

“ON THE ROAD” DURING THE CAMPAIGN SEASON: A PRACTICAL GUIDE TO POLITICAL ACTIVITY RESTRICTIONS

During an election year, senior officials and other employees of the Department of Health and Human Services (HHS) frequently are asked to deliver speeches or appear with incumbents at issues forums, town hall meetings, or other “official” events that, in a campaign season, may be perceived as “political.” Candidates, parties, or political groups also seek the assistance of senior political appointees for campaign-related events. Given the myriad restrictions that limit the political activity of Government officials, acceding to these requests poses particular challenges.

Candidates, campaign organizations, and political parties often are confused by the complexity of the political activity rules governing Federal executive branch employees. Press spokesmen, event planners, schedulers, campaign managers and treasurers, and others who work on behalf of candidates and parties face a perplexing array of requirements when they seek to engage the services and support of Administration officials or Department employees. Requests directed to cabinet and sub-cabinet political appointees to accompany a principal or to be a “surrogate” at political events—“meet-and-greets,” “grip-and-grins,” campaign rallies, retreats, strategy sessions, and fundraisers—or to endorse a candidate in print advertisements or television commercials raise a number of critical issues. Official events that involve an incumbent candidate, such as an issues forum, a public hearing, a speech, or an announcement of a Federal grant, pose a different set of legal concerns.

The law governing the political activities of Federal employees derives from a number of sources: (1) criminal statutes that address election offenses, patronage practices, and workplace solicitation; (2) the Hatch Act and implementing Office of Personnel Management regulations; (3) appropriations law limitations; and (4) government ethics rules. The interplay of these provisions does not present a cohesive and readily understandable set of rules. To many observers, the rules are arcane and overly technical. Others complain that the requirements are neither logical, intuitive, nor even sensible. Some even operate under the mistaken assumption that the rules were “reformed” or “repealed” so that employees are now free to campaign without limitation. Failure to understand and follow these rules, however, can result in serious consequences or embarrassment for the Federal official, the Department, the candidate and the party. Therefore, consultation with the Department and preclearance of events is required if an HHS official is to be involved. For example, the text of any invitation, flyer, poster, or press release regarding an event should be submitted to the Department for approval. The following guidance drafted in a question and answer format has been prepared so that various activities and events, whether official or political, can be planned to conform with the Federal requirements governing employee participation. The goals of this document are to promote the dissemination of official Administration views, where appropriate, and to facilitate employee participation in the political process, where permitted.



Official Events and Activities

If an incumbent Representative or Senator asks me to speak to a constituent group or participate in an issues forum, town hall meeting, or press conference in his district or State, can I do so officially?

You may deliver an official speech or provide Administration views on current issues at non-political, constituent events or other public appearances conducted by incumbent members of Congress in their districts or States, if your participation does not differ from other public information activities routinely conducted by your agency.

How can I tell if the activity is a “non-political, constituent event or public appearance”?

Clearly, events that involve: (1) the solicitation, making or acceptance of contributions to a party or a candidate's campaign, or (2) communications expressly advocating the nomination, election or defeat of any candidate are deemed political and campaign-related. However, the absence of solicitations for contributions or express advocacy regarding candidates is not determinative. Other factors, including the source of the invitation, the timing and location of an event, the identity of the attendees, statements or expressions concerning the purpose of an event, and the subject matter of the remarks or speech to be delivered, must be considered in determining whether an event is political.

Events initially classified as official on the schedule may be converted into political appearances through inadvertence. A reference to a candidate's campaign, or to the campaign or qualifications of another candidate, either during the speech or during any question and answer period (held just before or after the speech) may change the character of the appearance to one that is for the purpose of influencing a Federal election. For instance, if the official is asked whether the incumbent should be reelected and responds, the entire event could now be considered political. The Federal Election Commission particularly has stressed the significance of a question and answer period in circumstances where the individual appears just prior to the primary or election, and such questions and answers are a very foreseeable development.

To determine if an event is political, ask the following questions and evaluate the answers critically. Close cases should be resolved by presuming a political purpose. Remember that if the event is deemed political, you still may be able to participate, but under different ground rules. Consult the section of this guidance document that addresses political events.

Source of Invitation/Planner of Event

Did the invitation to speak come from an incumbent Senator or Representative on official stationery or on campaign or party letterhead? Is a candidate, party, or campaign organization, a political action committee, or an advocacy group sponsoring or planning the event?

Purpose of Event/Subject Matter

Is the event designed to raise support or funds for a candidate or a party or to reward contributors, or is its purpose to conduct a bona fide issues forum or educational seminar as a constituent service? Are you being asked to assess the current political situation or address discrete agency topics, such as Medicare policy, scientific research at the National Institutes of Health, or family assistance programs implemented by the Administration for Children and Families?

Location

Will the event occur in Washington, D.C., or is it scheduled in a key Congressional district or a State with a close Senate race?

Identity of the Attendees/Participants

Will the event be attended primarily by the candidate, campaign supporters, and financial contributors, or is the event a clearly public forum with expert presenters or knowledgeable participants and a non-partisan audience composed of constituents, program stakeholders, and others interested in the subject matter? Will public officials of the opposite party also attend or participate?

Timing

Has the event been scheduled as a “warm-up” for the requesting candidate or as a “rebuttal or response” to an opposition candidate? Does it occur during the campaign season immediately preceding a primary or the general election?

Candidate requests to provide an official agency spokesperson at events scheduled after Labor Day in an election year often are perceived as political. However, such activities appropriately are considered official, despite the timing of the event, if, for example, the subject matter is related to substantive agency programs, the audience is non-partisan, the event annually recurs in the relevant period, the speaker has attended previously in a non-election setting, or the event was scheduled months ago without reference to the impending election.

Assuming the event is official, are there any limits on what I can say?

You cannot endorse or oppose a candidate or political party, solicit funds or support for political purposes, or engage in political advocacy such as comparing and contrasting the positions of one candidate or party versus another. The tone must be non-partisan, the content informational, and the rhetoric non-political. However, you may tout the benefits of agency decisions and explain the merits of Administration proposals. The speech should be one that you would deliver without hesitation to a gathering of persons who were opposed to the Administration. In short, your speech is an official one in all respects; do not digress into campaign issues.

Can I announce a grant award, waiver approval, or other agency decision jointly with a Representative or Senator?

You may appear officially with a Member of Congress to announce decisions that have been fully vetted through appropriate channels and made in the ordinary course of government business. However, Federal law bars the use of official authority to affect the outcome of an election. An appointed policymaking official who bases a specific government decision on an intent to influence the vote for or against an identified candidate violates a criminal statute, 18 U.S.C. § 595. For example, several years ago the Department of Justice sought to prosecute a former Environmental Protection Agency official who was observed stating that a Superfund grant to clean environmental hazards in a specific congressional district would be awarded to help the incumbent in his race.

Section 595 potentially applies not only to the substantive agency decision, but to the timing, content, and location of the announcement. If you are asked by a Congressman in a close race in a key district that might tip the party balance in Congress to announce an agency decision at a joint press event scheduled the day before the election, you would be wise to decline. The intent to affect the outcome of the election might be inferred from the context.

Can I participate in an issues forum, town hall meeting, or similar event, if asked by a candidate who is running for an open seat or challenging an incumbent?

Agency officers and employees must act impartially in performing their official duties. Subject to staffing, workload, and scheduling limitations, you must be willing to speak or supply an alternate spokesperson as part of your agency's public information program to any appropriate requestor who can provide a non-partisan forum, demonstrate a legitimate interest in the subject matter, and articulate an appropriate, non-political reason for the request.

An incumbent Member of Congress renders constituent services and exercises legislative and oversight jurisdiction over Department budgets, programs, and operations. This official nexus provides the legal justification for providing agency experts and policymakers to speak at the request of the Hill, despite any political advantage that may result.

A challenger, on the other hand, generally seeks an appearance by Administration officials primarily to help the candidate's campaign. However, this is not always the case. A challenger who holds a constitutional office within State government, such as a Governor, Lieutenant Governor, or Attorney General, and who thereby has constituent responsibilities, may conduct issues events relating to cooperative Federal-State programs, such as Medicaid or Child Support Enforcement. These educational efforts targeted at joint Federal-State responsibilities provide a sufficient nexus to permit an official appearance by a Department speaker at an issues seminar or town hall meeting conducted by a State official who seeks an open seat or challenges an incumbent for Federal office.

Can I give an official speech before a political group or participate officially in an issues seminar conducted by a party organization?

Generally, an agency employee can speak officially at any event that provides an appropriate forum for the dissemination of Department positions on current issues, provided that the speech is informational and contains no political advocacy. However, if the organization or group conducting the event contributes funds to candidates for partisan elective office and the attendees are specifically charged or requested to contribute funds in order to attend, the event is considered a political “fundraiser,” irrespective of its focus on issues or its denomination as a seminar. You can NEVER participate officially in a fundraising activity. You may be able to speak at a political fundraiser in a personal capacity on your own time, provided that you adhere to Hatch Act limitations and refrain from disseminating non-public information. Consult the section of this guidance document that addresses political events.

Political Events and Activities

Under the Hatch Act, what are the basic “dos and don’ts” regarding political activity?

YOU MUST

- ✘ **NOT PARTICIPATE IN PARTISAN POLITICAL ACTIVITY ON DUTY, ON FEDERAL PREMISES, OR IN A GOVERNMENT VEHICLE.**
- ✘ **NOT WEAR A BADGE, UNIFORM, OR INSIGNIA THAT IDENTIFIES YOU AS AN HHS EMPLOYEE WHILE YOU ARE PARTICIPATING IN PARTISAN POLITICAL ACTIVITIES.**
- ✘ **NOT RUN FOR PUBLIC OFFICE IN A PARTISAN ELECTION.**
- ✘ **NOT ASK ANYONE TO GIVE MONEY.**
- ✘ **NOT ASK A BUSINESS OR ORGANIZATION TO GIVE SERVICES OR TO PROVIDE VOLUNTEERS.**

YOU MUST

- ✘ **NOT ACCEPT CONTRIBUTIONS OF MONEY OR BUSINESS SERVICES.**
- ✘ **NOT USE YOUR OFFICIAL AUTHORITY OR TITLE IN CONNECTION WITH ANY POLITICAL ACTIVITY.**
- ✘ **NOT ALLOW YOUR NAME TO BE USED ON AN INVITATION TO A FUND-RAISER AS A SPONSOR OR POINT OF CONTACT.**
- ✘ **NOT HOST OR SELL TICKETS TO A FUND-RAISER.**
- ✘ **NOT SPEAK BEFORE AN AUDIENCE OR SEEK SUPPORT FROM A GROUP THAT IS COMPOSED PRIMARILY OF INDIVIDUALS REPRESENTING COMPANIES OR ORGANIZATIONS THAT HAVE MATTERS PENDING BEFORE HHS.**

WHILE OFF DUTY, AWAY FROM THE WORKPLACE, AND WITHOUT USING A GOVERNMENT VEHICLE, UNIFORM, TITLE, OR OTHER INDICATION THAT YOU WORK FOR HHS (AND PROVIDED THAT YOU DO NOT SOLICIT, ACCEPT, OR RECEIVE POLITICAL CONTRIBUTIONS OF MONEY OR BUSINESS SERVICES OR OTHERWISE VIOLATE OTHER PROVISIONS):

YOU MAY

- ✓ PARTICIPATE IN, AND ADDRESS, POLITICAL GATHERINGS, SUCH AS NOMINATING CAUCUSES AND CONVENTIONS.
- ✓ ORGANIZE POLITICAL GROUPS OR PARTY ORGANIZATIONS.
- ✓ ENDORSE, OPPOSE, OR CANVASS FOR VOTES IN SUPPORT OF A CANDIDATE OR PARTY.
- ✓ PARTICIPATE IN MANAGING A CAMPAIGN, OR AS AN OFFICER OF A CAMPAIGN COMMITTEE.
- ✓ ASK FOR, ACCEPT, OR RECEIVE UNCOMPENSATED VOLUNTEER SERVICES FROM INDIVIDUALS (EXCEPT YOUR SUBORDINATES) TO WORK FOR A CANDIDATE.

YOU MAY

- ✓ ATTEND POLITICAL FUND-RAISERS AND MAKE POLITICAL CONTRIBUTIONS.
- ✓ ALLOW YOUR NAME TO APPEAR ON INVITATIONS TO A POLITICAL FUND-RAISER AS A SPECIAL GUEST OR SPEAKER AS LONG AS YOUR OFFICIAL TITLE IS NOT ON THE INVITATION.
- ✓ PROVIDE LOGISTICAL HELP IN ORGANIZING A FUND-RAISER SUCH AS SUPPLYING NAMES FOR THE INVITATION LIST.
- ✓ STUFF ENVELOPES WITH REQUESTS FOR CONTRIBUTIONS.
- ✓ ORGANIZE MAIL OR PHONE SOLICITATIONS FOR CONTRIBUTIONS, AS LONG AS YOU DO NOT SIGN SOLICITATION LETTERS OR MAKE EVEN ANONYMOUS APPEALS FOR CONTRIBUTIONS OVER THE PHONE.

Are the Hatch Act rules different for Senate confirmed Presidential appointees (PAS)?

The Hatch Act and implementing regulations apply fully to PAS officials, with only one exception. PAS officials, except the Inspector General, can engage in partisan political activities at the office during the work day, when riding in a Government-owned or leased vehicle, or when wearing a uniform. However, the costs of political activities conducted in a Federal building or requiring the use of an agency vehicle cannot be charged to the Government. Unless the costs would have been incurred as an ordinary operational expense, the PAS appointee must pay for any goods and services associated with political activity (which may constitute an individual campaign contribution subject to Federal Election Commission limits) or obtain reimbursement from the candidate or party organization. For example, if the Surgeon General, while dressed in his Commissioned Corps uniform and seated at his desk, spent, for instance, half an hour during the work day on the telephone discussing campaign strategy with party officials back in his home state, no violation occurs, provided that the long distance call is paid for personally or by the political party. Neither the official nor the party is required to pay or reimburse for a half hour's worth of salary, office rent, or utilities, which would have been paid by the Government in any event.

Conducting political activities on Federal premises does pose other risks for PAS appointees. Their subordinates, whether career or political, cannot participate in partisan political activities while on duty or at work, and these employees might be induced inadvertently to violate the law. Of course, political fundraising can never occur on Federal property, but even informal meetings or photo opportunities on the premises with supporters or contributors raise perception concerns and have been subjected to press scrutiny.

What are the penalties for a Hatch Act violation?

The United States Office of Special Counsel (OSC) prosecutes violators before the Merit Systems Protection Board. You can lose your job or, at a minimum, be suspended for 30 days.

Do I have to worry about any criminal statutes?

A series of criminal political statutes (18 U.S.C. §§ 595, 600-603, 606-607, 610) applies to all employees, including PAS appointees, even on non-duty hours. These provisions, which focus on patronage crimes and election offenses, prohibit coercive "political shakedowns," intimidation regarding political activities, campaign fundraising on Federal property, and the use of public office or authority for the purpose of affecting the outcome of an election.

I understand that I cannot solicit, accept, or receive political contributions, but can I speak in support of a candidate at a fundraiser?

Yes, but unless you are a PAS, remember that political activities must occur on your own time. You must use annual leave (or leave without pay) to account for any absence from duty. If travel is

involved, then either you or the candidate or party will have to pay for the trip. If your travel involves both political and official activities, then the costs of the trip have to be apportioned according to the “hard time” formula in 5 C.F.R. § 734.503. (A different formula known as the “hypothetical trip” rule is used whenever any portion of a trip is in support of a Presidential campaign.) The actual or “hard” time spent on political activities as a percentage of the total activity time engaged in both political and official events is applied against the total mixed trip costs to arrive at the amount the campaign organization will have to reimburse the Government. Time spent in actual travel, private study, or rest and recreation are excluded from the calculation. For example, if you travel to Chicago, spend an hour delivering official remarks at a trade association convention, tour a hospital for another hour, and, before heading to the hotel for an overnight stay, finish the day with an appearance for an hour at a political fundraiser for a local candidate, the total activity time is three hours. One third is political, so the campaign must reimburse HHS for an equivalent prorata share of the roundtrip airfare, lodging, per diem, and meals and incidental expenses allowance to which the traveler, if entirely on official business, would have otherwise been entitled.

I know that my speech or attendance at a fundraiser will be publicized and used to draw contributors to the event; can I still participate?

Campaign press releases, fundraising solicitations, invitations, brochures, programs, and other publicity materials may refer to you only as a featured speaker or honored guest. Although you may be referred to as “The Honorable,” your official title cannot be used for political events. Your name cannot be listed as a member of a host or sponsoring committee or as a point of contact or used in any other way that suggests that you are organizing the event and inviting others to contribute and attend.

I understand that my title cannot be used in political invitations or publicity materials, but can I be introduced at the event with a reference to my title, either directly or as part of several biographical details? Can I wear a name tag that identifies my position?

You cannot use your official title while participating in a political activity and are personally responsible for those actions over which you have control. Clearly, you should decline to wear a name tag or to sit behind a placard on the dais that identifies your position. In addition, you should not identify your title when introducing yourself to individuals or the audience nor refer to your position in the speech. Oblique references to the fact that you are in Washington “helping the President” or “serving in the Administration” are permitted, but more specific descriptions of your role, such as “serving in the Cabinet” or as a “political appointee” are not.

You may not be introduced directly by title, but assuming that the political organization has complied with the ban on using official title during the invitation and pre-event publicity phase, you may be introduced at the event with a reference to your title or position that is included in a statement of biographical details, provided that your current government position is given no greater prominence than other information.

You should ensure, as a condition of your initial acceptance of an invitation to speak, that the event organizers comply fully with these requirements. As part of the planning process, they should be informed of the rules regarding use of title. If someone introduces you and violates the rule without your knowledge or acquiescence, then you have not committed a violation.

Candidates ask me to speak at political gatherings attended by their supporters in the health care and pharmaceutical industries and often these meetings are not fundraisers; can I participate if my title is not mentioned?

You are prohibited from speaking before, seeking campaign support from, or otherwise encouraging the political activity of a partisan audience or group that is composed primarily of individuals representing companies or organizations that have matters pending before the Department. This rule applies even when the event is not a fundraiser. In order for you to participate in a political event, the campaign or party organization must ensure that the attendees represent a diversified, cross-section of supporters. To that end, solicitations or publicity must not be targeted at “prohibited sources,” i.e., individuals or organizations that are regulated by, do or seek to do business with, or request official action from HHS. If these types are included in a mass mailing and only a few attend, then no violation occurs.

Are there any limits on what I can say at a fundraiser or other political event?

You cannot ask for campaign contributions, but you may encourage the attendees to support the candidate or party and engage fully in political advocacy. When speaking about HHS-related issues, you cannot disclose non-public information. You should ensure that the campaign or party organization sponsoring the event does not publicize your attendance in such a way as to give the impression that contributors will be able to obtain “insider information” or “special access” to decision-makers.

Can I get any help in drafting my speech?

In answering this question, a number of fundamental rules are involved. First, appropriated funds, including staff time and equipment, cannot be used expressly for a political purpose. (However, as noted earlier, costs that would have been incurred as ordinary operational expenses and travel expenditures that are appropriately reimbursed may be paid with government funds.) Second, neither career employees nor political appointees (except PAS) can engage in political tasks at work during duty hours. Subordinates, whether career or political, cannot be asked or directed to perform political services even outside the workplace. Most significantly, superiors cannot accept or receive such services from a subordinate employee who offers to donate them.

Given these basic ground rules, employees covered by the Hatch Act may not write or prepare any materials that are inherently political which will be used solely for a partisan purpose, such as a campaign speech touting the candidate's virtues, party platform materials on a contested social issue, or an analysis of an opponent's economic plan, nor may they prepare any statements of political advocacy that might be added to a standard “stump” speech on agency topics.

These rules do not prevent your asking career or political subordinates to perform official duty tasks in preparing standard “canned” speeches on agency programs and issues. Old official speeches can be recycled, and publicly available materials can be gathered, provided that the effort does not involve extensive research at government expense. Basically, you are responsible for adding the political advocacy portions either extemporaneously or with comments drafted by the candidate or party organization.

Can career support personnel coordinate my travel arrangements for a political event?

The support staff of a senior Administration official may perform their normal clerical and ministerial functions in connection with the political travel and appearances or activities of their principal provided that the functions they perform are related to their official responsibilities. For example, a scheduler may make the logistical arrangements for his or her principal's political travel or appearances and ensure proper reimbursement to the Government by the political organization, but the employee may not engage in any of the management activities of a political event. Also, security details may travel at government expense to political events to protect their principals.

If a candidate asks me to appear with him at a Head Start day care center to film a campaign commercial, can I do so as long as I am not identified by title? Can my name appear in a print advertisement endorsing the candidate?

Assuming that you comply with restrictions previously discussed, you may appear in a television or radio message produced or sponsored by a political organization in which you endorse a partisan political candidate. However, using Federal grantees as backdrops for political activities should be avoided. Associating your identity with an HHS program in this manner may be perceived as an indirect attempt to use your title and official authority to assist the campaign. Furthermore, Federal funds allocated to grantees cannot be used for partisan political purposes. In particular, grantees that operate under the Head Start and the Community Services Block Grant programs cannot use grant funds in a manner supporting or resulting in the identification of such programs with any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office. 42 U.S.C. §§ 9851(b)(1), 9918(b)(2).

As to print advertisements that include your name or signature, without title, you should check the text to ensure that fundraising solicitations are neither express nor implied. Exercise caution if the message involves a campaign issue with which you or the Department are associated.

If I give a political speech for a candidate, can I accept the free meal at the event? What about complimentary tickets to political fundraising dinners when I am not speaking, does the “widely attended gathering” exception to the prohibited gift rules apply?

The “speaking engagement” and the “widely attended gathering” exceptions to the prohibited gift rules in the Standards of Ethical Conduct regulations do not apply because the appearance is

not an official activity and the requisite "agency interest" in the Federal employee's attendance is lacking in the partisan political context. However, a separate gift exception dealing with gifts from political organizations does permit political gifts, provided the gifts come directly from a political organization and not third party contributors.

Thus, campaign speakers can accept the free meal given to other participants at the head table. Assuming that the donor of the complimentary tickets is a candidate, political party, or campaign organization, a federal employee may accept an offer of free attendance at a political event, provided that the offer is in connection with that employee's active participation in the event (e.g., the employee will actually attend the dinner, as opposed to giving the tickets away) and the employee appropriately is participating in partisan political activities (i.e., the employee is not a Commissioned Corps officer, an Administrative Law Judge, or a career SES official). Employees who hold such uniformed service, quasi-judicial, or career SES positions are subject to severe restrictions and cannot engage in partisan political activities even on their own time.

If an event occurs during duty hours, remember that any non-PAS employee would have to take leave. Under no circumstances, whether regarding a PAS, a non-career SES, or a Schedule C, can a reference to title, position, or agency be used in connection with the publicity for or invitations to the event.

Even though immaterial for gift purposes, the event still must be widely attended with a diverse audience in order to avoid a possible Hatch Act violation for actively campaigning before or soliciting political support from a group composed primarily of individuals or representatives of entities that have matters pending before the Department (e.g., a fundraiser attended primarily by drug company VPs or hospital corporation CEOs).

If you comply with these rules, the fact that the sponsoring organization might place you at a table with "prohibited source" contributors is not legally problematic, but may pose an "optics" or perception concern which you should evaluate.

Do political gifts have to be reported on my financial disclosure form?

Political travel reimbursement does not have to be reported on the SF 278 Public Financial Disclosure Report when the expenditure is reported by the campaign organization to the Federal Election Commission. However, when a political event is local and free attendance is the only gift at issue, complimentary tickets with a face value in excess of the SF 278 gift reporting threshold, currently \$335, should be reported on Schedule B, Part II.