

Any scientist who has a question about how the Hatch Act or other political laws apply to them can call the Climate Science Legal Defense Fund, where we provide free and confidential counsel to scientists with legal questions related to their work. Call us at **(646) 801-0853** or send an email to [lawyer@csldf.org](mailto:lawyer@csldf.org).



The Climate Science Legal Defense Fund (CSLDF) works to protect the scientific endeavor by helping defend climate scientists against politically and ideologically motivated attacks. CSLDF is a non-profit organization under section 501(c)(3) of the Internal Revenue Code.

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A POCKET GUIDE FOR SCIENTISTS

## Participating in Political Activities: Guidelines for Federally Employed and Federally Funded Scientists



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# INTRODUCTION

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## Participating in Political Activities: Guidelines for Federally Employed and Federally Funded Scientists

As the election season kicks into high gear, many scientists are torn between their desire to apply their passion and knowledge to politics, and their fear of repercussions in their professional lives.

By following a few guidelines and best practices, even federally employed or funded scientists can engage in political activities while minimizing the risk to their professional lives. This guide helps scientists, particularly those employed by federal agencies, understand how to participate in political campaigns and elections, and what restrictions on political activity might affect them.

This resource includes general best practices, guidelines for different groups of scientists, and a Frequently Asked Questions section to address specific concerns.

You can always call us at the **Climate Science Legal Defense Fund**, where we provide free and confidential counsel to scientists with legal questions related to their work.

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# THE HATCH ACT: WITH LIMITATIONS, FEDERAL EMPLOYEES CAN ENGAGE IN POLITICS

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The political activity of federal employees is primarily regulated by the Hatch Act (5 U.S.C. §§ 7321-26), which fundamentally supports their right to participate in such activity.

Subject to certain limitations, the Hatch Act explicitly permits federal employees to “take an active part in political management or in political campaigns” (5 U.S.C. § 7323(a)). It explains that “employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation” (5 U.S.C. § 7321).

## Which Scientists Need to be Concerned with Hatch Act Restrictions?

### Federally Employed Scientists

The Hatch Act directly regulates the behavior of federal employees, and it defines an “employee” as:<sup>1</sup>

- Any person who is employed or holding office in an Executive Agency,<sup>2</sup> or
- Any person who holds a position within the competitive service<sup>3</sup> outside an Executive Agency.

However, it explicitly excludes employees of the Government Accountability Office, members of the uniformed services, employees of the District of Columbia, and the President and Vice President (5 U.S.C. § 7322(1)).

Broadly, the Hatch Act divides covered employees into two categories, commonly referred to as “further restricted” and “less restricted” employees:

- **“Further Restricted” Federal Employees** are typically those whose jobs involve law enforcement, national security, or election regulation; the term also includes career appointees in the Senior Executive Service (as well as a few other categories unlikely to be relevant for most scientists) (5 C.F.R.

§ 734.401).<sup>4</sup> Such employees are subject to more stringent limits on their ability to make political contributions and engage in certain other political activities. If you are a scientist with a question about whether you are a “further restricted” employee, please contact the Climate Science Legal Defense Fund (CSLDF).

- **“Less Restricted” Federal Employees** are all employees who don’t fall into the ‘further restricted’ group. They are subject to less stringent regulations on their political activity, which are outlined in the next section.

### Federally Funded Scientists

Scientists who are not directly employed by the federal government may still be subject to Hatch Act requirements if they receive funds from a grant or contract whose authorizing statute contains provisions subjecting recipients to regulation under the Hatch Act.

Some individual agencies have also developed their own rules governing political activities; these rules could potentially apply to contractors, grantees, partners, or others who are not directly employed by, but are nonetheless affiliated with a federal agency. Restrictions on political activity may also in some cases be written into the terms of a contract or grant.

Scientists whose work is funded by federal grants, contracts or similar should determine if there are any restrictions on their political activity by reviewing the terms of the relevant agreement, seeking guidance from an agency ethics official, and/or asking an outside legal adviser like CSLDF.

### What Activities are Governed by the Hatch Act?

As referenced above, how the Hatch Act applies to a federally employed scientist will depend on whether that person is considered a “less restricted employee” or a “further restricted employee.”

Notably, while the Hatch Act is a federal law, it applies to covered employees’ activities *at all levels of government*: federal, state, and local.

### Less Restricted Employees

Less restricted employees are typically federal employees outside of law enforcement, national security, or election regulation.

While they may take part in many activities, less restricted employees are generally prohibited from (5 U.S.C. § 7323):

1. Participating in political activities while “on duty,” in uniform, or in any government building or vehicle. “Political activity” is defined as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group” (5 C.F.R. § 734.101)<sup>5</sup>
2. Using their official authority or influence to interfere with an election<sup>6</sup>
3. Fundraising for political candidates<sup>7</sup>
4. Running for office in a partisan election
5. Soliciting or discouraging political participation by individuals who have business or other matters pending before the employee’s employing office

### Further Restricted Employees

In addition to the restrictions described above for “less restricted” employees, “further restricted” employees are prohibited from (5 C.F.R. § 734.410 et seq.):

1. Taking an active part in political management or in a political campaign
2. Establishing or serving as an officer of a political organization, serving as a delegate to a political party convention, or addressing a partisan political event
3. Soliciting, accepting, or receiving any political contributions, or organizing or promoting a fundraising event
4. Campaigning or canvassing for votes for or against a partisan candidate for office
5. Endorsing or opposing a candidate for partisan political office in a political advertisement or campaign literature, if done in concert with such candidate, a political party, or partisan political group
6. Initiating or circulating a partisan nominating petition
7. Acting as a poll worker
8. Driving voters to the polls

The Hatch Act does not prohibit non-partisan political and civic activities that are not identified with a political party. For example, a scientist could become involved in advocating for a constitutional amendment or against a proposed municipal ordinance without triggering the Hatch Act. The same is true for participation in the non-partisan activities of civic, community, social, labor, or professional organizations.

## FREQUENTLY ASKED QUESTIONS

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### Can I make political donations or contributions?

Federal employees can generally make personal contributions, financial and otherwise, to partisan campaigns, within the limits of laws capping individual campaign contributions. Political donations or contributions can take numerous forms, such as:

- **Financial Donations** – While federal funds must never be used for political purposes, money that a scientist has received as salary is generally considered personal and can be used in donations.<sup>8</sup>
- **Goods and Services** – A contribution can include providing goods or services for which the provider would normally be compensated, but that are provided for free or at reduced cost to a political committee or campaign. Similarly, providing goods or services for which the provider is later compensated by a third party can constitute a political contribution in the amount of that compensation.
- **Events, Fundraisers, and Merchandise** – Paying money to attend a political fundraiser or event, or purchasing campaign merchandise can likewise constitute a political contribution.

Scientists who receive federal grants must ensure that those funds (and resources that were acquired with federal funds, such as laptops and printers) are used only as outlined in the applicable grant, and are not used for political purposes. However, as above, this does not affect the right of a grant recipient to use personal funds and personal property for political activities, including salary and personally-owned computers.

### Can I participate in political campaigns?

“Less restricted” federal employees have the right to participate in partisan political campaigns. For example, they can:

- Volunteer for political campaigns, including canvassing for votes for or against a candidate, transporting voters to and from a polling place, and serving as poll workers, election judges, and in other similar roles
- Display buttons or stickers or other materials associated with a candidate, as long as they do not do so at work or while exercising federal authority
- Circulate nominating petitions (again, not while “on the job”)
- Publicly endorse or oppose a candidate
- Speak at a rally, convention, or similar event
- Take an active part in managing a partisan political campaign<sup>9</sup>

However, note that there is no federal law that allows employees to miss work to undertake these activities. Thus, if a federal scientist is going to miss work in order to participate in these activities, generally they will need to use leave.

### Can I express my political opinions in public?

The Hatch Act does not prevent federal scientists from publicly expressing partisan political opinions or opinions about political candidates. It only prevents federal employees from expressing such opinions while on duty, in a federal building or vehicle (even if they are not on duty), or otherwise exercising federal authority.

It is acceptable for federal scientists to state opinions in public—including online via social media, blogs, and similar—as long as they are not “on the job.”

### What does “on the job” mean during a pandemic?

Federal employees are prohibited from engaging in political activity or expressing political opinions while “on the job”—but this line may become more blurry than usual, as many federal scientists spend more time teleworking or working remotely, while at the same time many campaign

volunteer activities, such as canvassing, contacting voters, get-out-the-vote efforts, campaign organizing, and even speeches and fundraisers, are also likely to take place online.

This may lead to some real complications, since many of the Hatch Act's limitations and requirements center on drawing a clear line between times when an employee is at work and times when the employee is not.

Federal scientists should be aware that they are considered “on duty” when they are teleworking. If they are maintaining their regular working schedule while teleworking, then they have the same on-duty status as if they were reporting to their regular duty stations. Employees who are not working regular hours are considered on duty any time they are performing official duties. An employee's unpaid lunch break is generally not considered on-duty time, but even this may vary.

In short, if employees are being paid by the government for their time, or are performing official duties, those employees are generally considered on duty even if they are in their own home, and they should not engage in political activity during that time.

#### **Can I join a political party?**

All federally employed scientists absolutely have the right to register with a political party, and the Hatch Act does not in any way limit their right to do so.

#### **Can I vote as I choose?**

Status as federal employee absolutely does not impact the right and ability of a U.S. citizen to vote. Indeed, the Hatch Act expressly states that federal employees “retains the right to vote as [they choose]” (5 U.S.C. § 7323 (c)).

#### **Can I miss work to vote?**

Federal law does not provide an affirmative right for employees to miss work to vote. Thus, if a federal scientist is going to miss work in order to vote, it may be necessary to request and obtain appropriate leave to do so. That said, some state laws do provide a right to miss work to vote, so scientists should

confirm whether the laws in their particular state may allow them to miss work to vote if necessary.

#### **What if I'm not a U.S. citizen?**

Those who are not U.S. citizens or green card holders are prohibited from contributing or expending “anything of value” directly or indirectly in connection with a federal, state or local election (52 U.S.C. § 30121).

However, those who are not citizens or green card holders may still contribute services as a volunteer, spend money on living expenses while volunteering, or use their residence to host non-fundraising events (including in support of a candidate or political committee).<sup>10</sup>

Of course, federal scientists who are not U.S. citizens cannot vote in U.S. elections.

## **BEST PRACTICES**

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There are a few simple best practices that can help scientists who are federal employees, or whose work is federally funded, reduce the likelihood of any unwanted complications from participating in political activities, particularly in this period when remote work is prevalent.

- **Keeping close track of and documenting work hours—and making sure not to engage in political activity during those hours**—can help to avoid any accusation that a federal scientist has violated the Hatch Act by engaging in political activity while “on the job” or exercising federal authority.
- **Using personal devices and equipment for political activities, and avoiding using any government equipment for such activities**, can likewise help to avoid any complications or accusation that federal resources have been inappropriately used. This includes computers, phones, printers, vehicles, and similar.
- **Maintaining clear separation between personal and professional email and social media accounts** can also head off complications. We recommend conducting all political activities, and expressing any personal political opinions, over personal accounts.

- **Using federal grant funds only for the purposes described in the applicable grant** and not for political activities such as donating to campaigns. The same is true for equipment and resources purchased with federal grant funds—such as laptops, iPads, printers, and similar. It is essential for grantees to ensure that financial accounting and cost segregation is done appropriately and in compliance with requirements of the grant. Notably, federal funds received as personal salary generally become personal funds and may be used for political purposes.

By following these simple best practices, and the more detailed guidelines above, scientists can exercise their right to participate in the political process as individual citizens while simultaneously complying with the requirements of the Hatch Act.

## Endnotes

- <sup>1</sup> Individuals employed or holding office with the United States Postal Service or the Postal Rate Commission are also considered “employees” under the Hatch Act, but this is unlikely to be relevant for most scientists (5 C.F.R. § 734.101).
- <sup>2</sup> In this context, an Executive Agency typically means a federal agency that exists within the Executive Office of the President or the federal executive departments headed by a Cabinet secretary.
- <sup>3</sup> The competitive service is the portion of the federal civil service that consists of employees who are hired through a merit-based process administered by the Office of Personnel Management.
- <sup>4</sup> Members of the Senior Executive Service are appointees in key positions just below presidential appointees.
- <sup>5</sup> Examples of behavior prohibited by this provision include wearing or displaying partisan political attire, signs or similar items, distributing campaign materials, or posting a comment to a social media site or blog advocating for or against a partisan political party or candidate, while on duty. See A Guide to the Hatch Act for Federal Employees, U.S. Office of Special Counsel, <https://osc.gov/Documents/Outreach%20and%20Training/Handouts/A%20Guide%20to%20the%20Hatch%20Act%20for%20Federal%20Employees.pdf>.
- <sup>6</sup> Examples of behavior prohibited by this provision include employees using their official title or position while they are engaged in a political activity, or inviting a subordinate employee to a political event. See, Department of Justice Permitted and Prohibited Political Activities Overview, <https://www.justice.gov/jmd/political-activities>.
- <sup>7</sup> While the Hatch Act prevents covered employees from fundraising on behalf of political candidates, it does not prevent them from contributing their own personal money to a campaign (within the bounds of other laws and regulations governing individual campaign contributions), or from otherwise volunteering for a campaign. Both these points are discussed in more detail below.
- <sup>8</sup> Note that there are some restrictions that apply to individuals who negotiate contracts on behalf of a federal government contractor with the federal government, as regulated by 52 U.S.C. § 30119. Similar restrictions may apply at the state and local levels regarding state and local campaign contributions. Restrictions typically apply to individuals who are company officers or directors, or who hold ownership interests in the company that exceed specified thresholds. Scientists who do not hold one of these positions, do not negotiate contracts with government entities, and do not have an ownership interest in their employer, are unlikely to have these restrictions apply.
- <sup>9</sup> OSC regulations expressly permit less restricted employees to “engage in political activities, including political management” (5 C.F.R. § 734.202) and to “manage the political campaign of a candidate for public office” (Id. § 734.205, ex. 7). The regulations define “political management” as “the direction or supervision of a partisan political group or campaign” (Id. § 734.101).
- <sup>10</sup> See Federal Election Commission, Volunteer activity, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/volunteer-activity/>.