



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
DEFENSE LANGUAGE INSTITUTE FOREIGN LANGUAGE CENTER
AND PRESIDIO OF MONTEREY
OFFICE OF THE STAFF JUDGE ADVOCATE
1336 PLUMMER STREET, BLDG. 275
MONTEREY, CALIFORNIA 93944

ATZP-JA

July 2010

MEMORANDUM FOR ALL

SUBJECT: Social Media Restrictions and the Hatch Act

1. GENERAL RULE: Federal employees are prohibited from creating Facebook, Twitter, or other social networking webpages, in their official capacity, used to advocate for or against a political party, partisan political group, or partisan candidate. Any page created in an employee's official capacity must be limited to official business matters and must remain politically neutral. Any indicated political affiliation is limited to personal (unofficial) social networking pages subject to limitations in subsection 3 below.

2. REFERENCES:

- a. 5 U.S.C. §§ 7321-7326, The Hatch Act of 1939 (applicable to Civilian Personnel).
- b. DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," 19 February 2008 (applicable to Uniformed Personnel).
- c. DOD Directive 5500.7-R, Joint Ethics Regulation (JER).
- d. U.S. Office of Special Counsel legal opinion, "Frequently Asked Questions Regarding Social Media and the Hatch Act," 14 July 2010.

3. DISCUSSION:

a. Blogging :

(1) Federal employees may write a blog on which they express support or opposition to partisan political candidates and political parties, but only when off-duty and in personal capacity. Federal employees are not prohibited from expressing their political opinions but they are prohibited from engaging in "political activity," that which is directed at the success or failure of a political party, occupied in the discharge of official duties by a federal officer or employee. Thus, federal employees are prohibited from writing such a blog while on duty or in their federal workplace.

(2) Federal employees also may not use their official authority or influence to affect the result of an election. They should not identify their official titles or use their statuses as federal

employees to bolster the opinions concerning political parties, partisan candidates, or partisan groups that they post on their blogs.

(3) Federal employees are prohibited from soliciting, accepting, or receiving political contributions at all times. Therefore, at no time should they suggest or ask that readers of their blogs make contributions to a political party, partisan political candidate, or partisan political group. They should not post links to the contribution page of any of those entities' or individuals' websites.

b. Identifying an Employee's Political Party: A federal employee that has listed his or her official title on a Facebook profile page, or other social networking website, may identify the employee's political party. Simply identifying the political party that an employee supports does not amount to "political activity" prohibited by the Hatch Act.

c. Advocating For or Against a Political Party, Group, or Candidate: To the extent such activity is not expressly prohibited by the Hatch Act or other restrictions discussed in this document, federal employees may advocate for a political party, partisan political group, or candidate for partisan public office on their social networking pages or on the pages of others. Such statements may only be made while off-duty and outside the federal workplace. They may not refer to their official government positions to bolster political advocacy statements made on such pages. However, simply listing an official title on a Facebook page, without more, would not likely amount to improper use of official authority.

d. Comments or Messages to Subordinates: A federal employee may advocate for or against political parties, groups, or candidates on their Facebook pages (or other networking pages), subject to certain restrictions:

(1) Any comment made by a supervisor must be directed at all networking contacts (i.e. Facebook "friends"). For example, an opinion concerning a candidate posted in a supervisor's Facebook "status" field would be akin to the supervisor placing a sign in his or her yard at home that could incidentally be seen by subordinates.

(2) A comment made must not be directed at a specific subordinate or group of subordinates (e.g., sending a "message" on Facebook). Such an action could be construed as targeting subordinates with a political message, which is prohibited.

(3) A supervisor may never send an e-mail to a subordinate that is directed at the success or failure of a political party, group, or candidate. This would be considered improper targeting and improper use of official authority.

e. Posting a Link to Political Websites: Subject to certain restrictions, a federal employee may post a link to the website of a political party, group, or candidate on his networking page or blog. The link may direct to a homepage but not lead directly to a contribution page. Posting

links is akin to leafletting (circulating political literature) and employees may not take such action during duty hours or in the federal workplace.

f. Third-Party Posts on the Employee's Page: Federal employees are prohibited from soliciting contributions at all times, but they are not responsible for third-party actions. Therefore, if a federal employee's "friend" or other networking contact posts a link on the employee's page directing to a contribution page of a political party, group, or candidate, or otherwise solicits contributions, the employee need not take action. However, no further comments or other action should be taken that would tend to encourage others to donate.

g. "Friend" or "Fan" or "Like" Actions: Federal employees may take such actions regarding networking webpages of a political party, group, or candidate, but cannot do so while on duty or in the federal workplace. While the employee may take such action, he or she may not encourage others to "like," "friend," or become a "fan" of the party, group, or candidate. To do so amounts to "political activity" prohibited by the Hatch Act. An employee may also not forward any invitations regarding political fundraising events.

h. White House and President Pages: Federal employees may "follow" or "friend" official White House Twitter, Facebook, and other networking pages/accounts, even after the President commences a re-election campaign.

i. Following Political Twitter Accounts: Federal employees may "follow" a political Twitter account but only insofar as such activity does not constitute solicitation of contributions, is done when off duty, and is done outside the federal workplace.

j. Using an Alias to Create a Page: Federal employees may use an alias to create and use a networking page, but they remain subject to the restriction of the Hatch act. Therefore, the alias page may not be used to solicit contributions, or for other "political activity," prohibited by law. Such activity must also occur only when off duty and when outside the federal workplace.

k. Agency Pages: All federal agency pages must remain completely politically neutral and may not contain any information that may be construed to support or oppose a political party, group, candidate, or campaign.

4. If you have any questions or need further information, please feel free to contact the Office of the Staff Judge Advocate, Administrative Law Division, at (831) 242-6402.



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