

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

Office of Government Ethics

June 22, 2023



ADVISORY OPINION

Guidance on The Local Hatch Act and the use of Campaign Slogans¹

Pursuant to D.C. Official Code § 1-1162.19(a-1)(1), the Director of Government Ethics, Board of Ethics and Government Accountability (“BEGA”), is issuing this *sua sponte* advisory opinion to clarify the permissible and prohibited uses of campaign slogans by District employees in their official capacity under the Local Hatch Act² (“LHA”). Some of the phrases that have been used are “Build Back Better”, “Finish the Job”, “Make America Great Again” or “MAGA”. These phrases are similar and or identical to the ones currently being used by candidates in the 2024 presidential election with the first two being used by current President and candidate Joe Biden and the other two being used by former President and candidate Donald Trump.

Under the LHA, “political activity” is “activity that is regulated by the District directed toward the success or failure of a political party, partisan political group, candidate for partisan political office, ballot initiative, or referendum.”³ The LHA prohibits District employees from partaking in political activities while on duty or in a District government office or building, while wearing official government insignia, or while using a government vehicle.⁴ These restrictions apply to political activity that relates to federal and District elections. Additionally, the LHA prohibits District employees from using their official authority to influence or affect others relating to an election.⁵ This includes engaging in political activities while acting in an official capacity. This understanding of political activity is broad and does not require any express advocacy for or against a political party or candidate.

Therefore, employees shall not wear or display items, or post or tweet messages with campaign slogans, including “Build Back Better,” “Finish the Job,” “Make America Great Again,” or

¹ This opinion is adopted from the U.S. Office of Special Counsel’s Advisory Opinion, “Hatch Act Advisory Opinion Regarding the Use of Presidential Campaign Slogans,” dated June 7, 2023, available at <https://osc.gov/News/Pages/18-23-Updated-Hatch-Guidance.aspx>.

² See, D.C. Official Code § 1-1171.01 et seq. Prohibition on Government Employee Engagement in Political Activity Act of 2010; see also Rule 9 of the Council of the District of Columbia, (a)(5), Council Code of Official Conduct, which contains parallel language as the LHA.

³ D.C. Official Code § 1-1171.01(8)(A).

⁴ D.C. Official Code § 1-1171.03(a) (setting rules for engaging in political activity while on duty, in a government room or building, while wearing a uniform or official insignia, or while using a government vehicle).

⁵ D.C. Official Code § 1-1171.02(a)(1).

“MAGA” while they are on duty or in the workplace. Furthermore, employees may not use campaign slogans while conducting government business, such as in instances where they are giving official speeches, responding to media inquiries, defending policy initiatives, or communicating by any other means on official matters.

A. “Build Back Better”

BEGA recognizes that after the 2020 presidential election, the Biden Administration used the phrase, “Build Back Better” to brand some of its official policy initiatives and programs. At the time, President Biden was not a candidate for reelection, and thus, the use of the 2020 campaign slogan was not directed at his electoral success but rather to promote his administration’s policies. Accordingly, even though President Biden is now a candidate, BEGA advises that continued use of “Build Back Better” in connection with initiatives or programs already branded as such does not violate the LHA. However, because President Biden is now running for reelection, employees are prohibited from using the campaign slogan “Build Back Better” to promote or oppose President Biden as a candidate while on duty.

B. “Finish the Job,” “MAGA,” and Other Campaign Slogans

However, the exception described above allowing for the continued use of “Build Back Better” for programs or policy initiatives will only apply in situations where the slogan has been adopted by the federal or District government. For example, “Finish the Job” does not have the same history of being used to brand official administration initiatives or programs; it is the new and current slogan for President Biden’s reelection campaign. Accordingly, employees should not use the campaign slogan “Finish the Job” while on duty, in the workplace, or when acting in their official capacity, including communicating through social media, email, or on government websites.

Similarly, “Make America Great Again” or “MAGA” is not an official policy put forward by the Trump Administration. Some people have argued that MAGA’s meaning has expanded beyond former President Trump’s campaign slogan and now represents a broader political ideology, such that its use does not constitute political activity unless paired with express advocacy for a candidate or political party. BEGA does not agree with that argument. MAGA remains the campaign slogan of a current candidate for partisan political office, and therefore, its use constitutes political activity. This is true regardless of whether the slogan is used positively or negatively to describe—e.g., MAGA officials, MAGA Republicans, MAGA policies, or MAGA Members of Congress. Accordingly, employees should not use “MAGA” or “Make America Great Again” while on duty, in the workplace, or when acting in their official capacity, including communicating through social media, email, or on government websites.⁶

Illustrative examples

Scenario A

⁶ This analysis is not limited to “Finish the Job,” “Make America Great Again,” or “MAGA;” it also would apply to any other campaign slogans of current candidates for partisan political office.

A District government employee sends out an email to his subordinates expressing excitement with the production of his team lately. In the email he uses the phrase, “with work production like this we will surely help to Make America Great Again”.

What should the employee do?

The employee should refrain from using any such phrasing. It is clear in this scenario that the employee here has violated the LHA by using the campaign slogan currently being used by President/Candidate Donald Trump. The subordinates could take this phrasing as an endorsement of the political agenda and policy goals stated in the re-election campaign of President Trump.

Scenario B

During the normal and official tour of duty, a District employee is in the Wilson Building where she is discussing with co-workers her excitement for the upcoming Presidential Election, echoing a candidate’s official campaign slogan. In this conversation she states that she wholeheartedly supports one candidate over another. She later takes to Instagram and likes a post from that candidate and uses the candidate’s slogan in a post suggesting that she hopes the candidate wins the election.

What should the employee do?

The employee more likely than not, has violated the LHA in her discussion with her co-workers because she has taken an official stance favoring one candidate over another and then echoed an official slogan by that candidate potentially making others feel uncomfortable. As for the unpermitted use of social media while in the workplace and on-duty, in addition to being a violation of the LHA, the posting of campaign endorsements is an outside activity, and it should be noted that such activities also violate District Personnel Manual § 1807.1(b) for using government time or resources for other than official business, or government approved or sponsored activities.

The above examples are intended to be illustrative and are in no way exhaustive. Moreover, the analysis needed to determine whether an LHA issue applies is based on the totality of the fact patterns and small details can create different determinations. Notwithstanding the guidance provided herein, employees should continue to request safe-harbor advice from this Office when considering participation or engaging in political activity as it pertains to social media use. **Pursuant to Chapter 3 of the D.C. Municipal Regulations § 5405.7 this proposed advisory opinion shall be published in the District of Columbia Register for a 30-day public-comment period during which time a person may submit information or comment to bega@dc.gov.**

Sincerely,



ASHLEY D. COOKS

Director of Government Ethics

Board of Ethics and Government Accountability