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## **U.S. OFFICE OF SPECIAL COUNSEL ANNOUNCES FEDERAL APPEALS COURT DECISION PROHIBITING POSTAL WORKERS FROM DISPLAYING POLITICAL MATERIALS ON UNION BULLETIN BOARDS**

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FOR IMMEDIATE RELEASE - 7/18/03  
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Today, the U.S. Office of Special Counsel (OSC) announced that the United States Court of Appeals for the Second Circuit has reversed a decision from the United States District Court for the Southern District of New York concerning the Hatch Act. The lower court's decision prevented the government from prohibiting the display of political materials on union bulletin boards in post offices. Pursuant to the appeals court's decision, however, postal workers may not display political materials on union bulletin boards in nonpublic areas of post offices. The case is *American Postal Workers Union v. United States Postal Service*, U.S. Office of Special Counsel, and U.S. Office of Personnel Management (Docket No. 02-6257, July 14, 2003).

The case originated in September and October 2000 when the APWU Legislative Department distributed a poster comparing the campaign positions and voting records of the 2000 Republican and Democratic party presidential and vice-presidential candidates on issues of concern to the APWU and its membership. The union sent out at least 15,000 posters for use on bulletin boards. While the poster purported to present only factual information, the APWU did not seriously dispute in court that the poster was intended to generate support for the Gore/Lieberman ticket. After some United States Postal Service (USPS) employees complained to OSC about the posters, OSC issued an advisory opinion to the USPS stating that the posters violated a provision of the Hatch Act that prohibits covered employees -- such as postal workers -- from engaging in political activity while on duty, or in a government office or building, or while wearing an official uniform, or using a government vehicle. The USPS thereafter instructed managers at all postal facilities to remove the posters and return them to APWU.

APWU commenced legal action in district court, seeking, among other relief, to prevent the USPS from removing the posters. At issue in the case was whether APWU's postings constituted "political activity" under the Hatch Act. Federal regulations define "political activity" as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." One example of "political activity" provided by the regulations implementing the Act is an employee's display of political signs at his or her place of work.

APWU conceded to the district court that USPS employees on active duty engaged in the postings but it argued that the display of the posters did not constitute "political activity" because their activity was "not coordinated with or in concert with a political party or candidate." The district court agreed with APWU and enjoined the USPS from removing the posters.

The appeals court unanimously reversed the district court. It determined that APWU and the district court's interpretation of "political activity" was based upon an interpretation of the Hatch Act that predated significant amendments made to the Act in 1993. The court concluded that political activity could include conduct not undertaken in concert with a candidate's campaign or party. The appeals court held that the regulations defining "political activity" clearly included the APWU poster. The appeals court further concluded that APWU's constitutional challenges to the Hatch Act were without merit and rejected their allegation that the Hatch Act is impermissibly vague.

Acting Special Counsel William E. Reukauf expressed his pleasure with the appeals court decision,

stating, "Most federal employees, including postal employees, enjoy a great deal of latitude when it comes to participation in partisan political activity. Congress' intent in the Hatch Act -- to limit political activity on the job -- is clear, however. The appeals court correctly recognized that the display of partisan political posters or partisan candidates' position statements in government offices or buildings -- including union space -- runs afoul of the Act."

The U.S. Office of Special Counsel is an independent investigative and prosecutorial agency. Among other functions, it investigates and prosecutes complaints alleging violations of the Hatch Act, and provides advisory opinions on the Act's requirements.

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