despite the change wrought in the political activities allowed to State and local employees by the Federal Elections Campaign Act amendments of 1974, the Hatch Act's coverage still extends in some measure to those in State and local government whose principal employment is in connection with an activity financed in whole or in part by Federal loans or grants. As Federal grants-in-aid increase, touching more and more people, the thought occurs that some day, everyone could, to some degree, be covered by the act. Who would run for office?

Admittedly, that projected dilemma is whimsical at best, but the gist of the argument is viable. If one starts from the assumption that Government employees have in principle the same political rights as any other group, one automatically becomes cautious about restrictions, weighing each one carefully in terms of the Constitution, the advantages to be gained for the public interest, and the effect on the civil service. This viewpoint protects one against blanket prohibitions or the blind acceptance of past practices. And it is this viewpoint which the Hatch Act lacks.

In conclusion, I would like to congratulate Chairman Clay and his numerous cosponsors for this progressive piece of legislation. Chairman Clay's statement of February 27, 1975, that "this bill will bring the provisions of the Hatch Act in line with the realities of the 1970's"

brought to my mind not only the 1970's but also the 1770's, those years in which this Nation fought a revolution to insure the citizenry many of the same rights presently denied to Federal employees.

Once again, I would like to thank this subcommittee for allowing the views of the Professional Air Traffic Controllers Organization to be heard on these issues and this legislation.

Ms. SPELLMAN. Thank you very much, Mr. Leyden.

I was interested in what you had to say in comparing the Russian system and true democracy.

It brought to mind something that Averill Harriman told some of us one day. He had just come back from Russia and had been talking with the top echelon of the Soviet Union.

One of the men said to him, "In your country you believe in one man, one vote now, don't you?"

And he said, "Yes, we certainly do."

And the man said, "We go even further. We go one man, one vote, one candidate."

On page 4, I am interested where you mention the fact that if you live in the Metropolitan Washington area, for instance, you can be a candidate in a local partisan election but you have to run as an independent.

It brings to mind the fact that when we in Prince Georges County first had an election for a school board people ran as independents, but there was a Democratic slate of independents and a Republican slate of independents. And we had also the same kind of an election for our first county council. And all of us ran as independents, with the Democrats setting forth a slate and the Republicans setting forth a slate. And my colleague on my right would be interested to know that I didn't like that and I ran truly as an independent against both the Democratic slate and the Republican slate. If it was going to be an independent election, I was going to be a real independent—and I won.

Mr. COLLINS. That is very good.

Ms. SPELLMAN. You also ask—and you have made some excellent points here—on page 5, that as the Federal grants-in-aid increase, touching more and more people, who will be eligible to run?

Mr. Mitchell did cite a situation, as you know, where people did run to prove a point. In the metropolitan Washington area there were people who ran for office who were working with the community service programs and they really thought they could run to become delegates to the national conventions. Later, they were, indeed, found to be in violation of the Hatch Act.

So you are quite right, we keep narrowing this down more and more.

Mr. LEYDEN. I like to think the Supreme Court addressed themselves to that in the decision of 1973. I have a lot of respect for those people who did that, not because they are lawbreakers, because I think the law demands a look at it, and I think even the Justices said so, said maybe Congress will get enlightened sometime in the future.

Ms. SPELLMAN. And Mr. Clay has stepped into the breach so maybe they won't have to make decisions like that again.

Was this discussed in your group and was there a vote taken?

Mr. LEYDEN. As far as our position on the Hatch Act, we have an executive board and have discussed it at that level and we additionally have provided the chairman with members, who are not officers of

this organization who will be testifying before your committee when you go out for field investigations. I think that might belie the fears that have been raised about differences of opinion between elected officials of the union and membership. I feel you will get the same reaction.

Ms. SPELLMAN. There have been suggestions made that the penalties should be civil, rather than criminal. Do you have any thoughts on that?

Mr. LEYDEN. It was kind of refreshing for me to listen to Mr. Mitchell's views and I think dismissal from Federal employment—as far as I can conceive of a penalty being invoked on an individual for this type of action, I would support his position that anything beyond that is a penalty that doesn't fit the crime.

Ms. SPELLMAN. Another point I was especially interested in, and asked Mr. Mitchell about, was the taking of leaves of absence.

Mr. LEYDEN. I think if we are going to try to parallel the rights that have been long accepted by private employees—and I speak as a Federal employee with 17 years of Federal employment and leaves of absence—if we are trying to catch up, this is a step in the right direction.

On the other side of the coin, I think we have to say the same obligations that are imposed on a member of the private sector if he decides to run for office should be imposed on us. I find rare exceptions where Federal employees would not be supportive of a position to take a leave of absence when one wishes to run for office.

And I don't think it is inconsistent with the feelings of most of the people that I am associated with in the union movement.

Ms. SPELLMAN. They would say, also, to take a leave of absence?

Mr. LEYDEN. I think so.

Ms. SPELLMAN. Thank you very much.

Mr. CLAY. I would like to follow up on that last question because I have strong feelings on whether or not the leave of absence ought to be compulsory or a person ought to make that judgment, himself.

I can see where we would be extending a certain amount of political freedom on the one hand, and imposing some unreasonable and unfair restrictions with the other hand.

Take, for instance, a person who earns $7,000 or $8,000 a year working for the Government in a very nonessential position in terms of whether or not the agency will continue to function. That person cannot afford to take a 3-month leave of absence, or 2-month leave of absence, and still support his family.

On the other hand, in private industry, people at those levels of employment aren't forced to take leaves of absence in most instances in order to campaign for office.

My first elected position some 18 or 19 years ago was to the city council in the city of St. Louis and at the time I was in management. I was manager of an industrial insurance agency in the city of St. Louis with some 18 or 19 employees working under me. And I campaigned for about 8 months in my off-duty time and there was no condition that I had to resign or to take a leave of absence to do it. And the job I was seeking paid. At that time it paid some $5,200; $4,000 in salary and $1,200 in expenses.

And I just see that if you put that kind of provision in this law you are going to deny hundreds of thousands of people who perhaps may want to seek office that right because they can't afford it.

So I think we ought to give a great deal of thought before we put a provision such as that into the law.

Mr. LEYDEN. I am sympathetic with that and don't have an answer for it. I do see the problem that would be created and the burden imposed on a person in the income bracket described. Maybe there can be a breakpoint or the law can be drafted to categorize distinctions, making exceptions for certain persons in Federal employment. Maybe you could make breaks and have different standards for the individuals, depending on the sensitivity of the position and the income itself.

Maybe that is the answer. I don't have a positive answer for it and it is a dilemma.

Mr. MOSKOWITZ. Or possibly you might not have to make it mandatory. It seems to me most people who would be running for full-time office would take the time off from the job. And even if you don't put it in the law, they could possibly work it out with their employer at their particular shop.

I don't know whether that can be worked out through the Civil Service or not.

Mr. CLAY. I see some problems both ways but I think we are going to have to strike a happy medium, strike some type of a balance.

I, like Ms. Spellman, was interested in your quote or reference to the Soviet bloc, and would like to state that we found out in recent months that there isn't a country in the Western World, a democracy in the Western World, that prohibits its Federal or its public employees from participating in politics to the extent that we do in this country.

In fact, most of the democracies in the world have no laws, no limitations whatsoever. Just recently, when we were in Germany, we found out that 60 percent of all of the elected officials in the entire country are public servants, and 40 percent of the elected officials in the highest legislative body they have in Germany are schoolteachers, with another 20 percent coming from other categories of public service. And they seem to have no problem there.

In France and in England the same is true, and in the Scandinavian countries.

And I would just like to know, in your opinion—and I am asking this question because the opponents who have testified before us have all made generally the same statement: That, if we revise the Hatch Act as proposed in H.R. 3000, that in some way it would have a tendency to erode the Federal merit system. Do you agree with that statement?

Mr. LEYDEN. No, I don't. I think again you have to make a determination—and give the benefit of the doubt to the integrity of the individuals who are involved. And the possibility of erosion is there. Mr. Mitchell stated the risk when you open Pandora's box. I think that risk is outweighed by the rights there have not been for a long time to fully participate in the political activities of this country.

Mr. CLAY. There is just one part of the statement—I don't think it is a question, Madam Chairperson—but in regard to a question posed by the previous speaker, Mr. Mitchell, by Mr. Collins, he expressed some fears about what would happen if a supervisor in the office ran,

and some in the office were opposed to him and some were for him, who would be give preference to?

My experience in this field—and I have been in it for 20 years now—is if those opposed to me were able to garner a sufficient and substantial amount of opposition, I would do all in my power to win them over to my side.

And my personal political philosophy has always been that I have no permanent friends, no permanent enemies, just permanent interests. Someone may be opposed to me today and tomorrow we may be on the same side because the interest of both of us is in agreement.

I don't think that is anything we should be overly concerned about. I think the basic thing involved in this piece of legislation is that it is right and the most democratic thing we can do in this country.

Thank you.

Ms. SPELLMAN. Thank you, Mr. Clay.

Mr. Collins.

Mr. COLLINS. Thank you.

We have seen your union two or three times and it is a very well-run union and one I have never thought was short of any of the benefits. What is the average income of your members.

Mr. LEYDEN. I would say between $20,000 and $30,000 a year.

Mr. COLLINS. And we visited yesterday with the postal employees and I think they said theirs was about $10,000.

You have always prided yourself on the fact that you have certain special qualifications of your members and that they should have certain special benefits and in your contracts you have certain benefits that no other union has.

Mr. LEYDEN. That was because of the wisdom of the Congress in passing the legislation. [Laughter.]

Mr. COLLINS. But you do a very active job of keeping them informed. [Laughter.]

Mr. COLLINS. Going back, what advantage would your union have toward trying to get involved in politics and working toward an equalization program? Because usually in politics things tend to equalize out, whereas your group runs ahead of what the average person in the union is making.

Mr. LEYDEN. I don't share your views because I draw a parallel with the pilots and we have a long way to go to reach them, and my membership reminds me we are not making $87,000 a year.

Mr. COLLINS. I didn't see the pilots come in, either. You may not drive a Rolls Royce but you drive a good Cadillac.

Mr. LEYDEN. It has been recognized by the Congress that special consideration is given to the controller, because of the responsibility he assumes.

Mr. COLLINS. You are a very practical man. Can you imagine a supervisor coming in and saying, "I am a very, very strong supporter of George Wallace and I would like you fellows to come out and take a strong position for Wallace, too?"

Mr. LEYDEN. Mr. Collins, isn't it done sub rosa now?

Mr. COLLINS. I don't believe it is. In my district I am not aware of any, and that is a fact. The union membership in our town vote both ways and they are very open about it—and when I say "very open," I mean they are not coerced in any way. There is no coercion ever seen

in our area and yet I have never even heard anything very loud on where they stand, either.

I am not familiar with anyone in Government work coming out and speaking strongly.

Mr. LEYDEN. I am divorcing myself from the union. I think the realities are, Mr. Collins, that this has been a practice for a number of years. And it is sub rosa. It is done in the facilities. I have had experience with it. It is done not only in political campaigns but with bond raising and charity affairs—the whole load.

Mr. COLLINS. Bond raising and charities——

Mr. LEYDEN. Some subtle pressures are applied.

Mr. COLLINS. They are applied because most people don't just run forward and make their gifts. There is a different deal—and the same with the United Fund.

But going back to this, I am not aware, as to a single member of your union, whether you are for me or against me.

Mr. LEYDEN. We didn't take a position on your election, sir.

Mr. COLLINS. The members never do. And I just wonder what advantage you have in doing differently.

Mr. LEYDEN. Well, I am a very practical man and I am a political man. I run for office every 3 years.

Mr. COLLINS. That is a good system; it is good.

Mr. LEYDEN. Yes, it is good. I am judged on my productivity as a political person just as you are by your record in Congress. I am certain when I am elected I am not elected to sit and not further the goals and interests of the membership or protect them and represent them as best I can. And I will be gauged on that record. It certainly would be to my advantage to have the support of and be persuasive with people in Congress and have the right to lobby as every other vested interest group does in this country. We are precluded from the full participation that non-Federal unions and corporations now enjoy. I would like to participate in that.

Mr. COLLINS. But you are very effective right now. What I am trying to get back to is: Why do you need to have Congressmen pledged to come in? Why don't you have them come in open and take a fair and open chance when an election comes up? You would like to have Congressmen committed and pledged in a campaign?

Mr. LEYDEN. I didn't say that.

Mr. COLLINS. No?

Mr. LEYDEN. I would like to have an ear to be receptive to my views.

Mr. COLLINS. What other point would there be in participating, if not to get——

Mr. LEYDEN. I am not a Congressman, so I couldn't say.

Mr. COLLINS. Why would a union do that?

Mr. LEYDEN. I would like to have an opportunity to present my views and get a sympathetic ear for a view I am espousing.

Mr. COLLINS. I have an article that came out of the Star where a fellow says on this business he believes this will be the end of the merit system as he knows it today. He says the attacks on the merit system during the Nixon administration would be child's play compared to what would happen if the Hatch Act were radically changed. Federal employees would be on shaky ground if they refused their boss' orders to engage in political activities.

Do you honestly believe the merit system would continue the same as it is today?

Mr. LEYDEN. I think the same opportunity is now available for individuals to coerce, to apply pressure, in a sub rosa manner and I believe that is the case today and I don't see the distinction if the law opens that up.

I think you have to weigh it on two sides, Mr. Collins. The scales seem to tilt, as I see it, on the present course of action by Federal employees—the safest course is not political involvement because there may be a Hatch Act violation. That costs not only the individual but this Nation something and I don't think there should be two sets of rules applied, one for Federal employees and one for people on the private side. That wasn't the constitutional intent and I think the Hatch Act should be brought up to date.

Mr. COLLINS. The reason why there are two sets, if a man works for United States Steel or a lady works for Republic Steel, we have no control over their job, but if they work for the U.S. Government through the appointive positions we do have an input to their job. It is a tremendous difference.

And this is my fifth term and I have never had any single case, and I hope I never do, where people have come to me and said, "Jim, we ought to work that guy over because he was against us." I have never had anybody come and tell me that and I have been here five terms. And I think that is an excellent thing.

Mr. LEYDEN. Would you say by having the right concerned individuals will abuse the ability or the right to try to persuade individuals?

Mr. COLLINS. That is exactly right.

Mr. LEYDEN. Let me speak for my constitutency, then. I believe they are the most individualistic Federal employeees and there is a myth that has been perpetrated about union activities and a union's ability to deliver blocs of votes. I know from experience that that is a myth. The people I represent are free thinkers and they are going to weigh and evaluate the situation and make a determination not based on what I say but based on what they objectively review or look at and see as the merits of the case. And I am not convinced I can say to you, "I can deliver 15,000 votes." I don't think you would accept that as a reality.

Mr. COLLINS. We appreciate hearing from you.

Mr. CLAY. Thank you.

Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Leyden, while I regret I was delayed in arriving at the hearing and not hearing all of your testimony, I have reviewed through your prepared testimony.

One of the things that troubles me is that while you are suggesting greater participation, I am concerned about how we prevent the abuses that occurred prior to the adoption of the Hatch Act. How are we going to prevent these very same abuses from occurring once again if we now allow political activity?

Mr. LEYDEN. Again, I think that you must take a look at the totality of the Federal work force. I like to think they are a pretty enlightened group.

As the trade union structure has evolved within the Federal structure there are protections afforded individuals as to abuse in the merit

system or if they get involved in partisan politics and there was coercion exercised.

I speak not only for my group but the executive group, that we would welcome an opportunity to see that those abuses don't continue.

I think you have to think of the role the Federal unions had when this act first went into place 30 years ago, and where we stand today. I think it is the evolution of the Federal unions that has made this possible.

Mr. GILMAN. Isn't that what brought about the adoption of the Hatch Act, to avoid these abuses—solicitation, favoritism, some of the abuses that were prevalent pre-1939? What I am concerned about, Mr. Leyden, is what sort of teeth do you propose to prevent that from happening again once we open the door to political activity?

Mr. LEYDEN. Well, if there is coercion on the part of the union there is redress for the individual. I think you are providing sufficient safeguards for that individual to file his complaint and take action.

Mr. GILMAN. You are not concerned about any erosion of the merit system?

Mr. LEYDEN. No, I am not.

Mr. GILMAN. Thank you, Mr. Leyden.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Gilman.

I don't think we need to ask any more questions. I think the testimony has been right to the point. I think we know exactly where you stand on the proposed legislation. And we would just like to thank you for coming out this morning.

Mr. LEYDEN. Thank you, Mr. Chairman, I appreciate it.

Mr. CLAY. The subcommittee will adjourn, subject to the call of the Chair.

[Whereupon, at 11:25 a.m., the hearing was adjourned, subject to the call of the Chair.]

[The following statements and letters were received for inclusion in the record:]

STATEMENT OF HON. JOHN M. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

There are over 2.8 million Federal employees in the United States today. These government employees constitute a significant segment of the voting population in several states. For example, in my home state of New York there are close to 175,000 Federal workers, with over 98,000 in New York City alone. And yet, for many years these government employees have been prohibited from participating fully in the political life of the nation. I think that this situation is unwise and unfair. Therefore, I have introduced a bill, H.R. 719, to allow government employees to exercise full political rights, similar to those enjoyed by other American citizens.

The source of the existing restrictions on the political participation of government employees is the Hatch Act, originally passed by the Congress in 1939 and subsequently amended. I think that by this point most of us are familiar with the somewhat vague prohibitions contained in the Hatch Act: for example, covered employees may not use their official authority or influence for the purpose of interfering with or affecting the result of an election nor may they take an active part in political management or in political campaigns. In practice, this has meant that a Federal employee may vote or express an opinion on political issues, but is banned from performing any more active role in a partisan campaign or assuming any position of leadership in a political party.

The passage of the Hatch Act in 1939 represented the culmination of several years of debate in the country; this discussion had focused on the "pernicious" political activities of public employees, allegedly associated with the emergency public relief programs such as WPA in the 1930's. While there was widespread

agreement in the Congress at the time that some legislation was needed to curb political abuses of and by workers in various Federal agencies, many thought that the provisions of the Hatch Act might be unnecessarily restrictive and ambiguous. In the ensuing years debate in the Congress has continued concerning the propriety of the Hatch Act restrictions, although no substantial changes in the legislation occurred until 1974.

Some have questioned the constitutionality of the Hatch Act, contending that the existing provisions are so unnecessarily restrictive as to constitute an excessive abridgement of the public employee's freedom of political expression, guaranteed in the first amendment. However, the Supreme Court has upheld the constitutionality of the Hatch Act, most recently in 1973 in the case of *United States Civil Service Commission* v. *National Association of Letter Carriers*. This 1973 decision of the Supreme Court, which reverses a lower court's ruling in the case, has been subjected to criticism in legal journals, however. As one writer noted in a scholarly journal, "After being rebuked by the Supreme Court, government workers and particularly their unions will now have to apply pressure for legislative reform, if there is to be any liberalization of the law."

Last year Congress did enact legislation repealing portions of the Hatch Act. From 1940, when the Hatch Act was amended, until 1974, state and local government employees who were at least partially paid with Federal funds were covered by the Hatch Act restrictions, along with the employees of the Federal Government. The new Federal Election Campaign Act Amendments of 1974 (P.L. 93-443) lifted many of the restrictions from the state and local employees who had previously been subject to the Hatch Act, but did not benefit Federal employees.

We in the 94th Congress must continue this much needed process of reform. My bill, H.R. 719, is designed to permit Federal, State, and local officers and employees to take an active part in political management and in political campaigns. The heart of my proposal is section 1, which would amend section 7324 of title 5 of the United States Code. Under the proposed amendments nine specific activities, included under the rubric of "an active part in political management and political campaigns," are listed. If this legislation is enacted, all Federal, state, and local employees currently restricted by the Hatch Act could engage in the following activities:

(1) candidacy for service in political conventions;
(2) participation in political meetings, caucuses primaries;
(3) preparing for, organizing, or conducting a political meeting or rally;
(4) membership in political clubs;
(5) distributing campaign literature and distributing or wearing campaign badges and buttons;
(6) having a publishing, editorial, or managerial connection with political publications;
(7) participating in a political parade;
(8) circulating nominating petitions; and
(9) candidacy for any public office.

I might point out that this listing is virtually identical to that found in H.R. 3000, introduced by the Subcommittee Chairman, Mr. Clay.

More than eight years ago, in October of 1966, the Commission on Political Activity of Government Personnel was created to review the Hatch Act and to make recommendations for change. In the report of their findings, issued in early 1968, the Commission noted that its overriding problem involved the accommodation and reconciliation of two sometimes competing objectives:

On the one hand, in our democratic society it is important to encourage the participation of as many citizens as possible in the political processes which shape our government. All citizens must have a voice in the affairs of government.

On the other hand, it is equally important to assure integrity in the administration of governmental affairs and development of an impartial civil service free from partisan politics.

This same dilemma confronts us in 1975 as we seek to reform the provisions of the Hatch Act. Clearly a balance is necessary between the individual rights of public employees to participate in political activities and the societal need for a neutral, effective government bureaucracy.

Therefore, while I have introduced H.R. 719 and enthusiastically advocate the enactment of legislation which would extend to government employees their full rights to participate actively in politics as private citizens, I am very concerned that we maintain adequate safeguards to prevent potential abuses. In

my bill the range of permissible political activities by government employees is greatly expanded, but at the same time there is a provision prohibiting the use of offical authority or influence to interfere with or affect the result of an election.

In 1975 the Hatch Act is obsolete. In the thirty-five years since its original passage, very significant changes have occurred in American society. For one thing, government bureaucracies at all levels have expanded, thereby bringing more and more American citizens under the restriction on political participation found in the Hatch Act. Also, the public and especially the media are probably much more alert and sensitive to potential abuses of the merit system. And particularly in the aftermath of the Watergate affair, we need a rebirth of confidence in American politics. To revitalize the system we should be *encouraging* active and responsible political participation by all Americans, government employees certainly included. In short, the existing Hatch Act provisions have outlived their usefulness. While we must maintain the integrity of our civil service system and protect public employees from coercive threats to participate involuntarily, we must now replace the Hatch Act with legislation more appropriate to the circumstances of the seventies. I urge my colleagues to join with me in this important task.

STATEMENT OF HON. DOMINICK V. DANIELS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, I appreciate the opportunity to testify on H.R. 1675, the Federal Employees Political Activities Act of 1975.

I have introduced this legislation in an attempt to restore to Federal employees their rights to participate, as private citizens, in the political life of the Nation. This right has been denied to Federal workers since the enactment of the Hatch Act in 1939.

The irony of this situation is that as of January 1st of this year, the prohibitions against taking an active part in political campaigns will no longer apply to 12 million State and local employees whose principal employment is in connection with a federally financed activity. The Federal Election Campaign Act Amendments of 1974 (P.L. 93–443) deleted the prohibition in that portion of the Hatch Act governing political activity by State and local employees, and replaced it with a prohibition against being a candidate in a partisan election. State and local government employees who previously could not do so, may now serve as officers of national, State or local political parties and organize partisan political clubs. They may sell tickets to political fund-raisers, manage campaigns, solicit votes, act as challengers or poll watchers during elections or help in transporting voters to and from polling places.

Prohibitions still exist against coercion of fellow employees based on employment circumstances, as well as against on-the-job financial solicitation or the use of official authority to influence nominations or elections and actual candidacy for elective or partisan political office.

Further, criminal status other than those originating in the Hatch Act, still regulate political activities by government employees. Under 18 U.S.C. 602, the exchange of political contributions between government employees and the solicitation, giving, or receiving of political contributions between government employees is subject to fine and imprisonment. These prohibitions apply to all government employees—Federal, State and local.

Mr. Chairman, I am hopeful that Congress will take action to correct this discriminatory prohibition against political activity by Federal employees, and restore to these public servants the basic constitutional rights now enjoyed by their contemporaries in State and local service.

My distinguished colleagues on the subcommittee may well remember some of the recommendations of the Commission on Political Activity of Government Personnel, created in October 1966, to review the Hatch Act and make suggestions for change. The report of the commission reveals agreement on several points, which I would like to share with you.

First, the commission found that the present Federal Hatch Act is confusing, ambiguous, restrictive, negative in character and possibly unconstitutional. The commissioners believed that changes should be made which clarify prohibitions, increase participation and reflect a positive tone, so that employees would be encouraged to participate in permissible activities.

Second, the commission agreed that an effort should be made to strengthen the law on coercing public servants to participate in politics. To the extent that is possible, they recommended the development of workable legislation on coercion, thus adopting the narrower approach rather than restricting first amendment freedoms. This was precisely the approach of the California Supreme Court in two cases of high relevance to the concerns of the commission. In *Fort* v. *Civil Service Commission of the County of Alcmeda* (38 Cal. 625; 392, P. 2D 385; 1964),, the court ruled that the Alemeda County Little Hatch Act was unconstitutional because its restrictions violated the first amendment of the U.S. Constitution. The court argued that the restrictions were overbroad and uncertain. In *Bagley* v. *Washington Township Hospital Districts* (55 Cal. 40L; 42L P. 2D 409; 1966) the court reiterated the overbreadth doctrine set down in the *Fort* decision. But the court went further to outline the criteria which should be followed by a legislature when imposing restrictions on first amendment freedoms as a condition of public employment. This finding of the California Supreme Court was a significant influence on the members of the commission as they sought to weigh the principles outlined in the first amendment against those which are inherent in an impartial civil service for administering the public business.

The commission also found the existing Hatch Act distinction between partisan and nonpartisan is unrealistic; the commission felt that no such distinction could be made. In addition, the members of the commission agreed that the States should be given an opportunity to develop their own laws on political activity of government personnel (those receiving Federal funds) based on criteria used at the Federal level. There was also agreement that coverage should be more uniform than at present: That there should be greater flexibility in penalties for violation; that certain improvements in enforcing the law are essential; and that more money is needed to administer the law.

Mr. Chairman, I am sure my distinguished colleagues on the subcommittee will agree that these findings of the commission on political activity of government personnel underscore the growing congressional dissatisfaction with the Hatch Act during the past three decades. There has developed in some quarters uncertainty regarding the original congressional intention in passing the law. The traditional interpretation has been that a comprehensive statute was needed because during the rapid expansion of the Federal Government in the days of the New Deal, employees of relief agencies such as the Works Progress Administration were being used for political purposes. One can conclude after examining the debates and other records of the event that Senator Hatch and the other framers of the act were concerned with protecting more Federal employees, but they also wanted to liberalize the restrictive policy evolved by the Civil Service Commission and to protect freedom of speech. As a means of achieving these goals, they intentionally wrote a broad, loosely worded statement in order to permit liberal interpretation.

Experience has revealed that the vague language has been narrowly defined to produce even greater restrictions. The historical record indicates that the very Senators who enacted the legislation were confused by the vagueness. In order to clarify his interpretation of the proscribed activities, Senator Hatch prepared an index card on which he listed 18 "rulings". His interpretation was based upon the adjudications made by the U.S. Civil Service Commission pursuant to the Civil Service Act in dealing with political activity among civil servants. He interpreted it in this manner because of the similarity in language between the Hatch Act and the Civil Service regulations. When the Hatch Act was amended in 1940, it defined the prohibited activity by incorporating by reference those 18 rulings made by the Civil Service Commission prior to 1940, as to what constituted political activity. Instead, the Commission was saddled with over 3,000 of their pre-1940

When passing the 1940 amendments, Congress expressly denied the Civil Service Commission the power to promulgate rules and regulations specifically pertaining to the Hatch Act. The Commission was denied the power to define political activity. Instead, the Commission was saddled with over 3,000 of their pre-1940 rulings. When the amendment was introduced, Senator Hatch did not provide all of the rulings which were to be incorporated, but merely the same index card he had used in 1939. Thus, Congress passed the Hatch Act without being fully aware of the scope of these rulings.

The same Congressman who passed the act would have been unsure as to the proscribed activity. There was not one specific commission ruling before them—

only the index card prepared by Senator Hatch. If they felt they were passing a law prohibiting only those activities on the card, this should have been made clear. However, an examination of the pre-1940 rulings themselves is even more amazing than this lack of congressional understanding of the scope and implications of this legislation. As a class, these regulations are overboard and thus violative of the first amendment. The Hatch Act incorporates all of the pre-1940 rulings, not merely those pre-1940 rulings which are constitutional.

An interesting example of the problem inherent in the incorporation of these rulings is the case of one Archie B. Cole, a rural mail carrier. Archie was a Jehova's Witness whose political activity consisted of attending society meetings and distributing literature. Since the society was critical of certain political leaders and certain governmental policies, Archie's participation was judged to be in conflict with the law and he was dismissed from service, even though he promised to withdraw from the religious activities. This ruling could hardly withstand a first amendment analysis, and yet it is still a part of the definition of proscribed political activity. I doubt that my congressional colleagues would be willing to allow the rights of over 2 million Government workers to depend on administrative nullification of this ruling when the first amendment is at stake.

Mr. Chairman, I am sure many of my colleagues on the subcommittee are aware of the ruling of the three-judge panel in the district court for the District of Columbia which, in July of 1972 found the Hatch Act unconstitutional.

In this decision, the court saw the problem of the ambiguity and lack of precision in the definition, and with its incorporation by reference of over 3,000 rulings made by the commission prior to 1940. The court did not find that the *political activities reporter* or various pamphlets published by the Civil Service Commission as aiding the notice requirements of statutes which prohibit activity. The problem was further exaggerated by the qualifying statement in the Hatch Act by which the employee retains his right to vote and to express his opinion. The court felt that Congress clearly intended this to qualify the restrictions on the employee's behavior. The court ruled that vagueness and overbreadth would create a "chilling effect unacceptable under the first amendment."

In summing up its objections to the act, the court stated:

"If the Congress undertakes to circumscribe speech, it cannot pass on an act which, like this one, talks in riddles, prohibiting in one breath what it may be argued to have allowed in another, leaving the citizen unguided but at hazard for his job. Perhaps details could have been left to the administrative discretion, but in this instance, the commission was given no rulemaking power and the act itself does not state with any precision what evils it seeks to prevent. It is no answer to imply that a reading of the voluminous *political activities reporter* and resort to advisory rulings by the Civil Service Commission will give one who wants to express himself adequate guidance."

The Supreme Court reversed this lower court holding as to vagueness and overbreadth. However, this decision has received criticism from legal scholars, who contend that it begs the question of the least drastic means. The court accepts the statute and regulations as necessary without making inquiry into why such drastic means are necessary.

As revealed by the findings of the commission on political activity of government employees, the danger of political coercion upon the public employee by his superior may be more imagined than it is real. In any event, such coercion is already clearly prohibited by provisions of the civil service act.

Mr. Chairman, in my view, the Supreme Court did not pay adequate attention to the standards of compelling interest, least drastic means, overbreadth and vagueness. In fact, the court admitted the statute was vague, but proceeded to reverse the lower court's finding on ambiguity. I find this decision most perplexing.

Mr. Chairman, the initiatives taken by the 93rd Congress in defining allowable political activities for State and local government workers must now be followed by appropriate action by the 94th Congress to define and restore political rights to the over 2.8 million men and women who work in the Federal Government. I believe that it is high time for Congress to correct an inequity that has deprived these Americans of political rights that you and I enjoy. From Senator Hatch's index card to the Supreme Court's admission of vagueness, the history of this law and its administration should be a source of acute embarrassment to those of us who serve in Congress and who are pledged to uphold the Constitution of this country.

It is perhaps to the great credit of this body that a minimal amount of funding has been allotted to the administration of the Hatch Act—my records reveal that the Civil Service Commission has never had more than $100,000 for this purpose. However, I do not believe that we are fulfilling our responsibilities to 2.8 million Americans by simply keeping funding levels low for administrative purposes, or by excusing any further delay in resolving this inequity on the basis of a weak Supreme Court decision. We need to clearly define what constitutes a proscribed political activity. Further, we need to seriously question a draconian solution that prohibits political activty allowable to other Americans, rather than simply addressing the problem of political coercion through appropriate sanctions against such activity.

Finally, this Congress must ask itself if it can, in good conscience, deny basic political rights to those who serve in the Federal Government. I hope that Congress will decide that Federal workers are, indeed, worthy of these rights. I believe these Americans are entitled to participate in the political process, and I hope that this subcommittee will share this sentiment and act favorably upon legislation pending before it that will restore these basis political rights to Federal workers.

Mr. Chairman, I thank you for your courtesy in allowing me to express my views on this issue. I am hopeful that this subcommittee will be instrumental in lifting the burden of being a "second class citizen" off the shoulders of America's dedicated Federal workers.

ARKANSAS AUXILIARY TO APWU,
Camden, Ark., February 22, 1975.

Congressman DAVID N. HENDERSON,
House Office Building,
Washington, D.C.

Hon. Mr. HENDERSON: Once again the Auxiliary to the American Postal Workers Union is seeking support in amending the Hatch Act.

I am asking you to support in the committee on Post and Civil Service the Bill introduced by Congressman William Clay; H.R. 3000.

Sincerely,

LINDA CALLAWAY,
Secretary-Treasurer.

ARKANSAS POSTAL WORKERS UNION,
Fort Smith, Ark., February 20, 1975.

Congressman DAVID HENDERSON,
House Office Building,
Washington, D.C.

Hon. Mr. HENDERSON: I would like to solicit your support of H.R. 3000 as introduced by Representative Clay. I feel the "Hatch Act" has played it's part in restricting the political activity of the many federal employees.

I feel every American regardless of his occupation should have the full right to participate as private citizens in the political life of our Nation.

Sincerely,

HERB JERUE,
Legislative Aide.

STATEMENT OF EDWARD J. KIERNAN, PRESIDENT OF THE INTERNATIONAL CONFERENCE OF POLICE ASSOCIATIONS, WASHINGTON, D.C.

Mr. Chairman, my name is Edward J. Kiernan and I am President of the International Conference of Police Associations, which represents over 170,000 police officers in the United States and Canada. On behalf of myself and Robert Gordon, our Legislative Chairman, I thank you for the opportunity to present our views to your Subcommittee.

I wish to speak on behalf of legislation currently before your Subcommittee that would amend the Hatch Act, which has for many years deprived public employees of their rights under the Constitution to engage in political activities.

When this legislation was first enacted into law over 35 years ago, the fear

was that public employees would be used as a club by the political parties of our country. Without getting into the merits as to whether or not that was the position at that time, I think it is safe to say that in the enlightened atmosphere of politics today with the constant scrutiny of the news media of all things political, it seems ridiculous to perpetuate this discriminatory act.

Speaking on behalf of police officers who have probably been more harshly restricted by the prohibitions against becoming involved in politics than any other public employee group, I can only say that we have deeply resented the restrictions and look forward to the day when a responsive Congress will grant to us the same rights being enjoyed by every other citizen of this country.

We have no objections to safeguards within any of these bills that would prevent political organizations from being able to use coercion or threats against public employees in order to get their support but we do feel that the fear of the possibility of this happening should not preclude affirmative action on this legislation.

The numerous cases throughout the country where police officers have been prevented from becoming involved in local politics such as holding office on non-salaried local school boards and the harsh discipline that has been meted out to these men for being so daring as to try to perform their duties as citizens, would astonish many of you.

In closing let me reaffirm our support of any bill currently before your Subcommittee that would liberalize the present restrictions currently in force restricting the ability of federal, state of local police officers to take part in the political process.

Thank you.

CITY OF FALLS CHURCH REPUBLICAN COMMITTEE,
Falls Church, Va., April 8, 1975.

Hon. JOSEPH L. FISHER,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FISHER: The undersigned members of the Falls Church Republican Committee urge you not to support legislation which will repeal or revise the Hatch Act.

We believe that the provisions of this law have served well the interests of United States federal employees in that it has protected them from partisan political pressures and has insured that their careers will be governed by a merit system, not a spoils system.

Sincerely,

JUDITH H. SHREVE,
Chairman
(and 19 others).

STATEMENT OF PETER FOSCO, GENERAL PRESIDENT, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

Mr. Chairman and members of the subcommittee; the Laborers' International Union of North America, AFL–CIO, under its General President, Peter Fosco, represents over six hundred thousand workers. Of this membership, 47,000 is in the U.S. Postal Service in the Mail Handlers' Division of our Union, and the Federal-Public Employee Division of our Union represents employees of other Federal agencies, all covered by the Hatch Act.

The concepts of the Hatch Act have been carried over into state and local government employment so there is a constant fear, in all segments of public employment, of violation of the political restrictions and a corresponding neglect of political activities so essential to the survival of our democracy.

The Laborers' International Union has, for a number of years, been concerned about the fact that legislation at the Federal and state levels has had a tremendous effect upon our membership and upon our position at the bargaining table. In the private sector, Federal laws relating to the Fair Labor Standards Act (minimum wage, overtime, etc.), Social Security (as it affects negotiated pension plans), the Occupational Safety and Health Act of 1970, the Landrum-Griffin Act of 1959 and the obvious National Labor Relations Act of 1937 and 1947, have all had a decided effect upon labor-management relations and on conditions negotiated in collective bargaining agreements. The trade union movement, because its' very existence and future depend on policies estab-

lished by acts of Congress, must be an active political body in endorsing political candidates and supporting those who act most favorable in the legislative interests of organized workers.

The AFL–CIO, as a result of the Taft-Hartley amendments, established its Committee on Political Education with the sole purpose of endorsing Congressional and state candidates who supported legislation in the interests of labor and the general public. The COPE Program, through its voluntary contributions by individual workers, used money to actually support candidates and party activity committed to labor's political future.

Federal employees for a number of years, principally because of the Hatch Act, have avoided being involved in the programs of the AFL–CIO, especially those which give financial support to candidates for public office. The Federal employee probably has more to gain through political endorsements and having friends in Congress than any segment of the labor movement. The Federal employees' health and welfare plans, the retirement plans, the vacation benefits, holidays, and wages and salaries are all determined by political action in Congress. The only items left to the so-called bargaining table are noneconomic issues. As a result of a recent interpretation of the check-off provisions, the U. S. Civil Service Commission has agreed that the two-cent charge for a check-off deduction to a union could now be negotiated so that theoretically the unions now have an economic issue on the bargaining table with Federal management.

One of the principle stumbling blocks to the Federal employee participating in AFL–CIO COPE programs has been the cloud of possible violation of the Hatch Act. The prohibitions of the Hatch Act against solicitation of funds for political purposes has dampened the voluntary solicitation of funds such as practiced under the AFL–CIO COPE program. Some of the more aggressive unions have followed a pattern of soliciting voluntary money to support the "educational fund" of COPE and thereby avoiding the implications of solicitation for political purposes.

The amendments proposed to the Hatch Act by H.R. 3000, H.R. 3934, H.R. 3935 and H.R. 3936 would liberalize the existing provisions so that the prohibitions against "participating in political activities" would be removed, which would be a major step in liberalizing the Hatch Act. The Laborers' International Union and its' Mail Handlers' Division, representing the mail handlers' craft in the postal service, strongly endorses the liberalization of the Hatch Act.

The Hatch Act was born in a completely different atmosphere from the one currently existing in the federal, state and local fields. Theoretically—public employees were protected from being forced to participate in political activities, make contributions to political candidates in order to keep jobs, get promotions, or secure the favor of management officials, by the Hatch Act provisions. The Hatch Act was designed primarily to take politics out of office-holding or employment considerations. Restrictions were placed on the solicitation of funds, although it was conceded that employees could make voluntary contributions to regularly constituted political organizations or candidates for office. Employees were also restricted in activities involving the sale of dinner tickets of a political party or in the distribution of pledge cards soliciting subscriptions to dinners.

The Hatch Act has withstood the constitutional challenges, and has continued as the guideline on prohibited political activity for Federal employees, and for those state and local government employees who are in programs which receive Federal Grants-In-Aid. Many of the states have seen fit to follow the pattern of the Federal Government by adopting "State Hatch Acts". Some of these laws have been even more restrictive in terms of political activity than the Hatch Act.

Since the 1930's there has been a rapid growth of public employee unions, not only at the Federal level, but at state and local government levels as well. It is the position of the Laborers' International Union that the protection afforded to public employees since the 1930's is now the legitimate function of the recognized trade unions in the Federal, state and local government fields. As collective bargaining representatives, the exclusive unions should be able to protect their members from solicitations being made which violate the individuals' interests, as well as the interests of the trade unions in representing public employees. The public employee unions should function in such a way that Hatch Act protection will no longer be necessary. Unions will prohibit political considerations in obtaining jobs, promotions or other favors to public employees that are not based on merit and seniority.

The public employees, of necessity, must be active politically, because of the peculiar nature of collective bargaining in the public sector. As long as the economic issues of collective bargaining in the public sector continue to be decided by state legislative bodies and by Congress, the benefits that these public employees achieve will depend to a great extent upon their political effectiveness. Unions cannot function as effective representatives of public employees when the bargaining table issues are limited to: the cost of dues deducted; assignment of parking space; or the number of union representatives on the Welfare Committee. Until such time as Congress and the state legislatures are willing to put the economic issues on the bargaining table, it will, of necessity, require that the unions take an active part in endorsing political candidates and—yes—even financing in part their campaigns.

The private sector unions have recognized political action as a way of life—even though the major economic issues are at the bargaining table and the only issues in Congress and the state legislatures are indirectly related to the bargaining process. There has been a major shift with the adoption of President Nixon's Executive Order 11491 in establishing policies and practices which follow very closely those set by the Labor Board in interpreting the National Labor Relations Act. The public employee unions should at least have the ability to function in the political arena in the same way that the unions have in the private sector.

Based on what the Laborers' Union considers to be the new atmosphere in the Federal field, we wholeheartedly support the amendments to the Hatch Act sponsored by Chairman Clay and fifty-three colleagues in H.R. 3000 and companion bills. The Laborers' Union recognizes this as the first step which will permit Federal employees to take an active part by participating in political activities so essential to the life of our democracy. When the public employee movement of Federal, state and local government employees exceeds 13 million workers, it is inconceivable that this large block of informed citizens should be disenfranchised from active political participation by a Congressional act which has long outlived its usefulness.

NATIONAL CIVIL SERVICE LEAGUE,
Washington, D.C., April 22, 1975.

The Honorable WILLIAM (BILL) CLAY,
Chairman, Subcommittee on Employee Political Rights and Intergovernmental Programs, Committee on Post Office and Civil Service, U.S. House of Representatives, House Office Building Annex, Washington, D.C.

DEAR MR. CLAY: The National Civil Service League is firmly convinced that the range of political activity permitted under HR 3000 is so broad that political action on the part of Federal employees would inevitably permeate and politicize the Federal establishment. HR 3000 breaks with vital principles of the merit system developed over seven decades.

The protective sections intended to prohibit coercion of employees for political purposes are too weak. Penalties for violation are insufficient.

The impartial and efficient transaction of the public's business would be jeopardized. Our permanent system of civil service, under which persons are hired, paid, promoted and dismissed on the basis of merit would be eroded and possibly destroyed. The enactment of HR 3000 would create vast confusion and disarray. The protections against coercion would be virtually, if not totally, unenforceable. We could revert to the worst evils of the spoils system, which the lessons of history have shown to be disastrous.

There would be constant tension among civil service employees who would take advantage of the complete unleashing of public employees and the many who believe deeply in the merit system and would strive to uphold its standards.

On the side of maintaining the major principles of the "Hatch Act" it should be pointed out that:

Its constitutionality has been upheld by the Supreme Court as recently as 1973; That much freedom of expression and action is permitted under the present laws; much more than is taken advantage of by most employees.

No doubt a greater effort on the part of the Civil Service Commission and the departments and agencies could be exerted in the education of public employees to exercise the rights they already possess.

Also, some liberalization of permitted activities may be in order short of the drastic changes proposed by HR 3000. The National Civil Service League believes that further Congressional study and proposals for some modification of prohibited activities is needed. This should lead to a new and cleanly-worded law

on both prohibited and permitted activities, which would replace the accumulated law of many decades. Such a law should be given a new catch name to replace the onerous implications of being "Hatched" in the popular mind, and hopefully, to emphasize the positive.

Some modernization of law prohibiting political activity of public employees working under the merit system is needed but to enact HR 3000 would be too sweeping a change.

As a guideline to new legislation, the NCSL suggests the wording included in its Model Public Personnel Administration Law, which has been successfully adopted by many state and local governments.

"Section 7. Political Activities: (a) No [government] employee in the career service shall be an officer of a political party or hold political office during his/her employment. (b) No employee, official or person shall solicit any assessments, contributions, or services, for any political party from any employee in the career service. (c) Nothing herein contained shall affect the right of the employee to hold membership in, and support, a political party, to vote as he chooses, to express privately his opinions on all political subjects and candidates, to maintain political neutrality, and to attend political meetings."

Perhaps one of the most difficult issues to resolve in a democratic society is the treatment of the public employees with respect to their political activities. For in a democratic society, one of the overriding concerns and objectives is to maximize citizen involvement in all phases of the political process. However, owing largely to past abuses, most public jurisdictions have tended to develop a politically sterile work force. The tragedy of such barriers to the partisan activities of public employees is that with the growth of government and its increasing sophistication, a point has been reached where not only are public employees more prevalent, but much more importantly, they constitute a group of persons that is undoubtedly one of the best informed in our society. As a result, governments can ill afford to isolate these individuals from the political process. The problem is to succeed in broadening the sphere of political activities available to the public employee while at the same time maintaining the impartial administration and efficiency of the public service—without which our system of government cannot successfully function.

The National Civil Service League would like this letter to be made a part of the record on HR 3000, a Bill "To Restore to Federal Employees their rights to participate as private citizens in the political life of the nation, to protect Federal civilian employees from improper political solicitations, and for other purposes."

If you have further questions regarding the position of this organization, please let us know.

Sincerely,

KATHRYN H. STONE,
Chairwoman, Executive Committee.

STATEMENT OF JACK A. WALLER, LEGISLATIVE REPRESENTATIVE, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL–CIO

Mr. Chairman, and members of the committee, the International Association of Fire Fighters is grateful for the opportunity to appear before your Committee this morning to convey to you the thoughts and feelings on the part of our entire membership on the need for drastically amending, even outright repealing, the Hatch Act. For the record, this testimony was prepared by Jack A. Waller, Legislative Representative for the International Association of Fire Fighters.

The International Association of Fire Fighters is composed of 172,000 members in the United States, its territories and Canada. Approximately 156,000 of these are in the United States, including Federal Fire Fighters, who are 2% of our total membership.

I wish to direct my remarks today, not only to the effect of the Hatch Act upon our Federal membership, but also the effect that the Federal Hatch Act has had upon all other public employees. The Research Department of the International Association of Fire Fighters has not been able to discover one State that by law restricted the political activities of state, county, and municipal employees in 1939, when the Hatch Act was adopted. It is safe to say that presently, in one form or another, either a so-called little Hatch Act at the State level, civil service restriction at any level of government, or by department rules and regula-

tions, the activities of public employees in all States of the Union are to some degree restrained. During the adoption of the Campaign Practices Act in the 93rd session of Congress, the deliberate bodies of the House and Senate saw fit to adopt an amendment that removed from coverage of the Federal Hatch Act all state, county, and municipal employees whose salaries are in part or in whole paid with Federal funds. That is a giant step forward for public employees; it is certainly an excellent example of establishing political freedom and must be followed with extensive overhauling of the Federal Hatch Act, State Little Hatch Acts, and previously mentioned Civil Service regulations and restrictive city ordinances. The time has come for all public employees to enjoy the freedom of political participation at the very modest levels suggested in H.R. 3000.

The Federal Act, when enacted, was adopted primarily to protect a very small number of Federal employees from coercion and intimidation to contribute to political activity not of their own choice. The Act now covers more than five million employees and acts as a deterrent to their political activity. In fact, they are relegated to second class citizens because of this denial. The conditions that existed in 1939 that brought about the adoption of the Hatch Act do not exist at the present time. Public employees in large numbers now belong to unions. These organizations through the collective bargaining process can protect their membership against coercion and undue pressures in the area of political solicitations and pressure for political involvement, by Federal statute give public employees collective bargaining and the Hatch Act could be outright repealed.

The most devastating effect that the Hatch Act has upon Government employees is that they are, in fact, fearful of even exercising those meager activities to which they can legally participate. Studies undertaken by the Hatch Act Commission itself showed that most Government employees had very little idea of what they could do and what was prohibited by the Act. The result has been a very effective gag rule over federal, state, county, and municipal employees. At one period in my life, I served as a County Civil Defense Director, with one-half of my compensation coming from the Federal Government; therefore I was subject to the Hatch Act. My office was inundated with material from the Administrators of the Hatch Act. A continuing bombardment of don'ts and can'ts. It is my understanding that there are over 3,000 specific prohibitions issued by the Executive Branch between 1886 and 1940. As election time drew near, I waited for the day that the word would come that I was at least still enough of a citizen that I could go to the polls and cast my vote, but not even that positive position was indicated by the Hatch Act Administrators.

It seems quite evident that to a degree the Hatch Act has circumvented some of the precepts set forth in the United States Constitution.

The freedom of speech and freedom of association amendments are two of the most important concepts in our democracy. Yet, individuals covered under the Hatch Act are unjustifiably denied the full intent of these amendments. We cannot and should not compromise an individual's constitutional rights because of passe legislation such as the Hatch Act.

In nearly all of the democratic nations of the world, public employees are not restricted or inhibited by laws such as the Hatch Act. They are allowed to participate actively in the political party of their choice, they are allowed to run for public office, merely taking a leave of absence. It is a strong feeling of the International Association of Fire Fighters that public employees in the United States in the field of political activity should not be treated any differently than those citizens who work in other fields. They should be allowed to participate actively in the party of their choice, hold office within that party structure, run for any public office of their choice. The only limitations placed upon them should be similar to those placed on private industry employees. It cannot, in any way, interfere with the performance of their duty and the service that they render to their employer.

In seeking public office, they should be allowed to use any vacation time that is rightfully due them, they should be granted a leave of absence in the same manner as leaves of absences are granted to employees for other purposes.

The International Association of Fire Fighters wish to commend Chairman Clay and the other Members of this Committee for convening these meetings to discuss Hatch Act amendments. It has been nineteen years since the Congress has acted on amendments to the Hatch Act and those amendments were vetoed by President Truman. It has been seven years since the Hatch Act Commission has made its report with no action taken on any of its recommendations. The Fire Fighters commend you for taking the initiative and we urge you to actually outright repeal the Hatch Act. But short of this, we urge you to drastically alter the Hatch Act, as recommended in H.R. 3000, H.R. 3934, H.R. 3935 and H.R. 3936 so that five million Americans will be freed to actively participate in the political activities of this Nation.

CITIZENS FOR A BETTER CITY,
Falls Church, Va., April 29, 1975.

Hon. WILLIAM CLAY,
Chairman, Subcommittee on Employee Political Rights and Intergovernmental Programs, House Office Building Annex, Washington, D.C.

DEAR MR. CLAY. This refers to the Hearing on H.R. 3000 chaired by Congressman Harris held at the Annandale Elementary School in Virginia the evening of April 14, 1975. Due to the lateness of the hour the Chairman ruled that those who did not testify or wished to supply written statements at a later date, could do so through April 30, 1975. The Executive Council of the Citizens for a Better City, CBC, have met in the interim and desire respectfully to express views in opposition to enactment of H.R. 3000 and the three related identical bills.

CBC is a non-partisan political organization which has existed in the City of Falls Church, Virginia since 1959. Very little if any emphasis was directed at the hearing to the effect this proposed legislation would have on local non-partisan political party efforts in which Federal employees can now fully participate. There are those of us who believe such non-partisan organizations would become almost totally ineffective if the Hatch Act is amended as you propose. Perhaps the reason so little attention has been directed to this aspect is that few communities in this area have bothered to establish such organizations. A fact not too readily apparent is that the current Hatch Act permits Federal employees to engage fully in non-partisan political activities including running for and holding elected office in local communities such as City Council Member. The City of Falls Church has two such individuals on the current City Council. Why? Because they are products of the non-partisan provisions in the Hatch Act as it now stands.

Falls Church has a successful thriving government which is a direct by-product of non-partisan politics. We are proud of this record and wish to enlist your support in duly recognizing that this particular quality of American politics should not be banished from the scene. Falls Church, a past All-America City is blessed with a goodly number of highly motivated Federal employees. Such individuals experienced in public affairs, provide an excellent base from which to draw potential CBC candidates. We see the present Hatch Act as permitting Falls Church to obtain highly professional candidates to run for office under the banner of CBC as well as other independent, non-partisan sponsorship. This could clearly change with the passage of H.R. 3000. In addition, we see local government issues as being distinctly different from national issues, and believe that the national political politics are not completely oriented to community affairs.

CBC wishes to record its opposition to the proposed legislation and to recommend that the Hatch Act not be revised in a manner which would ban or preclude nonpartisan local political activity.

Respectfully yours,

JAMES E. DOUGHERTY,
President, CBC.

94TH CONGRESS
1ST SESSION

H. R. 3000

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1975

Mr. CLAY introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employees' Political Activities Act of 1975".

SEC. 2. (a) Section 7323 of title 5, United States Code, is amended to read as follows:

"§ 7323. Political contributions prohibited; enforcement by Civil Service Commission

"(a) An employee in an Executive agency, including

an employee appointed by the President, may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes, except that an employee may freely and voluntarily make a contribution to any candidate for public office on his own volition. An employee who violates this section shall be subject to the penalties provided in section 7325 of this title.

"(b) The Civil Service Commission shall process complaints arising under subsection (a) of this section and shall, upon receipt of a complaint alleging facts which constitute a violation of subsection (a), investigate the alleged activity.

"(c) Upon a finding that a violation of subsection (a) of this section has occurred, the Civil Service Commission shall—

"(1) in the case of an employee in the competitive service, impose the appropriate penalty under section 7325;

"(2) in the case of an employee appointed by the President, notify the President, the head of the Executive agency in which the employee is employed, and the Congress (A) that a violation of subsection (a) of this section has occurred, and (B) what penalty the Commission has determined is appropriate under section 7325 of this title; and

"(3) refer the case to the attention of the Attorney General for prosecution under section 602 of title 18.

"(d) For the purpose of this section 'Executive agency' includes the United States Postal Service.".

(b) The table of sections of chapter 73 of title 5, United States Code, is amended by striking out—

"7323. Political contributions; prohibition.",

and inserting in place thereof—

"7323. Political contributions prohibited; enforcement by Civil Service Commission.".

SEC. 3. (a) Section 7324 of title 5, United States Code, is amended to read as follows:

"§ 7324. Use of official authority or influence to affect elections prohibited; other political activities permitted

"(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not use his official authority or influence for the purpose of interfering with or affecting the result of an election.

"(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses, to express his opinion on political subjects and candidates, and to take an active part in political management or in political campaigns in his role as a private citizen and without involving his official authority or influence.

"(c) For the purpose of this section, the phrase 'an active part in political management or in political campaigns' includes—

"(1) candidacy for or service as delegate, alternate, or proxy in any political convention or service as an officer or employee thereof;

"(2) participation in the deliberations of any primary meeting, mass convention or caucus, addressing the meeting, making motions, preparing or assisting in preparing resolutions before the meeting, or taking a prominent part therein;

"(3) preparing for, or organizing or conducting a political meeting or rally, addressing such a meeting on any partisan political matter, or taking any part therein;

"(4) membership in political clubs and organizing of such a club;

"(5) distributing campaign literature and distributing or wearing campaign badges and buttons;

"(6) publishing or having editorial or managerial connection with any newspaper including those generally known as partisan from a political standpoint, and writing for publication or publishing any letter or article, signed or unsigned, soliciting votes in favor of or against any political party, candidate, or faction, except that no such editorial, letter, or article shall make refer-

52-137—75——14

ence to the writer's official employment or authority;

"(7) organizing or participating in any political parade;

"(8) initiating or signing nominating petitions on behalf of a partisan candidate, including canvassing for signatures of others; and

"(9) candidacy for nomination or election to any National, State, county, or municipal office."

"(d) For the purpose of this section 'Executive agency' includes the United States Postal Service.".

(b) The table of sections of chapter 73 of title 5, United States Code, is amended by striking out—

"7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.",

and inserting in place thereof—

"7324. Use of official authority or influence to affect elections prohibited; other political activities permitted.".

SEC. 4. Section 7325 of title 5, United States Code, is amended to read as follows:

"§ 7325. Penalties

"Whenever the Civil Service Commission finds that an employee or individual has violated section 7323 or 7324 of this title, the Commission shall impose such penalty as it finds is warranted but not less than 30 days' suspension from his position without pay. An employee or individual shall be removed only upon the unanimous vote of the Com-

mission. Funds appropriated for the position from which an employee or individual is removed may not thereafter be used to pay the employee or individual.".

SEC. 5. Sections 7326 and 7327 of title 5, United States Code, are repealed.

SEC. 6. Section 602 of title 18, United States Code, is amended by adding at the end thereof the following new paragraph:

"Upon receipt of a finding by the Civil Service Commission of illegal activity under section 7323 of title 5, the Attorney General shall prosecute under the first paragraph of this section, unless he shall determine that no factual basis for prosecution exists or that the cause of justice will not be served by such prosecution. If the Attorney General determines not to prosecute in a case referred to him by the Commission, he shall send to Congress within sixty days a written report describing the nature of the alleged violation and the reasons for not proceeding with prosecution under the first paragraph of this section."

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Honorable David N. Henderson
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Cannon House Office Building
Washington, D.C. 20515

APR 2 1975

Dear Mr. Chairman:

This is in reply to the Committee's request for the views of this Office on H.R. 719, H.R. 1306, H.R. 1326, H.R. 1675, and H.R. 3000, all bills primarily concerned with political activity of Federal employees.

The principal purpose of these bills is to repeal the restrictions in existing law on active participation by Federal employees in partisan political activities. In its report, the Civil Service Commission states a number of reasons for strongly opposing elimination of such restrictions.

We concur in the views expressed by the Civil Service Commission and, accordingly, strongly recommend against enactment of any of these bills.

Sincerely,

James F. C. Hyde, Jr.
Acting Assistant Director
for Legislative Reference

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

March 24, 1975

Honorable David N. Henderson
Chairman
Committee on Post Office
and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your letter requesting the Commission's views on H.R. 3000, H.R. 1306, and H.R. 1675, bills "To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation, to protect Federal civilian employees from improper political solicitations, and for other purposes"; on H.R. 1362, a bill "To amend title 5, United States Code, to permit Federal officers and employees to take an active part in political management and in political campaigns;" and on H.R. 719, a bill "To amend, title 5, United States Code, to permit Federal, State and local officers and employees to take an active part in political management and in political campaigns."

The Commission opposes enactment of these bills for several reasons.

In our opinion, the primary thrust of these bills is to repeal the existing restrictions on political activities as set forth at 5 U.S.C. 7324(a)(2). This provision prohibits Federal employees and employees of the District of Columbia from participation in partisan political management and partisan political campaigns.

A secondary thrust of these bills, with the exception of H.R. 1326 and H.R. 719, is to revise and expand 5 U.S.C. 7323 so as to clarify responsibilities and procedures under this section. The Commission does not disagree with the basic intent of the proposed revision. However, we do note that there is no indication in subsection (c) of section 7323 as to action to be taken, if any, concerning those employees in the excepted service who are not Presidential appointees. Further the provision that an employee may "make a contribution to any candidate" may conflict with 18 U.S.C. 607, administered by the Department of Justice, which prohibits an employee from giving to a

Senator or Member of or Delegate to Congress "money or other valuable thing on account of or to be applied to the promotion of any political object." Additionally, a secondary thrust of H.R. 719 is to repeal the restriction on candidacy for elective office as set forth at 5 U.S.C. 1502(a)(3). This prohibition applies to State or local officers or employees whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency.

The Commission's major area of concern, however, is with the primary thrust of these bills which would allow employees virtually unlimited political activity, both partisan and nonpartisan, even at the national level. This goes far beyond the proposals to liberalize the political activity restrictions as recommended by the Commission on Political Activity of Government Personnel.

Where advancement in the public service is predicated exclusively upon merit, the entire society benefits from a more efficient and honest public service. Since 1883, this Commission, acting at the direction of the President and under Congressional enactments, has endeavored to insure that Federal employment and Federal personnel management are anchored on the principle of merit, free from the influence of political partisanship.

We are convinced that some restriction on the ability of public employees to identify themselves prominently with partisan political party success is essential to an effective merit system. While the political activity of specific employees may appear to be innocuous in itself, the effect of such activity generally is that public employees become identified with the aspirations of political parties and candidates, and partisan considerations are injected into the career service. The identification of a civil servant with a political party through active participation in party affairs compromises that employee in the eyes of the public, and most certainly in the eyes of an opposing party during a change in administrations. Competition among employees for advancement and favor based on their contribution of money or services to political parties would also detract from the efficient administration of public business. Our conclusion is that the intrusion of partisan considerations into the career Federal service, even in appearance, would constitute a devastating blow to merit concepts, and to employee morale as well.

We, of course, favor the retention of the prohibition on the misuse of official authority to influence elections, as well as the restrictions on the solicitation and exchange of political contributions among Federal officers and employees. However, in our view, those limitations alone, even as revised and expanded by H.R. 3000, H.R. 1306 and H.R. 1675, are wholly inadequate to protect employees from the subtle pressures that would impel them to engage in other forms of political activity in order to protect or enhance their employment situation. Without the protection of a public policy that limits the political activities of public employees, an employee would be vulnerable to indirect influence to support the political party or candidates favored by those in a position to affect the employee's government career. Under current restrictions everyone knows that a covered employee cannot serve political purposes, except at the risk of loss of employment. This protection of the Federal employee would be discarded by the proposed legislation.

Similar restrictions, which previously applied to State and local employees in Federally financed programs, were repealed by section 401 of the Federal Election Campaign Act Amendments of 1974 (P.L. 93-443). The restriction against political management and political campaigning was replaced by a prohibition against being a candidate for elective office. It was our view at the time that amendment was passed (without public hearings of any kind), and it continues to be our view, that such a drastic change in the law would be seriously detrimental to the maintenance and operation of effective merit systems on the State and local levels, and would be contrary to the purpose and spirit of the original political activity legislation.

We believe that to go further, as would H.R. 719, and repeal the remaining prohibition against candidacy for elective office, would be an error of major proportions and would result in further impairment of effective merit systems at the State and local levels.

We think it significant that after nearly a year of study of the Hatch Act, the Commission on Political Activity of Government Personnel concluded that protection of a career system based on merit not only "requires strong sanctions against coercion . . . [but] also requires some limits on the role of the government employee in politics." Volume I, Report of the Commission on Political Activity of Government Personnel-Recommendations, page 3.

Apparently employees, too, feel some apprehension regarding the effect of amendments that would permit more political activity on their part. A survey of Federal employees, conducted by the same Commission in 1967, disclosed that more than half (52%) of those contacted believe that such

changes would effect promotions, decisions, job assignments, and similar actions. Of the State employees surveyed, a fairly high percentage (42.3%) felt that the merit system would be hindered if all restrictions on political activity were removed. Volume II, Report of the Commission on Political Activity of Government Personnel-Research, pages 21 and 78 (1968). We believe the employees' fears stem from a realistic view of politics in relation to the public service.

The foregoing should in no way, of course, be construed as a total indictment against political activity of Federal employees. We would note, for example, that under existing law Federal employees are free to engage in a wide variety of activities. The Hatch Act does not circumscribe the entire field of political activity, but, rather, carefully directs its prohibitions to what Congress regarded as particular sources of danger to the public service, namely, direct participation by employees in the management and campaigns of major political parties. A wide range of freedom to participate in the political processes of the Nation, State, and the local community is permitted under the existing law.

Accordingly, the Commission opposes enactment of these bills.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

Robert Hampton

Chairman

SUMMARY OF H.R. 3000 - "FEDERAL EMPLOYEES' POLITICAL ACTIVITIES ACT OF 1975" (MR. CLAY)

Purpose

To restore to Federal civilian employees their rights to participate, as private citizens, in the political life of the Nation and to protect Federal civilian employees from improper political solicitations.

Explanation of Provisions

SECTION 2. Amends Section 7323 of title 5, U.S. Code, to -

(1) Prohibit Federal civilian employees including employees of the Postal Service from requesting, receiving or giving a Member of Congress or a uniformed officer anything of value for political purposes but permit them to make voluntary contributions to candidates for public office. Violators are subject to penalties provided under Section 4 of the bill.

(2) Require the Civil Service Commission to investigate alleged violations of the prohibitions discussed in paragraph (1).

(3) Require that when the Civil Service Commission finds that a violation has taken place, it shall -

(a) impose the appropriate penalty provided under Section 4 when the violation has been committed by a competitive employee;

(b) notify the President and agency head when a violation has been committed by a Presidential appointee; and

(c) refer the case to the Attorney General for possible prosecution.

SECTION 3. Amends Section 7324 of title 5, U.S. Code, to -

(1) Prohibit Executive Branch, Postal Service, or District of Columbia employees from using their official authority or influence to interfere with or affect any election.

(2) Guarantee such employees the right to vote, to express their political views, and to participate in political management and campaigns so long as they do not use their official authority or influence.

(3) Define "an active part in political management or in political campaigns" to include -

(a) candidacy for service or office in political conventions;

(b) participation in primary meetings, conventions or caucuses;

(c) preparing for, organizing or conducting a political meeting or rally;

(d) membership in or organizing political clubs;

(e) distributing campaign literature, badges or buttons;

(f) publishing or having an editorial or managerial association with a partisan political publication;

(g) organizing or participating in a political parade;

(h) initiating, signing, or circulating nominating petitions on behalf of partisan candidates; and

(i) being a candidate for public office.

SECTION 4. Amends Section 7325 of title 5, U.S. Code, to require the Civil Service Commission to impose a penalty of not less than 30 days suspension without pay against an employee who has violated Section 7323 or 7324, discussed above.

SECTION 5. Repeals Sections 7326 and 7327 of title 5, U.S. Code.

SECTION 6. Amends Section 602 of title 18, U.S. Code, to require the Attorney General to report to the Congress should he decide not to prosecute alleged violators after a finding of illegal activity by the Civil Service Commission.

STATEMENT OF WILLIAM H. SIMONS, PRESIDENT OF WASHINGTON TEACHERS' UNION, LOCAL NO. 6, AMERICAN FEDERATION OF TEACHERS, AFL–CIO

My name is William H. Simons, and as President of the Washington Teachers' Union, Local #6, American Federation of Teachers, AFL–CIO, I wish to associate this organization with the purposes sought in your Legislative Bill H.R. 3000. While teachers in the Washington, D.C. School System are not encumbered by the Hatch Act restrictions, it nevertheless strikes at the best interest of teachers and the larger community to have the great body of their colleagues who are covered by Civil Service so denied. Therefore, we of the Washington Teachers' Union cannot stand apart from the effects of the ill-conceived Hatch Act. For with well over two and a half million citizens so circumscribed, there has to be an incalculable loss of intellectual talent legislatively removed from dealing through the political process with some of the severest problems confronting the nation.

It is here in my view, that the significant remedy lies. Where the federal government reaches out for the most able people to meet the demands of its pervasive obligations, it canot but help including trained and able minds into its politically sterile fold.

Looking briefly at the inception of the Hatch Act, the cloudy and insecure environment of the time in 1939, the politically charged doubts as to bridging the gap between widespread economic deprivation at the gut instinct to pile wealth upon wealth, we can today look with little understanding and appreciation for the emotions unleashed in the name of governmental integrity.

Unlike today, unions were weak, civil rights groups functioned on hardly more than determination and dedication. Then too, academic training of the general population has significantly increased from a median of 8.6 school years completed to 12.3 in 1973. (latest available data)

More and more, the government has drawn selectively from the people for positions of increasing training requirements and intellectual responsibility. The removal of so much talent from the political mainstream represents a tremendous waste. Indeed, where convictions are strong and commitments are overwhelming, the law has conceivably been bent, if not fractured.

We, therefore, can conclude that the general populace is no longer in need of the smothering embrace of the patronizing efforts of the then "knowledgeable" legislators.

I would say that minorities have been particularly hard hit in this type of twilight political process. Where legal barriers compound a history of political repression, political non-participation has become a way of life with a non-commitant result of political disregard and unaccountability.

Mr. Chairman, I charge that through wilful intent or happenstance the enactment of the Hatch Act froze into place the power of economics and politics in the hands of the few. For decades, thereafter, we have shared and witnessed the anguish associated with poverty and wealth, jobs and unemployment, racism and rejection.

Where anger and frustration overflowed into the streets, hurried political reaction sought stop-gap resolution. Where workable cures occurred, continuous onslaughts developed for their termination. Witness the current task before us, Mr. Chairman, in connection with the extension of the Voting Rights Act.

To document my argument further, Mr. Chairman, let me cite a bit of recent history. During the civil rights disturbance of the sixties, minority group employees, particularly at mid and high level positions in government, were rushed into the cities to assist in quieting the storm. They brought with them the newly aroused concerns of heretofore indifferent administrations. They sought out the causes of anger and frustrations, already well known to demonstrate a will to broaden participation. ". . . To bring into the system those left out," worked then. And, Mr. Nixon's quote is now shrouded in irony.

But Mr. Chairman, those pressures have now subsided. Nevertheless, the need remains urgent for the knowledge and demonstrated guidance they, the government workers, possess.

I do not propose to evade the wariness of the opponents of H.R. 3000. Rather, I accept the potential for offenses against the sanctions of the law. It seems to me, Mr. Chairman, that is too much to ask that a law ensure no violations. No law on the books undertakes a similar kind of burden. H.R. 3000 includes all of the necessary prohibitions to discourage violations and to mete out justice where infractions occur. To deny full political participation to an important segment of

the population is to deny a political reality in our national life. Throwing the baby out with the bath water may be an appropriate cliche used here.

Moreover, events demonstrate the need of government employees to have the full ties with the political machinery of the market place. They are beset by the cruel knife of favoritism, the unworkability of so-called equal opportunity programs and leverage in the financial and economic decisions. Where high level executives have access to political decisions and policy making, government employees as individuals experience difficulty and insecurity.

Some fear unions, some fear seeking Congressional intervention and others suffer retaliation for being so bold. The lessons are not lost. There is sufficient flexibility in the Civil Service provisions for administrators to act capriciously, though seemingly correctly.

Therefore, we cannot presume that security of employment is so certain or prevalent that the federal employee is set apart from the security of his fellow citizen. Indeed, their security in all respects can only flourish and progress as the social and economic security of the nation improves totally.

Mr. Chairman, all we have said here is that the market place of political ideas cannot be exclusive. It must be all inclusive. Ideals and goals must surface and undergo the rigors of testing in the market place. Otherwise, we are without the true meaning of democracy as it is understood.

○