

U.S. OFFICE OF SPECIAL COUNSEL
Form OSC-13 (2/28/14)

(202) 254-3650 / (800) 854-2824
OMB Control No. 3255-0002

**COMPLAINT OF POSSIBLE PROHIBITED POLITICAL ACTIVITY
(VIOLATION OF THE HATCH ACT)**

INFORMATION ABOUT FILING A COMPLAINT WITH OSC

This complaint form can be used to file complaints alleging violations of the Hatch Act by federal, District of Columbia, state and local and nonprofit organization employees. While it is not required that this complaint form be used, use of this form will be helpful to OSC in expediting the processing and investigating of complaints. Please complete the information requested below as fully and accurately as possible.

SEND COMPLETED COMPLAINT FORMS TO OSC -

By Mail:

**Hatch Act Unit
Office of Special Counsel
1730 M Street, N.W. (Suite 218)
Washington, DC 20036-4505**

By Fax:

(202)254-3700

Electronically:

WWW.OSC.GOV (AT "FILE COMPLAINTS ONLINE")

PLEASE KEEP A COPY OF YOUR COMPLAINT, ANY SUPPORTING DOCUMENTATION, AND ANY ADDITIONAL ALLEGATIONS SENT IN WRITING TO OSC NOW, OR AT ANY TIME WHILE YOUR COMPLAINT IS PENDING. REPRODUCTION CHARGES UNDER THE FREEDOM OF INFORMATION ACT MAY APPLY TO ANY REQUEST YOU MAKE FOR COPIES OF MATERIALS THAT YOU PROVIDED TO OSC.

INFORMATION ABOUT THE HATCH ACT

The Hatch Act prohibits federal, District of Columbia, some state and local and nonprofit organization employees from engaging in certain types of political activities. See 5 U.S.C. §§ 7321- 7326 and 5 U.S.C. §§ 1501-1508.

Federal Employees are generally prohibited from:

1. Using their official authority or influence for the purpose of interfering with or affecting the result of an election.
2. Soliciting, accepting, or receiving political contributions (with some exceptions).
3. Running for nomination or as candidates for partisan political office.
4. Soliciting or discouraging the participation in political activity of any person who has business before their employing agency.
5. Engaging in political activity while on duty, in any room or building occupied in the discharge of official duties, while wearing a uniform or official insignia, or while using a vehicle owned or leased by the United States government.

State and Local Employees are prohibited from*:

1. Using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.
2. Coercing, attempting to coerce, commanding, or advising 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.
3. Being a candidate for partisan political office.

* Employees of some private, nonprofit organizations are subject to the same restrictions on political activity that apply to covered state and local employees.

VISIT WWW.OSC.GOV
FOR MORE INFORMATION ABOUT THE HATCH ACT

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U.S. OFFICE OF SPECIAL COUNSEL

(202) 254-3650 / (800) 854-2824

**COMPLAINT OF POSSIBLE PROHIBITED POLITICAL ACTIVITY
(VIOLATION OF THE HATCH ACT)**

(Please print legibly or type and complete all pertinent items. Enter "N/A" (Not Applicable) or "Unknown" where appropriate. (If more space is needed, use Continuation Sheet at page 4.)

PART 1: COMPLAINANT'S INFORMATION

1. Name of person filing complaint: Mr. () Ms. () Mrs. () Miss. ()

Robert F. Orr, N.C. Supreme Court Justice (Retired)

2. Agency name (if referring complaint): N/A

3. Agency Address (if referring complaint): N/A

4. Home or mailing address (if filing complaint):

3525 Carlton Sq. Pl. Raleigh, NC 27612

5. Contact information: Telephone number(s): (919) 608-5335 (Home)

() (Office) Ext.

Fax number: ()

E-mail address: rforr1946@gmail.com

6. How did you first become aware that you could file a complaint with OSC?

- () OSC Web site
- () OSC speaker
- () OSC brochure
- () OSC poster
- () news story
- () agency personnel office
- () union
- () co-worker

() other (please describe):

Date (approximate): July 6, 2016

PART 2: SUBJECT'S INFORMATION

7. Name of person who violated the Hatch Act ("Subject"):

Gov. Cuomo, Howard Zemsky, Mehul Patel, John Gilstrap, Rich Newman, Kay Sarlin

8. Agency: Office of the Governor of New York and Empire State Development

9. Position/Title: New York Governor Cuomo and top leadership of Empire State Development

10. Federal, District of Columbia (DC), State/Local or Nonprofit employee (check one):

- () Federal employee
- () DC employee.
- () State or Local employee
- () Nonprofit organization employee

11. Contact information: Telephone number(s): () (Home)

() (Office) Ext.

Fax number: ()

E-mail address: unknown

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12. Subject's Supervisor's Name:

unknown

13. Subject's Supervisor's Contact Information:

Telephone number(s): () (Home)

() (Office) Ext.

Fax number: ()

E-mail address: unknown

14. Does Subject have knowledge of the Hatch Act? (check one) :

() Yes

() No

() Not sure

15. If you answered Yes to question 14, plea explain how Subject knows about the Hatch Act (e.g. agency training, agency's distribution of brochures, flyers, e-mails, etc.) :

[Empty text box for explanation]

PLEASE COMPLETE THE FOLLOWING ONLY IF THE SUBJECT IS A STATE OR LOCAL OR NONPROFIT ORGANIZATION EMPLOYEE. IF NOT, SKIP TO PART 3:

16. Does Subject's employing agency receive federal funds? (check one) :

() Yes

() No

() Not sure

17. If you answered Yes to question 16, please provide the following:

a) Nature and source of federal funds Usaspending.gov shows at least \$250,000 of grant money going to

Empire Development during the 2016 fiscal year.

b) Name of individual (s) at agency responsible for federal funds:

unknown

c) Contact information for individual (s) responsible for federal funds:

Telephone number(s): () (Home)

() (Office) Ext.

Fax number: ()

E-mail address: unknown

18. Does the Subject perform duties in connection with federal funds? (check one) :

- Yes
- No
- Not sure

19. If you answered yes to question 18, please provide the type of duties Subject performs in connection with Federal funds:

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PART 3: DETAILS OF COMPLAINT

20. What are the actions that you are reporting to OSC? Please attach all supporting documentation to the complaint form. **IF YOU ARE ALLEGING CANDIDACY IN A PARTISAN ELECTION, PLEASE PROVIDE THE DATE OF THE ELECTION AND/OR THE DATE NOMINATING PETITIONS ARE DUE. IF YOU ARE ALLEGING POLITICAL ACTIVITY WHILE ON DUTY OR IN A FEDERAL BUILDING FOR FEDERAL EMPLOYEES, PLEASE PROVIDE THE TIME AND/OR PLACE THE ACTIVITY OCCURRED.**

See attachment for full details of the Complaint, including full titles and positions of the individuals violating the Hatch Act.

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PART 4: CONSENT TO CERTAIN DISCLOSURES OF INFORMATION

OSC asks everyone who files a complaint alleging a possible prohibited personnel practice or other prohibited activity to select one of three Consent Statements shown below. **IF YOU DO NOT SELECT ONE OF THE THREE CONSENT STATEMENTS BELOW, OSC WILL ASSUME THAT YOU HAVE SELECTED CONSENT STATEMENT 1.** Please: (a) select and sign (or check, if filing electronically) one of the Consent Statements below;

and (b) keep a copy of the Consent Statement you select (as well as a copy of all documents that you send to OSC) for your own records.

If you initially select a Consent Statement that restricts OSC's use of information, you may later select a less restrictive Consent Statement. If your selection of Consent Statement 2 or 3 prevents OSC from being able to conduct an investigation, an OSC representative will contact you, explain the circumstances, and provide you with an opportunity to select a less restrictive Consent Statement.

You should be aware that the Privacy Act allows information in OSC case files to be used or disclosed for certain purposes, regardless of which Consent Statement you sign. See 5 U.S.C. § 552a(b). Information about certain circumstances under which OSC can use or disclose information under the Privacy Act appears on the next page.

(Please sign one)

Consent Statement 1

I *consent* to OSC's communication with the pertinent individuals involved in my complaint. I *agree* to allow OSC to disclose my identity as the complainant, and information from or about me, if OSC decides that such disclosure is needed to investigate the allegation(s) in my complaint. I understand that regardless of the Consent Statement I choose, OSC may disclose information from my complaint file when permitted by the Privacy Act (including circumstances summarized in Part 6, below).

Complainant's Signature for Consent Statement 1

Date Signed

Consent Statement 2

I *consent* to OSC's communication with the pertinent individuals involved in my complaint, but I *do not agree* to allow OSC to disclose my identity as the complainant. I agree to allow OSC to disclose only information from or about me, without disclosing my name or other identifying information, if OSC decides that such disclosure is needed to investigate the allegation(s) in my complaint. I understand that in some circumstances OSC could not maintain my anonymity while communicating with the pertinent individuals. In such cases, I understand that this request for confidentiality might prevent OSC from taking further action on my complaint. I also understand that regardless of the Consent Statement I choose, OSC may disclose information from my complaint file when permitted by the Privacy Act (including circumstances summarized in Part 6, below).

Complainant's Signature for Consent Statement 2

Date Signed

Consent Statement 3

I *do not consent* to OSC's communication with the pertinent individuals involved in my complaint. I understand that if OSC decides that it cannot investigate the allegation(s) in my complaint without communicating with this individuals, my lack of consent will probably prevent OSC from taking further action on the complaint. I understand that regardless of the Consent Statement I choose, OSC may disclose information from my complaint file when permitted by the Privacy Act (including circumstances summarized in Part 6, below).

Complainant's Signature for Consent Statement 3

Date Signed

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PART 5: CERTIFICATION AND SIGNATURE

I certify that all of the statements made in this complaint (including any continuation pages) are true, complete, and correct to the best of my knowledge and belief. I understand that a false statement or concealment of a material fact is a criminal offense punishable by a fine of up to \$250,000, imprisonment for up to five years, or both. 18 U.S.C. § 1001.

Signature

Date Signed

PART 6: PRIVACY ACT / PAPERWORK REDUCTION ACT STATEMENTS

Routine Uses. Limited disclosure of information from OSC files is needed to fulfill OSC's investigative, prosecutorial, and related responsibilities. OSC has described 18 routine uses for information in its files in the *Federal Register* (F.R.), at 66 F.R. 36611 (July 12, 2001), and 66 F.R. 51095 (October

5, 2001). A copy of the routine uses is available from OSC upon request. A summary of the routine uses appears below.

OSC may disclose information from its files in the following circumstances:

1. to disclose that an allegation of prohibited personnel practices or other prohibited activity has been filed;
2. to disclose information to the Office of Personnel Management (OPM) as needed for inquiries involving civil service laws, rules or regulations, or to obtain an advisory opinion;
3. to disclose information about allegations or complaints of discrimination to entities concerned with enforcement of antidiscrimination laws;
4. to the MSPB or the President, when seeking disciplinary action;
5. to the involved agency, MSPB, OPM, or the President when OSC has reason to believe that a prohibited personnel practice has occurred, exists, or is to be taken;
6. to disclose information to Congress in OSC's annual report;
7. to disclose information to third parties (without identifying the complainant unless OSC has the complainant's consent) as needed to conduct an investigation; obtain an agency investigation and report on information disclosed to OSC's whistleblower disclosure channel; or to give notice of the status or outcome of an investigation;
8. to disclose information as needed to obtain information about hiring or retention of an employee; issuance of a security clearance; conduct of a security or suitability investigation; award of a contract; or issuance of a license, grant, or other benefit;
9. to the Office of Management and Budget (OMB) for certain legislative coordination and clearance purposes;

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10. to provide information from an individual's record to a congressional office acting pursuant to the individual's request;
11. to furnish information to the National Archives and Records Administration for records management purposes;
12. to produce summary statistics and work force or other studies;
13. to provide information to the Department of Justice as needed for certain litigation purposes;
14. to provide information to courts or adjudicative bodies as needed for certain litigation purposes;
15. to disclose information to the MSPB as needed in special studies authorized by law;
16. for coordination with an agency's Office of Inspector General or comparable entity, to facilitate the coordination and conduct of investigations and review of allegations;
17. to news media or the public in certain circumstances (except when the Special Counsel determines that disclosure in a particular case would be an unwarranted invasion of personal privacy); and
18. to the Department of Labor and others as needed to implement the Uniformed Services Employment and Reemployment Rights Act of 1994, and the Veterans' Employment Opportunities Act of 1998.

If OSC officials believe that disclosure may be appropriate in a situation not covered by one of OSC's routine uses, or one of the 11 other exceptions to the Privacy Act's general prohibition on disclosure, OSC will seek written authorization from the complainant permitting the disclosure.

Purposes, Burdens, and Other Information. An agency may not conduct or sponsor a collection of information, and persons may not be required to respond to a collection of information, unless it: (a) has been approved by OMB; and (b) displays a currently valid OMB control number. The information in this form is collected pursuant to OSC's legal responsibility to investigate: (a) allegations of prohibited political activity (5 U.S.C. § 1216). The information will be reviewed by OSC to determine whether the facts establish its jurisdiction over the subject of the complaint, and whether further investigation and disciplinary action is warranted. The reporting burden for this collection of information is estimated to be an average of 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the form. Please send any comments about this burden estimate, and suggestions for reducing the burden, to the Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, N.W. (Suite 218), Washington, DC 20036-4505.

Attachment to Form OSC-13

Part 3: Details of Complaint

This complaint is filed under the authority provided by the Hatch Act in 5 U.S.C. § 1216 (a)(2). This complaint is filed against New York Governor Andrew Cuomo and Empire State Development, New York State's chief economic development agency. Specifically, Empire State Development has produced, developed, and placed an advertisement entitled "New York State Diversity" composed of a two minute version of the advertisement and a thirty second version of the advertisement.

To the best of my knowledge, the advertisements were published starting on June 28, 2016 and have been running in North Carolina media markets, that include, but are not limited to, the Raleigh media market. Most disturbing, is the fact that Empire State Development advertisements mention North Carolina and its leadership in a transparent attempt to criticize, interfere, and affect the impending North Carolina elections. These advertisements do so by highlighting issues that are currently matters of intense public debate as the state approaches its upcoming general elections for statewide offices including that of Governor and statewide legislative offices.

Particularly, Empire State Development has used advertisements in a manner that goes beyond appropriate economic development recruitment. For instance, the two minute advertisement from Empire State Development specifically identifies North Carolina, with one of several news headlines reading "North Carolina Bans Local Anti-Discrimination Policies, NY Times March 23, 2016." By using public funds to promote New York as supporting certain policies and implicitly criticizing contrary political decisions made in North Carolina, an ethical limitation has been breached. This advertisement can be found at the following link, and North Carolina's mention can be identified at the 58 second mark:

<https://www.youtube.com/watch?v=acC5UWTRiWU>.

On the other hand, Empire State Development's thirty-second version of the advertisement appears to be running nationally, yet does not mention North Carolina, thus demonstrating that Empire State Development's goal is to specifically interfere in North Carolina politics. The thirty second advertisement can be found at the following link: <https://www.youtube.com/watch?v=c4gcMRJBjx8>. The difference between the advertisements and their method of distribution, demonstrates that Empire State Development has chosen to insert itself into a high profile, controversial, public policy debate by criticizing North Carolina leaders that are up for re-election this election cycle.

This is in direct violation of 5 U.S.C. § 1502 which provides that a state or local officer or employee may not use their official authority or influence for purposes of interfering with or affecting the result of an election or nomination for office.

The advertisements currently airing in North Carolina are a blatant use of authority and influence by the Empire State Development civil servants to influence elections and political activities in North Carolina through the use of taxpayer funding as it is believed that these advertisements have been created using federal grant money. To be sure, in fiscal year 2016, Empire State Development has received at least \$250,000 in federal grant money.

At a minimum, it would appear that Governor Cuomo and the following Empire State Development civil servants have attempted to use their official authority and influence to impact political action in North Carolina elections: CEO, Howard Zemsky; COO and Chief of Staff, Mehul Patel; Executive Vice President of Business Attraction and Expansion, John Gilstrap; Executive Vice President of State Marketing Strategy, Rich Newman; and Executive Vice President of Public Affairs and Strategic Initiatives, Kay Sarlin.

I ask that the Office of Special Counsel conduct a full and thorough investigation of this matter and take any and all appropriate actions as a result. I further request that the Office of Special Counsel keep me updated as to the actions taken as a result of this complaint.