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Opening Statement

Rep. Elijah E. Cummings, Ranking Member

Hearing on “The Hatch Act: The Challenge of Separating Politics from Policy”

June 21, 2011

The Hatch Act was passed to ensure that federal government employees work on behalf of the American people rather than the political party that happens to be in power. The Hatch Act prohibits federal employees from engaging in “political activity” on federal property and from using their “official authority” to influence elections. The Hatch Act strikes a balance between protecting the free speech rights of hard-working public servants and ensuring that government operations are being conducted appropriately.

This Committee has conducted significant oversight work on the Hatch Act in the past. After determining that White House officials provided political briefings to agency political appointees prior to the 2006 midterm elections, the Committee conducted an investigation into the activities of the White House Office of Political Affairs.

In 2008, former Chairman Henry Waxman issued a staff report of that investigation, concluding that the Office of Political Affairs “enlisted agency heads across government in a coordinated effort to elect Republican candidates to Congress.” The report recommended eliminating the Office of Political Affairs.

The Office of Special Counsel, an independent agency charged with providing guidance and enforcement of the Hatch Act, conducted a parallel investigation and issued a report of its findings on January 21, 2011. The report concluded that numerous White House officials and political appointees in the previous Administration had violated the Hatch Act.

On January 20, 2011, it was reported that the President would close the Office of Political Affairs. I believe this is an improvement that should have been made back in 2008.

Another significant improvement is the appointment of a new Special Counsel, Carolyn Lerner, who was sworn in just last week. The Hatch Act is meaningless without responsible enforcement. Unfortunately, the Office of Special Counsel experienced significant problems under its previous leader, who was sentenced to one month in prison for contempt of Congress for lying in statements made to this Committee.

Now is the chance for the Office of Special Counsel to turn the page, and I look forward to working with the new Special Counsel on the implementation of the Hatch Act, as well as efforts to strengthen whistleblower protections for federal workers.

I also look forward to working with the Chairman and the new Special Counsel on bipartisan legislation to update and clarify the Hatch Act. The witnesses before us today will express concern that the report issued by the Office of Special Counsel in January was unfair because it established a new interpretation of the Hatch Act that employees were unaware of prior to the report. Many other federal employees feel the same way: they find themselves penalized after the fact for actions that they did not realize were against the rules.

Increased training is always helpful to help prevent these problems, but it also may be helpful to revisit some of these issues legislatively. For example, the Hatch Act does not provide for a graduated penalty system, and federal employees have been subjected to varying interpretations of the appropriate use of e-mail.

I want to thank all of the witnesses for coming here today. I look forward to your testimony, and I hope that by working together, we will be able to achieve the right balance for the American people and for our federal employees.

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