

Sec. 2—Powers, Duties of the President Cl. 2—Treaties and Appointment of Officers

however, substantially liberalized the rules for political activities during off-duty hours for most executive branch employees, subject to certain limitations on off-duty hours activities and express prohibitions against on-the-job partisan political activities.⁵³³

The Loyalty Issue.—By section 9A of the Hatch Act of 1939, a federal employee was disqualified from accepting or holding any position in the Federal Government or the District of Columbia if he belonged to an organization that he knew advocated the overthrow of our constitutional form of government.⁵³⁴ The 79th Congress followed up this provision with a rider to its appropriation acts forbidding the use of any appropriated funds to pay the salary of any person who advocated, or belonged to an organization which advocated the overthrow of the government by force, or of any person who engaged in a strike or who belonged to an organization which asserted the right to strike against the government.⁵³⁵ These provisos ultimately wound up in permanent law requiring all government employees to take oaths disclaiming either disloyalty or strikes as a device for dealing with the government as an employer.⁵³⁶ Along with the loyalty-security programs initiated by President Truman⁵³⁷ and carried forward by President Eisenhower,⁵³⁸ these measures reflected the Cold War era and the fear of subversion and espionage following the disclosures of several such instances here and abroad.⁵³⁹

⁵³³ Pub. L. 103–94, § 2(a), 107 Stat. 1001 (1993), 5 U.S.C. §§ 7321–7326. Executive branch employees (except those appointed by the President, by and with the advice and consent of the Senate) who are listed in § 7323(b)(2), which generally include those employed by agencies involved in law enforcement or national security, remain under restrictions similar to the those in the old Hatch Act on taking an active part in political management or political campaigns.

⁵³⁴ 53 Stat. 1147, 5 U.S.C. § 7311.

⁵³⁵ See Report of the Special Committee on The Federal Loyalty-Security Program, The Association of the Bar of the City of New York (New York: 1956), 60.

⁵³⁶ 5 U.S.C. § 3333. The loyalty disclaimer oath was declared unconstitutional in *Stewart v. Washington*, 301 F. Supp. 610 (D.D.C. 1969), and the did not appeal. The strike disclaimer oath was voided in *National Ass'n of Letter Carriers v. Blount*, 305 F. Supp. 546 (D.D.C. 1969); after noting probable jurisdiction, 397 U.S. 1062 (1970), the Court dismissed the appeal on the government's motion. 400 U.S. 801 (1970). The actual prohibition on strikes, however, has been sustained. *United Fed'n of Postal Clerks v. Blount*, 325 F. Supp. 879 (D.D.C. 1971), *aff'd per curiam*, 404 U.S. 802 (1971).

⁵³⁷ E.O. 9835, 12 Fed. Reg. 1935 (1947).

⁵³⁸ E.O. 10450, 18 Fed. Reg. 2489 (1953).

⁵³⁹ See generally, Report of the Special Committee on The Federal Loyalty-Security Program, The Association of the Bar of the City of New York (New York: 1956).