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**Advisory Regarding the Wearing or Displaying of Partisan Items
in the Federal Workplace after Election Day**

The U.S. Office of Special Counsel offers the following Hatch Act guidance to federal employees regarding the display of partisan items in the federal workplace after Election Day.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal executive branch employees in order to protect the federal workforce from partisan political influence and ensure the nonpartisan administration of laws. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. However, an employee covered by the Act may not, among other things, engage in political activity while they are on duty, in the federal workplace,¹ wearing an official uniform, or using a government vehicle. See 5 U.S.C. § 7324. Political activity is defined as “activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group.” 5 C.F.R. § 734.101.

I. Items about Presidential Candidates

The Hatch Act regulations define candidate as “an individual who seeks nomination or election to any elective office whether or not the person is elected.” Id. Typically, a candidate is thought to seek election to an office up until the point at which his or her election to that office is determined. Generally, candidates are elected to office through direct popular vote. However, for the office of President and Vice President, the actual election of the candidate takes place through the Electoral College. See U.S. Const. art. II, § 1; id. amend. XII.

On Election Day, voters choose their state’s electors for President and Vice President, who then meet and cast their ballots for President and Vice President. See 3 U.S.C. §§ 1, 7. After the state electors cast their votes, the outcome of the election is declared by the President of the Senate, who, in the presence of the entire Congress, counts the votes. See U.S. Const. amend. XII; 3 U.S.C. § 15 (stating that after the President of the Senate counts the votes, his or her announcement will be deemed a sufficient declaration of the persons elected to President and Vice President). Neither the President nor the Vice President is elected until the conclusion of that procedure, which takes place on the sixth day of January following Election Day. See U.S. Const. art. II, § 1; id. amend. XII; 3 U.S.C. § 15. Therefore, all candidates for President and Vice President retain their status as candidates until the electors’ ballots have been tallied and certified or until the candidate withdraws from the election. Accordingly, an individual ceases

¹ The federal workplace is any room or building occupied in the discharge of official duties by a federal officer or employee. See 5 C.F.R. § 734.101.

being a Presidential candidate for purposes of the Hatch Act on the sixth day of January following Election Day absent their withdrawal from the election.

However, after Election Day, with rare exception,² activities supporting or opposing a Presidential candidate will not affect the result of the election for that office, as the only individuals left to cast their votes are the members of the Electoral College. Thus, after Election Day, activities like wearing campaign t-shirts or displaying candidate pictures do not constitute political activity, and the Hatch Act does not prohibit a federal employee from engaging in such activities, even while on duty or in the federal workplace.

Note, however, that although the Hatch Act generally does not prohibit employees, while on duty or in the federal workplace, from wearing or displaying presidential campaign items after Election Day, such items will be prohibited by the Act if and when a former presidential candidate, including a President or Vice President, again becomes a candidate for election.

II. Items about Political Parties or Partisan Political Groups

The definition of political activity also includes activity directed at the success or failure of a political party or partisan political group. See 5 C.F.R. § 734.101. Therefore, even after Election Day, the Hatch Act still prohibits federal employees, while they are on duty or in the federal workplace, from wearing or displaying items that show support for or opposition to a political party or partisan political group. For example, a federal employee can never wear or display a political party t-shirt or similar item in the federal workplace. Accordingly, even after Election Day, employees, while on duty or in the federal workplace, are prohibited from wearing or displaying items that show support for or opposition to a political party and a Presidential candidate; for example, items with a “Democrats for Obama” or “Republicans for Romney” slogan.

For more information about the Hatch Act, please visit the U.S. Office of Special Counsel’s website at www.osc.gov/hatchact.htm.

² Such exceptions include, but are not limited to, influencing or attempting to influence the results of the popular election, such as through a recount effort, and swaying or attempting to sway the allocation of electoral votes.