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### "To prevent pernicious political activities" : the 1938 Kentucky Democratic primary and the Hatch Act of 1939.

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“To Prevent Pernicious Political Activities”: The 1938 Kentucky Democratic Primary and the  
Origins of the Hatch Act of 1939

By

Raymond Michael Myers IV

Submitted in partial fulfillment of the requirements for Graduation *summa cum laude*

and

Graduation with Honors from the Department of History

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## I. Introduction

Looking at the United States Constitution, the Founding Fathers provided little instruction for the implementation of public policy. Article II, Section 2 stipulated, “Congress may by Law vest the Appointment of such inferior Officers as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”<sup>1</sup> With the creation of this administrative state in the later twentieth century, Congress passed laws governing its structure, processes, and procedures. This essay examines one such law: the Hatch Act of 1939. This federal government required an increased number of employees to run this bureaucracy. The Hatch Act defined how these federal employees could interact with political campaigns.

Congress passed this law in 1939, at the end of the New Deal period. After the Great Depression crippled the national economy, nearly one-third of Americans were unemployed. In 1932, President Franklin Delano Roosevelt won the presidency on the pledge that he would bring a “new deal for the American people.”<sup>2</sup> Roosevelt’s New Deal consisted of unprecedented expansion of the federal government through the creation of executive agencies. To restore faith in the market, the Roosevelt administration created the Securities Exchange Commission (SEC) and Federal Deposit Insurance Corporation (FDIC). The Agricultural Adjustment Administration (AAA) and the National Recovery Administration (NRA) respectively regulated farm and industry through price and competition control. Public works agencies like the Public Works Administration (PWA) and the Works Progress Administration (WPA) developed national infrastructure while simultaneously decreasing unemployment. The Civilian Conservation Corps (CCC) and the Tennessee Valley Authority (TVA) created federal conservation efforts that also

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<sup>1</sup> United States Constitution, Article II, Section 2, Paragraph 2.

<sup>2</sup> Franklin D. Roosevelt, “FDR’s Democratic Nomination Acceptance Speech, July 2, 1932,” in Samuel I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt* (New York: Random House, 1938), I: 647-659.

helped modernize rural areas. After 1935, New Deal legislation focused more on reform than restoration, including long-lasting laws such as the 1935 Social Security Act and the 1937 National Labor Relations Act (also known as the Wagner Act).

This paper argues that the Hatch Act of 1939 was a response to the administrative state intended as a way to protect American constitutionalism by preserving free and fair elections. Proponents contended this bill prevented a national spoils system which the president would use to control electoral outcomes. Conversely, the opposition disapproved of the Hatch Act because it restricted federal employees' ability to participate on political campaigns. Declaring this bill a clear violation of civil liberties, opponents compared its restrictions to foreign totalitarian measures in Nazi Germany and Fascist Italy. Both sides couched their arguments in relation to preservation of the American form of government against dictatorship. This paper asserts that fascism and totalitarianism abroad, coupled with the executive branch's gross expansion, shaped this debate. In historical context, Americans had no guarantee that their government would not descend down this course. When Roosevelt performed unprecedented actions in the executive branch, it signaled such a shift. Therefore, Congress placed restrictions like the Hatch Act on the federal government and its employees.

Furthermore, this essay ties the Hatch Act into the greater context of New Deal legal and legislative history. As described in the historiographical section, New Deal legal and constitutional histories have overwhelmingly focused on President Franklin D. Roosevelt's "court-packing" bill and the "constitutional revolution of 1937," a period when the Supreme Court reversed previous conservative decisions in favor of upholding New Deal legislation. Finally, this essay argues that the Hatch Act indicated a continued constitutional opposition to the New Deal that occurred in Congress, not just the Supreme Court.

When studying the past, previous historical writings influence contemporary interpretations as much as the primary sources. To support this argument, this essay analyzes the historiography of the New Deal, the legal and constitutional transformation of the 1930s, and the Hatch Act of 1939. Collectively, these components demonstrate how this thesis expands upon current literature by arguing that the Hatch Act represented a constitutional backlash against the New Deal's administrative expansion.

This essay first examines past New Deal histories, ranging from Roosevelt administration officials to modern historians. Upon inspection, these histories revealed interpretive discrepancies stemming from their author's historical context. Reviewing this historiography demonstrates how understanding the New Deal's successes and failures depends upon which sources are consulted.

Next, this essay examines the constitutional and legal transformations that occurred during the New Deal. As previously mentioned, the New Deal ushered in an era of federal growth. This enlargement defined governance in the United States throughout the remainder of the twentieth century. Given this importance, legal and constitutional historians dedicated texts to describing this development's causes and case law. Most previous works in this category have suggested that a constitutional "revolution" occurred in 1937 because of President Roosevelt's "court-packing" bill. Nevertheless, recent revisionist works question the transition's causality and instead emphasize prolonged jurisprudential factors. These works assessed Supreme Court litigation throughout the 1930s to illustrate how the Court and the national constitution shifted in favor of a large federal government. Detailing this literature helps explain the constitutional and legal environment in which the Hatch Act of 1939 came into being.

This final historiographical section reviews the existing literature on the Hatch Act of 1939. During the late 1930s, corruption rumors stained the New Deal's legacy as opponents attested that Roosevelt used executive agencies to influence congressional elections. These reports prompted Congress to pass the Hatch Act of 1939. Intended to curb "pernicious political activities," the Hatch Act restricted federal executive employees' ability to participate in political campaigns. This statute endured into the twenty-first century and still governs these interactions. However, scholars have produced little on this litigation. Law reviews and articles generally replaced objectivity with subjectivity and made personal evaluations about the act. The existing monographs succeeded in describing the act's provisions, but those texts failed to place the act in the larger constitutional and legal context of the 1930s.

After assessing the relevant historical literature, this paper describes the workings of the Works Progress Administration (WPA) and the scandal that ensued in Kentucky during the 1938 Democratic Party primary. This specific election scandal helped heighten attention to potential executive branch corruption, prompting the Senate to launch a national investigation into the issue. Through this special committee, the Senate discovered rampant political activities across the country. The body recommended Congress pass legislation to prohibit future political activities in elections. Congress responded with the Hatch Act of 1939. During the debate for this bill, legislators voiced different opinions grounded in constitutional concerns. This legislative discussion provided the evidence for conservative opposition to the New Deal and the administrative state. Then, this text covers the Hatch Act's remaining legal history, examining the Supreme Court decisions that tested its constitutionality and subsequent amendments to the law.

## II. Literature Review

## A. New Deal Historiography

Even before President Roosevelt died in 1945, historians wrote accounts covering his landmark legislative agenda. Like the American Revolution and the Civil War, different historical schools treated this subject differently. The attitude these historians adopt towards the New Deal depended upon the historical period in which the author wrote. This trend in New Deal historiography exemplified the idea that historians write about and interpret the past from the perspective of their own historical context. More importantly, Stuart Kidd argued that these reinterpretations of the New Deal were important because they demonstrated the country's ability to persist through a crisis.<sup>3</sup>

A few historiographical debates surrounded the New Deal. First, historians questioned the ideological underpinnings of the New Deal. Comparing it to previous reform movements in the nineteenth and twentieth centuries, they analyzed the ideological origins of the New Deal. In this debate, past historians either viewed the New Deal as liberal or conservative.

Where early historians like Arthur Schlesinger, Jr., Frank Freidel, and William E. Leuchtenburg praised the New Deal as a revolutionary advancement in American governance, the succeeding New Left historians of the 1960s denounced it as a conservative ploy to establish corporate dominance in the United States. More recently scholarship transcended this binary argument to suggest that Roosevelt and the New Deal operated, and succeed, through pragmatism.

Second, historians questioned whether the New Deal succeeded at all. Where Schlesinger Jr., and Freidel praised the program for rebuilding the national economy, New Left historians like Howard Zinn and Ronald Radosh marked it a failure for not extending legal protections to African Americans or abolishing the United States' capitalist economy. Similarly,

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<sup>3</sup> Stuart Kidd, "Redefining the New Deal: Some Thoughts on the Political and Cultural Perspectives of Revisionism," *Journal of American Studies* 22 (Dec. 1988), 389.

historians in the 1990s adopted a more moderate view by conceding both points: the New Deal did not assist African Americans or southern tenant farmers or even fully revitalize the economy, but it prevented additional damage, instilled economic security in the American people, and assist oppressed interest groups.

Political actors from the 1930s and 1940s published the first New Deal histories even before the Roosevelt administration had ended. Initially, former Roosevelt administration members described the president and the New Deal, in a positive fashion. Robert Sherwood, a former Roosevelt speech-writer, published a favorable recollection of the relationship between President Roosevelt and Works Progress Administration operator Harry Hopkins.<sup>4</sup> In his autobiography, Harold L. Ickes, Roosevelt's Secretary of the Interior, praised the Public Works Administration (PWA), an early New Deal work-relief program. He lauded, "Had not Franklin Roosevelt come along when he did with his PWA cornucopia in 1933, we might today be doing the goose step."<sup>5</sup> Roosevelt's campaign manager and later Chairman of the Democratic National Committee, James Farley, approached hagiography in his comments. "Few, if any, can dispute the value of such organizations as the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, and the Home Owners Loan Corporation," he acclaimed, "All must concede the magnificence of such projects as Grand Coulee, Fort Peek, and the Tennessee Valley. While these originated in other minds, he had the audacity to adopt them and follow them through."<sup>6</sup> While their personal connections provided succeeding historians with first-hand

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<sup>4</sup> Robert E. Sherwood, *Roosevelt and Hopkins: An intimate History* (New York: Harper & Brothers, 1948).

<sup>5</sup> Harold L. Ickes, *The Autobiography of a Curmudgeon* (New York: Reynal & Hitchcock, 1943), 298.

<sup>6</sup> James A. Farley, *Jim Farley's Story: The Roosevelt Years* (New York: McGraw-Hill Book Company, Inc., 1948), 38. Farley pushed a similar story in his previous work *Behind the Ballots: The Personal History of a Politician* (New York: Harcourt, Brace and Company, 1938).

accounts of the New Deal's inner-workings, their affection for Roosevelt made objectivity elusive.

The second generation of New Deal historians came with the consensus historians of the 1950s. In reaction to the progressive historian's emphasis on class conflict and economic struggle in United States history, these historians believed that unity and homogeneity drove change; they stressed national character over disruptive social movements.<sup>7</sup> In this school, Pulitzer prize-winning historian Richard Hofstadter's *Age of Reform: From Bryan to FDR* (1955) first sought to place the New Deal in the larger scheme of United States intellectual and political history. After examining the Populist and Progressive movements of the late nineteenth and early twentieth century, he ended his analysis by comparing these trends to the New Deal. "In the years 1933-38 the New Deal sponsored a series of legislative changes that made the enactments of the Progressive era seem timid by comparison," Hofstadter emphasized, "The New Deal was different from anything that had yet happened in the United States: different because its central problem was unlike the problems of Progressivism; different in its ideas and spirits and its techniques."<sup>8</sup> Where the Progressive movement employed government action to combat social problems such as poverty, conservation, and consumer protection, Roosevelt's New Deal employed government--especially the central, federal government-- to resuscitate the national economy. Both the Progressive movement and the New Deal viewed government as the primary agent for change, but the New Deal did so on an unprecedented scale.

The other two consensus historians were Otis Graham, Jr., and James MacGregor Burns.

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<sup>7</sup> Aaron D. Purcell, "Historical Interpretations of the New Deal and the Great Depression," in Aaron D. Purcell, ed., *Interpreting American History: The New Deal and the Great Depression* (Kent, Ohio: The Kent State University Press, 2014), 13.

<sup>8</sup> Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* (New York: Vintage Books, 1955), 302-304.

James MacGregor Burns' two-part Roosevelt biography dedicated one volume to his early life and the New Deal and the second volume to World War II. This first book, *Roosevelt: The Lion and the Fox* (1956), argued that Roosevelt created a "broker state" within the United States where different politics competed for attention. In other words, the New Deal initiated an era of interest group politics that persisted for decades.<sup>9</sup> In *An Encore for Reform: The Old Progressives and the New Deal* (1967), Otis Graham Jr., disagreed with Hofstadter. The New Deal served as a continuation of the Progressive movement he argued.<sup>10</sup>

In United States historiography, liberal historians in the late 1950s and early 1960s supplanted the consensus historians. These historians overwhelmingly saw the New Deal as a liberal success, meaning popular political sentiment drove government to curb corporations and privilege.<sup>11</sup> For the New Deal, the three main historians included Arthur M. Schlesinger, Jr., Frank Freidel, and William E. Leuchtenburg.

Any discussion of New Deal scholarship must spend significant time on Arthur M. Schlesinger's three-part *Age of Roosevelt* series.<sup>12</sup> His first volume, *The Crisis of the Old Order* (1957), began by analyzing the ideological agendas that influence the New Deal. Drawing on the preceding two decades of United States history, the New Deal tapped into two Progressive traditions: Theodore Roosevelt's New Nationalism and Woodrow Wilson's New Freedom.

Additionally, *Crisis* followed Roosevelt's early years and his presidential campaigns.

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<sup>9</sup> James MacGregor Burns, *Roosevelt: The Lion and the Fox* (New York: Smithmark Books, 1956).

<sup>10</sup> Otis Graham Jr., *An Encore for Reform: The Old Progressives and the New Deal* (New York: Oxford University Press, 1967).

<sup>11</sup> Aaron D. Purcell, "Historical Interpretations of the New Deal and the Great Depression," 10-12.

<sup>12</sup> The three works in this series are *The Crisis of the Old Order, 1919-1933* (Boston, Massachusetts: Mariner Books, 1957), *The Coming of the New Deal, 1933-1935* (Boston, Massachusetts: Mariner Books, 1958), and *The Politics of Upheaval, 1935-1936* (Boston Massachusetts: Mariner Books, 1960).

Schlesinger's coverage of the New Deal did not begin until the second volume, *The Coming of the New Deal* (1958). Here, he analyzed the political struggles involved with passing and implementing each of these programs. Even though the National Recovery Administration crumbled under "a mass of multifarious administrative responsibilities," he argued it "prepared the nation for a greater and more arduous crisis."<sup>13</sup> Through the Wagner Act, the New Deal transformed the labor movement into a formidable political force. For Schlesinger, Social Security had the greatest impact on American society. "The federal government was at last charged with the obligation to provide its citizens a measure of protection from the hazards and vicissitudes of life," he wrote, "With the Social Security Act, the constitutional dedication of federal power to the general welfare began a new phase of national history."<sup>14</sup>

The final volume, *The Politics of Upheaval*, described the post-depression fragmentation that complicated the years after 1935. "The policies which had produced the economic and moral revival seemed themselves to be faltering. For two years the New Deal had been living off the momentum of the Hundred Days," he remarked, "Now the grand initiatives of 1933 appeared to be running their course."<sup>15</sup> Schlesinger argues that Roosevelt held national attendance by creating a new national coalition. "The older conception of the Democratic Party implied the politics of organization. The new conception implied the politics of ideology."<sup>16</sup> This new Democratic Party shirked the traditional party bosses and political machines to form a voting coalition ranging from urban white progressives to African American workers. These voting blocs carried Roosevelt to victory in the 1936 presidential election

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<sup>13</sup> Arthur M. Schlesinger, Jr., *The Coming of the New Deal*, 176.

<sup>14</sup> *Ibid.*, 315.

<sup>15</sup> Arthur M. Schlesinger, Jr., *The Politics of Upheaval*, 3.

<sup>16</sup> *Ibid.*, 409.

While these three volumes ignored the ground level impact of New Deal agencies like TVA and WPA, they provided more information than any other study about the political context of the New Deal. Though he planned to write five volumes on the Roosevelt presidency, Schlesinger's time in President John F. Kennedy's administration limited his scholarly pursuits. Furthermore, *The Age of Roosevelt* series served as a spiritual sequel to Schlesinger's previous work. Mirroring his Pulitzer Prize-winning study on the political changes under President Andrew Jackson, Schlesinger contended that the New Deal represented a liberal retaliation against the conservative business interests of the 1920s.<sup>17</sup> This connection between the antebellum period and the 1930s buttressed Schlesinger's cyclical theory of history, arguing that United States history fluctuated between periods of political conservatism and liberalism.<sup>18</sup> Though subsequent historians critiqued this hypothesis, Schlesinger's work remained relevant for future discussions of the New Deal.

Roosevelt's primary biographer, Frank Freidel treated Roosevelt as conservative but revolutionary nonetheless. Though conceding "how basically conservative Roosevelt's New Deal attitudes remained during the early period of the New Deal," Freidel later stressed, "From the beginning of the New Deal to the end, Roosevelt functioned with a fair degree of consistency. He heartily favored humanitarian welfare legislation and government policing of the economy, so long as these did not dangerously unbalance the budget. He preferred government co-operation with business to warfare with it."<sup>19</sup> In perspective, Freidel claimed,

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<sup>17</sup> This work is similarly titled Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston, Massachusetts: Little, Brown and Company, 1945).

<sup>18</sup> Schlesinger outlined this theory in Arthur M. Schlesinger, Jr., *The Cycles of American History* (Boston, Massachusetts: Houghton Mifflin Company, 1986), 23-48.

<sup>19</sup> Frank Freidel, *The New Deal in Historical Perspective* (Washington, D.C.: Service Center for Teachers of History, 1959), 19. Freidel also adopted this view in his four-volume biographical series on Roosevelt. He condensed this series into a single volume, Frank Freidel, *Franklin D.*

“For millions of American farmers and workers, and for a large part of that businessmen, the massive federal intervention in the economy, the planning and rationalization, and the controls over production, prices, and wages during World War I had seemed benign.”<sup>20</sup>

Taking a step back, William E. Leuchtenburg also viewed the New Deal as transformative, but with reservations. Leuchtenburg argued, “In 1932, men of acumen were absorbed to an astonishing degree with such questions as prohibitions, war debts, and law enforcement. In 1936, they were debating social security, the Wagner Act, valley authorities, and public authorities.”<sup>21</sup> Aside from the political subject matter, Roosevelt reshaped the presidency by increasing its legislative capacities. The New Deal also transformed federalism. He contended, “For the first time for many Americans, the federal government became an institution that was directly experienced. More than state and local governments, it came to be *the* government, an agency directly concerned with their welfare.”<sup>22</sup> Nonetheless, government assistance did not extend to everyone. Leuchtenburg acknowledged, “This was still a halfway revolution; it swelled the ranks of the bourgeoisie but left many Americans—sharecroppers, slum dwellers, most Negroes—outside of the new equilibrium.”<sup>23</sup> Short and concise, Leuchtenburg’s work provided the best overview of the New Deal period.

Nevertheless, no historian attested to the New Deal’s supposed radical nature more than Carl N. Degler. “Almost every one of the best-known measures of the federal government during the Depression era made inroads into the hitherto private preserves of businesses and the

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*Roosevelt: A Rendezvous with Destiny* (Boston, Massachusetts: Little, Brown and Company, 1990).

<sup>20</sup> *Ibid.*, 93.

<sup>21</sup> William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal, 1932-1940* (New York: Harper Colopjon Books, 1963), 326.

<sup>22</sup> *Ibid.*, 331.

<sup>23</sup> *Ibid.*, 347.

individual,” Degler asserted, “Furthermore, most of these new measures survived the period, taking their places as fundamental elements in the structure of American life. For modern Americans living under a federal government of transcendent influence and control in the economy, this is the historic meaning of the Great Depression.”<sup>24</sup> In his work, Degler called the Great Depression and New Deal the “Third American Revolution,” with the American Civil War being the second. This label stressed the importance of the New Deal as a watershed in United States history.

During this same period, Edgar Eugene Robinson’s *The Roosevelt Leadership, 1933-1945* (1955) first criticized FDR and the New Deal.<sup>25</sup> Following a similar structure, Robinson focused on FDR’s leadership style within the presidency and its outcomes on constitutionalism. Like Leuchtenburg and Degler, he viewed the New Deal as a revolutionary transformation in United States governance, but not for the better. “Despite winning the war and maintaining the support of the American people, Franklin Roosevelt underwent the supreme tragedy of effective leadership,” Robinson rebutted, “This tragedy lay not in the fact that death robbed him of triumph. The inexorable forces of his time engulfed the world, revealing the basic weakness and long-enduring follies that existed among the American people he had served so long.”<sup>26</sup> This piece’s conservative approach chided New Deal policies like Social Security for favoring welfare legislation over “a heightened sense of individual responsibility.”<sup>27</sup> Not only did this author disagree with Roosevelt’s approach to the Depression, he maligned the New Deal as “injurious

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<sup>24</sup> Carl N. Degler, *Out of Our Past: Forces that Shaped Modern America* (New York: Harper & Row, 1959), 417.

<sup>25</sup> Edgar Eugene Robinson, *The Roosevelt Leadership, 1932-1945* (Philadelphia, Pennsylvania: J.B. Lippincott Company, 1955).

<sup>26</sup> *Ibid.*, 391.

<sup>27</sup> *Ibid.*, 172.

to the slow working of democracy as Americans know it.”<sup>28</sup> The author’s sources included contemporary magazines such as *Life* and *Time*, detracting any credibility from his argument. Primarily arguing in abstracts, *The Roosevelt Leadership*’s only important contribution to New Deal historiography was to denote that conservative interpretations existed as early as the 1950s.

In the 1960s, a new historiographical school called the “New Left” entered the field. Providing a stark contrast to the social conformity of the consensus historians, the New Left arose during a period of social upheaval in the United States. The Civil Rights Movement and antiwar movement later in the decade attempted to reshape American society by ending racial divisions and ending ideological warfare. With this information in mind, these historians projected their visions for contemporary society onto their descriptions of the past. Furthermore, written during the Cold War, many of these accounts exhibited Marxist ideologies as they chastised Roosevelt for perpetuating American capitalism.

Rejecting previous interpretations, Barton J. Bernstein contended, “The New Deal failed to solve the problem of depression, it failed to raise the impoverished, it failed to redistribute income, it failed to extend equality and generally countenanced racial discrimination and segregation.”<sup>29</sup> Comparably, in *The New Deal* (1967) Paul Conkin said, “The story of the New Deal is a sad story, the ever-recurring story of what might have been.”<sup>30</sup> William Appleman Williams, Schlesinger’s intellectual rival, covered the intellectual dimensions of the New Deal in

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<sup>28</sup> Ibid. 392.

<sup>29</sup> Barton J. Bernstein, “The New Deal: The Conservative Achievements of Liberal Reform,” in *Towards a New Past: Dissenting Essays in American History* (New York: Pantheon Books, 1968), 264.

<sup>30</sup> Paul Conkin, *The New Deal* (New York: Wiley-Blackwell, 1967), 54.

*The Contours of American History*. For Williams, the New Deal did not usher in a revolution, but merely continued the Hoover administration's corporatism.<sup>31</sup>

The most extreme author among the New Left scholarship was Marxist historian Ronald Radosh. Where Conkin based his denunciations on the New Deal's liberal failures, Radosh based his argument on a perceived conservatism within the New Deal. Economically, he argued, "It's special form of conservatism was the development of reforms that modernized corporate capitalism and brought corporate law to reflect the system's changed nature."<sup>32</sup> To support his claim, he noted the reactionary elements of each major New Deal policy. Social Security's benefits "helped maintain the existing system of production and distribution."<sup>33</sup> Public works programs like the Public Works Administration and the Works Progress Administration were "of a limited nature and did not interfere with private business prerogatives."<sup>34</sup> The Wagner Act's structure "allowed the administration to obtain the final integration of organized labor into the existing political economy of corporation capitalism."<sup>35</sup> In his conclusion, Radosh delineated from New Deal history to espouse his own political views. He bemoaned, "Understanding how the New Deal worked will enable us to resist policies based on further extensions of the Welfare State, and to commit ourselves instead to the collective effort to forge a socialist community in America."<sup>36</sup>

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<sup>31</sup> William Appleman Williams, *The Contours of American History* (Chicago, Illinois: Quadrangle Paperbacks, 1961), 439-451.

<sup>32</sup> Ronald Radosh, "The Myth of the New Deal," in Ronald Radosh and Murray N. Rothbard, ed., *A New History of Leviathan: Essays on the Rise of the American Corporate State* (New York: E.P. Dutton & Co., Inc., 1972),

<sup>33</sup> *Ibid.*, 159.

<sup>34</sup> *Ibid.*, 170.

<sup>35</sup> *Ibid.*, 173.

<sup>36</sup> *Ibid.*, 187.

Radosh's article exemplified the critical problems with the entire New Left historical school. Ironically, famed New Left historian Howard Zinn described this problem with his school. Historians, in his view, were to subject the past to modern criticisms. "It is for today," he wrote, "that we turn to the think of the New Deal period."<sup>37</sup> Like Radosh, Zinn discredited the New Deal for not bringing "the blessings of immense natural wealth and staggering productive potential to every person in the land" or teaching ordinary people "how to communicate the day-to-day pains felt, between emergencies."<sup>38</sup> Rebuking New Left arguments, Jerold S. Auerbach asserted, "The New Left critique of the New Deal—spirited, controversial, and provocative though it may be—is occasionally illogical and consistently ahistorical."<sup>39</sup> In the stream of New Deal historiography, the New Left's contribution was that it contested the consensus historians' assumption that the New Deal radically altered the nation based on liberal principles and that it questioned the notion that the New Deal was the driving force behind the economic rehabilitation.

The New Left school declined as the social movements of the 1960s faded. In the 1970s and the 1980s, New Deal scholarship adopted a new, more diverse form. Whereas earlier scholarship viewed the program from a top-down approach, these new studies dissected individual programs and their impacts upon various social groups. "This emergent consensus has not, however, so much ended controversy over the New Deal as transformed the terms of the debate," John Braeman wrote, "The more recent monographic literature on the New Deal, while admitting its limited aims and even more limited successes, puts the New Deal in juster

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<sup>37</sup> Howard Zinn, *The Politics of History* (Chicago, Illinois: University of Illinois Press, 1970). Zinn dedicated an entire book to this subject in Howard Zinn, ed., *New Deal Thought* (New York: Bobbs-Merrill, 1966).

<sup>38</sup> Zinn, *The Politics of History*, 119.

<sup>39</sup> Jerold S. Auerbach, "New Deal, Old Deal, or Raw Deal: Some Thoughts on New Left Historiography," *Journal of Southern History* 35 (Feb.1969), 27.

perspective by showing its positive achievements in humanizing and disciplining American capitalism, the novelty and complexity of the problems that the Roosevelt administration faced, the difficulties of shaping policy in a pluralistic democracy, the continuing appeal of traditional values and attitudes, and the strength—diminished, but not destroyed—of private interest groups.”<sup>40</sup> Furthermore, historians incorporated disciplines such as sociology and anthropology into these accounts.<sup>41</sup>

During this time, James T. Patterson’s work illustrated the political complications during the New Deal period. In *The New Deal and the States: Federalism in Transition* (1969), Patterson confronted United States historians’ bias to focus solely on the federal government. He contended that the federal government did not uniformly impose its agenda on receptive state governments. Instead, state actors contested these programs and impacted the success they achieved on the state level. Nonetheless, this period still witnessed a transition towards top-down governance that marked federalism until the 1980s. “Compared to the national government, the states lost authority in the 1930s—and they have regained very little since. But their loss was not the fault of Roosevelt, [Harry] Hopkins, or [James] Farley, or the most nationalistic ideologues of the New Deal,” he wrote, “They have slipped—relatively—because the states alone, for good or ill, lacked the potential to solve the problems of urban, mid-

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<sup>40</sup> John Braeman, “The New Deal and the ‘Broker State:’ A Review of the Recent Scholarly Literature,” *The Business History Review* 46 (Winter, 1972), 410. Braeman says these monographs included John A. Brennan’s *Silver and the New Deal* (1969), Michael E. Parrish’s *Securities Regulation and the New Deal* (1970), Daniel S. Hirshfield’s *The Lost Reform: The Campaign for Compulsory Health Insurance in the United States from 1932 to 1943* (1970), Thomas K. McGraw’s *TVA and the Power Fight, 1933-1939* (1971), and Raymond Wolters’ *Negroes and the Great Depression: The Problem of Economic Recovery* (1971).

<sup>41</sup> Purcell, “Historical Interpretations of the Great Depression and the New Deal,” 21.

twentieth century America.”<sup>42</sup> Similarly, *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939* (1967) emphasized the role the conservative opposition played in bringing the New Deal to a close.<sup>43</sup>

As the gap between the New Deal and the present widened, historians who did compose general histories gave the policies a balanced approach. The most recent—and arguably most objective—examination of the New Deal was David M. Kennedy’s *Freedom From Fear: The American People in Depression and War, 1929-1945* (1999).<sup>44</sup> Where early liberal interpretations hailed nearly all New Deal programs as instant successes and New Left historians condemned the New Deal for merely preserving the existing capitalist structure, Kennedy recognized the New Deal’s successes and failures. The New Deal did not stabilize the national economy as original historians thought, it only prevented further damage. Full economic return did not occur until the United States entered World War II. “When the war brought recovery at last, a recovery that inaugurated the most prosperous quarter century America has ever know, it brought it to an economy and a country that the New Deal had fundamentally altered.”<sup>45</sup> With this in mind, the New Deal’s true achievement was not economic recovery. Kennedy argued, “Above all, the New Deal gave to countless Americans who had never had much of it a sense of security, and with it a sense of having a stake in their country. And it did it all without shredding the American Constitution or sundering the American people. At a time when despair and

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<sup>42</sup> James T. Patterson, *The New Deal and the States: Federalism in Transition* (Princeton, New Jersey: Princeton University Press, 1969), 207.

<sup>43</sup> James T. Patterson, *Congressional Conservatism and the New Deal* (Lexington, Kentucky: University of Kentucky Press, 1967).

<sup>44</sup> David M. Kennedy, *Freedom From Fear: The American People in Depression and War, 1929-1945* (New York: Oxford University Press, 1995).

<sup>45</sup> *Ibid.*, 363.

alienation were prostrating other peoples under the heel of dictatorship, that was no small accomplishment.”<sup>46</sup>

During the administration of President William Clinton in the 1990s, scholars perceived this presidency as a revival in liberalism. Historians in this context used this opportunity to examine the past through the context of liberal development. Alan Brinkley viewed the New Deal’s impact on this ideological strand in American history. Beginning his analysis in 1937 with the onset of a second economic downturn in the country—which some called the “Roosevelt recession,” Brinkley argued this event allowed liberal “New Dealers” like Tom Cocoran, Thurman Arnold, and Benjamin Cohen to exert influence within the administration. “The importance of the New Deal lies in large part, of course, in the actual legislative and institutional achievements: the Social Security System, the Wagner Act, the TVA, the farm subsidy programs, the regulation of wages and hours . . . and others—achievements that together transformed the federal government and its relationship to the economy and to the American people,” wrote Brinkley, “But the New Deal’s significance lies as will in its impact on subsequent generations of liberals and, through them, on two decades of postwar government activism. And in that light, the New Deal appears not just as a bright moment in which reform energies briefly prevailed but as part of a long process of ideological adaptation.”<sup>47</sup> For Brinkley, the New Deal set the bar for liberals like Lyndon B. Johnson and Clinton later in the twentieth century.

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<sup>46</sup> Ibid., 379.

<sup>47</sup> Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York: Alfred A. Knopf, 1995), 268.

Likewise, Alonzo L. Hamby's ideological study recognized the New Deal's overall failure to mend the national economy.<sup>48</sup> "Although he failed to achieve many of his most important immediate objectives, although he was notoriously eclectic and nonsystematic in his approach to the enormous problems of his era, FDR was the founder of a distinctly new tradition which was to preempt the mainstream of American politics after his death."<sup>49</sup> Theodore Roosevelt and Woodrow Wilson's progressivism influenced this new tradition and its dedication to securing individual liberty through federal intervention. Hamby reasoned that this tradition continued into the twentieth century until President Ronald Reagan warned, "Government is not the solution to our problem. Government is the problem." In this sense, Reagan was the "Roosevelt of the right."<sup>50</sup>

Recently scholarship began to place the New Deal and its key participants in an international context. In his award-winning work, Ira Katznelson extended his parameters past the traditionally viewed New Deal end date of 1943 to the end of the Truman administration in 1950. Similar to Kennedy's emphasis on security, Katznelson emphasized the role of fear in New Deal politics. Nothing guaranteed that the United States would recover after the Great Depression. This crisis made Americans uncertain about their futures; some even questioned whether the liberal democracy enshrined in the Constitution could recover without drastic measures. This unpredictability correlated with the rise of fascism and dictatorship abroad. In context, Roosevelt's drastic increase of federal power resembled those taken in 1930s Germany

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<sup>48</sup> Alonzo L. Hamby, *Liberalism and Its Challengers: From F.D.R. to Bush* (New York: Oxford University Press, 1992), 12- 51.

<sup>49</sup> *Ibid.*, 13.

<sup>50</sup> *Ibid.*, 361.

and Italy.<sup>51</sup> Likewise, David Roll's *The Hopkins Touch* (2013) examined the role Works Progress Administrator Harry Hopkins played domestically as both a works relief administrator and internationally as a diplomat.<sup>52</sup>

Interestingly, the late-twentieth century and early twenty-first century ushered in a new body of New Deal literature geared towards general audiences. In biographies, Jean Edward Smith's *FDR* (2005) and Kenneth S. Davis' multi-volume series exemplified this trend. Appealing to a larger, less educated audience, these texts provided only cursory accounts of the New Deal period; some even bordered on hagiography, ignoring Roosevelt's extramarital affair and attributing the entire success of the New Deal to the president.<sup>53</sup>

In summary, the historical context in which authors wrote about the New Deal shaped how they wrote about it. The individuals who served in the Roosevelt administration wrote favorable accounts of the agenda they helped devise and implement. Consensus historians examined unity as the driving force behind the New Deal. Those in the 1960s New Left historians criticized the New Deal for failing to attain the achievements contemporary social movements sought to bring about. Finally, late-twentieth century historians approached the New Deal from bottom-up and international perspectives.

## **B. The Constitutional and Legal History of the New Deal**

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<sup>51</sup> Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (New York: Liveright Publishing Corporation, 2013).

<sup>52</sup> David Roll, *The Hopkins Touch: Harry Hopkins and the Forging of the Alliance to Defeat Hitler* (New York: Oxford University Press, 2013).

<sup>53</sup> Jean Edward Smith, *FDR* (New York: Random House, 2007); Kenneth S. Davis, *FDR: The Beckoning of Destiny, 1882-1928* (New York: Random House, 1972); Kenneth S. Davis, *FDR: The New York Years, 1928-1933* (New York: Random House, 1985); Kenneth S. Davis, *FDR: The New Deal Years, 1933-1937* (New York: Random House, 1986); Kenneth S. Davis, *FDR: The War President, 1940-1943* (New York: Random House, 2000).

“Work in legal history has tended to focus too much on courts, and with unfortunate limitations even within that range,” lamented legal historian James Willard Hurst.<sup>54</sup> This description applied to New Deal history up to the twenty-first century. The New Deal’s limited legal history almost exclusively focused on Supreme Court litigation invalidating key statutes and the subsequent constitutional crisis that ensued after President Franklin D. Roosevelt introduced his court-packing bill in 1937. This thesis seeks to extend the scope of New Deal legal history past the Court to include a legislative act passed in direct response to the bureaucratic growth of the early 1930s.

Within New Deal constitutional and legal historiography, numerous texts cover the “constitutional revolution” that occurred during the Roosevelt administration. William E. Leuchtenburg’s *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt* (1996) provided the traditional narrative for the “constitutional revolution.”<sup>55</sup> Once President Roosevelt had implemented New Deal policies geared towards recovering and reforming the national economy, the Supreme Court reviewed this legislation. From 1935 to 1937, the Court invalidated key pieces of the New Deal. Through *Panama Refining Co. v. Ryan* (1935) and *A.L.A. Schechter Poultry Corp. v. United States* (1935), the Court overturned the National Recovery Administration as an unconstitutional delegation of legislative power.<sup>56</sup> In *United States v. Butler* (1936) the Court invalidated the Agricultural Adjustment

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<sup>54</sup> James Willard Hurst, “Legal Elements in United States History,” in *Law in American History*, ed. Donald Fleming and Bernard Bailyn (Boston, Massachusetts: Little, Brown and Company, 1971), 5.

<sup>55</sup> William E. Leuchtenburg, *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt* (New York: Oxford University Press, 1995).

<sup>56</sup> *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935).

Administration's processing tax for violating the Tenth Amendment.<sup>57</sup> Roosevelt claimed the Court subjected the nation to a "horse and buggy" interpretation of interstate commerce that hampered federal involvement. Using his electoral mandate after the Democratic Party's sweep in the 1936 elections, Roosevelt introduced a bill to increase the number of justices on the Supreme Court. This opportunity would allow him to "pack" the Court with justices predisposed to rule in favor of his policies.

Even though Congress rejected the "court-packing" bill, the intended effect still occurred. Beginning in 1937, the Court's rulings on New Deal legislation ruled in the administration's favor. *West Coast Hotel Co. v. Parrish* (1937) first signified the Court's new jurisprudence.<sup>58</sup> In *Parrish*, the Court overturned precedents set in *Adkins v. Children's Hospital* (1923) and *Morehead v. New York ex rel. Tipaldo* (1936) by upholding minimum wage legislation in Washington.<sup>59</sup> In *Helvering v. Davis* (1937) and *Steward Machine Co. v. Davis* (1937), the Court sustained the Social Security Act of 1935.<sup>60</sup> Finally, *National Labor Relations Board v. Jones & Laughlin Steel Corporation* (1937) upheld the National Labor Relations Act of 1935 and solidified labor's right to collectively organize.<sup>61</sup> After 1937, the Court ruled in favor of every New Deal policy.

Leuchtenburg attributed this revolutionary transformation to either the "court-packing" bill's constitutional implications—meaning an infringement on the Constitution's separation-of-powers system—or Roosevelt's mandate in the 1936 election. Specifically, this conventional

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<sup>57</sup> *United States v. Butler*, 297 U.S. 1 (1936).

<sup>58</sup> *West Coast Hotel Company v. Elsie Parrish, et ux.*, 300 U.S. 379 (1937).

<sup>59</sup> *Adkins v. Children's Hospital*, 261 U.S. 525 (1923) and *Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587 (1936).

<sup>60</sup> *Helvering v. Davis*, 301 U.S. 619 (1937); *Steward Machine Company v. Davis*, 301 U.S. 548 (1937).

<sup>61</sup> *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U.S. 1 (1937).

narrative looked at the voting behaviors of Justice Owen J. Roberts and Chief Justice Charles Evan Hughes. Once Roosevelt introduced the bill, these moderate justices had no choice but to rule with the liberal bloc of the Court in order to sustain institutional integrity.<sup>62</sup> The fear that Roosevelt's bill jeopardized the Court's independence drove them to carry out this swift response; this quick break from precedent led historians like Leuchtenburg to label the transformation a "revolution."

Other scholars questioned this theory. In his study of antebellum American law, Morton J. Horwitz wrote, "Constitutional law in America represents episodic legal intervention buttressed by rhetorical tradition that is often an unreliable guide to the slower (and often more unconscious) process of legal change in America."<sup>63</sup> His assessment proved equally applicable to constitutional changes in the New Deal era. In recent years, legal historians revisited the "constitutional revolution" and the conventional narrative that Roosevelt's "court-packing" plan ushered in this transformation. Two histories, Barry Cushman's *Rethinking the New Deal Court: The Structure of a Constitutional Revolution* (1999) and G. Edward White's *The Constitution and the New Deal* (2000), gave the revolution a more realistic approach.<sup>64</sup>

First, Cushman's *Rethinking the New Deal Court* began with a rejection of the conventional narrative. Using primary sources, he deduced that the "court-packing" bill could

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<sup>62</sup> These ideological labels were used loosely in the scholarship. The Court's liberal bloc, also called "The Three Musketeers," included Justices Benjamin Cardozo, Harlan Fiske Stone, and Louis Brandeis. Conversely, the conservative bloc, called "The Four Horsemen," included Justices James Clark McReynolds, Pierce Butler, George Sutherland, and Willis Van Devanter. These two alignments made Roberts and Hughes' votes crucial to sustaining or defeating New Deal legislation.

<sup>63</sup> Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, Massachusetts: Harvard University Press, 1977), xii.

<sup>64</sup> Barry Cushman, *Rethinking the New Deal Court: The Structure of a Constitutional Revolution* (Oxford: Oxford University Press, 1999); G. Edward White, *The Constitution and the New Deal* (Cambridge, Massachusetts: Harvard University Press, 2000).

not have caused the “constitutional revolution.” In reality, the Court decided *Parrish*, arguably the seminal case in the “constitutional revolution,” at the end of their 1936 session; they delayed the case to the following year because Justice Harlan Fiske Stone was ill. Additionally, this author argued that it was unlikely that Roosevelt’s 1936 mandate pressured the Court to change because he had already possessed this authority after the 1934 congressional elections.

Cushman’s analysis continued by establishing a different hypothesis for the “constitutional revolution.” For Cushman, the jurisprudential transformation belonged in the larger conversation about government regulation and interstate commerce. In his argument, the 1934 case *Nebbia v. New York* represented a shift in constitutional jurisprudence that predated the “court-packing” bill.<sup>65</sup> In *Nebbia*, the Court abandoned the “public-private” distinction it had long employed to determine regulatory commerce clause cases. From here, the Court rejected the NRA and AAA because they were poorly-written. After 1937, when the Court upheld New Deal legislation, they did so because it better fit constitutional precedent. Therefore, the justices were not responding to the “court-packing” bill, they were deciding cases based on what best fit precedent. Likewise, the Court did not fully transform until Roosevelt nominated his own appointees. This “Roosevelt Court” further extended commerce clause case law in *United States v. Darby* (1941), which allowed Congress to outlaw child labor, and *Wickard v. Filburn* (1942), which allowed Congress to regulate commerce even when it lay outside interstate commerce.<sup>66</sup>

Comparatively, White’s *The Constitution and the New Deal* expanded Cushman’s scope and compared this supposed constitutional revolution to larger shifts in legal history. Assessing developments in foreign relations, civil liberties, and administrative law, White argued that the constitutional and legal changes that occurred under the New Deal belonged to a larger part of

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<sup>65</sup> *Nebbia v. People of State of New York*, 291 U.S. 502 (1934).

<sup>66</sup> *United States v. Darby*, 312 U.S. 100 (1941); *Wickard v. Filburn*, 317 U.S. 111 (1942).

jurisprudential shifts. His study argued, “The crisis was underway by the early 1920s and not fully resolved until after the Second World War, so neither its surfacing nor its resolution can be attributed solely to developments in the New Deal period.”<sup>67</sup> His overarching thesis was that future historians should “cabin” the New Deal in its own time because these constitutional and legal changes did not begin or end with the New Deal.

Appeasing Hurst’s qualm that legal history too often examines Supreme Court cases and justices only, Peter Irons’ *The New Deal Lawyers* (1982) investigated the lawyers who staffed the New Deal agencies and defended these policies in the courtroom.<sup>68</sup> Narrowing his research down to three agencies, the National Recovery Administration, the Agricultural Adjustment Agency, and the National Labor Relations Board, Irons identified three distinct litigation strategies that shaped how these programs fared before the Supreme Court. Executive branch conflict, poorly-trained lawyers, and clashing political interests hindered the NRA’s “Legal Politicians.” These setbacks prevented them from finding a workable litigation strategy, and eventually caused them to select a weak test case to take to the Court. Lofty goals limited the AAA’s “Legal Reformers.” Jerome Frank and his counsel desired to use their position to assist poor tenant farmers and sharecroppers in the South. Their ambition led to their defeat as they overextended their roles and failed to select a test case that matched administration’s interests. Irons praised the “Legal Craftsmen” of the National Labor Relations Board (NLRB). As the name implied, these lawyers, trained in Ivy League schools, meticulously drafted and implemented the Wagner Act. To verify the act’s constitutionality in Court, they finely selected five test cases that supported their argument. These combined efforts led the Court to uphold all aspects of the NLRB. Conclusively, Irons argued that the conflicts in the NRA and AAA

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<sup>67</sup> White, *The Constitution and the New Deal*, 310.

<sup>68</sup> Peter Irons, *The New Deal Lawyers* (Princeton, New Jersey: Princeton University Press, 1982).

resulted in poorly-written law. Focusing less on the constitutional “revolution” explanation, Irons attributed the Court’s switch to this “poor craftsmen” theory.”

Whether or not the “constitutional revolution” occurred because of the “court-packing” bill or a shift in legal jurisprudence, these accounts share similar features. Even when legal historians like Irons departed from the orthodoxy of court histories, their analysis still focused on the “constitutional revolution” of 1937. Though Irons examined a legal actor other than judges, his works still remained in the courtroom. With this literature in mind, this thesis seeks to examine a federal law, the Hatch Act of 1939, that resulted because of the New Deal’s expansive administrative growth.

### **C. Hatch Act Historiography**

In his biographical sketch of New Mexico Senator Carl Hatch (D), historian David Porter stated, “Surprisingly, historians have not devoted entire works or many chapters to the original Hatch Act.”<sup>69</sup> When New Deal historians wrote about the Hatch Act, usually, they only granted it a few lines when discussing possible political interference in the 1938 midterm elections. This thesis seeks to amend this problem by connecting the Hatch Act with constitutional context of the New Deal era.

The bulk of literature pertaining to the Hatch Act of 1939 comes from law reviews. Generally, these pieces are similarly structured in that they begin with a brief history of the act’s passage and then discuss its constitutionality.<sup>70</sup> Much of Hatch Act scholarship arose during the

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<sup>69</sup> David Porter, “Senator Carl Hatch and the Hatch Act of 1939,” *New Mexico Historical Review* 48 (1973), 151.

<sup>70</sup> Philip L. Martin, “The Constitutionality of the Hatch Act: Second Class Citizenship for Public Employees,” *University of Toledo Law Review* 6 (1974): 78-109; Robert G. Vaughn, “Restrictions on the Political Activities of Public Employees: The Hatch Act and Beyond,” *George Washington Law Review* 44 (1976): 516-553.

1970s either before or after the Court debated the constitutionality of the act in 1973.<sup>71</sup> Bearing this point in mind, these authors ended their arguments by making a policy recommendation in regard to the Hatch Act (usually calling for the Court to overturn the law). While these pieces did provide different viewpoints on the act, most lacked any relevance to historical scholarship.

Along these same lines, Delmer Gibson Rhodes' M.A. thesis chronicled the Hatch Act's constitutional history from its inception to the 1970s.<sup>72</sup> This author detailed the provisions within the law and chronicled the federal cases that tested this law's constitutionality. This thesis suffered from the same criticism as the relevant law reviews in that it also provided a personal evaluation of the law, avoiding an objective assessment. While this text would be useful in determining the constitutionality of the law, for historical study, it provided little. However, this literature was the only text to trace the Hatch Act's litigation history, making it a useful resource in this field.

The only monograph covering the Hatch Act of 1939 was James R. Eccles' *The Hatch Act and the American Bureaucracy* (1981).<sup>73</sup> First, like the other literature on this subject, this author imposed his opinion about the law throughout the book, suggesting it infringed upon governmental employees' freedom of speech. Second, the author failed to use many secondary sources in his analysis, disconnecting this text from the existing historical literature on the New Deal and the period's legal changes.

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<sup>71</sup> The Supreme Court sustained the Hatch Act of 1939 in *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973). Three decades earlier, the Court had already upheld the Hatch Act in *United Public Workers v. Mitchell*, 330 U.S. 75 (1947).

<sup>72</sup> Delmer Gibson Rhodes, "The Hatch Act" A Historical and Constitutional Analysis," (M.A. Thesis, Virginia Polytechnic Institute and State University, 1973): 1-72.

<sup>73</sup> James R. Eccles, *The Hatch Act and the American Bureaucracy* (New York: Vantage Press, 1981).

Nevertheless, this work's highlight was its implementation of primary sources. From congressional floor debates to the committee hearings, Eccles research provided future investigators with a wealth of resources to expand upon the Hatch Act.

The most well-developed writing on the Hatch Act came from Jason Scott Smith's *Building New Deal Liberalism: The Political Economy of Public Works, 1933-1956* (2006).<sup>74</sup> Using the 1938 Democratic primary in Kentucky to investigate political corruption under New Deal public works agencies, Smith connected this election and others like it to the passage of the Hatch Act of 1939. Where *Building New Deal Liberalism* fell short—and where this thesis will build upon—was the constitutional importance of the Hatch Act. For Smith, the Hatch Act served merely as a retaliation against corruption in public works projects; he did not extend this hypothesis to the entire New Deal expansion. Yet Smith's work surpassed other Hatch Act literature in that it refrained from making a personal evaluation of the act.

### III. The WPA

Throughout the Great Depression, one of the greatest challenges for government officials was lowering the unemployment rate and returning Americans to the workplace. When Roosevelt assumed the presidency in 1933, government data estimated the unemployment rate at approximately 33% of the total work force in the United States.<sup>75</sup> Aside from sedating the domestic economy, gross unemployment demoralized the national temperament and caused some to question democracy and liberal capitalism's sustainability.<sup>76</sup>

To rectify this joblessness, Roosevelt created work relief programs to put Americans back to work. Initial agencies like the Civilian Conservation Corps and the Public Works

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<sup>74</sup> Jason Scott Smith, *Building New Deal Liberalism: The Political Economy of Public Works, 1933-1956* (Cambridge, Massachusetts: Cambridge University Press, 2006).

<sup>75</sup> Kennedy, *Freedom From Fear*, 163.

<sup>76</sup> Ira Katznelson, *Fear Itself*

Administration were unable to tackle large-scale unemployment and large-scale construction projects. On April 8, 1935, Congress appropriated nearly \$5 billion to fund work relief projects with the Emergency Relief Appropriation Act. Injecting new money into previous work relief programs like the PWA, it also supplied the financial support to create a larger national work relief program. One month later, on May 6, Roosevelt signed the WPA into creation.<sup>77</sup>

Overtime, the WPA became the largest federal work relief program implemented to tackle national unemployment. Its hierarchy created an organized system for the federal government to approve work projects. The program divided every state into multiple districts with its own WPA office (Kentucky, for example, had six districts). Each state had its own administrator who oversaw office operations. Above these officials, regional directors communicated with the top-level officials in the WPA. At the top, the chief executive directed the entire policy for the agency; the most notable head of the WPA was Harry Hopkins. When a city or state saw the need for a new construction project, the request worked its way through this hierarchy and bureaucracy until the federal administration approved. Moreover, because it had appropriated the funds for the entire agency, Congress generated a list of acceptable options.<sup>78</sup>

However, from its inception, the WPA attracted unwanted political attention. Pulitzer-Prize winning historian David M. Kennedy commented, “The WPA was from the outset a magnet for controversy. It was a federal program, but one that recognized the timeworn principle that ‘all politics is local.’ Roosevelt used it to build up those local bosses who would,

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<sup>77</sup> Leuchtenburg, *Franklin D. Roosevelt and the New Deal*, 125; Nick Taylor, *American-Made: The Enduring Legacy of the WPA: When FDR Put the Nation to Work* (New York: Bantam Books, 2008), 172.

<sup>78</sup> Donald S. Howard, *The WPA and Federal Relief Policy* (New York: Russell Sage Foundation, 1943), 108-110 and 124.

in turn, support his national programs.”<sup>79</sup> As early as 1935, opponents of the New Deal in Kentucky charged the WPA with political activities during election season. During the state’s gubernatorial election, Republicans working for party nominee King Swope charged the WPA with political involvement. Hoping to discredit Roosevelt and the New Deal, they alleged that the national arm of the WPA funneled forty-two million dollars into Kentucky to buy 72,000 votes for the Democratic candidate, A.B. “Happy” Chandler.<sup>80</sup>

At its peak in September 1938, the Kentucky WPA employed seventy-two thousand Kentuckians. Specific projects included an administrative office for Louisville’s Bowman Field airport, a new city hall in Pineville, and an improved school for Morgan County. Across the state, the WPA created “sewing rooms” for local women to make clothes for needy families. The agency created and staffed recreation centers in nearly every county in the state. When the Ohio River flooded in 1937, WPA workers helped repair the damages in downtown Louisville.<sup>81</sup> Famously, the WPA hired Kentucky women to traverse rural regions in Eastern Kentucky and lend books in a “packhorse library.”<sup>82</sup>

Throughout the 1930s, the WPA had combated unemployment in Kentucky and across the nation, mitigating the effects of the Great Depression. When Roosevelt ended the program in 1943, the Kentucky headquarters in downtown Louisville had processed over \$162 million spread out over thousands of projects.<sup>83</sup> Nationally, over its eight years, it employed 8.5 million

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<sup>79</sup> Kennedy, *Freedom From Fear*, 253.

<sup>80</sup> Robert J. Leupold, “The Kentucky WPA: Relief and Politics, May-November 1935,” *Filson Club Historical Quarterly* 49 (1975), 152.

<sup>81</sup> George T. Blakey, *Hard Times & New Deal in Kentucky* (Lexington, Kentucky: University Press of Kentucky, 1986), 59-77.

<sup>82</sup> Donald C. Boyd, “The Book Women of Kentucky: The WPA Pack Horse Library Project, 1936-1943,” *Libraries & the Cultural Record* 42 (2007): 111-128.

<sup>83</sup> Blakey, *Hard Times and the New Deal in Kentucky*, 59.

people for \$11 billion.<sup>84</sup> If any agency symbolized the New Deal's unprecedented governmental expansion, it was the WPA.

#### IV. The 1938 Kentucky Democratic Primary Scandal

In hindsight, 1938 marked a transitional period for both the world and the United States. In January, the Sino-Japanese conflict witnessed one of its bloodiest incidents with the Nanking Massacre under Emperor Hirohito. On March 12, Adolf Hitler's Germany annexed neighboring Austria in the *Anschluss*. Elsewhere, the Italian fascists under Benito Mussolini continued to wage war in Ethiopia. Across the globe, totalitarian states expanded their boundaries and asserted international dominance. Nearly a year later, this aggression led to the start of World War II when Germany invaded Poland on September 1, 1939.

In the United States, by 1938, support for the New Deal among the public and in Congress waned. Two political issues the previous year compromised President Roosevelt's governing coalition. First, a brief economic recession threatened to plunge the country back into the depression. As unemployment decreased and GDP increased in early 1937, Roosevelt sought to balance the budget by reducing federal expenditures. In turn, an economic relapse—dubbed the “Roosevelt recession”—occurred in the fall and winter.<sup>85</sup> Second, President Roosevelt's “court-packing” bill decreased presidential popularity. After the Supreme Court invalidated the National Industrial Recovery Act of 1933 and the Agricultural Adjustment Act of 1933, Roosevelt feared the conservative justices on the Court restricted the nation to a “horse-and-buggy” definition of the commerce clause. Using the electoral mandate he achieved in the 1936 election, Roosevelt revealed a judiciary bill allowing the president to appoint six new justices to

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<sup>84</sup> Kennedy, *Freedom From Fear*, 253.

<sup>85</sup> Julian E. Zelizer, “The Forgotten Legacy of the New Deal: Fiscal Conservatism and the Roosevelt Administration, 1933-1938,” *Presidential Studies Quarterly* 30 (Jun. 2000): 349-351.

the Supreme Court (using their old age as justification). The American public and congressional members from both parties recognized this bill as a response to previous anti-New Deal decisions and a potential risk to the constitutional system of checks and balances.<sup>86</sup>

It was in this historical context, with an executive branch in control of an expanded relief system that was declining in popularity, that the 1938 Kentucky Democratic Primary occurred. Two factors attracted national attention to this party primary race. First, the candidates were two key figures in Kentucky state politics. The 1938 Democratic primary pitted Senate Majority Leader Alben W. Barkley against Govern A.B. “Happy” Chandler. Second, the claims of political corruption heightened anti-government sentiment. Both sides hurled accusations that the other utilized government workers and funds to sway the elections. This essay recounts both politicians’ backstories and then delves into the rumors of political corruption.

Born in Graves County, Kentucky, Alben William Barkley became the Kentucky Senator most closely associated with the New Deal and the Roosevelt administration. Spanning nearly five decades, his political career ranges from local offices to the vice-presidency. After completing his legal education at the University of Virginia, Barkley’s first venture into local Kentucky politics occurred when he ran to become McCracken County’s county attorney in 1904. Winning this election, he went on to become the county judge in 1909. Three years later, in 1912, he first entered Congress as the Representative for Kentucky’s First District. There, he became a proponent of President Woodrow Wilson’s New Freedom, advocating for increased restrictions on monopolies and government regulation of the market. Gaining popularity in the House, he became a candidate in Kentucky’s 1923 gubernatorial Democratic primary. Losing

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<sup>86</sup> Alan Brinkley, “The New Deal and the Idea of the State,” in Steve Fraser and Gary Gerstle, ed., *The Rise and Fall of the New Deal Order, 1930-1980* (Princeton, New Jersey: Princeton): 85-121.

the nomination to James Campbell Cantrill, he increased his standing in the party by backing this ticket in the general election. Retaining his seat in the House, Barkley transitioned to the Senate in 1926. As a harsh critic of President Herbert Hoover's approach to the economic depression, Barkley used his popularity to campaign for Roosevelt during his presidential campaign in 1932. Roosevelt awarded this association by endorsing Barkley for Senate Majority Leader 1936 when the incumbent, Joseph Robinson, passed away. Across all of these positions, Barkley employed the oratory skills he had developed as a schoolchild to enunciate on his ideological positions.<sup>87</sup>

Barkley's rival, Albert Benjamin "Happy" Chandler, also possessed an extensive record in Kentucky state politics before and after the 1938 primary. A Henderson County native, his peers at Transylvania University gave him his nickname, "Happy," for his outgoing and energetic personality.<sup>88</sup> Beginning in the Lexington political scene, he became a state senator from Woodford County in 1929. By the age of thirty-seven, he had served as a state senator, lieutenant governor, and governor; later, he went on to serve as a United States senator, a second term as governor, and baseball commissioner. In 1935, Chandler defeated Thomas Rhea in the Democratic gubernatorial primary. In the subsequent general election, Chandler partook in the national Democratic sweep as he trounced Republican candidate King Swope. During his tenure, he replaced the two-primary system with a single primary system, abolished the sales tax implemented by former Governor Ruby Laffoon, and increased liquor and cigarette taxes.<sup>89</sup>

For these two Kentucky political giants, the 1938 Democratic primary became the race of a lifetime. Recounting his political career in his autobiography, Barkley described the 1938

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<sup>87</sup> James K. Libbey, *Dear Alben: Mr. Barkley of Kentucky* (Lexington, Kentucky: University Press of Kentucky, 1979), 1-64.

<sup>88</sup> John Ed Pearce, *Divide and Dissent: Kentucky Politics, 1930-1963* (Lexington, Kentucky: University Press of Kentucky, 1987), 32.

<sup>89</sup> Lowell H. Harrison, James C. Klotter, *A New History of Kentucky* (Lexington, Kentucky: University Press of Kentucky, 1997), 367-369.

primary as “the only year in which I had serious opposition for renomination.”<sup>90</sup> Similarly, in an interview later in his life, Chandler relayed his perception of the primary. He envisioned his 1938 campaign as a battle against Barkley, Roosevelt, and the federal treasury. Chandler described his relationship with Roosevelt, “I never got along well with Roosevelt. He did some good things, but he did some bad things too.”<sup>91</sup>

Given Chandler’s quick ascension in Kentucky politics, Barkley feared Chandler would challenge him in his 1938 reelection. Chandler confirmed these suspicions on January 22, 1938, when he refused to attend a testimonial dinner celebrating Barkley’s promotion to Senate Majority Leader. Moreover, Chandler held his own function on the same date, inviting government officials from across the state.<sup>92</sup> He announced his Senate bid on February 23 in Newport, Kentucky. Touting his own state record, he offered himself as a “man of action to replace a man of words.” In his speech, he played upon Barkley’s connection to Roosevelt and claimed the Senator had given Kentucky the “absent treatment.” Urging Kentuckians to stand by him one more time, Chandler was “absolutely certain of victory.”<sup>93</sup>

The corruption scandal began in the summer in late May 1938. On May 27, Brady Stewart, Chandler’s campaign manager, published a letter claiming that “every federal relief agency in Kentucky is frankly and brazenly operating on a political basis.” George Goodman, Kentucky WPA director, rebuked these accusations in the *Courier Journal*. One particular rumor alleged that the WPA distributed groceries and commodities to needy Kentuckians in

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<sup>90</sup> Alben W. Barkley, *That Reminds Me*— (Garden City, New York: Doubleday & Company, Inc., 1954),

<sup>91</sup> Harry M. Caudill and Dale Deaton, “Interview with A.B. “Happy” Chandler, November 6, 1978,” *Louie B. Nunn Center for Oral History- University of Kentucky Libraries*, November 6, 1978, <https://kentuckyoralhistory.org/catalog/xt74mw28cm6c>.

<sup>92</sup> Libbey, *Dear Alben*, 77.

<sup>93</sup> “Chandler In Race for Senate Against Barkley, Terms Foe Stranger and ‘Man of Words,’ *Courier Journal*, February 23, 1938, 1.

paper bags inscribed “donated by a friend of Senator Alben W. Barkley.” The campaign defended that these items came from an unnamed benefactor outside the administration.<sup>94</sup> On June 29, Hopkins released the results of an internal WPA investigation in Kentucky. Finding twenty-two alleged instances of political activities in the state, Hopkins rebutted all but two. But after the election, Ernest Rowe, the former WPA supervisor for the Lexington district, leaked correspondence purporting that George Goodman pressured Kentucky agency officials to contribute funds to Barkley’s campaign.<sup>95</sup> Goodman provided no comment on these allegations.<sup>96</sup>

Chandler employed similar tactics using state government employees. With the help of campaign official Dan Talbott, Chandler’s patronage rested primarily on the state highway program. During the primary, he increased hirings to gain more votes. The agency also dispatched letters promising “to build roads where they are appreciated and where we can accommodate those who are loyal, tried, and true.” Similarly, the Chandler campaign used state workers to deliver old age pension checks to elderly Kentuckians, in some cases refusing to grant the check if they refused to vote for the governor.<sup>97</sup>

On July 8, 1938, in the midst of campaigning, Roosevelt traveled to Kentucky. At his first stop in Covington, the president rebutted the claims against federal corruption by recounting the New Deal’s numerous successes.<sup>98</sup> Citing new federal expenditures, matched traditional

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<sup>94</sup> “Barkley Bag Origin Explained,” *Courier Journal*, July 10, 1938, page 1.

<sup>95</sup> “Porter urges W.P.A Head to Oust Goodman,” *Courier Journal*, May 30, 1939, page 9.

<sup>96</sup> “The Commonwealth in Review,” *Courier Journal*, June 18, 1939, page 36.

<sup>97</sup> Walter L. Hixson, “The 1938 Senate Election: Alben W. Barkley, “Happy” Chandler, and the New Deal,” *The Register of the Kentucky Historical Society* 80 (Summer 1982), 316-319.

<sup>98</sup> Franklin D. Roosevelt, “The President Recounts Some of the Accomplishments of the New Deal to Date and Urges Continuance of the Same Policies. Address at Covington, Kentucky. July 8, 1938,” Samuel I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt*

funds for state projects, avoiding mass liquidation through the Home Owners Loan Corporation and the Farm Credit Administration, and federal assistance against flood damages, he argued that New Deal policies had a direct, positive impact on Kentuckians. Roosevelt alleged, “If the Federal Government, your government, had not done at least some of these things, the state governments would probably not have done them at all out of their own resources, because they could not.”<sup>99</sup> After this claim, he then proceeded to discuss the upcoming state primary. “I read in the papers that you are having a primary campaign in Kentucky,” he noted, “Both candidates I know. Both are men of ability. Both are representative Kentuckians. I want to make it definite and clear to you that I am not interfering in any shape, manner or form in the primary campaign in Kentucky. I do not live here—you do.” Minutes later, he contradicted this position by attesting to Barkley’s experience. “I have no doubt whatsoever that Governor Chandler would make a good Senator from Kentucky—but I think that my friend, the Governor, would be the first to acknowledge . . . it would take many years to match the national knowledge, the experience, and acknowledged leadership in the affairs of the Nation of that son of Kentucky, of whom the whole nation is proud, Alben Barkley.”<sup>100</sup> During this part, Chandler, according to Barkley, smiled, waved, and called out to the crowd to distract them from Roosevelt’s endorsement.<sup>101</sup>

In conclusion, he dismissed the claims that state and federal government officials utilized their positions and resources to persuade voters. He stated:

You have heard charges and the country has heard charges of the use of political influence exerted on primary voters. Charges have been bandied back and forth that

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(New York: The Macmillan Company, 1941), *1938 Volume: The Continuing Struggle for Liberalism*: 432.

<sup>99</sup> *Ibid.*, 437.

<sup>100</sup> *Ibid.*, 438.

<sup>101</sup> Barkley, *That Reminds Me—*, 165.

employees of the Federal Government and workers on relief are being directed how to vote. And we have all heard charges that state employees, people the state payroll and their friends are being directed how to vote. Let me assure you that it is contrary to direct and forceful orders from Washington, for any Federal Government employee to tell those under them how to vote and I trust that the same rule applies to those who work for or under the State of Kentucky.

Personally, I am not greatly disturbed by these stories because I have an old-fashioned idea, an old-fashioned faith, that the voters of Kentucky, no matter whom they employ or by whom they are employed, are going to voter their own personal convictions on Primary Day. That is as it should be.

However, later that same day, Roosevelt adopted a much more direct stance for whom Kentucky voters should cast their ballots. In Louisville, the president praised the city's resilience in recovering from flooding along the Ohio River the previous year, saying, "I want to congratulate you and also the citizens of other communities who suffered so greatly from that flood on the firm courage and the fine spirit with which you met that disaster."<sup>102</sup> To further ameliorate this damage, he pledged future federal assistance from executive agencies like the WPA, Public Health Service, and Army Engineers. Aside from this promise, Roosevelt concluded these remarks with an appeal to his favored candidate. He continued, "In this work of planning and coordinating work on a vast scale, I want to acknowledge the splendid assistance I have received from the senior Senator from Kentucky," he praised, "This is a national problem. We need people of national experience with a national point of work to carry it out."<sup>103</sup>

Roosevelt's endorsement of Barkley belonged to a larger historical trend that occurred in Democratic primaries across the country. Seeking to purge the Democratic Party of conservative legislators hostile to the New Deal, the president endorsed and assisted candidates who sided with him ideologically. In South Carolina, he allowed Governor Olin Johnston to announce

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<sup>102</sup> Franklin D. Roosevelt, "Informal, Extemporaneous Remarks at Louisville, Kentucky. July 8, 1938," Samuel I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt* (New York: The Macmillan Company, 1941), *1938 Volume: The Continuing Struggle for Liberalism*: 439.

<sup>103</sup> *Ibid.*, 441-442.

against conservative incumbent Senator Ellison “Cotton Ed” Smith on the White House steps. At a public rally in Georgia, he challenged Senator Walter F. George by stating that—if possible—he would “most assuredly” cast his vote for pro-New Deal challenger Lawrence Camp. Likewise, he endorsed Maryland candidate Representative David J. Lewis against Senator Millard Tydings, claiming the incumbent had “betrayed the New Deal in the past and will again.”<sup>104</sup> This purge proved unsuccessful as all of the conservative Democratic incumbents defeated the challengers Roosevelt had endorsed.

Despite his insistence to campaign on behalf of political candidates, it is unknown if Roosevelt or members of his executive cabinet knew about these actions. Robert E. Sherwood, one of Roosevelt’s speechwriters, described Harry Hopkins response to the Kentucky controversy. “Just as post-office employees had been used time immemorial to beat the bushes in behalf of the ‘right’ candidates, so it was inevitable that local politicians all over the country would find ways and means of taking advantage of the vast WPA organizations,” Sherwood wrote, “Hopkins hated these activities, but he most certainly knew about them and made only occasional attempts to stop them, and to that extent he was culpable.”<sup>105</sup> In his autobiography, James A. Farley, Roosevelt’s 1932 campaign manager and later Chairman of the Democratic National Convention, also addressed these claims: “It seems to me that the administration of WPA and PWA has been remarkably free from the blight of partisanship and politics. It would be idle to deny that overzealous individuals in some communities have tried to obtain partisan advantage out of relief activities, but that is a far cry from endeavoring to prove that the entire

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<sup>104</sup> James T. Patterson, *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939* (Lexington, Kentucky: University Press of Kentucky, 1967), 279-281.

<sup>105</sup> Robert E. Sherwood, *Roosevelt and Hopkins: An Intimate History* (New York: Harper & Brothers, 1948), 98-99.

Federal set-up has been shot through with corruption and favoritism.” Moreover, he further defended Hopkins and the WPA by attesting that he has “never been identified with Democratic politics” and that agency’s social workers “by long training and environment are hostile to political control of any kind.”<sup>106</sup>

In the final count, Barkley defeated Chandler by over seventy thousand votes.<sup>107</sup> “Barkley’s victory stemmed from his popularity among three crucial voting blocs—farmers, laborers and city dwellers—rather than from political coercion,” argued historian Walter L. Hixson. His victory came from “the enduring popularity of the New Deal” and the “hundreds of grateful constituents” he had helped during his previous times in office.<sup>108</sup>

Months later in the general election, Barkley defeated Republican candidate John P. Haswell. Though the New Deal retained an ally with Barkley’s victory, it did not fare so well in other elections. In the House, Republican numbers nearly doubled from 89 members to 169. Furthermore, by historian James T. Patterson’s calculations, out of the 260 returning congressional Democrats, 30 outright opposed the New Deal and 50 more were unenthusiastic.<sup>109</sup> Examining this ideological purge in conjunction with growing anti-New Deal sentiment demonstrated that Roosevelt faced a legislative branch that disfavored the growing executive branch. This bloc of conservative Democrats and Republicans in Congress provided the support needed to pass the Hatch Act later.

Whether or not Barkley, Chandler, or Roosevelt utilized their governmental positions to influence the turnout of the election is unknown, though the evidence suggests both campaigns

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<sup>106</sup> James A. Farley, *Behind the Ballots*, 363-364.

<sup>107</sup> The final tally had Barkley and Chandler at 294,391 and 223,149 respectively, Harrison and Klotter, *A New History of Kentucky*, 370.

<sup>108</sup> Walter L. Hixson, “The 1938 Senate Election,” *The Register of the Kentucky Historical Society* 80 (Summer 1982), 327-328.

<sup>109</sup> Patterson, *Congressional Conservatism and the New Deal*, 290.

did.<sup>110</sup> Moreover, when Senator M. M. Logan passed away the following year, Chandler resigned the governorship and Keen Johnson, his successor, appointed him to the vacant Senate seat.<sup>111</sup> But the 1938 Senate election's impact and importance extended beyond its electoral outcomes. Pulitzer Prize-winning reporter Thomas L. Stokes recounted, "I travelled through the length and breadth of the state, talking to politicians on both sides, WPA directors, WPA workers, state officials and employees . . . I reported what I had found, which was that the WPA was in deep politics on behalf of Senator Barkley and that Chandler's state political leaders were using state employees in every possible way and levying upon their salaries."<sup>112</sup> For Stokes, "a much bigger and broader question was involved here than the mere election of a United States Senator."<sup>113</sup>

With Roosevelt's popularity in decline in 1938, the 1938 Kentucky Democratic primary was a referendum on the New Deal. The chance that Barkley, Roosevelt's close ally and Senate Majority Leader, could lose his seat drew national attention to the race. When Chandler accused his campaign of employing WPA resources to influence the election, the entire United States watched. Stokes' reporting reinforced these accusations and broadcasted Barkley and Chandler's pernicious political activities to the entire country. The corruption charges prompted Congress to launch a national investigation into executive interference into state elections. This inquiry culminated in the 1939 Hatch Act, a law that restricted federal executive employees'

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<sup>110</sup> On an individual level, this author believes it likely that both candidates knew—to some extent—of the political activity that occurred within their campaigns. Looking at political operations throughout the nineteenth century, horse-trading and buying favors were the norm. However, if this claim were true, it is probable that neither candidate would have openly acknowledged it, instead claiming plausible deniability.

<sup>111</sup> *Ibid.*, 370.

<sup>112</sup> Thomas L. Stokes, *Chip off my Shoulder* (Princeton, New Jersey: Princeton University Press, 1940), 535-539. In 1939, the year the Hatch Act passed, Stokes won the Pulitzer Prize for his investigation into this Kentucky scandal.

<sup>113</sup> *Ibid.*, 535.

involvement in political campaigns. Ultimately, this legislation served as the true constitutional and legal importance of the 1938 Kentucky Democratic primary.

#### V. The Sheppard Committee

On May 27, 1938, the Senate adopted Senate Resolution 283 which authorized the Special Committee to Investigate Senatorial Campaign Expenditures and Use of Governmental Funds. This resolution authorized the committee to investigate campaign expenditures for Senate candidates of both parties, the persons or corporations making the contributions, the method of the campaign expenditures, and all facts related to the promise or patronage of political funds. Later, on June 16, Senate Resolution 290 enlarged the committee's authority to investigate whether a federal or state appropriation had been used to influence votes in primaries or general elections. Vice President John Nance Garner appointed Senator Morris Sheppard (D-TX) to head the investigation, dubbing the body the "Sheppard Committee." Other members of the committee included Senator Joseph C. O'Mahoney (D-WY), Senator David I. Walsh (D-MA), Senator Pat Harrison (D-MS), and Senator Wallace H. White, Jr. (R-ME).<sup>114</sup>

At the first committee meeting, the members established a statement of intent. "The objective is simple and clear—the maintenance of the integrity of the elective processes, the preservation of democracy at its most vital point—the ballot box, the free exercise of the voting franchise, and to that end the prevention of any improper use of money and of any coercion or intimidation by any person, group, or agency, outside or inside the Government," they declared.<sup>115</sup>

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<sup>114</sup> 76<sup>th</sup> Congress, *Report of the Special Committee to Investigate Senatorial Campaign Expenditures and Use of Governmental Funds in 1938 Pursuant to Senate Resolution No. 283 Seventy-Fifth Congress and Senate Resolution No. 290 Seventy-Fifth Congress* (Washington, D.C.: United States Government Printing Office, 1939), 1-2.

<sup>115</sup> *Ibid.*, 3.

Over the course of its existence, the committee heard hundreds of complaints related to political activity resulting in 119 field investigations across the country. Out of these investigations, six were in Kentucky. The investigation inspected claims against both campaigns. Though they found neither candidate culpable for the involvement, they did discover that political corruption did occur during the primary. Addressing nearly twenty charges in Kentucky, the report read, “These activities, so far as solicitations were concerned, were carried on mainly by private parties, not connected with WPA, but in some instances by WPA officials.”<sup>116</sup> For Barkley, they charged, “The Committee has found nothing to show that Senator Barkley had any knowledge of any activity by persons soliciting contributions from Federal employees in his behalf, or of political activity within the ranks of WPA personnel in his interests. The Committee finds, therefore, no ground upon which to recommend any challenge to the right of Senator Barkley to the Senate seat to which he has been elected.”<sup>117</sup> Likewise, with Chandler, the committee found inappropriate behavior, but did not link these irregularities to the candidate himself. “The Committee also finds that State employees, whose salaries were derived in part from United States Treasury funds, were solicited for contributions in behalf of Candidate Chandler, and that this solicitation was done in such a manner as to amount to intimidation and coercion,” they alleged, “The evidence before the Committee fails to show that Governor Chandler had any knowledge of this activity.”<sup>118</sup>

Though the committee’s report exonerated both Barkley and Chandler personally, their campaigns were not spared. Comparing the Senate report to his own findings, Stokes noted,

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<sup>116</sup> *Ibid.*, 11.

<sup>117</sup> *Ibid.*, 18. The activity discussed in the report deals with the actions of Mr. Charles G. Tachau, who would collect contributions from WPA workers and turn them over to the Barkley campaign committee. This primarily occurred in Russell and Pulaski counties, located in the second WPA district in Kentucky.

<sup>118</sup> *Ibid.*, 18.

“The final report revealed a far more extensive political use of WPA than I had disclosed, including collection of several thousand dollars from WPA employees, and it showed that the Chandler forces had collected some \$70,000 from state-highway employees of federal and joint federal-state agencies.”<sup>119</sup> From the newspapers to Congress, the general sentiment held that foul play had tainted the 1938 Kentucky Democratic Primary.

Furthermore, the Sheppard Committee’s investigation revealed similar instances of political activity in other electoral contests across the country. In Pennsylvania, Democratic Senator Joseph Guffey utilized WPA resources to back candidates for the state’s senatorial and gubernatorial primaries. While the Sheppard Committee connected no corruption charges to Guffey, they discovered numerous cases where WPA workers solicited funds for these Democratic candidates.<sup>120</sup> Similarly, Tennessee political boss Edward H. Crump and Senator Kenneth McKellar also used WPA funds to buy votes, but the Sheppard Committee found no substantive proof of these accusations.<sup>121</sup>

Later in the committee’s report, the senators made a legislative recommendation to prevent future political corruption in elections. “The committee recommends legislation prohibiting contributions for any political purpose whatsoever by any person who is the beneficiary of Federal relief funds or who is engaged in the administration of relief laws of the Federal Government,” they prescribed, “The committee also recommends legislation prohibiting any person engaged in the administration of Federal relief laws from using his official authority

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<sup>119</sup> Stokes, *Chip off my Shoulder*, 537.

<sup>120</sup> Priscilla Ferguson Clement, “Works Progress Administration in Pennsylvania, 1935 to 1940,” *The Pennsylvania Magazine of History and Biography* 95 (April 1971), 253-256.

<sup>121</sup> James A. Burran, “The WPA in Nashville, 1935-1943,” *Tennessee Historical Quarterly* 30 (Fall 1975), 301-302.

or influence to coerce the political action of any person or body.”<sup>122</sup> The following year, the Hatch Act of 1939 fulfilled this suggestion.

#### VI. The Hatch Act’s Passage

On January 5, 1939, the same day Roosevelt delivered his annual budget message, he gave a separate message to Congress emphasizing the WPA’s specific financial needs. Stressing that foreign affairs and a recent hurricane in New England had increased demand for WPA projects, the president claimed that “the funds now available are barely sufficient to finance the Works Progress Administration through the month of January.”<sup>123</sup> Along with this appropriation request, Roosevelt recognized the growing fear that the administration used WPA funds for political manipulation. To address these concerns, Roosevelt urged Congress to “make this question the subject of study and hearings,” but Congress should not transfer WPA oversight and control to local governmental boards. “It is my belief that improper political practices can be eliminated only by the imposition of rigid statutory regulations and penalties by the Congress,” he proclaimed, “Such penalties should be imposed not only upon persons within the administrative organization of the Works Progress Administration, but also upon outsiders who in fact in many instances been the principal offenders in this regard.” He closed this message with a concession that any rules imposed on WPA workers should not deprive them of the “civil rights to which they are entitled in common with other citizens.”<sup>124</sup>

The Hatch Act was the legislative response crafted in response to the Sheppard Committee’s findings. The law derived its name from Senator Carl Hatch, a Democrat from New Mexico. Hatch’s home state had faced political corruption throughout the 1930s. In

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<sup>122</sup> 76<sup>th</sup> Congress, *Report of the Committee to Investigate Senatorial Campaign Expenditures*, 39.

<sup>123</sup> *Ibid.*, 57.

<sup>124</sup> *Ibid.*, 58.

October 1938, the month prior to the general elections, an Albuquerque investigation found that seventy-three WPA employees had engaged in political activities. In New Mexico, Governor Clyde Tingley and Senator Dennis Chavez (D-NM) maintained control of a political faction that dominated state politics.<sup>125</sup> Given this political machine, it was clear that Senator Hatch had his own incentives for proposing his namesake bill, but the Sheppard Committee's findings

On March 20, 1939, Senators Hatch, Sheppard, and Warren Austin (R-VT) introduced Senate bill 1871 to prevent pernicious political activities to the Senate's Committee on Privileges and Elections. In this committee, the bill received numerous amendments, specifically, removing sections that related to governed state officials and primary elections<sup>126</sup> Senator Tom Connally

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<sup>125</sup> David Porter, "Senator Carl Hatch and the Hatch Act of 1939," *New Mexico Historical Review* (April 1973), 151-161.

<sup>126</sup> *United States Congressional Record*, 76<sup>th</sup> Congress, 1<sup>st</sup> Session, 1939, vol. 84, part 4, p. 4191. The first amendment removed the original section 2, which read: "It shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten or coerce, any other person for the purpose for interfering with the right of such other person to vote, or to vote as he may choose, or of causing such other person to vote for or not vote for any candidate for the nomination of any party as its candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any primary or nominating convention held solely or in part for the purpose of selecting the candidate of such party for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives." The second amendment removed section 4, which read: "It shall be unlawful for any person employed in an administrative position by any State or political subdivision thereof, or by any department, agency, or instrumentality of any State or any political subdivision thereof, whose compensation or any part thereof is paid from moneys appropriated by the Congress or from any fund into which such moneys or any part thereof are placed, whether the payment of such compensation is made by the United States or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), or is made by the State or political subdivision thereof, or by the department, agency, or instrumentality of the State or the political subdivision thereof by which such person is employed, to use his official authority or influence for the purpose of interfering with, or affecting the results of, any primary, political convention, or election: *Provided* That nothing herein shall be deemed to affect the right of any person to vote as he may choose."

(D-TX) asked Hatch, “Is it not true that all the provisions relating to primary elections were eliminated?” Senator Hatch responded, “Unfortunately, in my opinion, that is true.”<sup>127</sup> On the Senate floor, the bill passed unanimously on April 13. Looking at the most controversial segment, the original section 9 (a) read:

It shall be unlawful for any person employed in any administrative or supervisory capacity by an agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any act of Congress, to use his official authority or influence for the purpose of interfering with an election or of affecting the results thereof. All such persons hold opinions on all political subjects, but they shall take no active part in political management or in political campaigns.

This definition was so broad that it effectively applied to both the president and vice-president. Though Hatch recognized this fault, the bill continued to the House of Representative’s Committee on the Judiciary on April 20.<sup>128</sup>

The bill remained in committee until late June. According to Hatch, the members of the Committee on the Judiciary applauded the bill’s sentiment, but feared section 9 was too broad. Therefore, Hatch proposed an amendment to the bill excluding “policy-making positions,” meaning the president and vice-president, from the restrictions.<sup>129</sup> He was so adamant on the importance of the bill that, if necessary, he would attach it as an amendment to the upcoming appropriation bill. On June 26, Hatch made a radio address to his home state discussing the bill. After citing previous Democratic Party platforms aimed at reforming the civil service, he stated:

We who have sponsored this bill do not hope to correct all the evils which have grown up over the years. We do hope to make some start toward bringing about these greatly needed reforms.

In doing so no thought has been given to the effect on any particular election or the ambitions or hopes of any individual, and certainly not of any party. If there are those who profess to see any political significance or maneuvering in the bill, let me say for the

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<sup>127</sup> *Ibid.*, 4191.

<sup>128</sup> *Ibid.*, 4614.

<sup>129</sup> *United States Congressional Record*, 76<sup>th</sup> Congress, 1<sup>st</sup> Session, 1939, vol. 84, part 7, p. 7708-7709.

authors of the bill, those persons are mistaken. No such maneuvering exists. My coauthors, the Senator from Texas [Mr. Sheppard], a man long and favorably known in public life, is a loyal Democrat, devoted to the principles of his party and an ardent supporter in all of its campaigns. The Senator from Vermont [Mr. Austin] is a Republican, an honorable gentleman and a patriotic statesman. The three of us have sought to avoid partisan consideration; we have tried to work for what we conceive to be the welfare of America and her people.

The founders of this Republic never dreamed that the spoils system would be fastened on the Government structure.<sup>130</sup>

When the bill left the House Committee on the Judiciary, they had removed the final sentence of the provision, which stipulated that federal executive employees could not involve themselves on political campaigns. Upon hearing this news, Senator Hatch warned, “The issue cannot be met by any claim of defective language, hiding behind so-called imperfections of language cannot excuse or justify the emasculation of the measure . . . Shall Federal employees be permitted to engage in political activities? Shall they continue to control and dominate conventions? This, Mr. President, is the issue. It is definitely drawn. If the objectives are to be killed, let them die honorably. Let not faith in the purposes of section 9 be betrayed by objection to form of language or structure of words.”<sup>131</sup>

Debate on the House floor began on July 20 with House Resolution 251, which committed the institution to debating the bill. Representative Claude Parsons (D-IL) attested, “Since this House is about to witness the demise of the political parties in this country, I think a quorum should be present at the embalming.”<sup>132</sup> He then asked that a quorum be present for the bill’s discussion. Once the Speaker confirmed quorum, Representative John J. Dempsey (D-NM) affirmed the Senate’s confusion with Section 9. He proposed an amendment to the bill, turning section 9 into its iteration. This clause stipulated:

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<sup>130</sup> *Ibid.*, 7937.

<sup>131</sup> *United States Congressional Record*, 76<sup>th</sup> Congress, 1<sup>st</sup> Session, 1939, vol. 84, part 8, p. 7708-8349.

<sup>132</sup> *United States Congressional Record*, 76<sup>th</sup> Congress, 1<sup>st</sup> Session, 1939, vol. 84, part 9, p.9594.

It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government or agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects.<sup>133</sup>

Debate in the House focused exclusively on this amendment; the members all agreed on the bills earlier sections against coercion. During this debate, representatives on both sides of the issue supported their positions with a number of arguments. Where some legislators argued the bill protected federal employees from intimidation, others argued it infringed upon their civil liberties by restricting their ability to participate in political campaigns. Aside from the liberty argument, legislators centered their speeches on the preservation of the constitutional system in the United States.

As the first legislator to speak against the bill, Representative Emmanuel Celler (D-NY) based his opposition on its potential effects on the Democratic Party. He stated, “Personally, it makes no difference to me as far as my district is concerned. My election does not depend upon Federal patronage job holders. But I believe the bill hurts my party. It goes too far.” Bearing these remarks in mind, it is noteworthy to mention that Celler made the only argument grounded on the bill’s partisan effects. He elaborated:

No member of the Cabinet could make a political speech. No member of the Cabinet could help shape party doctrine, yet ours is a party system. Somebody must appear on the radio and on the public platform to help create the party platforms and direct party policies. It is only due to our bipartisan system that we have been enabled to make the progress we have been making all these years, one party checking upon the other. These sections fly in the face of those theories and would make impossible, utterly impossible, the appearance before the public on the radio or on the platform of anyone who has a

semblance of public office, to announce what he thinks should be the principles and the practices of a party.<sup>134</sup>

Agreeing, Representative Harry P. Beam (D-IL) based his resistance on the bill's impact on federalism. "Is it not rather inconsistent . . . under the limitation our power of legislative enactment we can prescribe only limitations on a Federal election?" he contended, "These same Federal workers may engage actively and politically in any way they want in any local legislative or municipal campaign. Therefore, the inconsistency and the absurdity of this provision is apparent to me or to anyone here."<sup>135</sup>

Taking Beam's federal conclusion a step further, Representative Edward W. Creal (D-KY) tied in the threat of totalitarianism. "You have heard a great deal of talk here about dictatorship and Hiterlism, but today you are proposing to reach out to millions of people who have never been sought to be touched by the Federal Government in the last 150 years and to gag them and handcuff them in the exercise of their political rights," he contended, "This bill not only goes further than covering relief workers—and you can make that fence as stout as you please and I will support it—but you go into numerous other fields which I cannot support . . . it is the greatest invasion of States' rights ever proposed in a quarter of a century."<sup>136</sup> For Creal, the gross extension of federal authority written into the Hatch Act resembled a totalitarian power grab.

Creal was not the only legislator to draw this comparison. Others viewed Section 9(a)'s campaign restrictions as a clear violation of constitutional rights. Quoting President Abraham Lincoln, Representative Sam Hobbs (D-AL) claimed "If you do this thing, you not only violate the Constitution, you not only violate every natural right of every citizen in the United States, but

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<sup>134</sup> *Ibid.*, 9596.

<sup>135</sup> *Ibid.*, 9597.

<sup>136</sup> *Ibid.*, 9599-9600.

by doing this you divest him of citizenship and you have set up the process of disintegration, whereby the Government ‘of the people, by the people, and for the people’ will have begun to perish from the earth.”<sup>137</sup> Representative Charles Faddis (D-PA) buttressed the argument by emphasizing the foreign-ness of this restriction on civil liberties. He reiterated, “It is a doctrine too un-American for me to follow. To be willing to write a law saying to the employees of the Federal Government: ‘You are holding a Federal job, you shall not participate in political activity’ is the beginning of an invasion of civil liberties of the American people.”<sup>138</sup>

But, no representative went as far as Representative Frank Hook (D-MI), who argued that the Hatch Act did not prevent totalitarianism or dictatorship, but caused it. He argued:

The provisions of this bill will take away from the American people that inherent right that was handed down to them by our founding fathers, sanctified by the blood of American patriots. If enacted into law, it will deprive the American people of the rights to express their opinion on Government, the right to take part in politics, and is beyond a doubt the furthest step that has been taken in the history of this Nation toward a dictatorship. This Nation was born in politics. Through politics it has advanced to the highest state of civilization known to man. Might I be so bold as to say to you who are about to destroy our democracy that as long as you have Republicans and as long as you have Democrats you will have neither communism nor fascism. But when you eliminate politics from government you will eliminate parties. When you eliminate political parties, you have set up a totalitarian dictatorship in the in the pace of the greatest Government on this earth, and God forbid that that should ever happen . . .

The majority party should carry on in the interest of good government and in the interest of the great mass of people, protecting our democratic rights under the Constitution of the United States and not take away those rights from the people.

Moving to the legislators who championed the bill, they employed similar rhetoric in their floor speeches. While the opposition voiced their concerns against totalitarianism, the supporters voiced their concerns against a national spoils system. Representative Edward H. Rees (R-KS) fervently believed the welfare and administrative state was to blame for the United States’ social ills. “If the billions of dollars that have been appropriated by Congress for the

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<sup>137</sup> Ibid., 9622.

<sup>138</sup> Ibid., 9616.

needy and underprivileged during the past few years had been efficiently and economically administered and distributed we would not have the suffering which exists throughout our country today,” he lamented. By passing the Hatch Act, Congress still had hope “to prevent the American Government from being controlled by the corruption of a spoils system.”<sup>139</sup>

Though he maintained reservations about Section 9(a) Representative J. Will Taylor (R-TN) directly linked the need for the Hatch Act with the previous election cycle’s WPA corruption scandals. “Only last week . . . a WPA superintendent was tried and convicted in the Federal court at Knoxville, Tennessee, in my congressional district, for misappropriation of WPA funds, and for levying political tribute on poor, unfortunate relief workers . . . Even destitute women on sewing projects on sewing projects were subjected to the impositions of these political vultures,” Taylor asserted. He continued:

It will be urged by some that this legislation will interfere with personal liberty. Well, if the passage of this measure will secure those on Government relief from becoming the prey of political parasites and hijackers by interfering with their ‘liberty’ to coerce and exploit, then that is the strongest possible argument for its speedy enactment . . .

To me the lowest form of animal life is the creature who would levy tribute, political or otherwise, on the unfortunate recipients of Government relief, or who would undertake to influence their political action by either a promise of favor or by a threat of punishment or reprisal. Such a creature, in my opinion, belongs to the category of ghouls and deserves the contempt and execration of all decent people . . .

I favor this bill as it passed the Senate. The more teeth that can be put into it the better, so far as I am concerned. I want to see the House bill amended in substantial conformity to the Senate bill. Some clarification may be necessary, but we all fully realize that the objective of this legislation is to free those on Government relief from the talons of political harpies and to probity Government employees from engaging in pernicious political activities on Government time and at Government expense.

Aside from their fear of a spoils system, these supporters also backed the bill to preserve free and fair elections in the United States. Representative John Robinson (R-KY) based his position on the “common knowledge” that the “taxpayers’ money appropriated for WPA was

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<sup>139</sup> Ibid., 9603.

used to coerce and intimidate needy men, women and children.” For him, the bill would “go far toward bringing about clean government in the Nation” for there was nothing “so important to a free people as to have honest, clean, and free elections.”<sup>140</sup>

Concurring, Representative Hamilton Fish (R-NY) viewed the bill as “preserving a free ballot.” He expounded, “Our free institutions today by a free people under a free ballot is being attacked more than ever. Our very form parliamentary and representative government is more under attack than ever before. We are told from abroad that popular government and democracy have failed. Unless we pass legislation of this kind, upholding a free ballot and our free institutions and thereby our representative form of government, then gentleman, it is the beginning of free institutions, and you will soon have some form of dictatorial government in this country.”<sup>141</sup> Creal, Faddis, and Hook had utilized the fear of dictatorial ambition to argue in the negative for the bill. Here, Fish employed that same trepidation to argue in the affirmative.

Taking a different approach, Representative Raymond S. Springer (R-IN), interpreted this bill from the viewpoint of a WPA worker. He asserted that its protections unified the American electorate by ensuring that all individuals were free from coercion. He stated, “Can it be that we should continue to have two distinct class of citizens on election day? The one class would be composed of those people who are not on relief in any form, who would have the perfect right to go to the polls and cast their vote as they may desire . . . And, the other class would consist of the poor and unfortunate people—those who are forced to work on the WPA and those who are drawing direct relief—who would be subject to force, threats, restraint, and intimidation . . . whose freedom at the ballot box would have been taken away.”<sup>142</sup>

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<sup>140</sup> *Ibid.*, 9607.

<sup>141</sup> *Ibid.*, 9601.

<sup>142</sup> *Ibid.*, 9604.

After this extensive discussion, the time for debate expired. Moving along with the legislative procedure, the bill passed the House with a clear majority (the final vote being 241-134).<sup>143</sup> The bill then returned to the Senate with its amendments on July 21. With little discussion, the Senate agreed to the House changes.<sup>144</sup>

On August 2, 1939, Roosevelt signed the Hatch Act into law, but not without repeating a few reservations that Congress had held. While he viewed the law as “an effective instrument of good Government,” he also warned that it “cannot properly preclude Government employees from the exercise of the right of free speech or from their right to exercise the franchise.”<sup>145</sup> Roosevelt’s reservations demonstrated that apprehension extended beyond the legislative branch.<sup>146</sup>

## VII. The Hatch Act’s Subsequent History

Deliberations on governmental employee political involvement did not end with the Hatch Act of 1939. Addressing previous concerns, the following year, Congress passed subsequent legislation extending the act to the state and local level.<sup>147</sup> In 1942, Congress loosened the law’s restriction to exempt school teachers from Section 9(a).<sup>148</sup> Later, in 1950,

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<sup>143</sup> Ibid., 9639. For the voting record, look at Appendix II.

<sup>144</sup> Ibid., 9674.

<sup>145</sup> Franklin D. Roosevelt, “The President Signs and Discusses the Hatch Act. August 2, 1939,” Smauel I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt* (New York: Macmillan Company, 1941), *1939 Volume: War—and Neutrality*: 410-414.

<sup>146</sup> Several alternative explanations could also explain Roosevelt and the Democrats’ decision to pass the Hatch Act. First, internally, their support could be interpreted as an acknowledgement of guilt. By voting in favor of the bill (and signing it in Roosevelt’s case), it may have signified admission that such actions occurred in previous Democratic elections. Second, from a constitutional standpoint, they may have recognized how closely their actions resembled foreign fascism. Noticing this similarity, they endorsed the bill to rectify this dilemma. Further research on this subject could test these interpretations by examining Roosevelt and other Democrats’ personal papers from this period.

<sup>147</sup> Eccles, *The Hatch Act and the American Bureaucracy*, 111.

<sup>148</sup> Ibid., 231.

they lessened the penalty for violating the Hatch Act listed in section 9(b). This amendment meant an employee found guilty would not necessarily be removed from their position.<sup>149</sup>

Given the fierce constitutional debate that had occurred on the House floor in 1939, it was no surprise that Section 9(a) came before the Supreme Court in 1946 in *United Public Workers of America (C.I.O.) v. Mitchell* (1946).<sup>150</sup> Harry B. Mitchell, president of the United States Civil Commission, filed a Hatch Act claim against a George Poole, a Philadelphia mint worker, for working as a Democratic poll worker on election day.<sup>151</sup> Poole challenged his removal on the grounds that the Hatch Act unconstitutionally restricted his freedom of speech. In a 4-3 decision, Associate Justice Stanley Reed found no discrepancy between the Hatch Act and the First Amendment, upholding the firing.<sup>152</sup>

However, Associate Justice Hugo Black's dissenting opinion echoed the libertarian cries of the legislators in 1939. Referring to Section 9(a), he wrote:

Our political system, different from many others, rests on the foundation of a belief in rule by the people—not some, but all the people. Education has been fostered better to fit people for self-expression and good citizenship. In a country whose people elect their leaders and decide great public issues, the voice of none should be suppressed—at least, such is the assumption of the First Amendment. That Amendment, unless I misunderstand its meanings, includes a command that the Government must, in order to promote its own interest, leave the people at liberty to speak their own thoughts about government, advocate their own favored governmental causes, and work for their own political candidates and parties.

The section of the Act here valid reduces the constitutionally protected liberty of several million citizens to less than a shadow of its substance. It relegates millions of federal, state, and municipal employees to the role of mere spectators of events upon which hinge the safety and welfare of all the people including public employees. It removes a sizable proportion of our electorate from full participation in affairs destined to mould the fortunes of the nation. It makes honest participation in essential political activities an offense punishable by proscription from public employment. It endows a governmental board with the awesome power to censor the thoughts, expressions, and

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<sup>149</sup> *Ibid.*, 236.

<sup>150</sup> *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, (1946).

<sup>151</sup> Eccles, *The Hatch Act and the American Bureaucracy*, 223.

<sup>152</sup> *United Public Workers v. Mitchell*, 330 U.S., 75.

activities of law-abiding citizens in the field of free expression, from which no person should be barred by a government which boasts that it is a government of, for, and by the people—all the people. Laudable as its purpose may be, it seems to me to hack at the roots of a Government by the people themselves, and, consequently, I cannot agree to sustain its validity.<sup>153</sup>

Without using the exact words, Justice Black also believed the law desecrated the values fundamental to American governance. The Hatch Act certainly did not “censor the thoughts, expressions, and activities” of government employees, but this exaggeration emphasized liberty’s fragility. If the federal government allowed one such infringement, it created legal precedent for future infringements.

In the 1967, towards the end of President Lyndon B. Johnson’s Great Society (another legislative program that greatly expanded the federal government’s scope), the Commission on Political Activity of Government Personnel, also known as the Hatch Act Commission, reviewed the law in order to make reform recommendations. The committee advised that Congress amend the Hatch Act to give government employees some process to participate in political campaigns without losing their job. Nonetheless, Congress failed to take any action based on the Commission’s considerations.<sup>154</sup>

Section 9(a) reappeared before the Court in *United States Civil Service Commission Et Al. v. National Association of Letter Carriers, AFL-CIO, Et Al.* (1973)<sup>155</sup> In a 6-3 decision, like *Mitchell*, the Court upheld the provision. In his majority opinion, Justice Byron White employed historical examples to buttress the law’s constitutionality. He wrote:

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<sup>153</sup> *Ibid.*, 330 U.S. 115-116.

<sup>154</sup> Charlie O. Jones, “Reevaluating the Hatch Act: A Report on Political Activity of Government Personnel,” *Public Administration Review* 29 (May/June 1969), 249-254.

<sup>155</sup> *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, (1973).

Our judgement is that neither First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees. Such decision on our part would no more than confirm the judgement of history, a judgement 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 . . .

Early in our history, Thomas Jefferson was disturbed by the political activities of some of those in Executive Branch of the Government . . .

The experience of the intervening years, particularly that of the 1936 and 1938 political campaigns, convinced a majority in Congress that the prohibition against taking an active part in political management and political campaigns should be extended to the entire federal service . . .

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. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. 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, for example, not 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.<sup>156</sup>

Justice White's defense mirrored the Republican position in the original House floor debates. Because their employment tasked them with executing the law, it required them to remain publicly neutral.

But like Justice Black's opinion three decades before, Associate Justice William Douglas, joined by Associate Justices William J. Brennan and Thurgood Marshall, dissented against Section 9 (a). He posited:

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 public 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 spare time, whether religion, recreation, social work, or politics is his hobby—unless what he does impairs efficiency or other facets of the merits of his job.

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<sup>156</sup> Ibid., 413 U.S. 556-565.

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. In the areas of speech, like religion, it is of no concern what the employee says in private to his wife or in to the public in Constitution Hall. If Government employment were only a 'privilege,' then all sorts of conditions might be attached.<sup>157</sup>

Similar to Justice Black, he also argued a slippery slope. By preventing federal employees from actively engaging with political campaigns, it opened the door for "all sorts of conditions." In conjunction, the two dissents from Justices Black and Douglas illustrated two points. First, the civil liberty argument remained valid on a legal level; two of the nation's top jurists agreed with the congressional legislators in that it violated crucial American rights. Second, they reiterated the notion that the Hatch Act had severe repercussions for governance beyond that of the federal workers.

Since *Civil Service Commission*, no major challenges to the Hatch Act have occurred. The Hatch Act has had an important place in the legal regulation of the executive branch across the twentieth century. Despite Supreme Court challenges and political pushes, the law still defines how federal, state, and local government employees engage with political campaigns.<sup>158</sup>

### VIII. Why was the Hatch Act Passed?

The Hatch Act continues to have a lasting impact on the twentieth and twenty-first century. Given the law's permanence and contested constitutionality, it becomes important to understand why Congress passed the law. This section analyzes the Hatch Act's passage on partisan and constitutional grounds. Though House Republicans only voted in favor of the bill, it was a bipartisan measure; Democrats like Senator Hatch had introduced the bill and voted for it in both chambers. Bearing this point in mind, one must look elsewhere to explain why the Hatch Act passed Congress. Instead, the evidence suggests that the WPA controversies, like the one in

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<sup>157</sup> *Ibid.*, 413 U.S. 597.

<sup>158</sup> See Appendix 2 for the current version of the Hatch Act in 5 U.S. Code Sections 1501-1508.

Kentucky, evoked ideological concerns about the corruption of the constitutional system. In all three branches of the federal government, the Hatch Act debate surpassed a discussion of political activities in work relief to a conversation on the powers and role of the national government.

Given that the New Deal and the WPA were part of the Democratic agenda, it would make sense for the Republican Party to support legislation restricting federal agency reach. This consideration was more plausible considering the WPA scandals; if the Democratic Party was willing to use this agency to purge its own party members in primaries, then Republicans would have an electoral incentive to protect their own prospects. But for most of the 1930s, the Democratic Party retained control of both the presidency and Congress. Republicans would not regain the presidency until 1952 with the election of President Dwight D. Eisenhower, nor would they regain Congress until 1947. The Republican Party did not have the votes in Congress to pass the law without Democratic assistance. Moreover, the threshold would be higher when considering the possibility of presidential veto.

As Representative Celler noted in the congressional debate, “Both the Democrats and Republicans on the committee fashioned this bill.”<sup>159</sup> Looking at its origins in the Senate, a Democratic senator introduced the bill which unanimously passed the Democrat-dominated floor. In the House, both Democrats and Republicans voted for the bill. Interestingly, only Democrats voted against the bill; Republicans either voted in favor of the Hatch Act or did not vote at all.<sup>160</sup> When it reached the White House, Roosevelt even signed the bill without enacting

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<sup>159</sup> *United States Congressional Record*, 76<sup>th</sup> Congress, 1<sup>st</sup> Session, 1939, vol. 84, part 9, p.9596-9597.

<sup>160</sup> For the exact breakdown of the House vote, see Appendix II.

a veto. While this action may have been necessary to avoid further criticism after the 1938 “purges,” it revealed that he did not deem it too threatening to the Democratic Party.

From its inception, the Hatch Act was a bipartisan bill. Congressional Republicans may have backed the bill because for its potential electoral effects, but this point does not provide a full account of the its passage. A complete explanation must then consider a separate factor, something that transcended party boundaries.

Examining the congressional debates covering the Hatch Act, one finds an interesting paradigm. In the House, members centered their debates around civil liberties and the fear of totalitarianism in America. On the one hand, some legislators felt the Hatch Act would serve as a legislative protection against the creation of a national political machine sustained by work relief agencies and a new spoils system. On the other hand, other legislators argued that the Hatch Act created a slippery slope; if the government restricted these federal workers’ civil liberties, it would take the executive branch down the road to totalitarianism.

This conversation lead to the constitutional aspect of the Hatch Act debate: that without it, an all-encompassing executive branch of the federal government would use agencies like the WPA to manipulate elections and violate civil liberties. While executive agencies existed prior to the New Deal, legal historian Lawrence M. Friedman wrote, “it was a dramatic quickening, a ratcheting upward, that pushed the boundaries further and further into a kind of beyond.” In reference to these new agencies, Friedman argued, “They raised the specter of dictatorships; of an all-powerful administrative state, a central-planning state, in which the little man would be crushed into dust.”<sup>161</sup> Local WPA scandals in Kentucky and other states triggered this latent fear

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<sup>161</sup> Lawrence M. Friedman, *American Law in the 20<sup>th</sup> Century* (New Haven, Connecticut: Yale University Press, 2002), 170-171.

of dictatorial totalitarianism and provided enough cause for Congress to act in a bipartisan manner by enacting a law covering all federal employees.

To clarify, this apprehension existed outside the context of the Hatch Act debate. Congressman Charles Halleck (R-IN), who became House majority leader after WWII, voted for New Deal financial reforms such as Social Security, the Securities Exchange Commission, and the Federal Deposit Insurance Corporation, but opposed the expansive administrative state that it had ushered in. He once proclaimed, “Free Americans then will be following the road to serfdom under rigid governmental controls in every department of their lives . . . debt is slavery . . . excessive taxes is slavery . . . bureaucracy is slavery.”<sup>162</sup>

Similarly, using Fargo, North Dakota, as a case study, historian David B. Danbom discovered that average Americans were not entirely receptive to the New Deal’s top-down governance, specifically with respects to the WPA’s employment measures.<sup>163</sup> “Traditional assumptions and values continued to be held and asserted—sometimes quite aggressively when challenged by federal programs based on very different assumptions and values,” Danbom concluded, “New Deal programs were contested not just in Washington by Congressional conservatives and populist demagogues who opposed their creation, but in cities, states and counties where local officials who challenged their implementation.”<sup>164</sup>

In the larger historical context, a comparison of the New Deal’s executive enlargement to totalitarianism stemmed from international circumstances. When the global market toppled in 1929, European states like Germany and Italy passed broad Enabling Acts, granting near

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<sup>162</sup> Robert L. Fuller, “Halleck’s New Deal: Congressman Charles Halleck and the Limits to Reform,” *Indiana Magazine of History* 103 (March 2007), 75, 85-86, and 92.

<sup>163</sup> David B. Danbom, “National Ideas and Local Power in Fargo, North Dakota, during the Great Depression,” in Bruce J. Schulman, ed., *Making the American Century: Essays on the Political Culture of Twentieth Century America* (New York: Oxford University Press, 2014): 37-50.

<sup>164</sup> *Ibid.*, 48.

unlimited power to their heads of state. Over the following years, these powers regained economic balance before the United States and other democracies, questioning whether liberal constitutionalism was sustainable. In his recent award-winning work, Ira Katznelson stated, “The crisis of liberal democracy in Europe, Latin America, and East Asia in short, generated widespread apprehension about democratic incapacity as Franklin Roosevelt was about to assume the presidency. As he and the country faced a night sky illuminated by barbarism in 1933, they confronted confounding and pressing uncertainties. Could the political system meet its most urgent tests without suspending its rule? Might it be necessary to fashion a crisis government and transcend the limits of ordinary procedures in order to confront the economic crisis, respond to the dictators, and rescue the system?”<sup>165</sup>

Initially, Roosevelt’s rhetoric bordered on similar action. In his inaugural address, on March 4, 1933, he announced, “I shall ask the Congress for the one remaining instrument to meet the crisis—broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.”<sup>166</sup> Despite this vague language, Roosevelt never crossed into dictatorial territory. However, Katznelson observed that the executive branch drafted most New Deal legislation, expedited it through an abbreviated legislative process, and expanded its power through new agencies.<sup>167</sup> In light of these deviations, Katznelson found that later in the 1930s, “Congress firmly established itself as a forum where detailed answers could be crafted to the main substantive challenges of a historically dense and

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<sup>165</sup> Katznelson, *Fear Itself*, 117.

<sup>166</sup> Franklin D. Roosevelt,

<sup>167</sup> Katznelson, *Fear Itself*, 123-124.

difficult era . . . In that painful and uneven process, the legislature was recast and reinvigorated as a site of decision and governance.”<sup>168</sup>

Historian Barry D. Karl’s work reiterated this point. “The congressional rebellion against the WPA reflects an even more profound effect of New Deal politics. The fear of bureaucracy, of intellectuals managing government, and now of the very concept of government planning was no longer confined to a conservative minority,” argued Karl.<sup>169</sup> He continued, “Roosevelt’s first plan for his second term had failed badly . . . The plan . . . had fallen victim to two historical fears. One was the fear that identified rationalization with dictatorship and fascism. The other was the fear that rationalization would destroy state and local control of the federal government’s power to distribute federal resources.”<sup>170</sup> But while Roosevelt never crossed the line into dictatorship, Congress responded preemptively with the Hatch Act.

#### IX. Conclusion: The Hatch Act’s Importance in Relation to New Deal Legal and Constitutional History

Examination of the Hatch Act’s origins illuminates a gap in United States constitutional and legal history: the New Deal after 1937. Most general New Deal histories, from Schlesinger to Kennedy, shifted their attention from the New Deal’s domestic policies towards international affairs after the 1937 “court-packing” fight and the 1938 election “purges.” Legal and constitutional histories replicated this trend. Though the New Deal’s administrative state remained into the twenty-first century, these historians dedicated little attention to the legislative side of its origins, focusing instead on the Supreme Court.

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<sup>168</sup> Ibid., 126.

<sup>169</sup> Barry D. Karl, *The Uneasy State: The United States from 1915 to 1945* (Chicago, Illinois: University Press of Chicago, 1983), 178.

<sup>170</sup> Ibid., 181.

On this note, Karl wrote on the Roosevelt administration's legislative achievements and failures after 1937 in what he calls the "Third New Deal." This classification builds upon a preexisting trend in New Deal historiography where historians divide the program into two halves. The first half, lasting from Roosevelt's inauguration in 1933 to "Black Monday" in 1935, focused on economic recovery through laws like the Agricultural Adjustment Act and the National Industrial Recovery Act. The second half, lasting from 1935 until the 1937 "court-packing" scheme, consisted more of reform measures like the Wagner Act and Social Security. Karl contended that the existing scholarship failed to consider legislation after 1937 but before the United States joined World War II. Compared to Degler's description of the New Deal as the "Third American Revolution," Karl called these years the Thermidorian reaction to these liberal expansions.<sup>171</sup>

To expand upon Karl's point, from 1933 to 1937, the federal government expanded at an unprecedented rate with the creation of the administrative and welfare states. From 1937 to 1940, however, Congress reigned in those liberal policies. The Hatch Act was only one law to perform this function. The few domestic victories that Roosevelt achieved, like the National Housing Act of 1937 and the Revenue Act of 1937, were offset by defeats like the Revenue Act of 1938, which reversed the progressive tax plan of the previous year, and the creation of the House Committee to Investigate Un-American Activities, which investigated suspected fascists and communists in those newly created agencies. As late as 1946, the Administrative Procedure Act established strict guidelines for administrative agency processes, determining what regulations they had the authority to impose.<sup>172</sup>

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<sup>171</sup> *Ibid.*, 178-181.

<sup>172</sup> *Ibid.*, 168-169.

Legal histories focusing on the “constitutional revolution of 1937” overlooked this final phase. After the New Deal’s victory with the “switch in time that saves nine,” authors like Barry Cushman and G. Edward White skipped to the Court’s broad reinterpretation of the Commerce Clause in *Wickard v. Filburn*.<sup>173</sup> While the Court was more hospitable to the New Deal after 1937, other dimensions of the legal realm were not. To skip this legislation is to ascribe to the New Deal an incorrect historical legacy. Congress did not unquestionably accept every policy the executive branch requested. As time progressed, Roosevelt faced numerous setbacks and retaliations against his hallmark agenda, like the Hatch Act of 1939. In the words of scholar Maxwell Bloomfield, if the New Deal was a constitutional “peaceful revolution,” federal employees’ right to participate in political campaigns was one of the few victims in that upheaval.<sup>174</sup>

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<sup>173</sup> The “switch in time that saves nine” is another term historians use to describe the “court-packing” fight and its outcome. The “switch in time” refers to the Supreme Court’s transition to a pro-New Deal stance in 1937, “saving” them from Roosevelt’s bill. The “nine” refers to the nine Supreme Court justices who decided these cases.

<sup>174</sup> Maxwell Bloomfield, *Peaceful Revolution: Constitutional Change and American Culture from Progressivism to the New Deal* (Cambridge, Massachusetts: Harvard University Press, 2000), 124-166.

Appendix I- The Original Text of the 1939 Hatch Act- 53 Stat. 1147.<sup>175</sup>

## An Act

To prevent pernicious political activities.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be unlawful for any person to intimidate, threaten, or coerce, or to attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or not vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives at any election held solely or in part for the purpose of selecting President, a Vice President, a Presidential elector, or any Member of the Senate or any Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

Sec. 2. It shall be unlawful for any person employed in any administrative position by the United States, or by any department, independent agency, or other agency of the United States (including any corporation controlled by the United States or any agency thereof, and any corporation all of the capital stock of which is owned by the United States or any agency thereof), to use his official authority for the purpose of interfering with, or affecting the election or the nomination of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories and insular possessions.

Sec. 3. It shall be unlawful for any person, directly or indirectly, to promise any employment, position, work, compensation, or other benefit, provided for or made possible in whole or in part by any Act any political activity or for the support of or opposition to any candidate or any political party in any election.

Sec. 4. Except as may required by the provisions of subsection (b), section 9 of this Act, it shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election.

Sec. 5. It shall be unlawful for any person to solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person known by him to be entitled to or receiving compensation, employment or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes.

Sec. 6. It shall be unlawful for any person for political purposes to furnish or to disclose, or to aid or assist in furnishing or disclosing, any list or names of persons receiving compensation, employment, or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of, funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political

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<sup>175</sup> This text was transcribed from Patricia Ann Fiori, *The Hatch Act- Present Text and Statutory History of Provisions* (Washington, D.C.: Congressional Research Service, 1975), 18.

candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

Sec. 7. No part of any appropriation made by any Act, heretofore or hereafter enacted, making appropriations for work relief, relief, or otherwise to increase employment by providing loans and grants for public-work projects, shall be used for the purpose of, and no authority conferred by any such Act upon any person shall be exercised or administered for the purpose of, interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election.

Sec. 8. Any person who violates any of the foregoing provisions of this Act upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Section 9. (a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects. For the purposes of this section the term "officer" or "employee" shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the Nation-wide administration of Federal laws.

(b) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

Sec. 9A. (1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

Sec. 10. All provisions of this Act shall be in addition to, not in substitution for, of existing law.

Sec. 11. If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Appendix II- Voting Record for the S. 1871- a bill against pernicious political activities.<sup>176</sup>

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<sup>176</sup> *United States Congressional Record*, 76<sup>th</sup> Congress, 1<sup>st</sup> Session, 1939, vol. 84, part 9, 9639.

Yea

Alexander-R	Corbett-R	Grant (IN)
Allen (IL)-R	Costello-D	Grffith
Allen (LA)-D	Crawford-R	Gross
Andersen, H. Carl-R	Crosser-D	Guyer (KS)
Anderson (MO)-D	Crowther-R	Gwynne
Andresen, A.H.-R	Culkin-R	Hall
Angell-R	Curtis-R	Halleck
Arends-R	Darden-D	Hancock
Ashbrook-D	Darrow-R	Harness
Austin-R	Dempsey-D	Harrington
Ball-R	DeRouen-D	Harter (NY)
Barton-R	Dirksen-R	Harter (OH)
Bates (MA)-R	Disney-D	Hartley
Beckworth-D	Ditter-R	Hawks
Bender-R	Dondero-R	Heinke
Blackney-R	Douglas-R	Hess
Boehne-D	Dowell-R	Hinshaw
Bolles-R	Doxey-D	Hoffman-R
Bolton-R	Drewry-D	Holmes-R
Bradley (MI)-R	Dworshak-R	Hope-R
Brewster-R	Eaton (NJ)-R	Horton-R
Brooks-D	Elston-R	Houston-D
Brown (OH)-R	Engel-R	Hull-Progressive Party
Burgin-D	Englebright-R	Hunter-D
Byrns (TN)-D	Fenton-R	Jacobsen-D
Carlson-R	Fish-R	Jarrett-R
Carter-R	Flannery-D	Jeffries-R
Cartwright-D	Ford, Leland-R	Jenkins (OH)-R
Case (SD)-R	Fulmer-D	Jenks (NH)-R
Chapman-D	Gamble-R	Jensen-R
Chiperfield-R	Garrett-D	Johns-R
Church-R	Gartner	Johnson (IL)-R
Clason-R	Gathings	Johnson (IN)-R
Claypool-D	Gearhart	Johnson, Luther A.-D
Clevenger -R	Gehrmann	Johnson (OK)-D
Cochran-D	Gerlach	Jones (OH)-R
Coffee (Nebraska)-D	Gilchrist	Jones (TX)-D
Cole (MD)-D	Gillie	Kean-R
Cole (NY) -R	Gore	Keefe-R
Colmer-D	Gossett	Kilday-D
Cooper-D	Graham	Kinzer-R

Kitchens-D  
 Kleberg-D  
 Knutson-R  
 Kunkel-R  
 Lambertson-R  
 Landis-R  
 Lanham-D  
 LeCompte-R  
 Lemke-Nonpartisan  
 Republican  
 Lewis (CO)-D  
 Lewis (OH)-R  
 Luce-R  
 Ludlow-D  
 McCormack-D  
 McDowell-R  
 McGehee-D  
 McLaughlin-D  
 McLean-R  
 McLeod-R  
 Maas-R  
 Mahon-D  
 Maloney-D  
 Mapes-R  
 Marshall-R  
 Martin (IA)-R  
 Martin (MA)-R  
 Mason-R  
 Michener-R  
 Miller-R  
 Mills (LA)-D  
 Monkiewicz-R  
 Monroney-D  
 Mott-R  
 Mouton-D  
 Mundt-R  
 Murray-R  
 Nichols-D  
 Norrell-D

Nays

Arnold-D  
 Barden-D  
 Barnes-D  
 Barry-D  
 Bates (KY)-D

O'Brien-R  
 Oliver-R  
 Osmer-R  
 Pace-D  
 Patton-D  
 Pearson-D  
 Pierce (NY)-R  
 Pittenger-R  
 Plumley-R  
 Poage-D  
 Polk-D  
 Powers-R  
 Ramspeck-D  
 Randolph-D  
 Rankin-D  
 Rayburn-D  
 Reece (TN)-R  
 Reed (IL)-R  
 Rees (KS)-R  
 Rich-R  
 Risk-R  
 Robison (KY)-R  
 Rockefeller-R  
 Rodgers (PA)-R  
 Rogers (MA)-R  
 Routzohn-R  
 Rutherford-R  
 Sandager-R  
 Schafer (WI)-R  
 Schiffler-R  
 Secombe-R  
 Seger-R  
 Shafer (MI)-R  
 Short-R  
 Simpson-R  
 Smith (CT)-D  
 Smith (IL)-D  
 Smith (ME)-R  
 South-D

Beam-D  
 Bell-D  
 Bland-D  
 Bloom-D  
 Boland-D

Springer-R  
 Starnes (AL)-D  
 Stearns (NH)-R  
 Stefan-R  
 Sumner (IL)-R  
 Sutphin-D  
 Sweeney-D  
 Taber-R  
 Talle-R  
 Taylor (TN)-R  
 Terry-D  
 Thill-R  
 Thomas (NJ)-R  
 Thomas (TX)-D  
 Thomason-D  
 Tibbott-R  
 Tinkham-R  
 Treadway-R  
 Van Zandt-R  
 Voorhis (CA)-D  
 Vorys (OH)-R  
 Vreeland-R  
 Wadsworth-R  
 Walter-D  
 Ward-D  
 Welch-R  
 West-D  
 Wheat-R  
 Whelchel-D  
 White (OH)-R  
 Whittington-D  
 Wigglesworth-R  
 Williams (DE)-R  
 Winter-R  
 Wolcott-R  
 Wolverton (NJ)-R  
 Woodruff (MI)-R  
 Youngdahl-R

Boykin-D  
 Bradley (PA)-D  
 Brown (GA)-D  
 Buck-D  
 Bulwinkle

Caldwell-D	Hennings-D	O'Day-D
Cannon (FL)-D	Hill-D	O'Leary-D
Cannon (MO)-D	Hobbs-D	O'Neal-D
Casey (MA)-D	Hook-D	O'Toole-D
Celler-D	Izac-D	Parsons-D
Chandler-D	Jarman-D	Patrick-D
Clark-D	Johnson, Lyndon-D	Peterson (FL)-D
Coffee (WA)-D	Johnson, (WV)-D	Peterson (GA)-D
Collins-D	Kee-D	Pierce (OR)-D
Cox-D	Keller-D	Rabaut-D
Creal-D	Kennedy, Martin-D	Richards-D
Crowe-D	Kennedy (MD)-D	Robinson (UT)-D
Cullen-D	Kennedy, Michael-D	Rogers (OK)-D
D'Alesandro-D	Keogh-D	Romjue-D
Delaney-D	Kirwan-D	Sabath-D
Dickstein-D	Kocialkowski-D	Sacks-D
Dingell-D	Kramer-D	Satterfield-D
Doughton-D	Larrabee-D	Schaefer (IL)-D
Duncan-D	Leavy-D	Schuetz-D
Dunn-D	Lesinski-D	Scrugham
Durham-D	McAndrews-D	Shanley-D
Eberharter-D	McArdle-D	Shannon-D
Edmiston-D	McGranery-D	Sheppard-D
Elliott-D	McKeough-D	Sirovich-D
Ellis-D	McMillan, John L.-D	Smith (WA)-D
Faddis-D	McMillan, Thos. S.-D	Snyder-D
Fay-D	Maciejewski-D	Somers (NY)-D
Flaherty	Marcantonio- American	Sparkman-D
Flannagan	Labor	Spence-D
Ford, Thomas F.-D	Martin (CO)-D	Steagal-D
Fries-D	Martin (IL)-D	Tarver-D
Gavagan-D	May-D	Tenerowicz-D
Gibbs-D	Merritt-D	Vincent (KY)-D
Grant (AL)-D	Mills (AR)-D	Vinson (GA)-D
Green-D	Mitchell-D	Weaver-D
Gregory-D	Moser-D	White (ID)-D
Hart-D	Murdock (UT)-D	Williams (MO)-D
Havenner- Progressive	Myers-D	Wood-D
Party	Nelson-D	Zimmerman-D
Healey-D	Norton-D	
Hendricks-D	O'Connor-D	

Present

Thorkelson-R

Not Voting

Anderson (CA)-R	Eaton (CA)-R	Pfeifer-D
Andrews-D	Evans-D	Reed (NY)-R
Boren-D	Ferguson-D	Ryan-D
Bryson-D	Fernandez-D	Sasscer-D
Buckler (MN)-Farm Labor Party	Fitzpatrick-D	Schulte-D
Buckley (NY)-D	Folger-D	Schwert-D
Burch-D	Ford (MS)-D	Secrest-D
Burdick- Nonpartisan Republican	Geyer (CA)-D	Smith (OH)-R
Byrne (NY)-D	Gifford-R	Smith (VA)-D
Byron-D	Hare-D	Smith (WV)-D
Cluett-R	Kelly-D	Sullivan-D
Connery-D	Kerr-D	Sumners (TX)
Cooley-D	Lea-D	Taylor (CO)-D
Cummings-D	Magnuson-D	Tolan-D
Curley-D	Mansfield-D	Wallgren -D
Dies-D	Massingale -D	Warren-D
	Murdock (AZ)-D	Wolfenden (PA)-R
	Patman-D	Woodrum (VA)-D

Appendix III- The modern Hatch Act- 5 U.S. Code Chapter 15- Political Activity of Certain State and Local Employees

5 U.S. Code 1501- Definitions

For the purpose of this chapter—

- (1)“State” means a State or territory or possession of the United States;
- (2)“State or local agency” means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof, or the executive branch of the District of Columbia, or an agency or department thereof;
- (3)“Federal agency” means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and
- (4)“State or local officer or employee” means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—
  - (A)an individual who exercises no functions in connection with that activity; or
  - (B)an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by—
    - (i) a [State](#) or political subdivision thereof;
    - (ii) the District of Columbia; or
    - (iii) a recognized religious, philanthropic, or cultural organization.

1502- Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

- (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- (2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
- (3) if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency, be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

- (1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;
- (2) the mayor of a city;
- (3) a duly elected head of an executive department of a State, municipality, or the District of Columbia who is not classified under a State, municipal, or the District of Columbia merit or civil-service system; or
- (4) an individual holding elective office.

## 1503-Nonpartisan candidacies permitted

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

## 1504- Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

- (1) fix a time and place for a hearing; and
- (2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

## 1505- Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall—

- (1) determine whether a violation of section 1502 of this title has occurred;
- (2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and
- (3) notify the officer or employee and the agency of the determination by registered or certified mail.

## 1506- Orders; withholding loans or grants; limitations

(a)When the Merit Systems Protection Board finds—

- (1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or
- (2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State (or in the case of the District of Columbia, in the District of Columbia) in a State or local agency which does not receive loans or grants from a Federal agency; the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given

an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

#### 1507- Subpoenas and depositions

(a) The Merit Systems Protection Board may require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpoenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpoena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpoena on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in

obedience to a subpoena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

#### 1508- Judicial Review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section [1504](#), [1505](#), or [1506](#) of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

- (1) the court specifically orders a stay; and
- (2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

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