

Union Calendar No. 6

103D CONGRESS
1ST SESSION

H. R. 20

[Report No. 103-16]

A BILL

To amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

FEBRUARY 22, 1993

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. CLAY (for himself and Mr. MYERS of Indiana) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

FEBRUARY 22, 1993

Additional sponsors: Mr. RIDGE, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ANDREWS of Texas, Mr. ANDREWS of New Jersey, Mr. ANDREWS of Maine, Mr. BACCHUS of Florida, Mr. BEREUTER, Mr. BISHOP, Mr. BLACKWELL, Mr. BOEHLERT, Mr. BONIOR, Mr. BORSKI, Mr. BOUCHER, Mr. BROWDER, Mr. BROWN of California, Mr. BROWN of Ohio, Mrs. BYRNE, Mr. CARDIN, Mr. CLEMENT, Mr. CLYBURN, Mr. COLEMAN, Mr. CONYERS, Mr. COOPER, Mr. COSTELLO, Mr. DEFazio, Mr. DE LUGO, Mr. DEUTSCH, Mr. DICKS, Mr. DURBIN, Mr. EDWARDS of California, Ms. ESHOO, Mr. EVANS, Mr. FILNER, Mr. FORD of Michigan, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEJDENSON, Mr. GONZALEZ, Mr. GORDON, Mr. GENE GREEN of Texas, Mr. HALL of Ohio, Mr. HEFNER, Mr. HOCHBRUECKNER, Mr. HOLDEN, Mr. HUGHES, Mr. KANJORSKI, Mr. KLECZKA, Mr. KOPETSKI, Mr. LAFALCE, Mr. LIPINSKI, Mr. MCCLOSKEY, Mr. MCHUGH, Mr. McNULTY, Mr. MACHTLEY, Mrs. MALONEY, Mr. MAZZOLI, Mr. MEEHAN, Mr. MILLER of California, Mr. MINETA, Ms. MOLINARI, Mrs. MORELLA, Mr. MORAN, Mr. MURTHA, Ms. NORTON, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Ms. PELOSI, Mr. PENNY, Mr. PETERSON of Minnesota, Mr. PETERSON of Florida, Mr. POSHARD, Mr. PRICE of North Carolina, Mr. QUILLEN, Mr. RICHARDSON, Mr. RUSH, Mr. SANDERS, Mr. SAWYER, Mr. SAXTON, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SHAYS, Mr. SKAGGS, Mr. SOLOMON, Mr. STARK, Mr. STOKES, Mr. STUDDS, Mr. THOMAS of California, Mrs. UNSOELD, Mr. WASHING-

TON, Mr. WATT, Mr. WAXMAN, Mr. WELDON, Mr. WILLIAMS, Mr. WISE, Mr. WYNN, Mr. KREIDLER, Mr. GEPHARDT, Mr. MARKEY, Mr. HOAGLAND, Mr. NEAL of Massachusetts, Mr. MATSUI, Mr. SWIFT, Mr. LAROCO, Mr. KING, Mr. McDERMOTT, Mr. CHAPMAN, Mr. KILDEE, Mr. HASTINGS, Mr. McCURDY, Mr. DIXON, Ms. LONG, Mr. FAZIO, Mr. HINCHEY, Mr. MURPHY, Mr. HAMILTON, Mr. DINGELL, Mr. GUTIERREZ, Mr. LANCASTER, Mr. BARLOW, Mr. COYNE, Mr. RAVENEL, Mr. OBERSTAR, Mr. RAHALL, Mr. JACOBS, Mr. JOHNSTON of Florida, Mr. BREWSTER, Ms. FURSE, Mr. REYNOLDS, Mr. REED, Ms. KAPTUR, Mr. SABO, Mr. SARPALIUS, Mr. MOLLOHAN, Mr. SMITH of New Jersey, Mrs. MEEK, Ms. WATERS, Mr. GILMAN, Mr. MARTINEZ, Mr. VENTO, Mr. SANGMEISTER, Mr. WHEAT, Mr. MONTGOMERY, Mr. SISISKY, Mr. TORRES, Mrs. KENNELLY, Mr. MINGE, Mr. DOOLEY, Mr. YOUNG of Alaska, Mr. TUCKER, Mr. ROEMER, Mr. HAYES of Louisiana, Mr. VIS-CLOSKY, Mr. EMERSON, Mr. SWETT, Mr. RANGEL, Mr. TOWNS, Mr. ORTON, Mr. KLEIN, Mr. KLINK, Mr. FALEOMAVAEGA, Ms. SHEPHERD, Mr. BILBRAY, Mrs. LLOYD, Mr. MCHALE, Ms. CANTWELL, Mr. UPTON, Mr. TANNER, Mr. LEVIN, Mr. ENGLISH of Oklahoma, Mr. POMEROY, Mr. BERMAN, Mr. MANTON, Mr. HAMBURG, Mrs. COLLINS of Illinois, Mr. GALLO, Mr. PARKER, Mr. TORRICELLI, Mr. NADLER, Mr. HOYER, Mr. CRAMER, Mr. STUPAK, Mr. GOODLING, Mr. LEWIS of Georgia, Ms. MCKINNEY, Ms. WOOLSEY, Mrs. CLAYTON, Mr. PAYNE of New Jersey, Mr. JOHNSON of South Dakota, Mr. UNDERWOOD, Ms. DANNER, Mr. BECERRA, Mr. ENGEL, Mr. SCOTT, Mr. NEAL of North Carolina, Mr. WALSH, Ms. SCHENK, Mrs. LOWEY, Mr. LANTOS, Mr. DELLUMS, Mr. TRAFICANT, Mr. APPLGATE, Mr. WYDEN, Mr. SKELTON, Mr. ZELIFF, Mr. SLATTERY, Mr. FINGERHUT, Ms. SLAUGHTER, Mr. THORNTON, Mr. VOLKMER, Ms. HARMAN, Ms. DELAURO, Mr. SPRATT, Mr. PAYNE of Virginia, Ms. VELÁZQUEZ, Mr. FISH, Mr. MFUME, Mr. GRANDY, Mr. ROWLAND, Mr. PETE GEREN of Texas, Mr. STRICKLAND, Mr. COPPERSMITH, Mr. DARDEN, Mr. ROMERO-BARCELÓ, Mr. CARR, Mr. KENNEDY, Mr. BARCIA, Mr. CONDIT, Mr. SYNAR, Mr. PASTOR, Mr. OBEY, Mr. LEHMAN, Mrs. MINK, Mr. TAYLOR of Mississippi, Mr. MENENDEZ, Mr. TEJEDA, Mrs. THURMAN, Ms. ROYBAL-ALLARD, Mr. SHARP, Ms. MARGOLIES-MEZVINSKY, Mr. HOUGHTON, Mr. BRYANT, Ms. BROWN of Florida, Mr. CLINGER, Miss COLLINS of Michigan, Mr. EDWARDS of Texas, Ms. ENGLISH of Arizona, Mr. FLAKE, Mr. GLICKMAN, Mr. INSLEE, Ms. E.B. JOHNSON of Texas, Mr. LAUGHLIN, Mr. PICKETT, Mr. SERRANO, Mr. TAUZIN, Mr. WILSON, Mr. FORD of Tennessee, and Mr. HILLIARD

FEBRUARY 22, 1993

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A BILL

To amend title 5, United States Code, to restore to Federal

civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Employees Po-
5 litical Activities Act of 1993”.

6 **SEC. 2. POLITICAL ACTIVITIES.**

7 (a) IN GENERAL.—Subchapter III of chapter 73 of
8 title 5, United States Code, is amended to read as follows:

9 “SUBCHAPTER III—POLITICAL ACTIVITIES

10 **“§ 7321. Political participation**

11 “It is the policy of the Congress that employees
12 should be encouraged to exercise fully, freely, and without
13 fear of penalty or reprisal, and to the extent not expressly
14 prohibited by law, their right to participate or to refrain
15 from participating in the political processes of our Nation.

16 **“§ 7322. Definitions**

17 “For the purpose of this subchapter—

18 “(1) the term ‘employee’ means any individ-
19 ual—

20 “(A) employed or holding office in an Ex-
21 ecutive agency, other than the General Account-
22 ing Office; or

1 “(B) employed in a position within the
2 competitive service which is not in an Executive
3 agency;

4 but does not include the President or the Vice Presi-
5 dent, or a member of the uniformed services;

6 “(2) the term ‘candidate’ means any individual
7 who seeks nomination for election, or election, to any
8 elective office, whether or not the individual is elect-
9 ed, and, for the purpose of this paragraph, an indi-
10 vidual shall be considered to seek nomination for
11 election, or election, to an elective office, if the indi-
12 vidual has—

13 “(A) taken the action required to qualify
14 for nomination for election, or election, to that
15 office; or

16 “(B) received any political contribution
17 (other than any personal services described in
18 paragraph (3)(C)) or made any expenditure, or
19 has given consent for any other person to re-
20 ceive any political contribution (other than any
21 such personal services) or make any expendi-
22 ture, with a view to bringing about the individ-
23 ual’s nomination for election, or election, to
24 that office;

1 “(3) the term ‘political contribution’ means any
2 gift, subscription, loan, advance, or deposit of money
3 or anything of value, made for any political purpose,
4 and includes—

5 “(A) any contract, promise, or agreement,
6 express or implied, whether or not legally en-
7 forceable, to make a contribution for any politi-
8 cal purpose;

9 “(B) any payment by any person, other
10 than a candidate or a political party or affili-
11 ated organization, of compensation for the per-
12 sonal services of another person which are
13 rendered to any candidate or political party or
14 affiliated organization without charge for any
15 political purpose; and

16 “(C) the provision of personal services for
17 any political purpose;

18 “(4) the term ‘superior’ means any employee
19 who exercises supervision of, or control or adminis-
20 trative direction over, another employee;

21 “(5) the term ‘elective office’ means any elective
22 public office and any elective office of any political
23 party or affiliated organization;

24 “(6) the term ‘person’ includes any individual,
25 corporation, trust, association, State, local, or for-

1 eign government, territory or possession of the Unit-
2 ed States, or agency or instrumentality of any of the
3 foregoing; and

4 “(7) the term ‘Special Counsel’ means the Spe-
5 cial Counsel appointed under section 1211(b).

6 **“§ 7323. Use of official influence or official informa-**
7 **tion; prohibition**

8 “(a) An employee may not directly or indirectly use
9 or attempt to use the official authority or influence of the
10 employee for the purpose of—

11 “(1) interfering with or affecting the result of
12 any election; or

13 “(2) intimidating, threatening, coercing, com-
14 manding, influencing, or attempting to intimidate,
15 threaten, coerce, command, or influence—

16 “(A) any individual for the purpose of
17 interfering with the right of any individual to
18 vote as the individual may choose, or of causing
19 any individual to vote, or not to vote, for any
20 candidate or measure in any election;

21 “(B) any person to give or withhold any
22 political contribution; or

23 “(C) any person to engage, or not to en-
24 gage, in any form of political activity.

1 “(b) An employee may not directly or indirectly use
2 or attempt to use, or permit the use of, any official infor-
3 mation obtained through or in connection with such em-
4 ployee’s employment for any political purpose, unless the
5 official information is available to the general public.

6 “(c) For the purpose of subsection (a), ‘use of official
7 authority or influence’ includes—

8 “(1) promising to confer or conferring any ben-
9 efit (such as any compensation, grant, contract, li-
10 cense, or ruling) or effecting or threatening to effect
11 any reprisal (such as deprivation of any compensa-
12 tion, grant, contract, license, or ruling); or

13 “(2) taking, directing others to take, rec-
14 ommending, processing, or approving any personnel
15 action.

16 “(d) Nothing in this section shall be considered to
17 apply with respect to any actions if, or to the extent that,
18 such actions are taken in order to carry out the duties
19 and responsibilities of one’s position.

20 **“§ 7324. Solicitation; prohibition**

21 “(a) An employee may not—

22 “(1) give or offer to give a political contribution
23 to any individual either to vote or refrain from vot-
24 ing, or to vote for or against any candidate or meas-
25 ure, in any election;

1 “(2) solicit, accept, or receive a political con-
2 tribution to vote or refrain from voting, or to vote
3 for or against any candidate or measure, in any elec-
4 tion;

5 “(3) knowingly give or hand over a political
6 contribution to a superior of the employee; or

7 “(4) knowingly solicit, accept, or receive, or be
8 in any manner concerned with soliciting, accepting,
9 or receiving, a political contribution—

10 “(A) from another employee (or a member
11 of another employee’s immediate family) with
12 respect to whom the employee is a superior; or

13 “(B) in any room or building occupied in
14 the discharge of official duties by—

15 “(i) an individual employed or holding
16 office in the Government of the United
17 States; or

18 “(ii) an individual receiving any salary
19 or compensation for services from money
20 derived from the Treasury of the United
21 States.

22 “(b)(1) In addition to the prohibitions of subsection
23 (a), an employee may not knowingly solicit, accept, or re-
24 ceive a political contribution from, or give a political con-
25 tribution to, any person who—

1 “(A) has, or is seeking to obtain, contractual or
2 other business or financial relations with the agency
3 in which the employee is employed;

4 “(B) conducts operations or activities which are
5 regulated by that agency; or

6 “(C) has interests which may be substantially
7 affected by the performance or nonperformance of
8 the employee’s official duties.

9 “(2) The Special Counsel shall prescribe regulations
10 which exempt an employee from the application of para-
11 graph (1) with respect to any political contribution to or
12 from an individual who has a familial or personal relation-
13 ship with the employee if the employee complies with such
14 requirements as the Special Counsel shall so prescribe
15 which relate to the disqualification of the employee from
16 engaging in any official activity involving the individual.

17 “(3) The Special Counsel shall prescribe regulations
18 under which paragraph (1) shall not apply with respect
19 to any political contribution from a person in situations
20 in which the facts and circumstances indicate there would
21 not be any adverse effect on the integrity of the Govern-
22 ment or the public’s confidence in the integrity of the Gov-
23 ernment.

1 **“§ 7325. Political activities on duty, etc.; prohibition**

2 “(a) An employee may not engage in political activ-
3 ity—

4 “(1) while the employee is on duty;

5 “(2) in any room or building occupied in the
6 discharge of official duties by an individual employed
7 or holding office in the Government of the United
8 States or any agency or instrumentality thereof;

9 “(3) while wearing a uniform or official insignia
10 identifying the office or position of the employee; or

11 “(4) using any vehicle owned or leased by the
12 Government of the United States or any agency or
13 instrumentality thereof.

14 “(b)(1) An employee described in paragraph (2) may
15 engage in political activity otherwise prohibited by sub-
16 section (a) if the costs associated with that political activ-
17 ity are not paid for by money derived from the Treasury
18 of the United States.

19 “(2) Paragraph (1) applies to an employee—

20 “(A) the duties and responsibilities of whose po-
21 sition continue outside normal duty hours and while
22 away from the normal duty post; and

23 “(B) who is—

24 “(i) paid from an appropriation for the Ex-
25 ecutive Office of the President; or

1 “(ii) appointed by the President, by and
2 with the advice and consent of the Senate,
3 whose position is located within the United
4 States, who determines policies to be pursued
5 by the United States in its relations with for-
6 eign powers or in the nationwide administration
7 of Federal laws.

8 **“§ 7326. Candidates for elective office; leave**

9 “(a) Except as provided in subsection (c), an em-
10 ployee who is a candidate shall, upon the request of the
11 employee, be granted leave without pay for the purpose
12 of allowing the employee to engage in activities relating
13 to that candidacy.

14 “(b) Notwithstanding section 6302(d), and except as
15 provided in subsection (c), an employee who is a candidate
16 shall, upon the request of the employee, be granted ac-
17 rued annual leave for the purpose of allowing the em-
18 ployee to engage in activities relating to that candidacy.
19 Leave under this subsection shall be in addition to leave
20 without pay to which the employee may be entitled under
21 subsection (a).

22 “(c) A request for leave submitted under subsection
23 (a) or (b) may be denied if the exigencies of the public
24 business so require. Any such denial shall be in writing

1 and shall be accompanied by a statement of the reasons
2 why the request is being denied.

3 “(d) An employee may not be required to take leave
4 without pay under subsection (a), or accrued annual leave
5 under subsection (b), in order to be a candidate, unless
6 the activities relating to the candidacy interfere with the
7 employee’s performance of the duties of the position.

8 **“§ 7327. Regulations**

9 “The Special Counsel shall prescribe any rules and
10 regulations necessary to carry out this subchapter.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

12 (1) Section 3302(2) of title 5, United States Code, is
13 amended by striking “7203, 7321, and 7322” and insert-
14 ing “and 7203”.

15 (2)(A) Sections 8332(k)(1), 8706(c), and 8906(e)(2)
16 of title 5, United States Code, are each amended by insert-
17 ing immediately after “who enters on” the following:
18 “leave without pay granted under section 7326(a) of this
19 title, or who enters on”.

20 (B) Section 8411(e) of title 5, United States Code,
21 is amended by inserting immediately before “approved
22 leave without pay” the following: “leave without pay
23 granted under section 7326(a) of this title, or”.

1 (3) The section analysis for subchapter III of chapter
2 73 of title 5, United States Code, is amended to read as
3 follows:

“SUBCHAPTER III—POLITICAL ACTIVITIES

“7321. Political participation.

“7322. Definitions.

“7323. Use of official influence or official information; prohibition.

“7324. Solicitation; prohibition.

“7325. Political activities on duty, etc.; prohibition.

“7326. Candidates for elective office; leave.

“7327. Regulations.”.

4 (4) Section 1216(c) of title 5, United States Code is
5 amended—

6 (A) by striking paragraph (1); and

7 (B) in paragraph (2), by striking “(2) If” and
8 inserting “If”.

9 (c) AMENDMENTS TO TITLE 18.—(1) Section 602 of
10 title 18, United States Code, relating to solicitation of po-
11 litical contributions, is amended—

12 (A) by inserting “(a)” before “It”;

13 (B) by striking all that follows “Treasury of the
14 United States” and inserting a semicolon and the
15 following:

16 “to knowingly solicit any contribution within the meaning
17 of section 301(8) of the Federal Election Campaign Act
18 of 1971 from any other such officer, employee, or person.
19 Any person who violates this section shall be fined under
20 this title or imprisoned not more than three years, or
21 both.”; and

1 (C) by adding at the end the following:

2 “(b) The prohibition in subsection (a) shall not apply
3 to any activity of an employee (as defined in section
4 7322(1) of title 5) or any individual employed in or under
5 the United States Postal Service or the Postal Rate Com-
6 mission, unless that activity is prohibited by section 7323
7 or 7324 of that title.”.

8 (2) Section 603 of title 18, United States Code, relat-
9 ing to making political contributions, is amended by add-
10 ing at the end thereof the following new subsection:

11 “(c) The prohibition in subsection (a) shall not apply
12 to any activity of an employee (as defined in section
13 7322(1) of title 5) or any individual employed in or under
14 the United States Postal Service or the Postal Rate Com-
15 mission, unless that activity is prohibited by section 7324
16 of that title.”.

17 (d) AMENDMENTS TO THE VOTING RIGHTS ACT OF
18 1965.—Section 6 of the Voting Rights Act of 1965 (42
19 U.S.C. 1973d) is amended by striking out “the provisions
20 of section 9 of the Act of August 2, 1939, as amended
21 (5 U.S.C. 118i), prohibiting partisan political activity”
22 and by inserting in lieu thereof “the provisions of sub-
23 chapter III of chapter 73 of title 5, United States Code,
24 relating to political activities”.

1 (e) APPLICABILITY TO POSTAL OFFICERS AND EM-
2 PLOYEES.—

3 (1) IN GENERAL.—The amendments made by
4 this section, and any regulations thereunder, shall
5 apply with respect to officers and employees of the
6 United States Postal Service and the Postal Rate
7 Commission, pursuant to sections 410(b) and
8 3604(e) of title 39, United States Code.

9 (2) INVESTIGATIVE AND ENFORCEMENT AU-
10 THORITY.—The Special Counsel (appointed under
11 section 1211(b) of title 5, United States Code) may
12 conduct investigations and seek disciplinary action
13 with respect to any officer or employee referred to
14 in paragraph (1) in accordance with applicable pro-
15 visions of chapter 12 of such title.

16 **SEC. 3. EFFECTIVE DATE.**

17 (a) IN GENERAL.—The amendments made by this
18 Act shall take effect 120 days after the date of the enact-
19 ment of this Act, except that the authority to prescribe
20 regulations granted under section 7327 of title 5, United
21 States Code (as added by section 2 of this Act), shall take
22 effect on the date of the enactment of this Act.

23 (b) PENALTIES NOT AFFECTED.—Any repeal or
24 amendment made by this Act of any provision of law shall
25 not release or extinguish any penalty, forfeiture, or liabil-

1 ity imposed under that provision, and that provision shall
2 be treated as remaining in force for the purpose of sus-
3 taining any proper proceeding or action for the enforce-
4 ment of that penalty, forfeiture, or liability.

5 (c) PENDING PROCEEDINGS NOT AFFECTED.—No
6 provision of this Act shall affect any judicial or adminis-
7 trative proceeding commenced on or before the effective
8 date of the amendments made by this Act. Orders shall
9 be issued in such proceedings and appeals shall be taken
10 therefrom as if this Act had not been enacted.

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HR 20 RH—2