

PSF SUBJECT FILE: HATCH BILL,
1939

Copy of Chas.
McChesno's
letter attached

THE WHITE HOUSE
WASHINGTON

File

June 22, 1939

MEMORANDUM FOR: General Watson.

The President may wish to read the
attached letter from Senator Hatch before
he sees Congressmen Healey and Celler.

gmr

J. E. R.

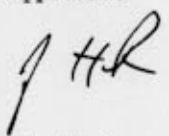
THE WHITE HOUSE
WASHINGTON

June 20, 1939

MEMORANDUM FOR: General Watson.

Attached is a letter from Senator Hatch commenting on the President's criticism of Section 9 of the Hatch Bill.

Incidentally, Arthur Healey told me the President wished to see him and Congressman Celler in a week or ten days, as soon as the House draft has been approved.


J. H. R.

PSF

Hatch
Bill

49

HENRY F. ASHurst, ARIZ., CHAIRMAN
WILLIAM H. KINGS, UTAH
M. M. HICKY, W. VA.
FREDERICK VAN DYKE, IND.
PATRICK MC CARRAH, NEV.
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WILLIAM H. DIETRICH, ILL.
GEORGE MC GILL, KANS.
CARL A. HATCH, N. MEX.
EDWARD R. BURKE, MASS.
KEY FITZMAUR, NEV.
TOM GONNALLY, TEX.
JOSEPH C. O'MAHONEY, WYO.
JAMES H. HUGHES, DEL.

WILLIAM E. BORAH, IDAHO
GEORGE W. NORRIS, MISS.
WARREN R. AUDEN, VT.
CHARLES L. McNARY, ORES.

United States Senate

COMMITTEE ON THE JUDICIARY

June 17, 1939

Col. Edwin M. Watson
Secretary to the President
The White House

By Riding Page

My dear Colonel:

As indicated in our telephone conversation yesterday, the statements appearing in the press and attributed to the President, as well as to Congressmen Celler and Healey, disturbed me somewhat and I feel that the President has been misinformed concerning section 9, Senate Bill 1871.

As I told you at the time I called on the President to discuss this bill, I have been quite eager to have the vigorous support of the President for the measure as I believed it to be in line with his general purposes and policies.

The criticism that section 9 is poorly drawn or drafted must have been made in the absence of information concerning its historical background. While I have always believed the language of the section could be improved upon, nevertheless, I did not attempt to do so for the reason that this language has been tested for more than fifty years in the Government civil service. With only necessary changes to make the section law instead of rule or regulation, section 9 is an exact copy of the pertinent provisions of Rule 1 of the Civil Service Rules which have been in effect for more than fifty years. I think the President should know this.

The criticism attributed to Congressmen that this bill contains "absurdities and monstrosities" would likewise seem hardly to be justified in the light of the history of this section. The statement that a literal interpretation of the bill would have made it impossible for the President, a member of his cabinet or a member of Congress to make a campaign speech would likewise hardly appear to be justified in view of the fact that section 9, as drawn by me, only prohibited political activity of "administrative and supervisory employees of any Federal agency." It needs no argument to say that the high office of President of the United States or of a cabinet official or of a member of Congress cannot be classed as employment under a Federal Agency.

-2-

Needless to say, my respect for the office of President and the others, as well as for the persons who occupy them, would never lead me to say that these dignified officials are classed as employees of a Federal agency.

Very truly yours,

A handwritten signature in cursive script, reading "Carl Hatch". The signature is written in dark ink and is positioned to the right of the typed name "CAH:MH".

CAH:MH

THE WHITE HOUSE
WASHINGTON

file

June 12, 1939

MEMORANDUM FOR: General Watson.
RE: HATCH BILL.

Congressman Healey and Celler are coming
in Wednesday at 11:30 to talk to the President
about the Hatch Bill. The President will
probably want the attached.

J H R
J. H. R.

C O P Y

April 25, 1939.

Hon. William B. Bankhead, Speaker
House of Representatives,
U. S. Capitol,
Washington, D.C.

Dear Mr. Speaker:

Herewith some changes I think should be made in S. 1871 in the interest of political freedom, etc. Actually, can see no purpose in retaining any part of Section 5, though I am including a substitute. It does not seem to me that there is any place in a law of the United States for a provision penalizing any person for soliciting a political contribution from Colonel Harrington or any of his aides. The statutory salary for the Administrator is \$12,000 a year, but this does not apply to Colonel Harrington, who as an army officer gets no salary from the W.P.A. However, he has four or five deputy and assistant administrators, whose salaries are \$9,500 a year, and whose Chief Clerk gets \$4,000 a year. In addition to these, there are 48 State Administrators, at salaries running from \$8,000 a year in half a dozen of the larger States to \$3,600, the smallest pay. The Regional Administrators get similar salaries and, of course, all of these have their own establishments. In other words, there are probably several hundred of these government employees who can afford to contribute. There certainly is no logic in segregating this group from the mass of federal employees whose aggregate contribution to the Democratic war chest is very important.

I am sending a copy of this letter to Sam Rayburn, and I leave the matter in your hands, knowing you will realize the importance of these changes to the national Democratic organization.

Yours sincerely,

Chas. Michelson

MEMORANDUM:---

Under this bill (S. 1871) Section 2 bars any person employed by any United States agency in any administrative position from using his official authority for the purpose of interfering with or affecting the election of any candidate for any federal office. The exceptions are limited to the right of "any such person to state his preference with respect to any such candidates or to vote as he may choose."

Section 9 of the same bill is even stronger, in the same direction, for there it is stated that "any person employed in any administrative or supervisory capacity by any agency of the Federal government, whose compensation, or any part thereof, is paid from funds authorized ~~by~~ or appropriated by any act of Congress," is barred from using his official authority, etc. And it adds "all such persons shall retain the right to vote as they please and to express PRIVATELY their opinions on all political subjects, but THEY SHALL TAKE NO ACTIVE PART IN POLITICAL MANAGEMENT OR IN POLITICAL CAMPAIGNS." In other words, a Cabinet officer, administrator, deputy administrator, district attorney, collector^{or} of the port, or in fact any official, is barred from making a political speech and is barred from being chairman of a National Committee, or a State Committee, and so on down the line.

Under section 9, it would seem to me impossible for John Nance Garner to run for President of the United States. No government official could be a candidate for any office, State or national.

I talked this over with Senator Hatch and he maintained the position that an official must resign his office when he accepts a nomination.

There is a similar provision--not quite so drastic--in the present law, which expires on June 30. It applies particularly to employees of the relief bureaus. This has been so construed by Colonel Harrington as to bar any of his administrators, deputies, and other employees, from membership in the Young Democratic

Clubs. This has caused the resignation from the Clubs of a large number of Young Democrats.

Two rather distinguished women who have been solicited to become candidates for the presidency of the Democratic Women's Council of Washington were told by the chiefs of the Executive bureaus in which they are employees that they must resign from their jobs if they became candidates for head of that organization.

Other provisions of the proposed law which will hamper the work of the Democratic National Committee are the provisions of Section 5 and Section 6, in which it is made unlawful under penalty of \$1,000 fine and a year's imprisonment for any person to solicit ^a ~~the~~ subscription or contribution for any political purpose from any person receiving compensation, employment or any other benefit that is paid for out of acts of Congress appropriating funds for work relief or relief purposes.

Under this provision, Acting Treasurer Quayle would be guilty of a felony, punishable as stated above, if he invited Colonel Harrington, or one of his deputies, assistant administrators, State administrators, regional administrators and others, whose salaries run from \$3600 to \$9500 a year, to a Jackson Day Dinner.

Section 6 forbids the obtaining of any list of government employees in the relief organizations by any candidate, committee, candidate manager, or other person, for delivery to one of these, under the same penalties.

(Note:- I am enclosing herewith copy of a letter I wrote to Speaker Bankhead, with a suggestion of changes I thought should be made in the bill.)

Sec. 2. It shall be unlawful for any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), to use his official authority for the purpose of interfering with, or affecting the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives. Provided, That nothing herein shall be deemed to affect the right of any such person to participate as an individual citizen in the activities of a political party, to state his preference with respect to any such candidates, or to vote as he may choose.

Sec. 5. It shall be unlawful for any person entitled to or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes to solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving any sort of compensation or other benefit under such act.

Sec. 9. (a) It shall be unlawful for any person employed in any administrative or supervisory capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized by any Act of Congress, appropriating funds for work relief or relief purposes, to use his official authority or influence for the purpose of interfering with an election or of affecting the results thereof. All such persons shall retain the right to vote as they please and to express their opinions on all political subjects.

Sec. 2. It shall be unlawful for any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), to use his official authority for the purpose of interfering with, or affecting the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives: Provided, That nothing herein shall be deemed to affect the right of any such person to participate as an individual citizen in the activities of a political party, to state his preference with respect to any such candidates, or to vote as he may choose.

Sec. 5. It shall be unlawful for any person entitled to or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes to solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving any sort of compensation or other benefit under such act.

Sec. 9. (a) It shall be unlawful for any person employed in any administrative or supervisory capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized by any Act of Congress, appropriating funds for work relief or relief purposes, to use his official authority or influence for the purpose of interfering with an election or of affecting the results thereof. All such persons shall retain the right to vote as they please and to express their opinions on all political subjects.

THE WHITE HOUSE
WASHINGTON

Hatch -

Dec 9. recopy of
Present existing civil
service principle - ~~make~~
be badly drawn -

He said that the language needed a little clarification, so that it would permit certain people to run for office or participate in campaigns.



Office of the Attorney General
Washington, D.C.

July 26, 1939

file Hatch Bill

*PSF
Hatch*

MEMORANDUM FOR THE PRESIDENT

Re: "Hatch Bill"

file →

I.

Preliminary to a discussion of the Hatch Bill, it should be observed that the President in his message of January 5, 1939, respecting an additional appropriation for the Works Progress Administration, said in part:

A

"It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress, and that this should be done. Such penalties should be imposed not only upon persons within the administrative organization of the Works Progress Administration, but also upon outsiders who have in fact in many instances been the principal offenders in this regard. My only reservation in this matter is that no legislation should be exacted which will in any way deprive workers on the Works Progress Administration program of the civil rights to which they are entitled in common with other citizens."

This language of the President is quoted in Report No. 4, 76th Congress, 1st Session, of the Committee on Appropriations in the House dated January 12, 1939, concerning joint resolution, H.J.Res. 83, later passed and approved by the President on February 4, 1939.

Thereafter, under date of January 21, 1939, the Committee on Appropriations in the Senate, Report No. 4, 76th Congress, 1st Session, recommended concerning the same resolution as follows:

"The committee recommends that the following provisos be stricken from the resolution:

"* * * Provided further, That no money herein appropriated shall be available to pay salary, remuneration, or benefit to any person who shall hereafter in any way attempt to

influence the vote of any person or persons receiving any salary, remuneration, or benefits hereunder * * * .

* * * : Provided further, That no money herein appropriated shall be used to pay the compensation of any supervisor, foreman, or other official who attempts to influence the political opinions of workers under his direction or supervision * * * .

"and in consonance with the recommendations of the President of the United States in his message of January 5, 1939, the Special Committee to Investigate Senatorial Campaign Expenditures and the Use of Governmental Funds in 1938, and the Special Committee to Investigate Unemployment and Relief has written into the resolution three sections which it is hoped will do much to take politics out of relief."

e of the three sections referred to read as follows:

"Sec. 4 (a) It shall be unlawful for any person employed in any administrative or supervisory capacity by any agency of the Federal Government, whose compensation or any part thereof is paid from funds authorized or appropriated by the Emergency Relief Appropriation Act of 1938 or this joint resolution, to use his official authority or influence for the purpose of interfering with an election or affecting the results thereof. All such persons shall retain the right to vote as they please and to express privately their opinions on all political subjects, but they shall take no active part in political management or in political campaigns."

Section 4 (a) just quoted became a part of the joint resolution, H. Res. 83, approved by the President February 4, 1939, the only difference being that in the last sentence the word "while" was substituted for the word "all" and the word "but" was omitted immediately before the word "they" after the last comma without changing the sense.

It will be noted that this joint resolution applied only to persons employed "in any administrative or supervisory capacity" and so did not apply to the rank and file of Works Progress Administration employees. They were thus left free to take such part as they pleased in political campaigns. Through the enactment by the Congress and the approval by the President of this resolution, the Congress and the President indicated their views that the above-quoted provision was

constitutional. Their action gave rise to the presumption that the legislation was constitutional so that thereafter it became the duty of administrative officers to proceed accordingly without questioning its constitutionality, and it became the duty of the Attorney General to defend such legislation against charges of unconstitutionality.

So far as appears no question was raised either in Congress or by the President respecting the constitutionality of the provision quoted. Indeed, there appears to be no ground upon which such a charge could have been made. Aside from the fact that the quoted provisions of the joint resolution appear to be but reasonable means for accomplishing a proper and authorized result--to see that Federal funds appropriated for relief were honestly used for that purpose and not for affecting results in elections--there is little reason for doubting that the Federal Government has the power to prescribe as qualifications for its employees that they refrain from taking part in other endeavors which, in the light of common experience, well may consume part of the time and attention required by their duties as public officials. Other statutes during many years have forbidden particular officers and employees of the Government to participate in incompatible private endeavors and the Civil Service Rules have long forbidden persons subject thereto to participate actively in political campaigns.

II.

With respect particularly to the Hatch Bill which was sent to the White House on July 22, 1939, I do not find in the first eight sections any provisions requiring comment. In section 9 (a), however, occurs the following provision:

"No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects."

It will be noted that this provision, unlike the above-quoted provision in H.J.Res. 83, is not confined to persons employed in an administrative or supervisory capacity but includes all officers and employees. In subdivision (1) of 9(a) certain persons are excluded from the terms "officer" or "employee" but these exceptions are not material to the present discussion.

III.

With respect to the constitutionality of the above-quoted provision of section 9(a) of the Hatch Bill it should be noted that the Civil Service Rules--revised in full and reissued by the President on June 24, 1938--have long carried the following provision in Rule I:

" * * * Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns."

The general similarity between this portion of Rule I and the above-quoted provisions in section 9(a) of the Hatch Bill is apparent. In the publication of the United States Civil Service Commission entitled "Civil Service Act and Rules, Statutes, Executive Orders and Regulations", as amended to June 30, 1937, the following is printed (p. 13) as a footnote to the provision of Rule I just quoted:

"Constitutionality.--In the case of John J. McAuliffe v. Mayor of New Bedford (155 Mass. 216, 1891-1892), it was held that a municipal regulation, which provides that no member of the police department shall be allowed to solicit money or any aid on any pretense for any political purpose whatever, is not unconstitutional as invading the rights of the members of the police force to express their political opinions; and a breach thereof by such a member is good cause for removal. The court (Judge Holmes, later a member of the United States Supreme Court) said: 'The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him."

I think there is no ground on which the constitutionality of the similar provision appearing in the Hatch Bill could be attacked. I do not find any authority opposed to the decision of Judge Holmes in the Massachusetts case but on the contrary find other authorities in accord. Ex Parte Curtis, 106 U. S. 371; Duffy v. Cooke, 239 Pa. St. 427; Brownell v. Russell, 76 Vt. 326;

Clifford v. Scannell, 76 App. Div. N. Y. 406. See also Louthan v. Commonwealth, 79 Va. 196; 30 Op. A. G. 512.

In Duffy v. Cooke the Supreme Court of Pennsylvania, quoting in part from a decision of the United States Supreme Court, said:

"The act does not impose any restriction upon the actions, political or otherwise, of the individual as such, but simply upon the employee of the municipality while holding office or employment thereunder. It is simply a condition of his employment. If he does not like or is not willing to submit to the restriction upon his personal liberty, he need not accept nor continue in the employment of the city. If he does accept or continue in such employment, he waives his right to that freedom of action which he enjoys when otherwise employed. 'It belongs to the State, as the guardian and trustee of its people and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf or on behalf of its municipalities. No employee is entitled of absolute right, and as a part of his liberty, to perform labor for the State': Atkin v. Kansas, 191 U. S. 207 (24 Sup. Ct. Repr. 124)'; Com. v. Casey, 43 Pa. Superior Ct. 494."

In the report of March 30, 1939, accompanying S. 1871 respecting the Hatch Bill (S. Rep. 221, 76th Cong., 1st Sess.), the following is said of section 9 thereof:

"Section 9 is a restatement of the law now in effect as regards civil-service employees. It provides in almost the exact language of the civil-service rule that it shall be unlawful for any person employed in any administrative or supervisory capacity of any agency of the Federal Government to use his official authority for the purpose of interfering with an election or affecting the result thereof.

"In effect, this is also a restatement of the provisions of section 2 of the act, except it includes an additional penalty--that of removal from the position or office held by him. It also prohibits such persons from taking active part in political management or in political campaigns just as the civil-service rules now provide."

IV.

While I do not think that there exists constitutional objection to the above-quoted provision of the Hatch Bill, I do think that it is open to a good many practical objections. With the few express exemptions specified in the Bill it precludes any officer or employee in the Executive branch of the Federal Government, including any agency or department, from taking any active part either in political management or in political campaigns. Thus if a person is in the category of such an officer or employee he is precluded from taking any part either in political campaigns for local or Federal offices. The Bill thus does not include any exception for employees permanently residing in the District of Columbia or in municipalities adjacent thereto who may desire to become candidates for or hold municipal office in their municipalities. Such an exception was made by various Executive orders from the provisions of Executive Order No. 9 of January 17, 1873, which precluded a person holding Federal civil office, while holding it, from accepting or holding any office under any state or territorial government or under the charter or ordinances of any municipal corporation, the penalty being vacation of his Federal office. There have been many exceptions by subsequent Executive orders from the strict provisions of the order of January 17, 1873. I understand that Senator Hatch has indicated that after the present Bill before the President has been signed, he will introduce a measure to exempt officers and employees residing in municipalities adjacent to the District of Columbia, after the manner of the exceptions noted on pages 4 and 5 of the Executive order of 1873.

There can be no doubt that any activity in political campaigns by a Federal officer or employee which so takes of his time and effort as to affect the proper performance of his duties in his Federal office would be objectionable. It is, perhaps, more difficult to see why, because one happens to be a Federal employee, he may not outside of the hours required for the proper performance of his duties as such participate by way of speaking, writing speeches, etc., in political campaigns, national, state, or local, providing that he does not render himself physically or mentally less able to carry on the duties of his office.

Since that has been the policy, however, for a long time respecting persons in the competitive classified service, and was continued by the President's reissue in June 1938, the argument that the same principle should be applied to the officers and employees referred to in the Hatch Bill is difficult to meet. No doubt the drafters of the Hatch Bill had this in mind when it was prepared.

As a practical matter it will be very difficult to determine in many cases which would arise under the act whether a Federal employee had taken "any active part" in a political campaign. Certainly he is entitled orally to express his opinion on "all political subjects" by the terms of the Hatch Bill itself. Certainly this does not mean merely that a Federal employee is entitled to express his opinion on such subjects where nobody can hear it. It contemplates that some one or more may hear his expression. There is nothing to preclude such an employee from reducing his opinion on any political subject to writing. How far, then, may he go after he has set down his opinion on papers--must he immediately destroy the document, and, if not, to whom and how far may he circulate it? May he, for instance, permit another to use it verbatim in a speech or may he permit another to use it as the basis merely for a speech?

These, obviously, will be difficult questions to determine under the various states of facts that will arise. Moreover, like the prohibition law, this may drive Federal employees to refrain from openly and actively participating in political campaigns but to methods of so doing which are under cover and more objectionable. Just as the prohibition law was widely and clandestinely breached, howsoever admirable its purposes, so the same consequences would be likely to attach under the Hatch Bill, however commendable the motives leading to its passage.

V.

With respect to section 9 A (1) providing that 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 an act of Congress "to have membership in any political party or organization which advocates the overthrow of our constitutional form of Government in the United States":

I find no constitutional objection to this provision. If a Federal employee desires to be a member in an organization advocating the overthrow of our form of Government, whether by force or otherwise, of course he may be or become such a member through resigning his Federal position. However, he cannot blow both hot and cold. He cannot be a loyal servant of our Government while at the same time advocating its overthrow. No private employer would contemplate retaining the services of an employee in his business who at the same time belonged to an organization for the overthrow of that business or took steps in that direction. No man can serve two masters, and if that principle is true as between individuals, it is far more so as between the Government and its employees.

VI.

Whether or not the practical considerations discussed under division IV, supra, are sufficiently substantial to justify a veto of the Bill or a statement concerning it if approved by you is, of course, a question of policy for your determination. I should doubt the advisability to veto or, if the Bill is signed, of any statement. No statement which might be made could broaden the provisions of the Bill, and any statement might have the practical effect of indicating a narrower construction of it than would be possible if the Bill were left to be construed with respect to each case of alleged political activity as such case arises and in view of the particular circumstances involved. Any statement made would be seized upon and possibly misconstrued by those opposed to the President. Therefore I doubt the desirability of any statement which would go further than to voice the above-quoted exceptions with respect to the District of Columbia and municipalities adjacent thereto. Even a statement so limited would seem to be superfluous since I understand that Senator Hatch himself contemplates a measure exempting Federal employees in those places from the operation of the restriction of the act.

Respectfully,

Franklin D. Murphy

Attorney General.

OWB:mer

July 25, 1939

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: "Hatch Bill"

I.

Preliminary to a discussion of the Hatch Bill, it should be observed that the President in his message of January 5, 1939, respecting an additional appropriation for the Works Progress Administration, said in part:

"It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress, and that this should be done. Such penalties should be imposed not only upon persons within the administrative organization of the Works Progress Administration, but also upon outsiders who have in fact in many instances been the principal offenders in this regard. My only reservation in this matter is that no legislation should be enacted which will in any way deprive workers on the Works Progress Administration program of the civil rights to which they are entitled in common with other citizens."

This language of the President is quoted in Report No. 4, 76th Congress, 1st Session, of the Committee on Appropriations in the House dated January 12, 1939, concerning Joint resolution, H.J. Res. 83, later passed and approved by the President on February 4, 1939.

Thereafter, under date of January 21, 1939, the Committee on Appropriations in the Senate, Report No. 4, 76th Congress, 1st Session, recommended concerning the same resolution as follows:

"The committee recommends that the following provisos be stricken from the resolution:

"* * *: Provided further, That no money herein appropriated shall be available to pay salary, remuneration, or benefit to any person who shall hereafter in any way attempt to

influence the vote of any person or persons receiving any salary, remuneration, or benefits hereunder * * * .

* * * : Provided further, That no money herein appropriated shall be used to pay the compensation of any supervisor, foreman, or other official who attempts to influence the political opinions of workers under his direction or supervision * * * .

and in consonance with the recommendations of the President of the United States in his message of January 5, 1939, the Special Committee to Investigate Senatorial Campaign Expenditures and the Use of Governmental Funds in 1938, and the Special Committee to Investigate Unemployment and Relief has written into the resolution three sections which it is hoped will do much to take politics out of relief."

of the three sections referred to read as follows:

"Sec. 4 (a) It shall be unlawful for any person employed in any administrative or supervisory capacity by any agency of the Federal Government, whose compensation or any part thereof is paid from funds authorized or appropriated by the Emergency Relief Appropriation Act of 1938 or this joint resolution, to use his official authority or influence for the purpose of interfering with an election or affecting the results thereof. All such persons shall retain the right to vote as they please and to express privately their opinions on all political subjects, but they shall take no active part in political management or in political campaigns."

Section 4 (a) just quoted became a part of the joint resolution, H. Res. 83, approved by the President February 4, 1939, the only difference being that in the last sentence the word "while" was substituted for the word "all" and the word "but" was omitted immediately before the word "they" after the last comma without changing the sense.

It will be noted that this joint resolution applied only to persons employed "in any administrative or supervisory capacity" and so did not apply to the rank and file of Works Progress Administration employees. They were thus left free to take such part as they pleased in political campaigns. Through the enactment by the Congress and the approval by the

President of this resolution the Congress and the President indicated their views that the above-quoted provision was constitutional. Their action gave rise to the presumption that the legislation was constitutional so that thereafter it became the duty of administrative officers to proceed accordingly without questioning its constitutionality, and it became the duty of the Attorney General to defend such legislation against charges of unconstitutionality.

So far as appears no question was raised either in Congress or by the President respecting the constitutionality of the provision quoted. Indeed, there appears to be no ground upon which such a charge could have been made. Aside from the fact that the quoted provisions of the joint resolution appear to be but reasonable means for accomplishing a proper and authorized result--to see that Federal funds appropriated for relief were honestly used for that purpose and not for effecting results in elections--there is little reason for doubting that the Federal Government has the power to prescribe as qualifications for its employees that they refrain from taking part in other endeavors which, in the light of common experience, well may consume part of the time and attention required by their duties as public officials. Other statutes during many years have forbidden particular officers and employees of the Government to participate in incompatible private endeavors and the Civil Service rules have long forbidden persons subject thereto to participate actively in political campaigns.

II.

With respect particularly to the Hatch Bill which was sent to the White House on July 22, 1939, I do not find in the first eight sections any provisions requiring comment. In section 9 (a), however, occurs the following provision:

"No officer or employe in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects."

It will be noted that this provision, unlike the above-quoted provision in H.J. Res. 83, is not confined to persons employed in an administrative or supervisory capacity but includes all officers and employees. In subdivision (1) of 9(a) certain persons are excluded from the terms "officer" or "employee" but these exceptions are not material to the present discussion.

III.

With respect to the constitutionality of the above-quoted provision of section 9 (a) of the Hatch Bill it should be noted that the Civil Service Rules have long carried the following provision in Rule I:

"* * * Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns."

The general similarity between this portion of Rule I and the above-quoted provisions in section 9 (a) of the Hatch Bill are apparent. In the publication of the United States Civil Service Commission entitled "Civil Service Act and Rules, Statutes, Executive Orders and Regulations", as amended to June 30, 1937, the following is printed (p. 13) as a footnote to the provision of Rule I just quoted:

"Constitutionality.--In the case of John J. McAuliffe v. Mayor of New Bedford (155 Mass. 216, 1891-1892), it was held that a municipal regulation, which provides that no member of the police department shall be allowed to solicit money or any aid on any pretense for any political purpose whatever, is not unconstitutional as invading the rights of the members of the police force to express their political opinions; and a breach thereof by such a member is good cause for removal. The court (Judge Holmes, later a member of the United States Supreme Court) said: 'The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him.'

I think there is no ground on which the constitutionality of the similar provision appearing in the Hatch Bill could be attacked. I do not find any authority opposed to the decision of Judge Holmes in the Massachusetts case but on the contrary find other authorities in accord. Ex Parte Curtis, 106 U. S. 371; Duffy v. Cooke, 239 Pa. St. 427; Bronnell v. Russell, 76 Vt. 326;

Clifford v. Remmell, 74 App. Div. N. Y. 406; Louther v. Commonwealth, 79 Va. 196. See 30 Op. A. G. 512.

In the report of March 30, 1939, accompanying S. 1871 respecting the Hatch Bill (S. Rep. 221, 76th Cong., 1st Sess.), the following is said of section 9 thereof:

"Section 9 is a restatement of the law now in effect as regards civil-service employees. It provides in almost the exact language of the civil-service rule that it shall be unlawful for any person employed in any administrative or supervisory capacity of any agency of the Federal Government to use his official authority for the purpose of interfering with an election or affecting the result thereof.

"In effect, this is also a restatement of the provisions of section 2 of the act, except it includes an additional penalty--that of removal from the position or office held by him. It also prohibits such persons from taking active part in political management or in political campaigns just as the civil-service rules now provide."

IV.

While I do not think that there exists constitutional objection to the above-quoted provision of the Hatch Bill, I do think that it is open to a good many practical objections. With the few express exemptions specified in the Bill it precludes any officer or employee in the Executive branch of the Federal Government, including any agency or department, from taking any active part either in political management or in political campaigns. Thus if a person is in the category of such an officer or employee he is precluded from taking any part either in political campaigns for local or Federal offices. The Bill thus does not include any exception for employees permanently residing in the District of Columbia or in municipalities adjacent thereto who may desire to become candidates for or hold municipal office in their municipalities. Such an exception was made by various Executive Orders from the provisions of Executive Order No. 9 of January 17, 1873, which precluded a person holding Federal civil office, while holding it, from accepting or holding any office under any state or territorial government or under the charter or ordinances of any municipal corporation, the penalty being vacation of his Federal office. There have been many exceptions by subsequent Executive Orders from the strict provisions of the order of January 17, 1873. I understand that Senator Hatch has indicated that after the present Bill before the President has been signed, he will introduce a measure to exempt officers and employees residing in municipalities adjacent to the District of Columbia, after the manner of the exceptions

noted on pages 4 and 5 of the Executive Order of 1873.

There can be no doubt that any activity in political campaigns by a Federal officer or employee which so takes of his time and effort as to affect the proper performance of his duties in his Federal office would be objectionable. However, it is more difficult to see why, because one happens to be a Federal employee, he may not outside of the hours required for the proper performance of his duties as such participate by way of speaking, writing speeches, etc., in political campaigns, national, state, or local, providing that he does not render himself physically or mentally less able to carry on the duties of his office.

Since that has been the policy, however, for a long time respecting persons in the competitive classified service, the argument that the same principle should be applied to the officers and employees referred to in the Hatch Bill is difficult to meet. No doubt the drafters of the Hatch Bill had this in mind when it was prepared.

As a practical matter it will be very difficult to determine in many cases which would arise under the act whether the Federal employees had taken "any active part" in a political campaign. Certainly he is entitled orally to express his opinion on "all political subjects" by the terms of the Hatch Bill itself. Certainly this does not mean merely that a Federal employee is entitled to express his opinion on such subjects where nobody can hear it. It contemplates that some one or more may hear his expression. There is nothing to preclude such an employee from reducing his opinion on any political subject to writing. How far, then, may he go after he has set down his opinion on papers--must he immediately destroy the document, and, if not, to whom and how far may he circulate it? May he, for instance, permit another to use it verbatim in a speech or may he permit another to use it as the basis merely for a speech?

These, obviously, will be difficult questions to determine under the various states of facts that will arise. Moreover, like the prohibition law, this may drive Federal employees to refrain from openly and actively participating in political campaigns but to methods of so doing which are undercover and more objectionable. Just as the prohibition law was widely and clandestinely breached, however admirable its purposes, so the same consequences would be likely to attach under the Hatch Bill, however commendable the motives leading to its passage.

V.

With respect to section 9 A (1) providing that 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 an act of Congress "to have membership in any political party or organization which advocates the overthrow of our constitutional form of Government in the United States":

I find no constitutional objection to this provision. If a Federal employee desires to be a member in an organization advocating the overthrow of our form of Government, whether by force or otherwise, of course he may be or become such a member through resigning his Federal position. However, he cannot blow both hot and cold. He cannot be a loyal servant of our Government while at the same time advocating its overthrow. No private employer would contemplate retaining the services of an employee in his business who at the same time belonged to an organization for the overthrow of that business or took steps in that direction. No man can serve two masters, and if that principle is true as between individuals, it is far more so as between the Government and its employees.

VI.

I hesitate to venture any observation whether or not the President should veto the Bill or whether he should make any statement in approving it. Those are policy questions peculiarly within his knowledge and province. I should doubt the advisability to veto or, if the Bill is signed, of any statement. No statement which might be made could broaden the provisions of the Bill, and any statement might have the practical effect of indicating a narrower construction of it than would be possible if the Bill were left to be construed with respect to each case of alleged political activity as such case arises and in view of the particular circumstances involved. Any statement made would be seized upon and possibly misconstrued by those opposed to the President. Therefore I doubt the desirability of the statement which would go further ^{and} to voice the above-quoted exceptions with respect to the District of Columbia and municipalities adjacent thereto. Even a statement so limited would seem to be superfluous if, as reported, Senator Hatch himself contemplates a measure exempting Federal employees in those places from the operation of the restriction of the act.

Respectfully,

GOLDEN W. RELL,
Assistant Solicitor General.

—

THE WHITE HOUSE
WASHINGTON

PSF
Hatch Bill

July 28, 1939.

MEMORANDUM FOR

G. W. H.

Wait until you see what
I say about the Hatch Bill!

F. D. R.

1077 33 1939

RECEIVED
U.S. SENATE
JULY 26 1939

GEORGE W. NORRIS
NEBRASKA

United States Senate

WASHINGTON, D. C.

N-F

July 26, 1939.

My dear Mr. President: In Re: Hatch Bill.

I have been informed from sources I deem reliable that great pressure is being brought to bear to have you veto the Hatch bill.

I cannot conceive of your opposition to legislation of this kind. I know that many politicians, in fact most politicians, in both political parties, are bitterly opposed to such a law but I have assumed all the time that you were one hundred percent for it and I refuse to believe any reports to the contrary unless I get it directly from you.

I believe this bill is a great step towards the purification of politics and Government. The people of the country, outside of the active politicians, are practically unanimously for it and that means that your friends are one hundred percent in its favor. To veto it would be the greatest mistake of your career - the full effects of which you could never overcome. It would break the hearts of millions of your admirers - patriotic people of all political faiths. You stand in the minds of millions of our best people as one who believes in pure politics, in the upbuilding and purification of everything that stands for better government, and more happiness for the rank and file of the people who want a better and cleaner Government. You are their idol but, if you veto this bill, you will shatter their hopes, their aspirations, and drive them into a bewilderment of desperation and sorrow.

Very truly yours,

Honorable Franklin D. Roosevelt,
The White House.

G. W. Norris

CARL A. HATCH
NEW MEXICO

PSF: Hatch Bill

RECEIVED
JUL 28 2 33 PM '39
THE WHITE HOUSE

United States Senate

WASHINGTON, D. C.

July 28, 1939.

Honorable Franklin D. Roosevelt,
President of the United States,
The White House.

My dear Mr. President:

Having used the Civil Service rule as a pattern in drafting Section 9 of the original Senate Bill 1871, and also for the House substitute which was adopted by the House of Representatives, I believe the interpretation of that section should follow the interpretation placed upon a similar provision of the Civil Service rule. It was the intention of Congress to make exactly the same rules which now apply to employees under the classified service applicable to those in the non-classified service.

Following our conversation of yesterday, I requested an interpretation of Section 9 from the Civil Service Commission. This morning I am in receipt of the views of Mr. Mitchell, the President of the Commission. A copy of his letter is enclosed. I believe it will make several matters clear, for instance, Jackson Day Dinners may continue to be held and government employees may attend them. Of course they must do so voluntarily. The same is true of political contributions. Free expression of opinion on all political matters is permitted, except campaign speeches would, in Mr. Mitchell's opinion be taking an active part in political management.

I am taking the liberty of sending a copy of this and Mr. Mitchell's letter to the Attorney General.

Sincerely yours,



CAH-VLF

UNITED STATES CIVIL SERVICE COMMISSION

Washington, D. C.

July 28, 1939.

Honorable Carl A. Hatch
United States Senate

Dear Senator Hatch:

I am pleased to acknowledge receipt of your letter of July 26, 1939, regarding the interpretation of Senate Bill 1871, "To Prevent Pernicious Political Activities", which has passed both branches of Congress and is now awaiting action by the President.

Section 9 of the enactment reads substantially the same as Section 1 of Civil Service Rule I, and your interpretation of Section 9 appears to be the same as the interpretation which the Commission has placed on Civil Service Rule I. I am enclosing a copy of a pamphlet published by the Commission giving detailed information regarding the civil service rules, Executive orders, and statutes concerning political activity and political assessments of Federal officeholders and employees, and am indicating below for your convenience the page and section of this pamphlet in which the particular types of political activity are discussed.

Section 1 of Civil Service Rule I is interpreted to prohibit the following types of political activities on the part of employees in the classified civil service:

1. The holding of office in political party organizations. (Page 4, sections 14 and 15).
2. Attendance at caucuses or conventions as delegates. (Page 4, section 12).
3. Holding office or other activity at political conventions or caucuses. (Page 4, section 13).
4. Soliciting campaign contributions. (Page 5, section 16). The solicitation of political contributions by any person who is in the service of the United States or who is receiving compensation for services from money derived

1

from the Treasury of the United States, regardless of whether such person is in the classified civil service or not, from any other such officer or person is a violation of Section 118 of the Criminal Code. (Page 17, section 39, et. seq.)

5. Making political speeches or soliciting votes or support in behalf of candidates or parties in primaries or general elections. (Page 5, sections 18 and 19).
6. Becoming a candidate for office or nomination in primary conventions or general elections.
Such activity on the part of a classified employee is prohibited under Section 1 of Civil Service Rule I, except in such cases where special permission has been extended by Executive order, such as in the case of employees residing in municipalities adjacent to the District of Columbia and in the case of employees at navy yards or arsenals and military establishments of the War Department. (Page 7, section 29; pages 12 and 13).

Section 1 of Civil Service Rule I has been construed to permit classified employees to engage in the following types of activity:

1. Membership in clubs or organizations formed for purely partisan political purposes (page 4, sections 15 and 14), provided the employee is not an active member, an officer, or a member of any committee.
2. The making of a voluntary contribution to political parties. (Page 5, section 16). It is a violation of Section 121 of the Criminal Code, however, for an employee to make such a contribution to another Government employee, regardless of whether or not either employee is in the classified civil service. (Page 19, section 46).
3. The private expression of political opinions. (Page 5, section 18).

As you point out, the civil service rules confine classified employees to a private expression of opinion, whereas the word "privately" has been omitted from Section 9 of S. 1871. It is believed, however, that even under S. 1871 an expression of opinion which so far exceeds the limits of a private

expression of opinion and assumes the aspect of a campaign speech or a canvass for votes, would be in violation of the general prohibition against taking an active part in political management or in political campaigns.

4. Attendance at political meetings as a spectator. (Page 5, section 17; page 4, sections 12 and 13).
5. Attendance at social functions where political speeches may be made and the proceeds from the sale of dinner tickets may be used for political purposes, such as at Jackson Day dinners.

The Commission construes attendance at such functions as in the same light as attendance at political meetings, and a classified employee may therefore attend such functions as an inactive participant. Although the contributions made at such functions purport to be the purchase price of the dinner tickets, they are in actuality political contributions and must not be made or solicited in violation of the statutes which I have already mentioned prohibiting the solicitation or receipt of political contributions between Federal employees.

I trust the information herein will serve your purposes. If there is any further way in which I can be of assistance I shall be happy to do so.

Sincerely yours,

(Sgd.) Harry B. Mitchell
President

Mr. President:

A well known rule of statutory construction is that the adoption of language previously construed and interpreted carries with it the adoption of the previous interpretation and construction for that reason the interpretation of the Civil service rule is very important,

Fatch

FORM 1234
August 1955

UNITED STATES CIVIL SERVICE COMMISSION

POLITICAL ACTIVITY AND
POLITICAL ASSESSMENTS
OF FEDERAL OFFICEHOLDERS
AND EMPLOYEES

*This pamphlet should
answer several questions.*

Hatch



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1955

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POLITICAL ACTIVITY AND POLITICAL ASSESSMENTS OF FEDERAL OFFICEHOLDERS AND EMPLOYEES

I. THE POLITICAL ACTIVITY RULE

1. **Text of the political activity rule.**—Civil-service rule I, section 1, is as follows:

No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof. Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns.

Every Government employee is expected to know the political activity rule; ignorance of the rule will not excuse its violation. Each appointee to the classified service, upon entering on duty, is required to sign a sworn statement that he will familiarize himself with the rule and the laws relating to political activity.

2. **Definition of political activity, and scope of rule.**—It is impossible to give a complete list of all the particular activities in which an employee may not engage. The rule is sufficiently broad, however, to prohibit participation not only in national politics, but also in State, county, and municipal politics, and in the activities of any political party, by whatever designation it may be known. Any group of persons which opposes another in matters of governmental principles or policies, or which contends for governmental power, is a political party. Since the scope of governmental activity is constantly changing, a question which is not a political issue at one time may assume a political aspect at another. The merits of a particular cause are immaterial in the administration of the rule. If politics is involved, active participation by classified employees is prohibited. This includes such activity in connection with a "reform party" conducting a so-called nonpartisan campaign, or under the auspices of a religious organization, or with a labor union interested in the enactment of legislation regarding labor.

The policy underlying the political activity rule was clearly expressed by President Theodore Roosevelt in a statement which appears on page 15, paragraph 36.

II. PERSONS TO WHOM THE RULE APPLIES

3. **Classified employees.**—The political activity rule applies in its entirety to all employees occupying classified positions, regardless of whether their status was acquired as a result of competitive examination, classification by statute, or classification by Executive order.

4. **Presidential, excepted, and other nonclassified employees.**—Only the first sentence of the rule applies to Presidential appointees

and incumbents of excepted and other nonclassified positions. Such employees may, therefore, engage in politics, *provided they do not use their official authority or influence for the purpose of interfering with an election or affecting its results.* Further restrictions on the political activities of Presidential, excepted, and other nonclassified employees are found in the regulations promulgated by their respective departments, in statutes, and in Executive orders, some of which are set forth in paragraphs 35 to 55.

5. Temporary employees—employees furloughed or on leave.—Temporary or emergency employees, substitutes, and persons on furlough or leave of absence, with or without pay, are subject to the rule. So long as an employee is in the classified service and his name is carried on the rolls, the civil-service rules and regulations apply to him and he must refrain from their violation, even though he may not be on active duty. It is not permissible for an employee to take leave of absence for the purpose of working for a political committee or organization or of becoming a candidate for an elective office with the understanding that he will resign his classified position if nominated or elected.

6. Unclassified laborers.—Under the regulations for the navy-yard service, approved December 7, 1912, unclassified laborers are made subject to dismissal for political activity in the same manner as are classified employees. Similar rulings have been issued by other departments placing the same limitations in regard to political activity on laborers in the unclassified service as are applied to classified employees.

7. Rural carriers.—An Executive order of December 30, 1911, provides as follows:

Hereafter paragraphs (a) and (b) of section 1 of civil-service rule VII shall apply to the appointment of rural carriers, and three eligibles shall be certified by the Civil Service Commission.

In all cases selections shall be made with sole reference to merit and fitness and without regard to political considerations. No inquiry shall be made as to the political or religious opinions or affiliations of any eligible, and no recommendation in any way based thereon shall be received, considered, or filed by any officer concerned in making selections or appointments. Any such recommendation, in writing, forwarded to any such officer shall be at once returned to the writer, with attention invited to the purport of this order, and attention hereto shall be similarly directed in connection with any verbal recommendation. Where it is found that there has been a violation of these provisions by any officer concerned in making selections or appointments, such fact shall be cause for the immediate removal of such officer from the service, and the Commission shall make prompt report of any such case for appropriate action to the Postmaster General, or, as to Presidential appointees, to the President. The appointment of the rural carrier concerned, if effected, shall be canceled.

Persons employed as rural carriers, while retaining the right to vote as they please and to express their opinion privately on all political subjects, shall take no active part in political management or in political campaigns. Any rural carrier taking such part shall be removed from the service or otherwise disciplined, recommendation as to the penalty to be imposed in each case to be made by the Civil Service Commission.

NOTE.—Paragraphs (a) and (b) of section 1 of civil-service rule VII refer to the certification and appointment of eligibles.

8. Substitute rural carriers.—The restrictions regarding political activity have not been applied to substitute rural carriers, when not engaged upon substitute duties, to the same degree as to regular employees. While serving his route, however, a substitute is subject to the same discipline as regular employees and must refrain from political activity with patrons. He must not use his position for political purposes, acting either independently or in collusion with the regular carrier.

9. Fourth-class postmasters.—The following is an extract from regulations approved by the President November 25, 1912:

In all cases selection for appointment shall be made with sole reference to merit and fitness and without regard to political or religious considerations. No inquiry shall be made as to the political or religious opinions or affiliations of any applicant or eligible, and in conformity with section 10 of the Civil Service Act no recommendation in any way based thereon shall be received or considered by any officer concerned in making selections or appointments. The attention of the writer of any such recommendation shall be invited to the purport of this order, and attention hereto shall be similarly directed in connection with any verbal recommendation. Where it is found that there has been a violation of these provisions by any officer concerned in making selections or appointments, such fact shall be cause for the immediate removal of such officer from the service, and the Civil Service Commission shall make prompt report of any such case for appropriate action to the Postmaster General, or, as to Presidential appointees, to the President. The appointment of the fourth-class postmaster concerned, if effected, shall be canceled. Persons employed as postmasters of the fourth class, while retaining the right to vote as they please and to express their opinions privately on all political subjects, shall take no active part in political management or in political campaigns. Any such postmaster taking such part shall be removed from the service or otherwise disciplined, recommendations as to the penalty to be imposed in each case to be made by the Civil Service Commission. This section shall apply to all offices of the fourth class of whatever compensation.

10. Retired employees.—Persons retired from the civil service are not regarded as employees of the Government and are not, therefore, subject to the restrictions of the civil-service rules. Such persons may engage in politics to the same extent as persons not connected with the Government service.

III. ACTIVITY OF CLASSIFIED EMPLOYEES

11. Activity by indirection.—Any political activity which is prohibited by the rule in the case of an employee acting independently is also prohibited in the case of an employee acting in open or secret cooperation with others (see paragraph 2). Whatever the employee may not under the rule do directly or personally, he may not do indirectly or through an agent, officer, or employee chosen by him or subject to his control. Employees are therefore accountable for political activity by persons other than themselves, including wives or husbands, if, in fact, the employees are thus accomplishing by collusion and indirection what they may not lawfully do directly and openly. Political activity in fact, regardless of the methods or means used by the employee, constitutes the violation.

This does not mean that an employee's husband or wife may not engage in politics independently, upon his or her own initiative, and

in his or her own behalf. Cases have arisen, however, in which the facts showed that the real purpose of a wife's activity was to accomplish a political act prohibited to her husband, the attempt being made for her husband's benefit and at his instigation or even upon his coercion. This may be true of individuals or it may occur among groups of employees' wives, associated for the purpose of securing for their husbands what their husbands may not secure for themselves. In such situations, it is obvious that the rule against political activity is being indirectly violated. The collusion or coercion renders the wife's activity imputable to the husband, he being guilty of the same infraction of the rule as if he were openly a participant.

12. Conventions.—The rule is held to forbid candidacy for or service as delegate, alternate, or proxy in any political convention, or service as an officer or employee thereof. It does not prohibit mere attendance as a spectator, but the employee so attending must not take any part in the convention or in the deliberations or proceedings of any of its committees, and must refrain from any public display of partisanship or obtrusive demonstration or interference or any activity which might cause scandal or unfavorable comment.

13. Primaries—caucuses.—An employee may attend a primary meeting, mass convention, beat convention, caucus, and the like, and may cast his vote on any question presented, but he may not pass this point in participating in its deliberations. He may not act as an officer of the meeting, convention, or caucus, may not address it, make motions, prepare or assist in preparing resolutions, assume to represent others, or take any prominent part therein.

14. Committees.—Service on or for any political committee or similar organization is prohibited. An employee may attend as a spectator any meeting of a political committee to which the general public is admitted, but must refrain from activity as indicated in the preceding paragraphs.

Whether a committee has an ultimate political purpose determines whether a classified employee may properly serve as a member. Assignment may be to duties which, if considered alone, would seem far removed from active politics, but which, when considered as a part of the whole purpose, assume an active political character. No attempt can be made to differentiate between workers on or under political committees with respect to the degree to which they are politically active.

15. Clubs.—Employees may be members of political clubs, but it is improper for them to be active in organizing such a club, to be officers of the club, or members or officers of any of its committees or to act as such, or to address a political club. Service as a delegate from such a club to a league of political clubs is service as an officer or representative of a political club and is prohibited, as is service as a delegate or representative of such a club to or in any other organization. In other words, an employee may become a member of a political club, but may not take an active part in its management or affairs, and may not represent other members or attempt to influence them by his actions or utterances.

Section 6 of the act of August 24, 1912 (36 Stat. 555), provides in part—

That membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an

obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups of persons of any grievance or grievances to the Congress or any Member thereof, shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service.

16. Contributions.—An employee may make political contributions to any committee, organization, or person not employed by the United States, but may not under the rule solicit, collect, receive, or otherwise handle or disburse the contributions. (See provisions of the Criminal Code, discussed in pars. 39 to 43.)

17. Meetings.—Service in preparing for, organizing, or conducting a political meeting or rally, addressing such a meeting, or taking any part therein, except as a spectator, is prohibited.

18. Expression of opinions.—The right to express privately his opinions on all political subjects is reserved to the employee by the rule. He must confine himself to the private expression of his views and must refrain from political discussions or conferences while on duty or in public places; he must not canvass a district or solicit political support for any party, faction, candidate, or measure.

19. Activity at the polls and for candidates.—An employee has the right to vote as he pleases, and to exercise this right free from interference, solicitation, or dictation by any fellow employee or superior or any other person. It is a violation of the Federal Corrupt Practices Act to pay or offer to pay any person for voting or refraining from voting, or for voting for or against any candidate for Senator or Representative in, or Delegate or Resident Commissioner to, Congress. It is also a violation of the law to solicit, receive, or accept payment for one's vote or for withholding one's vote. (See U. S. Code, title 2, sec. 250.)

It is the duty of an employee to avoid any offensive activity at primary and regular elections. He must refrain from soliciting votes, assisting voters to mark ballots, helping to get out the voters on registration and election days, acting as the accredited checker, watcher, or challenger of any party or faction, assisting in counting the vote, or engaging in any other activity at the polls except the marking and depositing of his own ballot. Rendering service, such as transporting voters to and from the polls and candidates on canvassing tours, whether for pay or gratuitously, is held to be within the scope of political activities prohibited by the rule, even if such service is performed without regard to political party.

20. Election officers.—An employee may not seek or solicit appointment or election to any position of election officer. He may not serve in such a position unless failure or refusal to do so would be penalized by the election law of the State. In the latter case, he may serve if appointed without his solicitation, but must act impartially and without exhibiting partisan feelings or giving any appearance of partisan activity.

21. Newspapers—publication of letters or articles.—An employee may not publish or be connected editorially, managerially, or financially with any political newspaper, and may not write for publication

or publish any letter or article, signed or unsigned, in favor of or against any political party, candidate, faction, or measure. An employee who writes such a letter or article is responsible for any use that may be made of it whether or not he gives consent to such use.

22. Liquor question.—Activity in campaigns concerning the regulation or suppression of the liquor traffic is prohibited. An employee may be a member but not an officer of a club, league, or other organization which takes part in such a campaign. The rule does not prohibit temperance propaganda, but any endeavor for or against the regulation, control, or suppression of the liquor traffic through political agencies is prohibited. The fact that the activity may be under the auspices of a religious organization does not remove it from the scope of the political activity rule. The rule does not exclude the employee from participating in discussion where no political issue is involved or from making an address on any moral or ethical subject, but when two or more parties or factions become engaged in a contest for rival or antagonistic measures or policies of governmental control or regulation a political question is presented.

23. Betting or wagering on elections.—Betting or wagering upon the results of primary and general elections is penalized by the laws of most States and is improper political activity.

24. Seeking legislation.—Service as a legislative agent or lobbyist and all other activity in connection with direct legislation and proposed constitutional or statutory provisions, national or State, and with proposed municipal ordinances, regulations, or other enactments, are prohibited.¹

25. Parades.—A classified employee may march in a political parade, but he may not organize, or be an officer or leader of such a parade, nor may he display placards, posters, banners, buttons, or badges while marching.

A musical organization composed entirely of classified employees should not participate in any parade or other activity of a political party. If classified employees constitute only a small percentage of the musical organization, and the organization is available for hire by any political party, the political activity rule would not be violated by the participation of such employees.

26. Signing petitions.—The first amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Section 6 of the act of August 24, 1912 (37 Stat. 555), provides that "the right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or Member thereof, shall not be denied or interfered with."

The right guaranteed by the Constitution and the statute extends only to petitions addressed to the Government, or to Congress or Members thereof. It does not extend to petitions addressed to State, county, or municipal governments, or to other political

¹ Applies to all legislation except Federal legislation relating to the conditions of labor of employees. As to such legislation, see para. 13 and 28.

units. A classified employee is permitted to sign petitions of the latter class *as an individual*, without reference to his connection with the Government, but he may not initiate them, circulate them, or canvass for the signatures of others.

27. Applying for Presidential positions.—When a classified employee seeks promotion by appointment or transfer to a Presidential office there is no objection to his becoming a candidate for such an office, provided the consent of his department is obtained, and provided he does not violate section 1 of rule I, prohibiting the use of his official authority or influence in political matters, and provided further that he does not neglect his duty and avoids any action that would cause public scandal or semblance of coercion of his fellow employees or of those over whom he desires to be placed in the position he seeks.

A classified employee may circulate a petition or seek endorsements for his own appointment to a Presidential position, subject to the qualifications above stated, and he may, as an individual, sign a petition or recommend another person for such an appointment; but he may not circulate a petition or solicit endorsements, recommendations, or support for the appointment of another person to such a position, whether such other person is a fellow employee or one not at the time in the Government service.

When an unofficial primary or election is held for the purpose of determining the popular choice for the Presidential office, a classified employee may permit his name to appear upon the ticket, but he may not solicit votes in his behalf at such a primary or election, or in any manner violate section 1 of rule I. He may vote and express privately his opinions, but may not solicit votes or publicly advocate the candidacy or election of himself or any other person. Although it is permissible for a classified employee, *as an individual*, to sign a petition or recommend another person for appointment to a nonclassified position, he is not permitted to sign such a petition as a Government employee or in any other way to use his official authority or influence to advance the candidacy of any person for election or appointment to any office. Classified employees are permitted to exercise the right as individuals to sign a petition favoring a candidate for any office, but they may not do so as Government employees or as a group or association of Government employees.

28. Other forms of political activity.—Among other forms of political activity which are prohibited by the rule are the distribution of campaign literature, badges or buttons, the wearing of such badges or buttons, and assuming general political leadership or becoming prominently identified with any political movement, party, or faction, or with the success or failure of any candidate for election to public office. A classified employee may not display campaign stickers, signs, or pictures of candidates on his automobile or in the windows of his home.

IV. CANDIDACY FOR OR HOLDING LOCAL OFFICE—CLASSIFIED AND NONCLASSIFIED EMPLOYEES

29. Candidacy for local office.—Candidacy for a nomination or for election to any national, State, county, or municipal office is not per-

missible. The prohibition against political activity extends not merely to formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy. The fact that candidacy is merely passive does not remove it from the prohibition of the rule, and if an employee acquiesces in the efforts of friends in furtherance of such candidacy and does nothing to prevent them, the rule is violated.

30. Holding local office.—Persons holding Federal civil office by appointment, whether in the competitive classified service or not, are prohibited from accepting or holding any office under a State, Territorial or municipal government by an Executive order of January 17, 1873, which is as follows:

Whereas it has been brought to the notice of the President of the United States that many persons holding civil office by appointment from him or otherwise under the Constitution and laws of the United States while holding such Federal positions accept offices under the authority of the States and Territories in which they reside, or of municipal corporations, under the charters and ordinances of such corporations, thereby assuming the duties of the State, Territorial, or municipal office at the same time that they are charged with the duties of the civil office held under Federal authority:

And whereas it is believed that, with but few exceptions, the holding of two such offices by the same person is incompatible with a due and faithful discharge of the duties of either office; that it frequently gives rise to great inconvenience, and often results in detriment to the public service; and, moreover, is not in harmony with the genius of the Government:

In view of the premises, therefore, the President has deemed it proper thus and hereby to give public notice that, from and after the 4th day of March, A. D. 1873 (except as herein specified), persons holding any Federal civil office by appointment under the Constitution and laws of the United States will be expected, while holding such office, not to accept or hold any office under any State or Territorial government, or under the charter or ordinances of any municipal corporation; and, further, that the acceptance or continued holding of any such State, Territorial, or municipal office, whether elective or by appointment, by any person holding civil office as aforesaid under the Government of the United States, other than judicial offices under the Constitution of the United States, will be deemed a vacation of the Federal office held by such person, and will be taken to be and will be treated as a resignation by such Federal officer of his commission or appointment in the service of the United States.

The offices of justices of the peace, of notaries public, and of commissioners to take the acknowledgment of deeds, of bail, or to administer oaths, shall not be deemed within the purview of this order and are excepted from its operation, and may be held by Federal officers.

The appointment of deputy marshals of the United States may be conferred upon sheriffs or deputy sheriffs. And deputy postmasters, the emoluments of whose office do not exceed \$600 per annum, are also excepted from the operation of this order and may accept and hold appointments under State, Territorial, or municipal authority, provided the same be found not to interfere with the discharge of their duties as postmasters.¹ Heads of departments and other officers of the Government who have the appointment of subordinate officers are required to take notice of this order, and to see to the enforcement of its provisions and

¹ See par. 3. The order now applies to all post offices of the fourth class of whatever compensation.

terms within the sphere of their respective departments or offices and as relates to the several persons holding appointments under them, respectively.

31. Interpretation of the order of January 17, 1873.—An Executive order of January 28, 1873, as amended by Executive order of August 27, 1933, is as follows:

Inquiries having been made from various quarters as to the application of the Executive order issued on the 17th of January relating to the holding of State or municipal offices by persons holding civil offices under the Federal Government, the President directs the following reply to be made:

It has been asked whether the order prohibits a Federal officer from holding also the office of an alderman or of a common councilman in a city, or of a town councilman of a town or village, or of appointments under city, town, or village governments. By some it has been suggested that there may be distinction made in case the office be with or without salary or compensation. The city or town offices of the description referred to, by whatever names they may be locally known, whether held by election or by appointment, and whether with or without salary or compensation, are of the class which the Executive order intends not to be held by persons holding Federal offices.

It has been asked whether the order prohibits Federal officers from holding positions on boards of education, school committees, public libraries, religious or eleemosynary institutions incorporated or established or sustained by State or municipal authority. Positions and service on such boards and committees, and professorships in colleges are not regarded as "offices" within the contemplation of the Executive order, but as employments or service in which all good citizens may be engaged without incompatibility and in many cases without necessary interference with any position which they may hold under the Federal Government. Officers of the Federal Government may therefore engage in such service, provided the attention required by such employment does not interfere with the regular and efficient discharge of the duties of their office under the Federal Government. The head of the department under whom the Federal office is held will in all cases be the sole judge whether or not the employment does thus interfere.

The question has also been asked with regard to officers of the State militia. Congress having exercised the power conferred by the Constitution to provide for organizing the militia, which is liable to be called forth to be employed in the service of the United States, and is thus, in some sense, under the control of the General Government, and is, moreover, of the greatest value to the public, the Executive order of the 17th January is not considered as prohibiting Federal officers from being officers in the militia in the States and Territories.

It has been asked whether the order prohibits persons holding office under the Federal Government being members of local or municipal fire departments, also whether it applies to mechanics employed by the day in the armories, arsenals, and navy yards, etc., of the United States. Unpaid service in local or municipal fire departments is not regarded as an office within the intent of the Executive order, and may be performed by Federal officers, provided it does not interfere with the regular and efficient discharge of the duties of the Federal office, of which the head of the department under which the office is held will in each case be the judge. Mechanics and laborers employed by the day in armories, arsenals, navy yards, etc., and master workmen and others who hold appointments from the Government or from any department, whether for a fixed time or at the pleasure of the appointing power, are embraced within the operation of the order.

32. Eligibles holding local office.—Eligibles who are holding a local office not excepted from the prohibitions of the order of January 17,

1873, on selection for and acceptance of any position in the competitive classified service or of unclassified laborer must immediately resign the local office. The holding of a local office not excepted from the prohibitions of the order of January 17, 1873, is an absolute disqualification for appointment, and unless applicants are willing immediately to resign the local office in the event of selection for appointment their applications cannot be considered.

33. Active candidacy for office excepted from rule not permissible.—The provisions of the Executive orders of January 17 and 28, 1873, permitting the holding of certain minor offices, do not relieve a competitive classified employee from the necessity of obeying the rule concerning political activity. The only difference between these and other elective offices is that candidacy for or holding such an office is not alone sufficient to constitute a violation of the rule, while it is sufficient in offices not excepted from the operation of the orders. If candidacy for any office, whether or not one of the offices mentioned in the orders, involves or necessitates activity in political management or in a political campaign, such candidacy is prohibited by the rule. If, however, a classified employee by becoming a passive or inactive candidate may secure election to one of the positions excepted from the operation of the orders, the rule is not violated. In the case of offices not excepted from the operation of the Executive order of January 17, 1873, candidacy alone, even if passive, is regarded as a violation of the rule.

34. Special exceptions from order of January 17, 1873.—Persons in the executive civil service may be appointed to certain other positions which are held to be excepted from the operation of the order of January 17, 1873, provided the consent of the department under which the Federal office is held is obtained and the political activity rule is not violated, viz:

Employees on Indian reservations may be appointed under State authority as deputy sheriffs or constables, as the requirements of the service demand. The reason for this action is that on all reservations which have been allotted and opened for settlement conditions arise wherein the Federal Government has sole jurisdiction over certain offenses and the State has jurisdiction over other offenses, and if the joint authority of a Federal and State officer can be merged in one person, a serious difficulty in the administration of justice is removed. There is no objection to the holding of a small-salaried position in a municipal fire department.

Under subsequent Executive orders certain other exceptions have been made, as indicated below:

Employees of the Department of Agriculture.—Officers and employees of the Department of Agriculture are authorized to hold State and Territorial positions when such action is deemed necessary by the Secretary of Agriculture to secure a more efficient administration (Executive order of June 26, 1907).

Collectors of cotton statistics, Bureau of the Census.—State and county officials may be appointed special agents under the Bureau of the Census for the collection of cotton statistics (Executive order of Aug. 4, 1909).

Moderators of town meetings.—The temporary office of moderator of a town meeting and offices of a like character are excepted from the operation of the order of January 17, 1873 (Executive order of Aug. 24, 1912).

Employees of the Reclamation Service and the National Park Service.—Employees of the Reclamation Service and the National Park Service may, with the

approval of the Secretary of the Interior, accept appointments as deputy State fish or game wardens, if no compensation is attached to the position (Executive order of July 9, 1914).

Lighthouse Service—Laborers.—Laborers in charge of lights in the Lighthouse Service are excepted from the operation of the order of January 17, 1873 (Executive order of Oct. 6, 1915).

Special agents, Department of Labor.—Persons holding State, Territorial, or municipal positions may be appointed as special agents when such action is deemed necessary by the Secretary of Labor to secure a more efficient administration of any law coming within the purview of the Department of Labor (Executive order of Jan. 2, 1923).

Employees of the Veterans' Administration.—Officers and employees of the U. S. Veterans' Administration serving in a medical capacity and on a part-time basis may with the consent of the Administrator hold State, county, or municipal positions in which employed in a medical capacity. Officers and employees of the U. S. Veterans' Administration may with the consent of the Administrator accept appointments under State, county, or municipal authority as deputy sheriffs (Executive order of Aug. 6, 1924).

Employees of the Alaska Railroad.—Employees of the Alaska Railroad, permanently residing in municipalities on the line of the railroad, are permitted to become candidates for and hold municipal office therein (Executive order, Oct. 22, 1926).

Appointments in the Department of Commerce.—Persons holding State, Territorial, or municipal positions may receive, unless prohibited by law, appointments under the Department of Commerce when the Secretary of that Department deems such employment necessary to secure more efficient administration of the duties of his Department (Executive order of July 3, 1931).

Officers of the Public Health Service.—Officers of the Public Health Service are permitted, upon recommendation of the Surgeon General of the Public Health Service, and the approval of the Secretary of the Treasury, to hold office in State, Territorial, or local health organizations, in order to cooperate with and aid State, Territorial, or local health departments; and State, Territorial, or local health officials or employees are permitted, unless prohibited by law, to hold office in the Public Health Service when the Surgeon General and the Secretary of the Treasury deem such employment necessary to secure a more efficient administration of the duties imposed upon the Public Health Service (Executive order of Aug. 31, 1931).

Offices under municipalities of the Virgin Islands.—Membership in the Colonial Council of the Municipality of St. Thomas and St. John, or in the Colonial Council of the Municipality of St. Croix, Virgin Islands, being unremunerative positions, shall not be deemed disqualification for employment in the Federal service of the Virgin Islands, notwithstanding the Executive order of January 17, 1873, provided it does not interfere with the efficient discharge of the duties of the Federal position, of which the head of the department under which the position is held will be the judge (Executive order of Feb. 27, 1933).

Employees of the National Park Service.—Employees of the National Park Service are permitted, with the approval of the Secretary of the Interior, to accept appointments as deputy sheriffs under the laws of the States or Territories in which such employees may be on duty: *Provided*, That their services as such deputy sheriffs shall be without compensation and shall not in any manner interfere or conflict with the performance of their duties as employees of the National Park Service (Executive order of Apr. 3, 1936).

Medical officers, Indian Service.—Officers and employees of the Indian Service, Department of the Interior, serving in a medical or sanitary capacity,

either on a part-time or full-time basis, may hold, with the consent of the Secretary of the Interior, State, county, or municipal positions of a similar character: *Provided*, That such services shall not in any manner interfere or conflict with the performance of their duties as officers or employees of the Indian Service: *And provided further*, That there shall be no additional compensation when the Federal officer or employee is carried on a full-time basis (Executive order of May 13, 1936).

Appointments in the Department of Labor under Act of June 30, 1936.—"The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act * * * (Act of June 30, 1936, Sec. 4, Pub., No. 846, 74th Cong.).

Appointments in the Rural Electrification Administration.—"In order to carry out the provisions of this Act, the Administrator may accept and utilize such voluntary and uncompensated services of Federal, State, and local officers and employees as are available. * * * (Act of May 20, 1936, Sec. 11, Pub., No. 605, 74th Cong.).

Provisions similar to those above, relating to voluntary and uncompensated service, have been authorized by law and Executive order in a number of emergency agencies.

Employees residing in municipalities near the District of Columbia.—Employees of the executive civil service permanently residing in the following incorporated municipalities adjacent to the District of Columbia will not be prohibited from becoming candidates for or holding municipal office in such corporations:

In Maryland—Takoma Park, Kensington, Garrett Park, Chevy Chase, Glen Echo, Hyattsville, Mount Rainier, Somerset, North Beach, Capitol Heights, Laurel, Riverdale, Bladensburg, Brentwood, Berwyn Heights, Cottage City, North Brentwood, Edmonston, Colmar Manor, Fairmount Heights, Eagle Harbor, Cobb Island, Seat Pleasant, Cheverly, District Heights.

In Virginia—Falls Church, Vienna, Herndon, Potomac.

In the exercise of the privilege granted by this order, officers and employees must not neglect their official duties and must not engage in national, State, or county political activity in violation of the civil-service rules, and if there is such violation the head of the department or independent office in which the person is employed shall inflict such punishment as the Civil Service Commission shall recommend.

The Civil Service Commission may extend the privilege of this order to other incorporated municipalities in Maryland and Virginia when it shall deem it necessary to the domestic interests of the Government employees resident therein (Executive order of Feb. 14, 1912, as amended).

NOTE.—The exception made in this case to section 1 of rule 1 and the Executive order of January 17, 1913, does not extend to municipalities other than those specifically named, and Government employees residing in other towns than those who desire to become candidates for local office or to take an active part in political campaigns are not permitted by this order to do so.

¹ Executive order, May 5, 1914.

² Executive order, May 26, 1914.

³ Executive order, Feb. 20, 1915.

⁴ Executive order, Mar. 9, 1915.

⁵ Executive order, Nov. 25, 1920.

⁶ Executive order, Apr. 20, 1922.

⁷ Executive order, June 7, 1925.

⁸ Executive order, May 19, 1926.

⁹ Executive order, July 12, 1924.

¹⁰ As amended by Executive order, Dec. 24, 1921. Potomac, Va., has been annexed to the city of Alexandria, Va., and the authority granted by the order is revoked.

¹¹ Executive order, July 12, 1924.

¹² Minute of the Commission, July 15, 1924.

¹³ Minute of the Commission, Sept. 2, 1924.

¹⁴ Minute of the Commission, June 6, 1927.

¹⁵ Minute of the Commission, June 15, 1927.

¹⁶ Minute of the Commission, Aug. 4, 1929.

¹⁷ Minute of the Commission, May 20, 1930.

¹⁸ Minute of the Commission, July 17, 1931.

¹⁹ Minute of the Commission, Apr. 24, 1931.

²⁰ Minute of the Commission, May 15, 1935.

Employees of navy yards, arsenals, and military establishments.—Whenever in the opinion of the Secretary of the Navy or the Secretary of War a strict enforcement of the provisions of section 1, rule 1, of the civil-service rules would influence the result of a local election the issue of which materially affects the local welfare of the Government employees in the vicinity of any navy yard or station or of any arsenal or other military establishment, the Civil Service Commission may, on recommendation of the Secretary of the Navy or the Secretary of War, and after such investigation as it may deem necessary, permit the active participation of the employees of the yard, station, arsenal, or other military establishment in such local election. In the exercise of the privilege which may be conferred hereunder, persons affected must not neglect their official duties nor cause public scandal by their activity. (Executive order of May 14, 1909, as amended by Executive order of Aug. 27, 1919.)

NOTE.—It is not the practice of the War and Navy Departments to recommend, or of the Commission to grant, under this order permission to homes or head men, by whatever designation known, or to any person whose recommendations have, by regulation, any influence upon the employment, promotion, laying off, or discharge of other employees, to become candidates for local office, as in such cases there would be temptation to use the power of their official positions to secure election. Prior permission must be obtained to engage in any political activity under the order. The order applies solely to local municipal elections. Therefore, under it, permission cannot be granted for political activity in county affairs. The order does not apply to localities where the proportion of Government employees to the total population is negligible.

Employees residing in Arlington County, Va.—Officers and employees of the executive civil service permanently residing in Arlington County, Va., may become candidates for and hold local office in such county and may participate in campaigns for election to such offices.

In the exercise of the privilege granted by this order, officers and employees must not neglect their official duties and must not engage in national or State politics in violation of the civil-service rules. If there is such violation, the head of the department or independent office in which the person is employed shall inflict such punishment as the Civil Service Commission shall recommend.

Officers and employees elected or appointed to offices requiring full-time service shall resign their positions with the Federal Government. If elected or appointed to offices requiring only part-time service, they may accept and hold same without relinquishing their Federal employment, provided the holding of such part-time office does not conflict or interfere with their official duties as officers or employees of the Federal Government.

This order is based upon the facts that Arlington County is substantially a municipality, that a considerable number of the residents and taxpayers are employed in the Government service, that service as local officers in such county should in no way involve general partisan political activity, and that the principle of home rule and local self-government justifies such participation.

The permission granted by this order may be suspended or withdrawn by the Civil Service Commission when, in its opinion, the activities resulting therefrom are, or may become, detrimental to the public interest or inimical to the proper enforcement of the civil-service rules (Executive order of May 20, 1931).

V. ACTIVITY OF PRESIDENTIAL OFFICERS AND INCUMBENTS OF EXCEPTED AND OTHER NONCLASSIFIED POSITIONS

35. Executive order of July 14, 1886.—The following Executive order, issued July 14, 1886, applies to all officeholders under the Federal Government:

I deem this a proper time to especially warn all subordinates in the several departments and all officeholders under the General Government against the

use of their official positions in attempts to control political movements in their localities.

Officeholders are the agents of the people, not their masters. Not only is their time and labor due to the Government, but they should scrupulously avoid, in their political action as well as in the discharge of their official duties, offending, by display of obtrusive partisanship, their neighbors who have relations with them as public officials.

They should also constantly remember that their party friends from whom they have received preferment have not invested them with the power of arbitrarily managing their political affairs. They have no right as officeholders to dictate the political action of their party associates or to throttle freedom of action within party lines by methods and practices which pervert every useful and justifiable purpose of party organization. The influences of Federal officeholders should not be felt in the manipulation of political primary meetings and nominating conventions. The use by these officials of their positions to compass their selection as delegates to political conventions is indecent and unfair, and proper regard for the proprieties and requirements of official place will also prevent their assuming the active conduct of political campaigns.

Individual interest and activity in political affairs are by no means condemned. Officeholders are neither disfranchised nor forbidden the exercise of political privileges, but their privileges are not enlarged nor is their duty to party increased to pernicious activity by office holding.

A just discrimination in this regard between the things a citizen may properly do and the purposes for which a public office should not be used is easy, in the light of a correct appreciation of the relation between the people and those entrusted with official place and the consideration of the necessity under our form of government of political action free from official coercion.

You are requested to communicate the substance of these views to those for whose guidance they are intended.

36. **President's letter of June 13, 1902.**—Under date of June 5, 1902, the Commission addressed a letter to the President in which it called attention to the omission in the new postal regulations, issued April 1, 1902, of former section 435, providing that—

Officeholders should not offend by obtrusive partisanship, nor assume the active conduct of political campaigns. * * * This is in consonance with the order of President Cleveland of July 14, 1886.

The Commission also called the President's attention to the following statement in its eleventh report:

The Commission feels strongly that whatever rule is adopted should apply equally to adherents of all parties, and that it would be safe to adopt as such a rule the requirement that the adherents of the party in power shall never do what would cause friction in the office and subvert discipline if done by the opponents of the party in power. A man in the classified service has the entire right to vote as he pleases and to express privately his opinions on all political subjects, but he should not take any active part in political management or in political campaigns, for precisely the same reasons that a judge, an Army officer, a regular soldier, or a policeman is debarred from taking such active part. It is no hardship to a man to require this. It leaves him free to vote, think, and speak privately as he chooses, but it prevents him, while in the service of the whole public, from turning his official position to the benefit of one of the parties into which that whole public is divided; and in no other way can this be prevented.

The Commission recommended either that a general Executive order upon the subject be issued by the President or that recom-

mendations be made to the heads of departments for the establishment of regulations similar to the post-office regulation which had been omitted.

The following reply was received under date of June 13, 1902:

GENTLEMEN: As the greater includes the less, and as the Executive order of President Cleveland of July 14, 1886, is still in force, I hardly think it will be necessary again to change the postal regulations.

The trouble, of course, comes in the interpretation of this Executive order of President Cleveland. After 16 years' experience it has been found impossible to formulate in precise language any general construction which shall not work either absurdity or injustice. Each case must be decided on its merits. For instance, it is obviously unwise to apply the same rule to the head of a big city Federal office, who may by his actions coerce hundreds of employees, as to a fourth-class postmaster in a small village who has no employees to coerce and who simply wishes to continue to act with reference to his neighbors as he always has acted.

As Civil Service Commissioner under Presidents Harrison and Cleveland I found it so impossible satisfactorily to formulate and decide upon questions involved in these matters of so-called pernicious activity by officeholders in politics that in the eleventh report of the Commission I personally drew up the paragraph which you quote. This paragraph was drawn with a view of making a sharp line between the activity allowed to public servants within the classified service and those without the classified service. The latter, under our system are, as a rule, chosen largely with reference to political considerations, and, as a rule, are and expect to be changed with the change of parties. In the classified service, however, the choice is made without reference to political considerations and the tenure of office is unaffected by the change of parties. Under these circumstances it is obvious that different standpoints of conduct apply to the two cases. In consideration of fixity of tenure and of appointment in no way due to political considerations, the man in the classified service, while retaining his right to vote as he pleases and to express privately his opinions on all political subjects, "should not take any active part in political management or in political campaigns, for precisely the same reasons that a judge, an Army officer, a regular soldier, or a policeman is debarred from taking such active part." This, of course, applies even more strongly to any conduct on the part of such employee so prejudicial to good discipline as is implied in a public attack on his or her superior officers, or other conduct liable to cause scandal.

It seemed to me at the time, and I still think, that the line thus drawn was wise and proper. After my experience under two Presidents—one of my own political faith and one not—I had become convinced that it was undesirable and impossible to lay down a rule for public officers not in the classified service which should limit their political activity as strictly as we could rightly and properly limit the activity of those in whose choice and retention the element of political considerations did not enter; and afterwards I became convinced that in its actual construction, if there was any pretense of applying it impartially, it inevitably worked unevenly, and, as a matter of fact, inevitably produced an impression of hypocrisy in those who asserted that it worked evenly. Officeholders must not use their offices to control political movements, must not neglect their public duties, must not cause public scandal by their activity; but outside of the classified service the effort to go further than this had failed so signally at the time when the eleventh report, which you have quoted, was written, and its unwisdom had been so thoroughly demonstrated that I felt it necessary to try to draw the distinction therein indicated.

Sincerely, yours,

THEODORE ROOSEVELT.

37. Departmental regulations.—The following order relating to the political activity of Presidential appointees was issued by the State, Treasury, War, Navy, Interior, Agriculture, and Commerce Departments, and by the Interstate Commerce Commission, the Secretary of the Smithsonian Institution, and the Public Printer:

Presidential appointees are forbidden by statute to use their official authority or influence to coerce the political action of any person or body, to make any contribution for a political object to any other officer of the United States, or to solicit or receive contributions for political purposes from other Federal officers or employees, or to discriminate among their employees or applicants for political reasons.

Otherwise, a Presidential appointee will be allowed to take such a part in political campaigns as is taken by any private citizen, except that he will not be permitted—

1. To hold a position as a member or officer of any political committee that solicits funds.
2. To display such obtrusive partisanship as to cause public scandal.
3. To attempt to manipulate party primaries or conventions.
4. To use his position to bring about his selection as a delegate to conventions.
5. To act as chairman of a political convention.
6. To assume the active conduct of a political campaign.
7. To use his position to interfere with an election or to affect the result thereof.
8. To neglect his public duties.

The following order governing the political activity of Presidential appointees under the Department of Justice was issued by the Attorney General:

No Presidential appointee or other unclassified employee of the Department of Justice will hereafter be permitted (a) to hold a position as a member of any political committee that solicits funds; (b) to display such obtrusive partisanship as to cause public scandal; (c) to attempt to manipulate party primaries or conventions; (d) to use his position to bring about his selection as delegate to conventions; (e) to act as chairman of a political convention; (f) to assume the active conduct of a political campaign; (g) to use his position to interfere with an election or to affect the result thereof; (h) to neglect his public duties.

VI. STATUTES RELATING TO POLITICAL ASSESSMENTS, POLITICAL COERCION AND DISCRIMINATION, AND THE PURCHASE AND SALE OF PUBLIC OFFICE

38. In addition to the restrictions of the civil-service rules, Executive orders, and departmental regulations, the freedom of officers and employees of the executive civil service to engage in politics is limited by a number of statutes. These statutes are generally applicable to all officers and employees of the United States, whether or not in the classified service, and, in some cases, the language of the statute is sufficiently broad to include any person receiving compensation for services from money derived from the Treasury of the United States, and other persons. These statutes are set forth in the following sections. Some of the activities prohibited under penalty of fine and imprisonment are:

1. Solicitation or receipt of political contributions by one officer or employee from another.

2. Solicitation or receipt of political contributions in a Federal building by any person, whether or not an employee of the Government.

3. Discrimination by an officer or employee in favor of, or against, another officer or employee on account of political contributions.

4. The giving or handing over of a political contribution by one employee to another.

5. Payment or the offer of payment for the use of influence in securing an appointive office under the United States.

6. Solicitation or receipt of any thing of value, either for personal reward or as a political contribution, in return for the promise to use, or the use of, influence to secure an appointive office under the United States.

VII. POLITICAL ASSESSMENTS

39. Solicitation or receipt of political contributions by one employee from another.—The United States Code, title 18, sec. 208 (Criminal Code, sec. 118, as amended), provides as follows:

It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or any officer or employee of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person.

40. Circulars of solicitation bearing names of Federal employees.—In an opinion of October 17, 1902 (24 Op., 133), the Attorney General held that the sending of a circular letter by a political committee to Federal officers and employees soliciting financial aid in congressional or State elections, upon or attached to which appear the names of Federal officers or employees, is a violation of section 11 of the Civil Service Act (now sec. 118 of the Criminal Code), which declares that no officer or employee of the Government shall be in any manner concerned in soliciting or receiving any assessment or contribution for any political purpose whatever from any officer or employee of the United States. The statute unquestionably condemns all such circulars, notwithstanding the particular form of words adopted, in order to show a request rather than a demand, and to give the responses a quasi-voluntary character.

41. "Political assessments" defined.—The following is an extract from the decision in *United States v. Scott* (74 Fed., 213), in the Circuit Court of the District of Kentucky, rendered October 7, 1895, by Taft, J.:

To charge a man with soliciting a contribution from United States officers for a political purpose carries with it by implication a charge that the accused knew the purpose for which the contribution was solicited. The words "for a political purpose" may reasonably be construed to qualify not only the contribution but the solicitation. Similarly, to charge that a man received from another his contribution for a political purpose, by implication charges that the reception was for the same purpose as the contribution. * * * Nor

was it necessary to set out the specific averment that the defendant knew that the persons from whom the contributions were received were officers of the United States.

The following extract is from the decision rendered by McCall, J., in the case of *United States v. Dutro, May T.*, 1913, Western District of Tennessee (unreported):

The statute under which the indictment was found prohibits (and I shall speak of this concrete case) the postmaster at Memphis, Tenn., from receiving, or being in any manner concerned in receiving, any assessment, subscription, or contribution for any political purpose whatever from any official, clerk, or employee of the United States.

There are four counts in the indictment. Two of them charge the defendant with receiving subscriptions and contributions for political purposes from an officer, clerk, or employee of the United States, and two of them charge defendant with being concerned in receiving such assessment or subscription for political purposes from a clerk or employee of the United States.

Evidently one of the purposes of Congress in enacting the legislation was to prohibit superior officers from bringing pressure to bear upon their subordinates in order to secure contributions for campaign purposes, and the act is couched in very broad terms.

This evidence (which so far is uncontradicted) shows that the defendant, Mr. Dutro, did receive two contributions for campaign purposes from an officer or clerk or employee of the United States. Whatever may have been Mr. Dutro's frame of mind in regard to his connection with it, the one fact remains, as the evidence shows, that he received these contributions for the purposes and from the parties which the law prohibits. Perhaps and no doubt he did so without any thought that he was violating any statute, and felt that he was acting purely as a conveyor of these contributions to the political parties for whom they were intended, to accommodate those who were making the contributions, and purely as a personal matter, but I think under the evidence his action was in violation of the statute.

The other two counts, as I have pointed out, charge the defendant with being concerned in receiving assessments, subscriptions, or contributions for campaign purposes from a clerk, employee, or officer of the United States. There is a controversy here between counsel as to what the word "concerned" means. From what the law books say which have been read here, and from my own impression, it seems that the word "concerned" means to be interested in, or take part in, receiving such contributions. If Mr. Dutro, by his connection with these two subscriptions, took a part in the contributions being made by employees of the Government for campaign purposes, he would be guilty. I think the natural construction of the phrase or term or word necessarily leads to the conclusion that he did take a part in receiving the contributions, because he received and conveyed them from the contributors to the parties for whom they were intended, and, as the proof so far shows, he knew that the parties who were making the contributions were clerks under him in the Post Office Department, and he knew the purpose for which the money was to be used and where it was to go.

The foregoing case definitely establishes the principle that an employee of the Government who receives a political contribution from another such employee as a mere agent or messenger for the purpose of turning it over to a political organization commits a violation of the statute.

42. Solicitation or receipt of political contribution in Federal buildings.—The United States Code, title 18, sec. 209 (Criminal Code, sec. 119), provides that—

No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in section 208 of this title, or in any navy yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever.

43. Letters addressed to Federal buildings.—The Commission by a minute of March 23, 1897, held that addressing a letter to a Government employee in a Government building soliciting political contributions is a solicitation in that building within the meaning of section 12 of the Civil Service Act, and in this opinion was sustained by the advice of eminent counsel (see fourteenth report, pp. 147-155), but notwithstanding numerous violations no opportunity arose of having the question judicially determined until 1907, when an indictment was obtained against Edward S. Thayer at Dallas, Texas. A demurrer to the indictment was sustained on the ground that the act required the personal presence in the Government building of the solicitor. Appeal was taken to the Supreme Court, and the judgment of the lower court was reversed. (*United States v. Thayer*, 209 U. S. 39.) The opinion of the court, delivered by Justice Holmes on March 9, 1908, establishes definitely the proposition that solicitation by letter or circular addressed to and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building" within the meaning of this section, the solicitation taking place where the letter was received. (See also *United States v. Smith*, 163 Fed., 928, where the letter was personally delivered.)

44. Letters delivered in Federal buildings.—The Commission holds that the sending through the mails of letters to Government employees soliciting political contributions, their street or home address being omitted from the envelopes, with the result that the letters are delivered by the postal authorities in the Government building in which they are employed, constitutes a violation of this section. It is a maxim of the law that a person is presumed to intend the natural and probable consequences of his acts, and failure or omission to take measures to avoid delivery of such letters in a Government building will render the offender liable to prosecution.

45. Discrimination on account of political contributions.—The United States Code, title 18, sec. 210 (Criminal Code, sec. 120), provides as follows:

No officer or employee of the United States mentioned in section 208 of this title shall discharge or promote or degrade or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

46. Payment of political contributions by one employee to another.—The United States Code, title 18, sec. 211 (Criminal Code, sec. 121), provides as follows:

No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in

the service of the United States, or to any Senator or Member of or Delegate to Congress or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

47. Penalties for assessments.—The United States Code, title 18, sec. 212 (Criminal Code, sec. 122), provides that—

Whoever shall violate any provision of sections 208 to 211 of this title shall be fined not more than \$5,000 or imprisoned not more than 3 years, or both.

48. Foregoing offenses declared felonies.—By section 15 of the Civil Service Act it was declared that persons violating any provisions of the four preceding sections should be guilty of a misdemeanor, but this section is now superseded by section 122 of the Criminal Code, above quoted, which makes such violation a felony in view of the following provision of section 335 of the Criminal Code (U. S. C., title 18, sec. 541):

All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies. All other offenses shall be deemed misdemeanors.

VIII. PURCHASE AND SALE OF PUBLIC OFFICE

49. Payment for influence in procuring appointive public office prohibited.—The United States Code, title 18, sec. 149, provides as follows:

It shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

50. Receiving payment for influence in procuring appointive public office prohibited.—The United States Code, title 18, sec. 150, provides as follows:

It shall be unlawful to solicit or receive from anyone, whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

51. Punishment for violation.—The United States Code, title 18, sec. 151, provides:

Anyone convicted of violating sections 149 and 150 of this title shall be punished by imprisonment of not more than 1 year, or by a fine of not more than \$1,000, or by both such fine and imprisonment.

IX. POLITICAL COERCION

52. Civil Service Act and rule.—Section 2, clause second, of the Civil Service Act directs that the civil-service rules "shall provide and declare as nearly as the conditions of good administration will warrant, as follows: * * * Sixth. That no person in said service has any right to use his official authority or influence to coerce the political action of any person or body." In pursuance of this section, civil-service rule I, section 1, provides, in part, that "No person in

the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof." This provision applies to all persons in the executive civil service, nonclassified as well as classified, and is held to prohibit a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates.

X. POLITICAL DISCRIMINATION

53. Failure to contribute or render political service not prejudicial.—Section 2, clause second, of the act also provides:

Fifth. That no person in the public service is for that reason under any obligations to contribute to any political fund or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

54. No disclosure as to opinions or affiliations.—Section 2 of rule I provides as follows:

No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened, or promised by any person in the executive civil service against or in favor of an applicant, eligible, or employee in the classified service because of his political or religious opinions or affiliations.

55. Definition of discrimination.—Political discrimination consists in giving appointment, promotion, or any other favor to an appointee, eligible, or candidate because of his politics, or withholding appointment, promotion, or any other favor from an appointee, eligible, or candidate because of his politics. An appointing officer who appoints or refuses to appoint an applicant because the applicant does or does not entertain certain political opinions, who makes any inquiry of the applicant or any other person as to the applicant's political opinions or affiliations, or reduces an employee because that employee refuses to render political service, to be coerced in political action, or to contribute money for political purposes, or who advances or promotes an employee for opposite reasons, violates the Civil Service Act and rules.

XI. POLITICAL RECOMMENDATION

56. Senators and Representatives.—Section 10 of the Civil Service Act provides:

That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act.

57. Disclosing politics.—Rule I, section 3, provides as follows:

No recommendation of an applicant, eligible, or employee in the competitive service involving a disclosure of his political or religious opinions or affiliations shall be considered or filed by the Commission or any officer concerned in making appointments or promotions.

58. **Letters disclosing politics not to be considered.**—It is the duty of officers concerned in making appointments or promotions to refuse to receive or consider letters disclosing the politics or religion of an applicant, eligible, or employee and to explain to the writers that communications based upon such grounds will not receive attention or be filed.

59. **Recommendation for promotion.**—Rule XI, section 3, provides that—

No recommendation for the promotion of a classified employee shall be considered by any officer concerned in making promotions, unless it be made by the person under whose supervision such employee has served; and such recommendation by any other person, if made with the knowledge and consent of the employee, shall be sufficient cause for debarring him from the promotion proposed, and a repetition of the offense shall be sufficient cause for removing him from the service.

Section 9 of the Rural Electrification Act of May 20, 1936 (Pub. No. 605, 74th Cong.), provides as follows:

This act shall be administered entirely on a nonpartisan basis, and in the appointment of officials, the selection of employees, and in the promotion of any such officials or employees, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. If the Administrator herein provided for is found by the President of the United States to be guilty of a violation of this section, he shall be removed from office by the President, and any appointments or selection of officials or employees made by the Administrator who is found guilty of a violation of this act shall be removed by the Administrator.

XII. JURISDICTION OF COMMISSION

60. **Investigation and recommendation.**—The Commission's jurisdiction under the Civil Service Act and rules extends to the investigation of alleged violations of law or rules as to political activity, assessments, coercion, discrimination, etc., on the part of both classified and nonclassified employees, except alleged violations by nonclassified employees of restrictions upon their political activity contained in the various Executive orders and letters of the Presidents and in the orders issued by the heads of departments.

61. **Enforcement of provision.**—It is the duty of the Commission to see that the provisions of the Civil Service Act and rules are strictly enforced, and it will employ every legitimate and available means to secure the prosecution and punishment of persons who may violate them. The Commission requests any person having knowledge of any such violation to lay the facts before it, in order that it may at once take action thereupon.

PSF: Hatch Act

Re: Hatch Bill

July 29, 1939

For the reasons hereinafter stated, I am returning without my approval S.1871, entitled an Act to prevent pernicious political activities, commonly referred to as the Hatch Bill.

With the general objectives of this measure I am in hearty accord. Its general aim and purport are to prevent the intimidation of voters, prohibit the misuse of public funds or public office to interfere with elections, and forbid federal employees (with certain exceptions) from engaging in political activities. An obvious defect which may be noted at the outset, and to which I shall later refer, is that its prohibitions against the use of official authority to determine or affect election results are strictly confined to federal employees, in apparent disregard of the fact that state and local officeholders out-number federal officeholders nearly four to one and are vastly more influential in determining the results of both federal and state elections than employees and officials of the federal government.

Continually and consistently I have urged upon the Congress the extension of civil service as a means of protecting public employees against the spoils system which compels them to act as parts of a political machine.

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Legislation recommended by me, and adopted by the Congress, has succeeded over six years in applying Civil Service principles to a larger number of officeholders and administrative personnel than at any other time in our history.

With respect to the use of relief funds in election campaigns, in my message to the Congress of January 5, 1939, I made the following recommendation:

"It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress, and that this should be done. Such penalties should be imposed not only upon persons within the administrative organization of the Works Progress Administration, but also upon outsiders who have in fact in many instances been the principal offenders in this regard. My only reservation in this matter is that no legislation should be enacted which will in any way deprive workers on the Works Progress Administration program of the civil rights to which they are entitled in common with other citizens."

While the bill under consideration appears to achieve some of the objectives I have mentioned and urged, a close analysis of its provisions has served to disclose defects

and deficiencies which in my opinion would make it unworkable in certain respects and would tend to subordinate those matters of public interest that are of federal concern to the interests of state and local governments and those who administer and control them. Eventually it might place the federal government at a grave disadvantage in the discharge of obligations and responsibilities which under varying conditions it may be called upon to meet.

In section 9 (a), it is made unlawful for officers and employees of the executive branch of the federal government, with a few conspicuous exceptions, to use their "official authority or influence for the purpose of interfering with an election or affecting the result thereof." They are also prohibited from taking "any active part in political management or in political campaigns." The penalty for a violation of either provision is immediate removal from the position held and cessation of compensation.

Under section 2, if any person employed in an "administrative position" in the federal government should use his official authority for the purpose of "interfering with or affecting" the election or nomination of a candidate for federal office, he would be subject to fine and imprisonment.

Expressions like "use his official authority" and "affecting the election" are vague in scope and application. The use of vague and ambiguous terms in a penal statute is contrary to the traditions of Anglo-Saxon jurisprudence. Circumstances could easily be cited wherein an administrative official or employee, after acting in accordance with a conception of his duties and authority which he believed proper, might later be charged with a violation of either section by a hostile official or a disappointed individual seeking public assistance or a favorable ruling on a doubtful claim.

The terms "political management" and "political campaigns" and "take any active part" are equally difficult to apply and define and circumscribe.

Responsibility for enforcement of the prohibitions in Section 9 (a) will in most instances be on the department head. Is anyone willing to believe that he will perform this duty against an employee who complies with a direction or request of his superior that involves taking an active part in a campaign? Employees called upon by their superiors to assist in political activity or management will be subject to removal if they do and in danger of re-

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moval for insubordination if they do not. In most cases they will comply with such requests as the lesser of the two evils, relying upon their superiors to protect them. In the broad range and varied character of political activities, furthermore, the difficulty of determining without more precise statutory delineation whether particular acts fall within the prohibition of the statute is quite apparent. In these circumstances the statute may well become either a dead letter or an instrument of oppression, according to the whim or personal interest of the individual charged with responsibility of enforcement. Such a result clearly is not in the public interest.

A more serious objection to the bill, however, is the one mentioned at the beginning of this message, namely, the failure to include state and local officials within the prohibition against the use of official authority to interfere with or affect the nomination or election of candidates for federal office.

If it be really the intention to protect elections from improper interference by public officeholders, it is fully as important to protect them from state and local officials as from federal officeholders. So-called

"political machines" composed of state and municipal officeholders have given the public no reason to believe that they have a higher regard for the public interest than federal officeholders who are members of national party organizations. Indeed there is some evidence to the contrary.

In American political practice we do not have watertight compartments. Party organizations, including local as well as federal officeholders, campaign for an all inclusive party "ticket". Under our election practices, federal, state, municipal, and other local elections are often held at the same times, in the same places, on the same ballots, through the same machinery, and under the common auspices of interlocked and unified political organizations.

Those familiar with the political process know that if federal officeholders are prohibited from participating in that process, the determination of party policies and the conduct of political activities in relation to matters of federal concern will more than ever be subject to the influence and control of state and local machines, whose adherents already greatly outnumber the federal officeholders, and whose point of view is local rather than national. The consequences will be a shifting of political power still further

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in the direction of state and local officials and a gradual redirection of political policy. This may eventually result in the subordination of matters of federal interest and broad national concern to the interests of the states and local governments and those who for the moment may be in control of their affairs.

It is believed that the Congress has the constitutional power to prohibit the use by state and local officials of their official influence and authority to interfere with or influence the result of a federal election if this should be found necessary to safeguard the integrity of the election and the freedom of the ballot. To the same end, state and local government employees might conceivably be forbidden to engage in political activities designed or calculated to influence the result of a federal election.

The result of such legislation, if permitted by the Constitution, might well be to preserve a proper balance between state and federal interests, and keep state and federal governments functioning within their respectively proper spheres of authority and responsibility. Candidates for Congress and other federal offices would be safe-

guarded in the proper performance of their duties against the use or threat of oppressive tactics by local authorities designed to prevent their nomination or election and thus influence the course of federal legislation to their own advantage.

Another consideration relates to the matter of tenure and quality of public service. If federal employees are excluded from performing any political service, they will be in danger of replacement at the behest of Congressmen who must look to others for political aid and assistance during campaigns. There is no ample justification in the facts of the situation for this discrimination against the federal officeholder in favor of state and local employees. We will not improve the morale of our political life by silencing or intimidating federal officeholders and leaving political management and leadership to state officials and local politicians.

In revising the bill, Congress might well give further attention to the subject of political contributions and the use of money in political campaigns. Every practical means should be taken to protect government employees, whether relief workers or others, from the

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sordid practice of enforced contributions to political funds. It is equally important to protect the government from the sordid influence of large private contributions from interests that hope thereby to obtain concessions and advantages in legislation or administrative action.

The attempt to control this evil through the Corrupt Practices Act has not been wholly successful. In my opinion, the Congress might well explore the feasibility of prohibiting all private contributions and appropriating a suitable amount for the use of the several political parties, to be expended and accounted for under conditions prescribed by law. Such an appropriation might free our political parties from the domination or influence of sinister elements and yield unexpected returns in the elevation of the whole tone of our political life.

Finally, the Congress should give careful consideration to a wider application of the principles of civil service and thereby assure to the largest possible number of federal employees greater security of tenure against the evils of patronage and spoils.

INSERT A

I have been asked if citizens who have received loans from the Home Owners Loan Corporation, from the Farm Credit Administration, or its subsidiaries, from the Farm Security Administration, from the Reconstruction Finance Corporation and other government lending agencies, would be subject to the terms of this bill. The answer is, of course, no. I have been asked whether farmers receiving farm benefits would be bound by the terms of the bill. Again the answer is no. I have been asked if government employees who belong to Young Republican Clubs, Young Democratic Clubs, Civil Service Reform Associations, the League of Women Voters, the American Federation of Labor, the Committee for Industrial Organization, are bound because of the fact of their membership in these organizations. The answer is, of course, no. There will be hundreds of similar questions raised in the actual administration and enforcement of this bill. Such questions will be asked in most cases by individuals in good faith. And it is only fair that they should receive an answer. I am, therefore, asking the Attorney General to set up the necessary machinery in the new Civil Liberties section of the Department of Justice in order that the civil rights of every government employee may be duly protected and that the element of fear may be removed.

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I have been asked if the bill applies to veterans -- Civil War, Indian wars, the war with Spain, the World War, retired officers and men of the Army, Navy and Marine Corps who are receiving benefits or pensions of one kind or another. The answer is, of course, no.

I have been asked if the Act applies to those who get government benefits under the Social Security Act in the form of old age pensions or in the form of unemployment compensation. The answer is, of course, no.

PSF: Hatch Act

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Those familiar with the political process know that if federal officeholders are prohibited from participating in that process, the determination of party policies and the conduct of political activities in relation to matters of federal concern will more than ever be subject to the influence and control of state and local machines, whose adherents already greatly outnumber the federal officeholders, and whose point of view is local rather than national. The consequences will be a shifting of political power still further

in the direction of state and local officials and a gradual redirection of political policy. This may eventually result in the subordination of matters of federal interest and broad national concern to the interests of the states and local governments and those who for the moment may be in control of their affairs.

It is believed that the Congress has the constitutional power to prohibit the use by state and local officials of their official influence and authority to interfere with or influence the result of a federal election if this should be found necessary to safeguard the integrity of the election and the freedom of the ballot. To the same end, state and local government employees might conceivably be forbidden to engage in political activities designed or calculated to influence the result of a federal election.

The result of such legislation, if permitted by the Constitution, might well be to preserve a proper balance between state and federal interests, and keep state and federal governments functioning within their respectively proper spheres of authority and responsibility. Candidates for Congress and other federal offices would be safe-

guarded in the proper performance of their duties against the use or threat of oppressive tactics by local authorities designed to prevent their nomination or election and thus influence the course of federal legislation to their own advantage.

Another consideration relates to the matter of tenure and quality of public service. If federal employees are excluded from performing any political service, they will be in danger of replacement at the behest of Congressmen who must look to others for political aid and assistance during campaigns. There is no ample justification in the facts of the situation for this discrimination against the federal officeholder in favor of state and local employees. We will not improve the morale of our political life by silencing or intimidating federal officeholders and leaving political management and leadership to state officials and local politicians.

In revising the bill, Congress might well give further attention to the subject of political contributions and the use of money in political campaigns. Every practical means should be taken to protect government employees, whether relief workers or others, from the

Hatch Bill

9.

sordid practice of enforced contributions to political funds. It is equally important to protect the government from the sordid influence of large private contributions from interests that hope thereby to obtain concessions and advantages in legislation or administrative action.

The attempt to control this evil through the Corrupt Practices Act has not been wholly successful. In my opinion, the Congress might well explore the feasibility of prohibiting all private contributions and appropriating a suitable amount for the use of the several political parties, to be expended and accounted for under conditions prescribed by law. Such an appropriation might free our political parties from the domination or influence of sinister elements and yield unexpected returns in the elevation of the whole tone of our political life.

Finally, the Congress should give careful consideration to a wider application of the principles of civil service and thereby assure to the largest possible number of federal employees greater security of tenure against the evils of patronage and spoils.

PSF.
Hatch Bill

July 30, 1939

Dear Mr. President:

I have risked breaking the rule that no business should go down on the pouch because the Attorney General, Ben and I have worked out in the attached suggestions for a veto message on the Hatch Bill a line of approach which is outside of any speculation in the newspapers, and which seems to us to offer a real chance to turn the tables.

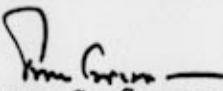
We have checked this draft very carefully against all the defenses of the bill which have appeared in speeches and in editorials — and have matched it against the Committee reports, Civil Service regulations, and all the other technical material.

We have also prepared (with a little help to which we were perhaps not legally entitled) a constitutional brief establishing the undoubted power of the Federal Congress to regulate the conduct of any participants affecting a primary or an election in which, among other candidates, candidates for Federal offices are involved.

Attached is a short memorandum explaining briefly the theory of the message.

The publicity seems to be in good shape for a veto. Walter Winchell is tearing at the edges of the exemption of the State political machines (following up the line in Time) on Sunday and Monday, with front page editorials by him in all the Hearst Sunday papers, and two radio broadcasts.

Respectfully yours,


Thomas G. Cereoran

Dear Mr. President:

In connection with consideration of the so-called Hatch Bill you have asked my opinion as to the extent that the federal government may go in limiting activities regarded as inimical to free and fair elections under our federal system. In particular you have asked my opinion as to the extent the federal government may go in making limitations on the political activities of federal officers and employees applicable to state, local, county and municipal officers and employees. You have further requested my opinion as to the right of the federal government to make appropriations to cover the costs of political campaigns incident to federal elections.

My opinion is as follows:

1. The Congress clearly has power under the Constitution to protect the federal elective process.

As an incident to such power the Congress may reasonably regulate all matters affecting the federal elective process with a view to ensuring that such elective process may function freely and without corruption or improper influence.

To this end, the Congress may forbid activities which, in themselves, or because of the position occupied by those who carry them on, are inimical to the free and fair functioning of the federal elective process.

Within the widest limits the findings of the Congress as to the inimical effects of specified activities upon the federal elective process should and would be respected by the courts.

2. The plenary power of the Congress to safeguard the election of the President, Vice President, presidential electors, and members of the Congress against corruption or improper influence has been too long recognized by the Supreme Court to require extended discussion. Ex parte Siebold, 100 U. S. 371 (1879); Ex parte Yarbrough, 110 U. S. 651 (1884); United States v. Mosley, 238 U. S. 383 (1915); Burroughs v. United States,

290 U. S. 534 (1934); see also the following provisions of the Constitution: Art. I, sections 3 and 4; Art. II, section 1, and the Seventeenth Amendment.

The decision of the Court in the Siebold case "that Congress has plenary and paramount jurisdiction over the whole subject" is probably nowhere challenged today. Nor could it be, for, "if this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends from violence and corruption." Ex parte Yarbrough, 110 U. S. 651, 657-658.

3. The power to protect the election of federal officials against corruption or improper influence would seem clearly to include the power to limit the activities of particular groups not only in so far as they are directed at the election of a particular federal official but also in so far as they are directed at any election at which, among others, a federal official is to be chosen.

When men are appointed to offices because of their political interests and activities, they frequently continue to maintain their political interests and activities. That is particularly so when they have good reason to believe that the retention of their offices depend upon the maintenance of those interests and activities and the success at election time of their political sponsors.

The position of a political appointee in this respect is not wholly comparable to the position of a Civil Service appointee whose tenure of office is secure. If it be deemed necessary or appropriate, to protect the integrity of the elective process, to limit the political activities of political appointees whose tenure of office is not secure, it would seem equally necessary or appropriate to limit the political activities of those who are most likely to aspire to their jobs and politically to compete with incumbents for their jobs.

The same political organizations and groups which are active in national politics are active in state and local politics. Federal elections and primaries are usually held at the same times and at the same polling places as state and local elections, and federal, state and local candidates usually appear on the same ballot. The political activities of federal appointees are not generally confined to the election of officials of the federal government.

The political activities of state and local appointees are not generally confined to the election of officials of the federal government. But neither are the political activities of state and local appointees generally confined to the election of state and local officials.

Municipal, county and state offices or employments are the recognized training schools for aspirants to Federal officeholding and employment. Of that any court could take judicial notice. If the political activities of the recipients of federal patronage be regarded as inimical to the integrity of the federal elective process, similar political activities on the part of the recipients of state and local patronage who are the most likely aspirants for federal patronage would seem to be equally inimical to the integrity of the federal elective process.

Indeed should the political activities of the recipients of federal patronage be curtailed without a similar curtailment of the political activities of the recipients of state and local patronage, the only practical effect of such curtailment might be the enhancement of the influence upon the federal elective process of state and local patronage and of private campaign contributors.

To deal effectively with the political activities of state and local officials in so far as these activities are directed at the election of federal officials, Congress must be able to deal with the whole gamut of political activities which are directed at any election at which, even if among others, a federal official is chosen. The Constitution does not require the Congress to separate the inseparable.

The Supreme Court has so decided. In the case of In re Coy, 127 U. S. 731, (1888) the Court recognized the indivisible characteristics of an election at which local and federal officers are elected and held that corrupt practices perpetrated at such an election were indictable federal offenses without specific averment of proof that the offenses specifically influenced the returns relating to the election of the federal officer. The Court said:

"It would be a very singular principle to establish, that, where a man was charged with a homicide, caused by maliciously shooting into a crowd with the purpose of killing some person against whom he bore malice, but with no intent to injure or kill the individual who was actually struck by the shot, he should be held excused because he did not intend to kill that particular person, and had no malice against him.

"The analogy of this example to the present case is close. The persons accused did desire and intend to interfere with the election returns, and they did purpose to falsify those returns, as to some of the persons, at least, who were then voted for as candidates. It is argued on their behalf that because it is not averred in the indictment that they intended to falsify the election returns with regard to the congressional vote, or to affect those particular returns, it is to be held bad. It is also insisted that the felonious intent had relation to the action of inducing the officers to omit the duty of keeping carefully the poll books and tally sheets, and although the records of the votes for congressmen might possibly also suffer along with a number of other persons who might be affected by that omission, yet because there was not in the minds of the conspirators the specific intent or design to influence the congressional election, they are not to be held liable under this statute.

"The object to be attained by these acts of Congress is to guard against the danger, and the opportunity, of tampering with the election returns, as well as against direct and intentional frauds upon the vote for members of that body. The law is violated whenever the evidences concerning the votes cast for that purpose are exposed or subjected in the hands of improper persons or unauthorized individuals to the opportunity for their falsification, or to the danger of such changes or forgeries as may affect that election, whether they actually do so or not, and whether the purpose of the party guilty of thus wresting them from their proper custody and exposing them to such danger might accomplish this result."

The breadth and significance of the majority opinion is emphasized by Mr. Justice Field's dissent:

"In several States, and probably in a majority of them, numerous officers, state, county, city, and village, are elected at the same time with representatives in Congress; and according to the present decision a conspiracy to persuade the officers of election to omit any duty imposed upon them under the laws of the State, though designed merely to affect the election of an

inferior magistrate of a village, is an offence against the United States, punishable in the Federal courts. Thus, obedience to the laws of the State in matters of even local offices, if a member of Congress is voted for at the same election, may be enforced by the courts of the United States, instead of by the proper tribunals of the State whose laws have been violated. I am not able to assent to a doctrine which leads to this result, and gives the Federal courts power to intermeddle with the action of state officials in an election for local offices whenever a member of Congress may have been voted for at the same time." (pp. 763-764)

4. The same principles which sustain the power of the federal government to protect the integrity of an election at which a federal officer is elected would seem to sustain its power to protect the integrity of the primary or convention at which a candidate for federal office is nominated. The primary and the convention are as much a part of the process of selection of the federal officer as the final action at the polls.

Newberry v. United States, 256 U. S. 232, (1921) which has sometimes been cited as casting doubt upon the power of the federal government to protect the process by which candidates for federal office are nominated, does not, in my opinion, sustain that doubt.

In that case (decided by the Supreme Court in 1921, nearly 20 years ago) Newberry was convicted under the provisions of the Federal Corrupt Practices Act of 1910 for making expenditures in excess of the statutory limit in the conduct of his primary campaign for nomination to the United States Senate. The Court reversed the conviction.

Mr. Justice McReynolds speaking for himself and three other members of the Court expressed the opinion that primaries are not "elections for an office, but merely methods by which party adherents agree upon candidates whom they intend to offer and support for ultimate choice by all qualified electors." (p. 251)

Mr. Justice McKenna concurred in the result on the narrow ground that the statute under which Newberry was indicted was passed prior to the enactment of the Seventeenth Amendment, and that at that time Congress had no power over the procedure for nominating candidates for the Senate, and he expressly reserved the question of the power of Congress under that

amendment.

Chief Justice White and the three other Justices who also concurred in the result (but not in Mr. Justice McKenna's opinion) did so on the ground that the trial court's charge in effect made Newberry guilty if he continued as a candidate after he had knowledge that excessive expenditures had been made in his behalf. But the Chief Justice and the three other concurring Justices (including Justice Brandeis) had no doubt as to the power of Congress to protect the integrity of a primary as necessarily incidental to the protection of the integrity of the succeeding election. The Chief Justice said:

"In view, then, of the plain text of the Constitution, of the power exerted under it from the beginning, of the action of Congress in its legislation, and of the amendment of the Constitution, as well as of the legislative action of substantially the larger portion of the States, I can see no reason for now denying the power of Congress to regulate a subject which from its very nature inheres in and is concerned with the election of Senators of the United States, as provided by the Constitution."

In the Newberry case, therefore, four Justices affirmed the power of Congress to protect the integrity of a primary election, one Justice found no need for expressing his opinion, and four Justices denied that power. Since that time have gone by nearly twenty years of increasing appreciation by the courts as well as by the public of the importance of the functioning of the federal government in our national life.

The protection of the integrity of an election requires the protection of the integrity of the process by which candidates for election are nominated. And I have no reason to doubt that the Supreme Court today would so hold.

5. I am therefore of the opinion that the Congress may regard the political activities of state and local political appointees, in any election or convention or primary in which candidates for a federal office are to be nominated or elected, as no less inimical to the integrity of such election or primary than the political activities of federal political appointees, and - provided the Constitutional inhibitions against vagueness are met - may make such activities federal penal offenses.

6. If the Congress should regard the political activities of federal appointees in state or local elections as well as federal elections inimical to the federal service, I should think that the Congress might also properly regard the political activities of state or local appointees in state and local elections as well as federal elections, as inimical to any state or local service or work which is maintained in whole or in part by the financial aid of the federal government.

I am therefore of the opinion that the Congress could forbid, or require the states or localities to forbid state and local employees, employed on projects or in services which are in whole or in part financed by the federal government, from engaging in political activities which the Congress regards as inimical either to the integrity of the federal elective process or to the works or services financed by the federal government.

7. It is, of course, indispensable to the free and fair functioning of the elective system, that the voters should be fairly and adequately informed regarding the candidates and the issues upon which they are called to vote. I have therefore no doubt that the Congress, with a view to ensuring that the results of federal elections should represent the free and enlightened will of the voters, may make appropriations to cover the reasonable costs of political campaigns incident to such elections. In my judgment the Congress may properly conclude that such action on its part is not only necessary to ensure the fair presentation of campaign issues, but to prevent the undue influence of private money upon public elections.

Yours sincerely,

PSF: Hatch Bill
File Personal

THE WHITE HOUSE
WASHINGTON

August 1, 1939.

MEMORANDUM FOR THE PRESIDENT:

Congresswoman Norton wants very much to talk to you on the phone, and here is her message:

She implores you to veto the Hatch Bill because it is a bill gotten up by your enemies to destroy you and the Democratic organization throughout the country. This is concurred in very strongly, in fact, inspired by Frank Hague of Jersey City.

She also says that the Housing Bill (special rule) is slated for slaughter.

E.M.W.
E.M.W.

HOLD FOR RELEASE

HOLD FOR RELEASE

HOLD FOR RELEASE

August 2, 1939

CONFIDENTIAL: To be held in STRICT CONFIDENCE and no portion, synopsis or intimation to be published or given out until the READING of the President's Message has begun in the Senate or the House of Representatives. Extreme care must therefore be exercised to avoid premature publication.

STEPHEN EARLY
Secretary to the President

TO THE CONGRESS OF THE UNITED STATES:

Because there have been so many misrepresentations, some unpremeditated, some deliberate, in regard to the attitude of the Executive branch of the Government in relation to Senate Bill 1871, "An Act to Prevent Pernicious Political Activities", and because a number of questions have been raised as to the meaning and application of some of its provisions, I deem it advisable at the time of executive approval to make certain observations to the Congress of the United States.

The genesis of this legislation lies in the message of the President of January 5, 1939, respecting an additional appropriation for the Works Progress Administration. I said in that message: "It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress, and that this should be done. Such penalties should be imposed not only upon persons within the administrative organization of the Works Progress Administration, but also upon outsiders who have in fact in many instances been the principal offenders in this regard. My only reservation in this matter is that no legislation should be enacted which will in any way deprive workers on the Works Progress Administration program of the civil rights to which they are entitled in common with other citizens."

Furthermore, in applying to all employees of the Federal Government (with a few exceptions) the rules to which the Civil Service employees have been subject for many years, this measure is in harmony with the policy that I have consistently advocated during all my public life, namely, the wider extension of Civil Service as opposed to its curtailment.

It is worth noting that nearly all exemptions from the Civil Service, which have been made during the past six years and a half, have originated in the Congress itself and not in the Executive.

Furthermore, it is well known that I have consistently advocated the objectives of the present bill. It has been currently suggested that partisan political reasons have entered largely into the passage of the bill: but with this I am not concerned, because it is my hope that if properly administered the measure can be made an effective instrument of good government.

As is usual with all bills passed by the Congress, this bill has been examined, on its receipt at the Executive Offices, by the appropriate Departments or Agencies, in this case the Attorney General of the United States and the Civil Service Commission.

The Attorney General has advised me that it seems clear that the Federal Government has the power to prescribe as qualifications for its employees that they refrain from taking part in other endeavors which, in the light of common experience, may well consume time and attention required by their duties as public officials. He points out, however, that such qualifications cannot properly preclude government employees from the exercise of the right of free speech or from their right to exercise the franchise.

The question of constitutionality being resolved in favor of the bill, our next inquiry relates to the exercise and preservation of these rights. It is obvious that the intent of the bill is to follow broadly the provisions of Civil Service regulations that have existed for many years in regard to political activities of Federal employees.

It is because I have received and will continue to receive so many queries asking what a government employee may or may not do that it seems appropriate at the outset to postulate the broad principle that if the bill is administered in accord with its spirit, and if it is in the future administered without abuse, oppression or groundless fear, it will serve the purpose intended by the Congress.

For example, I have been asked by employees of the government whether under this law they would lose their positions if they merely attend political meetings. The answer is, of course, no.

I have been asked whether they would lose their positions if they contributed voluntarily to party or individual campaign funds without being solicited. The answer is, of course, no.

I have been asked whether they would lose their positions if they should merely express their opinion or preference publicly -- orally, by radio, or in writing -- without doing so as part of an organized political campaign. The answer is no.

I have been asked if citizens who have received loans from the Home Owners Loan Corporation, from the Farm Credit Administration or its subsidiaries, from the Farm Security Administration, from the Reconstruction Finance Corporation and other government lending agencies, would be subject to the terms of this bill. The answer is no.

I have been asked whether farmers receiving farm benefits would be bound by the terms of the bill. Again the answer is no.

I have been asked if government employees who belong to Young Republican Clubs, Young Democratic Clubs, Civil Service Reform Associations, the League of Women Voters, the American Federation of Labor, the Congress for Industrial Organization, and similar bodies are subject to the penalties of the measure because of mere membership in these organizations. The answer is no.

There will be hundreds of similar questions raised in the actual administration and enforcement of this bill. Such questions will be asked in most cases by individuals in good faith. And it is only fair that they should receive an answer. I am, therefore, asking the Attorney General to take the necessary steps through the new Civil Liberties unit of the Department of Justice in order that the civil rights of every government employee may be duly protected and that the element of fear may be removed.

I have been asked if the bill applies to veterans -- Civil War, Indian Wars, the War with Spain, the World War -- retired officers and men of the Army, Navy and Marine Corps who, though not government employees are receiving benefits or pensions of one kind or another. The answer is, of course, no.

I have been asked if the Act applies to those who get government benefits under the Social Security Act in the form of old age pensions or in the form of unemployment compensation. The answer is no.

Finally, I have been asked various questions relating to the right of a government employee publicly to answer unwarranted attacks made on him or on his work or on the work of his superiors or on the work of his subordinates, notwithstanding the fact that such attacks or misrepresentations were made for political purposes by newspapers or by individuals as a part of a political campaign.

This raises the interesting question as to whether all government officials except the President and Vice President, persons in the office of the President, heads and assistant heads of Executive Departments and policy determining officers appointed by and with the advice and consent of the Senate must remain mute if and when they or the work with which they are concerned is attacked and misrepresented in a political campaign or preliminary thereto.

It will be noted that the language of the bill wholly excludes members or employees of the Legislative Branch of the Government from its operation.

It can hardly be maintained that it is an American way of doing things to allow newspapers, magazines, radio broadcasters, members and employees of the Senate and House of Representatives and all kinds of candidates for public office and their friends to make any form of charge, misrepresentation, falsification or vituperation against the acts of any individual or group of individuals employed in the Executive Branch of the Federal Government with complete immunity against reply except by a handful of high executive officials. That, I repeat, would be un-American because it would be unfair, and the great mass of Americans like fair play and insist on it. They do not stand for any gag act.

It is, therefore, my considered opinion, in which the Attorney General of the United States joins me, that all Federal employees, from the highest to the lowest, have the right publicly to answer any attack or misrepresentation, provided, of course, they do not make such reply as part of active participation in political campaigns.

The same definition of fair and proper administration of the bill applies to the right of any government employee, from the highest to the lowest, to give to the public factual information relating to the conduct of government affairs. To rule otherwise would make it impossible for the people of the United States to learn from those who serve the government vital, necessary and interesting facts relating to the manifold activities of the Federal Government. To rule otherwise would give a monopoly to originate and disseminate information to those who, primarily for political purposes, unfortunately have been given to the spreading of false information. That again is unfair and, therefore, un-American.

It is, I am confident, the purpose of the proponents of this legislation that the new law be thus administered so that the right of free speech will remain, even to those who serve their government; and that the government itself shall have full right to place all facts in its possession before the public. If some future Administration should undertake to administer this legislation to the detriment of these rights, such action would be contrary to the purpose of the Act itself and might well infringe the constitutional rights of citizens. I trust that public vigilance will for all time prevent this.

The Attorney General calls my attention to a practical difficulty which should be corrected by additional legislation as soon as possible. For many years there has been an exception to the Civil Service regulation whereby employees permanently residing in the District of Columbia or in municipalities adjacent thereto may become candidates for or hold municipal office in their municipalities. This and a few similar exceptions should, I believe, be maintained.

The other question relates to the fact that the bill does not in any way cover the multitude of State and local employees who greatly outnumber Federal employees and who may continue to take part in elections in which there are candidates for Federal office on the same ballot with candidates for state and local office. It is held by many who have examined the constitutional question that because the Congress, under the Constitution, may maintain the integrity of Federal elections, it has the power to extend the objectives of this bill so as to cover State and local government employees who participate actively in Federal elections. This is at least worth the study of the Congress at its next session and therefore before the next Federal election.

It is because for so many years I have striven in public life and in private life for decency in political campaigns, both on the part of government servants, of candidates, of newspapers, of corporations and of individuals that I regard this new legislation as at least a step in the right direction.

FRANKLIN D. ROOSEVELT

The White House

August 2, 1939

PSF
File
Hatch Bill Folder
~

Letter to the President

From Carl A. Hatch

August 2-1939

Thanks for signing Hatch Bill

See-Senate folder-Drawer 2-1939

Rider, p. 1

They are in accord with my relief message of January 5, 1939,
from which I quote.

"It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress, and that this should be done. Such penalties should be imposed not only upon persons within the administrative organization of the Works Progress Administration, but also upon outsiders who have in fact in many instances been the principal offenders in this regard. My only reservation in this matter is that no legislation should be enacted which will in any way deprive workers on the Works Progress Administration program of the civil rights to which they are entitled in common with other citizens."

PSF
Hatch Bill

As I understand it, the purported broad objectives of this bill are two:

- (a) It seeks to free federal elections from the subversive use of money; and
- (b) It seeks to free federal elections from alleged subversive activities of the administrative personnel of government in political organizations.

In short the objectives are to take money out of politics and take government out of politics.

If such are the real objectives of this bill all right-thinking citizens commend them - they are objectives for which this Administration has consistently striven as has none other in American history.

I am, however, vetoing this particular bill because I cannot agree that it will achieve these objectives, and ^{that in its present form} because I believe it will leave conditions far worse than it finds them.

Grave doubts have been expressed to me as to the constitutionality of this bill - because of the vagueness of its provisions, because of the restraints it places upon rights of freedom of speech and freedom of assembly - in these days of contempt in many places for the personal liberties of others.

But I would not let any vetoing of this bill turn on that ground. I believe that the Congress has ^{the} widest powers to protect the functioning of the federal government, and nothing is more important to that protection than the integrity of national elections. I believe that on constitutional questions Congress should be given the benefit and take the responsibility of doubt.

I approve all of the bill except Sections 2 and 9.

Those sections of the bill which are designed to prevent relief workers from being abused for political purposes, i.e., Sections 4, 5, 6, 7 and 8 - I approve. *ADD Rider.*

Sections 1 and 3 which apply to the activities of all persons without regard to their office I also approve.

If sections 2 and 9 are cut away and the rest of the bill is offered to me as a separate bill, as it very simply and quickly can be, I will sign such a bill. I am sending this message today--four days before the expiration of my constitutional power to act--in order that Congress may, if it chooses, accept that opportunity.]

But the Constitution does not permit me to veto in part and approve in part. I must sign the bill entire -- or veto it entire.

Therefore, since I am not permitted to separate the good provisions from the bad provisions and since I cannot in conscience agree to the bad provisions, I am reluctantly compelled to send the bill back to Congress for revision.

I am vetoing this bill for two reasons:

First. It fails to exercise the undoubted power of Congress to take state, local, and municipal officeholders and employees, out of national politics just as completely as the bill purports to take federal employees and officials out of national politics. That granting of a monopoly of political organization to state, local and municipal politicians will defeat the very purported objectives of the bill. It will put money further into politics -- it will put politics further into government.

Second. *Some of the provisions of the bill* The provisions of Sections 2 and 9 are so dangerously vague and sweeping that they will weaken the position of those public officials who are accustomed to speak frankly and to act openly within the law, and, to the same degree, strengthen the hands of other officials and professional politicians accustomed in some instances to operate otherwise. In the confusion resulting from the bill's vagueness, the latter will find ways around and through the law.

Either the bill will be practically unenforceable -- a breeder of widespread violation like bootlegging under prohibition -- or it will be an instrument of oppression to curtail freedom of action of all decent people in the difficult business of democratic government.

Fifteen months intervene before the next general federal elections. Twelve months at least intervene before the next national conventions.

There is, therefore, plenty of time for Congress to do in a thorough and forthright manner the fundamental job of taking money and politics out of government.

That Congress desires to do this it is not for me to doubt. I assume that Congressmen, who have long claimed the right to be consulted about appointments to local federal offices, are now prepared to relinquish this claim or, in any case, to cease proposing for appointment the names of persons who have actively participated or whom they hope will participate in their own political operations, ~~in politics~~.

Needless to say, while any President welcomes the advice of members of Congress in such matters, yet in the workings of our imperfect democracy this method of operation sometimes imposes a burden and a strain on the Chief Executive that offsets its advantages, and I will not oppose this added step toward taking politics out of government. I mention this apparent inclination of Congress, however, solely as an evidence that Congress is disposed at this time to do a fundamental job and is, I am sure, prepared to give serious consideration to a proposal I shall make in this message whereby a truly great step may be taken toward cleaner and fairer national elections.

First, however, I wish to discuss certain vicious aspects of the present bill which I believe may easily be remedied.

Failure to Regulate
Regulation of State, Local and Municipal Officials.

One vicious aspect of this bill is the disregard of the fact that under our election practices, federal, state, municipal and other local elections are all held at the same times, in the same polling places, on the same ballots, through the same campaign machinery, and under the common auspices of interlocked and unified political organizations.

In American political practice we do not have watertight compartments. Party organizations including local as well as federal office-

an officeholders and holders, campaign for/all inclusive party "ticket". And since/employees in state, municipal and local government are nearly four (?) times the number of officeholders and employees in federal government, state officeholders are even more influential in these joint elections for federal and local office than federal officials can possibly be.

Under such circumstances no good, and only harm, can result from Sections 2 and 9 of this bill unless their scope is extended to regulate officeholders and employees in state, municipal and other local governments in relationship to federal elections just as effectively as federal officeholders are purported to be regulated.

Unless this is done it is my firm opinion, based upon years of practical experience with both federal and state situations, that instead of making progress toward a goal of pure federal elections, this bill in its present form will simply pollute present conditions.

~~In its present form this is not a bill to take politics out of government. Its effect would be to put government into the control of ward politicians.~~

~~Political organizations are sometimes called "machines" -- state and municipal officeholders and employees have given the public no reason to believe that they have a higher regard for the public interest than federal officeholders. Indeed, there is some evidence to the contrary.]~~

I propose therefore that ~~[in a revision]~~ the Congress revise these Sections 2 and 9 to treat all public officeholders ^{and employees} alike; and if participation in a primary or election for federal office is to be made a federal crime punishable by fine and imprisonment or loss of job for federal officeholders it be similarly made a federal crime for State, municipal and local officeholders.

In addition to creating such a federal crime for federal officeholders, the present bill (Section 9) ~~creates another method of enforcing~~ ~~ment of~~ its provisions by providing in substance that no federal funds shall be available for the payment of compensation to offending officeholders.

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Those familiar with the political process, and with the purposes of some of the backers of the bill, know full well that the moment this bill would go into effect it would produce two results.

One result would be to concentrate political power in State, local and municipal organizations -- as exempt political organizations ^{able to raise} ~~which could use~~ money and ^{we} patronage. That means that future Presidents and future Congresses would be progressively more at the mercy of State and local machines in their control of national politics. And that means

that any hope to perfect this bill at some later time by including State and municipal officeholders would grow progressively more impossible.

The second effect would be demoralization of the efficiency of the Federal administrative service.

The moment that those interested in the nationally-minded policies of the Federal Government are prohibited from participating in the political process, those in the professional business of politics, from the monetary as well as from the office-holding point of view, will immediately put in motion a far-flung campaign to concentrate contributions and patronage in State and local machines whose point of view is local rather than national. Officeholders who wish to campaign in national elections will, by well-known local processes uncontrollable from Washington, be shifted from Federal to State payrolls. Those who are of little value to local organizations will be worked off on Federal payrolls.

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In the matter of vagueness let me give you ^{a few} two instances, ~~one~~ under Section 2, one under Section 9.

In its present form Section 2 forbids, without exception or limitation, every person "employed in any administrative position by the United States * * * to use his official authority for the purpose of * * * affecting the election or nomination" of any candidate for federal office.

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Men subject to political revenges have been framed before.

It is one thing to write such language into Civil Service rules. There the penalty is at most discharge by the appointing officer -- and the employee is protected by the fact that a superior officer, discharging a civil servant, has to justify his action in a report to the Civil Service Commission -- which understands the ways of intriguers and informers and understands the conditions of Congressional pressure (through giving or withholding appropriations for instance) under which government servants have to work.

It is an entirely different thing to put such a vague and sweeping suppression of the native American interest in politics into a penal statute, with penalties of imprisonment.

I do not say that the language is unconstitutional.

But I do say that every lawyer in the Congress knows ~~that~~ ^{the} language to be so doubtfully constitutional that it cannot be depended upon to be legally reliable.

And I do say that every man in political life knows that this defective language will have two practical results. It will tyrannize every honest man in government to abandon his birthright as an American citizen to be sure that he keeps out of trouble. It will encourage every venal man in politics to take what a criminal lawyer will tell him is a better than even chance.

If the Congress is serious about taking venal politicians out of government, I hope it will not court failure with another prohibition law like this. It will rewrite the section until it accords with accepted standards of legality and practicability of Anglo-Saxon jurisprudence.

Another example. Section 9(a) forbids substantially all employees of the federal government to take "an active part in political management or in political campaigns", although they may "express their opinions on all political subjects".

No terms are defined.

This is language out of Civil Service rules. It is perfectly fair applied to people with a Civil Service security for their jobs who do not have to deserve or retain political favor to have a Senator or Congressman endorse them for appointment or reappointment.

But this bill applies such a rule to thousands of federal employees who do not have Civil Service status, like United States District Attorneys and Marshals, Collectors and Deputy Collectors of Internal Revenue, and employees of great emergency agencies like the Reconstruction Finance Corporation, for instance.

Members of the Congress will, I think, take judicial notice of the fact that they have themselves insisted that in order to secure many of those positions, or to retain such positions through a crisis of reappointment, appointees have had to enjoy political favor presumably in return for political services rendered, or to be rendered. Indeed, some of the most difficult relations between the Executive and the Congress at this very session have turned upon that problem. I will watch with interest the practical effect of Section 3 of this bill upon that situation.

I ask the Congress to be fair and not hypocritical about the position of these thousands of government servants.

Many of them are among the most capable in the federal service. They do not have Civil Service security. But under the terms of Section 9, except for a handful of special exemptions, they are expected to live the same retired non-political life as the Civil Servant with a secure status. While one of these non-Civil Service federal servants must fold his hands so far as politics is concerned, the bill leaves others completely free to amass political credit in competitive bidding for his job--any aspirant ~~for the job~~ of another political party -- or even of his own political party -- and, in particular, any State or municipal official holding down a comparable local job and ^{enjoying} ~~obviously enjoying~~ his better federal job.

Either these men should have merit jobs ~~which were~~ protected by a merit status or be allowed to defend with politics jobs that can be retained

only through politics. Once more, their plight points up the necessity of bringing State and municipal and local employees within the scope of this bill if there is any serious intention to make it workable.

I have appointed a committee to study feasible ways of blanketing many of this class of employee under the Civil Service.

I call upon the Congress, in fairness, either to blanket the remainder of these employees under Civil Service or to grant exemptions from Section 9 down to the point where the Congress is willing to apply the Civil Service. Otherwise, every Member of Congress knows that this section will either be grossly unfair or grossly unenforceable.

This Administration has put on the statute books far-reaching ^{is} legislation which/~~is~~ no better than the men who administer/^{it.}~~them~~. For those ~~statutes~~ statutes it has tried hard to find a quality of public servant better than any Administration before has ever found in quantity.

At the best it is hard to keep such men, at the rate of pay that government will pay and under the terms of abuse that are always the lot of the government servant. In its present form this bill would add on top of all this, living under a net of suspicion and watchfulness of an OGPU of political informers ever on the lookout to transform some innocent remark about politics into an indictment or a dismissal, or standing helplessly by while others compete politically for his political job.

That is not taking politics out of government.

That is making government nothing but politics.

And it is not fair.

Non-policy making jobs ought to be taken out of politics, but the way to take such jobs out of politics is to remove them through Civil Service from the field of political patronage.

Continually and consistently I have urged upon the Congress the only real remedy for the spoils system which compels government officeholders to act as parts of a political machine, i.e., the extension upward, downward and outward of the principles of Civil Service. As a matter of fact, in

connection with the reorganization bill and at other times the Congress, including many of those who have voted for this bill, has continually and consistently whittled down such recommendations of mine concerning the extension and effective applications of Civil Service principles.

Despite such whittling down, however, it is a fact that legislation recommended by me, and adopted by the Congress, has succeeded over six years in applying Civil Service principles to a larger number of officeholders and administrative personnel than at any other time in our history, and to a far larger proportion of officeholders and administrative personnel in the federal government than in any state government in the country.

Money and Politics in Government.

To take money out of politics, to take politics out of government, this Administration has striven as has none other in American history.

The insidious influence of money in elections has been a growing menace ever since the famous campaign of Mark Hanna. The growing concentration of wealth has made it progressively more easy to apply. Indications increase that unless the Congress takes fundamental action to prevent it, the successors of Mark Hanna will make the elections of 1940 memorable.

But no fair-minded person can say of this Administration, as could be said of many of its predecessors, that it has sold or mortgaged the government of the United States or the well-being of the people of the United States to campaign contributors. The one key to the White House is still in my pocket.

I thoroughly approve of any practical means which can be taken to protect all workers in government whether relief workers or others, from the sordid practice of enforced contributions to political funds.

But just as it is retrogression and not progress to build up

and strengthen the political influence of state and local machines by imposing upon federal officeholders restrictions which do not equally apply to state and municipal officeholders; so it may be retrogression and not progress to build up and strengthen the influence of those who contribute to political campaigns in the hope of securing economic advantages and privileges by imposing restrictions upon those who contribute to political campaigns in the hope of securing political jobs.

So far as political funds are concerned, I am convinced that any realistic treatment of the abuse of political funds must reach the disparity between the amount of campaign contributions openly or secretly available to contending political parties.

Everyone knows that the attempt to control the superficial aspects of the situation through the Corrupt Practices Act has been consistently evaded by methods of surreptitious contribution.

It has always seemed to me unimportant whether the political faction with the wrong candidate and the wrong platform had too much money to spend, provided the party with the right candidate and the right platform had enough to spend to put its case fairly before the country. Given a decent advocacy of the issues the American people can be trusted to find the truth.

I therefore propose for the consideration of the Congress in any revision it may see fit to make of this bill the incorporation of the following plan.

Let Congress recognize the fact of the party system in American politics.

Let Congress appropriate for each important party, for the coming elections and for succeeding elections under standards specified in the Act, a sum adequate to permit the party to put its principles fairly before the country.

For the two major parties I propose that the sum for a national campaign should be the same, and, based upon the filed returns of the expenses of the 1936 campaign, that the sum be \$5,000,000 for each party. Special care should be taken so as not to obstruct the growth of new parties to meet new needs. For any substantial third party proportionate sums should be granted.

The sum of \$5,000,000 per national election is adequate for public education on the issues involved. Sums additionally spent over that \$5,000,000, from outside sources open or secret, would arouse public suspicion, and would bring such a diminishing rate of return that they could be a matter of diminishing public concern.

The entire plan might cost the federal treasury \$15,000,000 for each national campaign.

But the appropriation of that \$15,000,000, I am convinced, would save the American people hundreds of millions of dollars in eliminating trails of corruption in public life which are almost impossible to trace. The American people should never forget that the sale of Teapot Dome was conceived as a way of making up out of the property of the people, out of stolen oil, a deficit in a campaign fund.

There are many generous contributors to campaign funds honestly interested in the preservation and development of political democracy in the United States. There are others who expect -- however mistakenly -- to keep double-entry books.

Our political system has grown up as a seamless web. You cannot change the pattern of part of it without considering the effect upon all of it.

As I have said, I completely understand and appreciate the evils this bill is trying to reach. But I am sure of three things.

First, in its present form it only creates greater evils than it seeks to cure.

Second, it can be effectively revised along the lines that

I have indicated to do a really effective job of reshaping our political technique to the interest of an enduring democracy.

Third, that effective revision can be accomplished in time for the next national election -- and conventions.

I had never hoped that in my Administration it would be possible to achieve at one stroke the elimination of politics from national government - toward which the eagerness of Congress for this bill is such an auspicious beginning. I am heartily for the objectives and the promise of this bill. I am sending it back because I want Congress to do a really good job. And I am sure Congress wants to do a really good job.

PSF.
Hatch Bill

LEGAL NOTES

Under its constitutional authority to regulate the manner of holding federal elections, the Congress may employ all means that are necessary and proper to the exercise of this authority.

Such means undoubtedly include prohibition of the use by federal employees of their official authority to interfere with or affect a federal election.

It is very doubtful whether they would include prohibition against taking any active part in all political affairs. This prohibition probably is based rather on the right of the federal government to impose conditions of employment on its own employees, subject only to rights and privileges guaranteed to them by the federal constitution.

Would they include, then, prohibitions on state and local employees from engaging in all political activities? Only if on the basis of facts and experience that were found to be necessary and proper as a means of regulating the manner of holding federal elections.

If the propriety of such a restriction be conceded, then it would seem to follow at least theoretically that private citizens could be forbidden to engage in such activities. ^{Provided there is any substantial relation,} It would be a question of degree and the judgment of the Congress as to the effect of such activities,

~~(Specially)~~ ^(the extent to which they interfere and the character of the interference) Broadly, the activities of state and local employees are subject only to regulation by the state governments, except when they affect the manner of holding federal elections and the integrity of those elections.

The use of their official authority by state and local employees to affect a federal election is in the same position as the use of private authority. If it takes the form of invading the freedom of the ballot or the integrity of the federal election, it may be regulated and forbidden.

If without doing either it is merely calculated to influence public opinion, it might conceivably reach such proportions or take on such a character as to require complete prohibition in order to protect federal elections from undue local interference. It would have to become a public evil in fact and substance, rather than theory, to justify such an extension of federal power.

It is believed, moreover, that if public officials (state and local) can be curbed to this extent in the exercise of their authority over matters that are exclusively of state concern, then private persons could be curbed to the same extent.

Remember that we are not dealing merely with local officials that have duties to perform in relation to elections. We are dealing with all local officials, - coroners, legislators, supervisors, superintendents of the poor, governors, state attorneys, etc.

The possibility of such a general condition arising or existing as would call for a prohibition against any use of official authority by state officials to influence public opinion and affect an election, may be conceded. I am not sure that it could now be supported with evidence.

To say further that a condition exists or might exist that justifies a curb on mere political activities by state officials is to stretch theory to the utmost. So far as federal elections are concerned, it is no more improper for local public officials to take active part in political affairs than for private citizens.

The theory might conceivably be stretched to that. But this merely serves to demonstrate the danger of pursuing that theory on a basis of pure logical reasoning. It leads to the complete suppressing of all political activities and the negation of democratic methods.

In section 1 the Congress is on safe ground. It could probably go farther and include state and local officials within the scope of section 2. *Bringing them under section 2 is very hazardous & doubtful.*

RSE
Hatch
Bill

As I understand it, the purported broad objectives of this bill are two:

(a) It seeks to free federal elections from the subversive use of money; and

(b) It seeks to free federal elections from alleged subversive activities of the administrative personnel of government in political organizations.

Exhort the objectives are to take money out of politics and take government out of politics.

If such are the real objectives of this bill all right-thinking citizens commend them - they are objectives for which this Administration has consistently striven as has none other in American history.

I hereby, however, veto this particular bill.

I veto it because it does not go far enough to achieve those objectives, and because by not going far enough it will create conditions far worse than it finds them.

Grave doubts have been expressed to me as to the constitutionality of this bill - because of the vagueness of its provisions, because of the restraints it places upon rights of freedom of speech and freedom of assembly - in these days of contempt in many places for the personal liberties of others.

veto

But this/does not turn on that ground. I believe that the Congress the has/widest powers to protect the functioning of the federal government, and nothing is more important to that protection than the integrity of national elections. I believe that on constitutional questions Congress should be given the benefit and take the responsibility of doubt.

I approve all of the bill except Sections 2 and 9.

Those sections of the bill which are designed to prevent relief workers from being abused for political purposes, i.e., Sections 4, 5, 6, 7 and 8 - I approve.

They are in accord with my relief message of January 5, 1939, from which I quote.

"It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress, and that this should be done. Such penalties should be imposed not only upon persons within the administrative organization of the Works Progress Administration, but also upon outsiders who have in fact in many instances been the principal offenders in this regard. My only reservation in this matter is that no legislation should be enacted which will in any way deprive workers on the Works Progress Administration program of the civil rights to which they are entitled in common with other citizens."

Sections 1 and 3 which apply to the activities of all persons without regard to their office I also approve.

If sections 2 and 9 are cut away and the rest of the bill is offered to me as a separate bill, as it very simply and quickly can be, I will sign such a bill. [I am sending this message today -- four days before the expiration of my constitutional power to act -- in order that Congress may, if it chooses, accept that opportunity.]

But the Constitution does not permit me to veto in part and approve in part. I must sign the bill entire -- or veto it entire.

Therefore, since I am not permitted to separate the good provisions from the bad provisions and since I cannot in conscience agree to the bad provisions, I am reluctantly compelled to send the bill back to Congress for revision.

I am vetoing this bill for two reasons:

First. It fails to exercise the undoubted power of Congress to take state, local, and municipal officeholders and employees out of national politics just as completely as the bill purports to take federal employees and officials out of national politics. That granting of a monopoly of political organization to state, local and municipal politicians will defeat the very purported objectives of the bill. It will put money further into politics -- it will put politics further into government.

Second. Some of the provisions of the bill [sections 2 and 9] are so dangerously vague and sweeping that they will weaken the position of those public officials who are accustomed to speak frankly and to act openly within the law, and, to the same degree, strengthen the hands of other officials and professional politicians accustomed in some instances to operate otherwise. In the confusion resulting from the bill's vagueness, the latter will find ways around and through the law.

Either the bill will be practically unenforceable -- a breeder of widespread violation like bootlegging under prohibition -- or it will be an instrument of oppression to curtail freedom of action of all decent people in the difficult business of democratic government.

Fifteen months intervene before the next general federal elections. Twelve months at least intervene before the next national conventions.

There is, therefore, plenty of time for Congress to do in a thorough and forthright manner the fundamental job of taking money and politics out of government.

That Congress desires to do this it is not for me to doubt. I assume that Congressmen, who have long claimed the right to be consulted about appointments to local federal offices, are now prepared to relinquish this claim or, in any case, to cease proposing for appointment the names of persons who have actively participated or whom they hope will participate in their own political operations.

Needless to say, while any President welcomes the advice of members of Congress in such matters, yet in the workings of our imperfect democracy this method of operation sometimes imposes a burden and a strain on the Chief Executive that offsets its advantages, and I will not oppose this added step toward taking politics out of government. I mention this apparent inclination of Congress, however, solely as an evidence that Congress is disposed at this time to do a fundamental job and is, I am sure, prepared to give serious consideration to a proposal I shall make in this message whereby a truly great step may be taken toward cleaner and fairer national elections.

First, however, I wish to discuss certain vicious aspects of the present bill which I believe may easily be remedied.

Failure to Regulate State, Local and Municipal Officials.

One vicious aspect of this bill is the disregard of the fact that under our election practices, federal, state, municipal and other local elections are all held at the same times, in the same polling places, on the same ballots, through the same campaign machinery, and under the common auspices of interlocked and unified political organizations.

In American political practice we do not have watertight compartments. Party organizations including local as well as federal officeholders, campaign for an all inclusive party "ticket". And since officeholders and employees in state, municipal and local government are nearly four (?) times the number of officeholders and employees in federal government, state officeholders are even more influential in these joint elections for federal and local office than federal officials can possibly be.

Under such circumstances no good, and only harm, can result from sections 2 and 9 of this bill unless their scope is extended to regulate officeholders and employees in state, municipal and other local governments in relationship to federal elections just as effectively as federal officeholders are purported to be regulated.

Unless this is done it is my firm opinion, based upon years of practical experience with both federal and state situations, that instead of making progress toward a goal of pure federal elections, this bill in its present form will simply pollute present conditions.

I propose therefore that the Congress treat all public officeholders and employees alike; and if "affecting" or "taking an active part in" a primary or election for federal office are to be made federal crimes punishable by fine and imprisonment or loss of job for federal officeholders, they be similarly made federal crimes for state, municipal and local officeholders.

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Suppose he says that to his neighbor on his own front porch at home. Clearly that would seem not to be a violation of the law.

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Or suppose he repeats that commendation on the edges of a political meeting which he is attending, like any other American citizen, in a district which depends upon appropriations for reclamation projects.

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It will take many years for the courts to know. But in the meantime a Federal District Attorney anytime within the period of the Statute of Limitations may by asking for an indictment interpret this vague language to harm seriously a man whose only offense has been [1s] the ineradicable interest of a good citizen in his government.

Men subject to political revenges have been framed before.

It is one thing to write such language into Civil Service rules. There the penalty is at most discharge by the appointing officer -- and the employee is protected by the fact that a superior officer, discharging a civil servant, has to justify his action in a report to the Civil Service Commission -- which understands the ways of intriguers and informers and understands the conditions of Congressional pressure (through giving or withholding appropriations for instance) under which government servants have to work.

It is an entirely different thing to put such a vague and sweeping suppression of the native American interest in politics into a penal statute, with penalties of imprisonment.

I refuse to say that the language is unconstitutional.

But I do say that every lawyer in the Congress knows the language to be so doubtfully constitutional that it cannot be depended upon to be legally reliable.

I do say that every man in political life knows that this defective language will have two practical results. It will tyrannize every honest man in government to abandon his birthright as an American citizen to be sure that he keeps out of trouble. It will encourage every venal man in politics to take what a criminal lawyer will tell him is a better than even chance of escaping under such a poorly-drawn statute.

If the Congress is serious about taking venal politicians out of government, I hope it will not court failure with another prohibition law like this. Rather it will rewrite the section until it accords with accepted standards of legality and practicability of Anglo-Saxon jurisprudence.

Another example. Section 9(a) forbids substantially all employees of the federal government to take "an active part in political management or in political campaigns", although they may "express their opinions on all political subjects".

No terms are defined.

This is language out of Civil Service rules. It is perfectly fair applied to people with a Civil Service security for their jobs who do not have to deserve or retain political favor to have a Senator or Congressman endorse them for appointment or reappointment.

But this bill applies such a rule to thousands of federal employees who do not have Civil Service status, like United States District Attorneys and Marshals, Collectors and Deputy Collectors of Internal Revenue, and employees of great emergency agencies like the Reconstruction Finance Corporation and the Public Works Administration for instance.

Members of the Congress will, I think, take judicial notice of the fact that they have themselves insisted that in order to secure many of those positions, or to retain such positions through a crisis of reappointment, appointees have had to enjoy their political favor, presumably in return for political services rendered, or to be rendered. You know and I know that this bill has its origins in efforts to bring WPA into politics which culminated in the demand of the Senate that state administrators of federal relief be put under political control of the Senators through confirmation -- after the play upon the Senators of the pressures of state, local and municipal political organizations.

Indeed, some of the most difficult relations between the Executive and the Congress at this very session have turned upon that problem. It is also interesting to note that while this bill purports to take federal appointees out of politics, this session has seen an increasing demand by the Senate for political confirmation of more appointees than ever before in history.

I will watch with interest the practical effect of section 3 of this bill upon that situation.

I ask the Congress to be fair and not hypocritical about the position of these thousands of non-Civil Service government servants.

Many of them are among the most capable in the federal service. Under the terms of section 9, except for a handful of special exemptions, they are expected to live the same retired non-political life as the

Civil Servant with a secure status. So far as politics is concerned one of these non-Civil Service federal servants must fold his hands.

But while he stands helplessly by the bill leaves completely free to amass political credit in competitive bidding for his job any other aspirant for that job -- an aspirant of another political party -- a jobless aspirant of his own political party -- and, in particular, any state or municipal official holding down a comparable local job and envying his better federal job.

Either these political appointees should have Civil Service jobs protected by a Civil Service status or be allowed to defend with political activity jobs that you will permit them to retain only through political activity. Once more, their plight points up the necessity of bringing state and municipal and local employees within the scope of this bill if there is any serious intention to make it workable.

I have already appointed a committee to study feasible ways of bringing many of this class of employee under the Civil Service.

I call upon the Congress, in fairness, either to help me bring the remainder of these employees under Civil Service or to grant exemptions from section 9 down to the point where the Congress is willing to apply the Civil Service.

Otherwise, every member of Congress knows that this section will either be grossly unfair or grossly unenforceable.

This Administration has put on the statute books far-reaching legislation which is no better than the men who administer it. For those statutes it has tried hard to find a quality of public servant better than any Administration before has ever found in quantity.

At the best it is hard to keep such men, at the rate of pay that government will pay and under the terms of abuse that are always the lot of the government servant. In its present form this bill would add on top of all this, living under a net of suspicion and watchfulness of an OGPU of political informers ever on the lookout to transform some innocent remark about politics into an indictment or a dismissal, or standing help-

lessly by while others compete politically for his political job.

That is not taking politics out of government.

That is making government nothing but politics.

And it is not fair in a situation which Congress itself has created.

Non-policy making jobs ought to be taken out of politics, but I agree with Senator Norris that the way to take such jobs out of politics is to remove them through Civil Service from the field of political patronage.

Continually and consistently I have urged upon the Congress the only real remedy for the spoils system which compels government officeholders to act as parts of a political machine, i.e., the extension upward, downward and outward of the principles of Civil Service. As a matter of fact, in connection with the reorganization bill and at other times the Congress, including many of those who have voted for this bill, has continually and consistently whittled down such recommendations of mine concerning the extension and effective applications of Civil Service principles.

Despite such whittling down, however, it is a fact that legislation recommended by me, and adopted by the Congress, has succeeded over six years in applying Civil Service principles to a larger number of officeholders and administrative personnel than at any other time in our history, and to a far larger proportion of officeholders and administrative personnel in the federal government than in any state government in the country.

Money and Politics in Government.

To take money out of politics, to take politics out of government, this Administration has striven as has none other in American history.

The insidious influence of money in elections has been a growing menace ever since the famous campaign of Mark Hanna. The growing

concentration of wealth has made it progressively more easy to apply. Indications increase that unless the Congress takes fundamental action to prevent it, the successors of Mark Hanna will make the elections of 1940 memorable.

But no fair-minded person can say of this Administration, as could be said of many of its predecessors, that it has sold or mortgaged the government of the United States or the well-being of the people of the United States to campaign contributors. The one key to the White House is still in my pocket.

I thoroughly approve of any practical means which can be taken to protect all workers in government whether relief workers or others, from the sordid practice of enforced contributions to political funds.

But one thing should be remembered from the broad point of view. It is retrogression and not progress to build up and strengthen the political influence of state and local machines by imposing upon federal officeholders restrictions which do not equally apply to state and municipal officeholders. It may equally be retrogression and not progress to build up and strengthen the influence of those who contribute to political campaigns in the hope of securing economic advantages and privileges -- government contracts and government property -- by imposing restrictions upon those who contribute to political campaigns in the humbler hope of securing political jobs.

So far as political funds are concerned, I am convinced that any realistic treatment of the abuse of political funds must reach the disparity between the amount of campaign contributions openly or secretly available to contending political parties.

Everyone knows that the attempt to control the superficial aspects of the situation through the Corrupt Practices Act has been consistently evaded by methods of surreptitious contribution.

I want to take the insidious influence of money out of politics. But I am less concerned that the political faction with the wrong candidate and the wrong platform should have too much money to spend, than I am that

the party with the right candidate and the right platform should have enough to spend to put its case fairly before the country. Given a decent advocacy of the issues the American people can be trusted to find the truth.

I therefore propose for the consideration of the Congress in any revision it may see fit to make of this bill the incorporation of the following plan.

Let Congress recognize the fact of the party system in American politics.

Let Congress appropriate for each important party, for the coming elections and for succeeding elections under standards specified in the Act, a sum adequate to permit the party to put its principles fairly before the country.

For the two major parties I propose that the sum for a national campaign should be the same for each, and that the sum should be equal to an amount which splits the difference between the filed returns of the expenses of the Republican and Democratic parties in the 1936 campaign. Special care should be taken so as not to obstruct the growth of new parties to meet new needs. For any substantial third party proportionate sums should be granted.

Sums additionally spent over these Congressional grants, from outside sources open or secret, would arouse public suspicion, and would bring such a diminishing rate of return that they could be a matter of diminishing public concern.

Such an appropriation would, I am convinced, save the American people hundreds of millions of dollars in eliminating trails of corruption in public life which are almost impossible to trace. The American people should never forget that the sale of Teapot Dome was conceived as a way of making up out of the property of the people, out of stolen oil, a deficit in a campaign fund.

There are many generous contributors to campaign funds

honestly interested in the preservation and development of political democracy in the United States. There are others who expect -- however mistakenly -- to keep double-entry books.

Our political system has grown up as a seamless web. You cannot change the pattern of part of it without considering the effect upon all of it.

As I have said, I completely understand and appreciate the evils this bill is trying to reach. But I am sure of three things.

First, in its present form it only creates greater evils than it seeks to cure.

Second, it can be effectively revised along the lines that I have indicated to do a really effective job of reshaping our political technique to the interest of an enduring democracy.

Third, that effective revision can be accomplished in time for the next national election -- and conventions.

Instead of the patch-work of this bill I call upon the Congress for a real program--

1. Amendment of the scope of this bill to reach all office-holders and public employees -- in state, local and municipal governments as well as the federal government.
2. Amendment of the language of this bill to make it certainly constitutional -- to make it reliably enforceable by law -- and not an instrument of tyranny by an OGPU of informers and framers.
3. Extension of Civil Service status and protection to all federal administrative appointees except those specifically exempted from section 9 of this bill.
4. Relinquishment of Senatorial confirmation of all federal administrative appointments except those specifically exempted from section 9 of this bill.
5. Congressional appropriation of campaign funds to end the burden upon the democratic election process of concentrated economic power.

I had never hoped that in my Administration I could see the possibility of eliminating politics from national government -- toward which possibility the eagerness of Congress for this bill is such an auspicious beginning.

I am heartily for the promise as well as the objectives of this bill.

I am sending it back because I want Congress to do a really good job.

And I am sure Congress wants to do a really good job.

PST-
Hatch Bill

The fundamental ideas behind this treatment of the Hatch Bill are:

1. By demanding that all state officials and employees be included (as they constitutionally certainly can) the resistance of members of Congress under pressure from state political machines may very well be increased to the point where there will be no bill passed at all.
2. If state officials are included in a revision of the bill the political situation will become so mixed up that it cannot help but result to advantage.
3. Opportunity is given to parade the Civil Service accomplishments of the Administration and its remarkable freedom from scandal and graft.
4. Opportunity is given to sound for the first time a note which should recur from now on - warning about the use of money by the other side.
5. The money proposal on the last two pages may be sound - depending on circumstances, i.e., by whom it is to be spent, national committee officials or otherwise, and where the control of such officials will lie.

Even if not sound it will provide so much discussion that it will red-herring any headlines about the vetoing of the bill.

As I understand it, the purported broad objectives of this bill are two:

(a) It seeks to free federal elections from the subversive use of money; and

(b) It seeks to free federal elections from the subversive use of the administrative personnel of government for purposes of party organizations and the manipulation of elections.

In short the objectives are to take money out of politics and take politics out of government.

If such are the real objectives of this bill all right-thinking citizens commend them.

And if such are the real objectives of this bill they are objectives for which this Administration has striven as has none other in American history.

The insidious influence of money in elections has been a growing menace ever since the famous campaign of Mark Hanna. Indications increase that unless the Congress takes fundamental action on the subject of political contributions the successors of Mark Hanna will make the elections of 1940 memorable for the lavish use of money.

But no fair-minded person can say of this Administration, as could be said of many of its predecessors, that it has sold or mortgaged the government of the United States or the property or the well-being of the people of the United States to campaign contributors. The policy of this Administration has been to keep money out of politics.

As for the use of federal funds, relief or otherwise, in election campaigns, I laid down in my message of January 5, 1939, to the Congress the following pledge of policy of which sections 5, 6 and 7 of the present bill - with which sections I am heartily in accord - are declarative.

"No one wishes more sincerely than I do that the program for assisting unemployed workers shall be completely free from political manipulation.

"It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress, and that this should be done. Such penal-

ties should be imposed not only upon persons within the administrative organization of the Works Progress Administration, but also upon outsiders who have in fact in many instances been the principal offenders in this regard. My only reservation in this matter is that no legislation should be enacted which will in any way deprive workers on the Works Progress Administration program of the civil rights to which they are entitled in common with other citizens."

The second purported broad objective of this bill is to eliminate the use of the personnel intended to carry on the business of government as a political mechanism for manipulating elections. Toward this objective also this Administration has gone further than any other administration in history.

Continually and consistently I have urged upon the Congress the only real remedy for the spoils system which compels government officeholders to act as parts of a political machine, i.e., the extension upward, downward and outward of the principles of Civil Service. As a matter of fact, in connection with the reorganization bill and at other times the Congress, including many of those who have voted for this bill, has continually and consistently whittled down such recommendations of mine concerning the extension of Civil Service principles.

Despite such whittling down, however, it is a fact that legislation recommended by me, and adopted by the Congress, has succeeded over six years in applying Civil Service principles to a larger number of officeholders and administrative personnel than at any other time in our history, and to a far larger proportion of officeholders and administrative personnel in the federal government than in any state government in the country.

Of the practical devotion of this Administration to the broad objectives of this bill therefore there can be no doubt. We have given them no mere lip service.

I am, however, vetoing this bill.

I am vetoing it because in its present form it is so poorly drawn that it not only fails to carry out those objectives but actually interferes with the progress already made toward them.

I am returning this bill to Congress with specific suggestions as to how it may be revised so that it does carry out those objectives in full and with adequate draftsman's care to avoid constitutional, administrative, and practical difficulties arising from vagueness.

I am returning the bill to Congress for such revision, knowing that with more than 14 months intervening before the next general federal election there is plenty of time to do in a thorough and fundamental manner the fundamental job which this bill purports to attempt.

The present bill has a fundamental vice.

It ignores the fact that under our election practices, federal, state, municipal and other local elections are all held at the same times, in the same places, on the same ballots, through the same machinery, and under the common auspices of interlocked and unified political organizations. In American political practice we do not have watertight compartments. Party organizations including local as well as federal officeholders, campaign for an all inclusive party "ticket". And since officeholders in state, municipal and local government are nearly four times the number of officeholders in federal government, state officeholders are even more influential in elections for federal office than federal officials can possibly be.

The scope of this bill should be extended to regulate (organizations of) officeholders in those state, municipal and other local governments in relationship to federal elections as effectively as federal officeholders are purported to be regulated. Unless this is done it is my opinion, based upon years of practical experience with both federal and state situations, that instead of making progress toward a goal of pure federal elections, this bill in its present form will simply pollute present conditions.

Those familiar with the political process know that if federal officeholders are prohibited from participating in that process the power of political organization in federal as well as state elections will be

concentrated in state and local machines whose point of view is local rather than national. Officeholders who wish to campaign in elections will by well-known processes be shifted from federal to state payrolls, and those who contribute little to state elections will be shifted to federal payrolls.

Realistically the consequences will be administrative confusion and inefficiency during a long period of shifting jobs and an end result of a redirection of political power rather than eradication of political corruption.

So-called "political machines" composed of state and municipal officeholders have given the public no reason to believe that they have a higher regard for the public interest than federal officeholders who are members of national party organizations. Indeed there is some evidence to the contrary.

We will not improve the morale of our political life by silencing and intimidating federal officeholders, and by leaving political management to state officials and professional politicians who know how things can be done within the law or who are willing to skate on the thin edges of the law.

I believe therefore that if the Congress denies federal officeholders the right to participate in political campaigns, it must similarly prohibit state and local officeholders from participating in any federal election or primary or in any state or local contest which substantially affects any federal election or primary.

The power of the Congress so to increase the scope of this bill cannot be doubted.

Under Art. I, Sec. 4 of the Constitution the Congress has the authority to protect the federal electoral process from direct assault. It has equal power to protect the federal electoral process from indirect assault. The Supreme Court has unquestionably so held. Ex Parte Siebold, 100 U.S. 371;

Ex Parte Yarbrough, 110 U.S. 651; In re Coy, 127 U.S. 731; United States v. Mosley, 238 U.S. 383; and Burroughs v. United States, 290 U.S. 534.

An opinion of the Attorney General completely covering the subject is appended hereto.

I propose therefore that in a revision of this bill the Congress treat all officeholders alike; and if participation in a campaign for federal office is to be made a federal crime punishable by fine and imprisonment for federal officeholders it be similarly made a federal crime for state, municipal and local officeholders.

In addition to creating such a federal crime for federal officeholders, the present bill creates another method of enforcement of its provisions by providing in substance that no federal funds shall be available for the payment of compensation to violators.

At the present time large subsidies of federal funds are being made available to states for such purposes as road building, public works and relief grants, social security benefits, etc. I propose to the Congress that in a revision of this bill some appropriate provision be made that such contributions shall be available to such local bodies only so long as no employees or officeholders compensated from projects receiving such funds, violate the law as revised to include non-federal officeholders.

The constitutional authority of Congress on this point is equally clear.

Furthermore, with respect to federal and local officeholders alike, the bill should be revised to eliminate its present dangerously vague language. Such language will on the one hand either render the bill practically unenforceable, creating a chaotic situation of widespread violation akin to the bootlegging of the prohibition era, or on the other hand render it an instrument of oppression to curtail freedom of speech and freedom of assembly.

Let me give you two instances, one under Section 2, one under Section 9.

In its present form Section 2 forbids without exception or limitation every person "employed in any administrative position by the United States to use his official authority for the purpose of affecting the election or nomination" of any candidate for federal office.

The statute does not define "administrative position", "official authority" or "affecting".

Suppose during the 1940 campaign rival candidates should debate the issue of the efficacy or administration of the Securities Exchange Act. Suppose the Chairman of the Securities Exchange Commission, in response to inquiry or otherwise should reply to criticism of the Act or the Commission. Obviously he would be assisting the candidate defending the Act.

Would that constitute "affecting" the election of that candidate so that the Chairman of the Commission would go to jail for making an honest effort to educate the public about the scope and nature of his own duties?

Section 9(a) forbids substantially all employees of the federal government to take "an active part in political management or in political campaigns", although they may "express their opinions on all political subjects".

No terms are defined.

When does "expression of opinion" grow up to be "an active part" in political campaigns?

Suppose an employee of the Department of Agriculture - a county agent for instance - tells his neighbor that Mr. A is a good candidate.

Would that be merely an "expression of opinion" on a political subject? I should think so.

But does the county agent go beyond "expression of opinion" to "an active part" in a political campaign,

if he repeats that good opinion of candidate A to a group in the country store -

if he repeats that good opinion in lodge meeting -

if he repeats that commendation on the public hustings?.

Somewhere the kitten becomes a cat.

Where?

Under this bill nobody knows.

But assuming that as a penal statute it will not be declared unconstitutional for ambiguity under well-settled doctrines of Anglo-Saxon civil liberties two classes of people can pretend to know and interpret this vague language to affect other people's property and other people's lives.

The first of those classes is a federal district attorney or any local official empowered to enforce federal penal laws. Such an official within the period of the statute of limitations which may be for as long as three years after the offense (within which time all presently known officials of this grade may be completely changed) may arbitrarily choose his penal victims on his own decisions of degree when an "expression of opinion" becomes "an active part in political campaigns".

The other class of person who can make decisions of degree is the person who decides that a federal employee loses his pay and his job for making the mistake of crossing the line of degree.

The present statute overrides all Civil Service protection against arbitrary dismissal. As a practical matter it puts every federal employee, whether under Civil Service or not at the mercy of a superior officer who chooses to interpret an exercise of the right "to express political opinion" as "taking an active part in any political campaign".

Rarely has there been offered to a President for his signature so insidious a law, so poorly thought through, and so carelessly unregardful of the need of high officials to educate the public, and of the need of the common man to be protected in his civil liberties and in his Civil Service status.

In its present form the bill strengthens the hands of those with easy political consciences and correspondingly weakens the hands of those public officials who are accustomed to speak frankly and to act openly. The conscientious public official will lean backwards while the less

conscientious official will know his way around the law.

Non-policy making jobs ought to be taken out of politics, but the way to take such jobs out of politics is to remove them from the field of political patronage through Civil Service and to provide some sort of security of tenure - not to jeopardize even what security of tenure now exists under Civil Service laws by superseding legislation such as this.

So long as it is not unlawful for Congressmen to claim a right to be consulted about the appointments to local federal offices, it is difficult to forbid those who hold these appointments from active participation in politics. The effect of this bill may be only to conceal from the public much that goes on behind the scenes.

I have earlier referred to the growing concern of all decent citizens over the use of money in political campaigns with the great increase of concentrated wealth in this country - and the unmistakable indications that in the coming campaign the power of wealth will be abused as never before.

As I have said earlier in this message, I thoroughly approve of any practical means which can be taken to protect all workers in government whether relief workers or others, from the sordid practice of enforced contributions to political funds. And I have no objection to this bill in so far as it properly seeks to set up special safeguards to protect relief workers and relief work from politics.

But I am convinced that any realistic treatment of the abuse of political funds must reach the disparity between the amount of campaign contributions openly or secretly available to contending political parties. Just as it is retrogression and not progress to build up and strengthen the political influence of state and local machines by imposing upon federal officeholders restrictions which do not equally apply to state and municipal officeholders; so it may be retrogression and not progress to build up and strengthen the influence of those who contribute to political campaigns in the hope of securing economic advantages and privileges by

imposing restrictions upon those who contribute to political campaigns in the hope of securing political jobs.

Everyone knows that the attempt to control the superficial aspects of the situation through the Corrupt Practices Act has been consistently evaded by methods of surreptitious contribution.

It has always seemed to me unimportant whether the political faction with the wrong candidate and the wrong platform had too much money to spend, provided the party with the right candidate and the right platform had enough to spend to put its case fairly before the country. Given a decent advocacy to delineate the issues the American people can be trusted to find the truth.

I therefore propose for the consideration of the Congress in any revision it may see fit to make of this bill the incorporation of the following plan.

Let Congress recognize the fact of the party system in American politics.

Let Congress appropriate for each important party, for the coming elections and for succeeding elections under standards specified in the Act, a sum adequate to permit the party to put its principles fairly before the country.

For the two major parties I propose that the sum should be the same, and, based upon the filed returns of the expenses of the 1936 campaign, that the sum be \$5,000,000 for each party. For any substantial third party proportionate sums should be granted.

The sum of \$5,000,000 per national election is adequate for public education on the issues involved. Sums additionally spent over that \$5,000,000, from outside sources open or secret, would arouse public suspicion, and would bring such a diminishing rate of return that they could be a matter of diminishing public concern.

The entire plan might cost the federal treasury \$15,000,000, one-sixth

of the cost of a battleship.

But the appropriation of that \$15,000,000, I am convinced, would save the American people hundreds of millions of dollars in eliminating trails of corruption in public life which are almost impossible to trace.

There are many generous contributors to campaign funds honestly interested in the preservation and development of political democracy in the United States. There are others who expect - however mistakenly - to keep double-entry books.

Our political system has grown up as a seamless web. You cannot change the pattern of part of it without considering the effect upon all of it.

As I have said I completely understand and appreciate the evils this bill is trying to reach. But I am sure of two things.

First, in its present form it only creates greater evils than it seeks to cure.

Second, it can be effectively revised along the lines that I have indicated to do a really effective job of reshaping our political technique to the interest of an enduring democracy.

PSF.
Hatch Bill

The fundamental ideas behind this treatment of the Hatch Bill are:

1. By demanding that all state officials and employees be included (as they constitutionally certainly can) the resistance of members of Congress under pressure from State political machines may very well be increased to the point where there will be no bill passed at all.
2. If State officials are included in a revision of the bill the political situation will become so mixed up that it cannot help but result to advantage.
3. Opportunity is given to parade the Civil Service accomplishments of the Administration and its remarkable freedom from scandal and graft.
4. Opportunity is given to sound for the first time a note which should recur from now on - warning about the use of money by the other side.
5. The money proposal on the last two pages may be sound - depending on circumstances, i.e., by whom it is to be spent, national committee officials or otherwise, and where the control of such officials will lie.

Even if not sound it will provide so much discussion that it will red-herring any headlines about the vetoing of the bill.

6. NOTE HOW PERFECTLY THE TREATMENT OF THE HATCH BILL IN TIME THIS WEEK, CLIPPING ATTACHED, RE-ECHOED IN ALL THE PRESS, HAS PREPARED PUBLIC OPINION FOR SUCH TREATMENT OF THE HATCH BILL.

THE NEW YORK TIMES, SUNDAY, JULY 23,

Hatch Bill as Sent to the President

SPECIAL TO THE NEW YORK TIMES.
WASHINGTON, July 22.—The text of the Hatch Bill, as sent to the White House yesterday, is as follows:

AN ACT

To Prevent Pernicious Political Activities

Be it enacted by the Senate and the House of Representatives of the United States of America, in Congress assembled, that it shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, member of the Senate or member of the House of Representatives at any election held solely or in part for the purpose of selecting a President, a Vice President, or a Presidential elector, or any member of the Senate or any member of the House of Representatives, delegates or commissioners from the territories and insular possessions.

Sec. 2. It shall be unlawful for any person employed in any Administrative position by the United States, or by any department, independent agency, or any other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof, to use his official authority for the purpose of interfering with, or affecting the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, member of the Senate, or member of the House of Representatives, delegates or commissioners from the territories and insular possessions.

Must Not Abuse Hiring Power

Sec. 3. It shall be unlawful for any person, directly or indirectly, to procure any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election.

Sec. 4. Except as may be re-

quired by the provisions of subsection (b) Section 9 of this act, it shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or made possible by any act of Congress appropriating funds for work relief or relief purposes, on account of race or creed, color or any political activity, support of, or opposition to any candidate or any political party in any election.

Sec. 5. It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, employment or other benefit provided for or made possible by any act of Congress appropriating funds for work relief or relief purposes.

Forbids Shipping of Lists

Sec. 6. It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment or benefit provided for or made possible by any act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee or campaign manager, and it shall be unlawful for any person to receive any such list or names of political purposes.

Sec. 7. No part of any appropriation made by any act, hereafter or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public-works projects, shall be used for the purpose of, and no authority conferred by any such act upon any person shall be exercised or administered for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election.

Sec. 8. Any person who violates any of the foregoing provisions of this act upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Policy-Makers Exempted

Sec. 9 (a). 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 affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects.

For the purposes of this section the term "officer" or "employee" shall not be construed to include (1) the President and Vice President of the United States, (2) persons whose compensation is paid from the appropriation for the office of the President, (3) heads and assistant heads of executive departments, (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the nation-wide administration of Federal laws.

(b). 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.

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 organization which advocates the overthrow of our constitutional form of government in the United States.

(2). Any persons 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.

Sec. 10. All provisions of this act shall be in addition to, not in substitution for, existing law.

Sec. 11. If any provision of this act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Time - July 31, 1939

NATIONAL AFFAIRS

Taking pen & paper, he scratched off a statement reiterating that he and the Secretary of State still maintain that failure to act now weakened U. S. influence in preserving peace.

Three hours had passed. At the end of it, Franklin Roosevelt's chin was still out and he talked lightly with his departing guests about other matters. Secretary Hull made no effort to hide his disappointment as he left. Vice President Garner left grinning.

Three days later, in Hyde Park, the President held a press conference. Never had reporters seen Franklin Roosevelt in such a mood of passive defeatism. Though not knocked out, he appeared definitely stunned by what he had taken. Only flash of his old self was a sidelong crack to the effect that the Senate, in leaving Neutrality up in the air, causing "uncertainty" (for which he has so often been blamed) and "fumbling" against war abroad, had ~~had~~ nipped a nice little boom.*

► The Hatch bill effectually demolished the national Roosevelt political machine, as distinct from the national Farley machine (composed of State bosses & underlings) which built up and elected Mr. Roosevelt in 1932, stayed with him in 1936. At the Philadelphia convention three years ago, about half the 1,100 delegates were Federal jobholders. Next year only Cabinet officers, Congressmen and a few top-rank policy officers of the Roosevelt regime may be delegates. Power unprecedented will be in the hands of the State bosses, Jim Farley's friends. The whole Roosevelt strategy of getting untrusted delegations for 1940 was out on the ropes. If ever there was a juncture when Franklin Roosevelt needed to talk with Jim Farley, this was it.

Two months ago Jim Farley completed a tour of 13 Midwestern and Western States to assay Roosevelt third-term sentiment. What he found was never published. He loyally saved it for Franklin Roosevelt's ear first. Weeks rolled by and Jim Farley was not asked for his information. Jim Farley did not like that. Then Mr. Roosevelt appointed brash, ambitious Paul McNutt, whom Jim Farley dislikes, to a post of honor and influence (Security Agency). Jim Farley boiled.

Last week came Jim Farley's call to Hyde Park. Reason given was that the President wanted to bid his able, surplus-producing Postmaster General good-bye before his vacation (six weeks in Europe, mostly Poland). Before going to Hyde Park, Jim Farley called on Jack Garner and Senator Burton Wheeler, two of the strongest anti-third-termers known to man. Stories were published that Jim

Farley had declared himself to them as of their kidney. Jim Farley announced:

"Any time I have anything to say I will say it publicly and definitely."

He denied nothing. At Hyde Park he met Franklin Roosevelt whirling down a lane in his handbraked Ford.

"Hello, Boss," said Jim Farley.

"Step in, Jim," said Franklin Roosevelt.

And away they went to talk all that afternoon, late into that night, more on Monday.

When reporters were at last allowed to approach the two men, Franklin Roosevelt ran the interview. He and Jim Farley had been having talks like this for eleven years, he said. Their results were usually "fairly effective," and would continue so. And that, said Mr. Roosevelt significantly, was all that reporters would get out of either of them.

If Jim Farley was still boiling, he masked it beautifully. "Nobody is going to catch up with me," he said. "Good-bye, Boss. I'll keep in touch with you." And away again went the 1940 Roosevelt riddle, its answer now (most reporters felt sure) locked in Jim Farley's bosom, its terms dictated (many a reporter suspected) by Jim Farley.

► Librarian of Congress & Mrs. Archi-



Arthur Griffin

JAMES FARLEY

"Nobody is going to catch up with me."

bald McLeish, also rotund Author Alexander Woollcott, were Presidential weekend guests and witnesses of a deed-signing ceremony whereby Franklin Roosevelt turned over to the Nation twelve Hyde Park acres where his books and State papers will be housed.

► Another caller-of-the-week: John L. Lewis, to tell the President what went on in C. I. O.'s packinghouse worker drive against Armour & Co. in Chicago.

► The President appointed to the ICC a onetime railroad brakeman, switchman,

conductor: William J. Patterson, 59, director of ICC's Bureau of Safety.

► In his dark political hour, Franklin Roosevelt received the comfort of a Gallup poll taken in France, which showed that he outranks other foreign statesmen for popularity among Frenchmen as follows: Roosevelt 58%, Chamberlain 22%, Stalin 4.5%.

THE CONGRESS

Collapse in the Capitol

The Capitol of the United States stood last week as white, massive and immovable as ever under the hot July sun. But within it took place a series of political upheavals more momentous than any since the Hundred Days of 1933. Explosion after smoky explosion blew away Franklin Roosevelt's last vestige of control over both houses of Congress. When the week ended, the Democratic Party lay split asunder, with the larger half lying away from the President, coalesced with the Republicans, the smaller half crumbling toward him in frightened fragments.

Starting as a sharp crack with the Court fight in 1937, the Democratic split had widened after Mr. Roosevelt's abortive Purge of 1938. The elections last autumn drove in fresh wedges so alarming to Mr. Roosevelt that he attempted no legislative program of his own in the 76th Congress except nonpartisan National Defense. Scornfully he challenged Congress to get a legislative program of its own. Slowly, awkwardly but with a determination which mounted as Mr. Roosevelt opposed and sneered at it, the Congress did formulate and pursue such a program.

Responsive to popular sentiment, it revised taxes against the President's will. Vote-hungry, it lavished money on farmers. Economy-minded (if not economy-willed), it pared the Relief outlay, tightened the rules, canceled projects it considered frittering. Stubborn, self-assertive, it would have taken away the President's monetary powers had he not been able to barter with enough venal Silver Senators. Weary of experiment, it harnessed TVA. But all these anti-Roosevelt actions were a gentle prelude to what came last week.

Suspicious of his motives, the Congress voted not to turn Franklin Roosevelt loose in world power politics. The scene one night last week upstairs in the Oval Room at the White House, with the President of the United States making one last, futile plea to a steadfast coalition of Senators grouped against his brand of Neutrality marked the nadir of collapse. In rapid succession other collapses followed.

Labor. Keystone of the temple built by the New Deal for Labor is the National Labor Relations Act, administered by the NLR Board. Last week a coalition of House Democrats (mostly Southerners

* In Washington, after citing sharp stockmarket rises that day, Senator Vandenberg wisecracked: "The third-term boom?"

† Unique in the deficit-producing Roosevelt regime, Mr. Farley last week reported a \$10,000,000 postal surplus for fiscal 1939, his fifth plus in six years.

PST
Hatch Bill

Shabby efforts

Studios - all on the worst
presumption I would sign
the bill.

Civil rights
legislation
states -

BF
Hatch Bill
1939

DSF
Hatch Bill

76th Congress }
1st Session }

SENATE

{ DOCUMENT
{ No. 100

PERNICIOUS POLITICAL ACTIVITIES

S. 1871

AN ACT TO PREVENT PERNICIOUS POLITICAL
ACTIVITIES AS AMENDED BY THE HOUSE
OF REPRESENTATIVES AND AGREED
TO BY THE SENATE



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1920

PERNICIOUS POLITICAL ACTIVITIES

(As agreed to in conference)

S. 1871

AN ACT TO PREVENT PERNICIOUS POLITICAL ACTIVITIES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any election held solely or in part for the purpose of selecting a President, a Vice President, a Presidential elector, or any Member of the Senate or any Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

SEC. 2. It shall be unlawful for any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), to use his official authority for the purpose of interfering with, or affecting the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

SEC. 3. It shall be unlawful for any person, directly or indirectly to promise any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any Act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election.

SEC. 4. Except as may be required by the provisions of subsection (b), section 9 of this Act, it shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election.

SEC. 5. It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation,

Submitted by Mr. O'MAHONEY

JULY 24 (legislative day, JULY 18), 1939.

1871, an act to prevent pernicious political activities by the House of Representatives and agreed to by the Senate as a Senate document.

EDWIN A. HALSEY,
Secretary.

employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes.

Sec. 6. It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment, or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

Sec. 7. No part of any appropriation made by any Act, heretofore or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public-works projects, shall be used for the purpose of, and no authority conferred by any such Act upon any person shall be exercised or administered for the purpose of, interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election.

Sec. 8. Any person who violates any of the foregoing provisions of this Act, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Sec. 9. (a) 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 affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purposes of this section the term "officer" or "employee" shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

(b) 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.

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 organization 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.

Sec. 10. All provisions of this Act shall be in addition to, not in substitution for, of existing law.

Sec. 11. If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.