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WHITE HOUSE

## **Opinion | Time to Close the Hatch Act's Escape Hatch**

The head of the Office of Special Counsel announces an enforcement update for White House officials.



While the Hatch Act is broad on paper, a loophole has emerged in practice: senior White House personnel aren't being subjected to the law's full enforcement. | Francis Chung/POLITICO

Opinion by HAMPTON DELLINGER  
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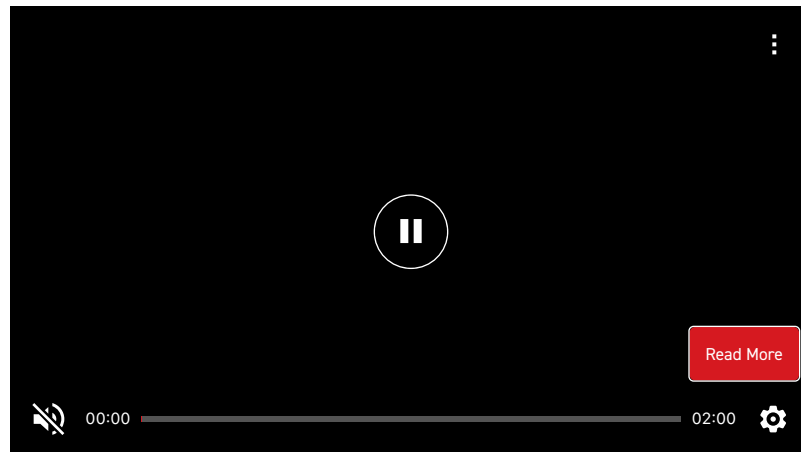
*Hampton Dellinger began his tenure as head of the U.S. Office of Special Counsel, an independent federal agency, in March 2024 after confirmation by the U.S. Senate. Prior*

*to heading OSC, Dellinger was an assistant attorney general overseeing the Justice Department's Office of Legal Policy.*

Since the Hatch Act was passed in 1939, government workers have faced strict limits on their political activity. And rightly so. Federal employees should be on the job for the public good, not partisan ends. Violators can be reprimanded, fined and even barred from federal service.

While the Hatch Act is broad on paper, a loophole has emerged in practice: senior White House personnel (including assistants to the president and others deemed commissioned officers) [aren't being subjected to the law's full enforcement](#). Today, that changes.

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I was recently nominated and confirmed to lead the [Office of Special Counsel](#), the independent agency responsible for enforcing the Hatch Act for millions of federal workers. And after a careful review of past and present policies, [I'm updating my agency's enforcement approach](#) to put an end to such differential treatment.

OSC brings Hatch Act violations to the [Merit Systems Protection Board](#), an independent and quasi-judicial body, and the board can impose a range of sanctions if it determines the rules were broken.

But, in the past, OSC has declined to bring MSPB cases against White House officials. Instead, OSC has left the question of whether punishment should be imposed to the sole discretion of the president. This distinction creates separate and not automatically equal systems of accountability for violators, one where an independent adjudicator (the MSPB) can impose sanctions and another where it is left to the president to dole out — or not — any consequences.

It's clear Congress wants the Hatch Act to apply to as many people as possible. Only two positions are walled off completely from its restrictions: the president and vice president. While most Senate-confirmed officials are exempted from enforcement at the MSPB, White House staffers are not. It would be extraordinary if they were.

Though Congress has given the president broad hiring authority, once aides are onboarded, they are still bound by the same rules — from the tax code to conflicts-of-interest laws — that govern other federal employees. Indeed, going back to Watergate in the 1970s, White House staffers have faced fines, indictments and even incarceration for violating various laws, just like every other government worker. The Hatch Act, with primarily civil sanctions, should be no different.

A key part of OSC's prior explanation for exempting White House personnel from full Hatch Act enforcement was the lack of a quorum at the MSPB. Thankfully, the Board [quorum has been restored](#) with all three members now Senate-confirmed and in place.

And while I have great respect for the Department of Justice's Office of Legal Counsel, I do not believe (as my office has suggested in recent years) that a 1978 DOJ opinion assessing draft legislation should be considered sufficient support for OSC to unequivocally exempt White House staff from the same Hatch Act enforcement regime other federal workers face.

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As a result, I am announcing that prior OSC statements that White House officials cannot face Hatch Act enforcement in the same way other federal civilian employees do are no longer in effect. It is time to close the Hatch Act's escape hatch.

OSC enforcement of the Hatch Act also is being updated in two other ways. First, we will no longer automatically rule out bringing actions against former government employees. As the MSPB has advised: an "employee's post-violation resignation does not eliminate the case or controversy between the employee and the Special Counsel concerning whether the employee violated the Hatch Act and, if so, what penalty is warranted."

Second, the wearing or displaying of items in the workplace related to current political figures should be considered contrary to the Hatch Act regardless of whether it is before or after Election Day. Among the reasons for a blanket prohibition on such items while federal workers are on duty or in their office is the clear connection between political candidates and political parties. OSC has long advised that political party swag (T-shirts, hats, mugs) is banned year-round. It is logical and workable to apply the same rule to individual political figure paraphernalia, particularly items referencing presidential candidates who are, understandably, well-defined in the public's mind as aligned with specific political parties.

These enforcement changes should provide clear guidance and bright-line rules to federal workers and the public. And the goal with each is to adhere closely and faithfully to congressional mandates as well as relevant applications of the Hatch Act by the MSPB and the judiciary.

At the same time, Congress and the courts have recognized the meaningful free speech rights that public sector workers retain even on the job. OSC does as well. That's why I believe the use of a word or phrase in federal employee speech focusing on policy issues does not necessarily or always violate the Hatch Act just because it is also associated with a candidate or party. This is particularly true when the word or phrase at issue has a legitimate connection to proper governmental activities or inter-branch debates.

In fact, in my view, a few of OSC's prior determinations might not have weighted employee speech considerations quite heavily enough.

For example, OSC concluded that then-President Donald Trump’s Energy secretary violated the Hatch Act in 2020 when he compared the oil, fracking and coal policies of the president and then-candidate Joe Biden. The discussion included a rhetorical question — “Is that what we want to go back to?” — that could have been understood to reference the impending election. But the remarks did not include express advocacy (*i.e.* vote for, vote against, donate to).

Of course, finding the exact line between protected and prohibited workplace speech can involve close calls and judgment. And I recognize and respect those who view an example like this, or, to take another example, references to “MAGA” in policy debates, differently than me.

Above all, the need to balance robust Hatch Act enforcement with careful consideration of government employee speech rights is vital because another key part of OSC’s mandate is supporting the federal workforce’s right to speak out on policy matters, particularly governmental misconduct. For example, OSC is known for its vigorous enforcement of the [anti-gag order](#) provisions established by Congress in the Whistleblower Protection Enhancement Act.

Congress, like the courts, wants partisan politics out of the federal workplace and workers on the job to be mission oriented, not campaign focused. But lawmakers also have made clear that government employees should be able to speak on matters of policy in meaningful ways. As Special Counsel, I am committed to following and fulfilling these dual directives.

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