

Did You Know?

- Updates are underway for the NCSL Guide for Writing a State Legislative Personnel Manual, initially produced in 2002. Both versions contain examples of language states use in limiting staff political activity.
- Staff working for the California Senate Rules Committee and the New Hampshire House Sergeant at Arms are expressly prohibited from engaging in partisan activities, while their colleagues face no such restrictions.
- The Massachusetts Supreme Court upheld a city rule preventing police officers from soliciting “aid... for any political purpose” in 1892—the oldest case found involving a government restriction on state employees’ political activities.



Limiting Political Activity for Nonpartisan Staff

BY NICHOLAS BIRDSONG

James Madison introduced the Bill of Rights to allay concerns that the newly established federal government would recreate repressive conditions like those suffered under British colonial rule. In a 1789 speech on the House floor, Madison rallied support by framing the amendments as a response to widespread concern that the Constitution “[lay the foundation of aristocracy or despotism.](#)” He described the freedom of expression that would later become enshrined in the First Amendment as “inviolable.”

Over 230 years later, the freedoms of expression and association continue to be recognized among the most dearly held and [fundamental](#) rights in the United States. Political speech, in particular, enjoys some of [the most extensive protections](#) of any form of expression. Yet, even for this most fundamental right, limits exist when justified by sufficiently compelling government interests.

Effective legislative institutions rely on the work of nonpartisan staff to perform [a variety of vital roles](#). They provide unbiased legal advice, research services, bill drafting, security, information technology and other services to members of any party. If ostensibly nonpartisan staff were to openly engage in partisan political activities, they would risk undermining their perceived objectivity and trustworthiness among lawmakers. As a result, nonpartisan staff would likely suffer [reduced effectiveness to the detriment of legislative institutions](#).

Legislatures have an interest in ensuring that nonpartisan legislative staff refrain from political activities that may diminish their effectiveness, but staff also have the “inviolable” right to express themselves politically. The apparent conflict has led to the development of a robust body of case law discussing when states may have a [sufficiently compelling interest](#) to limit the political activities of public employees.

Legislative staff policy manuals should include a description of any relevant political activity prohibitions. Clear and unambiguous language may help set employee expectations and avoid inadvertent violations of law or policy.

In several cases, courts have found that restricting the right of public employees to engage in certain political activities are valid conditions of employment that do not violate the First Amendment. Restrictions may be justified by a state's interest in institutional [integrity](#), [efficient operations](#), [discipline](#) and employee [morale](#), as well as discouraging [improper influences](#), [abuses of position and the appearance of bias](#).

However, the mere existence of a justification has not been found to grant states limitless authority to penalize employees for expressing partisan sentiments. Courts have rejected restrictions for being [overbroad](#) or [vague](#). Statutory limits on staff political activity must also avoid infringing on the rights enumerated in a state's constitution, which may extend beyond those established under federal law.

A complex hierarchy of authorities beyond the First Amendment may influence political activity restrictions for nonpartisan staff. State constitutions, statutes, chamber rules, administrative regulations, policies, employee manuals and employment contracts may all dictate rules of conduct. Any such source of authority may limit staff political activities, so long as it complies with all superior authorities. For example, agency policies may prohibit nonpartisan staff from signing a petition involving a matter before the legislature, [unless](#) an applicable statute or state constitutional provision protects the employee's right to do so.

State Action

Currently, 29 states regulate the political activity of legislative staff [by statute](#). Of those states, 18 protect the right of staff to participate in political activities, such as signing petitions, voting or running for office. No state restricts staff members' right to vote or register with a party, except in the four states that forbid employees from belonging to groups that advocate for the violent overthrow of the government.

Staff who run for office must take a leave of

absence or sever employment in eight states' legislatures. Three states' laws may allow employees to run for or hold an elected position if an appropriate supervising authority deems the office compatible with the staff member's responsibilities.

The most common prohibitions found in statute, which 26 states have adopted, forbid employees from using state resources for political purposes or espousing partisan views while on duty. Legislative staff in three states cannot serve on a party committee or in a leadership position. Two states go further, by prohibiting any state employee from attending political meetings or participating in politics beyond voting. No state prohibits nonpartisan staff from voting in elections or political primaries.

In 23 states, the [rules](#) of at least one legislative chamber place some kind of limit on staff political activity. All of these rules prohibit attempts to influence an issue before the legislature or forbid the use of state resources for campaign purposes.

Legislative staff policy manuals should include a description of any relevant political activity prohibitions, according to NCSL's [Guide for Writing a State Legislative Personnel Manual](#). Clear and unambiguous language may help set employee expectations and avoid inadvertent violations of law or policy.

Federal Action

The [Hatch Act of 1939](#) prohibits most federal employees from engaging in political activity while on duty. However, the law does not apply to partisan or nonpartisan congressional staff. A series of criminal laws and appropriations statutes governs conduct at the federal level.

[Federal law](#) prohibits congressional staff from using government resources—including funds, equipment, materials and office space—for campaign purposes. Staff are free to engage in any otherwise lawful political activity outside of working hours.

Additional Resources

- [NCSL's Staff and Political Activity – Chamber Rules](#)
- [NCSL's Staff and Political Activity – Statutes](#)
- [NCSL's Guide for Writing a State Legislative Personnel Manual](#)

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