ment service, that service as local officers in such county should in no way involve general partisan political activity[32] and that the principle of home rule and local self-government justifies such participation.

The permission granted by this order may be suspended or withdrawn by the Civil Service Commission when, in its opinion, the activities resulting therefrom are, or may become, detrimental to the public interest or inimical to the proper enforcement of the civil-service rules (Executive order of May 20, 1931).

V. Statutes Relating to Political Assessments, Political Coercion and Discrimination, and the Purchase and Sale of Public Office

36. In addition to the restrictions of the act of August 2, 1939, civil-service rules, Executive orders, and departmental regulations, the freedom of officers and employees of the executive civil service to engage in politics is limited further by a number of statutes. These statutes are generally applicable to all officers and employees of the United States, whether or not in the classified service, and, in some cases, the language of the statute is sufficiently broad to include any person receiving compensation for services from money derived from the Treasury of the United States, and other persons. These statutes are set forth in the following sections. Some of the activities prohibited under penalty of fine and imprisonment are:

1. Solicitation or receipt of political contributions by one officer or employee from another.

2. The giving or handing over of a political contribution by one employee to another.

3. Solicitation or receipt of political contributions in a Federal building by any person, whether or not an employee of the Government.

4. Solicitation or receipt by any person of political contributions from any person receiving any benefit under any act of Congress appropriating funds for relief.

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[32] Participation in political management and in political campaigns is now prohibited by the act of August 2, 1939. (See sec. 34, above.)

5. Solicitation or receipt of any thing of value, either for personal reward or as a political contribution, in return for the promise to use, or the use of influence to secure an appointive office under the United States.

6. Payment or the offer of payment for the use of influence in securing an appointive office under the United States.

[fol. 137] 7. Promising employment, compensation, or other benefit made possible by act of Congress as consideration or reward for political activity.

8. Discrimination by an officer or employee in favor of, or against, another officer or employee on account of political contributions.

9. Depriving any person on account of race, creed, color, or political activity, of compensation or other benefit made possible by any act of Congress appropriating funds for relief.

10. Disclosure for political purposes of any list or names of persons receiving benefits under an act of Congress appropriating funds for relief and the receipt of such a list for political purposes.

VI. Political Assessments

37. Solicitation or receipt of political contributions from Federal employees.—The United States Code, title 18, section 208 (Criminal Code, sec. 118, as amended), provides as follows:

It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or any officer or employee of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person.

Section 5 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads as follows:

It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, employment, or other benefit provided for or made possible by any act of Congress appropriating funds for work relief or relief purposes.[33]

38. Circulars of solicitation bearing names of Federal employees.—In an opinion of October 17, 1902 (24 Op., 133), the Attorney General held that the sending of a circular letter by a political committee to Federal officers and employees soliciting financial aid in Congressional or State elections, upon or attached to which appear the names of Federal officers or employees, is a violation of section 11 of the Civil Service Act (now sec. 118 of the Criminal Code), which declares that no officer or employee of the Government shall be in any manner concerned in soliciting or receiving any assessment or contribution for any political purpose whatever from any officer or employee of the United States. The statute unquestionably condemns all such circulars, notwithstanding the particular form of words adopted, in order to show a request rather than a demand, and to give the responses a quasi-voluntary character.

[fol. 138] 39. "Political assessments" defined.—The following is an extract from the decision in *United States* v. *Scott* (74 Fed., 213), in the Circuit Court of the District of Kentucky, rendered October 7, 1895, by Taft, J.:

To charge a man with soliciting a contribution from United States officers for a political purpose carries with it by implication a charge that the accused knew the purpose for which the contribution was solicited. The words "for a political purpose" may reasonably be construed to qualify not only the contribution but the solicitation. Similarly, to charge that a man received from another his contribution

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[33] Under section 8 of the act penalty for violation of this section is fine of not more than $1,000, imprisonment for not more than 1 year, or both.

for a political purpose, by implication charges that the reception was for the same purpose as the contribution. * * * Nor was it necessary to set out the specific averment that the defendant knew that the persons from whom the contributions were received were officers of the United States.

The following extract is from the decision rendered by McCall, J., in the case of *United States* v. *Dutro, L. W.*, 1913, Western District of Tennessee (unreported):

The statute under which the indictment was found prohibits (and I shall speak of this concrete case) the postmaster at Memphis, Tenn., from receiving, or being in any manner concerned in receiving, any assessment, subscription, or contribution for any political purpose whatever from any official, clerk, or employee of the United States.

There are four counts in the indictment. Two of them charge the defendant with receiving subscriptions and contributions for political purposes from an officer, clerk, or employee of the United States, and two of them charge defendant with being concerned in receiving such assessment or subscription for political purposes from a clerk or employee of the United States.

Evidently one of the purposes of Congress in enacting the legislation was to prohibit superior officers from bringing pressure to bear upon their subordinates in order to secure contributions for campaign purposes, and the act is couched in very broad terms.

This evidence (which so far is uncontradicted) shows that the defendant, Mr. Dutro, did receive two contributions for campaign purposes from an officer or clerk or employee of the United States. Whatever may have been Mr. Dutro's frame of mind in regard to his connection with it, the one fact remains, as the evidence shows, that he received these contributions for the purposes and from the parties which the law prohibits. Perhaps and no doubt he did so without any thought that he was violating any statute, and felt that he was acting purely as a conveyor of these contributions to the political parties for whom they were intended, to accommodate those who were making the contributions, and purely as a personal matter

but I think under the evidence his action was in violation of the statute.

The other two counts, as I have pointed out, charge the defendant with being concerned in receiving assessments, subscriptions or contributions for campaign purposes from a clerk, employee, or officer of the United States. There is a controversy here between counsel as to what the word "concerned" means. From what the law books say which have been read here, and from my own impression, it seems that the word "concerned" means to be interested in, or take part in, receiving such contributions. If Mr. Dutro, by his connection with these two subscriptions, took a part in the [fol. 139] contributions being made by employees of the Government for campaign purposes, he would be guilty. I think the natural construction of the phrase or term or word necessarily leads to the conclusion that he did take a part in receiving the contributions, because he received and conveyed them from the contributors to the parties for whom they were intended, and, as the proof so far shows, he knew that the parties who were making the contributions were clerks under him in the Post Office Department, and he knew the purpose for which the money was to be used and where it was to go.

The foregoing case definitely establishes the principle that an employee of the Government who receives a political contribution from another such employee as a mere agent or messenger for the purpose of turning it over to a political organization commits a violation of the statute.

40. Solicitation or receipt of political contribution in Federal buildings.—The United States Code, title 18, section 209 (Criminal Code, sec. 119), provides that—

No person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in section 208 of this title, or in any navy yard, fort, or arsenal, solicit in any manner whatever or receive any contribution of money or other thing of value for any political purpose whatever.

41. Letters addressed to Federal buildings.—The Commission by a minute of March 23, 1897, held that addressing a letter to a Government employee in a Government build-

ing soliciting political contributions is a solicitation in that building within the meaning of section 12 of the Civil Service Act, but notwithstanding numerous violations no opportunity arose of having the question judicially determined until 1907, when an indictment was obtained against Edward S. Thayer at Dallas, Texas. A demurrer to the indictment was sustained on the ground that the act required the personal presence in the Government building of the solicitor. Appeal was taken to the Supreme Court, and the judgment of the lower court was reversed. (*United States* v. *Thayer,* 209 U. S. 39.) The opinion of the Court, delivered by Justice Holmes on March 9, 1908, establishes definitely the proposition that solicitation by letter or circular addressed to and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building" within the meaning of this section, the solicitation taking place where the letter was received. (See also *United States* v. *Smith,* 163 Fed., 926, where the letter was personally delivered.)

42. Letters delivered in Federal buildings.—The Commission holds that the sending through the mails of letters to Government employees soliciting political contributions, their street or home address being omitted from the envelopes, with the result that the letters are delivered by the postal authorities in the Government building in which they are employed, constitutes a violation of this section. It is a maximum of the law that a person is presumed to intend the natural and probable consequences of his acts, and failure or omission to take measures to avoid delivery of such letters in a Government building will render the offender liable to prosecution.

[fol. 140] 43. Discrimination on account of political contributions.—The United States Code, title 18, section 210 (Criminal Code, sec. 120), provides as follows:

No officer or employee of the United States mentioned in section 208 of this title shall discharge or promote or degrade or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting

to make any contribution of money or other valuable thing for any political purpose.

(See also sec. 52 herein.)

44. Payment of political contributions by one employee to another.—The United States Code, title 18, section 211, (Criminal Code, sec. 121), provides as follows:

No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

45. Penalties for assessments.—The United States Code, title 18, section 212 (Criminal Code, sec. 122), provides that—

Whoever shall violate any provision of sections 208 to 211 of this title shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

46. Foregoing offenses declared felonies.—By section 15 of the Civil Service Act it was declared that persons violating any provisions of the four preceding sections should be guilty of a misdemeanor, but this section is now superseded by section 122 of the Criminal Code, above quoted, which makes such violation a felony in view of the following provision of section 335 of the Criminal Code (U. S. C., title 18, sec. 541):

All offenses which may be punished by death or imprisonment for a term exceeding 1 year shall be deemed felonies. All other offenses shall be deemed misdemeanors.

VII. Purchase and Sale of Public Office

47. Payment for influence in procuring appointive public office prohibited.—The United States Code, title 18, section 149, provides as follows:

It shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or

promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

48. Receiving payment for influence in procuring appointive public office prohibited.—The United States Code, title 18, section 150, provides as follows:

It shall be unlawful to solicit or receive from anyone, whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other [fol. 141] person, in obtaining any appointive office under the Government of the United States.

49. Punishment for violation.—The United States Code, title 18, section 151, provides:

Anyone convicted of violating sections 149 and 150 of this title shall be punished by imprisonment of not more than 1 year, or by a fine of not more than $1,000, or by both such fine and imprisonment.

50. Promising benefits for political activity.—Section 3 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads:

It shall be unlawful for any person, directly or indirectly to promise any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any act of Congress, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in any election.[34]

VIII. Political Coercion

51. Section 2, clause second, of the Civil Service Act directs that the civil-service rules "shall provide and declare as nearly as the conditions of good administration will warrant, as follows: * * * Sixth. That no person in

[34] Under sec. 8 of the act, penalty for violation of this section is fine of not more than $1,000, imprisonment for not more than 1 year, or both.

said service has any right to use his official authority or influence to coerce the political action of any person or body." In pursuance of this section, civil-service rule I, section 1, provides, in part, that "No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof." This provision applies to all persons in the executive civil service, nonclassified as well as classified, and is held to prohibit a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates.

Section 1 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads as follows:

That it shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any election held solely or in part for the purpose of selecting a President, a Vice President, a Presidential elector, or any Member of the Senate or any Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.[34]

Section 7 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads:

No part of any appropriation made by any act, heretofore or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public-works projects, shall be used for the purpose of, and no authority conferred by any [fol. 142] such act upon any person shall be exercised or administered for the purpose of, interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election. [34]

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[34] Under sec. 8 of the act, penalty for violation of this section is fine of not more than $1,000, imprisonment for not more than 1 year, or both.

IX. Political Discrimination

52. Failure to contribute or render political service not prejudicial.—Section 2, clause second, of the Civil Service Act reads:

Fifth. That no person in the public service is for that reason under any obligations to contribute to any political fund or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Section 4 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads as follows:

It shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or made possible by any act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election.[34]

53. No disclosure as to opinions or affiliations.—Section 2 of rule I provides as follows:

No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened, or promised by any person in the executive civil service against or in favor of an applicant, eligible, or employee in the classified service because of his political or religious opinions or affiliations.

(See sec. 16 herein.)

54. Definition of discrimination.—Political discrimination consists in giving appointment, promotion, or any other favor to an appointee, eligible, or candidate because of his politics, or withholding appointment, promotion, or any other favor from an appointee, eligible, or candidate be-

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[34] Under sec. 8 of the act, penalty for violation of this section is fine of not more than $1,000, imprisonment for not more than 1 year, or both.

cause of his politics. An appointing officer who appoints or refuses to appoint an applicant because the applicant does or does not entertain certain political opinions, who makes any inquiry of the applicant or any other person as to the applicant's political opinions or affiliations, or reduces an employee because that employee refuses to render political service, to be coerced in political action, or to contribute money for political purposes, or who advances or promotes an employee for opposite reasons, violates the Civil Service Act and rules.

X. Political Recommendation

55. Senators and Representatives.—Section 10 of the Civil Service Act provides:

That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of [fol. 143] Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act.

56. Disclosing politics.—Rule I, section 3, provides as follows:

No recommendation of an applicant, eligible, or employee in the classified service involving disclosure of his political or religious opinions or affiliations shall be considered or filed by the Civil Service Commission * * * or by any officer concerned in making appointments or promotions.

57. Letters disclosing politics not to be considered.—It is the duty of officers concerned in making appointments or promotions to refuse to receive or consider letters disclosing the politics or religion of an applicant, eligible, or employee and to explain to the writers that communications based upon such grounds will not receive attention or be filed.

58. Recommendation for promotion.—Rule XI, section 3, provides that—

No recommendation for promotion except in the regular form of periodical service-rating reports or unless it be made by the person or persons under whose supervision

such employee has served shall be considered by any officer concerned in making promotions. Recommendation in any other form or by any other person, if made with the knowledge and consent of the employee, shall be sufficient cause for debarring him from the promotion proposed, and a repetition of the offense shall be sufficient cause for removing him from the service.

59. Disclosure of names for political purposes.—Section 6 of the act of August 2, 1939 (Public, No. 252, 76th Cong.), reads:

It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment, or benefits provided for or made possible by any act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.[34]

XI. Jurisdiction of Commission

60. Withholding salary of employees engaged in political activity.—Civil-service rule XV reads as follows:

For the proper supervision and enforcement of its functions, the Commission shall, if it finds that any person has been appointed to or is holding any position, whether by original appointment, promotion, assignment, transfer, or reinstatement, in violation of the Civil Service Act or of the rules promulgated in accordance therewith, or in violation of any Executive order or any regulations of the Commission, or that any employee subject to such act, rules, orders, or regulations is taking active part in political management or political campaigns, after notice to the person affected and opportunity for explanation, certify the

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[34] Under sec. 8 of the act, penalty for violation of this section is fine of not more than $1,000, imprisonment for not more than 1 year, or both.

facts to the proper appointing officer with specific recom-
[fol. 144] mendation for discipline or dismissal; and such appointing officer shall carry out the recommendation. In the event of any continued violation for 10 days after such recommendation, the Commission shall certify the facts to the proper disbursing and auditing officers, and such officers shall not pay or allow the salary or wages of such person thereafter accruing.

61. Commission's determinations final.—The General Accounting Office is without jurisdiction to review the determinations of the Civil Service Commission under rule XV (see above) and, upon certification by the Commission that an employee is holding a position in violation of the Civil Service Act and rules, the General Accounting Office has no alternative to withholding credit for payments made for salary or compensation (decision, Comptroller General, July 20, 1939, to the Postmaster General).

[fol. 145] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION—Filed June 29, 1944

CITY OF WASHINGTON,
District of Columbia, ss:

Kenneth C. Vipond, being duly sworn, deposes and says:

I am the Acting Executive Director and Chief Examiner of the United States Civil Service Commission, and in that capacity am thoroughly familiar with all of the circulars and publications of said Commission.

I have been shown a copy of Form 1982, annexed hereto as Exhibit A, published by the United States Civil Service Commission which, I understand, has been added to the amended complaint of the plaintiffs in the above-entitled matter.

As Mr. Moyer has already stated in his affidavit which has heretofore been filed in this proceeding, the United States Civil Service Commission does not have the statu-

tory authority to enforce, and does not enforce, Section 9 (a) of the Hatch Act with respect to any Federal employees except those who are employees of the United States Civil Service Commission.

[fol. 146] Form 1982, now annexed to the amended complaint as Plaintiffs' Exhibit II, is addressed to Federal employees for their advice and guidance. The Civil Service Commission deems it part of its functions to inform all Federal employees of the statutes, rules and regulations applicable to their employment. It will be noted in this connection that Form 1982 itself refers not only to possible violations of the Hatch Act, but also refers to violations of the statute forbidding the making of political contributions in a Federal building. In addition to this circular, the Civil Service Commission prepares and issues various other publications advising Federal employees of their rights, liabilities, and duties so that they may govern themselves accordingly. Annexed to Mr. Moyer's original affidavit is the latest pamphlet published by the Civil Service Commission dealing with political activities and assessments of Federal employees. It will be noted that this pamphlet relates not only to the Hatch Act but to numerous other statutes and regulations which are of particular concern to Federal employees.

Part of Form 1982 refers to political activities on the part of certain State or local agency employees covered by Section 12 (a) of the Hatch Act. This Section of the Hatch Act specifically gives to the Civil Service Commission the duty to enforce the provisions of the statute applicable to this class of persons. With reference to such persons (who are not Federal employees), the Civil Service Commission does enforce the applicable provisions of the Hatch Act.

It was not the intention of the Civil Service Commission in Form 1982 to declare or imply that it was enforcing, [fol. 147] or would enforce, Section 9 (a) of the Hatch Act as to Federal employees (except with respect to its own employees), nor does any such statement appear in Form 1982.

Federal employees subject to the Hatch Act are advised in Form 1982 that the penalty for established violations of Section 9 (a) of the Hatch Act is removal from office, but

there is no statement that such removal can, or will be made by the United States Civil Service Commission.

Kenneth C. Vipond.

Subscribed and sworn to before me this 28 day of June, 1944. R. E. Soneder, Notary Public of District of Columbia. My commission expires Jan. 14, 1946. (Seal.)

NOTE: Exhibit A annexed hereto is the same as Exhibit II attached to Motion to Amend Complaint, at page 149 of this transcript.

[fol. 148] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO AMEND COMPLAINT—Filed June 29, 1944

Plaintiffs move the court to amend the complaint in the above-entitled action by adding to paragraph 22 thereof the following sentences:

Defendants have, both prior to and since the filing of this complaint, publicized in Civil Service Commission Form 1982, the fact that they will cause the removal of any employee in the classified civil service who commits any of the acts forbidden by the second sentence of section 9(a) of the Hatch Act as amended. This publication is conspicuously posted in various places where employees in the classified civil service perform their duties. A copy of Civil Service Commission Form 1982 is attached hereto as Exhibit II.

Dated: June 29, 1944.

Respectfully Submitted, Lee Pressman, Attorney for Plaintiffs.

(Here follows 1 photolithograph, side folio 149)

EXHIBIT II

Form 1988
June 1942

[POST CONSPICUOUSLY]

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D. C.

C. A. 24007

WARNING

POLITICAL ACTIVITY OF FEDERAL EMPLOYEES PROHIBITED

THE LAW

"It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. * * *" (Section 9 (a), Act of August 2, 1939, as amended by the Act of July 19, 1940.)

"Persons employed in the government of the District of Columbia shall be deemed to be employed in the executive branch of the Government of the United States * * *." (Section 14, Act of August 2, 1939, as amended by the Act of July 19, 1940.)

POLITICAL ACTIVITY OF CERTAIN EMPLOYEES OF A STATE OR LOCAL AGENCY PROHIBITED

THE LAW

"No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency shall (1) use his official authority or influence for the purpose of interfering with an election or a nomination for office or affecting the result thereof; or, (2) directly or indirectly coerce, attempt to coerce, command, or advise any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes. No such officer or employee shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates." (Section 12 (a), Act of August 2, 1939, as amended by the Act of July 19, 1940.)

IN GENERAL

The statutes quoted above being public laws, all persons within their scope are presumed to be acquainted with their provisions, and ignorance thereof will not excuse a violation. Partisan activity in connection with municipal, county, State, or National elections, primary or regular, in which political party candidates are involved is prohibited. The restrictions regarding political activity apply to temporary employees, employees on leave of absence, with or without pay, and substitute employees during their periods of active employment.

THE PENALTY FOR ESTABLISHED VIOLATIONS IS REMOVAL.

AMONG THE FORMS OF POLITICAL ACTIVITY *PROHIBITED* ON THE PART OF FEDERAL OR STATE OR LOCAL AGENCY OFFICERS AND EMPLOYEES WHO ARE WITHIN THE SCOPE OF THE ABOVE-QUOTED LAWS ARE—

Serving on or for any political committee, party, or other similar organization.

Soliciting or handling political contributions.

Serving as officer of a political club, as member or officer of any of its committees, addressing such a club or being active in organizing it.

Serving in connection with preparation for, organizing, or conducting a political meeting or rally, addressing such a meeting, or taking any other active part therein except as a spectator.

Engaging in political conferences while on duty, or canvassing a district or soliciting political support for a party, faction, or candidate.

Manifesting offensive activity at the polls, at primary or regular elections, soliciting votes, assisting voters to mark ballots, or helping to get out the voters on registration or election days.

Acting as recorder, checker, watcher, or challenger of any party or faction.

Serving in any position of election officer, in which partisanship or partisan political management may be shown.

Publishing or being connected editorially or managerially with any newspaper generally known as partisan from a political standpoint; or writing for publication or publishing any letter or article, signed or unsigned, in favor of or against any political party or candidate.—Ownership entirely disassociated from editorial control and managerial activities limited entirely to business management would not be regarded as being within this provision.

Becoming a candidate for nomination or election to office, Federal, State, or local, which is to be filled in an election in which party candidates are involved.

Distributing campaign literature or material.

Initiating or circulating political petitions, including nomination petitions.

Assuming political leadership or becoming prominently identified with any political movement, party, or faction, or with the success or failure of any candidate for election to public office.

GENERAL STATEMENTS AS TO CERTAIN ACTIVITIES WHICH ARE CONSIDERED AS PERMISSIBLE ON THE PART OF ALL OFFICERS AND EMPLOYEES SUBJECT TO THE ABOVE-QUOTED STATUTES

VOTING.—The direct language of the law specifically provides that all such persons retain the right to vote as they may choose.

EXPRESSION OF OPINIONS.—The right to express political opinions is reserved to all such persons. NOTE.—This reservation is subject to the prohibition that such persons may not take any active part in political management or in political campaigns.

CONTRIBUTIONS.—It is lawful for any officer or employee to make a voluntary contribution to a regularly constituted political organization, *provided* such contributions are not made in a Federal building or to some other officer or employee within the scope of the above-quoted statutes.

POLITICAL PICTURES.—It is lawful for any officer or employee to display a political picture in his home if he so desires.

BADGES, BUTTONS, AND STICKERS.—While it is not unlawful for an officer or employee to wear a political badge or button or to display a political sticker on his private automobile (except where forbidden by local ordinance), it is felt that it is inappropriate for any public servant to make a partisan display of any kind while on duty, conducting the public business.

NOTICE

All persons within the scope of the Political Activities Law *must take the responsibility for seeing* that their activities are not such as would constitute violations of the restrictions of the political activity statutes. In case of doubt as to whether or not any particular activity is prohibited, prior to engaging in the questionable activity, the employee involved should present the matter in writing to the U. S. Civil Service Commission for consideration.

Further information is contained in Form 1236 dealing with Federal officers and employees and Form 1236a dealing with officers and employees of the State or local agency, which may be obtained from the Commission, its District managers, or any local civil-service board.

It is the duty of any person having knowledge of the violation of any of the foregoing provisions of law to submit the facts to the U. S. Civil Service Commission, Washington, D. C., or to the agency employing the person thought to be violating the law.

16—118-1 U. S. GOVERNMENT PRINTING OFFICE

[fol. 150] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER AMENDING COMPLAINT—Filed June 29, 1944

It is hereby ordered that the complaint in the above-entitled action be amended by adding to paragraph 22 thereof the following sentences:

Defendants have, both prior to and since the filing of this complaint, publicized in Civil Service Commission Form 1982, the fact that they will cause the removal of any employee in the classified civil service who commits any of the acts forbidden by the second sentence of section 9(a) of the Hatch Act as amended. This publication is conspicuously posted in various places where employees in the classified civil service perform their duties. A copy of Civil Service Commission Form 1982 is attached hereto as Exhibit II.

Dated: June 29, 1944.

D. Lawrence Groner, Chief Judge of the United States Court of Appeals for the District of Columbia. Jennings Bailey, Associate Justice of the District Court of the United States for the District of Columbia. Jas. W. Morris, Associate Justice of the District Court of the United States for the District of Columbia.

[fol. 151] IN THE DISTRICT COURT OF THE UNITED STATES

Civil Action No. 24007

UNITED FEDERAL WORKERS OF AMERICA (C.I.O.), et al., Plaintiffs,

v.

HARRY B. MITCHELL, et al., Defendants

Before Groner, Chief Justice, United States Court of Appeals, District of Columbia; and Bailey and Morris, Associate Justices, District Court of the United States for the District of Columbia, sitting as a statutory three-judge court

OPINION—Filed August 4, 1944

BAILEY, J.:

This is an action brought to declare invalid, as in contravention of the Constitution of the United States, the second sentence of Section 9(a) of the Act of August 2, 1939, as amended, popularly known as the Hatch Act (U. S. C. 61h (a); 53 Stat. 1147, 1148; 54 Stat. 767; 56 Stat. 181), and to enjoin the defendants, members of the United States Civil Service Commission, "from enforcing, threatening to enforce, or otherwise acting" pursuant to that provision. Defendants have moved to dismiss the action and for summary judgment, the motion being accompanied by affidavit.

The following are the pertinent statutes and regulations:

Section 9(a) of the Hatch Act is as follows:

> "It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, except a part-time officer or part-time employee without compensation or with nominal compensation serving in connection with the existing war effort, other than in any capacity relating to the procurement or manufacture of war material shall take any active part in po-

litical management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects [fol. 152] and candidates. For the purposes of this section the term 'officer' or 'employee' shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal Laws."

Section 9(b) of the Hatch Act is as follows:

"Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person."

Section 15 of the Hatch Act is as follows:

"The provisions of this subchapter which prohibit persons to whom such provisions apply from taking any active part in political management or in political campaigns shall be deemed to prohibit the same activities on the part of such persons as the United States Civil Service Commission has heretofore determined are at the time this section takes effect prohibited on the part of employees in the classified civil service of the United States by the provisions of the civil-service rules prohibiting such employees from taking any active part in political management or in political campaigns." (18 U. S. C. 610; 54 Stat. 767).

Section 18 of the Hatch Act is as follows:

"Nothing in the second sentence of section 9(a) * * * shall be construed to prevent or prohibit any person subject to the provisions of this subchapter from engaging in any political activity (1) in connection with any election and the preceding campaign if none of the

candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) in connection with any question which is not specifically identified with any National or State political party. For the purposes of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, shall not be deemed to be specifically identified with any National or State political party." (18 U. S. C. 61r; 54 Stat. 767).

Revised Statutes Section 1753 (5 U. S. C. 631) contains the following provision:

"The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter * * * and may * * * establish regulations for the conduct of persons who may receive appointments in the civil service."

[fol. 153] In the exercise of power conferred by R. S. Section 1753, and by the Civil Service Act, the President has promulgated a number of Civil Service Rules. Civil Service Rule I is as follows:

"No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof. Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express their opinions on all political subjects, shall take no active part in political management or in political campaigns" (5 C. F. R. 1943 Cum. Supp., 1.1).

Civil Service Rule XV is as follows:

"Whenever the Commission finds, after due notice and opportunity for explanation, that any person has been appointed to or is holding any position, whether

by original appointment, promotion, assignment, transfer, or reinstatment, in violation of the Civil Service Act or Rules, or of any Executive Order or any regulation of the Commission, or that any employee subject thereto has violated such act, rules, orders, or regulations, it shall certify the facts to the proper appointing officer with specific instructions as to discipline or dismissal of the person or employee affected. If the appointing officer fails to carry out the instruction of the Commission within 10 days after receipt thereof, the Commission shall certify the facts to the proper disbursing and auditing officers, and such officers shall make no payment or allowance of the salary or wages of any such person or employee thereafter accruing." (Executive Order No. 8705, March 5, 1941) (5 C. F. R. 1943 Cum. Supp., 15.1).

This action is brought by the United Federal Workers of America, an unincorporated labor union composed of employees of the United States Government, and 12 individual plaintiffs, each of whom occupies a position in the Federal government under the classified civil service. The defendants are the duly appointed and acting members of the United States Civil Service Commission.

The plaintiff union asserts that it has "an interest in protecting and restoring the rights of its membership" and that it brings this action "as a representative of, and on behalf of, all of its members, including those who have not specifically joined in suing individually, who are subject to the provisions of the second sentence of Section 9 (a) of the Hatch Act."

The plaintiffs charge that if they engage in the activities forbidden by Section 9 (a) of the Hatch Act the defendants [fol. 154] will cause them to be dismissed; that plaintiff Poole has already conducted political activities in violation of said Section 9 (a), and that the defendants have already commenced proceedings for his dismissal from the employ of the United States.

The defendants contend that neither plaintiff union nor the individual plaintiffs can maintain this action; that it is not claimed that the union is prevented from engaging in any political activity; that a union does not stand in a position where it can assert the individual rights of its members; that the plaintiffs, other than Poole, have only hy-

pothetical issues, and that they are not hurt because they have done nothing in violation of the Act.

Whether or not the union can maintain this action in a representative capacity the individual plaintiffs are in a different situation. The mere existence of the statute, saying that they shall not engage in political activity, the penalty in the statute that they shall be dismissed if they do, and the warning addressed to them by the Civil Service Commission in their posters certainly prevent them from engaging in such activity, if the statute is constitutional. If the statute is unconstitutional, they are being prevented from things which they have the right to do. If the statute is constitutional, it is mandatory that they be dismissed for doing such things. As to the plaintiff Poole, he has done the things denounced by the statute. If the Act is valid, dismissal is mandatory. There is no need for him to follow further administrative procedures. The provisions of Civil Service Rule XV that in case of any violation of the Civil Service Act or Rules or of any Executive Order or any regulation of the Commission the Commission shall certify the facts to the proper appointing officer with specific instructions as to discipline or dismissal is now controlled by the provisions of the Hatch Act that in case of violation of Section 9 (a) of that Act, dismissal is mandatory.

We are of the opinion, therefore, that the individual plaintiffs have such an interest as to give them the right to maintain this suit.

[fol. 155] The defendants further contend that the Civil Service Commission has no responsibility under the law to enforce the Hatch Act, and, therefore, no action can be maintained against them (except as to their own employees, of whom none are parties in this case) in which the constitutionality of the Hatch Act can be determined. It is true that the Hatch Act does not specifically charge the Civil Service Commission with the enforcement of the particular provision here involved. The situation is this: Revised Statutes, Section 1753 (5 U. S. C. 631) authorizes the President to prescribe regulations for the conduct of persons who may receive appointments in the Civil Service. Pursuant to that authority, Rule I, Section 1, was promulgated by Executive Order, providing, among other things:

> "Persons who by the provisions of these rules are in competitive classified service, while retaining the right

> to vote as they please and to express *privately* their opinions on all political subjects, shall take no active part in political management or in political campaigns."

By Rule XV, it is provided that, if the Commission finds that any person is holding a position in violation of the Civil Service Act, or the rules promulgated thereunder, or in violation of any Executive Order, or any regulations of the Commission, or that any employee subject to such act, rules, orders, or regulations is taking active part in political management or political campaigns, after notice to the person affected and opportunity for explanation, it shall certify the facts to the proper appointing officer with specific recommendation for *discipline or dismissal.* In the event of any continued violation for ten days after such recommendation, the Commission shall certify the facts to the proper disbursing and auditing officers, and such officers shall not pay or allow the salary or wages of such person thereafter accruing.

The second sentence of the above-quoted Section 9 (a) of the Hatch Act provides:

> "No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, except a part-time officer or part-time employee without compensation or with nominal compensation serving in connection with the existing war effort, other than in any capacity relating to the procurement or manufacture of war material, shall take any active part in political management or in political campaigns."

[fol. 156] It is this sentence which the plaintiffs claim to be unconstitutional.

It will be seen that the Congress here applies to all governmental employees, except those expressly excepted, the same rule of conduct respecting active participation in political campaigns and management as that which had theretofore applied only to Civil Service classified employees, with the exception that the word "privately" in the former Civil Service Rule was eliminated. It will also be observed that the penalty for such action is dismissal rather than as had theretofore in the Civil Service Rules been discipline or dismissal. It is significant that, after the enactment of the Hatch Act, the Civil Service Commission Rule I was altered to bring it into conformity with that Act

by also eliminating the word "privately," and this was done, as stated in the Commission's brief, at page 15,

> "As a matter of fact, rather than Civil Service Rules I and XV being incorporated into the Hatch Act, the Hatch Act has compelled changes in the Rules."

It is true that there is no statement in the Hatch Act that Rule I of the Civil Service Commission is incorporated in Section 9 (a), but it is also true that the very words of that rule, with the exception of the word "privately," are the words of Section 9 (a). It has been recognized by the Executive Departments, pursuant to an opinion of the Attorney General, dated June 8, 1941, that by virtue of the Hatch Act the penalty for all employees, both classified and those not classified, is dismissal and not as theretofore provided respecting classified employees in Rule XV of the Civil Service Commission discipline or dismissal. It is argued by the Commission in its brief that the enforcement of the Hatch Act in this regard lies with the appointing authority having jurisdiction of the particular employee, namely, the head of a department or independent agency. This seems to be in accordance with the broad language in an opinion of the Attorney General, dated July 22, 1940 (39 Opinions of Attorney General 462). It will be noted that this opinion was prior to the Opinion of the Attorney General, first above referred to, and it will also be noted that there is no discussion of any difference of enforcement as to [fol. 157] classified employees and those not classified.

Our conclusion is that the Congress moved into the field which had previously only been partially occupied by the rules of the Civil Service Commission, and which were applicable only to classified employees; that the Congress superseded the rules insofar as conduct is concerned, and made such rules applicable alike to both classified and unclassified employees; that Congress left the matter of enforcement of such rules of conduct where it found it, namely, that the Civil Service Commission, under rules of conduct which must be brought into accord with the Act of Congress, still retain the duty to enforce the proper penalty with respect to classified employees as they had theretofore had the power to do; and that the appointing authorities, namely, the heads of departments and independent agencies, who before the enactment of the Hatch

Act were responsible for disciplinary measures, including dismissal, of employees not classified, remain charged with the duty of enforcement of such discipline, including dismissal, only they are required to apply the rules of conduct and disciplinary measures set forth in the Hatch Act. Viewed in this light, it seems clear that the Hatch Act, insofar as it is here involved, determines what the rules of the Civil Service Commission should be and what disciplinary penalties should be imposed upon a classified employee without disturbing the existing authority of the Commission to visit such punishment upon a classified employee. If this be so, the individual plaintiffs in this cause and the Civil Service Commission have a very real concern and controversy as to the validity of the provisions of the Hatch Act here involved. We hold, therefore, that this suit is properly brought against the defendants.

Plaintiffs claim that the second sentence of Section 9 (a) of the Hatch Act is unconstitutional in that it violates fundamental rights of the plaintiffs guaranteed by the First Amendment to the Constitution, providing that "Congress shall make no law abridging * * * freedom of speech, or of the press, or of the right of the people peaceably to assemble" and that it deprives plaintiffs of liberty and [fol. 158] property without due process of law in violation of the Fifth Amendment to the Constitution, and that it disparages and denies to the plaintiffs fundamental right to engage in political activity reserved to the people by the Ninth and Tenth Amendments.

From the earliest times there have been certain restrictions respecting those who hold office or employment in the Government. President Jefferson in 1801 made the following order:

> The President of the United States has seen with dissatisfaction officers of the General Government taking on various occasions active parts in elections of the public functionaries, whether of the General or of the State Governments. Freedom of elections being essential to the mutual independence of governments and of the different branches of the same government, so vitally cherished by most of our constitutions, it is deemed improper for officers depending on the Executive of the Union to attempt to control or influence the free exercise of the elective right. This I am in-

> structed, therefore, to notify to all officers within my Department holding their appointments under the authority of the President directly, and to desire them to notify to all subordinate to them. The right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice; but 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 sprit of the Constitution and his duties to it.

There has been a strong development toward safeguarding employees of the Government from insecurity attributable to political affiliation. While that has been accomplished to a much greater degree with respect to those occupying classified positions under the Civil Service, there is, nonetheless, a definite objective toward securing and keeping employees not in the classified service on the basis of merit rather than becaue of political activities on their part. As the Hatch Act has sought to extend to those latter much of the same protection theretofore afforded to classified employees, so it has imposed upon them the same restrictions heretofore recognized to be proper respecting classified employees. And in the instant discussion it is not to be lost sight of that the individual plaintiffs are all classified employees. The legislation hereunder consideration does not seek to take away from a Government employee his right to vote, nor his right to express his opinion on all political subjects. It does undertake to preclude him [fol. 159] from taking any active part in political management, or in political campaigns, and by that is meant activities particularly defined by the Civil Service Commission (Section 15 of the Hatch Act). In the debates leading up to the passage of the Hatch Act much was said about the limitation on the constitutional rights of those employees who were made subject to the Act. Most that was said was by those who considered the legislation to be an infringement of such rights. There can, therefore, be no doubt that it was the considered judgment of the Congress and of the President that the legislation was not such an infringement.

To say that the Congress has not the power to pass this legislation in the public interest, and in the interest of the

employees of the Government whose tenure it is seeking to protect, is to say that it is not rational for the Congress to conclude that it cannot take political activity out of the employment, promotion and dismissal of Government employees without at the same time taking Government employees out of political activity. This is a question for the Congress, and not the courts, to decide.

The plaintiffs challenge the legislation as being unreasonably discriminatory between the employees who come within the Act and certain employees excepted therefrom. First, the employees covered by the Act as compared with persons whose compensation is paid from appropriation for the office of the President, heads and assistant heads of Executive Departments, officers who are appointed by the President by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relation with foreign powers, or in the Nation-wide administration of Federal laws. It is perfectly obvious that these classes of employees are in very large measure political. No one supposes that they would not change with the changing of administrations. There is no need nor desire to protect them from political activity, and hence there is no corresponding occasion to restrict such activity on their part.

Section 18 of the Act provides that political activity shall not include certain elections where there are no can- [fol. 160] didates of a party whose electors have been voted for in a presidential election, nor an election in connection with any question which is not specifically identified with a national or state political party. Thus restriction is eliminated as to elections relating to constitutional amendments, referendums, approval or municipal ordinances and others of a similar character.

An amendment to the Act, which has application to certain state employees where the funds supporting the activity or institution with which they are connected are supplied in whole or in part by the Federal Government, exempts

> "any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any State or political subdivision thereof, or by the District of Columbia or by any Territory or Territorial possession of the United

States; or by any recognized religious, philanthropic, or cultural organization."

It is clear that this exemption deals primarily with teachers, though no doubt other types of work come within such exempting provisions. To deny to Congress the power to make this classification is to say that the Congress may not rationally conclude that, while it should lay restrictions upon the political activity of Government employees generally, it should not do so where the duties of their work are such as to require acts which come within the general interdiction. Certainly the classification is not unreasonable viewed in the light of the objective of the legislation.

A further exemption by amendment relates to the participation of Federal employees residing in municipalities or other political subdivisions adjacent to the District of Columbia insofar as local campaigns and elections are concerned. The reasonableness of these classifications seem too obvious to require discussion to show that there is no arbitrary discrimination such as would invalidate the legislation.

[fol. 161] All in all, we can see no sound reason for a conclusion that the second sentence of Section 9(a) of the Hatch Act is repugnant to the Constitution.

The motion of the defendants for summary judgment should be sustained and the complaint dismissed.

D. Lawrence Groner, Jennings Bailey, Jas. W. Morris, U. S. Judges.

[fol. 162] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER GRANTING MOTION TO DISMISS COMPLAINT AND FOR SUMMARY JUDGMENT—Filed September 26, 1944

The defendants, Harry B. Mitchell, Lucille Foster McMillin, and Arthur S. Fleming, members of the United States Civil Service Commission, having moved the Court for an order dismissing the complaint and granting summary judgment upon the grounds (1) that this Court lacks jurisdiction to grant the relief requested, and (2) that the

second sentence of Section 9(a) of the Act of August 2, 1939, as amended, is valid and constitutional, and

Said motion having come on to be heard and having heard the arguments of counsel in open court and upon consideration thereof, and upon consideration of the affidavits and the points and authorities of defendants in support thereof, and the points and authorities of plaintiffs in opposition thereto, and

The Court having determined that it does not lack jurisdiction to grant the relief requested and that the second sentence of Section 9(a) of the Act of August 2, 1939, as [fol. 163] amended, is in all respects valid and constitutional, it is, this 26th day of September, 1944, in accordance with the opinion of the Court rendered herein dated August 4, 1944,

Ordered, Adjudged and Decreed, that defendants' motion to dismiss the complaint and for summary judgment be, and the same hereby is, granted, and the complaint is accordingly dismissed and summary judgment is granted to the defendants.

D. Lawrence Groner, Jennings Bailey, James W. Morris, United States Judges.

Approved as to form:

Francis M. Shea, Assistant Attorney General; Lee Pressman, Attorney for Plaintiffs; Francis M. Shea, Attorney for Defendants.

[fol. 164] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed October 26, 1944

United Federal Workers of America (C.I.O.), Patrick T. Fagan, Harry V. Winegar, Jack M. Elkin, Rudolph Hinden, George P. Poole, Olivia Israeli Abelson, Joseph D. Phillips, Charles G. Shane, Albert J. Rieck, Richard Weber, L. E. Tempest and Margery Mitchell, plaintiffs in the above-entitled cause, feeling themselves aggrieved by the final judgment of the District Court rendered and entered in the above-entitled cause on the 26th day of September, 1944, do hereby appeal therefrom to the Supreme Court of the

United States because of errors prejudicial to the plaintiffs which are set forth in the assignment of errors presented and filed herewith, and pray that their appeal be allowed and that citation be issued as provided by law and that the record on appeal be made and certified and sent to the Supreme Court of the United States, in accordance with the rules of that Court.

October 25, 1944.

Lee Pressman, Attorney for Plaintiffs.

[fol. 165] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed October 26, 1944

United Federal Workers of America (C.I.O.), Patrick T. Fagan, Harry V. Winegar, Jack M. Elkin, Rudolph Hinden, George P. Poole, Olivia Israeli Abelson, Joseph D. Phillips, Charles G. Shane, Albert J. Rieck, Richard Weber, L. E. Tempest and Margery Mitchell, plaintiffs in the above-entitled cause, in connection with their petition for an appeal to the Supreme Court of the United States, hereby assign error to the entry of the final judgment entered on September 26, 1944, in the above-entitled cause and say that in the entry of the final judgment the said District Court committed error to the prejudice of said plaintiffs in the following particulars:

1. The Court erred in sustaining defendants' motion for summary judgment and dismissing plaintiffs' complaint.

2. The Court erred in failing to grant a declaratory judgment as prayed by plaintiffs.

3. The Court erred in failing to issue an injunction, as prayed by plaintiffs.

4. The Court erred in failing to hold that the second sentence of Section 9(a) of the Hatch Act of August 2, 1939, as amended 18 U. S. C., Section 61(h)(a) is invalid as repugnant to the Constitution of the United States on the ground that it infringes fundamental rights of freedom of

speech, of the press and of assembly guaranteed by the First Amendment of the Constitution.

5. The Court erred in failing to hold that the second sentence of Section 9(a) of the Hatch Act is repugnant to the Constitution of the United States as a deprivation of the fundamental right of the people of the United States to en- [fol. 166] gage in political activity, reserved to the people of the United States by the Ninth and Tenth Amendments.

6. The Court erred in failing to hold that the second sentence of Section 9(a) of the Hatch Act is repugnant to the Constitution of the United States, since it unreasonably prohibits Federal employees from engaging in activities which may be lawfully carried on by persons who are not Federal employees, thus constituting a deprivation of liberty in violation of the Fifth Amendment.

7. The Court erred in failing to hold that the second sentence of Section 9(a) of the Hatch Act is repugnant to the Constitution of the United States since it effects an arbitrary and grossly unreasonable discrimination between employees of the Federal Government in the classified civil service subject to its provisions and employees specifically exempted therefrom, in violation of the Fifth Amendment.

8. The Court erred in failing to hold that the second sentence of Section 9(a) of the Hatch Act is repugnant to the Constitution of the United States since it is so vague and indefinite as to prohibit lawful activities as well as activities which are properly made unlawful by other provisions of law, in violation of the Fifth Amendment.

Wherefore plaintiffs pray that the judgment of the District Court dismissing the complaint and granting defendants' motion for summary judgment may be reversed.

October 25, 1944.

Lee Pressman, Attorney for Plaintiffs.

[fols. 167-210] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed October 26, 1944

The plaintiffs herein having filed a petition for appeal to the Supreme Court of the United States from the final judgment entered herein on September 26, 1944, and having filed their assignment of errors, it is

Ordered, that an appeal by petitioners in the above-entitled cause to the Supreme Court of the United States from the judgment heretofore filed and entered herein on September 26, 1944, be and the same is hereby allowed and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that court, said appeal being hereby made returnable sixty (60) days from the date hereof.

October 26, 1944.

D. Lawrence Groner, Chief Justice, United States Court of Appeals for the District of Columbia.

[fol. 211] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER—Filed November 17, 1944

Upon consideration of plaintiffs' motion to extend time for filing the record on appeal, and it appearing to the Court that the motion should be granted, it is by the Court this 25th day of October, 1944,

Ordered, that the time for filing the record on appeal and the same is hereby extended up to and including November 25, 1944.

F. Dickinson Letts, Judge.

I consent, Charles Fahy, Solicitor General, Attorney for Defendants.

[fol. 212] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER—Filed November 20, 1944

The plaintiffs herein having heretofore applied for an order extending their time within which to perfect the appeal from the order entered in this action on August 2, 1944, and the said order having been granted and the time within which to perfect the said appeal extended to November 25, 1944, and good cause having been shown why an additional extension of time should be granted the plaintiffs, it is hereby

Ordered that the time within which the said appeal may be perfected be and the same hereby is extended to and including December 25, 1944.

Dated: November 20, 1944.

F. Dickinson Letts, Associate Justice of the United States District Court for the District of Columbia.

[fols. 213-216] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER FIXING BOND ON APPEAL—Filed December 16, 1944

The plaintiffs herein having filed a petition for appeal to the Supreme Court of the United States from the judgment entered herein on September 26, 1944, and an order allowing appeal having been made and entered on October 26, 1944, it is hereby

Ordered that the bond on appeal to be approved by this Court is fixed at the sum of Two Hundred and Fifty Dollars ($250.00).

D. Lawrence Groner, Chief Justice, United States Court of Appeals for the District of Columbia, Presiding as circuit judge in the above proceedings.

December 16, 1944.

MEMORANDUM

January 3, 1945.

Bond on appeal ($250) approved and filed.

[fol. 217] Citation in usual form, filed December 26, 1944, omitted in printing.

[fol. 218] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed December 21, 1944

To: Charles E. Stewart, Esq., Clerk of the District Court of the United States for the District of Columbia.

SIR:

You are hereby requested to make a Transcript of Record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above-entitled cause, and to include in such Transcript of Record, the following papers, to wit:

1. Complaint and Exhibit I.
2. Order designating three-judge statutory court.
3. Motion for interlocutory injunction and the affidavits submitted in support thereof.
4. Notice of motion and motion to dismiss and for summary judgment and the affidavits and exhibits submitted in support thereof.
5. Motion to amend complaint filed June 29, 1944, and Exhibit II (Warning Notice) thereto attached.
6. Order dated June 29, 1944, amending complaint.
7. Opinion and decision of three-judge statutory court filed August 4, 1944.
8. Judgment dismissing the complaint filed on September 26, 1944.
9. Petition for appeal dated October 25, 1944.
10. Assignment of errors and prayer for reversal.
11. Statement as to jurisdiction and Exhibit A attached thereto (Exhibit B attached to the statement need not be [fol. 219] printed since it appears in No. 7 supra).
12. Order allowing appeal.
13. Notice of appeal; and admission of service of (a) notice of appeal, (b) petition for appeal, (c) order allowing appeal, (d) assignment of errors, and (e) statement as to jurisdiction.

14. Order fixing bond on appeal.
15. Memorandum evidencing deposit of $250 appeal bond.
16. Citation.
17. This praecipe and acknowledgment of service thereof.

Said Transcript to be prepared as required by law and the Rules of the Supreme Court of the United States and to be filed in the office of the Clerk of the Supreme Court on or about December 26, 1944, in accordance with the Order allowing appeal.

Lee Pressman, Attorney for Plaintiffs.

December 21, 1944.

[fol. 220] I hereby acknowledge service of this praecipe on the 21st day of December 1944.

Charles Fahy, Solicitor General, Attorney for Defendants. (A. Q.)

[fol. 221] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 222] IN THE DISTRICT COURT OF THE UNITED STATES

ORDER

Upon consideration of the plaintiffs' motion to extend the time within which to docket the appeal in the Supreme Court of the United States taken from the judgment entered in this proceeding on September 26, 1944, and it appearing to the court that the motion should be granted, it is hereby

Ordered that the time for docketing the record on appeal in the above-entitled case be and the same hereby is extended up to and including January 15th, 1945.

D. Lawrence Groner, Presiding Judge.

December 21, 1944.

[fol. 223] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION OF PARTS OF RECORD NECESSARY FOR CONSIDERATION THEREOF—Filed February 5, 1945

In accordance with paragraph 9 of Rule 13 of the Rules of this Court the Appellant states the following points to be relied on:

1. The second sentence of Section 9 (a) of the Hatch Act of August 2, 1939, as amended 18 U. S. C., Section 61 h (a) is invalid as repugnant to the Constitution of the United States on the ground that it infringes fundamental rights of freedom of speech, of the press and of assembly guaranteed by the First Amendment of the Constitution.

2. The second sentence of Section 9 (a) of the Hatch Act is repugnant to the Constitution of the United States as a deprivation of the fundamental right of the people of the United States to engage in political activity, reserved to the people of the United States by the Ninth and Tenth Amendments.

3. The second sentence of Section 9 (a) of the Hatch Act is repugnant to the Constitution of the United States, since it unreasonably prohibits Federal employees from engaging in activities which may be lawfully carried on by persons who are not Federal employees, thus constituting a deprivation of liberty in violation of the Fifth Amendment.

4. The second sentence of Section 9 (a) of the Hatch Act is repugnant to the Constitution of the United States since it effects an arbitrary and grossly unreasonable discrimination between employees of the Federal Government in the classified civil service subject to its provisions and employees specifically exempted therefrom, in violation of the Fifth Amendment.

5. The second sentence of Section 9 (a) of the Hatch Act is repugnant to the Constitution of the United States since [fol. 224] it is so vague and indefinite as to prohibit lawful activities as well as activities which are properly made un-

lawful by other provisions of law, in violation of the Fifth Amendment.

The Appellant designates the following portions of the Record as necessary for the consideration of the above points: the entire Record.

Lee Pressman, Attorney for Appellant.

Dated February 5, 1945.

I hereby acknowledge service of this statement.

Charles Fahy, Solicitor General, Attorney for Appellees. (A. Q.)

Dated February 5, 1945.

[fol. 225] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—March 12, 1945

The statement of jurisdiction is this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

[fol. 226] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO RECORD—Filed March 23, 1945

The record in the above case contains three publications of the United States Civil Service Commission, Form 1236, "Political Activity and Political Assessments of Federal Officeholders and Employees", dated 1939, 1942, and 1944 respectively. Because the 1944 edition of this publication contains substantially all the material contained in the 1942 edition in substantially the same form, and because the 1942 edition is out of print, it is stipulated between the parties that the 1942 edition may be omitted in printing but that

either party or both may refer to it whenever convenient or necessary.

Lee Pressman, Attorney for Appellants. Charles Fahy, Solicitor General, Attorney for Appellees.

March 22, 1945.

Endorsed on Cover: File No. 49,364. D. C. U. S., District of Columbia. Term No. 34. United Federal Workers of America (C.I.O.), et al., Appellants, vs. Harry B. Mitchell, Lucille Foster McMillin and Arthur S. Fleming. Filed February 2, 1945. Term No. 34, O. T., 1945.