"[T]he government has an interest in regulating the conduct and 'the speech of its employees that differ[s] significantly from those it possesses in connection with the regulation of the speech of the citizenry in general....' "

CIVIL SERVICE COMMISSION v. NATIONAL ASSOCIATION OF LETTER CARRIERS

413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973).

Sec. 9a of the Hatch Act provides:

An employee in an Executive Agency or an individual employed by the government of the District of Columbia may not–

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

(2) take an active part in political management or in political campaigns.

In 1947 United Public Workers v. Mitchell sustained the constitutionality of § 9a and the myriad of regulations the Civil Service Commission had issued under it. Over the next twenty-five years, however, the Supreme Court became more sensitive of and concerned to protect rights of political association and participation; and the National Association of Letter Carriers, several local Democratic and Republican committees, and six individual federal employees filed suit in a federal district court rechallenging the constitutionality of § 9a. The special three-judge district court that heard the case agreed that constitutional doctrine had changed since *Mitchell* and invalidated § 9a. The Civil Service Commission appealed directly to the Supreme Court, the normal procedure when a special three-judge district court has made the initial decision.

Mr. Justice **WHITE** delivered the opinion of the Court....

II ...

We unhesitatingly reaffirm the *Mitchell* holding that Congress had, and has, the power to prevent Mr. Poole and others like him from holding a party office, working at the polls and acting as party paymaster for other party workers....

... Our judgment is that neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.

A

Such decision on our part would no more than confirm the judgment of history, a

judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited....

[The Court then recited a long chronicle of concern from Jefferson to recent times of involvement by federal employees in partisan politics.]

B

... The restrictions so far imposed on federal employees are not aimed at particular parties, groups or points of view, but apply equally to all partisan activities of the type described. They discriminate against no racial, ethnic or religious minorities. Nor do they seek to control political opinions or beliefs, or to interfere with or influence anyone's vote at the polls.

But as the Court held in Pickering v. Board of Education (1968), the government has an interest in regulating the conduct and "the speech of its employees that differ[s] significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interest of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the [government], as an employer, in promoting the efficiency of the public services it performs through its employees." Although Congress is free to strike a different balance than it has, if it so chooses, we think the balance it has so far struck is sustainable by the obviously important interests sought to be served by the limitations on partisan political activities now contained in the Hatch Act.

It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in accordance with the will of Congress, rather than in accordance with their own or the will of a political party.... A major thesis of the Hatch Act is that to serve this great end of Government– the impartial execution of the laws– it is essential that federal employees not, for example, take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it if confidence in the system of representative Government is not to be eroded to a disastrous extent.

Another major concern of the restriction against partisan activities by federal employees was perhaps the immediate occasion for enactment of the Hatch Act in 1939. That was the conviction that the rapidly expanding Government work force should not be employed to build a powerful, invincible and perhaps corrupt political machine....

A related concern ... was to further serve the goal that employment and advancement in

the Government service not depend on political performance, and at the same time to make sure that Government employees would be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out their own beliefs....

Neither the right to associate nor the right to participate in political activities is absolute in any event. See, e.g., Rosario v. Rockefeller (1973); Dunn v. Blumstein (1972); Bullock v. Carter (1972); Jenness v. Fortson (1971); Williams v. Rhodes (1968). Nor are the management, financing and conduct of political campaigns wholly free from governmental regulation. We agree with the basic holding of *Mitchell* that plainly identifiable acts of political management and political campaigning may constitutionally be prohibited on the part of federal employees....

III

But however constitutional the proscription of identifiable partisan conduct in understandable language may be, the District Court's judgment was that [Sec. 9(a)] was both unconstitutionally vague and fatally overbroad. Appellees make the same contentions here, but we cannot agree that the section is unconstitutional on its face for either reason....

For the foregoing reasons, the judgment of the District Court is reversed.

So ordered

Mr. Justice **DOUGLAS,** with whom Mr. Justice **BRENNAN** and Mr. Justice **MARSHALL** concur, dissenting....

There is no [statutory] definition of what "an active part ... in political campaigns" means. The Act incorporates over 3,000 rulings of the Civil Service Commission between 1886 and 1940 and many hundreds of rulings since 1940. But even with that gloss on the Act, the critical phrases lack precision. In 1971 the Commission published a three-volume work entitled *Political Activities Reporter* which contain over 800 of its decisions since the enactment of the Hatch Act....

The chilling effect of these vague and generalized prohibitions is so obvious as not to need elaboration. That effect would not be material to the issue of constitutionality if only the normal contours of the police power were involved. On the run of social and economic matters the "rational basis" standard which *Mitchell* applied would suffice. But what may have been unclear to some in *Mitchell* should by now be abundantly clear to all. We deal here with a First Amendment right to speak, to propose, to publish, to petition Government, to assemble. Time and place are obvious limitations. Thus no one could object if employees were barred from using office time to engage in outside activities whether political or otherwise. But it is of no concern of Government what an employee does in his or her spare time ... unless what he or she does impairs efficiency or other facets of the merits of his job. Some things, some activities do affect or may be thought to affect the employee's job performance. But his political creed, like his religion, is irrelevant.... If Government employment were only a "privilege," then all sorts of conditions might be attached. But it is now settled that Government employment may not be

denied or penalized "on a basis that infringes his constitutionally protected interest– especially his interest in freedom of speech." See Perry v. Sindermann [1972]....

Free discussion of governmental affairs is basic in our constitutional system. Sweezy v. New Hampshire [1957]; Mills v. Alabama [1966]; Monitor Patriot Co. v. Roy [1971]. Laws that trench on that area must be narrowly and precisely drawn to deal with precise ends. Overbreadth in the area of the First Amendment has a peculiar evil, the evil of creating chilling effects which deter the exercise of those freedoms. Dombrowski v. Pfister [1965]....

The present Act cannot be appropriately narrowed to meet the need for narrowly drawn language not embracing First Amendment speech or writing without substantial revision. That rewriting cannot be done by the Commission because Congress refused to delegate to it authority to regulate First Amendment rights....

Is a letter a permissible "expression" of views or a prohibited "solicitation?" The Solicitor General says it is a "permissible" expression; but the Commission ruled otherwise. For an employee who does not have the Solicitor General as counsel great consequences flow from an innocent decision. She may lose her job. Therefore the most prudent thing is to do nothing. Thus is self-imposed censorship imposed on many nervous people who live on narrow economic margins.

I would strike this provision of the law down as unconstitutional so that a new start may be made on this old problem that confuses and restricts nearly 5 million federal, state, and local public employees today that live under the present Act.

Editors' Notes

(1) Pickering v. Board of Education (1968), on which Justice White relied, invalidated the firing of a public school teacher for openly criticizing the board of education's allocation of money between athletics and academics. Marshall, for the Court, held that Pickering's comments were about "a matter of legitimate public concern" and so were protected by the First and Fourteenth amendments. The reasoning, however, was not clear. At one point Marshall identified the proper constitutional test as that which White quoted:

> The problem in any case is to find a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as employer, in promoting the efficiency of the public services it performs through its employees.

But, toward the end of his opinion, Marshall added:

> In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issue of public importance may not furnish the basis for his dismissal from public employment.

(2) Regardless of what Marshall meant, White used *Pickering* to bolster "balancing" as a *technique* of constitutional interpretation. Was there more to White's reasoning? To the degree he relied on balancing, what interests did he identify here as pitted against each other? How can one generalize from the relative weights he attached to these interests to similar sorts of factual situations that may arise under the First Amendment? In sum, can one find guiding principles in his opinion? What about Douglas' opinion? What *approaches/modes/techniques* did he use? How much more (or less) useful is Douglas' opinion in pointing toward general rules?

(3) Connick v. Myers (1983) sustained a district attorney's firing of one of his assistant attorneys for what he alleged was insubordination in circulating a questionnaire to fellow staff members regarding some of the office's internal policies. The assistant alleged that her discharge violated her rights under the First and Fourteenth amendments. White wrote for the Court again: "For at least 15 years, it has been settled that a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression." Once more he quoted *Pickering*'s balancing test and concluded that the balance was against the employee. In so doing, White explicitly refused to lay down a general standard by which to judge future cases of this sort.

(4) In March, 1976, prodded by unions representing federal employees, Congress passed HR 8617, which would have substantially amended the Hatch Act. The bill would have retained existing prohibitions against: any federal employee's using his or her official authority to influence another person's vote, a senior official's eliciting or trying to prevent a contribution to a political fund from a junior employee, and any political solicitations by federal employees within federal buildings or while in uniform. The bill would also have kept most of the Hatch Act's restrictions on political activities by members of the Internal Revenue Service, the Department of Justice, and the Central Intelligence Agency. On the other hand, HR 8617 would have allowed all other federal employees to exercise their full political rights of participation. President Ford vetoed the bill, and its supporters in Congress lacked the necessary two-thirds majority to override his action.