



October 8, 2004

Office of the General Counsel

Reply to Attn of:

TO: Officials-in-Charge of Headquarters Offices
Directors, NASA Field Installations
Director, Jet Propulsion Laboratory

FROM: Designated Agency Ethics Official

SUBJECT: Guidelines for Candidate Visits to NASA Facilities

In light of the upcoming Presidential election and a recent Federal Hatch Act Advisory from the Office of Special Counsel, I am updating the guidelines for granting requests from political candidates to visit NASA facilities. This guidance addresses activities relating to Federal, state, and local political campaigns of candidates in partisan elections, including Presidential candidates. This guidance supersedes all previous guidance on this subject.

The Hatch Act, 5 U.S.C. §§ 7321-7326, regulates the political activity of Federal executive branch employees. Although the Act permits most covered Federal employees to actively participate in partisan political management and partisan political campaigns, covered NASA employees still are subject to certain prohibitions related to their participation in partisan activities. Two such prohibitions are that NASA employees may not: (1) use their official authority or influence for the purpose of affecting the result of an election or (2) engage in political activity while on duty; in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; while wearing a uniform or other similar item that identifies NASA as the employing agency; or using a government vehicle. 5 U.S.C. §§ 7323(a)(1) and 7324. Political activity is defined as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." 5 CFR §734.101.

The decision of whether to permit a candidate access to a NASA facility is to be made on a case-by-case basis by the Center Director based on the following factors:

1. Whether the political figure who is requesting a visit is a "candidate." Hatch Act regulations define "candidate" as "an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or has made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election." 5 CFR § 734.101.

2. Whether the visit would take place at a "Federal facility" of NASA. A Federal facility under the Hatch Act is a "room or building occupied in the discharge of duties by an individual employed or holding office in the Government of the United States or any agency thereof" and includes any Federally-owned or leased space in which Federal employees perform official duties on a regular basis. This presumptively includes any area within the security perimeter of a NASA facility. For visits outside this area, such as visitor centers owned and operated by contractors and open to the public, considerations include whether NASA has actual or de facto approval authority for the event, whether the facility has resident offices for civil servants, and whether the place to be visited is on property owned or controlled by NASA or in near proximity to a NASA building or facility. In particular, if there are Federal employees occupying offices in the building, then the building is a Federal facility for purposes of the Hatch Act. Even where the building is not a Federal facility, owners or contractors who operate a facility associated with NASA, such as a visitor center, should be informed of NASA's policy on visits by political candidates and asked to coordinate such visits with NASA.

3. Whether the visit is for an official purpose. Permissible visits are those conducted for an official purpose, such as briefings, tours, gathering of official information, and presenting information that specifically relates to NASA. It is of particular importance whether the visit is coordinated by a Congressional or official staff member or the campaign team. Visits coordinated by campaign staff will normally be deemed to be for political purposes. Visits involving communications by both official and campaign staff, or by individuals known to be associated with both, should receive heightened scrutiny.

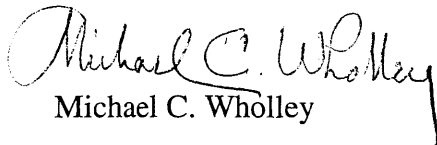
4. Whether there would be an impermissible use of a NASA facility. NASA facilities shall not be used for the purposes of conducting a campaign activity, such as town hall meetings, rallies, parades, speeches, fundraisers, press conferences, "photo ops" or meet and greets; attending or planning such campaign events while on duty or in a Federal building or office; or distributing campaign literature or wearing campaign-related items while on duty or in a Federal building or office. Even an otherwise appropriate visit may become political in nature if it involves an appearance of this type.

5. Whether appropriate coordination can be done with a candidate. Candidates should be informed in advance that they should not engage in any political campaign or election activity during the visit and every effort should be made to get the candidate and staff to agree to adhere to these guidelines. NASA will neither attempt to control the content of the candidate's remarks while visiting the facility, nor will NASA do anything to impede elected officials from appropriately representing their constituents.

6. Whether all candidates making visit requests will be treated fairly. All requests by candidates to visit NASA facilities shall be treated in an even-handed manner, with no preference shown to any particular candidate or party.

Please ensure that your legislative and public affairs officers coordinate with the Chief Counsel's office on all requests by political candidates for visits to NASA facilities. In any

case, inform the Headquarters Ethics Team at (202) 358-2465, of the proposed visit for coordination, as appropriate, with the Office of Special Counsel.


Michael C. Wholley

cc:

ARC/200-12/Ms. Mauldin
DFRC/D-2016/Mr. Samuels
GRC/500-118/Mr. Sikora
GSFC/140/Mr. Stephens
JSC/AL/Mr. Roan
KSC/CC/Mr. Stubbs
LaRC/141/Ms. Kurke
MSFC/LS01/Mr. Hicks
NMO-JPL/Mr. Howell
SSC/CA00/Mr. Human