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FOIA Number:
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THE WHITE HOUSE

12-22-91

Dear David -

Thank you for your very kind note. Your interest means much to me.

I have passed on with appropriate concern your thought.

Keep in touch.

Sincerely,

Andy Card

THE WHITE HOUSE
WASHINGTON

The Honorable
David K. Karnes
1650 Farnam Street
Omaha, Nebraska
68102



AC HAS SEEN

DAVID K. KARNES

RECEIVED
RECEIVED
DEC 13 1991
DEC 10 1991

December 10, 1991

Mr. Andrew H. Card, Jr.
Assistant to the President and
Deputy Chief of Staff
The White House
Washington, DC 20500

Dear Andy:

I hope the changes at the House allow you to continue your role as Deputy. I know from talking with members of the Administration who occasionally had their differences with Governor Sununu (i.e., Jack Kemp) that notwithstanding they always felt they received full access and a fair hearing on whatever issue with you. Thus, I hope you are able to continue with Sam if you so choose.

The point of my note is to raise an item concerning Ken Lay as the White House considers him as a successor to Bob Mossbacher (see enclosed Omaha World Herald article of December 7, 1991).

During my Senate tenure I sought Ken's support, not only on the basis of our consistent philosophical and policy beliefs, but also because Enron's predecessor, Northern Natural Gas Company, had been for many years headquartered in Omaha and, following the move to Houston, continues to have a large operating division in the community. To my dismay and disappointment, Ken, (and at Ken's encouragement) several of his executives, and the Enron PAC, chose to support Bob Kerrey. From recent newspaper reports this Lay-Kerrey relationship is one of long standing and has been tapped by Kerrey in conjunction with his presidential aspirations.

Thus, assuming that Ken and the President are good friends, and not knowing whether Ken is, in fact, being seriously considered

Mr. Andrew H. Card, Jr.
December 10, 1991
Page 2

for Commerce, or whether or not Ken's personal and political support of Bob Kerrey is known to the White House, I felt it appropriate to at least raise the issue. I would hope that no embarrassing after the fact revelations would flow from such an appointment. I know surprises after nominations have been announced can be uncomfortable for all concerned.

As always, my personal best wishes to you, particularly during this time and the Holiday Season.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dave", followed by a horizontal line.

David K. Karnes

rsp

Enclosure

National News



The Associated Press



Enron Corp.

Roemer ... Possibility for transportation secretary.

Lay ... Possibility for commerce secretary.

Enron Chairman On Cabinet List

Louisiana Governor Also Considered

Washington (AP) — The chairman of Enron Corp. and Louisiana's lame-duck governor are among those being mentioned as possible choices to fill two vacancies in President Bush's Cabinet.

The vacancies were created Thursday when Bush announced he was picking Transportation Secretary Samuel Skinner to replace John Sununu as White House chief of staff.

As had long been expected, the president also announced that Commerce Secretary Robert Mosbacher would serve as general chairman of his reelection campaign.

While Bush did not give any timetable for Mosbacher's departure, Commerce Department officials said he was expected to leave for the campaign before the end of December.

No Clues

At a press conference Thursday, Bush did not provide clues about those under consideration for the Transporta-

tion and Commerce jobs. But administration and congressional sources, who spoke on condition of anonymity, gave the following list of possible candidates.

For the Transportation Department:

■ Louisiana Gov. Buddy Roemer, who earlier this year switched from the Democratic to Republican Party but came in third in his race for a second term as governor behind David Duke and the eventual winner, former Gov. Edwin Edwards.

■ Deputy Transportation Secretary James B. Busey IV, who took the No. 2 position at the department this week after having served as head of the Federal Aviation Administration.

■ Wendy Gramm, chairwoman of the Commodity Futures Trading Commission and wife of Sen. Phil Gramm, R-Texas.

For the Commerce Department:

■ Kenneth Lay, chief executive of Enron Corp., the Houston-based natural gas company that had been based in Omaha.

■ Deputy Treasury Secretary John E. Robson, who has served as Treasury Secretary Nicholas Brady's chief point man on the savings and loan bailout and

the credit crunch. Robson is a former head of G.D. Searle & Co., whose products include the artificial sweetener NutraSweet.

■ John D. Macomber, since 1989 the head of the government's Export-Import Bank and before that chief executive of the Celanese Corp.

■ Former Rep. Bill Frenzel, R-Minn., who spent 18 years in the House, gaining a reputation as one of the top experts on trade issues.

■ Maurice "Henk" Greenberg, head of American International Group Inc. of New York, an international insurance consortium.

Administration officials said that while those were among the names being mentioned, Bush could pick a candidate who is not on either list.

Industry Groups

Some suggested that the president, looking ahead to the 1992 campaign, may decide to tap a Hispanic business executive for the Commerce Department post. One person being mentioned is Ronald Cedillos, the head of a California aerospace testing firm.

Industry groups that would normally be consulted by the White House before any decision was made said Thursday they had not been contacted.

The executive committee of the National Association of Manufacturers met with Bush Thursday to discuss the administration's economic growth package.

Officials said the issue of a replacement for Mosbacher did not come up in the discussions, but NAM Chairman Dexter Baker said his group did not object to any of the names being mentioned as possible successors.

Baker said NAM would be pushing whomever is selected to commit more government resources to promoting U.S. exports.

"We would like to see commerce be more aggressive overseas," he said. "As a country, we spend one-tenth the dollars per unit of sales that Japan and Germany spend to promote exports."



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

ROBERT J. LAGOMARSINO
NINETEENTH DISTRICT
CALIFORNIA

AC HAS SEEN

RECEIVED

DEC 23 1991

December 18, 1991

President George Bush
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. President:

I'm writing to ask a favor. I need your endorsement in my campaign for re-election to the House of Representatives.

As you know, I currently represent both Santa Barbara County and part of Ventura County in the House. Under the currently pending redistricting plan for California, I will be forced to choose between running in the Ventura County primary against another House Republican incumbent--my good friend Elton Gallegly--or another, non-incumbent Republican, Mike Huffington, who is seeking the Republican nomination in Santa Barbara County.

I want to do what's best for the party; therefore, I'm willing to bow out of the race against Elton, and run for re-election in Santa Barbara County. However I know that Mike Huffington's father is your ambassador to Austria, and that he may seek your endorsement. The winner of the Republican primary in Santa Barbara will probably face a popular Democrat, California State Senator Gary Hart, who spent \$1.6 million in an attempt to unseat

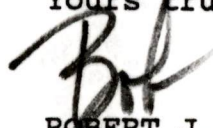
President George Bush
December 18, 1991
Page 2

me in 1988. It was the most expensive, and one of the closest, House races in the nation that year.

The Republican Party needs to avoid an expensive, divisive primary fight, especially if it's going to be followed by another tough race against Gary Hart. As you know, I was among the first members of the House to endorse your candidacy in the 1988 primaries; I would very much appreciate your endorsement now, in order to avoid another bloodletting in California.

Norma and I both appreciate your consideration of this request, and with warmest regards for the Christmas season, remain,

Yours truly,



ROBERT J. LAGOMARSINO
Member of Congress

RJL:jid

✓ bcc: Andy Card

*Thanks
for your
help on this*


THE WHITE HOUSE

12-29-91
(eve of Far East trip.)

Dear Senator Hatch -

I will make sure the letter
you had faxed to Sam Skinner
is viewed by the President during
his trip to the Far East.

Keep in touch. Sincerely,
Andy Card

THE WHITE HOUSE
WASHINGTON

The Hon. Orrin G. Hatch
United States Senator
Washington, D.C. 20510-6200

United States Senate

WASHINGTON, DC 20510

F A C S I M I L E

AC HAS SEEN

(I have the
letter.)

FROM: OFFICE OF SENATOR ORRIN G. HATCH
ATTN: BOB LOCKWOOD, SENIOR COUNSEL (TRADE & DEFENSE)
(Drafter of this message: Bob Lockwood)

DATE: _____
TEL: (202) 224-1283
FAX: (202) 224-6510

TO:

WHITE HOUSE (Chief of Staff)

ATTN:

Andy Card

FAX:

456-2883

TEL:

PAGES (Incl. coversheet): 2

M E S S A G E

ANDY: Orrin would very much appreciate
inclusion of this letter in the President's
trip book —

Thanks,
Bob

FAX: () 456 - 2883

THE WHITE HOUSE
WASHINGTON

AC HAS SEEN

RECEIVED

NOV 08 1991

November 8, 1991

MEMORANDUM FOR GOVERNOR SUNUNU

THROUGH: FRED MCCLURE *fm*
FROM: GARY ANDRES *ga*
RE: House Labor/HHS Vote

On Wednesday, November 6, the House approved the Labor/HHS Appropriations Conference Report by a vote of 272 to 156. Fifty-one Republicans voted for the conference report while forty-three Democrats voted against. While it is always dangerous to depend on such a large number of Democrats to sustain the President's veto, we believe the veto will be sustained.

Several Democrats have already indicated they will not sustain a veto and the Democrat Leaders are sure to whip their Members hard. However, we are certain to pick up Republican Members who will not let the President down on an override vote.

Frankly, we were pleased with this vote, given the extraneous issues that clouded the picture. Members were reluctant to vote against the funding of popular programs such as those for women, senior citizens and cancer research. Further, Bill Natcher (D-KY) is a well-respected gentleman whose goal of a clean appropriations bill is well-known. His fellow appropriators were loath to vote against him. On the other hand, the \$4 billion forward funding in the bill helped us pick up Members who would not otherwise have voted with us. While the Administration has used forward funding itself, it has never been of this magnitude.

There seemed to be genuine surprise at Wednesday's vote among some of the Democrats. Others, aware of where the votes lie, will continue to press for votes on abortion. They believe these votes will hurt our Members next year and that eventually pro-life Members will turn around on the issue or be turned out of office. The Waxman freestanding overturn of Title X is waiting in the wings and may be the next, new abortion vote. That vote should be easier to defend (and count) since it is not confused with popular funding issues.

It is not yet clear when the Labor/HHS bill will reach the White House. However, it is important that our veto message include a strong message on the \$4 billion forward funding since it helped garner additional votes.

AC HAS SEEN



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

DENNY SMITH
OREGON

Andy,

Our meeting went well. Folks
back home are happy. The Congressman
~~is~~ happy. Thanks for getting Gov.
Sumner here, and thanks for
all the time you gave us.

Sincerely,

Kurt



U.S. HOUSE OF REPRESENTATIVES

KURT PFOTENHAUER
CHIEF OF STAFF

DENNY SMITH
MEMBER OF CONGRESS
5TH DISTRICT, OREGON

1213 LONGWORTH BUILDING
WASHINGTON, D.C. 20515
(202) 225-5711

THE WHITE HOUSE

7/5/90

Dear Kurt -

Thank you for the Oregonian clip of Roberta Ulrich's column on 6/27/90. We do have Westerners on the Senior Staff: Roger Porter (Utah), Brent Scowcroft (Utah), Sig Rogich (Nevada) and the Texas team - McClure, Cicconi and Untermeyer. — Keep in touch.
Andy

DENNY SMITH
MEMBER OF CONGRESS
5TH DISTRICT, OREGON



KURT PFOTENHAUER
ADMINISTRATIVE ASSISTANT

1213 LONGWORTH BUILDING
WASHINGTON, D.C. 20515
(202) 225-5711

U.S. HOUSE OF REPRESENTATIVES



U.S. HOUSE OF REPRESENTATIVES

KURT PFOTENHAUER
ADMINISTRATIVE ASSISTANT

DENNY SMITH
MEMBER OF CONGRESS
5TH DISTRICT, OREGON

1213 LONGWORTH BUILDING
WASHINGTON, D.C. 20515
(202) 225-5711

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WASHINGTON — A group of Western Republicans told White House Chief of Staff John Sununu last week the Bush administration lacked understanding of Western issues, especially those concerning public lands.

And while they didn't exactly get what they wanted, they believe they made a lot of progress toward closer relations with the White House.

Oregon's two GOP House members, Bob Smith and Denny Smith, were among the nine congressmen from seven states who met with Sununu in the office of Rep. Charles Pashayan Jr., R-Calif. The White House chief apparently was will-



ULRICH

listen — he spent an hour with the senators and met them on their turf, the Cannon House Office Building, instead of in the White House.

The Westerners asked that the administration put a Westerner on the staff so there would be someone available who understands issues of the wide open spaces. No one at the White House, at least on a policy level, is from the states where public lands occupy much of the space and management of public lands occupies much of the public attention.

Sununu said he wouldn't specifically add a Westerner to the staff, but they were welcome to call him at any time. "I think he means it," Bob Smith said after the meeting.

"He pledged to us that his office would be wide open to our concerns," Smith said. "He reminded us that if we didn't let him know about something, he couldn't do anything about it. That's a fair statement."

"He was very open and forthright"

Roberta Ulrich covers politics from

White House gets earful from Western Republicans

By ROBERTA ULRICH

WASHINGTON — A group of Western Republicans told White House Chief of Staff John Sununu last week the Bush administration lacked understanding of Western issues, especially those concerning public lands.

And while they didn't exactly get what they wanted, they believe they made a lot of progress toward closer relations with the White House.

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ULRICH

Roberta Ulrich covers politics from Washington, D.C., for The Oregonian.

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"He pledged to us that his office would be wide open to our concerns," Smith said. "He reminded us that if we didn't let him know about something, he couldn't do anything about it. That's a fair statement."

"He was very open and forthright," Denny Smith added. "I was pleased with his response."

"Sununu indicated he wanted to help. He certainly has been (a help) on forestry."

—Rep. Denny Smith

Both Smiths said they consider the session a good one and thought they opened better communication with the White House.

Passage of a bill that would sharply limit ownership of land in federal reclamation projects was the incident that prompted the Republicans to seek better rapport with the White House. The acreage limitation amendment was sponsored by a Western Democrat, Rep. George Miller of California, and is something that environmentalists have long sought.

Western Republicans, however, believe it would devastate family farms.

Denny Smith said the amendment was

attached without a committee hearing and with no comment from the White House.

The GOP group told Sununu they hoped the president would veto the bill if it reached the White House. Meantime, they said, it's important that the White House let Senate Republicans know where President Bush stands.

The White House could hardly be unaware of the Northwesterners on Capitol Hill. Denny Smith led a troop of timber industry people over for a visit with domestic policy staff members earlier in the month. Sununu stopped in to listen a bit then.

Most other Republican Northwesterners also have kept the spotted owl issue before Sununu and Roger Porter, the director of economic and domestic policy, for months. That issue had made enough impression in the White House that Bush could answer a question about it at a news conference for regional reporters without hesitating or glancing around for guidance from his staff.

Other issues have gotten less publicity and less attention from the White House.

Reclamation is one. Other uses of public lands is another. Water issues are bound to come up, especially with California once more casting covetous glances at the Columbia River.

Sununu, who is given to answering questions with figures of speech, told the congressmen he wanted to hear about their problems early. "I'd rather deal with an acorn than an oak," he was quoted as saying.

Denny Smith said, "Sununu indicated he wanted to help. He certainly has been (a help) on forestry."

In addition to Oregon and California, the states represented were Alaska, Idaho, Montana, Arizona and New Mexico. Most of those attending are members of the House Interior and Insular Affairs Committee.

Although they won't get the Western staff member they want, Bob Smith said the Westerners believe they accomplished a good deal in their meeting. "We're willing, if we have access and communications," to give Sununu a chance, he said.

and Clark College and editor of the "Anadromous Fish Law Memo."

Forget also that what BPA spends on fish is a fraction of what it spent on the Washing-

ton, The Oregonian, 2000 G Street, S.W., Portland, Ore. 97201.

ed under the title "A Conservative View."

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THE WHITE HOUSE
WASHINGTON

*No
Not deal
w/ this issue
yet in
cos. of R u*

*Called
9:12 am
6/26*

Date: 6/25/90

FOR: *Gov. Sununu*

FROM: ANDREW H. CARD, Jr. *ASAP*

☐ Action

☒ Your Comment

☐ Let's Talk

☐ FYI

*Should I meet w/ the
US West people?*



June 21, 1990

DAVID K. KARNES

Mr. Andy Card
The White House
Washington, D.C. 20500

Dear Andy:

I understand the Governor Sununu-Governor Orr event last week in Omaha went exceptionally well. Liz and I were very pleased to be hosts. Unfortunately, at the same time as the Orr event in Omaha, I was hosting in Washington a special recognition event for Dr. Ron Roskins, a Nebraskan who as you know is the new Administrator of A.I.D. However, from all reports, the Governor did his usual super job. Kay was very pleased.

I had asked Kay to mention to Governor Sununu her interest in a project that is a top priority for one of her constituent corporations and best supporters - U.S. West. The project I believe you and the Governor have come to know well is the Trans-Soviet fiber optic telecommunications line (TSL). Kay's interest, of course, is not technically, geo-politically or security based, although she respects those concerns. Her interest is constituent based.

Kay said that she discussed her interests with the Governor and asked if, when appropriate, he would accommodate a meeting in D.C. with the Chairman of U.S. West and one or two other senior U.S. West staff. She indicated that, although the Governor was nearing his limit of appropriate U.S. West contact, he was willing to consider her request. She advised me to follow-up about the meeting and I said to Kay I would contact you.

What I have requested of Linda in your office is some time next week, preferably 4:00 p.m. on June 26 (since I have a meeting at 5:00 with Cooper Evans) with you, me and Laird Walker of U.S. West to discuss their procedural dilemma and political decision regarding an appeal.

Mr. Andy Card
June 21, 1990
Page Two

The goal of our meeting with you would be to seek counsel on if, and when, a Governor Sununu-U.S. West meeting would be appropriate as requested by Kay, and some of the issues that U.S. West feels are process-related within the White House which only you and a handful of others could clarify.

The U.S. West people have been aggressive on this issue as the Governor will attest. They have been most helpful to me, Kay and others over the years and I expect them to be so in the future. I am helping because I believe the TSL project will be done with or without U.S. West. The technology transfer issue is one that I appreciate. We were asked to address in the Senate during my tenure several politically volatile items. I recognize that each has its own dynamic, as this does.

Andy, I am requesting some of your time knowing the premium placed on your schedule. I would not do this unless I felt you could help and make any meeting with the Governor mutually productive and positive. I would like 20-30 minutes.

Please have Linda give my office a call at (402) 346-6000 or in D.C. at 828-2400. We will attempt to rearrange schedules to accommodate yours if the suggested time does not work.

Much thanks and best wishes!

Sincerely,

David K. Karnes

mew

Enclosures

P.S. Per Linda's assistant, I have enclosed a short (June 20) memo of technical concerns and a 2-pager dated June 14 concerning a bit more. Also sometime I would like to share some thoughts with you about the politics of Marlin's broadsides against Bob Kerry.

June 14, 1990

Opportunity for a U.S. Leadership Role in the
Trans-Soviet Telecommunications Project May Be Lost

- U S WEST has learned this week that the U.S. decision to oppose the U S WEST-led project has forced the Soviets to begin development of a new approach to the project which may exclude any role for U.S. telecommunications companies and will greatly increase the role of the Soviets.
- Under the TSL proposal presented in U S WEST's license application the Company had the lead role in system design, procurement, construction and eventual operation and maintenance. The company would have been in a position to maximize procurement and involvement by U.S. companies.
- The new Soviet proposal would adopt a segment by segment construction approach, utilize more Soviet design, engineering and cable, and obtain construction, technical assistance, cable and electronics from a variety of non-U.S. sources, as decided by the Soviets.
- Under the new Soviet concept for a trans-continental fiber optics project, the Soviets intend to do most engineering, design and construction domestically. Design and construction on the intra-Soviet segment has begun. Cable installation is scheduled to begin in April 1991. CoCom approval is not necessary for the cable that is to be installed. These activities account for the majority (over 75%) of the value of the project.
- This is similar to the Soviet strategy for building the Yamal pipeline over U.S. opposition. The Soviets were forced to exclude U.S. companies which, at the time, had the most advanced pipeline construction capability. They completed the pipeline with a combination of non-U.S. materials and know-how plus accelerated development and production of Soviet compressors.
- The Soviets can almost certainly procure technical advice and construction assistance from any number of non-U.S. companies without violating CoCom restrictions or the national controls of most CoCom members.
- The cable for the project is now available from CoCom and non-CoCom sources without CoCom approval. Only a national license is required even for CoCom member companies.

- We assume the U.S., consistent with its Intent to Deny letter to U S WEST, would not license cable exports from the U.S., but for a cable market of the size of the TSL project and potentially for other projects in the Soviet Union, there are many non-U.S. competitors.
- The Danes can lay the Copenhagen to Narva, USSR segment of the project without seeking any authority from CoCom. They might decide to do this if they conclude there is a high probability that CoCom limits on transmission equipment will change in the short term and if other competitors begin to respond to Soviet invitations.
- The 565 Mb/s electronics for the project are still controlled by CoCom but need not be installed until approximately late 1992. The Soviets assume they can manufacture these domestically or obtain them from CoCom or non-CoCom sources by that time.
- A German project to build a 565 Mb/s fiber optic system is also under development between Deutsche Bundespost Telekom (DBP) and the Soviets. This project could be completed up to the Soviet border if CoCom approved 565Mb/s electronics equipment for Czechoslovakia, Poland and Hungary. The Soviets can place the cable to Moscow, again without CoCom approval, awaiting only the import of electronics. With these elements completed, a central leg of the project could be completed within months by installing 565Mb/s electronics in late 1992.
- The segment by segment approach to development of a Soviet fiber optics telecommunications system, now being implemented by the Soviets as a substitute to the U S WEST-led TSL project, will be extremely disadvantageous to U.S. interests. U.S. control over the project and knowledge of its design and operation will be lost. U.S. companies will be least favored because of legitimate Soviet concern that U.S. export controls make them unreliable suppliers of equipment and especially of technical expertise. European telecommunications companies will achieve a decisive, long term advantage in the Soviet market.
- Under the new Soviet approach, the opportunity to include effective civilian use guarantees and safeguards, provided in current U S WEST-Soviet contracts, will be lost since U S WEST will no longer be the project leader.

Although US WEST is obviously disappointed with the US and UK governments' June 5th decision to halt the Trans-Soviet fiber optic telecommunications line (TSL) at this time, US WEST does not seek to appeal that decision.

However, faced with strong foreign competition and the inevitability of TSL, US WEST would appreciate USG guidance on:

- Eventual timing of TSL commencement acceptable to the USG,
- Conditions under which TSL could receive approval, and
- US WEST participation immediately in a "phase 1 activity" to place only fiber (no electronics) for the project--possibly only the Northern Leg (Copenhagen-Moscow), construction of which would begin in Spring 1991.

The Commerce Department announced this week that the relevant single mode commercial fiber may be exported to the Soviet Union under a "national discretion" standard which means that approval of the host government, but not CoCom, is required for such exports. The result is the very real risk that a non-U.S. company will now proceed to sell and install the fiber, while the USG continues to block U.S. companies' participation.

June 20, 1990

THE WHITE HOUSE
WASHINGTON

DATE: 5-12-90

TO: Fred McClure

FROM: ANDY CARD *Andy*

Please "buy something"
with Sen. Hatfield.

Although HHS is not
inclined to take the
challenge.

United States Senate

WASHINGTON, DC

May 2, 1990

The Honorable John Sununu
Chief of Staff
The White House
Washington, D.C. 20500

Dear John:

I wanted to bring to your attention an exciting development, the rebirth of a sport which originated at the White House. Hoover-ball, created by its namesake in 1931 to combat his weight problem, was once the most popular sport at the White House. Each morning, President Hoover would join members of his Cabinet, Supreme Court Justices and other senior government officials for a game on the South Lawn.

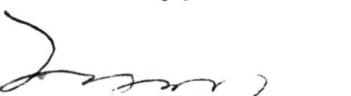
Though Hoover-ball faded from popularity after President Hoover's defeat by President Roosevelt in 1931, the sport is making a comeback. Attached are several articles which chronicle the sport's increasing popularity and a set of rules describing the game.

How appropriate it would be to see Hoover-ball return to the South Lawn! Having obtained two Hoover-balls from the Hoover Presidential Library Association, my office has held one practice and we are looking forward to some friendly competition.

With this in mind, my office wishes to challenge your staff to a Hoover-ball game to be played on the South Lawn. I would be pleased to provide you with a Hoover-ball and any assistance you might need. The date of the match and the wager can be negotiated at a future time.

Are you game?

Sincerely,



Mark O. Hatfield
United States Senator

THE WHITE HOUSE
WASHINGTON

DATE: 5-14-90

TO: Bonnie Newman

FROM: ANDY CARD *Andy*

A couple of weeks ago I raised the possibility of a 5% pay raise for those WH employees that did not qualify for the 5% given earlier. (I think the rule was you got the 5% if you started working here prior to June 1, '89.)

Roger Porter keeps asking. Also, is there any movement with the Roger Porter desire to get that extra office opposite the two he has on the 4th floor (maybe 5th) of the OEOB?

11/3
Gov. S. -
Anything
new?
Andy

THE WHITE HOUSE
WASHINGTON

November 3, 1989

Don -
per LHS 11/9
No deal was
struck. Sen. Dole
was to make a proposal
to HHS but did not.
Go w/ strong
direction from DOJ
and OPM.
Andy

MEMORANDUM FOR ANDREW C. CARD, Jr.

FROM:

ROBERT J. PORTMAN *RJP*

SUBJECT:

Federal Employee Overtime Legislation

We have recently received inquiries from both Justice and OPM as to the White House position on H.R. 215, legislation which establishes a more generous formula for determining "administratively uncontrollable overtime" for federal employees. The legislation is sponsored by Rep. Mary Rose Oakar (D-OH) on the House side. Apparently, Senator Dole has been promoting it in the Senate.

Both DOJ and OPM have problems with the bill but have heard through the grapevine that the Governor has told Senators Dole and Stevens that we will not object. Can you shed any light on this? We have been told that the legislation could move forward as early as next week.

Thanks.

Check w/
DMB
for status
of HR 215,
←

Document Originally
Attached to
Following Page

**Federal Bureau of Investigation
Agents Association**

per HHS 10/10
check into this
Anders

10/10 I talked
w/ Darman who
will set a position
on H.R. 215.
AKC

October 4, 1989

Dear Governor,

Before I served in Congress I was an FBI agent. They have been unfairly paid for overtime for over 25 years.

H.R. 215 would fix that. The boost in morale would be dramatic.

Agents tell me that it will be futile to bring more agents into the front door because we are losing too many out the back door due to the overtime issue.

Bob Hale suggested that I write you a note about the bill. Thank you for considering this important issue.

Ed Bethune
4702 N. 32nd St.
Arlington, VA 22207

101ST CONGRESS
1ST SESSION

H. R. 215

To amend title 5, United States Code, with respect to the method by which premium pay is determined for irregular, unscheduled overtime duty performed by a Federal employee.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1989

Ms. OAKAR introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, with respect to the method by which premium pay is determined for irregular, unscheduled overtime duty performed by a Federal employee.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 5545(c)(2) of title 5, United States Code, is
4 amended to read as follows:

5 “(2) an employee in a position in which the hours
6 of duty cannot be controlled administratively, and
7 which requires substantial amounts of irregular, un-
8 scheduled overtime duty with the employee generally

1 being responsible for recognizing, without supervision,
2 circumstances which require the employee to remain on
3 duty, shall receive premium pay for this duty on an
4 annual basis instead of premium pay provided by other
5 provisions of this subchapter, except for regularly
6 scheduled overtime, night, and Sunday duty, and for
7 holiday duty. Premium pay under this paragraph is an
8 appropriate percentage, not less than 10 percent nor
9 more than 25 percent, of the rate of basic pay for the
10 position, as determined by taking into consideration the
11 frequency and duration of irregular, unscheduled over-
12 time duty required in the position.”.

13 (b) The amendment made by subsection (a) shall apply
14 with respect to overtime duty performed after September
15 30, 1989.

○

GORDON J. HUMPHREY
NEW HAMPSHIRE

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1-800-852-3714

COMMITTEES
JUDICIARY

FOREIGN RELATIONS

ENVIRONMENT AND PUBLIC
WORKS

United States Senate

WASHINGTON, DC 20510

November 8, 1989

The Honorable John H. Sununu
Chief of Staff to the President
The White House
Washington, D.C. 20500

Dear John:

I am writing to update you once more on the matter of the Oakwood Child Center.

One month ago, Rabbi Balkany and I met with Richard P. Kusserow, the Inspector General of HHS to review his audit of the Oakwood matter. At that time, Mr. Kusserow admitted that Oakwood had done nothing wrong or improper in regards to the grant from HHS, but instead, that HHS was attempting to cover itself from the fact that this grant had been made in an accelerated fashion. To quote Mr. Kusserow, "how could I ask the Secretary to continue this grant in the atmosphere of HUD."

Further, Mr. Kusserow went on to state that if the Inspector General's office had found anything wrong, "they would have had a full investigation." Instead, his office merely conducted a routine audit.

Clearly, Oakwood has become a victim of circumstances beyond its control.

Currently, Oakwood has two potential steps that it could take. It could take HHS to court, which would entail years of litigation, or, it could refund the entire \$1.8 million grant. While Rabbi Balkany has recommended that Oakwood take the latter option, I believe that in fairness, it is incumbent on HHS to negotiate an extended repayment of this grant. If Oakwood were required to return the entire grant at this time, this would require the sale of the building, and ultimately would prevent over 250 children from having adequate day care.

John, having been involved with the Oakwood matter for over 11 months, I believe that justice and fair play requires that the HHS counsel work out an extended repayment plan of eight to ten years, so that the day care center may go forward. Requiring immediate repayment will make it impossible for the center to serve the children. Frankly, I believe it will take your personal involvement to secure a decent settlement of the problem HHS has created for Oakwood.

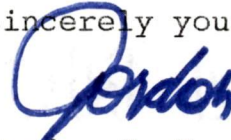
ONE EAGLE SQUARE
CONCORD, NH 03301
(603) 228-0453

157 MAIN STREET
BERLIN, NH 03570
(603) 752-2600

The Honorable John H. Sununu
November 8, 1989
Page Two

With warmest regards, I am

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Gordon", written over the typed name.

Gordon J. Humphrey, USS

GJH/jm

THE WHITE HOUSE

WASHINGTON

November 20, 1989

Dear Senator Heinz:

I understand that your office recently arranged some group tours of the White House and was less than pleased with the results.

Please allow me to apologize for any inconvenience or embarrassment caused on these occasions. Your concerns have been relayed to appropriate White House officials who will be sensitive to your needs.

Again, if I can be of any assistance, please let me know.

With best wishes,

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

The Honorable John Heinz
United States Senate
Washington, D.C. 20510

AC HAS SEEN ✓

THE WHITE HOUSE
WASHINGTON

11/14

TO: ANDY CARD

FROM: **FRED McCLURE**
Assistant to the President
for Legislative Affairs

- ☐ FYI
- ☒ Comment
- ☐ Action

Remember the Heinz incident? Well, I received another phone call from Heinz yesterday regarding his receipt of some kind of apology letter. Can't we get some generic note to him from Debbie Romash? I'll be happy to do it over my signature if necessary.

We must make a decision on this. Although I have him temporarily calmed down, I am not sure how long he will maintain this disposition.

Thanks.

11/14

Andy-- I spoke w/Romash. There is nothing to apologize for in her opinion. She checked with the tour officer who says he merely asked the couple to go to the back of the group while they were translating so the others in the front could hear him. Debbie said the Senator has an "intolerably rude woman working for him - Katie Eney - who is on a tirade" and is getting the Senator working up for no reason.

Therefore, no apology letter is forthcoming.
Linda

Why don't
I write an
apology
on behalf
of the WH?
Linda
11/16

THE WHITE HOUSE

WASHINGTON

November 16, 1989

Dear Senator Nunn:

On behalf of Governor Sununu, thank you for the recent letter from you and Senator Warner relative to securing permanent space for the Defense Nuclear Facilities Safety Board.

I have looked into the housing situation, and things appear to be on the right track as indicated in Admiral Watkins' letter of November 7th to John Conway. I will continue to monitor this closely.

With best wishes,

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

The Honorable Sam Nunn
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

November 16, 1989

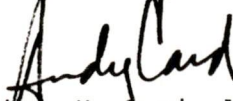
Dear Senator Warner:

On behalf of Governor Sununu, thank you for the recent letter from you and Senator Nunn relative to securing permanent space for the Defense Nuclear Facilities Safety Board.

I have looked into the housing situation, and things appear to be on the right track as indicated in Admiral Watkins' letter of November 7th to John Conway. I will continue to monitor this closely.

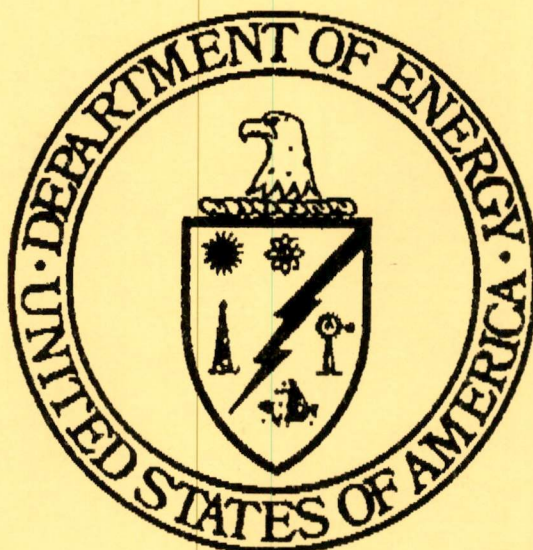
With best wishes,

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

The Honorable John Warner
United States Senate
Washington, D.C. 20510



OFFICE OF THE SECRETARY

FACSIMILE TRANSMITTAL SHEET

DATE 11-16-89
TO Linda Gambatese
FAX NUMBER 456-2397
OFFICE NUMBER 1F/WW
COMMENTS _____

FROM Bucky Brack
FAX NUMBER 586-7573
OFFICE NUMBER 7B-222 586-8504
NUMBER OF PAGES INCLUDING COVER 2

Nov. 7, 1989

Mr. John T. Conway
c/o Mr. Kenneth M. Pusateri
Department of Energy
Washington, DC 20585

Dear John:

This letter is to confirm the status of office space for the Defense Nuclear Facility Safety Board. While neither of us are comfortable with housing the Board within the Department of Energy, the reality of the Board needing secure office space on short notice makes it necessary for me to agree to your request for temporary space at the Department of Energy.

I understand that adequate and secure space has been located for you within the Department of Energy effective Tuesday, November 7, 1989. This space will be available to you for a period not to exceed 3 months, that is, until February 7, 1990.

I want to assure you that I will assist you in your efforts with GSA to obtain adequate space, independent from the DOE, for the Board. The Defense Nuclear Facility Safety Board contact person at GSA is Calvin Snowden, and he may be reached at 453-4002. Mr. Snowden has been advised of this agreement and will work with your administrative liaison, Kenneth M. Pusateri on all the details.

Thank you.

Sincerely,

James D. Watkins
Admiral, U.S. Navy (Retired)

cc: Mr. Calvin Snowden
Mr. Kenneth M. Pusateri

THE WHITE HOUSE

WASHINGTON

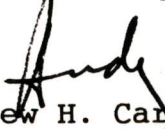
November 15, 1989

Dear Congressman Campbell:

Thanks for your phone call and also for the copy of your letter to OMB Director Dick Darman.

I have raised the issue to Governor Sununu. It's an uphill battle.

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

The Honorable Tom Campbell
U. S. House of Representatives
Washington, D.C. 20515



Congress of the United States
House of Representatives
Washington, D. C. 20515

Tom Campbell
Twelfth District
California

Dear Dick,

This is the reason I was telephoning you last night. Yesterday, SBA gave a briefing to the California delegation including the following facts:

- a housing loan applications approved 72
- b housing loan dollars approved 1,796,800
- c total housing loans anticipated 9,500
- d total housing loan dollars available 400 million
- e expected additional cost from
lifting SBA housing loan
cap from 100,000 to 500,000 15-20 million

Please divide line b by line a, yielding an average of \$24,955 per housing loan. Multiply by line c, to yield 237 million total anticipatable cost. This is far less than line d, the funds allocated in the revolving fund for this purpose - and far more than line e, the estimated additional cost.

The conclusion apparent is that increasing

(over, please)

the SBA limit to the full statutory authority of 500,000 would not jeopardize the solvency of the fund. Indeed, these estimates are likely low, given that the more expensive home damage claims would have been received by now.

Lifting the administratively imposed cap is essential to fulfilling the intended purpose of the fund. Many bought homes for 15,000 or 25,000 ten years ago, only to find them now re-constructable for in excess of 100,000. These are not wealthy people; the news media have focused on the San Francisco marina, but I represent the poorer people who live in the mountainous area around Loma Prieta. Many whose homes were destroyed have meager savings and earn low levels of income - yet their replacement cost exceeds 100,000 per home.

Thank you for considering my urgent request.

Sincerely,
Jon Campbell

THE WHITE HOUSE
WASHINGTON

Date: November 10, 1989

FOR: Fred McClure

FROM: **ANDY CARD**

- ☒ **Action** - to be blue sheeted
(Handed to Gov. Sununu)
- ☐ **Your Comment**
- ☐ **Let's Talk**
- ☐ **FYI**

cc: Darman
Gray
Porter

NEWT GINGRICH
SIXTH DISTRICT, GEORGIA

THE REPUBLICAN WHIP

WASHINGTON OFFICE:
2438 RAYBURN HOUSE OFFICE BLDG.
WASHINGTON, DC 20515
(202) 225-4501



Congress of the United States

House of Representatives

November 8, 1989

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MORROW, GA 30260
(404) 968-3219

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GRIFFIN FEDERAL BUILDING
GRIFFIN, GA 30224
(404) 228-0389

CARROLL COUNTY COURTHOUSE
CARROLLTON, GA 30117
(404) 834-6398

19 EAST WASHINGTON STREET
NEWNAN, GA 30263
(404) 253-8355

The Honorable George Bush
The White House
Washington, DC 20500

Dear Mr. President,

As you know, I supported your position opposing a Presidential Emergency Board in the Eastern strike. I agreed with your analysis that this was not a national emergency and that such a Board would hurt the chance for Eastern to survive and for its workers to keep their jobs.

Now, eight months later, we are in a very different situation. Eastern is in bankruptcy. The company's survival is in jeopardy. Many of the striking workers have deep fears that the bankruptcy court system is being used against them.

The proposed Blue Ribbon Commission will help restore workers' trust in the American process of fair play. The Blue Ribbon Commission is bipartisan. The Blue Ribbon Commission will have no inappropriate powers or authority.

I urge you to sign the Blue Ribbon Commission so the workers of Eastern can learn better how to save their company.

I urge you to sign the Blue Ribbon Commission so the American people can learn that no one can bankrupt two major companies without investigation.

I urge you to sign the Blue Ribbon Commission to restore trust in the process of refereed free enterprise.

Thank you for considering this.

Yours,

A handwritten signature in dark ink, appearing to read 'Newt', with a stylized flourish at the end.

Newt Gingrich

POSITIONS ON S. 135

NO

1. Armstrong
2. Bond
3. Boschwitz
4. Burns
5. Coats
6. Cohen
7. Danforth
8. Dole
9. Garn
10. Gorton
11. Grassley
12. Helms
13. Humphrey
14. Lugar
15. Mack
16. McCain
17. McConnell
18. Roth
19. Rudman
20. Simpson
21. Symms
22. Thurmond
23. Wallop
24. Wilson

UNDECIDED

1. Byrd
2. Bumpers
3. Chafee
4. Cochran
5. D'Amato
6. Domenici
7. ~~Durenberger~~
8. Graham
9. Gramm
10. Hatch
11. Johnston
12. Kassebaum
13. Kasten
14. ~~Lott~~
15. McClure
16. Murkowski
17. Nickles
18. Packwood
19. Pressler
20. Specter
21. Warner

This list received attachment hand delivered 10/18/89

Co-Sponsors of S. 135

- | | |
|---------------|-----------------|
| 1. Adams | 26. Jeffords |
| 2. Baucus | 27. Kennedy |
| 3. Bentsen | 28. Kerrey |
| 4. Biden | 29. Kerry |
| 5. Bingaman | 30. Kohl |
| 6. Bradley | 31. Lautenberg |
| 7. Breaux | 32. Leahy |
| 8. Bryan | 33. Levin |
| 9. Burdick | 34. Lieberman |
| 10. Conrad | 35. Lott |
| 11. Cranston | 36. Metzenbaum |
| 12. Daschle | 37. Mikulski |
| 13. DeConcini | 38. Moynihan |
| 14. Dixon | 39. Nunn |
| 15. Dodd | 40. Pell |
| 16. Exon | 41. Pryor |
| 17. Ford | 42. Reid |
| 18. Fowler | 43. Riegle |
| 19. Glenn | 44. Robb |
| 20. Gore | 45. Rockefeller |
| 21. Harkin | 46. Sanford |
| 22. Heflin | 47. Sarbanes |
| 23. Heinz | 48. Shelby |
| 24. Hollings | 49. Simon |
| 25. Inouye | 50. Stevens |
| | 51. Wirth |
| | 52. Durenberger |

Non-Co-Sponsor Supporters

- | |
|--------------|
| 1. Mitchell |
| 2. Sasser |
| 3. Matsunaga |



Office of the Attorney General
Washington, D. C. 20530

OCT 18 1989

Honorable Robert S. Dole
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

This is to inform you of our grave and unequivocal objections to S. 135, a bill that would substantially repeal the Hatch Act. If this bill were presented to the President, his senior advisers would recommend that it be vetoed.

The Hatch Act of 1939 prohibits certain partisan political activities by federal government employees. It was enacted to remedy a century of patronage abuses resulting from the "spoils system." Federal programs to help the poor and the dispossessed were often perverted for political purposes. The Hatch Act seeks to guarantee the integrity of the federal civil service by assuring that federal employees are hired and promoted based upon their qualifications and not their political loyalties. It also assures that federal programs are administered on the basis of need, not politics. The Act's ban on active partisan campaigning by federal employees protects them from coercion and patronage abuse. Those protections remain essential to assure the integrity of the federal work force and the administration of federal programs. They also are critical to the public perception and confidence in the impartial, even-handed conduct of government business.

S. 135 would fundamentally undermine the Merit System by changing a presumption that partisan politicking by federal servants is prohibited into a presumption that such partisan campaigning is to be encouraged. Specifically, the bill would allow federal employees to hold office in political parties, work in partisan political campaigns, and solicit political contributions from other federal employees, including subordinates, who are members of the same federal employee organization. Such a reversal in the role of partisan politics in the ethic of public service would permit virtually unbridled partisan activities by federal employees, which, history shows, would in turn inevitably lead to the politicization of public administration. For example, S. 135 would permit Internal Revenue Service District Managers to serve as political party officers, loan officers with the Department of Housing and Urban Development could organize partisan campaigns after work, and

federal law enforcement officers could make television commercials paid for by political committees on behalf of partisan candidates.

We note that the bill provides that these newly authorized partisan activities are not to be conducted while employees are on duty, wearing the insignia of their offices, or otherwise about the government's business. Unfortunately, these prohibitions would be meaningless. They add nothing to existing criminal prohibitions in this area (see, e.g. Chapter 29 of Title 18 of the U.S. Code, and 18 U.S.C. §§641 and 872). Moreover, although proponents claim that S. 135 would provide protections against political coercion, the bill would actually repeal the authority of the Office of Special Counsel, found in 5 U.S.C. §7325, to seek penalties for Hatch Act violations. Finally, the vestige of the Hatch Act left by S. 135 could be easily circumvented. For example, government officials, who belong to employee organizations, could induce subordinates to join their organizations and then they could extract involuntary political contributions of money or services, as long as this activity occurred during off-duty hours and while the participants were not in government uniforms or on government property.

The inevitable result of S. 135 would be a politicization of the federal work force to the great detriment of federal employees, the programs that these employees administer, and ultimately the public which these programs were enacted to serve. Without the Hatch Act, employees would be inevitably subject to subtle, and not so subtle, pressures to support the partisan agenda in their government offices. It is unreasonable to expect that the few prohibitions listed in S. 135 would have any practical impact on the subtle politicization that would occur in the federal work force. Rank-and-file civil servants would not make federal criminal cases out of supervisors' requests for political contributions or for their off-duty time in support of a candidate. They would find it less costly to be victimized rather than incur the job-related risks that would surely result from a complaint to law enforcement authorities. Moreover, the difficulties inherent in proving even the most patent abuses would render the protections of the criminal justice system illusory. Thinly veiled exploitation and extortion would flourish because the politicized atmosphere of the workplace would make criminal conviction virtually impossible. The resulting impact on federal programs would undermine the public's confidence in the impartial administration of public business.

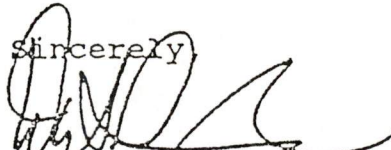
The Hatch Act ensures an environment wherein federal employees are encouraged to impartially carry out the public's business, rather than being distracted by the demands of political patronage. Under the Hatch Act, promotion is based upon merit, not political loyalty. The Act is understood by the vast majority of federal employees as a bulwark against the

political pressures that would inevitably accompany a partisan public work force. Its prohibitions are clearly set forth in the statute and regulations at 5 C.F.R. §733. The Office of Special Counsel (OSC) is empowered to provide authoritative advice to employees with questions about the application of the statute and regulations to particular circumstances. Last year, OSC processed about 1,400 inquiries from the approximately 3 million federal employees covered by the Act. We believe, on the basis of experience, that most federal employees either understand how the Hatch Act applies or they simply have no desire to politicize their lives and their jobs by engaging in the sort of partisan activity it covers. It is, we think, significant that there has been no groundswell of popular support for this bill from the ranks of federal civil servants.

In sum, the Hatch Act has served to shield federal employees and the programs that they administer from political exploitation and abuse for over fifty years. S. 135, which is being promoted in the Senate as a liberator of federal workers' civil rights, is perceived by many federal workers as stripping them of that shield, and presages that those workers may have to demonstrate a fealty to a political party that they may not otherwise endorse. We are committed to continuing the protections of the Hatch Act and urge you to join us by opposing S. 135.

The Office of Management and Budget has advised that there is no objection to the submission of this report to the Congress and that enactment of S. 135 would not be in accord with the program of the President.

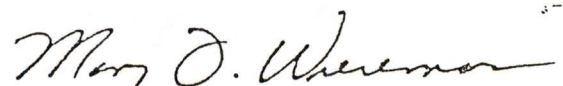
Sincerely,



Dick Thornburgh
Attorney General



Constance Berry Newman
Director, Office of Personnel
Management



Mary F. Wieseman
Special Counsel
Office of Special Counsel

Talking Points on S. 135, a bill to repeal the Hatch Act

I. S. 135 would invite a return to the spoils system.

S. 135 would repeal the Hatch Act of 1939, which remedied a century of patronage abuses resulting from the invidious spoils system. Prior to its enactment and particularly during the period of the New Deal, federal grants and programs that were intended to help the poor and the dispossessed were too often perverted to reward the politically loyal and punish the unfaithful. The public outcry against these patronage practices led to enactment of the Hatch Act.

- o The Hatch Act prohibits federal employees from engaging in "the active management of political campaigns." See 5 U.S.C. §7324 and the implementing regulations at 5 C.F.R. §733.101 et seq.

- o The regulations (which comprise two pages in length) permit federal employees to engage in a broad range of activities including the expression of their opinions on political subjects, voting, contributing money to campaigns, running as independent candidates in certain partisan contests, and attending political fund-raising events.

- o They are prohibited, however, from such overtly partisan activities as soliciting political contributions, holding office in a political club or party, making speeches on behalf of partisan candidates, and distributing campaign material in a partisan election.

- o The Supreme Court has twice concluded that this politicking ban is constitutional because it protects the non-partisan nature of federal employment and the non-partisan implementation of federal laws and programs. United Public Workers v. Mitchell, 330 U.S. 75 (1947); U.S. Civil Service Commission v. Letter Carriers, 413 U.S. 548 (1973).

S. 135 would repeal these protections by allowing federal employees to hold office in political parties, work in partisan political campaigns and party organizations, publicly endorse partisan candidates and urge others to support them, and to solicit political contributions from fellow employees who are members of the same employee organizations.

- o Supervisors would be specifically authorized to solicit contributions from subordinates as long as both are members of the same employee organization. That conduct currently constitutes a felony with a potential penalty of three years imprisonment.

- o In fact, under S. 135 it would be perfectly legal for a superior to induce subordinates to join a labor union so that he could solicit political contributions from them.

II. Existing federal criminal laws would not stem the tide of patronage crime that would inevitably result from enactment of S. 135.

- o Encouraging federal employees to solicit political contributions from each other invites violations of federal felony laws dealing with political shakedowns (18 U.S.C. §§600, 606, 603), and corruption of federal work areas (18 U.S.C. § 607).

- o However, patronage abuses are virtually impossible to detect since victims rarely come forward:

Subordinate employees, who are almost always the victims of patronage shakedown schemes, usually wish to please their superiors so as to further their careers;

Consequently, most victims find it much less "costly" to go along with illegal demands for contributions than to face rejection by their peers, severe pressure to recant or to expose their careers to ruin by complaining to authorities.

- o Furthermore, patronage abuses are virtually impossible to prove in court:

- Patronage shakedowns rarely occur in public or before third party witnesses, which reduces the trials to one-on-one swearing contests;

- Those victims who do come forward normally are disgruntled employees who have an axe to grind against the accused person. Hence, prosecution witnesses in patronage accused. Hence, prosecution witnesses in patronage cases are usually easily impeachable at trial by patronage defendants;

- The burden of proof in criminal cases requires the prosecutor to prove that the defendant violated the law beyond a reasonable doubt, an unattainable standard in cases of this nature.

III. The Administration opposes S. 135.

The Administration opposes S. 135 because it would strip federal employees and programs of essential protections against corruption and abuse. Only the Hatch Act's clear, unequivocal ban on overt partisan political activity protects federal employees from this pressure and exploitation.

- o Enactment of this legislation would not be a reform but a return to the spoils system. The merit-based civil service system that has flourished during the last 50 years would be effectively gutted. History has shown that allowing partisan politics to enter the federal work force erodes the fundamental

feature of nonpartisanship which is essential to the integrity of the merit civil service.

- o While federal employee organizations stand to gain financially from S. 135, individual employees would become targets and tools for partisan political purposes.

- o For all of these reasons, senior advisers to the President would recommend veto of S. 135 if it were to reach the President's desk.



Department of Justice

STATEMENT

OF

EDWARD S. G. DENNIS, JR.
ACTING DEPUTY ATTORNEY GENERAL

BEFORE

THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
U. S. SENATE

CONCERNING

S. 135, THE HATCH ACT REFORM AMENDMENTS OF 1989

ON

JULY 25, 1989

Mr. Chairman and Members of the Committee, I am pleased to appear before you today to present the views of the Department of Justice on S. 135, the "Hatch Act Reform Amendments of 1989."

The Department of Justice has submitted to this Committee under separate cover a formal bill report on S.135. This bill report contains a detailed analysis of this legislative proposal, and raises several concerns dealing with this particular bill that I will not address in these remarks. I commend this bill report to the Committee's attention.

OVERVIEW

For the past half century, the Hatch Act of 1939 has prohibited all federal employees (except certain senior Administration executives who are confirmed by the Senate) from engaging in active political management. S.135 would reverse this situation by transforming what is today a presumption of prohibition into a presumption of permissibility. In short, this proposed bill, like its House companion H.R.20, would allow rank-and-file federal personnel to engage in all forms of active partisan political activity, except a few narrow forms of clearly abusive practices.

If enacted into law, S.135 would amount to a virtual repeal of the Hatch Act. It would permit federal employees to engage in such presently prohibited, but overtly partisan activities as:

- holding office in a political party;
- working in partisan political campaigns or in party organizations;
- publicly endorsing partisan candidates and urging the general public to support them, at the request of the candidate, his campaign or a political party organization;
- soliciting political contributions from fellow federal employees in certain circumstances.

On its face, this bill might arguably seem innocuous to some people. Indeed, S. 135 has been touted as a "civil rights" and "free speech" bill for rank-and-file federal personnel.

Unfortunately, the experience we have gained over the years investigating and prosecuting public corruption indicates that the exact opposite is the case. While the intentions of this bill's drafters may be commendable, we believe that the consequences of its enactment will be extremely detrimental to both federal personnel and federal programs. More specifically, we are convinced that this bill poses a very real risk of subjugating the political freedom of those who have chosen to pursue careers in public service to the partisan agenda of the politically powerful, all to the detriment of the quality and impartiality of federal public administration.

The Hatch Act is rooted in the political reality that, given the opportunity, partisan operatives will inevitably seek to exploit a politically active civil service for their partisan political ends. For the past half century, the Hatch Act has effectively responded to this problem by defining a maximum scope of political activity in which public servants may safely engage without compromising the independence and impartiality which the American public had come to demand in the ministerial administration of governmental programs. In the process, the Hatch Act has also protected all federal employees from political exploitation and patronage abuse. From the perspective of federal law enforcement, the Hatch Act has served the public -- and the public employee -- extremely well for over 50 years, by keeping the evil of corrupt patronage abuse far from the federal government's doorstep.

It is simply naive to believe that high-level political appointees, and other politically motivated or transient occupants of federal office, will not vigorously seek to exploit the increased political license which S. 135 would give to public employees by transforming them into political assets for those in power. Both the Department and its career prosecutors are convinced, based on their experiences in this area, that enactment of this bill would inevitably lead to three tragic consequences: (1) a dramatic increase in the politicization of federal public administration, with a concomitant decrease in the public's confidence in the quality and fairness of Government;

(2) the involuntary transformation of ministerial and career federal servants into political cadres; and (3) the diversion of public revenues to partisan political ends.

These adverse societal costs will be aggravated by the virtual inability of federal law enforcement to prosecute these corrupt patronage schemes, and to bring meaningful criminal remedies to bear on offenders under existing federal criminal laws in this area.

For these reasons, the Department of Justice strongly opposes the enactment of S. 135, and any other legislative measure that would repeal or weaken the Hatch Act.

I will expand on these ideas in these remarks.

THE HATCH ACT HAS DEEP HISTORIC ROOTS AND SERVES VITAL PUBLIC INTERESTS

It seems to us inevitable that an active and visible partisan work force would seriously diminish -- if not destroy -- public confidence in the even-handed administration of governmental operations. Even worse, history shows that allowing the general functioning of the Government to be handled by an overtly political work force invariably leads to political abuses within the Government, to the detriment of both federal employees and the impartial administration of federal laws and programs.

The 1939 Hatch Act was not enacted in a vacuum. It was a statute perceived by the Congress as a necessary and long overdue remedy to a century of increasingly gross patronage abuses within the Federal Government, not only within the community of federal civil servants, but also in the administration of federal programs.

Patronage, and the idea that "to the victor belong the spoils," go back to the Jacksonian era in the early nineteenth century. The adverse societal consequences of this invidious "spoils system" became increasingly apparent as the role of the Federal Government in the lives of the people expanded. Not long after the Civil War, the cancer of abuse had so infected the body of public administration that a disgruntled postal worker assassinated President James Garfield because of his disappointment over not receiving what he thought was his just patronage reward. The national reaction to this assassination led to the enactment of the Pendleton Civil Service Act of 1883. This statute created a merit civil service, whose members were to be selected on the basis of their qualifications for the jobs they sought, and not because of their political loyalty to the incumbent administration. At its beginning, the merit civil service comprised only about ten percent of the employees in the executive branch. This percentage increased substantially over the ensuing years, as the public demand for nonpartisan federal service became more vocal and acute.

By 1907, the need for still further safeguards against politicization of the federal public service prompted President Theodore Roosevelt to promulgate Civil Service Rule No. 1. This Rule banned all federal employees in the competitive service from engaging actively in political campaigns. Penalties for violating this Rule included disciplinary suspension and, in extreme cases, termination from employment. The Rule was administered on a case-by-case basis by the Civil Service Commission, which over the next 30 years rendered over 2,000 opinions interpreting this federal anti-politicking Rule. By this time, the United States was well on its way to guaranteeing a public administration that was both politically impartial, and free from internal political coercion.

However, the New Deal, and the subsequent flood of federal programs and grants to the States, led to new and undesirable forms of political patronage practices. New Deal programs enacted to help the poor, the dispossessed, and other victims of the Great Depression were perverted by local political bosses into instruments by which the politically loyal could be rewarded -- and the politically unfaithful punished. Corruption of federal programs for partisan political ends became so blatant that the governor of North Dakota was able to defraud the United States by diverting federal work relief program benefits into the coffers of local politicians. See Langer v. United States, 76 F.2d 817 (1935). By 1939, the public was

demanding that such practices stop. The response of Congress was to enact the Hatch Act.

The main thrust of the Hatch Act was to prohibit virtually all employees of the Executive Branch of the Federal Government from engaging in "the active management of political campaigns," a concept that was defined in the statute to include all activities which the Civil Service Commission had determined to be illegal under Civil Service Rule No. 1. See 5 U.S.C. § 7324. The Hatch Act regulations which the Civil Service Commission promulgated have been codified at 5 C.F.R. § 733.101 et seq.

These regulations permit federal employees to express opinions on political subjects, and to contribute to candidates of their choice. However, they prohibit federal personnel from such overtly partisan activities as soliciting political contributions, actively participating in political organizations, running for partisan office, and misusing their authority over public programs to achieve partisan ends.

The Hatch Act and its implementing regulations have been challenged before the Supreme Court on two separate occasions, as arguably unconstitutional infringements on the First Amendment rights of federal employees to freedom of association and expression. Both of these challenges resulted in resounding affirmations of the Act's constitutionality, as a necessary safeguard to ensure both the appearance, and the actuality, of a politically detached federal civil service. See United Public

Workers v. Mitchell, 330 U.S. 75 (1947); Civil Service Commission v. Letter Carriers, 413 U.S. 548 (1973). The issue thus is no longer whether the Hatch Act's politicking ban is constitutional; rather the issue is whether this prohibition furthers or hinders the public interest in safeguarding the nonpartisan implementation of federal laws, programs, and policies. The Supreme Court has clearly spoken on this subject.

While the Hatch Act is not the only protection federal law provides the public against political corruption in the civil service, it may be the most important. During the course of the half century it has been the law of the land, the Hatch Act has evolved into the foundation of a vital ethic of political neutrality which today permeates - and guides - the federal service. In the process, it has been the Criminal Division's experience that the Hatch Act ban has served as an effective shield against the tide of patronage abuse, which, history shows, can readily degenerate into favoritism and arbitrariness in public administration, and even into corruption, fraud and other forms of aggravated criminal abuses of power.

The fact that it has not been necessary to divert significant federal prosecutive resources to the investigation and prosecution of criminal patronage abuses is a direct consequence of the existence and deterrent influence of the Hatch Act. As long as it has been illegal under the Hatch Act for federal civil servants to solicit political contributions, forced

political-giving schemes within the federal service have not materialized. As long as it has been illegal under the Hatch Act for federal employees to actively participate in political organizations, the diversion of federal program benefits to partisan political ends has been limited. As long as it has been illegal for federal employees to actively campaign for political candidates, federal offices have not been converted into political fiefs. As long as it has been illegal under the Hatch Act for federal employees to be political candidates or active advocates of partisan causes, the day-to-day administration of federal programs has been impartial -- and, no less importantly, has been perceived by the public as being impartial.

Repeal of the Hatch Act also will increase the level of public cynicism and distrust of government authority, diminish public respect for government service, and devastate the morale of the federal work force. The Federal Government today regulates a large portion of our daily lives, and performs extremely sensitive functions, most of which were unheard of in the days when the spoils system first took root in America. Given this pervasive federal influence over our citizens' affairs, we doubt very strongly that the American public would tolerate a law which allowed a Section Chief in the Criminal Division, who decides whether or not to prosecute public officials, to serve simultaneously in his off hours as a Party Chairman of a political party. We also seriously question whether the American public would long tolerate a government in

which agents of the Internal Revenue Service, or the Federal Bureau of Investigation, were permitted to solicit political contributions for political candidates and political causes. We similarly doubt that the American public would tolerate the day-to-day administration of federal programs by ostensible "civil servants" who are actively and visibly affiliated with partisan political candidates and causes.

Of course, Mr. Chairman, repeal of the Hatch Act through legislation like that before us today will not, at least in theory, leave the federal work force completely defenseless in a world of political power. Criminal laws - many of them ancient throwbacks to the 1883 Pendleton Act - will still be in the Criminal Code for theoretical use in appropriately aggravated circumstances. However, as I shall explain more fully later in these remarks, remedies and sanctions such as these have little practical utility as deterrents to abuse in the context of an increasingly politically active civil service. Rank-and-file government employees are easily intimidated by the political currents in a government office where political activity is the norm. It is simply unrealistic to expect that such persons will endanger their ability to make a living by exposing superiors who make political demands upon them. To the contrary, it has long been our experience that most ministerial government personnel find it far easier - and "wiser" - simply to do what is asked of them politically rather than rock the boat.

In view of these realities, S. 135 does not, as its drafters claim, "restore" political liberties to federal civil servants. On the contrary, this legislation presents a very real danger of imposing a reign of political repression on the ranks of the federal civil service. In this regard, it is, we feel, particularly noteworthy that there has been absolutely no spontaneous ground swell of support for this legislation from the civil service community. Quite to the contrary, aside from the leadership of federal employee unions whose political power will be substantially augmented by the repeal of the Hatch Act, the sentiment among the vast majority of federal employees is that the Hatch Act is at worst a modest sacrifice for the privilege of public service, and at best a bastion of protection against patronage abuse.

In summary, enactment of the bill before this Committee will:

- ° Jeopardize public confidence in Government.

The confidence of the public in the integrity and impartiality of the day-to-day operation of governmental action rests on the fundamental premise that the Government operates in a fair and nonpartisan fashion. If rank-and-file federal employees were to engage in political affairs of a clearly partisan nature, this would have an immediate and devastating

impact on the public's perception of nonpartisan governmental service by the civil service.

° Ignore the teachings of history.

The idea that a "politically responsive" federal civil service is more capable of serving the public good than a non-partisan work force has been rejected by both the Legislative and Executive Branches for almost a century. History reflects that the only way to insulate federal personnel against both overt and subtle forms of political pressure is to prohibit these employees from actively engaging in any type of partisan campaigning. This is precisely what the existing Hatch Act does, and is precisely why the Hatch Act is so important.

° Place unrealistic demands on prosecutorial resources.

Past experience with the administration of federal laws designed to protect federal personnel against improper political influences indicates that relaxation of the rules against political activity by federal employees is likely to lead to an increase in political abuses. We therefore believe that S. 135 would create a climate conducive to the interjection of corrupting political influences into both the federal work place and the administration of federal programs. The investigation and prosecution of the crimes resulting from these illegal political influences will likely create substantial drains on

federal prosecutorial resources. Indeed, we seriously doubt that the Department of Justice possesses the resources, the expertise, or the ability to prosecute more than a tiny fraction of the increased criminal patronage activity which the enactment of S. 135 would inevitably cause.

- ° Jeopardize the impartial administration of federal programs.

Many States do not have similar bars against visible political activities by state employees. "Two Percent Clubs," still exist in many State and local government civil service corps that require public employees to contribute a set percentage of their salary annually to the political party through which they obtained their employment. This is but one example of the sort of pernicious situation which exists in governmental agencies which do not have the benefit of protections such as the Hatch Act. The experience with the corrupt administration of the New Deal programs shortly before the Hatch Act was enacted graphically demonstrates what can happen to public administration when federal personnel are allowed to become active proponents of partisan causes. In all likelihood, repeal of the Hatch Act would return to the field of federal public administration the corrupt practices which existed prior to 1939.

S.135 IS NOT NECESSARY:

S. 135 rests on the erroneous thesis that today's federal employee is politically repressed by the Hatch Act -- in other words, that the Hatch Act bars federal employees from engaging in meaningful political activity. This simply is not true. The Hatch Act allows federal employees to engage in a great variety of important political functions, to express themselves meaningfully on political issues, and to play a voluntary role in our democratic process. The Act bars only a very narrow range of political conduct: that is, conduct which is clearly, unambiguously, and visibly partisan, such as --

- holding an office in a political club or party,
- soliciting political contributions or organizing partisan fund-raising activities,
- making speeches on behalf of partisan candidates,
- circulating partisan nominating petitions, and
- distributing campaign material in a partisan election.

In essence, the Hatch Act restrictions boil down to the single and salutary concept that federal employees, who are responsible for overseeing and implementing the nation's laws and

programs, may not simultaneously be active agents of partisan political camps. While that is a restriction of sorts, it is hardly an absolute prior restraint on political expression and/or association.

For example, the Hatch Act currently permits federal employees to:

- register to vote and vote,
- contribute money to campaigns,
- express their views in private and in public (though not in a concerted way to elicit support for a candidate or party),
- run as an independent candidate in certain partisan contests in designated areas with a high concentration of federal employees,
- attend political conventions and rallies as a spectator,
- assist in nonpartisan voter registration drives,
- campaign for or against political referendum questions,

- participate as a nonpartisan poll-watcher or election judge,
- attend political fund-raising functions,
- wear political buttons (off duty or, subject to certain agency restrictions, on duty), and
- participate in nonpartisan campaigns.

These are important and substantial activities. The existing Hatch Act is, therefore, hardly the politically repressive ogre that the backers of S.135 would have the American public believe it to be. Federal employees are - and always have been - allowed a wide latitude of political expression, which they have always exercised vigorously and in a manner that is consistent with the privilege of public service. The need for such a drastic re-ordering of the ethic of public service such as that embodied in S.135 simply does not exist.

S. 135 PROVIDES NO SAFEGUARDS, AND IT ELIMINATES EXISTING ONES:

Not only would S.135 seriously jeopardize the nonpartisan nature of the federal civil service, it would in our view seriously undermine what criminal and civil enforcement authority presently exists to safeguard federal employees, programs and program recipients from political pressures and other forms of patronage abuse. Enactment of this bill will so complicate criminal prosecutions under existing federal criminal laws as to render statutes such as 18 U.S.C. §§ 595, 600, 601, 602, 603, 606 and 607 virtually useless. At the same time, this bill will effectively repeal existing statutes that provide a basis for achieving administrative and employment-related sanctions against federal employees who seek to force their colleagues to participate in political activities against their will.

Both of these problems have their roots in the simple fact that the goal of this legislative proposal is just not attainable in the real world of politics. S. 135 seeks to allow voluntary political activity by the federal civil service, while at the same time to provide some protection for employees who either do not want to participate in politics, or who wish to do so for candidates or political causes that are not supported by their superiors. It is difficult, if not impossible as a practical matter, to provide such protection for some workers, while simultaneously permitting aggressive and overtly active partisan politicking by others. As Senator Carl Hatch said in support of

passage of the statute that bears his name, "I defy anyone to draw that line". Accordingly, S. 135 is conceptually flawed.

This bill will also directly restrict the scope and utility of several criminal laws which specifically address gross forms of patronage abuse. For example, under 18 U.S.C. § 602 it is presently a federal felony for federal employees to solicit certain types of political contributions from one another, while under 18 U.S.C. § 603 it is a federal felony for a federal employee to hand over political contributions to any other federal employee who is his or her "employing authority". Taken together, these two statutes are designed to shield subordinate federal personnel from political shakedowns (Section 602), as well as shield the administration of federal business from attempts at unjustified self-advancement by federal personnel through political ingratiation with their superiors (Section 603).

Section 7323(2) of S. 135 would change all of this by specifically allowing all inter-employee political contributions as long as both parties to the deal are members of a federal employee organization, and the political funds are to be contributed in the first instance to a political action committee affiliated with that labor organization. In such circumstances, not only would federal employees be allowed to contribute to their bosses, their bosses would be specifically allowed to

solicit them without facing prosecution under 18 U.S.C. §§ 602 or 603!

What is more, there seems to us to be absolutely no basis for placing an inter-employee solicitation license in the place where S. 135 has placed it. Long and bitter legislative experience with the labor movement has, indeed, shown quite graphically that rank-and-file union members are particularly susceptible to coercive political pressures, and as such they need more, not less, statutory protections against such abuses. See e.g. United States v C.I.O., 335 U.S. 106 (1948); United States v Auto Workers, 352 U.S. 567 (1957); Pipefitters v United States, 407 U.S. 385 (1972).

Finally, reversing the direction of the Hatch Act, from a general ban on partisan campaigning and fund raising to a general license to engage in such activities, is bound to severely complicate the task of obtaining convictions under many other existing federal fraud and corruption laws. Once federal employees are encouraged to become politically active, and once fine distinctions between "right" and "wrong" such as the ones just mentioned are enacted into law, there will be very few defendants in patronage abuse cases who will not be successful in finding some basis in what is left of the Hatch Act to justify the activity for which they are being prosecuted. Given the fact that the prosecutor in such cases must usually prove that the defendant acted in willful contravention of the law, and that the

prosecutor must always prove that the defendant is guilty "beyond a reasonable doubt", such fine statutory distinctions between "right" and "wrong" have a very real potential to severely cripple existing law enforcement efforts in the patronage abuse area.

Furthermore, the havoc to federal law enforcement posed by S. 135 is not confined to criminal prosecutions by the Department of Justice. This legislative proposal also risks substantially undercutting the present authority of the Office of Special Counsel (OSC), the Office of Personnel Management (OPM), and the Merit Systems Protection Board (MSPB) to impose even non-criminal personnel sanctions for aggravated patronage shakedowns.

Presently, regulatory authority exists under 5 U.S.C. §§ 7321 and 7322 for the President, acting through OPM, to provide for personnel sanctions against federal employees who require their colleagues to make political contributions or perform political services, as a condition of their employment. These existing statutes also provide a basis for remedial relief for employees who are victims of such patronage abuses. Admittedly, the authority that presently exists under these statutes is not widely invoked today. This is because the Hatch Act, and in particular the present terms of 5 U.S.C. § 7324, strictly forbids all forms of partisan political activity within the ranks of the civil service.

However, under S.135 all of this would change. The present outright prohibition in Section 7324 would be transformed into a general license to engage in political activity, and in the case of members of employee unions to solicit political contributions from other employees who are also union members. At the same time, the authority which the President presently possesses under Sections 7321 and 7322 to prescribe rules to forbid and deter coercive political practices through administrative prosecutions by the OSC would be eliminated. S.135 even repeals the Hatch Act provision, 5 U.S.C. § 7325, that contains the administrative penalty for violations. Such a state of affairs can hardly be characterized as readily conducive to effective administrative enforcement of what would be left of the Hatch Act, nor can it be expected to serve as an effective deterrent to patronage abuses.

CRIMINAL PATRONAGE ABUSES ARE EXTREMELY DIFFICULT TO DETECT AND PROSECUTE

The principal role of the Department of Justice in matters involving political corruption of public personnel and programs focuses on the criminal prosecution of aggravated offenders under federal criminal patronage statutes such as those in Chapter 29 of Title 18 of the United States Code. The experience we have gained over the years in this area has demonstrated quite clearly that this particular type of crime is extremely difficult to detect, and this type of criminal case is particularly difficult to prove.

The development of factually sufficient cases involving corrupt politicization of federal programs, employment and/or personnel suffers from four major problems:

The first problem lies in the fact that individual victims of patronage schemes rarely come forward, either because the victims agree with the politics of the person pressuring them, or because the relative "cost" of submission on an individual level is low (i.e., stuffing political mailings or purchasing a \$50 fund-raising ticket compared to the possible cost of complaining and displeasing their supervisors and possibly jeopardizing their jobs). It is painfully true, but our experience has shown, that most rank-and-file public employees usually find it far more prudent to go along with political intimidation than to rock the boat, imperil their careers, and offend their superiors by complaining about it to authorities.

A second problem lies in the fact that most patronage abuses in government offices are subtle. Rarely does this sort of thing rise to a level where a superior actually fires a subordinate specifically because of the subordinate's refusal to perform political work or to give political contributions. The pressures to go along politically with one's superiors more often flow from peer pressure, a desire to please one's superiors, and unspoken mores of political fidelity to an incumbent political administration that normally attend employment in a civil service corps that is overtly political active. Even in States where

political "clearances" political clearances have been routinely necessary to secure public jobs, the "clearance" function has been successfully postured as just another "check" to assure that only "qualified" applicants were hired. Such subtle forms of pressure to conform to the incumbent political norm are extremely difficult to formulate, or to prove, as crimes under the statutes (e.g. Chapter 29, Title 18, United States Code) that presently address this sort of thing.

A third problem is the fact that criminal convictions require proof of guilt beyond a reasonable doubt, and patronage matters simply do not easily lend themselves to such a clear factual standard. Those employees who do come forward to complain about political pressure within a public office normally have some ulterior motive for doing so. They are, more often than not, individuals who have experienced difficulties with their bosses, and who have an axe to grind. While this does not, in itself, prevent them from being true victims of political abuses, their bias does seriously compromise their utility as witnesses in criminal cases. Moreover, in those relatively few situations where improper pressure is unambiguously expressed to, and imposed upon, an identified victim, it is rarely is done in public, or in front of third party witnesses. This usually leaves prosecutors with, at best, one-on-one criminal cases that have little realistic chance of successful prosecution.

A fourth problem is cost. The investigation and prosecution of matters involving inappropriate politicization of public employment invariably require large investments of investigative and prosecutorial manpower. They normally present novel issues of law, and require large numbers of field interviews to be successful. Given other demands on prosecutorial time and resources, the Justice Department will be hard pressed to serve as the main bulwark against politicization of public service through our role as criminal prosecutors.

POLITICALIZATION OF PUBLIC EMPLOYEES IS STILL A VERY REAL

PROBLEM:

S.135 springs from an underlying assumption that the days of political pressure within civil services have long passed, that the Hatch Act has outlived its original purpose, and that it can be safely repealed with little adverse consequence to the principle of merit public service. This assumption is plainly wrong!

To illustrate this important point, I would like to close these remarks with a few real life examples of the continued threat posed to public servants by lax political activity laws. What follows is merely intended to highlight the problem. The matters that follow all took place in local government offices, in States and localities that do not presently enjoy the degree of insulation from partisan political activity which the Hatch

Act has provided to the federal work force. This is certainly not intended to be an exclusive listing of every investigation and enforcement action we have taken in this area in recent years. It should, however, serve to illustrate the nature of the clear and present danger of which the Hatch Act has - for the large part - successfully kept from the federal doorstep in modern times:

- * In 1975, Congressman J. Edward Roush of Indiana testified before a House subcommittee in support of increased penalties under 18 U.S.C. §§ 600 and 601, at which time he provided the Congress with several examples of specific written demands from the party in power in his home State to rank-and-file government personnel (many of them firemen, road laborers, and the like) for the political donation of a percentage of their government salaries.

- * In 1985, A Special Federal Grand Jury in the Northern District of Illinois (Chicago) issued a report on the dynamics of the fraudulent election practices for which Chicago has until recently been infamous. After several years of hearing testimony, and after returning over 65 indictments charging Chicago officials with fraudulent voting practices, this grand jury determined that the driving force behind voter fraud in Chicago was the quest for patronage -- e.g., the power of the

winning political faction to control the jobs of rank-and-file municipal personnel and award benefits to its "friends." It is not surprising that this vicious patronage system produced corrupt government, and required aggressive political work by even the most mundane public employees in order to obtain -- or retain -- municipal jobs.

* Two County Commissioners in Clark County, Indiana were indicted and convicted in Indianapolis during 1986 for overtly threatening a large group of highway laborers with the loss of County jobs if they did not make political contributions to the party in power. Several laborers who refused to contribute either were summarily fired, or simply left their jobs on their own accord, knowing that termination was the inevitable consequence of refusing to go along with such demands. This investigation also uncovered several other situations where Clark County employees -- including at least one paramedic -- were punitively transferred to job sites that were far removed from their homes and children because of the employees' lack of support for the incumbent political faction.

* Nine years ago the Public Integrity Section of the Criminal Division successfully prosecuted two high-level officials of the Upper Great Lakes Regional

Commission for misusing federal program funds for partisan purposes. See United States v. Pintar, 630 F.2d 1270 (8th Cir. 1980).

- * Just two months ago, in May, 1989, a Federal Grand Jury in Newark indicted the incumbent Mayor, and one of the incumbent City Councilmen, of the township of Guttenberg, New Jersey, for terminating the jobs of two exemplary police officers, and a 76-year-old school crossing guard, because these public servants refused to perform partisan political services for the incumbent city administration.
- * During recent months, the Criminal Division has transferred two major patronage matters to the Office of Special Counsel (OSC) of the Merit Systems Protection Board (MSPB) for administrative enforcement under the so-called "Little Hatch Act" (5 U.S.C. §§ 1501 et seq.). Extensive criminal investigations had failed to produce sufficient evidence to support criminal charges in these cases. Both of these matters involved the solicitation by political appointees of political contributions -- usually in the form of dinner tickets -- from their subordinates. In one of these cases the OSC succeeded in obtaining meaningful penalties (including debarment from future public employment) against the Director of Personnel of the

Akron Municipal Housing Authority and two of her subordinates. See Special Counsel v. Parnell, 37 M.S.P.R. 184 (1988). In the other case, the OSC is presently seeking similar penalties against several political and senior supervisory employees of the Niagara Frontier Transportation Authority for doing much the same thing. In both these instances, the OSC has been successful in obtaining administrative sanctions against plainly unlawful behavior, largely because the Little Hatch Act is on the books, and the evidentiary requirements of this administrative statute are far less demanding than those applicable to criminal proceedings under statutes such as 18 U.S.C. §§ 595, 600, and 601.

- * As a result of the OSC's recent successes in the area of patronage abuse, the Criminal Division is presently engaged in seeking ways to include the OSC in the overall enforcement of the federal patronage laws on the state and local levels. Accordingly, the number of administrative cases such as the ones just discussed can be expected to increase in the near future -- if, of course, S. 135 does not pass and the Hatch Act remains an effective enforcement tool.

These recent cases support our conviction that any relaxation of the Hatch Act's politicking ban will substantially

diminish the protections which federal employees currently enjoy against political pressure, while affording no realistic expectation that the void thus created can be filled by the federal criminal justice system. The Department of Justice remains convinced that nothing short of the current ban on active partisan political activities by federal civil service employees will adequately protect the public's interest in the fair and impartial administration of government programs and policies, and the employees themselves from more or less subtle pressure by their superiors. As noted above, violations of the criminal patronage laws are notoriously difficult to prosecute and prove because the coercion usually occurs outside the presence of third-party witnesses, and the fine line between conduct that amounts to pressure and conduct that does not is exceedingly difficult to draw.

Experience has shown that the only way to prevent abuse in this area is by declaring the entire field off-limits.

CONCLUSION:

The Federal Government today enjoys a civil service system whose impartiality and fairness are justifiably held in high regard. The present system affords federal employees substantial latitude to participate in critical aspects of our democratic political process along with other citizens. It prohibits only that small portion of actively partisan political conduct which

history shows will lead inevitably to the twin abuses of political intimidation and political corruption.

We submit that the immediate victims of repeal of the Hatch Act will be the individuals within the federal civil service, who will lose a meaningful and effective level of statutory protection against political pressure and manipulation. The next level of victims would be the federal programs and policies implemented by this newly politicized federal work force, which would become vulnerable to subtle manipulation to further the partisan goals of the current program administrators. The final victims of repeal of the Hatch Act would be the public, who would have lost -- not just the appearance -- but the actuality of non-partisan administration of the public's business.

We strongly urge that this Committee consider the grave repercussions of this legislation and retain the Hatch Act's essential protections against political corruption of federal personnel and programs.

The Administration has additional concerns with this legislation, including constitutional concerns, that are more fully developed in our accompanying bill report.

I would be pleased to respond to any questions from Members of the Committee.



U.S. Department of Justice

Office of Legislative Affairs

Faith

Office of the Assistant Attorney General

Washington, D.C. 20530

July 24, 1989

Honorable John Glenn
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for giving us the opportunity to express the views of the Department of Justice on S. 135, the "Hatch Act Reform Amendments of 1989." The Department strongly opposes legislation that would reduce the current restrictions on partisan political activity by federal civil servants. ^{1/} Senior advisors to the President would recommend a veto of this bill if it were presented to the President.

Our opposition is grounded in a firm belief that it is impossible to allow active partisan campaigning by the vast majority of federal employees and, at the same time, protect two fundamental principles central to the operations of the Executive Branch of the Federal Government: the nonpartisan administration and enforcement of federal laws, and advancement in the federal civil service based solely on merit.

If enacted, S. 135 would repeal substantial portions of the Hatch Act, 5 U.S.C. § 7324 ("the Act"), which forbids certain active partisan political activities on the part of federal employees (and certain state employees whose positions are funded by federal grants). ^{2/} We believe that such a course would be a

^{1/} S. 135 is essentially identical to the final version of H.R. 3400, the "Hatch Act Reform Amendments of 1988," considered by the 100th Congress, and also opposed by the Department.

^{2/} In 1974, Congress repealed most of the federal restrictions on partisan campaigning by state and local employees who administer federal programs imposed by the 1940 "Little Hatch Act." See 5 U.S.C. § 1501 *et seq.* By this time, most of the states had enacted legislation protecting public employees against political abuses and, thus, the federal bar had become superfluous. We are aware of no major policy shift at the state level backwards, toward the universally

(continued...)

serious mistake because we remain convinced that it would result in a tragic re-politicization of the federal civil service to the detriment of the vast majority of federal employees, as well as to the public policies and programs that they implement. ^{3/} This, in turn, would seriously jeopardize public confidence in government and increase demands on already overburdened prosecutorial resources.

I. The Hatch Act

While the purpose of S. 135 is to restore the right to participate in the Nation's political processes to federal employees, in fact, federal workers already have significant political rights under the current Hatch Act. For example they may:

- register to vote and vote;
- contribute money to partisan political campaigns;
- express their views in private and in public (though not in a concerted way to elicit support for a candidate or party);
- run as an independent candidate in certain partisan contests in designated areas with a high concentration of federal employees;
- attend political conventions and rallies as a spectator;
- assist in nonpartisan voter registration drives;
- campaign for or against political referendum questions;
- participate as a nonpartisan poll-watcher or election judge;

^{2/} (...continued)

discredited political "spoils" system. On the contrary, the trend today in public administration at the state and local level continues toward a more merit-based, and less political, civil service.

^{3/} Similar legislation has been passed by the House of Representatives as H.R. 20, which resembles the original House version of H.R. 3400 in the 100th Congress. While there are some significant differences in the proposals, the Department of Justice opposes enactment of H.R. 20 for many of the same reasons that it opposes S. 135.

- attend political fund-raising functions;
- wear political buttons (off duty or, subject to certain agency restrictions, on duty); and
- participate in nonpartisan campaigns.

However, federal employees may not take an active role in partisan political activities. Specifically, the Hatch Act forbids employees to:

- run as partisan candidates in elections for public office;
- hold office in political clubs or parties;
- solicit or handle political contributions or organize partisan fund-raising activities;
- make speeches or engage in other campaign activities to elect partisan candidates as an agent of the candidate's campaign organization; and
- circulate partisan nominating petitions.

II. S. 135, the "Hatch Act Reform Amendments of 1989"

If it were enacted into law, S. 135 would amount to a virtual repeal of the Hatch Act. It would permit federal employees to:

- hold office in a political party;
- work in partisan political campaigns or in party organizations;
- publicly endorse partisan candidates and urge others to support them; and
- solicit political contributions from fellow federal employees in certain circumstances.

The Hatch Act was passed in 1939, but its roots are much deeper. For example, the political activities of some of those in the Executive Branch disturbed Thomas Jefferson, who issued an order stating in part that, "[t]he right of any officer to give his vote at election as a qualified citizen is not meant to be restrained . . . [however] it is expected that he will not attempt to influence the votes of others nor take any part in the

business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it." ^{4/}

In spite of Jefferson's concerns about mixing partisan politics and regular federal service, the political spoils system flourished in succeeding decades and remained the rule until after the Civil War. In 1871, Congress authorized the President to establish a true civil service of federal employees. ^{5/} This was followed by the Civil Service Act of 1883, known as the Pendleton Act, ^{6/} which in Rule 1 declared that "no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any right to use his official authority or influence to coerce the political action of any person or body." ^{7/}

Problems with political activity by government workers continued, and the Civil Service Rules were frequently revised. In 1907, under President Theodore Roosevelt, Rule 1 was amended to prohibit executive civil servants from using their "official authority or influence for the purpose of interfering with an election or affecting the result thereof." ^{8/} Finally, the experience of the 1936 and 1938 elections convinced Congress that the prohibition against taking an active part in political management and campaigns should be extended to the entire federal service. ^{9/} The bill introduced to remedy this problem became the Hatch Act, named for its main proponent, Senator Carl Hatch (D-NM). ^{10/} It has since been amended on several occasions, but its essential features have remained intact for almost 50 years.

^{4/} 10 J. Richardson, Messages and Papers of the Presidents 98 (1899), quoted in United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 557 (1973) (dismissing a constitutional challenge to the Hatch Act as a violation of the First Amendment). Justice White presented a concise history of the Act in this opinion, id. at pp. 557-63, from which this discussion is largely drawn.

^{5/} 16 Stat. 514.

^{6/} 22 Stat. 403.

^{7/} 22 Stat. 404.

^{8/} Twenty-fourth Annual Report of the Civil Service Commission 104 (1908), cited in Letter Carriers, supra, 413 U.S. at 559.

^{9/} Earlier civil service rules had been confined to the competitive classified service. Id.

^{10/} 53 Stat. 1147.

The principle that the privilege of federal employment constitutionally justifies restrictions on partisan political activity also has been twice expressly recognized by the Supreme Court. In United Public Workers of America v. Mitchell, 330 U.S. 75, 98 (1947), the Court upheld the constitutionality of the Hatch Act and noted that, "Congress recognizes danger to the [civil] service in that political rather than official effort may be channeled through political connections." In United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 565-67 (1973), the Court noted that "[n]either the right to associate nor the right to participate in political activities is absolute," and found that Congress was justified in concluding that "substantial barriers should be raised against the party in power -- or the party out of power, for that matter -- using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns."

We believe that the changes proposed in the Senate bill, even more than those proposed in the House version (H.R. 20), would invite an unacceptably dangerous degree of politicization in the federal workplace. ^{11/} The types of conduct involved could run the gamut from informal political commentary to

^{11/} Although similar, S. 135 and H.R. 20 differ in several significant respects. For example, H.R. 20 appears to allow some off-duty solicitation of political contributions, while the Senate bill would specifically allow free solicitation among employees who are members of the same federal employee organization for the purpose of supporting the organization's multicandidate political committee. (See § 7323(2)). On the other hand, H.R. 20 would allow federal employees to run for public office in a partisan election and even creates an entitlement to unpaid leave in order to allow the employee to do so. (See H.R. 20, § 7326) S. 135 would prohibit such activity.

In two important respects, H.R. 20 includes important provisions lacking in S. 135: (1) H.R. 20 would prohibit the partisan use of "official information obtained through or in connection with" federal employment unless the official information is available to the general public (See H.R. 20, § 7323(b)); and (2) H.R. 20 defines the nature of "official authority or influence," the partisan use of which is prohibited by both bills, to include promising to confer and conferring any benefit (such as any compensation, grant, contract, license, or ruling), or threatening reprisals (such as deprivation of any compensation, grant, license, or ruling), and approving, recommending processing, or taking personnel actions. (See § 7323(c)).

outright pressure on subordinates to "volunteer" to help in a campaign or contribute to an election fund. Of great concern to us, in particular, is proposed § 7323(2), which would permit federal employees belonging to federal employee organizations to solicit and receive contributions from fellow union members for the organization's multicandidate political committee. Such activities are federal crimes under current law. 18 U.S.C. § 602 makes it a crime to solicit, and 18 U.S.C. § 603 makes it a crime to make, any prohibited political contribution. This dual prohibition is intended to assure that employees are doubly shielded from coercive political shakedowns.

While it may be argued that by becoming members of employee organizations, the affected federal employees have agreed to expose themselves to such activities, this is not necessarily the case. The decision to join a federal employee union should not have the result of subjecting them to unwanted pressures from which they would otherwise have been immune. Further, in addition to deepening the gulf between federal employee organization members and non-members, this distinction between when solicitation either is or is not a crime, depending upon individual employee affiliation, will be extremely difficult to enforce. Moreover, prosecutions of infractions of these laws could be expected to multiply, since opportunities for conduct which might be a violation would be substantially increased.

The current bill includes several provisions, specifically §§ 7323(1) and 7324, which, although theoretically intended to prevent abuses, will be ineffective in achieving that goal as a practical matter. Further, these provisions would be virtually impossible to enforce effectively, and could invite a flood of litigation by disgruntled employees. In our view, these prohibitions would add little other than confusion to existing statutes which make certain kinds of coercion and misuse of authority a criminal offense. ^{12/}

It is important to emphasize that the Department's role in matters involving political corruption of public personnel and programs is generally confined to criminal prosecution of aggravated violations of federal criminal statutes. See e.g., Chapter 29 of Title 18 of the United States Code. The development of factually significant cases in this area suffers from two major problems. The first problem lies in the fact that individual victims of patronage schemes rarely come forward, either because the victims agree with the politics of the person pressuring them, are part of the same political machinery, or because the relative "cost" of submission on an individual level is low (i.e., stuffing political mailings or purchasing a \$50

^{12/} See, e.g., 18 U.S.C. §§ 595, 598, 600, 601, 602, 603, 606, and 607.

fundraising ticket compared to the possible cost of complaining and displeasing their supervisors -- possibly jeopardizing their jobs).

The second major problem the Department must overcome to prosecute successfully these types of crimes is the fact that political threats and intimidation are rarely communicated in clear and unambiguous terms. The issue of coercion is invariably subtle. The prosecutor must therefore attempt to identify additional witnesses who can testify that they also received similar "threats" from the identified suspect. Our experience over the years is that when patronage abuses are actually reported they generally involve isolated instances, and often disgruntled employees, who complain of adverse job consequences by their supervisors because of their failure to comply with political demands imposed upon them. Such one-on-one-witness cases are not conducive to criminal prosecution in federal court. The absence of large numbers of federal criminal prosecutions of patronage corruption thus does not indicate that the problem does not exist, but that it is generally extremely hard to prove.

The experience which this Department has had over the years enforcing the criminal laws dealing with illegal patronage practices has demonstrated quite graphically that there is a definite -- and sinister -- link between lack of civil service protections, on the one hand, and the occurrence of abuse on the other. The dynamics by which most government offices operate -- and the fact that all government offices are in the last analysis subordinate to the political process -- inevitably leads to the strong temptation on the part of many senior public administrators to use subtle, and often overt, pressure to transform the rank and file implementors of public programs and policies into political cadres. It is imperative that these forces be checked. The fact that such abuses are comparatively rare in the federal system, but not uncommon in many state and local government agencies, is a telling testament to the wisdom, efficacy, need, and purpose of the present federal Hatch Act.

Several examples of patronage abuses at the state and local level which have been investigated by this Department in the very recent past will illustrate the magnitude of the problem the Hatch Act has successfully kept from the federal door step:

- * In 1975, Congressman J. Edward Roush of Indiana testified before a House subcommittee in support of increased penalties under 18 U.S.C. §§ 600 and 601, at which time he provided the Congress with several examples of specific written demands from the party in power in his home State to rank and file government personnel (many of them firemen, road laborers, and the like) for the political donation of a percentage of their government salaries.

- * In 1985, a Special Federal Grand Jury in the Northern District of Illinois (Chicago) issued a report on the dynamics of the fraudulent election practices for which Chicago has until recently been infamous. After several years of hearing testimony, and after returning over 65 indictments charging Chicago officials with fraudulent voting practices, this grand jury determined that the driving force behind voter fraud in Chicago " was the quest for patronage -- e.g., the power of the " winning political faction to control the jobs of rank and file municipal personnel and award benefits to its "friends." This vicious patronage system produced corrupt government, and required aggressive political work by even the most mundane public employees in order to obtain -- or retain -- municipal jobs.
- * Two County Commissioners in Clark County, Indiana were indicted and convicted in Indianapolis during 1986 for overtly threatening a large group of highway laborers with the loss of local County jobs if they did not agree to make political contributions to the party in power. Several laborers who refused to contribute were either summarily fired, or simply left their jobs on their own accord knowing that termination was the inevitable consequence of refusing to go along with such demands. This investigation also uncovered several other situations where Clark County employees -- including at least one paramedic -- were punitively transferred to job sites that were far removed from their homes and children because of the employees' lack of support for the incumbent political faction.
- * During recent months, the Criminal Division has transferred two major patronage matters to the Office of Special Counsel (OSC) for administrative enforcement under the so-called "Little Hatch Act" (5 U.S.C. §§ 1501 et seq.) Extensive criminal investigations, however, failed to produce sufficient evidence to support criminal charges in these cases -- mainly for the reasons summarized previously in this letter. Both of these matters involved superior political appointees soliciting political contributions -- usually in the form of dinner tickets -- from clerks and administrative personnel. In one of these cases OSC succeeded in obtaining meaningful penalties (including debarment from future public employment) against the Director of Personnel of the Akron Municipal Housing Authority and two of her subordinates. See Special Counsel v. Parnell, 37 M.S.P.R. 184 (1988). In the other case, OSC is presently seeking similar penalties against several political and senior supervisory

employees of the Niagara Frontier Transportation Authority for doing much the same thing. In both these instances, OSC has been successful in obtaining administrative sanctions against plainly unlawful behavior largely because the Little Hatch Act is on the books, and the evidentiary requirements of this administrative statute are far less demanding than those applicable to criminal proceeding under statutes such as 18 U.S.C. §§ 600, 601 and 595.

- * As a result of OSC's recent successes in this regard, the Criminal division is actively engaged at the present time in seeking ways to include OSC in the overall enforcement of the Federal patronage laws on the local and State level. Accordingly, the number of administrative cases such as the ones just discussed can be expected to increase in the near future -- if, of course, S. 135 does not pass and the Hatch Act remains an effective enforcement tool.
- * Two months ago, at the end of May, 1989, a federal grand jury in Newark indicted the incumbent mayor, and an incumbent city councilman, of the township of Guttenberg for terminating the services of two exemplary police officers, and a 76-year-old school crossing guard. These public servants had refused to perform partisan political services for the incumbent city administration. This case, which is presently awaiting trial in Newark, was made possible because of the willingness of at least three of the victims to come forward and complain directly to the United States Attorney in Newark, through an "800" telephone number which the District of New Jersey has recently put in place.

This recent history supports our firm conviction that any relaxation of the Hatch Act's politicking ban will substantially diminish the protections which federal employees currently enjoy against political pressure, while affording no realistic expectation that the void thus created can be filled by the federal criminal justice system. The Department of Justice remains convinced that nothing short of an absolute bar on active partisan political activities by federal civil service employees will adequately protect the public's interest in the fair and impartial administration of government programs and policies, and the employees themselves from more or less subtle pressure by their superiors. As noted above, violations of the criminal laws outlined above are notoriously difficult to prosecute because coercion in the workplace is hard to prove. Attempted coercion usually occurs out of sight of any witnesses, when none other than the alleged victim and perpetrator are present. The line between conduct that amounts to pressure and conduct that does

not is very fine. Experience has shown that the only way to prevent abuse in this area is by declaring the entire field off-limits.

In addition to the specific concerns outlined above, the overall effect on the general public's confidence in the fair and impartial administration of the laws could be devastating, particularly if federal employees performing law enforcement or other sensitive government functions are not exempted from the proposed relaxation of the Hatch Act requirements. If it appears that an official of Party A has misappropriated funds, it will not inspire public confidence to learn that the local U.S. attorney's office charged with investigating the allegation is headed by that official's campaign manager -- or, in contrast, by the campaign manager for the candidate the official defeated.^{13/} If a federal agency's employees' PAC endorses a presidential candidate, and he loses the election, the public will justly wonder how faithfully that department will carry out the new President's programs. If an agency manager goes on record supporting (even through a "multicandidate political committee"), a candidate who proves successful at the polls, and subsequently that agency manager is promoted, it will surely promote increased public cynicism.

Furthermore, the increased political clout of public officials who might also serve within the hierarchy of national political committees should not be underestimated. For example, although he could not himself run for office under S. 135, the head of the Federal Election Commission could be the National Chairman of one political party or the other. This surely would not inspire confidence by members of the opposite party in that official's ability or desire to impartially administer the election laws.

^{13/} It should be noted that the Department of Justice currently imposes its own rules, more stringent than the Hatch Act, which would prohibit a U.S. Attorney from engaging in such activities, even if the Hatch Act were repealed. The Department of Justice holds even its presidential appointees to the standards which apply to the rank-and-file, reasoning that the public's faith in fair and impartial law enforcement requires them to shun every appearance of partisan politics. See Memorandum from Attorney General William French Smith to all Department of Justice Offices, Boards, Divisions, and Bureaus (Feb. 13, 1984) (advising all Department of Justice employees, even those exempt from the Act, to refrain from participating in partisan politics). However, leaving such regulation to departments and agencies alone is undesirable because such rules can be easily changed and could produce uneven results.

The list could go on and on. Two principles central to the operation of the Executive Branch -- the impartial, nonpartisan administration and enforcement of federal laws, and advancement in the federal service based solely on merit -- would certainly be threatened and could well be extinguished by the adoption of S. 135. Safeguards against real abuse would be virtually unenforceable. In short, S. 135 is an open invitation to political corruption.

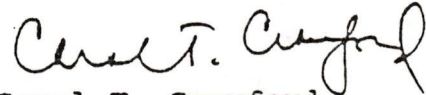
Finally, in addition to the policy and practical concerns discussed above, S. 135 raises serious constitutional concerns insofar as it limits the ability of most senior political appointees to engage in political activity. For example, § 7324 would place sweeping restrictions on the ability of many senior presidential appointees, the individuals primarily responsible for implementing the President's program, to engage in "political activity" while "on duty." We take little comfort from the fact that this prohibition does not apply in the case of the highest level appointees and presidential aides (those paid from the Executive Office of the President appropriation or appointed with the advice and consent of the Senate), if "the costs associated with that political activity are not paid for by money derived from the Treasury of the United States." (See § 7324 (b)(1)). This qualification is of very uncertain value given that effective implementation of a President's program depends upon many non-cabinet level appointees, that all appointees' salaries are ultimately paid by the Treasury, and given that a wide variety of official activity of these appointees might be regarded as "political." The term "political activity" is nowhere defined in the Bill. There is, for example, no suggestion in the proposal that this term was intended to include only the kinds of partisan campaign activities for which appropriated funds may be unavailable under existing law. Restrictions on the partisan political activity of such high level government officers is questionable under both Article II of the Constitution (as an impediment to the exercise of legitimate Executive authority), ^{14/} and the First Amendment. ^{15/}

^{14/} Supreme Court precedent establishes that Congress may not interfere with the President's ability to carry out his constitutional responsibilities. See, e.g., Hart v. United States, 118 U.S. 62 (1886); United States v. Klein, 79 U.S. (13 Wall.) 128 (1872), holding unconstitutional congressional attempts to interfere with the President's pardon power. Even when Congress acts pursuant to its appropriations power, its authority is not absolute. Congress may not, for example, use its appropriations power to establish a religion, Flast v. Cohen, 392 U.S. 83, 104-105 (1968), or to diminish the compensation of federal judges, United States v. Will, 449 U.S. 200 (1980). By the
(continued...)

In sum, we conclude that an unintended but nevertheless certain result of this legislation would be to seriously undermine the nonpartisan nature of the federal workforce. Ultimately, S. 135 would lead to the re-politicization of the federal civil service, and an unfortunate retreat into the very worst aspects of public administration from the last century. One of the justifications given in 1939 by Senator Carl Hatch for restricting the political activities of civil servants applies to the same extent today: It is simply impossible to draw the line between voluntary and coerced political activity. 86 Cong. Rec. 2626 (1940) ("I defy . . . [anyone] to draw that line"). Allowing political activities by the federal civil service will inevitably harm the merit civil service and the people our Government serves.

For these reasons, the Department strongly opposes this legislation. The Office of Management and Budget has advised that there is no objection to the presentation of this report to the Congress and that S. 135 is not in accord with the program of the President.

Sincerely,



Carol T. Crawford
Assistant Attorney General

14/ (...continued)

same token, Congress' appropriations authority may not be used to intrude upon the President's Article II powers.

15/ See, e.g., Branti v. Finkel, 445 U.S. 507, 519 (1980) (recognizing the distinction between ministerial and policymaking officials); Elrod v. Burns, 427 U.S. 347, 367-69 (1976) (recognizing that different First Amendment considerations apply to policymaking officials as opposed to nonpolicymaking employees).

DEPARTMENT OF JUSTICE
OFFICE OF LEGISLATIVE AFFAIRS CONTROL DATA SHEET

From: OLA (101ST CONGRESS) (GLENN) (S.135)
To: GLENN, SEN. JOHN CHMN, GOVERNMENTAL AFFAIRS COMM
Date Received: 07-24-89 Date Due: NONE Control # : L9081606351
Subject & Date
07-24-89 (HATCH ACT REFORM AMENDMENTS OF 1989) LETTER
TO CHAIRMAN GLENN EXPRESSING THE VIEWS OF THE DEPARTMENT
REGARDING S.135, THE HATCH ACT REFORM AMENDMENTS OF
1989 (S.135)

	Referred To:	Date:		Referred To:	Date:	Type:
(1)	OLA;FILES	07-24-89	(5)			
(2)			(6)			Cat
(3)			(7)			LEG
(4)			(8)			ATTY:
	Interim by:			Date:		MFB
	Sig. For: OLA			Date Released: 07-24-89		

Remarks
CLEARED BY HILDA SCHREIBER, OMB.
(1) 07-24-89: OLA/CTC LTR. CC: DAG, CIV, OMB.

Other Remarks:

OLA ATTY: FAITH BURTON, 633-5310
Remarks: DAAG;PERKINS
Exec Sec Ctrl #: NONE

THIS DOCUMENT MUST BE DISPOSED OF BY SHREDDING

THE WHITE HOUSE
WASHINGTON

DATE: July 21, 1989

TO: Fred McClure

FROM: **ANDY CARD**

ASAP -- Attached for you to handle.

JOHN WARNER
VIRGINIA

COMMITTEES:
ARMED SERVICES
SELECT COMMITTEE ON INTELLIGENCE
ENVIRONMENT AND PUBLIC WORKS
SPECIAL COMMITTEE ON AGING

United States Senate

July 17, 1989

225 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-2023

CONSTITUENT SERVICE OFFICES:

805 FEDERAL BUILDING
200 GRANBY MALL
NORFOLK, VA 23510
(804) 441-3079

PARCEL POST BUILDING
110 EAST MAIN STREET
RICHMOND, VA 23219
(804) 771-2579

235 FEDERAL BUILDING
180 WEST MAIN STREET
ABINGDON, VA 24210
(703) 628-8158

DOMINION BANK BUILDING
213 S. JEFFERSON ST. SUITE 1003
ROANOKE, VA 24011
(703) 982-4676

The Honorable John Sununu
Chief of Staff
The White House
Washington, D.C. 20500

Dear Governor Sununu:

As I have indicated to the President on several occasions, I was very encouraged by his recent announcement of a strong, effective clean air proposal based on the principles of freedom of choice. I share the President's support for expeditious passage of such legislation.

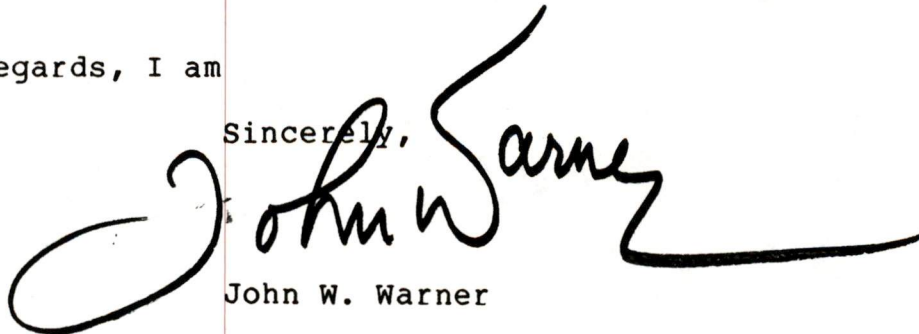
I am disturbed, however, about recent reports that certain portions of the draft of the President's bill depart significantly from these principles. In particular, the inclusion of a "cap" on emissions at 1985-87 generation levels from all sources installed prior to the date of enactment appears to be contrary to the plan proposed by the President on June 12. If enacted, this provision will raise costs to consumers at the same time that it imperils continued viability of the low-sulfur coal industry.

It is my hope to be able to sign on to the President's proposal when it is sent to the Congress. In addition, it is my impression that a significant number of members of the coal industry, at least in the State of Virginia, also hope to be able to lend their collective support to the President. However, this issue is a key factor in making such a determination.

Since there is little time before introduction of this legislation, I would like to urge you to meet with coal industry representatives to discuss this issue at the earliest possible time.

With kind regards, I am

Sincerely,


John W. Warner

JWW: cam

*Fred - call
re. clean air
per JWW
7/21*

THE WHITE HOUSE
WASHINGTON

Date: 9/13/89

FOR: *Fred McClure / Joe Hagin*

FROM: ANDY CARD *Andy*

☒ Action

☐ Your Comment

☐ Let's Talk

☐ FYI

*I got the word today from
HHS that we'll do this on
10/18. — I like the drop-by
routine!*

THE WHITE HOUSE
WASHINGTON

9/12

TO:

ALDY CARD

FROM:

FRED McCLURE *fm*
Assistant to the President
for Legislative Affairs



FYI



Comment



Action

Stevens' reception is generally very good in terms of Senators' attendance. Only question is whether we want to ~~set~~ start "accepting" invites for POTUS to attend local fundraisers. Of course, POTUS could not attend an Alaska fundraiser. Drop-by may not be bad idea because it is easy to do at the Madison.

THE WHITE HOUSE
WASHINGTON

DATE: 10/2/89

TO: Fred McClure/Jim Wray/Joe Hagin

FROM: ANDY CARD *Andy*

Sen. Ted Stevens gave JHS a
note requesting that the President
drop by the Senator's "only large
fundraising event... held in Washington."
It is Alaska Day, Wed. Oct. 18th, at
the Madison Hotel.

Guidance? ? ?

The Gov. said that if it's easy
we could do the drop-by.



9/7/89

TED STEVENS
U. S. SENATOR FOR ALASKA
WASHINGTON, D. C. 20510
202-224-3004

John:

Alaska Day is Wednesday,
October 18. We will hold a
fundraising event at the
Madison Hotel - in the Dolly
Madison Ballroom - from 6 to 8
P.M. This will be the only large
fundraising event for my 1990

Campaign held in Washington if he comes.

My request is that the President stop by this event as the Honored Guest - and, of course, the time for that visit is up to him.

Thanks for your help
Jed

JIM SASSER, TENNESSEE, CHAIRMAN

ERNEST F. HOLLING, SOUTH CAROLINA
J. BENJAMIN JOHNSTON, LOUISIANA
DONALD W. RIEGLE, JR., MICHIGAN
J. JAMES EXON, NEBRASKA
FRANK R. LAUTENBERG, NEW JERSEY
PAUL SIMON, ILLINOIS
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CHRISTOPHER J. DODD, CONNECTICUT
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WARREN B. RUDMAN, NEW HAMPSHIRE
PHIL GRAMM, TEXAS
CHRISTOPHER S. BOND, MISSOURI

JOHN L. HILLEY, STAFF DIRECTOR
G. WILLIAM HOAGLAND, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON THE BUDGET
WASHINGTON, DC 20510-6100

*Fred said
this has been
answered.*

And

July 17, 1989

Copy

The Honorable George Bush
President
The White House
Washington, D.C. 20500

Dear Mr. President:

Welcome home, Mr. President, and congratulations on your most successful trip.

There can be no clearer evidence of the triumph of the American principles of democracy and free enterprise than your reception in Poland and Hungary. As you indicated in your speech at Karl Marx University, the world has never before experienced the extent of political and economic change underway in Eastern Europe under peaceful and orderly circumstances.

Your trip has intensified the general optimism both here and abroad that free and democratic economic systems can work in countries that have never experienced free and open development. Nonetheless, it would be tragic if we, and the other Western nations, raised expectations of economic well-being that the economic institutions in those countries were ill-prepared to fulfill. The result could well be renewed political unrest and a return to totalitarian government.

It may be presumptive of me to discuss the following because you may already have such an evaluative process in place. Nevertheless, permit me to suggest the following:

1. The creation of a team of American experts from academia, business, and labor to examine thoroughly an existing Communist economy, hopefully with the full cooperation of one or more of the Communist countries that are now in transition.
2. The team should include a variety of experts, including financial, monetary, human development, and management personnel. After evaluating a Communist economy, they should make recommendations as to the most appropriate sequencing of transition activities.

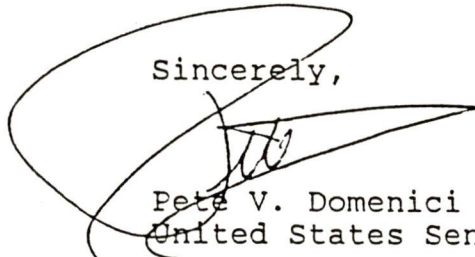
The Honorable George Bush
July 17, 1989
Page 2

Since these transitions are an historic first, it seems to me that, if we, and our free industrial partners are going to aid the Communist regimes in taking steps toward more free-entrepreneurial economies, our involvement should at least address the most propitious sequencing of this change.

I am sure that there are many American experts who, if asked, would respond to this unprecedented challenge. Their analysis and recommendations might be very revealing. Certainly the Communist regimes in Eastern Europe and the Soviet Bloc are embarking on a major new experience for them. Such a group might end up being as beneficial to us as to them, in at least pinpointing significant shortcomings in any bona fide attempt to achieve the economic change we all desire.

Let me conclude, Mr. President, by commending your historic efforts. America has the initiative in foreign policy as never before, and I am enormously enthusiastic at the thought of what we might accomplish.

Sincerely,



Pete V. Domenici
United States Senator

cc: The Honorable James A. Baker
The Honorable Richard B. Cheney
The Honorable Robert A. Mosbacher
The Honorable Michael J. Boskin

THE WHITE HOUSE
WASHINGTON

May 11, 1989

MEMORANDUM FOR FREDERICK D. McCLURE

FROM: ANDREW H. CARD, JR. *Andy*
SUBJECT: CONGRESSMAN CHESTER ATKINS (D-MA) AND
INTERNATIONAL CONFERENCE ON SOUTHEAST ASIAN
REFUGEES

I have received the attached correspondence from Congressman Chester Atkins (D-MA). He has expressed his interest in being a member of the U.S. delegation to the International Conference on Southeast Asian Refugees to be held in Geneva on June 12 and 13.

He has an active interest in the fate of Southeast Asian refugees. A third of the population from the city of Lowell, Massachusetts is Southeast Asian. Congressman Atkins has also filed the attached concurrent resolution in the House on the Geneva Conference.

Please keep me apprised of your action on this matter.

cc: Janet Mullins, State Department

Attachments

THE WHITE HOUSE

WASHINGTON

May 15, 1989

Chet
Dear Congressman Atkins:

Thank you for your letter of May 5, 1989, in which you enclose Len Kardon's resume. I will be happy to check into possible summer positions for him at the Department of Housing and Urban Development.

Please know that I have communicated to Fred McClure and Janet Mullins your interest in being a member of the U. S. delegation to the International Conference on Southeast Asian Refugees, June 12 and 13. As soon as I have some news, I will be in touch with you.

In the meantime, all the best.

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

The Honorable Chester G. Atkins
U. S. House of Representatives
Washington, D.C. 20515

CHESTER G. ATKINS
5TH DISTRICT, MASSACHUSETTS

COMMITTEES:
APPROPRIATIONS
STANDARDS OF OFFICIAL CONDUCT
AT LARGE DEMOCRATIC WHIP

LINDA J. HARTKE
ADMINISTRATIVE ASSISTANT

Congress of the United States
House of Representatives
Washington, DC 20515

REPLY TO:
☐ WASHINGTON OFFICE:
504 CANNON BUILDING
WASHINGTON, DC 20515-9998
(202) 225-3411
☐ DISTRICT OFFICE:
134 MIDDLE STREET, SUITE 320
LOWELL, MA 01852-1886
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May 5, 1989

Mr. Andrew H. Card, Jr.
Deputy to the Chief of Staff
Executive Office of the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. ~~Card~~ *Andy*:

It was good talking with you yesterday -- I have been hearing rave reviews all week of your meetings with folks from Massachusetts who were down in Washington for Chamber of Commerce meetings.

I am enclosing the resume and information about Leonard Kardon of Framingham and his interest in a summer position at H.U.D. Len is a good kid who has had a great experience at the Republican Research Committee this year -- I only regret we lost him to "the other side". Anything you can do to help him out at H.U.D. would be appreciated.

I am also grateful for anything you can do in support of my interest in participating in the U.S. delegation to the International Conference on Southeast Asian Refugees in Geneva on June 12 and 13. My interest and efforts in regard to Southeast Asia and the refugees who have fled the region have been an important part of my career in Congress. Almost a third of the population in Lowell is now Southeast Asian -- the city and the individuals there will be directly affected by the work of the conference. It is my understanding that the delegation will be bipartisan in nature and that probably 13 Members of Congress will be invited to participate. Your assistance and guidance in this matter will be deeply appreciated.

page two

Finally, I would be delighted to get together at your convenience. I am usually in Washington each week on Tuesday through Thursday. Please have your office be in touch with my scheduler, Linda Eisenstadt, at 225-3411 to arrange something that works out for your schedule. Again, many thanks and I look forward to seeing you soon.

Sincerely yours,


Chester G. Atkins
Member of Congress

CGA: ljh
Enclosures

I'm also enclosing a concurrent resolution on the Geneva Conference I just dropped in. See you soon -
Keep up the good work!

THE WHITE HOUSE
WASHINGTON

DATE: 4/3

TO: Fred McChure

FROM: ANDY CARD

Andy

The Gov asked if
you could see him
re. the attached soon.

THE WHITE HOUSE

WASHINGTON

March 28, 1989

MEMORANDUM FOR GOVERNOR SUNUNU

FROM: ROGER B. PORTER *RBP*
SUBJECT: California Water Contracts

*Ask Fred McChune
to see me.
copy to Fred
hold orig for me.
Andy*

ISSUE

Should the Bureau of Reclamation renew long-term (40 year) fixed rate water service contracts in the Friant Unit of the Central Valley Project (CVP) in California without public review under the National Environmental Policy Act (NEPA)?

BACKGROUND

The Friant Unit of the Central Valley Project consists of 28 California irrigation and water districts and municipalities which hold water service contracts with the Bureau of Reclamation. Water to these districts comes from the Madera Canal and the Friant-Kern Canal, which divert water from the San Joaquin River to locations as far as 150 miles away.

The Central Valley Project provides 267 irrigation, municipal, and industrial contractors a maximum total annual entitlement of 9.1 million acre-feet (MAF) of water. The 28 Friant Unit contracts executed from 1948-1985 are the first major group of CVP water service contracts to expire. The Orange Cove irrigation district contract, of major concern to Congressman Pashayan, expired on February 28, 1989, and provided a maximum annual entitlement of 39,200 acre feet or 1.5 MAF over the 40 year life of the contract. By comparison, the city of Los Angeles uses a total of about 700,000 acre feet of water annually. The concern is that the terms of renewal of these contracts will set a precedent for the upcoming renewals of most, if not all, of the Central Valley Project water contracts and similar Federal reclamation projects.

ECONOMIC ISSUES

- o Forty year contracts have provided for water over that period at \$3 an acre foot. Contract renewals would raise the cost to \$14 an acre foot. By contrast, Los Angeles pays a price of over \$100 an acre foot on the open market.
- o This water pricing is the result of a formula which requires irrigation contractors to pay all operations and maintenance expenses, and allow deferment over long periods of time of repayment of capital costs.
- o Since the 1940s, over \$2 billion in capital investment has been made in Central Valley Project facilities. The 267 Central Valley Project irrigation contractors are required to repay an allocated \$1.2 billion of the original investment. To date, however, only about \$30 million of this amount has been repaid. The remainder of the investment is approximately \$950 million and, under the terms of the contract renewals, some must be repaid by other users by the year 2030 and some is non-reimbursable and will never be repaid.
- o Reclamation law allows interest payments on the \$1.2 billion irrigation investment to be foregone. Although not an outlay, foregone interest is a subsidy, and, for the CVP, amounts to \$68 million annually assuming an interest rate of 8 percent on an investment amortized until year 2030. On a present value basis, even if the entire \$1.2 billion is repaid, the repayments to the government would have a value of less than 5 cents on the dollar.
- o The 28 Friant Unit contractors will make average annual payments of about \$6.3 million for repayment of the irrigation investment and \$9.1 million for all assigned O&M and replacement expenses for their annual total of \$2.2 MAF of water for an average of \$6.95 an acre foot. The annual foregone interest on irrigation investment for Friant Unit contractors is about \$15.7 million.

LEGAL ARGUMENTS

The legal issues are 1) whether or not an EIS should be required before these contracts are renewed for another 40 year period, and 2) whether or not the Secretary has discretion to renew other than "long-term" contracts.

The opinion of the Department of the Interior's Solicitor (November 10, 1988) is that under the 1956 Bureau of Reclamation amendment, the Secretary is required by law to sign "long-term" contracts. The Solicitor defines long-term as not less than 10 years. The Solicitor further concludes that the Bureau of Reclamation is not required to prepare an EIS concerning mere renewals of contracts because 1) the contracts contain substantially the same terms as those in existing contracts, and 2) the quantity of water to be contracted is non-discretionary.

However, in both October of 1988 and January 3, 1989, EPA determined that renewal contracts might require an EIS because of effects from continued diversion of water under contract from other beneficial uses, such as stemming the flow through the San Joaquin River, Sacramento-San Joaquin Delta, and the San Francisco Bay. The Bureau of Reclamation's proposed contracts will commit water for consumable uses that will help restore salmon runs and wetlands of the San Joaquin River area and help improve water quality.

On February 2, John Moore, Acting Administrator of EPA, referred the matter to the Council on Environmental Quality (CEQ) for resolution. According to CEQ's General Counsel, CEQ will be ruling on this issue sometime in May.

Meanwhile, the Natural Resources Defense Council has sued the Department of the Interior over this matter. Court orders issued by the Federal District Court in Sacramento on February 23 and March 17 directed that the existing Orange Cove irrigation district contract be kept in force until the Court issued its formal opinion on March 17. On March 17 the Court orally ruled that its formal opinion will allow the Department of the Interior to enter into a renewal contract containing a stipulation making that contract subject to the final decision of the Court. The issues before the Court are generally the same as those referred by EPA to CEQ. The Department of the Interior's Solicitor has determined that the Secretary is legally bound to sign the contract(s) even while CEQ reviews the matter. Any decision to sign must await a formal opinion from the Court, unofficially expected this coming Friday.

CONGRESSMAN PASHAYAN CONCERNS

Congressmen who represent California growers are pressing for a renewal of 40 year contracts.

According to Congressman Pashayan, signing of a 40 year contract is absolutely essential to both the survival of the farming community as well as the political survival of the President in that area of California. Congressman Pashayan's arguments are 1) the farmers in his area are small farmers; 2) the crops planted are long-term crops, such as orange trees and almonds which take 10 years to come to fruition; and 3) long-term contracts are necessary to secure bank loans because of the nature of crops planted.

On the other side of the issue, the Attorney General for the state of California has filed an amicus curie favoring the NRDC/EPA position calling for an Environmental Impact Statement.

c: Bill Roper
Jim Pinkerton
Bob Grady

THE WHITE HOUSE
WASHINGTON

DATE: February 20, 1990

TO: Fred McClure

FROM: **ANDY CARD**

The Governor looked at this and doesn't really want to get involved to spend our political capital. What is Senator Phil Gramm doing?

Attachment

February 15, 1990

per JKS
2/20-
What is
Sen. Gramm
saying?
Judy

MEMORANDUM FOR JOHN H. SUNUNU

THROUGH: Frederick D. McClure *FM*
FROM: Brian Waidmann, ^(B) Special Assistant for
Legislative Affairs
SUBJECT: Recommended Meeting with Senator Dick Lugar (R-IN)

SUMMARY:

Senator Lugar objects to the proposed nomination of Wendy Gramm to continue as chairman of the Commodity Futures Trading Commission. His opposition will kill her nomination. This nomination requires your special attention. As you know, Wendy is the wife of Senator Phil Gramm. We urge you to meet with Senator Lugar early next week to discuss his concerns and attempt to change his mind.

BACKGROUND:

The President approved renominating Wendy Gramm on January 22. Her nomination has not been announced or submitted to the Senate because we have been trying to reverse Senator Lugar's opposition. We have not succeeded. He flatly says her nomination would be a mistake, and should not go forward.

Senator Lugar is the Agriculture Committee's top Republican. His opposition will embolden Democrats to attack Wendy Gramm and make it difficult, if not impossible, to win confirmation.

Senator Lugar knows his opposition poses "unusual and difficult problems" for Wendy and Senator Gramm. But he feels compelled to do so because "she is not the strongest candidate." He says Presidential Personnel fails to understand the magnitude of the crisis at the CFTC. "Problems exist at the CFTC that could haunt the President. What is needed is for first class people to be appointed to the CFTC." This is the second CFTC appointment he has blocked. He opposed Margot Machol for being unqualified (her nomination is still pending in his committee).

Senator Lugar is the father of the CFTC. In recent months, he says the CFTC committed huge errors in the collapse of the soybean market, failed to properly investigate criminal activity in futures markets and is administratively weak. He fears the CFTC now risks losing its jurisdiction to the SEC and the Treasury (doing so is now under study within the Administration.)

Given his strongly held views and the political ramifications of this nomination, you should meet with Senator Lugar before this nomination is submitted. Talking points will be provided.

THE WHITE HOUSE

WASHINGTON

May 17, 1989

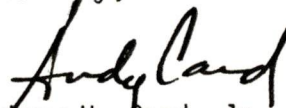
Dear Congressman Smith:

On behalf of Governor Sununu, thank you for your letter of May 2, 1989, in which you request his appearance at a fundraiser in Oregon at some point in the future.

Please know that the Governor would be happy to accommodate your request provided that it does fit in with a trip he may later plan to the west coast.

In the meantime, we certainly wish you all the best with your 1990 campaign.

Sincerely,



Andrew H. Card, Jr.
Assistant to the President
and Deputy to the Chief of Staff

The Honorable Denny Smith
U. S. House of Representatives
Post Office Box 12868
Salem, Oregon 97309

34833



DENNY SMITH
UNITED STATES CONGRESS

May 2, 1989

The Honorable John H. Sununu
Chief of Staff
The White House
Washington, D.C. 20500

Dear John

Congratulations on an outstanding start as our new administration Chief of Staff. I can think of no one better equipped than you to oversee the important and ambitious agenda of the President.

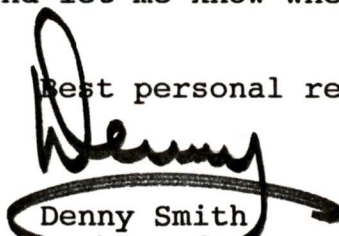
I know that this agenda keeps you very busy, but I would consider it a great honor and a personal favor if any future travel plans out west could include a stop in Oregon's 5th Congressional District.

As you know, my 1988 election victory was extremely close, and I have already gone to work on the 1990 campaign. An early start is imperative if Republicans are to keep this seat. An appearance by you at a fundraising event would be a tremendous boost to my campaign. Your appearance would guarantee a successful event, and I can guarantee lots of warm Oregon hospitality.

My schedule is open, and the event can be scheduled in conjunction with other trips you may have out west.

My thanks for your consideration of this request. Keep fighting the good fights, and let me know whenever I can be of help.

Best personal regards,


Denny Smith
Member of Congress