



August 20, 2020

Special Counsel Henry Kerner  
U.S. Office of Special Counsel  
1730 M Street NW, Suite 218  
Washington, DC 20036

Dear Special Counsel Kerner:

The Project On Government Oversight (POGO) writes to file a Hatch Act complaint regarding potential violations of the Hatch Act by Postmaster General Louis DeJoy and possibly other senior federal officials for engaging in prohibited political activity by using their official authority to attempt to sway an upcoming election. The Hatch Act explicitly prohibits executive branch officials from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.”<sup>1</sup>

As you know, the Hatch Act exists, in part, “to ensure that federal programs are administered in a nonpartisan fashion.”<sup>2</sup> In 2007, the Office of Special Counsel (OSC) wrote, “One can imagine no greater violation of the Hatch Act than to invoke the machinery of an agency ... in the service of a partisan campaign.”<sup>3</sup> At the United States Postal Service (USPS), many believe there is an effort directed by top management aimed in part at disenfranchising voters and hobbling the electoral performance of a rival to the incumbent president.

According to recent reporting, USPS has removed high-speed mail sorting machines from USPS facilities.<sup>4</sup> These machines would be used to sort any mail-in ballots and are capable of sorting around 35,000 pieces of mail each hour. Documents gathered by CNN show that the removal of these machines is a part of a plan by USPS to remove “671 machines used to organize letters or other pieces of mail”—a coordinated “reduction” that began in June of this year during Mr. DeJoy’s tenure.<sup>5</sup> The Postal Service has offered no explanation regarding their removal.

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<sup>1</sup> 5 C.F.R. § 734.302(a). <https://www.law.cornell.edu/cfr/text/5/734.302>

<sup>2</sup> “Hatch Act Overview,” U.S. Office of Special Counsel. <https://osc.gov/Services/Pages/HatchAct.aspx>

<sup>3</sup> U.S. Office of Special Counsel, *Report of Prohibited Policy Activity under the Hatch Act, OSC File No. HA-07-1160 (Lurita A. Doan)*, May 18, 2007, 18. <https://www.documentcloud.org/documents/6536500-DoaninvestigationROI.html>

<sup>4</sup> Aaron Gordon, “The Post Office Is Deactivating Mail Sorting Machines Ahead of the Election,” *Vice Motherboard*, August 13, 2020. [https://www.vice.com/en\\_us/article/n7wk9z/the-post-office-is-deactivating-mail-sorting-machines-ahead-of-the-election](https://www.vice.com/en_us/article/n7wk9z/the-post-office-is-deactivating-mail-sorting-machines-ahead-of-the-election)

<sup>5</sup> Curt Devine, Bob Ortega and Paul P. Murphy, “Postal Service removes some mail-sorting machines, sparking concerns ahead of election,” CNN, August 13, 2020. <https://www.cnn.com/2020/08/13/politics/postal-service-sorting-machines/index.html>

Additionally, USPS has removed mail collection boxes in several states.<sup>6</sup>

Beyond physical changes to mail processing and collection equipment, the USPS implemented policy changes in what has been referred to as a restructuring of postal service operations.<sup>7</sup> These changes include cutting back employee hours and prohibiting overtime.<sup>8</sup> While Postmaster General DeJoy has since indicated, following public outcry, that he may be reversing or halting a number of the policies, damage has already been done.<sup>9</sup> By DeJoy's own admission, these changes have had "unintended consequences that impacted our overall service levels."<sup>10</sup> They have hampered the ability of postal workers to deliver mail on time, causing delays that could be catastrophic for time-sensitive ballots.<sup>11</sup>

The Postal Service also recently warned states that ballots may not be delivered in time for each to be counted. To combat this delay, USPS has recommended that states employ the more costly 55-cent first-class stamp in lieu of the 20-cent stamp which is typically used for bulk mail and takes longer to deliver.<sup>12</sup> Yet, historically, USPS has treated mailed in ballots as first-class mail even without a first-class stamp.<sup>13</sup>

Another recent policy change seems inarguably aimed at directly affecting mailed-in ballots: USPS has banned postal clerks from signing as witnesses for mail-in ballots while on duty. This ends a long-time practice that seems uniquely important under physical-distancing concerns related to the coronavirus pandemic.<sup>14</sup> This practice has been so common that the state of Alaska

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<sup>6</sup> Paul P. Murphy, "USPS removes mail collection boxes and reduces post office hours as critics accuse Trump administration of voter suppression," CNN, August 17, 2020. [https://www.kctv5.com/usps-removes-mail-collection-boxes-and-reduces-post-office-hours-as-critics-accuse-trump-administration/article\\_170fb1fb-8d96-58b6-b8f7-5c566d41764e.html](https://www.kctv5.com/usps-removes-mail-collection-boxes-and-reduces-post-office-hours-as-critics-accuse-trump-administration/article_170fb1fb-8d96-58b6-b8f7-5c566d41764e.html)

<sup>7</sup> "Mandatory Stand-Up Talk: All Employees – Pivoting For Our Future," United States Postal Service, July 10, 2020. <http://cdn.cnn.com/cnn/2020/images/07/31/usps0731.pdf>

<sup>8</sup> Letter from Democratic Members of Congress to U.S. Postal Service Inspector General Tammy L. Whitcomb about new USPS policies, August 7, 2020, 2.

<https://www.warren.senate.gov/imo/media/doc/2020.08.07%20Letter%20to%20Postal%20Service%20IG.pdf>

<sup>9</sup> Postmaster General Louis DeJoy, "Postmaster General Louis DeJoy Statement," United States Postal Service, August 18, 2020. <https://about.usps.com/newsroom/national-releases/2020/0818-postmaster-general-louis-dejoy-statement.htm>

<sup>10</sup> Kristen Holmes and Veronica Stracqualursi, "In new letter, USPS chief acknowledges 'unintended consequences' of recent policy changes," CNN, August 14, 2020. <https://www.cnn.com/2020/08/14/politics/dejoy-usps-changes-2020-election/index.html>

<sup>11</sup> Michael D. Shear, Hailey Fuchs and Kenneth P. Vogel, "Mail Delays Fuel Concern Trump Is Undercutting Postal System Ahead of Voting," *New York Times*, July 31, 2020. <https://www.nytimes.com/2020/07/31/us/politics/trump-usps-mail-delays.html>

<sup>12</sup> Jacob Bogage, "Trump says Postal Service needs money for mail-in voting, but he'll keep blocking funding," *Washington Post*, August 12, 2020. <https://www.washingtonpost.com/business/2020/08/12/postal-service-ballots-dejoy/>; Luke Broadwater, Hailey Fuchs, and Nick Corasaniti, "The Postal Service warns states it may not meet mail-in ballot deadlines," *New York Times*, August 15, 2020. <https://www.nytimes.com/2020/08/15/us/elections/the-postal-service-warns-states-it-may-not-meet-mail-in-ballot-deadlines.html>

<sup>13</sup> David A. Andelman, "It'll cost you 55 cents to protect your vote this November," *CNN*, August 14, 2020. <https://www.cnn.com/2020/08/14/opinions/55-cent-mail-in-ballot-campaign-andelman/index.html>

<sup>14</sup> Christina Cabrera, "USPS Quietly Added Rule Prohibiting Workers From Signing Mail-In Ballots As Witnesses," *Talking Points Memo*, August 19, 2020. <https://talkingpointsmemo.com/news/usps-quietly-added-rule-prohibiting-workers-from-signing-mail-in-ballots-as-witnesses>

includes postal officials as an example of an authorized witness for ballots on their mail-in voting instructions website.<sup>15</sup>

Although several of these policies may have been walked back as recently as August 18,<sup>16</sup> this does not negate the possibility that Postmaster General DeJoy—who was until recently a former finance chair of the Republican National Committee<sup>17</sup>—violated the Hatch Act.<sup>18</sup> In that light, we also urge you to investigate the actions of other federal officials who may also have engaged in potential Hatch Act violations.

The timing of the most recent USPS actions, which have disrupted the smooth and timely operations of the USPS in the immediate months prior to the 2020 presidential election, raises serious questions about the motivation of the actions. As the Office of Special Counsel recommended in a 2011 report, there should be “heightened scrutiny” of actions taken or proposed “in the final three months preceding an election” that may be politically motivated.<sup>19</sup> We are within three months of the 2020 election now.

Even evidence of a partial political motivation could be grounds for finding a violation of the Hatch Act under the preponderance of the evidence standard that applies.<sup>20</sup> In a 2017 report, while “OSC did not find evidence” that an individual (whose name is redacted) had “the specific intent of influencing the outcome of the 2016 elections,” nonetheless, OSC found “USPS management took official actions” that constituted “a systemic violation of the Hatch Act.”<sup>21</sup>

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<sup>15</sup> Alaska Division of Elections, “Online Ballot Delivery,” Accessed August 19, 2020.

<https://www.elections.alaska.gov/Core/votingbyonline.php>

<sup>16</sup> Postmaster General Louis DeJoy, “Postmaster General Louis DeJoy Statement” [see note 9].

<sup>17</sup> Steve Benen, “USPS’s Louis DeJoy makes his mark as part of a motley GOP crew,” *MSNBC*, August 14, 2020.

<https://www.msnbc.com/rachel-maddow-show/usps-s-louis-dejoy-makes-his-mark-part-motley-gop-n1236729>

<sup>18</sup> 5 U.S.C. § 7323(a)(1): “...an employee may not use his official authority or influence for the purpose of interfering with or affecting the result of an election.” <https://www.law.cornell.edu/uscode/text/5/7323>

<sup>19</sup> U.S. Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Elections*, January 2011, 97.

[https://www.eenews.net/assets/2020/06/22/document\\_gw\\_09.pdf](https://www.eenews.net/assets/2020/06/22/document_gw_09.pdf)

<sup>20</sup> As a 2007 Congressional Research Service memo states, “gleaning the intent of an activity (that is, if the activity ‘is directed at the success or failure’ of partisan candidates or parties) might often be central to the determination of whether any given activity is ‘political activity’ under the Hatch Act.” The CRS memo notes that OSC would likely examine whether there is a “nexus” between the activity and “political objectives” and that even “seemingly ‘nonpartisan’ activity, may be considered as ‘political activity’ in the federal workplace because of various factors surrounding the conduct and sponsorship of such activities that might indicate a political intent or a partisan ‘agenda.’” Memorandum from Jack Maskell, Legislative Attorney, American Law Division, Congressional Research Service, to the House Committee on Oversight and Government Reform, subject: “Meetings, Conferences as ‘Political Activities’ in a Federal Office, and ‘Hatch Act’ Considerations,” March 26, 2007, 9-10.

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/migrated/20070328154603-20874.pdf>;

5 C.F.R. § 1201.56(a)(1)(ii); 5 C.F.R. § 1201.56(c)(2) (defining “preponderance of the evidence”); Special Counsel v. Perkins, 2006 MSPB 344, 2006 WL 3613437 (M.S.P.B. 2006). Cited in *Political Activity, Lobbying Laws and Gift Rules Guide, 3d*, (Thomson Reuters/West LegalWorks, 2008), 338.

<https://www.zuckerman.com/sites/default/files/2018-01/Political-patronage.pdf>

<sup>21</sup> U.S. Office of Special Counsel, *Report of Hatch Act Investigation: Facilitating Labor Union’s Political Activity Through Use of ‘Union Official’ Leave Without Pay, OSC File No. HA-17-0610 (U.S. Postal Service)*, July 14, 2017, 21.

[https://www.hsgac.senate.gov/imo/media/doc/FINAL%202017%20HA%20USPS%20Report%207.14.17\\_Redacted.pdf](https://www.hsgac.senate.gov/imo/media/doc/FINAL%202017%20HA%20USPS%20Report%207.14.17_Redacted.pdf).

## President Trump's Comments on USPS, Mail-In Voting, and the 2020 Election

In a March 30, 2020, interview on *Fox & Friends*, President Trump rejected the idea of increasing funding to support mail-in voting, as proposed by the Democrats, directly equating increased funding for mail-in voting to increased voter turnout for Democratic candidates over Republican candidates: “The things they had in there were crazy. They had things—levels of voting that, if you ever agreed to it, you’d never have a Republican elected in this country again.”<sup>22</sup>

More recently, in an August 13, 2020, interview with Maria Bartiromo on the Fox Business network, President Trump directly connected his resistance to additional Postal Service funding to a desire to prevent mail-in voting, stating, “Now, they need that money in order to make the post office work, so it can take all of these millions and millions of ballots. Now, if we don’t make a deal, that means they don’t get the money. That means they can’t have universal mail-in voting, they just can’t have it.”<sup>23</sup>

Again, in that same interview, the president connected mail-in voting to partisan politics: “You have California where they’re sending out tens of millions of ballots where they have no idea where they’re going—or maybe they do—maybe they’ll go to everybody but Republicans.”<sup>24</sup>

Despite strong evidence to the contrary, President Trump has repeatedly asserted that mail-in voting is an unreliable system. “Mail-in voting: It’s going to be the greatest fraud in the history of elections,” President Trump stated in the White House.<sup>25</sup> Further, at a recent White House event, the president stated, “Universal [mail-in voting] is going to be a disaster, the likes of which our country has never seen. It’ll end up being a rigged election, or they will never come out with an outcome. They’ll have to do it again. And nobody wants that, and I don’t want that.”<sup>26</sup>

On August 3, 2020, President Trump and Postmaster General DeJoy met in the White House. Two days later, Postmaster General DeJoy met with congressional leadership regarding his plans to make major staffing cuts to the Postal Service. On August 9, the president denied meeting with the postmaster: “I didn’t speak to the postmaster general of the post office.”<sup>27</sup>

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<sup>22</sup> Aaron Blake, “Trump just comes out and says it: The GOP is hurt when it’s easier to vote,” *Washington Post*, March 30, 2020. <https://www.washingtonpost.com/politics/2020/03/30/trump-voting-republicans/>

<sup>23</sup> Chris Stirewalt, “Trump seeks to starve post office to limit mail-in voting,” *Fox News*, August 13, 2020. <https://www.foxnews.com/politics/trump-seeks-to-starve-post-office-to-limit-mail-in-voting>

<sup>24</sup> Fox Business, “Trump: Coronavirus stimulus negotiations sticking point is mail-in voting,” August 13, 2020, 00:13:11. <https://www.foxnews.com/politics/trump-seeks-to-starve-post-office-to-limit-mail-in-voting>

<sup>25</sup> Anderson Cooper 360, “New questions about Trump’s influence over the USPS,” August 18, 2020, 00:00:06. <https://www.cnn.com/videos/politics/2020/08/15/usps-us-postal-service-dejoy-investigation-phillip-ac360-vpx.cnn/video/playlists/this-week-in-politics/>

<sup>26</sup> The White House, “Remarks by President Trump in a Signing of a Proclamation on the 100th Anniversary of the Ratification of the 19th Amendment,” August 18, 2020. <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-signing-proclamation-100th-anniversary-ratification-19th-amendment/>

<sup>27</sup> Abby Phillip, Jim Acosta, and Betsy Klein, “Trump met with Postmaster General amid mail-in voting attacks,” CNN, August 14, 2020. <https://www.cnn.com/2020/08/14/politics/trump-postmaster-general-dejoy/index.html>

President Trump isn't the only one who has made remarks that have raised questions about why management decisions were made that disrupted the USPS's operations just months before the election. For example, President Trump's deputy campaign manager said, "The president views vote by mail as a threat to his election."<sup>28</sup>

Trump's comments are important because, as OSC has noted:

... the case law addressing the Hatch Act's prohibition against using one's official authority or influence to affect the result of an election concerns the supervisor/subordinate relationship and circumstances in which a supervisor requests, and a subordinate performs, political chores. By its terms, however, the Act applies more broadly than that because a federal employee's influence can extend to situations where the supervisor/subordinate relationship is not at play.<sup>29</sup>

While Postmaster General DeJoy has independence from the White House, OSC has also written that the Hatch Act is still relevant even when there is not "a traditional supervisor/subordinate relationship."<sup>30</sup>

It's also worth noting that, despite the president's comments, according to three detailed analyses of mail-in voting, mail-in voting has not benefitted either political party.<sup>31</sup>

### **The USPS's Importance During the Election**

The Postal Service has a critical role to play during the coronavirus pandemic, particularly where the general election is concerned. Millions of Americans are sheltering in place in an attempt to prevent the spread of the coronavirus. The impact of this on voter turnout could be catastrophic as many voters will have to forego in-person voting—a tradition that necessitates standing in large crowds in cramped spaces while waiting to vote and voting. Instead, many voters may want to take advantage of remote, mail-in voting options.

Even before the pandemic struck, last year, the chair and vice chair of the U.S. Election Assistance Commission wrote:

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<sup>28</sup> Bill Whitaker, "How The Coronavirus And Politics Could Affect Voting in the 2020 General Election," *60 Minutes*, June 28, 2020. <https://www.cbsnews.com/news/election-voting-2019-20-coronavirus-pandemic-60-minutes-2020-06-28/>

<sup>29</sup> U.S. Office of Special Counsel, *Investigation of Political Activities*, 41 [see note 19].

<sup>30</sup> U.S. Office of Special Counsel, *Investigation of Political Activities*, 41 [see note 19].

<sup>31</sup> Lee Drutman, "There Is No Evidence That Voting By Mail Gives One Party An Advantage," *FiveThirtyEight*, May 12, 2020. <https://fivethirtyeight.com/features/there-is-no-evidence-that-voting-by-mail-gives-one-party-an-advantage/>; Daniel M. Thompson, Jennifer Wu, Jesse Yoder, and Andrew B. Hall, "The Neutral Partisan Effects of Vote-by-Mail: Evidence from County-Level Roll-Outs," Stanford Institute for Economic Policy Research, April 2020.

<https://siepr.stanford.edu/research/publications/neutral-partisan-effects-vote-mail-evidence-county-level-roll-outs/>; Charlotte Hill, Jacob Grumbach, Adam Bonica, and Hakeem Jefferson, "We Should Never Have to Vote in Person Again," *New York Times*, May 4, 2020.

<https://www.nytimes.com/2020/05/04/opinion/coronavirus-vote-by-mail.html>

“Most [voters] do not realize the growing role of the United States Postal Service (USPS) in ensuring all eligible Americans are able to cast a ballot ... While the USPS may not dominate the discussion around elections, we cannot ignore the role this federal agency plays in our efforts to ensure every eligible voter is able to cast their ballot. ...

... Ensuring all eligible Americans are able to cast a ballot, no matter where they are in the world or what their mental or physical abilities are, is just as important as ensuring their vote is counted accurately.<sup>32</sup>

A nimble, well-equipped Postal Service will be critical to ensuring that ballots are delivered on time to be counted.

### **OSC Has Jurisdiction and an Investigation Is Warranted**

An Office of Special Counsel examination is warranted because it is the only federal office empowered to investigate potential Hatch Act violations, as it has previously done when there has been alleged wrongdoing, including involving the White House.<sup>33</sup>

As you know, USPS falls within OSC’s Hatch Act jurisdiction, and OSC issued a 2017 report on USPS’s management facilitating a labor union’s political activity in support of certain candidates, including Hillary Clinton.<sup>34</sup>

The Office of Special Counsel has enforced the Hatch Act with commendable independence during your tenure, even in the face of considerable White House antipathy.<sup>35</sup> We urge your office to remain independent from any potential pressure and initiate an investigation.

If you have any questions or if we can be of assistance, please contact Rebecca Jones at [rjones@pogo.org](mailto:rjones@pogo.org).

Sincerely,



Danielle Brian  
Executive Director

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<sup>32</sup> Christy McCormick and Ben Hovland, “Post Office and Election Office, Critical Partners in Democracy,” U.S. Election Assistance Commission (May 9, 2019), 7. <https://www.eac.gov/post-office-and-election-office-critical-partners-in-democracy>

<sup>33</sup> U.S. Office of Special Counsel, *Investigation of Political Activities* [see note 29].

<sup>34</sup> U.S. Office of Special Counsel, *Report of Hatch Act Investigation*, 21 [see note 21].

<sup>35</sup> Neil Vigdor and Charlie Savage, “What Is the Hatch Act? Explaining Why Trump Was Urged to Fire Kellyanne Conway,” *New York Times*, June 13, 2019. <https://www.nytimes.com/2019/06/13/us/hatch-act.html>