



NATIONAL SHERIFFS' ASSOCIATION

May 15, 2012

The Honorable Dennis A. Ross, Chair
The Honorable Stephen F. Lynch, Ranking Member
House Subcommittee on Federal Workforce, U.S. Postal Service, and Labor Policy
House Committee on Oversight and Government Reform
Washington, D.C. 20515

Dear Chairman Ross and Ranking Member Lynch:

I would like to thank you for allowing the National Sheriffs' Association (NSA) to submit a statement for the record for the House Subcommittee on Federal Workforce, U.S. Postal Service, and Labor Policy on "Hatch Act: Options for Reform," held on May 16, 2012.

On behalf of the National Sheriffs' Association (NSA) and the 3,079 elected sheriffs nationwide, I am writing to express the significant need to reform the federal Hatch Act, particularly as it applies to the Office of Sheriff.

As you know, the federal law governing political activities by federal employees, known as the "Hatch Act," was originally enacted in 1939 to prohibit federal employees from engaging in partisan political activity to curtail possible corruption. The provisions of the Hatch Act were, soon after enactment, expanded and amended in 1940 to impose statutory restrictions on certain state and local governmental employees whose principal employment was in connection with a federally funded activity.

While 1993 amendments to the Hatch Act allow most federal, state, and local employees to engage in personal, off-duty voluntary partisan political activities; speech; and expression, there are still express statutory prohibitions under the current Hatch Act that apply to sheriffs and their deputies.

Currently, the Hatch Act restricts the political activity of individuals principally employed by state, county, or municipal executive agencies who have duties in connection with programs financed in whole or in part by federal loans or grants. Moreover, allowable "political activities," as they apply to the Office of Sheriff, are ambiguous at best which has resulted in unfair and increasing claims of violations of the Hatch Act against a sheriff, especially during an election cycle. Finally, there is no statute of limitations or deadline by which the Office of Special Counsel (OSC) – the governing body which investigates Hatch Act violations - must file charges for alleged violations of the Hatch Act.

To help clarify the standards by which the Hatch Act may be applied in future elections, Congressman Bob Latta (R-OH) and Congressman Tim Holden (D-PA) introduced **H.R. 498 – the State and Local Law Enforcement Hatch Act Reform Act of 2011** in the 112th Congress. Congressman Latta and Congressman Holden also introduced this legislation in the previous 111th Congress.

A key priority for NSA and the nation's sheriffs, H.R. 498 would accomplish three goals: 1) allow state and local law enforcement officers to be a candidate for the Office of Sheriff—an elected Office—without being forced to quit their jobs; 2) clarify current law to allow sheriffs to endorse political candidates without fear of potentially violating the Hatch Act; and 3) establish a statute of limitations of 6 months to file a claim against a state or local law enforcement officer for an alleged violation of the Act.

Firstly, H.R. 498 would allow state and local law enforcement officers, whose employment is funded in part or in whole by a federal grant, to run for the Office of Sheriff without having to quit their jobs. Currently, a state or local law enforcement officer covered under the Act is prohibited from being a candidate for the Office of Sheriff which severely limits the number of qualified candidates for Sheriff—the chief law enforcement officer of a county. Furthermore, current law may also place a significant financial burden on the individuals (as they now lack a job while campaigning). This provision ensures that they can stay employed while seeking the Office of Sheriff.

Additionally, in the post-9/11 and post-Katrina America, more than six decades since the enactment of the original Hatch Act, there is virtually no local law enforcement agency that does not receive some amount or type of federal funds to enhance their anti-terrorism and emergency response activities. As such, this section of the current Hatch Act law is outdated for the new reality, particularly as it applies to state and local law enforcement.

Secondly, H.R. 498 would clarify current law to allow sheriffs, in their official capacity, to participate in political activities. Moreover, it also clarifies allowable political activities of a sheriff to include, but not limited to, endorsing a candidate through print, radio or TV ads, speaking at political events, attending or sponsoring fundraisers.

While the intent of §1502(a)(1) of the Hatch Act may be to prohibit an individual from abusing his or her official authority to influence or interfere with an election is valid, §1502(a)(1) is overreaching and ambiguous when applied to the Office of Sheriff. The Office of Sheriff is unique in that it is both an ***elected and uniformed position***. Consequently, sheriffs have unfairly been subjects of claims of potential violations of the federal Hatch Act due to the inherent and unique nature of the elected Office which requires him or her to be on duty 24 hours a day/7 days a week/365 days a year.

Recently, the Office of Special Counsel came down with a position that elected officials (such as sheriffs), whose elected position is their principal employment, would not violate the Hatch Act by using their title and/or wearing an official uniform or insignia while engaging in political activity. While we are extremely pleased with the recent position from OSC, we continue to maintain that a statutory change is needed to ensure that the issue is permanently taken care of and clarified by law.

Finally, the bill would implement a statute of limitations of 6 months to file a claim against a state or local law enforcement officer or a sheriff for alleged violation of the Hatch Act. The penalty for violating the Hatch Act is removal of the employee from his or her position with the state or local agency and debarment from employment with a state or local agency within the same state for the following 18 months. Currently, there is no statute of limitations. In recent years, individuals have used potential violations that occurred years past by filing a claim with the Office of Special Counsel to use as a political attack against an incumbent sheriff during an election cycle. The statute of limitations will ensure that claims must be filed within six months of the alleged violation.

Undoubtedly, federal legislation to amend this antiquated law is significantly needed to ensure that our citizens can elect the best candidate as their local sheriff and that state and local law

enforcement officers are not unfairly and unnecessarily penalized. We applaud Congressman Latta and Congressman Holden for their leadership on this critical issue and urge for the swift passage of **H.R. 498 – the State and Local Law Enforcement Hatch Act Reform Act of 2011** during the remainder of the 112th Congress.

On behalf of the National Sheriffs' Association, I greatly appreciate the opportunity to submit a statement for the record on the need to amend the federal Hatch Act, particularly as it applies to the Office of Sheriff. Please do not hesitate to contact me if the Subcommittee has any further questions or needs any further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Kennard". The signature is fluid and cursive, with a prominent initial "A".

Aaron D. Kennard, Sheriff (ret.)
Executive Director