Why Government Workers That Use Your Tax Dollars To Violate The HATCH ACT Are Such Scumbag Pieces Of Shit

By Tom Justi

The Hatch Act, originally enacted in 1939 and later amended, is a federal law designed to prevent undue political influence and ensure that public employees perform their duties without partisan bias. While the law primarily governs federal employees, its provisions also extend to certain state and local officials if their roles involve federally funded programs. Violations of the Hatch Act can carry significant consequences for officials and their jurisdictions, ranging from reputational harm to financial penalties.

State and local officials are subject to the Hatch Act when they work in roles that are funded in whole or in part by federal loans or grants. The law aims to prevent public employees from using their official positions to influence elections or engage in political activities. Examples of restricted actions include:

1. **Using Official Authority to Influence Elections**: Officials cannot use their authority or title to endorse or oppose a political candidate, party, or campaign. For example, a county commissioner using their office's official social media account to support a candidate would constitute a violation.
2. **Running for Partisan Political Office**: State and local officials whose roles involve federally funded programs cannot run for partisan political office. However, they may seek nonpartisan positions, such as a school board seat.
3. **Engaging in Political Activity on Duty**: Officials are prohibited from engaging in partisan political activities during work hours or while representing their office. This includes activities like campaigning, fundraising, or attending political events in an official capacity.

The Hatch Act does not apply to all state and local officials. For instance, elected officials whose roles are entirely state- or locally funded are typically not subject to the Act. Additionally, employees in roles funded by federal programs but classified as policymaking positions may be exempt, as they are allowed a greater degree of political engagement.

However, these exemptions come with caveats. Officials must clearly separate their political activities from their official duties to avoid perceptions of impropriety, even if their positions are not strictly covered by the Hatch Act.

Violating the Hatch Act can lead to a range of penalties, depending on the severity of the offense and the official's role. Common consequences include:

1. **Removal from Office**: The Office of Special Counsel (OSC), which enforces the Hatch Act, can recommend termination for officials found in violation.
2. **Loss of Federal Funding**: In cases where an official is not removed, the federal agency overseeing the program may require the state or local government to forfeit federal funds equivalent to two years' worth of the official's salary.
3. **Fines and Reprimands**: Violations may also result in monetary penalties or formal reprimands, which can damage an official's reputation and political career.
4. **Disqualification from Federal Employment**: Serious violations can lead to bans on holding federal or federally funded positions in the future.

For state and local officials, the implications of Hatch Act violations extend beyond personal consequences. Missteps can expose their jurisdiction to financial penalties, legal challenges, and public mistrust. Maintaining a clear boundary between official duties and political activities is essential for preserving public confidence and ensuring ethical governance.

State and local officials, especially those in federally funded roles, must navigate the Hatch Act's requirements carefully. By understanding and respecting these restrictions, they uphold the integrity of their offices and avoid actions that could jeopardize their communities or their careers.

White House press secretary Karine Jean-Pierre says the White House counsel is going to review her Hatch Act violation after a government watchdog sent her a letter warning she violated the federal law. The incident has prompted questions about the definition of the law known as the Hatch Act.Jean-Pierre spoke of "mega MAGA Republican officials who don't believe in the rule of law" during a briefing last year, which partially triggered the violation as well as a letter from a watchdog group, NBC News reported Monday.

"So as we've made very clear throughout our time in this administration, that we do everything that we can to uphold, certainly the Hatch Act and take the law very seriously," she told reporters during a briefing Tuesday.

White House press secretary Karine Jean-Pierre speaks at the daily press briefing on Monday, June 12, 2023.JULIA NIKHINSON/FOR THE WASHINGTON POST VIA GETTY IMAGES

Michael Chamberlain, director of the conservative watchdog group Protect the People's Trust, said in a letter addressed to the U.S. Office of Special Counsel (OSC) and White House counsel on November 3, 2021, that Jean-Pierre violated the Hatch Act for comments she made during a White House briefing the day before in the lead-up to the midterms.

"Unfortunately, we have seen mega MAGA Republican officials who don't believe in the rule of law. They refuse to accept the results of free and fair elections, and they fan the flames of political violence through what they praise and what they refuse to condemn," Jean-Pierre said in that briefing, which was among the remarks flagged by Chamberlain.

The OSC responded with a letter that was first reported by NBC News and confirmed by other outlets. Ana Galindo-Marrone, the chief of OSC's Hatch Act Unit, wrote that because Jean-Pierre "made the statements while acting in her official capacity, she violated the Hatch Act prohibition against using her official authority or influence for the purpose of interfering with or affecting the result of an election." Despite the violation, the OSC "decided to close this matter without further action" and sent Jean-Pierre a warning.

On Tuesday, Jean-Pierre said she would not "get ahead" of how White House lawyers would respond to the letter from the OSC, the independent agency which enforces the Hatch Act. She also cited the archived Trump White House website that revealed that the Trump administration used the term MAGA to describe policies and official agendas nearly 2,000 times, and mentioned congressional Republicans also use it.

"It's going to be reviewed," she said. "That's what the White House Counsel is going to do. They're going to have a dialogue, a routine dialogue with OSC. And so, I'll just leave it there."

Prior to Tuesday's briefing, White House deputy press secretary Andrew Bates told CBS News the opinion was under review.

What is the Hatch Act in simple terms?

The Hatch Act is a federal law passed in 1939 that "limits certain political activities of federal employees," according to the OSC, which oversees federal personnel issues and is separate from special counsel Jack Smith.

The purpose of the law is to ensure federal programs are administered in a "nonpartisan fashion, to protect federal employees from political coercion in the workplace, and to ensure federal employees are advanced based on merit and not based on political affiliation," the U.S. Office of Special Counsel said.

he agency that enforces a 1939 law prohibiting government employees from circulating political messages on the job is hoping that four recent Merit Systems Protection Board decisions will help clarify that the ban extends to online communication.

"The four MSPB decisions send a clear message to the federal community," said Scott Bloch, head of the Office of Special Counsel, on Wednesday. "No political activity means no political activity, regardless of the specific technology used."

While the Hatch Act generally permits most federal employees to participate in political campaigns, it bars them from engaging in any political activity while in uniform, on duty or in a government building or vehicle.

Hatch Act violations are typically resolved with a warning letter from the OSC. If the case is egregious, however, OSC brings the case before MSPB, where the presumed punishment is dismissal.

Still, in the four recent cases before the board, the respondents all raised the defense that their conduct was a mere expression of opinion, arguing that it was no different from an informal conversation at the office water cooler. An OSC advisory to federal employees in 2002 said water cooler-type conversations about political opinions are permissible.

In the first case, *Special Counsel v. Morrill*, the MSPB last summer upheld a 60-day suspension imposed on a federal employee who had sent a political e-mail while on duty at a federal building.

That employee circulated the e-mail, which announced a party for Tim Holden, a Democratic candidate for a Pennsylvania seat in the House, to more than 300 individuals. The judge found that the e-mail was obviously "directed toward the success of Mr. Holden's re-election campaign," warranting the worker's suspension in violation of the Hatch Act.

In the second case, *Special Counsel v. Davis and Sims*, the MSPB last summer reversed an administrative law judge's ruling that sending political messages to a handful of co-workers using a government e-mail account is legal.

The first e-mail the two sent featured a photo of President Bush in front of an American flag with the statement, "I vote the Bible." A second e-mail stated, "Why I am supporting John Kerry for president?" and presented several reasons why the reader should vote for Kerry and should not support the Republican Party.

In the third case, the MSPB last summer upheld an earlier decision by an administrative law judge ordering the removal of a Small Business Administration employee from federal service. The employee, Jeffrey Eisinger, was an elected official of the California Green Party, and had received, read, drafted and sent more than 100 e-mails through his government computer that were directed toward the success of the Green Party.

Finally, in December, the MSPB found an Environmental Protection Agency employee guilty of Hatch Act violations after e-mailing a letter from the Democratic National Committee urging recipients to take immediate action after the presidential debate in support of former presidential candidate John Kerry.

Eisinger, who was removed from his federal job, argued Friday that though he received Hatch Act advisories from OSC, he never felt well-versed in the law. "I think that if someone else had asked me for advice on the Hatch Act, I probably would have had to do additional research or ask an expert in Washington," he said.

OSC spokesman Loren Smith said the agency is constantly seeking new ways to better educate employees, often through the use of advisories and outreach events. He said that if a Hatch Act violation complaint is related to a certain agency, OSC will often go to that agency as part of the settlement to educate employees on the law.

"Outreach is very important," Smith said. "It's very much half the battle in terms of preventing these violations."

But National Treasury Employees Union President Colleen Kelley criticized the recent decisions, arguing that the current OSC has an "obsessive focus" on regulating the use of e-mail by federal employees. "NTEU believes that OSC resources could be better spent on investigating serious Hatch Act violations," she said, "and protecting whistleblowers against retaliation, a central part of its mission that it has seemingly forgotten."

Still, OSC holds that it will not hesitate in pursuing potential transgressions. "We will continue to vigorously prosecute anyone who engages in political activity in the workplace or on duty," Bloch said, "and those using e-mail for this purpose should be especially aware that this decision subjects them to penalties, including removal from federal service."

The Justice Department inspector general and Office of Special Counsel both issued reports on Wednesday about misconduct allegations against U.S. Attorney Rachael Rollins, whom President Biden tapped for the role in July 2021. OSC found that Rollins' violations of the Hatch Act were among the "most egregious transgressions of the act that OSC has ever investigated." The IG report included the violations OSC investigated and other instances of misconduct.
The lawyer representing Rollins downplayed the allegations, however. "I think the OIG report needs to be put in context," said Michael Bromwich, who previously served as Justice Department IG, in a statement. "The central truth is that she moved from being an elected official with virtually no restrictions on her activities to the highly-regulated environment of the U.S Attorney's Office. Most of the allegations amount to minor process fouls."

Examples of past Hatch Act violations

Last year, Health and Human Services Secretary Xavier Becerra violated the Hatch Act when expressing support for California Sen. Alex Padilla's reelection.

In the previous administration, at least 13 senior Trump administration officials were found to have violated the Hatch Act prior to the 2020 presidential election, according to a 2021 report from the OSC. Among them, the OSC report listed former White House chief of staff Mark Meadows, former

Secretary of State Mike Pompeo, former senior adviser Jared Kushner and former White House press secretary Kayleigh McEnany as Hatch Act offenders, for which no action was taken by the Trump administration.

"President Trump not only failed to do so, but he publicly defended an employee OSC found to have repeatedly violated the Hatch Act. This failure to impose discipline created the conditions for what appeared to be a taxpayer-funded campaign apparatus within the upper echelons of the executive branch," the report stated.

Kellyanne Conway, who was also listed on the report and was one of former President Trump's top advisers, violated the Hatch Act multiple times. In 2019, the OSC recommended to then-President Trump that he remove her from federal service after she violated the act "on numerous occasions" by criticizing Democratic presidential candidates in TV interviews and on social media. She was later called to testify before a House oversight panel about the violations, but the Trump White House blocked her appearance, citing "constitutional doctrines"

"In accordance with long-standing precedent, we respectfully decline the invitation to make Ms. Conway available for testimony before the committee," then-White House counsel Pat Cipollone said.

Many of you who have worked in federal health care for some years may have heard a fellow employee say, “be careful you don’t violate the Hatch Act.”

Most readers probably had not heard of the statute before entering federal service. And you may have had an experience similar to mine in my early federal career when through osmosis I absorbed my peers fear and trembling when the Hatch Act was mentioned. This was the situation even though you were not at all sure you understood what the lawyers were warning you not to do. In my decades in federal service, I have heard that the Hatch Act dictates everything from you cannot vote to you can run for political office.

All this makes the timing right to review a piece of legislation that governs the political actions of every federal health and administrative professional. The Hatch Act sets apart federal employees from many, if not most, of our civilian counterparts, who, depending on your perspective, have more freedom to express their political views or are not held to such a high standard of ethical conduct.

In legalese, the Hatch Act is Political Activity Authorized; Prohibitions, 5 USC §7323 (1939). The title of this editorial, "To Prevent Pernicious Political Activities" is the formal title of the Hatch Act enacted at a time when government legislation was written in more ornamental rhetoric than the staid language of the current bureaucratic style. The alliterative title phrase of the act is an apt, if dated, encapsulation of the legislative intention of the act, which in modern parlance:

> *The law's purpose is to ensure that federal programs are administered in a nonpartisan fashion, to protect federal employees from political coercion in the workplace, and to ensure that federal employees are advanced based on merit and not based on political affiliation.*[2]

For all its poetic turn of phrase, the title is historically accurate. The Hatch Act was passed in response to rampant partisan activity in public office. It was a key part of an effort to professionalize civil service, and as an essential aspect of that process, to protect federal employees from widespread political influence. The ethical principle behind the legislation is the one that still stands as the ideal for federal practitioners: to serve the people and act for the good of the public and republic.

The Hatch Act was intended to prevent unscrupulous politicians from intimidating federal employees and usurping the machinery of major government agencies to achieve their political ambitions. Imagine if your supervisor was running for office or supporting a particular candidate and ordered you to put a campaign sign in your yard, attend a political rally, and wear a campaign button on your lapel or you would be fired. All that and far worse happened in the good old USA before the Hatch Act.[3]

The Office of Special Counsel (OSC) is the authoritative guardian of the Hatch Act providing opinions on whether an activity is permitted under the act; investigating compliance with the provisions of the act; taking disciplinary action against the employee for serious violations; and prosecuting those violations before the Merit Systems Protection Board. Now I understand why the incantation "Hatch Act" casts a chill on our civil service souls. While there have been recent allegations against a high-

profile political appointee, federal practitioners are not immune to prosecution.4 In 2017, Federal Times reported that the OSC sought disciplinary action against a VA physician for 15 violations of the Hatch Act after he ran for a state Senate seat in 2014.5

Fortunately, the OSC has produced a handy list of "Though Shalt Nots" and "You Cans" as a guide to the Hatch Act.6 Only the highpoints are mentioned here:

- Thou shalt not be a candidate for nomination or election to a partisan public office;
- Thou shalt not use a position of official public authority to influence or interfere with the result of an election;
- Thou shalt not solicit or host, accept, or receive a donation or contribution to a partisan political party, candidate, or group; and
- Thou shalt not engage in political activity on behalf of a partisan political party, candidate, or group while on duty, in a federal space, wearing a federal uniform, or driving a federal vehicle.

Covered under these daunting prohibitions is ordinary American politicking like hosting fundraisers or inviting your coworkers to a political rally, distributing campaign materials, and wearing a T-shirt with your favorite candidates smiling face at work. The new hotbed of concern for the Hatch Act is, you guessed it, social media— you cannot use your blog, Facebook, Instagram, or e-mail account to comment pro or con for a partisan candidate, party, office, or group.6

You may be asking at this point whether you can even watch the political debates? Yes, that is allowed under the Hatch Act along with running for nonpartisan election and participating in nonpartisan campaigns; voting, and registering others to vote; you can contribute money to political campaigns, parties, or partisan groups; attend political rallies, meetings and fundraisers; and even join a political party. Of course these activities must be on your own time and dime, not that of your federal employer. All of these "You Cans" enable a federal employee to engage in the bare minimum of democracy: voting in elections, but opponents argue they bar the civil servant from fully participating in the complex richness of the American political process.7

Nonetheless, since its inception the Hatch Act has been a matter of fierce debate among federal employees and other advocates of civil liberties. Those who feel it should be relaxed contend that the modern merit-based system of government service has rendered the provisions of the Hatch Act

unnecessary, even obsolete. In addition, unlike in 1939, critics of the act claim there are now formidable whistleblower protections for employees who experience political coercion. Over the years there have been several efforts to weaken the conflict of interest safeguards that the act contains, leading many commentators to think that some of the amendments and reforms have blurred the tight boundaries between the professional and the political. Others such as the government unions and the American Civil Liberties Union (ACLU) believe that the tight line drawn between public and private binds the liberty of civil servants.8 Those who defend the Hatch Act believe that the wall it erects between professional and personal in the realm of political activities for federal employees must remain high and strong to protect the integrity of the administrative branch and the public trust.9

A Small Business Administration attorney failed to persuade the Merit Systems Protection Board and now the federal appeals court that he should not have been fired for violations of the Hatch Act. (*Eisinger v. Merit Systems Protection Board*, C.A.F.C. No. 2006-3426 (nonprecedential), 6/8/07) According to the court's decision, the facts in the case are not in dispute. Here's a quick summary taken from that decision. (See, also, *Fire That Lawyer!*)

Eisinger worked for the SBA in Fresno, California when he became active with the California Green Party. He admitted he was familiar with the Hatch Act, which bans federal employees from being involved in political activities while at work. Nevertheless, he did just that on behalf of the Green Party for about 3 years. Eisinger used his official telephone, computer and email to espouse Green Party causes. Eventually, the Office of Special Counsel took notice and filed a complaint with the MSPB charging Eisinger with Hatch Act violations. (Opinion, p. 2)

An MSPB judge held a hearing resulting in his finding that Eisinger had violated the Hatch Act and that he should be removed from his SBA position. The full Board accepted the AJ's findings and ordered SBA to remove Eisinger. (pp. 2-3)

Eisinger took his case to the Federal Circuit Court of Appeals and primarily argued that the Board erred in imposing removal as the penalty in his case. He did not dispute the facts. Instead, he cited several cases to the Board, and now to the court, where a lesser penalty had been imposed.

The court quotes the pertinent language from section 7326 of the Hatch Act:

> "*An employee or individual who violates…this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board." (Opinion p. 4)*

The court delineates the following factors that are to be considered by the Board in such cases: "[1] the nature of the offense and the extent of the employee's participation, [2] the employee's past employment record, [3] the political coloring of the employee's activities, [4] whether the employee had received advice of counsel … , [5] whether the employee had ceased the activities, and [6] the employee's motive and intent." (Citations omitted, p. 4)

The court concluded that the Board had given due consideration to all of these factors and that the removal penalty was appropriate. The court did not agree with Eisinger that other cases in which the penalty had been mitigated were similar to his situation, pointing out that Eisinger's political activities had been "significant" and had been "over a three year period," whereas the activities of employees in the cases that he was relying on to argue for a lesser penalty were "much more limited." (p. 5)

Bottom line: Eisinger's removal for his admitted Hatch Act violations stands. This case demonstrates that there are still some teeth left in the Hatch Act and it pays to take it seriously given the fact that one's job hangs in the balance.

So, as political advertisements dominate television programming and the texts never stop asking for campaign donations, you can cast your own vote for or against the Hatch Act. As for me and my house, we will follow President Jefferson in preferring to be the property of the people rather than be indebted to the powerful. You need never encounter a true conflict of interest if you have no false conflict of obligation: history teaches us that serving 2 masters usually turns out badly for the slave. Many of you will completely disagree with my stance, holding that your constitutional rights as a citizen are being curtailed, if not outright denied, simply because you choose to serve your country. Our ability to freely hold and express our differences of opinions about the Hatch Act and so much else is what keeps democracy alive.

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- 10. United States Court of Appeals for the Federal Circuit - 2006-3426

- JEFFREY W. EISINGER,

- Petitioner,

- v.

- MERIT SYSTEMS PROTECTION BOARD, UNITED STATES OF AMERICA
- Respondent.
- Jeffrey W, Eisinger, of Fresno, California, pro se.
- Jeffrey A. Gauger, Attorney, Office of the General Counsel, United States Merit Systems Protection Board, of Washington, DC, for respondent. With him on the brief were B. Chad Bungard, General Counsel, and Rosa M. Koppel, Deputy General Counsel.
- Appealed from: United States Merit Systems Protection Board
- United States Court of Appeals for the Federal Circuit - 2006-3426
- JEFFREY EISINGER
- Petitioner,
- v.
- MERIT SYSTEMS PROTECTION BOARD, Respondent.
- Before MICHEL, Chief Judge, HOLDERMAN, Chief Judge * , and GAJARSA, Circuit Judge.
- PER CURIAM.
- Jeffrey Eisinger ("Mr. Eisinger") appeals from a final decision of the Merit Systems Protection Board ("Board"). Special Counsel v. Eisinger, 103 M.S.P.R. 252 (2006) ("Final Decision"). The Board determined that Mr. Eisinger had violated the Hatch Act, 5 U.S.C. §§ 7321-26, which prohibits federal employees from engaging in certain partisan political activities. Final Decision at 253. The Board further determined that removal was the appropriate penalty for Mr. Eisinger's violation of the Act. Id. We affirm.

- Honorable James F. Holderman, Chief Judge, United States District Court for the Northern District of Illinois, sitting by designation.

- BACKGROUND

- The facts of this case are not in dispute. The parties stipulated to the relevant facts in the proceeding before the board.

- Mr. Eisinger was employed as a staff attorney with the United States Small Business Administration ("SBA") in Fresno, California until his removal as a result of the present litigation. He admits that he "was aware of the Hatch Act and knew that the Hatch Act prohibited federal employees from engaging in partisan political activity while at work." However, Mr. Eisinger also admits that from the fall of 2001 to September 2004 he conducted political activity while on duty or while in a room or building occupied in the discharge of official duties, in violation of the Hatch Act. Mr. Eisinger's political activities related to several positions that he held within the Green Party of California, a state political party.

- Specifically, during the relevant time period he used his government e-mail account to send numerous messages "that were directed toward the success of the Green Party," he "[h]eld telephone conversations that were directed toward the success of the Green Party," and he "[u]sed his government computer to draft documents that were directed toward the success of the Green Party."

- As a result of Mr. Eisinger's conduct of political activities while at work as a government employee, the OSC filed a complaint with the Board for violations of the Hatch Act. The complaint was tried before an administrative law judge ("ALJ") who issued an initial decision on November 17, 2005. Special Counsel v. Eisinger, No. CB- 1216-05-0011-T-1 (M.S.P.B. Nov. 17, 2005) ("Initial Decision"). The ALJ found that Mr. Eisinger had violated the Hatch Act and that he should therefore be removed from his position with the SBA.

- Initial Decision at 19. On August 9, 2006, the Board issued a 2006-3426 final decision and order accepting and adopting the ALJ's reasoning and findings. Final Decision at 252. As a result, the Board ordered the SBA to remove Mr. Eisinger from his position as a staff attorney. Id.

- Mr. Eisinger filed an appeal to this court from the Board's decision. This court has jurisdiction pursuant to 28 U.S.C. § 1295(a)(9).

- DISCUSSION

- This court must affirm the Board's decision unless it is "(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported

- by substantial evidence." 5 U.S.C. § 7703(c); Barrett v. Soc. Sec. Admin., 309 F.3d 781, 785 (Fed. Cir. 2002).

- The Hatch Act "prohibits covered government employees from engaging in certain partisan political activities." McEntee v. Merit Sys. Prot. Bd., 404 F.3d 1320, 1322 (Fed. Cir. 2005). Among the political activities prohibited by the Hatch Act are those engaged in "(1) while the employee is on duty [or] (2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof . . . ."

- 5 U.S.C. § 7324(a). The Act does not prohibit federal employees from engaging in most types of political activities while off-duty. McEntee, 404 F.3d at 1328. The Hatch Act's prohibitions apply to Mr. Eisinger because he is an "individual . . . employed or holding office in . . . an Executive agency other than the Government Accountability Office . . . ." 5 U.S.C. § 7322(1)(A). Mr. Eisinger admits that he engaged in political activities in support of the Green Party of California while on-duty 2006-3426 at his government job.

- The Board therefore properly found that Mr. Eisinger had violated the Hatch Act.

- Mr. Eisinger argues that removal was not the appropriate penalty for his violations of the Hatch Act. The Act provides that:

- An employee or individual who violates sections 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote

that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

- 5 U.S.C. § 7326. In determining whether a penalty other than removal should be imposed, this court has stated that the Board should consider the following Purnell factors: "[1] the nature of the offense and the extent of the employee's participation, [2]

- the employee's past employment record, [3] the political coloring of the employee's activities, [4] whether the employee had received advice of counsel regarding the activities[,] [5] whether the employee had ceased the activities, and [6] the employee's motive and intent." Kane v. Merit Sys. Prot. Bd., 210 F.3d 1379, 1382 (Fed. Cir. 2000); Special Counsel v. Purnell, 37 M.S.P.R. 184, 200 (1988).

- In deciding that removal was the appropriate penalty for Mr. Eisinger's violation, the Board considered each of the Purnell factors as well as several other factors raised by Mr. Eisinger. The additional factors included the lack of notoriety of the offense, that

- he did not receive any specific warnings from OSC, his potential for rehabilitation, and unusual job tensions that were present at the time of the violations. Initial Decision at 18. 2006-3426

- Mr. Eisinger argues that the Board erred by applying a penalty inconsistent with those imposed in other Hatch Act cases where the penalty was mitigated. However, many of the cases cited by Mr. Eisinger are settled cases and are therefore of limited precedential value. See, e.g., Special Counsel v. Spada, 66 M.S.P.R. 526 (1995); Special Counsel v. Andrezjwski, 63 M.S.P.R. 495 (1994). Further, the Board analyzed each of the cited cases but found them to be significantly different from Mr. Eisinger's.

- Here, Mr. Eisinger, by his own admission, engaged in a significant amount of political activity while at work over a three year period. None of employees in the cases cited by Mr. Eisinger devoted nearly the amount of time as Mr. Eisinger to the activities that

- violated the Hatch Act. See, e.g., Special Counsel v. Malone, 84 M.S.P.R. 342 (1999); Special Counsel v. Rivera, 61 M.S.P.R. 440 (1994). Because the political activities of the employees in those cases were much more limited than Mr. Eisinger's, the penalties

- in those cases cannot form a basis for comparison to Mr. Eisinger's penalty.

- Accordingly, we find that the Board's decision that removal was an appropriate penalty in Mr. Eisinger's situation was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

- Mr. Eisinger also argues that the Board made several factual errors in its analysis of the Purnell and other factors. We have reviewed those claims and determine that the Board's findings are supported by substantial evidence. Mr. Eisinger further argues that the Board erred by refusing to stay its proceedings pending the resolution of charges of impropriety against the Special Counsel, by denying his motion to compel discovery of the OCS's investigation manual, by denying his motion for certification for interlocutory appeal from the denial of his discovery request, and by rejecting his affirmative 2006-3426 defenses of laches, the Administrative Procedure Act, and discrimination based on political affiliation. However, we have considered these issues and determine that the Board's decisions with respect to them were not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

- CONCLUSION

- We conclude that the Board did not commit legal error in its decision to remove Mr. Eisinger from his position as a staff attorney for the SBA for his grievous violations of the Hatch Act. The decision of the Board is therefore affirmed."