Particular Governmental Regulations That Restrict Expression

Government adopts and enforces many measures that are designed to further a valid interest but that may restrict freedom of expression. As an employer, government is interested in attaining and maintaining full production from its employees in a harmonious environment. As enforcer of the democratic method of carrying out the selection of public officials, it is interested in outlawing "corrupt practices" and promoting a fair and smoothly functioning electoral process. As regulator of economic affairs, its interests are extensive. As educator, it desires to impart knowledge and training to the young with as little distraction as possible. All these interests may be achieved with some restriction upon expression, but, if the regulation goes too far, then it will violate the First Amendment.[762]

Government as Employer: Political and Other Outside Activities.—Abolition of the "spoils system" in federal employment brought with it restrictions on political activities by federal employees. In 1876, federal employees were prohibited from requesting from, giving to, or receiving from any other federal employee money for political purposes, and the Civil Service Act of 1883 more broadly forbade civil service employees to use their official authority or influence to coerce political action of any person or to interfere with elections.[763] By the Hatch Act, federal employees, and many state employees as well, are forbidden to "take any active part in political management or in political campaigns."[764] As applied through the regulations and rulings of the Office of Personnel Management,

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[762] Highly relevant in this and subsequent sections dealing with governmental incidental restraints upon expression is the distinction the Court has drawn between content-based and content-neutral regulations—a distinction between regulations that serve legitimate governmental interests and those that are imposed because of disapproval of the content of particular expression. *Compare* Police Dep't of Chicago v. Mosle, 408 U.S. 92 (1972); Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975); *and* Schacht v. United States, 398 U.S. 58 (1970), *with* Greer v. Spock, 424 U.S. 828 (1976); Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548 (1973); and United States v. O'Brien, 391 U.S. 367 (1968). Content-based regulations are subject to strict scrutiny, but content-neutral regulations are subject to lesser scrutiny. See "Modern Tests and Standards: Vagueness, Overbreadth, Strict Scrutiny, Intermediate Scrutiny, and Effectiveness of Speech Restrictions," *supra*.

[763] 19 Stat. 143, § 6, 18 U.S.C. §§ 602–03, sustained in *Ex parte* Curtis, 106 U.S. 371 (1882); 22 Stat. 403, as amended, 5 U.S.C. § 7323.

[764] 53 Stat. 1147 § 9(a), (1939), as amended, 5 U.S.C. § 7324(a)(2). By 54 Stat. 767 (1940), as amended, 5 U.S.C. §§ 1501–08, the restrictions on political activity were extended to state and local governmental employees working in programs financed in whole or in part with federal funds. This provision was sustained against federalism challenges in Oklahoma v. Civil Service Comm'n, 330 U.S. 127 (1947). All the states have adopted laws patterned on the Hatch Act. *See* Broadrick v. Oklahoma, 413 U.S. 601, 604 (1973).