

August 20, 2020

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Re: Request for Investigation into Violations of the Hatch Act by Louis DeJoy

Dear Director Wray,

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Federal Bureau of Investigation (“FBI”) investigate whether Postmaster General of the United States Louis DeJoy criminally violated or conspired to violate federal criminal statutes by taking deliberate actions that will undermine voting by mail for the political benefit of President Donald Trump, a candidate for partisan office.

The Hatch Act broadly prohibits the manipulation of federal funds and federal programs to advance a partisan agenda. One criminal provision of the law, 18 U.S.C. § 610, prohibits any person from commanding, or coercing, or attempting to command or coerce, any employee of the federal government to engage in political activity, including, but not limited to, working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both. Another provision, 18 U.S.C § 595, bars any person “employed in any administrative position by the United States, or by any department or agency thereof . . . in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof” from using their “official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President.” Violators of this provision could be subject to fine or imprisoned not more than one year, or both. These prohibitions ensure that the government pursues the national interest—not the personal political interests of powerful individuals, government officials, or foreign powers.

Publicly-available information as well as statements from DeJoy raise questions about whether he and others unlawfully commanded the United States Postal Service (“USPS”) to make policy changes at the agency that would depress or delay voting by mail, despite the increased demand due to the coronavirus pandemic, for the political benefit of President Donald Trump, a candidate for partisan political office. Prosecutions under the criminal provisions of the Hatch Act, while rare, are not unprecedented. In 1974, for example, President Richard Nixon’s personal lawyer pled guilty to a criminal Hatch Act violation for attempting to trade an ambassadorship appointment for contributions to support President Nixon’s reelection. DeJoy’s conduct, while not similar, is perhaps more egregious because of its widespread impact on the American electorate’s ability to vote, and should be reviewed in the context of the Hatch Act’s criminal provisions.

Background

On June 15, 2020, Louis DeJoy, a prominent Trump campaign donor, became the Postmaster General of the United States—the first in decades to hold the position without prior experience within the agency.¹ In 2017, DeJoy and his wife hosted the President for a fundraiser in their home. When he was selected to serve as Postmaster General, DeJoy was overseeing fundraising for the Republican National Convention (“RNC”), though he has since resigned from the post.² Public records indicate that DeJoy donated more than \$1.2 million to the Trump Victory Fund and millions more to the RNC and Republican candidates.³ Although the Postal Service Board of Governors voted on the selection of DeJoy, the Trump administration, led by Treasury Secretary Steven Mnuchin, sought authority to pick the new Postmaster General, raising additional concerns about politicization of the agency.⁴

Prior to and since Louis DeJoy’s selection as Postmaster General, President Trump has made clear his interest in voting by mail and its potential impact on his partisan political goals in the upcoming presidential election. As public reports note, “Trump, for whatever reason, has long been convinced that mail voting is bad for him.”⁵ During the 2018 midterm elections, President Trump tweeted that the Florida election should be called in favor of Republicans Rick Scott and Ron DeSantis, suggesting that mail-in ballots might be “forged” or “massively infected.”⁶ Trump’s attacks on voting by mail escalated as the coronavirus pandemic hit and the USPS Board of Governors were considering hiring a new Postmaster General. During an interview on Fox & Friends on March 30, the President described his “opposition to a Democratic proposal to include funding for mail-in voting in coronavirus stimulus legislation by saying, ‘they have things, levels of voting, that if you ever agreed to it, you’d never have a Republican elected in this country again.’”⁷ In April, the President “tweeted (falsely) that mail voting has ‘tremendous potential for voter fraud’ and ‘for whatever reason, doesn’t work out well for Republicans.’”⁸ This false statement was used to explain Trump’s partisan claim that “Republicans should fight very hard when it comes to state wide mail-in voting. Democrats are clamoring for it.”⁹

¹Ahiza García-Hodges, New Postal Service Head is a Top Trump Donor. What Does That Mean for Its Future?, *NBCNews*, June 15, 2020, available at <https://www.nbcnews.com/news/us-news/new-usps-head-top-trump-donor-what-does-mean-its-n1231124>.

²Donald K. Sherman and Sylvia Albert, Trump’s New Postmaster General could Corrupt a Key Institution Ahead of Election Day, *NBCNews*, July 19, 2020, available at <https://www.nbcnews.com/think/opinion/trump-s-2020-usps-appointment-could-corrupt-key-institution-ahead-ncna1234125>.

³ *Id.*

⁴ *Id.*

⁵ Aaron Rupar, How Trump’s Mail Voting Sabotage could Result in an Election Night Nightmare, *Vox*, Aug. 11, 2020, available at <https://www.vox.com/2020/8/11/21358960/trump-mail-voting-sabotage-explained>.

⁶ *Id.* Trump made these comments despite voting by mail in Florida.

⁷ Aaron Rupar, Trump isn’t Even Trying to Hide his Self-Interested Reasons for Opposing Mail-In Voting, *Vox*, Apr. 8, 2020, available at <https://www.vox.com/2020/4/8/21213416/trump-mail-in-voting-wisconsin-coronavirus>.

⁸ Aaron Rupar, How Trump’s Mail Voting Sabotage could Result in an Election Night Nightmare, *Vox*, Aug. 11, 2020, available at <https://www.vox.com/2020/8/11/21358960/trump-mail-voting-sabotage-explained>.

⁹ *Id.*

On July 7, 2020, the USPS Office of Inspector General (OIG) issued a management review identifying “potential nationwide issues integrating election office’s vote by mail processes with the Postal Service processes which could impact future elections.”¹⁰ OIG acknowledged that as Americans have attempted to adjust their lives to the still-surgingly coronavirus pandemic “there is an expected increase in the number of Americans who will choose to vote by mail and avoid in-person voting.”¹¹ OIG’s review indicated that there were issues in Milwaukee, WI “related to the timeliness of ballots being mailed to voters, correcting misdelivery of ballots, an inability to track ballots, and inconsistent postmarking of ballots”¹² during the Wisconsin primary. OIG explained that at the national level, there were “potential concerns with the deadlines set by the states to request absentee ballots, ballots postmarks, ballots mailed without mail tracking technology, and the ratio of Political and Election Mail coordinators to election offices in certain locations.”¹³ In response to some of these findings, USPS management indicated that it had or would soon implement OIG’s recommendations, but on July 13, DeJoy “established major operational changes [] that could slow down mail delivery,” alarming voting by mail experts.¹⁴ This management review was not OIG’s first report regarding voting by mail -- in 2015, OIG found that expanding voting by mail would increase USPS annual revenue by \$2 million.¹⁵

During DeJoy’s tenure at USPS, President Trump continued his attacks on voting by mail. In July, Trump once again made false statements about voting by mail and even “went as far as to suggest that the election should be delayed until people can safely vote in person.”¹⁶ After Nevada Governor Steve Sisolak signed legislation to automatically provide all Nevada voters with a ballot in the mail, the President responded by describing the new law legislation as “an illegal late night coup.”¹⁷ Many of these attacks were repeated and reinforced by Republican Party leaders, including RNC Chair Ronna Romney McDaniel.¹⁸ Public reports indicate that on August 3, DeJoy met with Trump at the White House “amid [Trump’s] ongoing attacks on mail-in voting and ahead of DeJoy’s meeting with House Speaker Nancy Pelosi and Senate

¹⁰ U.S. Postal Service, Office of the Inspector General, Management Alert, Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center Service Area, July 7, 2020, available at <https://www.uspsoidg.gov/sites/default/files/document-library-files/2020/20-235-R20.pdf>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*; see also, Jacob Bogage, [Postal Service memos detail ‘difficult’ changes, including slower mail delivery](https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/), *Washington Post*, July 14, 2020, available at <https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/>.

¹⁵ U.S. Postal Service, Office of the Inspector General, A Vote for Election Mail, Sep. 21, 2015, available at <https://www.uspsoidg.gov/blog/vote-election-mail>.

¹⁶ Aaron Rupar, [How Trump’s mail voting sabotage could result in an election night nightmare](https://www.vox.com/2020/8/11/21358960/trump-mail-voting-sabotage-explained), *Vox*, Aug. 11, 2020, available at <https://www.vox.com/2020/8/11/21358960/trump-mail-voting-sabotage-explained>.

¹⁷ *Id.*

¹⁸ *Id.*

Democratic Leader Chuck Schumer.”¹⁹ On August 13, Trump gave a national television interview in which he suggested that he would not support Democratic legislation to help fund USPS so it can “adequately deal with what is expected to be a major surge in mail-in and absentee balloting due to concerns about in-person voting spreading Covid-19” because without those funds, “there won't be the ability for the people to cast more mail-in ballots, or ... for election officials to effectively count them all.”²⁰

Despite the concerns raised by USPS OIG, and amidst the President and Republican Party leadership’s public lobbying campaign against voting by mail, Postmaster General DeJoy directed or implemented numerous policy changes that will undermine voting by mail in November. According to internal USPS memos, DeJoy directed USPS employees that overtime would be prohibited and that they were prohibited from making late trips in order to ensure timely delivery.²¹ DeJoy offered these changes as a way to cut costs, but USPS has acknowledged that they will likely result in delayed mail delivery for a period of time.²² USPS effectively raised the rate of mail-in ballots by advising state election officials “to use high-priority first-class postage, which costs 55 cents an item, on election mail rather than the third-class, or bulk, rate of 20 cents typically used.”²³ USPS also reassigned or displaced twenty-three postal executives in a move that centralized power for DeJoy that he touted as establishing “clear lines of authority and accountability.”²⁴ According to congressional leaders, DeJoy acknowledged that the changes implemented since he assumed office included: “reductions of overtime availability, restrictions on extra mail transportation trips, testing of new mail sorting and delivery policies at hundreds of Post Offices, and the reduction of the number and use of processing equipment at mail processing plants.”²⁵ USPS workers note these changes are delaying mail delivery which includes mail-in ballots in presidential primaries.

¹⁹ Abby Phillip, Jim Acosta and Betsy Klein, Trump Met with Postmaster General Amid Mail-In Voting Attacks, *CNN*, Aug. 14, 2020, available at <https://www.cnn.com/2020/08/14/politics/trump-postmaster-general-dejoy/index.html>.

²⁰ Chris Cillizza, Donald Trump Just Straight-Up Admitted he is Working to Meddle in the Election, *CNN*, Aug. 13, 2020, available at <https://www.cnn.com/2020/08/13/politics/donald-trump-mail-in-ballots-2020/index.html>.

²¹ Jacob Bogage, Postal Service Memos Detail ‘Difficult’ Changes, including Slower Mail Delivery, *Washington Post*, July 14, 2020, available at <https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/>; see also, Internal USPS Document Tells Employees to Leave Mail at Distribution Centers, *Washington Post*, July 14, 2020, available at https://www.washingtonpost.com/context/internal-usps-document-tells-employees-to-leave-mail-at-distribution-centers/175dd1ae-e202-4777-877c-33442338d1cc/?itid=lk_inline_manual_46.

²² *Id.*

²³ Jacob Bogage, Trump says Postal Service needs money for mail-in voting, but he'll keep blocking funding, *Washington Post*, Aug. 12, 2020, available at <https://www.washingtonpost.com/business/2020/08/12/postal-service-ballots-dejoy/>.

²⁴ Jacob Bogage, Postal Service Overhauls Leadership as Democrats Press for Investigation of Mail Delays, *Washington Post*, Aug. 7, 2020, available at <https://www.washingtonpost.com/business/2020/08/07/postal-service-investigation-dejoy/>.

²⁵ Jacob Bogage, Top Democrats say Postmaster General Acknowledged New Policies that Workers Say are Delaying Mail, *Washington Post*, Aug. 6, 2020, available at <https://www.washingtonpost.com/politics/2020/08/06/top-democrats-say-postmaster-general-acknowledged-new-policies-that-workers-say-are-delaying-mail/>.

DeJoy seemingly responded to criticism about these actions in recent public statements. In remarks to the USPS Board of Governors, DeJoy explained:

[L]et me be clear that with regard to Election Mail, the Postal Service and I are fully committed to fulfilling our role in the electoral process. If public policy makers choose to utilize the mail as a part of their election system, we will do everything we can to deliver Election Mail in a timely manner consistent with our operational standards. . . . We have delivery standards that have been in place for many years. These standards have not changed, and despite any assertions to the contrary, we are not slowing down Election Mail or any other mail.²⁶

In an internal memo to USPS staff DeJoy stated “that his sweeping operational changes have brought ‘unintended consequences’” to the agency.²⁷

On June 16, 2020, CREW requested that, pursuant to the Freedom of Information Act, USPS provide internal documents and information related to the Postmaster General search process that led to DeJoy’s appointment as well as internal communications to DeJoy and the Board of Governors about voting by mail.²⁸ To date, USPS has not provided any internal document related to the agency’s approach or DeJoy’s intentions regarding voting by mail. Other good government groups have sued USPS in federal court to obtain documents about DeJoy’s policies related to voting by mail.²⁹ Democratic Members of Congress have made similar requests for documents and information that also remain outstanding.³⁰

Following weeks of immense public pressure, calls for DeJoy’s removal, and the demands that DeJoy appear before the House Committee on Oversight and Reform for an “emergency” hearing, the policies remained intact.³¹ It was only after the Republican-led Senate Homeland Security and Governmental Affairs Committee scheduled a hearing with DeJoy this

²⁶ U.S. Postal Service, Postmaster General Louis DeJoy’s Opening Remarks for the USPS Board of Governors Aug. 7 Meeting, Aug. 7, 2020, available at <https://about.usps.com/newsroom/national-releases/2020/0807-pmg-bog-meeting-comments.htm>.

²⁷ Kevin Breuninger, *Postal Service Chief, Under Fire, Admits ‘Unintended Consequences’ of His Policy Overhaul*, CNBC, Aug. 14, 2020, available at <https://www.cnbc.com/2020/08/14/postal-service-chief-under-fire-admits-unintended-consequences-of-his-policy-overhaul.html>.

²⁸ Citizens for Responsibility & Ethics in Washington, *CREW Requests Records on Mail-In-Voting Plans*, June 16, 2020, available at <https://www.citizensforethics.org/foia/usps-louis-dejoy-mail-in-voting/>.

²⁹ See e.g., Protect Democracy, *USPS 2020 Election Mail Plans*, available at <https://protectdemocracy.org/project/usps-voting-by-mail/#section-2>, accessed Aug. 18, 2020.

³⁰ See e.g., Letter from Rep. Carolyn Maloney, Chairwoman, House Committee on Oversight and Reform to Louis DeJoy, Postmaster General of the United States, July 20, 2020, available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-07-20.CBM%20GEC%20to%20DeJoy%20-PMG%20re%20Postal%20Service%20Changes.pdf>. Committee staff confirmed that USPS did not provide the requested documents.

³¹ Jacob Bogage and Joseph Marks, *House Accelerates Oversight of Postal Service as Uproar Grows, Demanding Top Officials Testify at ‘Urgent’ Hearing*, *Washington Post*, Aug. 16, 2020, available at <https://www.washingtonpost.com/business/2020/08/16/postal-service-mail-democrats-hearing-dejoy/>.

week that he finally agreed to partially reverse some of his new policy decisions.³² On August 18, 2020, DeJoy issued a statement claiming to suspend operational initiatives until after the election, including assurances that “[m]ail processing equipment and blue collection boxes will remain where they are” and that overtime will be approved “as needed.”³³ Neither of these assurances speak to undoing changes he made in the past two months. Mail processing equipment in multiple locations around the nation have already been removed, including at least eight reported machines in Michigan, twelve in Massachusetts, and seven in Charlotte, North Carolina.³⁴ If these machines will remain where they are, as assured by Postmaster General DeJoy, they will remain removed from USPS and their loss will continue to make the process of sorting mail longer. DeJoy’s statement that overtime will be approved “as needed,” also fails to address any of the internal changes at USPS related to the demand for overtime, such as no longer waiting for plants to deliver sorted mail, leaving mail for the next day’s delivery, or cutting out parking points, which also led to delivery delays.³⁵

Speaker of the House Nancy Pelosi reported that during a meeting with DeJoy after his announcement, he “frankly admitted” he had no intention to replace any removed mail sorting machines or dropboxes, and that no plans for “adequate overtime” had been developed.³⁶ Speaker Pelosi characterized DeJoy’s statement as “not a solution” and “misleading.”³⁷ *Vice News* cite Motherboard reported that according to internal USPS emails, shortly after DeJoy’s August 18th statement, USPS headquarters “instructed all maintenance managers around the country not to reconnect or reinstall any mail sorting machines they had already disconnected.”³⁸

³² Jacob Bogage, Postmaster General Announces He is ‘Suspending’ Policies that were Blamed for Causing Mail Delays, *Washington Post*, Aug. 18, 2020, available at https://www.washingtonpost.com/politics/senate-will-hold-postal-service-hearing-with-dejoy-on-friday-as-mail-delay-fears-grow/2020/08/18/5f978e76-e14f-11ea-8dd2-d07812bf00f7_story.html/.

³³ Press Release, USPS, Postmaster General Louis DeJoy Statement (Aug. 18, 2020),

<https://about.usps.com/newsroom/national-releases/2020/0818-postmaster-general-louis-dejoy-statement.htm>.

³⁴ See, Jordyn Grzelewski & Craig Mauger, Michigan union chiefs: USPS delaying mail by removing machines, shifting policies, *Detroit News* (Aug. 18, 2020),

<https://www.detroitnews.com/story/news/politics/2020/08/18/michigan-union-chiefs-usps-delaying-mail-removing-machines-shifting-policies/3378203001/>; see also, Saraya Wintersmith, At Least A Dozen Mail Sorting Machines Have Already Been Removed In Massachusetts, Postal Union Officials Say, *WGBH NEWS* (Aug. 17, 2020), <https://www.wgbh.org/news/local-news/2020/08/17/at-least-a-dozen-mail-sorting-machines-have-already-been-removed-in-massachusetts-postal-union-officials-say>; see also, Austin Weinstein & Brian Murphy, 7 mail sorting machines removed in Charlotte, official says, as protests continue, *Charlotte Observer*, (Aug. 18, 2020), <https://www.charlotteobserver.com/article245030145.html>.

³⁵ These changes were initially reported in unverified leaked memos. See Document purports to show PMG’s plans for changes to USPS operations, *PostalNews* (July 13, 2020),

<http://postalnews.com/blog/2020/07/13/document-purports-to-show-pmgs-plans-for-changes-to-usps-operations/>

³⁶ Off ice Speaker of the House Nancy Pelosi, Pelosi Statement after Conversation with Postmaster General (Aug. 19, 2020), available at <https://www.speaker.gov/newsroom/81920>.

³⁷ *Id.*

³⁸ Aaron Gordon, USPS Headquarters Tells Managers Not to Reconnect Mail Sorting Machines, Emails Show, *Motherboard*, Aug. 20, 2020, available at https://www.vice.com/en_us/article/xg8k4d/usps-emails-tell-managers-not-to-reinstall-mail-sorting-machines-postmaster-general-dejoy.

Potential Violations

The Hatch Act protects federal funds, employees, and programs from political manipulation. In particular, the statute has criminal provisions that are designed to provide penalties for egregious attempts at using federal authority to influence a federal election. The speed and scale of the dramatic changes made by Postmaster DeJoy at USPS to the detriment of voting by mail and the potential benefit of President Trump – according to the candidate – warrant investigation by federal law enforcement.

The Coercion Statute

One criminal provision of the Hatch Act, 18 U.S.C. § 610, states:

It shall be unlawful for any person to intimidate, threaten, command, or coerce, or attempt to intimidate, threaten, command, or coerce, any employee of the Federal Government as defined in section 7322(1) of title 5, United States Code, to engage in, or not to engage in, any political activity, including, but not limited to, voting or refusing to vote for any candidate or measure in any election, making or refusing to make any political contribution, or working or refusing to work on behalf of any candidate. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.³⁹

As the Department of Justice (“DOJ”) has explained, 18 U.S.C. § 610, bars the coercion of political activity and “was enacted as part of the 1993 Hatch Act reform amendments to provide increased protection against political manipulation of federal employees in the executive branch.”⁴⁰ The statute prohibits intimidating or coercing a federal employee to induce or discourage “any political activity” by the employee and is among the body of statutes directed at the “use [of] government-funded jobs or programs to advance a partisan political agenda rather than to serve the public interest.”⁴¹ DOJ notes that “[a]lthough the class of persons covered by Section 610 is limited to federal employees, the conduct covered by this statute is broad: it reaches political activity that relates to any public office or election, whether federal, state, or local.”⁴² DOJ notes that the “phrase ‘political activity’ in Section 610 expressly includes, but is not limited to, ‘voting or refusing to vote for any candidate or measure,’ ‘making or refusing to make any political contribution,’ and ‘working or refusing to work on behalf of any candidate.’”⁴³

Here, there is ample evidence to suggest that DeJoy’s conduct violated 18 U.S.C § 610. It is not in dispute that Postmaster DeJoy has made numerous policy changes since arriving at USPS that have the effect of causing delays in the delivery of mail. These reports have been

³⁹ 18 U.S.C. § 610

⁴⁰ Federal Prosecution of Election Offenses 53 (Richard C. Pilger et al. eds., 8th ed. 2017), <https://www.justice.gov/criminal/file/1029066/download>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

well documented, and the Postmaster General admitted as much in public to the Board of Governors and private statements to USPS employees and congressional leaders. As documented by the USPS OIG, these delays have the potential to undermine voting by mail in November. While there are very few cases interpreting Section 610, the USPS policy changes implemented and overseen by USPS employees at the direction of Postmaster DeJoy and leading to delays in the delivery of mail-in ballots could be considered a “contribution” to candidate Trump. As described above, Trump has made abundantly clear that he believes the use and expansion of voting by mail would have a detrimental impact on his election and the election of Republicans officials in other government positions. Trump’s opposition to voting by mail was expressed during the period of DeJoy’s recruitment to serve as Postmaster General and reiterated by Republican Party leadership. As a member of the Republican Party’s fundraising team for its national convention, it is hard to imagine that DeJoy was unaware of the president’s or the party’s active opposition to voting by mail when he was appointed or when he assumed the role of Postmaster General during his tenure at USPS. Advancing that agenda against voting by mail, which the president clearly believed would benefit his reelection, appears to be a political contribution to candidate Trump.

As DOJ’s guidance articulates, Section 610 prohibits DeJoy from using his authority to direct “any political activity” by USPS employees. The criminal Hatch Act statutes are meant to prohibit “use [of] government-funded jobs or programs to advance a partisan political agenda rather than to serve the public interest.”⁴⁴ It is hard to see DeJoy’s actions as anything other than manipulating the Postal Service to address a potential political liability for the President’s re-election prospects. USPS OIG has acknowledged that due to the coronavirus pandemic “there is an expected increase in the number of Americans who will choose to vote by mail and avoid in-person voting.”⁴⁵ Despite this demand, DeJoy’s repeated directives appear openly hostile to supporting voting by mail in November. While the Postal Service has suffered longstanding budget issues, DeJoy’s quick policy changes following the president’s relentless advocacy and despite OIG’s findings regarding the financial boon of election mail and its concerns regarding delays in delivering ballots strongly suggests a nefarious intent. The term “political activity” is meant to be interpreted broadly, but given the widespread impact of DeJoy’s policy changes on Americans’ access to the vote amidst the pandemic, even a narrow definition would seem to apply. While DeJoy has claimed that these actions were taken with no nefarious intent, the agency’s lack of transparency with the public and Democratic Members of Congress suggest otherwise. DeJoy’s partial reversal of his policy decisions occurred only after being called to attend a hearing by a Republican-led Senate committee, adding to the context suggesting his partisan motivations. DeJoy’s directives will have a dramatic impact on the implementation of voting by mail to the benefit of President Trump, which may indicate a violation of 18 U.S.C. § 610.

⁴⁴ *Id.*

⁴⁵ U.S. Postal Service, Office of the Inspector General, Management Alert, Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center Service Area, July 7, 2020.

Interference in Election by Employees of Federal, State, or Territorial Governments

Another criminal provision of the Hatch Act, 18 U.S.C. § 595, states:

Whoever, being a person employed in any administrative position by the United States, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined under this title or imprisoned not more than one year, or both.⁴⁶

As the Department of Justice (“DOJ”) has explained, 18 U.S.C. § 595 “is aimed at the misuse of official authority. It does not prohibit normal campaign activities by federal, state, or local employees.”⁴⁷ DOJ notes that “Section 595 applies to all public officials, whether elected or appointed, federal or non-federal.”⁴⁸ For example, an appointed policymaking government official, such as a Postmaster General, “who bases a specific governmental decision on an intent to influence the vote for or against an identified federal candidate violates Section 595.”⁴⁹ DOJ’s guidance adds that “[t]he nexus between the official action and an intent to influence must be clear to establish a violation of this statute.”⁵⁰

Postmaster General DeJoy’s conduct may have violated the prohibitions in 18 U.S.C. § 595. The Trump administration sought to recruit a Trump loyalist to become Postmaster General, and they appear to have found their man in Louis DeJoy. In the months ahead of his appointment, the President was clear not just in his interest regarding voting by mail, but in his belief that expansion of voting by mail even in response to the pandemic was a threat to his political future. He explicitly stated that voting by mail would threaten Republican prospects in future elections. DeJoy was, at the time, overseeing fundraising for the Republican National Convention, working with RNC Chair McDaniel, who has also voiced opposition to expanding voting by mail. After DeJoy began his tenure at USPS, it appears that every major policy decision made by DeJoy had the effect of hampering voting by mail, including cuts to overtime and effectively raising the cost of sending mail-in ballots to voters. DeJoy’s numerous, sweeping

⁴⁶ 18 U.S.C. § 595

⁴⁷ Federal Prosecution of Election Offenses 111 (Richard C. Pilger et al. eds., 8th ed. 2017), <https://www.justice.gov/criminal/file/1029066/download>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

policy changes were made in close succession over the course of just his two months on the job, despite push back from postal workers, Congress, and the public.

Postmaster DeJoy has acknowledged that his policy moves have had “unintended consequences,” but the President’s persistent advocacy about voting by mail strongly suggests that DeJoy’s changes were made quickly in order to ensure they were in place before Election Day. On July 7, USPS OIG identified “potential nationwide issues integrating election office’s vote by mail processes with the Postal Service processes which could impact future elections.”⁵¹ Despite this ominous warning, six days later, DeJoy made “major operational changes” experts warned could slow down mail delivery and harm voting by mail.⁵² Internal communications within the USPS regarding DeJoy’s motivation for these changes would provide more clarity regarding his intent in making these changes, but to date, DeJoy has not been fully responsive to requests for such documents and information from Congress and the good government community. Further investigation to shed more light on DeJoy’s intent is essential. While DeJoy abruptly announced plans to halt some of his questionable policies, this decision came only after a hearing announcement from Senate Republicans, providing more support for concern about DeJoy’s partisanship. Given all the context surrounding DeJoy’s actions, these consequences don’t appear to be unintended, but instead governmental decisions based on DeJoy’s intent to influence the vote for or against President Trump, an identified federal candidate for partisan office in violation of 18 U.S.C. § 595.

Conclusion

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. The criminal provisions of the statute prohibit federal officials from intimidating or directing government employees to undertake political activity directed toward the success or failure of a political candidate or from misusing governmental authorities and decisions to influence an election.

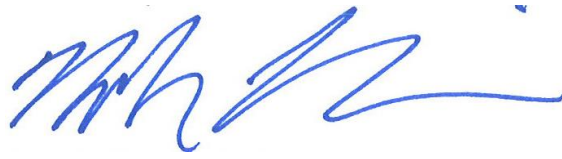
By using his official position and authority to direct policy changes at USPS to the benefit of President Donald Trump, a candidate in a partisan election, Postmaster General DeJoy may have violated multiple criminal provisions of the Hatch Act. CREW respectfully requests that the FBI immediately commence an investigation into DeJoy’s conduct and take appropriate action.

Sincerely,

⁵¹ U.S. Postal Service, Office of the Inspector General, Management Alert, Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center Service Area, July 7, 2020.

⁵² Jacob Bogage, *Postal Service memos detail ‘difficult’ changes, including slower mail delivery*, *Washington Post*, July 14, 2020, available at <https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/>.

The Honorable Christopher Wray
August 20, 2020
Page 11

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director