

NONPARTISAN POSTMASTER GENERAL ACT OF 2020

OCTOBER 27, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. CAROLYN B. MALONEY of New York, from the Committee on Oversight and Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 8109]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Reform, to whom was referred the bill (H.R. 8109) to clarify and increase the restrictions on political activities that are applicable to the members of the Postal Service Board of Governors, including the Postmaster General and the Deputy Postmaster General, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Summary and Purpose of Legislation	3
Background and Need for Legislation	3
Section by Section Analysis	4
Legislative History	5
Committee Consideration	5
Roll Call Votes	5
Explanation of Amendments	8
List of Related Committee Hearings	8
Statement of Oversight Findings and Recommendations of the Committee	8
Statement of General Performance Goals and Objectives	8
Application of Law to the Legislative Branch	8
Duplication of Federal Programs	9
Disclosure of Directed Rule Makings	9
Federal Advisory Committee Act Statement	9
Unfunded Mandates Reform Act Statement	9
Earmark Identification	9

Committee Cost Estimate	9
New Budget Authority and Congressional Budget Office Cost Estimate	9
Changes in Existing Law Made by the Bill, as Reported	11
Minority Views	23

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nonpartisan Postmaster General Act of 2020”.

SECTION 2. POSTAL SERVICE OFFICERS’ POLITICAL ACTIVITIES LIMITED.

(a) HATCH ACT OFFICER APPLICABILITY.—

(1) IN GENERAL.—Section 410 of title 39, United States Code, is amended by adding at the end the following new subsection:

“(e) For the purposes of applying subchapter III of chapter 73 of title 5, and any regulations thereunder, to the Postal Service pursuant to subsection (b)(1), the following are deemed to be employees of the Postal Service:

“(1) The Postmaster General.

“(2) The Deputy Postmaster General.

“(3) Any individual holding a position in the Postal Service to which such individual was appointed by the President, by and with the advice and consent of the Senate, including a Governor appointed under section 202.”.

(2) FURTHER RESTRICTED EMPLOYEES.—Section 7323(b)(2)(B) of title 5, United States Code, is amended—

(A) in clause (i)(XIV), by striking “or” at the end;

(B) in clause (ii), by striking the period at the end and inserting “; and” ; and

(C) by adding at the end the following new clause:

“(iii) a person holding a position described in section 410(e) of title 39.”.

(b) POLITICAL ACTIVITIES OF BOARD MEMBERS.—Section 202 of title 39, United States Code, is amended by adding at the end the following new subsections:

“(f) While serving as a member of the Board, an individual may not—

“(1) hold a political position; or

“(2) solicit funds for—

“(A) the campaign of a candidate for election for a Federal, State, or local elected office; or

“(B) a Federal, State, or local political party (as defined in the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.)).

“(g) For purposes of this section, an individual holds a political position if such individual—

“(1) holds Federal, State, or local elected office;

“(2) files paperwork to be a candidate for election for a Federal, State, or local elected office; or

“(3) is an officer, director, or employee of a Federal, State, or local political party (as defined in subsection (f)(2)(B)).”.

(c) SEVERABILITY.—If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 3. FINANCIAL DISCLOSURES REQUIRED PRIOR TO ASSUMING DUTIES OF POSTMASTER GENERAL OR DEPUTY POSTMASTER GENERAL.

The Ethics in Government Act of 1978 (5 U.S.C. App) is amended—

(1) in section 101(a)—

(A) by striking “(a) Within” and inserting “(a)(1) Within”; and

(B) by adding at the end the following:

“(2)(A) An individual proposed pursuant to section 202 of title 39, United States Code, to assume the position of Postmaster General or Deputy Postmaster General shall file the report required by paragraph (1) before assuming such position.

“(B) An individual proposed for such a position may not carry out any duty of the position until the report submitted by the individual pursuant to subparagraph (A) is reviewed and signed by the Director of the Office of Government Ethics under section 106(b)(1), and any action taken by that individual in the performance of any function or duty of the applicable position before the date on which such signature occurs shall have no force or effect.”; and

(2) in section 103(b)—

(A) by striking “(b) The President” and inserting “(b)(1) The President”; and

(B) by adding at the end the following:

“(2) Notwithstanding subsection (a), an individual proposed pursuant to section 202 of title 39, United States Code, to assume the position of Postmaster General or Deputy Postmaster General shall file the report required under section 101(a) with the Director of the Office of Government Ethics.”.

SUMMARY AND PURPOSE OF LEGISLATION

H.R. 8109, the Nonpartisan Postmaster General Act, would restrict the political activities of the members of the Postal Service Board of Governors, including the Postmaster General and the Deputy Postmaster General. Specifically, the bill would prohibit the Postmaster General and the Deputy Postmaster General from taking an active part in political management of political campaigns and prohibit the Governors, the Postmaster General, and the Deputy Postmaster General from holding any political position while in office or soliciting funds for the campaign of a candidate for elected office or for a political party.

BACKGROUND AND NEED FOR LEGISLATION

Enshrined in the Constitution and entrusted to Congress as one of its enumerated powers, the United States Postal Service is one of the oldest agencies in the federal government. Until recently, the Postal Service has operated in a nonpartisan manner. Unfortunately, the President installed a Republican megadonor and bundler as Chairman of the Board of Governors, and the Board then hired another bundler and Republican megadonor as Postmaster General.

The Nonpartisan Postmaster General Act would reaffirm the nonpartisan status of the Postal Service by prohibiting the Board of Governors, Postmaster General, and Deputy Postmaster General from engaging in all but private, personal political activity such as individual donation and voting. In addition, it would prevent an individual selected to serve as Postmaster General or Deputy Postmaster General from taking office until the Office of Government Ethics reviews and certifies disclosure forms—something already required of the Board of Governors.

The Nonpartisan Postmaster General Act would reaffirm the nonpartisan status of the Postal Service by making the Board of Governors, Postmaster General, and Deputy Postmaster General further restricted employees under the Hatch Act—prohibiting them from engaging in all but private, personal political activity while in office. Prohibited activities would include:

- Holding federal, state, or local elected political office;
- Filing paperwork to be a candidate for federal, state, or local elected office;
- Serving as an officer, director, or employee of a federal, state, or local political party; and
- Soliciting funds for campaigns or political parties.

In addition, it would prevent an individual selected to serve as Postmaster General or Deputy Postmaster General from taking office until the Office of Government Ethics reviews and certifies disclosure forms—something already required of the Board of Governors.

Over the past several months, sweeping operational and organization changes at the Postal Service have resulted in delays in the

mail across the country, including in rural communities, among veterans and seniors, and in blue and red states alike. Some of these changes include curtailing overtime, restricting deliveries, eliminating sorting machines, and removing mailboxes.

Concerns have been raised by both elected officials and good government organizations about the timing of these changes so close to a national election and during the coronavirus crisis. In addition, troubling reports about the process by which the Postmaster General was chosen and his close ties to Republican officials and fundraising operations have raised questions about the ability of Postal Service leadership to remain impartial and nonpartisan.

When President Trump took office, he installed Robert Duncan, a longtime Republican megadonor and bundler who currently heads two Republican PACS, the Senate Leadership Fund and American Crossroads, which was started by Karl Rove, as Chairman of the Postal Service Board of Governors.

Postmaster General DeJoy, like Chairman Duncan, is a longtime Republican megadonor and bundler. In fact, new reports indicate that he may have engaged in inappropriate behavior by encouraging his employees to donate to Republican campaigns and organizations and then paying them back via bonuses. If true, this would be illegal and cast a pall over the nonpolitical nature of the Postal Service.

SECTION-BY-SECTION ANALYSIS

Section 1—The short title of this bill is the “Nonpartisan Postmaster 5 General Act of 2020”

Section 2—Postal Service Officers’ Political Activities Limited

Section 2(a)(1)

Designates the Postmaster General, Deputy Postmaster General, and any individual who was appointed by the President with advice and consent of the Senate to a position in the Postal Service as employees of the Postal Service.

Section 2(a)(2)

Makes the Postmaster General, Deputy Postmaster General, and any Presidentially appointed and Senate confirmed individual in the Postal Service further restricted employees under the Hatch Act.

Section 2(b)

Prohibits members of the Postal Service Board of Governors from holding political positions and soliciting funds for campaigns or political parties while in office. Defines an individual holding a political position as an individual who holds federal, state, or local elected office; files paperwork to be a candidate for election for federal, state, or local elected office; or is an officer, director, or employee of a federal, state, or local political party.

Section 2(c)

Provides that if any provision of the bill is held to be unconstitutional, the remainder of the bill will remain in effect.

Section 3—Financial disclosures required prior to assuming duties of Postmaster General or Deputy Postmaster General

Provides that any individual chosen by the Postal Service Board of Governors to serve as Postmaster General or Deputy Postmaster General may not take office until the individual submits financial disclosure reports required by the Office of Government Ethics (OGE) and until those reports have been approved and certified by OGE.

LEGISLATIVE HISTORY

On August 25, 2020, Representative Carolyn B. Maloney, Chairwoman, Committee on Oversight and Reform, introduced H.R. 8109, the Nonpartisan Postmaster General Act. H.R. 8109 was referred to the Committee on Oversight and Reform. The Committee discussed the legislation at a Subcommittee on Government Operations hearing on September 14, 2020. The Committee considered H.R. 8109 at a business meeting on September 16, 2020, and ordered the bill as amended favorably reported by voice vote.

COMMITTEE CONSIDERATION

On September 16, 2020, the Committee met in open session and, with a quorum being present, ordered the bill as amended favorably reported by voice vote.

ROLL CALL VOTES

There were two roll call votes during consideration of H.R. 8109:

COMMITTEE ON OVERSIGHT AND REFORM

116TH CONGRESS

RATIO 24-18

ROLL CALL

Vote on: Rep. Massie offered an amendment (#16) to the Rep. Maloney ANS to H.R. 8109 .

Date: 9-16-2020

VOTE #: 1

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Vote Last)		x		MR. COMER (KY)	x		
MS. NORTON (DC)		x		MR. JORDAN (OH)	x		
MR. CLAY (MO)				MR. GOSAR (AZ)	x		
MR. LYNCH (MA)		x		MS. FOXX (NC)	x		
MR. COOPER (TN)		x		MR. MASSIE (KY)	x		
MR. CONNOLLY (VA)		x		MR. HICE (GA)	x		
MR. KRISHNAMOORTHY (IL)		x		MR. GROTHMAN (WI)	x		
MR. RASKIN (MD)		x		MR. PALMER (AL)	x		
MR. ROUDA (CA)		x		MR. CLOUD (TX)	x		
MR. KHANNA (CA)		x		MR. GIBBS (OH)	x		
MR. MFUME (MD)		x		MR. HIGGINS (LA)	x		
MS. WASSERMAN SCHULTZ (FL)		x		MR. NORMAN (SC)	x		
MR. SARBANES (MD)		x		MR. ROY (TX)	x		
MR. WELCH (VT)		x		MS. MILLER (WV)	x		
MS. SPEIER (CA)		x		MR. GREEN (TN)	x		
MS. KELLY (IL)		x		MR. ARMSTRONG (ND)	x		
MR. DeSAULNIER (CA)		x		MR. STEUBE (FL)	x		
MS. LAWRENCE (MI)		x		MR. KELLER (PA)	x		
MS. PLASKETT (VI)		x					
MR. GOMEZ (CA)		x					
MS. OCASIO-CORTEZ (NY)							
MS. PRESSLEY (MA)		x					
MS. TLAIB (MI)							
MS. PORTER (CA)		x					

Roll Call Totals: Ayes: 18 Nays: 21 Present:

Passed: _____ Failed: X

COMMITTEE ON OVERSIGHT AND REFORM

116TH CONGRESS

RATIO 24-18

ROLL CALL

Vote on: Rep. Massie offered an amendment (#17) to the ANS to H.R. 8109.

Date: 9-16-2020

VOTE #: 2

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MS. MALONEY (NY) (Vote Last)		x		MR. COMER (KY)	x		
MS. NORTON (DC)		x		MR. JORDAN (OH)	x		
MR. CLAY (MO)				MR. GOSAR (AZ)	x		
MR. LYNCH (MA)		x		MS. FOXX (NC)	x		
MR. COOPER (TN)		x		MR. MASSIE (KY)	x		
MR. CONNOLLY (VA)		x		MR. HICE (GA)	x		
MR. KRISHNAMOORTHY (IL)		x		MR. GROTHMAN (WI)	x		
MR. RASKIN (MD)		x		MR. PALMER (AL)	x		
MR. ROUDA (CA)		x		MR. CLOUD (TX)	x		
MR. KHANNA (CA)		x		MR. GIBBS (OH)	x		
MR. MFUME (MD)		x		MR. HIGGINS (LA)	x		
MS. WASSERMAN SCHULTZ (FL)		x		MR. NORMAN (SC)	x		
MR. SARBANES (MD)		x		MR. ROY (TX)	x		
MR. WELCH (VT)		x		MS. MILLER (WV)	x		
MS. SPEIER (CA)		x		MR. GREEN (TN)	x		
MS. KELLY (IL)		x		MR. ARMSTRONG (ND)	x		
MR. DeSAULNIER (CA)		x		MR. STEUBE (FL)	x		
MS. LAWRENCE (MI)		x		MR. KELLER (PA)	x		
MS. PLASKETT (VI)		x					
MR. GOMEZ (CA)		x					
MS. OCASIO-CORTEZ (NY)		X					
MS. PRESSLEY (MA)		x					
MS. TLAIB (MI)		x					
MS. PORTER (CA)		x					

Roll Call Totals: Ayes: 18 Nays: 23 Present:

Passed: _____ Failed: X

EXPLANATION OF AMENDMENTS

Chairwoman Maloney offered an amendment in the nature of a substitute (ANS) that made technical changes to the bill. The ANS passed by voice vote.

Mr. Connolly offered an amendment to the ANS to H.R. 8109 which passed by voice vote. The amendment added section 3 to the bill relating to financial disclosure requirements.

Mr. Raskin offered an amendment to the ANS to H.R. 8109 which passed by voice vote. The amendment struck a provision in the original bill relating to the qualification requirements for the Postmaster General.

Mr. Massie offered an amendment to the ANS to H.R. 8109 which failed on a roll call vote of 18–21. The amendment would have prohibited picketing or other concerted refusal to work actions that would slow the delivery of mailed ballots.

Mr. Massie offered an amendment to the ANS to H.R. 8109 which failed on a roll call vote of 18–23. The amendment would have made all local Postmasters further restricted employees under the Hatch Act.

Mr. Massie offered an amendment to the ANS to H.R. 8109 which failed on a voice vote. The amendment would have increased the fines for forging a postmark.

Mr. Hice offered an amendment to the ANS to H.R. 8109 which failed on a voice vote. The amendment would have prohibited postal employees from using official time before November 4, 2020.

Mr. Massie on behalf of Ms. Foxx offered an amendment to H.R. 8109 which failed on a voice vote. The amendment would have struck section 2(b) from the bill.

LIST OF RELATED COMMITTEE HEARINGS

The Subcommittee on Government Operations held a hearing on September 14, 2020, titled “Postal Update” at which this bill was discussed.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the previous section.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goal or objective of this bill is to clarify and increase the restrictions on political activities that are applicable to the members of the Postal Service Board of Governors, including the Postmaster General and the Deputy Postmaster General, and for other purposes.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to pub-

lic services and accommodations. This bill would clarify and increase the restrictions on political activities that are applicable to the members of the Postal Service Board of Governors, including the Postmaster General and the Deputy Postmaster General. As such, this bill does not relate to employment or access to public services and accommodations.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII, no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT

This bill does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the Congressional Budget Act of 1974, the Committee has included a letter received from the Congressional Budget Office below.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 20, 2020.

Hon. CAROLYN B. MALONEY,
*Chairwoman, Committee on Oversight and Reform,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 8109, the Non-partisan Postmaster General Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 8109, Nonpartisan Postmaster General Act of 2020			
As ordered reported by the House Committee on Oversight and Reform on September 16, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 8109 would specify that the Postmaster General, Deputy Postmaster General, and people within the Postal Services (USPS) appointed to their position by the President be deemed as employees of USPS for purposes of federal government's prohibitions on employee's political activities. Those people also would be prohibited from taking an active part in political management or political campaigns. The bill would prohibit members of the USPS Board of Governors from holding a political position and from soliciting funds for federal, state, or local candidates for election or political parties. Lastly, H.R. 8109 would make the filing of certain financial disclosures by the Postmaster General and Deputy Postmaster General a precondition for taking office rather than a post-appointment requirement. The bill would require those disclosures to be filed with the Director of the Office of Government Ethics rather than USPS' designated ethics official.

Using information from USPS, CBO estimates that implementing the bill would have no effect on USPS' costs and thus no effect on the federal budget.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 39, UNITED STATES CODE

* * * * *

PART I—GENERAL

* * * * *

CHAPTER 2—ORGANIZATION

* * * * *

§ 202. Board of Governors

(a)(1) The exercise of the power of the Postal Service shall be directed by a Board of Governors composed of 11 members appointed in accordance with this section. Nine of the members, to be known as Governors, shall be appointed by the President, by and with the advice and consent of the Senate, not more than 5 of whom may be adherents of the same political party. The Governors shall elect a Chairman from among the members of the Board. The Governors shall represent the public interest generally, and shall be chosen solely on the basis of their experience in the field of public service, law or accounting or on their demonstrated ability in managing organizations or corporations (in either the public or private sector) of substantial size; except that at least 4 of the Governors shall be chosen solely on the basis of their demonstrated ability in managing organizations or corporations (in either the public or private sector) that employ at least 50,000 employees. The Governors shall not be representatives of specific interests using the Postal Service, and may be removed only for cause. Each Governor shall receive a salary of \$30,000 a year plus \$300 a day for not more than 42 days of meetings each year and shall be reimbursed for travel and reasonable expenses incurred in attending meetings of the Board. Nothing in the preceding sentence shall be construed to limit the number of days of meetings each year to 42 days.

(2) In selecting the individuals described in paragraph (1) for nomination for appointment to the position of Governor, the President should consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate.

(b)(1) The terms of the 9 Governors shall be 7 years, except that the terms of the 9 Governors first taking office shall expire as designated by the President at the time of appointment, 1 at the end of 1 year, 1 at the end of 2 years, 1 at the end of 3 years, 1 at the end of 4 years, 1 at the end of 5 years, 1 at the end of 6 years, 1 at the end of 7 years, 1 at the end of 8 years, and 1 at the end of 9 years, following the appointment of the first of them. Any Gov-

ernor appointed to fill a vacancy before the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term. A Governor may continue to serve after the expiration of his term until his successor has qualified, but not to exceed one year.

(2) No person may serve more than 2 terms as a Governor.

(c) The Governors shall appoint and shall have the power to remove the Postmaster General, who shall be a voting member of the Board. His pay and term of service shall be fixed by the Governors.

(d) The Governors and the Postmaster General shall appoint and shall have the power to remove the Deputy Postmaster General, who shall be a voting member of the Board. His term of service shall be fixed by the Governors and the Postmaster General and his pay by the Governors.

(e)(1) The Governors shall appoint and shall have the power to remove the Inspector General.

(2) The Inspector General shall be appointed—

(A) for a term of 7 years;

(B) without regard to political affiliation; and

(C) solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) The Inspector General may at any time be removed upon the written concurrence of at least 7 Governors, but only for cause. Nothing in this subsection shall be considered to exempt the Governors from the requirements of section 8G(e) of the Inspector General Act of 1978.

(f) *While serving as a member of the Board, an individual may not—*

(1) hold a political position; or

(2) solicit funds for—

(A) the campaign of a candidate for election for a Federal, State, or local elected office; or

(B) a Federal, State, or local political party (as defined in the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.)).

(g) For purposes of this section, an individual holds a political position if such individual—

(1) holds Federal, State, or local elected office;

(2) files paperwork to be a candidate for election for a Federal, State, or local elected office; or

(3) is an officer, director, or employee of a Federal, State, or local political party (as defined in subsection (f)(2)(B)).

* * * * *

CHAPTER 4—GENERAL AUTHORITY

* * * * *

§ 410. Application of other laws

(a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of

chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service.

(b) The following provisions shall apply to the Postal Service:

(1) section 552 (public information), section 552a (records about individuals), section 552b (open meetings), section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees), section 3110 (restrictions on employment of relatives), section 3333 and chapters 72 (antidiscrimination; right to petition Congress) and 73 (suitability, security, and conduct of employees), section 5520 (withholding city income or employment taxes), and section 5532 (dual pay) of title 5, except that no regulation issued under such chapters or section shall apply to the Postal Service unless expressly made applicable;

(2) all provisions of title 18 dealing with the Postal Service, the mails, and officers or employees of the Government of the United States;

(3) section 107 of title 20 (known as the Randolph-Sheppard Act, relating to vending machines operated by the blind);

(4) the following provisions of title 40:

(A) sections 3114–3116, 3118, 3131, 3133, and 3141–3147; and

(B) chapters 37 and 173;

(5) chapters 65 and 67 of title 41;

(6) sections 2000d, 2000d–1–2000d–4 of title 42 (title VI, the Civil Rights Act of 1964);

(7) section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668);

(8) the provisions of the Act of August 12, 1968 (42 U.S.C. 4151–4156);

(9) chapter 39 of title 31;

(10) the Inspector General Act of 1978; and

(11) section 5520a of title 5.

(c) Subsection (b)(1) of this section shall not require the disclosure of—

(1) the name or address, past or present, of any postal patron;

(2) information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed;

(3) information prepared for use in connection with the negotiation of collective-bargaining agreements under chapter 12 of this title or minutes of, or notes kept during, negotiating sessions conducted under such chapter;

(4) information prepared for use in connection with proceedings under chapter 36 of this title;

(5) the reports and memoranda of consultants or independent contractors except to the extent that they would be required to be disclosed if prepared within the Postal Service; and

(6) investigatory files, whether or not considered closed, compiled for law enforcement purposes except to the extent available by law to a party other than the Postal Service.

(d)(1) A lease agreement by the Postal Service for rent of net interior space in excess of 6,500 square feet in any building or facility, or part of a building or facility, to be occupied for purposes of the Postal Service shall include a provision that all laborers and mechanics employed in the construction, modification, alteration, repair, painting, decoration, or other improvement of the building or space covered by the agreement, or improvement at the site of such building or facility, shall be paid wages at not less than those prevailing for similar work in the locality as determined by the Secretary of Labor under section 3142 of title 40.

(2) The authority and functions of the Secretary of Labor with respect to labor standards enforcement under Reorganization Plan numbered 14 of 1950 (title 5, appendix), and regulations for contractors and subcontractors under section 3145 of title 40, shall apply to the work under paragraph (1) of this subsection.

(3) Paragraph (2) of this subsection shall not be construed to give the Secretary of Labor authority to direct the cancellation of the lease agreement referred to in paragraph (1) of this subsection.

(e) For the purposes of applying subchapter III of chapter 73 of title 5, and any regulations thereunder, to the Postal Service pursuant to subsection (b)(1), the following are deemed to be employees of the Postal Service:

(1) The Postmaster General.

(2) The Deputy Postmaster General.

(3) Any individual holding a position in the Postal Service to which such individual was appointed by the President, by and with the advice and consent of the Senate, including a Governor appointed under section 202.

* * * * *

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART F—LABOR-MANAGEMENT AND EMPLOYEE RELATIONS

* * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * *

SUBCHAPTER III—POLITICAL ACTIVITIES

* * * * *

§ 7323. Political activity authorized; prohibitions

(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person, unless such person is—

(A) a member of the same Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multi-candidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

(B) not a subordinate employee; and

(C) the solicitation is for a contribution to the multi-candidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)))¹ of such Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of the enactment of the Hatch Act Reform Amendments of 1993 had a multi-candidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));¹ or

(3) run for the nomination or as a candidate for election to a partisan political office; or

(4) knowingly solicit or discourage the participation in any political activity of any person who—

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(2)(A) No employee described under subparagraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (A) shall apply to—

(i) an employee of—

(I) the Federal Election Commission or the Election Assistance Commission;

(II) the Federal Bureau of Investigation;

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the National Security Council;

(VI) the National Security Agency;

(VII) the Defense Intelligence Agency;

(VIII) the Merit Systems Protection Board;

(IX) the Office of Special Counsel;

(X) the Office of Criminal Investigation of the Internal Revenue Service;

- (XI) the Office of Investigative Programs of the United States Customs Service;
 - (XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;
 - (XIII) the National Geospatial-Intelligence Agency; or
 - (XIV) the Office of the Director of National Intelligence;
- [or]**
- (ii) a person employed in a position described under section 3132(a)(4), 5372, 5372a, or 5372b of title 5, United States Code**[.]; and**
 - (iii) *a person holding a position described in section 410(e) of title 39.*

(3) No employee of the Criminal Division or National Security Division of the Department of Justice (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(4) For purposes of this subsection, the term “active part in political management or in a political campaign” means those acts of political management or political campaigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(c) An employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

* * * * *

ETHICS IN GOVERNMENT ACT OF 1978

* * * * *

TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

PERSONS REQUIRED TO FILE

SEC. 101. **[(a) Within]** *(a)(1) Within* thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

(2)(A) An individual proposed pursuant to section 202 of title 39, United States Code, to assume the position of Postmaster General or Deputy Postmaster General shall file the report required by paragraph (1) before assuming such position.

(B) An individual proposed for such a position may not carry out any duty of the position until the report submitted by the individual pursuant to subparagraph (A) is reviewed and signed by the Director of the Office of Government Ethics under section 106(b)(1), and any action taken by that individual in the performance of any function or duty of the applicable position before the date on which such signature occurs shall have no force or effect.

(b)(1) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual nominated for appointment to a position as a Foreign Service Officer or a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is O-6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 102(b). Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 102(a)(1)(A) with respect to income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after that public announcement, but not later than is required under the first sentence of such paragraph.

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are—

- (1) the President;
- (2) the Vice President;

(3) each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O-7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(4) each employee appointed pursuant to section 3105 of title 5, United States Code;

(5) any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government;

(6) the Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Regulatory Commission who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule;

(7) the Director of the Office of Government Ethics and each designated agency ethics official;

(8) any civilian employee not described in paragraph (3), employed in the Executive Office of the President (other than a special government employee) who holds a commission of appointment from the President;

(9) a Member of Congress as defined under section 109(12);

(10) an officer or employee of the Congress as defined under section 109(13);

(11) a judicial officer as defined under section 109(10); and

(12) a judicial employee as defined under section 109(8).

(g)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days.

(2)(A) In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986, the date for the filing of any report shall be extended so that the date is 180 days after the later of—

(i) the last day of the individual's service in such area during such designated period; or

(ii) the last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area.

(B) The Office of Government Ethics, in consultation with the Secretary of Defense, may prescribe procedures under this paragraph.

(h) The provisions of subsections (a), (b), and (e) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (e) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar year, but only if the supervising ethics office determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

* * * * *

FILING OF REPORTS

SEC. 103. (a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 101(e), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

[(b) The President] (b)(1) *The President*, the Vice President, and independent counsel and persons appointed by independent counsel under chapter 40 of title 28, United States Code, shall file reports required under this title with the Director of the Office of Government Ethics.

(2) *Notwithstanding subsection (a), an individual proposed pursuant to section 202 of title 39, United States Code, to assume the position of Postmaster General or Deputy Postmaster General shall file the report required under section 101(a) with the Director of the Office of Government Ethics.*

(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency ethics officials, employees described in section 105(a)(2)(A) or (B), 106(a)(1)(A) or (B), or 107(a)(1)(A) or (b)(1)(A)(i), of title 3, United States Code, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than individuals nominated to be judicial officers and those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title by the Director of the Office of Government Ethics shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

(e) Each individual identified in section 101(c) who is a candidate for nomination or election to the Office of President or Vice President shall file the reports required by this title with the Federal Election Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) Each supervising ethics office shall develop and make available forms for reporting the information required by this title.

(h)(1) The reports required under this title shall be filed by a reporting individual with—

(A)(i)(I) the Clerk of the House of Representatives, in the case of a Representative in Congress, a Delegate to Congress, the Resident Commissioner from Puerto Rico, an officer or employee of the Congress whose compensation is disbursed by the Chief Administrator Officer of the House of Representatives, an officer or employee of the Architect of the Capitol, United States Capitol Police, the United States Botanic Garden, the Congressional Budget Office, the Government Printing Office, the Library of Congress, or the Copyright Royalty Tribunal (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico; and

(II) the Secretary of the Senate, in the case of a Senator, an officer or employee of the Congress whose compensation is disbursed by the Secretary of the Senate, an officer or employee of the General Accounting Office, the Office of Technology Assessment, or the Office of the Attending Physician (including any individual terminating service, under section 101(e), in any office or position referred to in this subclause), or an individual described in section 101(c) who is a candidate for nomination or election as a Senator; and

(ii) in the case of an officer or employee of the Congress as described under section 101(f)(10) who is employed by an agen-

cy or commission established in the legislative branch after the date of the enactment of the Ethics Reform Act of 1989—

(I) the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, as designated in the statute establishing such agency or commission; or

(II) if such statute does not designate such committee, the Secretary of the Senate for agencies and commissions established in even numbered calendar years, and the Clerk of the House of Representatives for agencies and commissions established in odd numbered calendar years; and

(B) the Judicial Conference with regard to a judicial officer or employee described under paragraphs (11) and (12) of section 101(f) (including individuals terminating service in such office or position under section 101(e) or immediately preceding service in such office or position).

(2) The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such committee.

(i)(1) A copy of each report filed under this title by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk of the House of Representatives or Secretary of the Senate, as the case may be, to the appropriate State officer designated under section 316(a) of the Federal Election Campaign Act of 1971 of the State represented by the Member or in which the individual is a candidate, as the case may be, within the 30-day period beginning on the day the report is filed with the Clerk or Secretary.

(2) The requirements of paragraph (1) do not apply to any report filed under this title which is filed electronically and for which there is online public access, in accordance with the systems developed by the Secretary and Sergeant at Arms of the Senate and the Clerk of the House of Representatives under section 8(b) of the STOCK Act.

(j)(1) A copy of each report filed under this title with the Clerk of the House of Representatives shall be sent by the Clerk to the Committee on Standards of Official Conduct of the House of Representatives within the 7-day period beginning on the day the report is filed.

(2) A copy of each report filed under this title with the Secretary of the Senate shall be sent by the Secretary to the Select Committee on Ethics of the Senate within the 7-day period beginning on the day the report is filed.

(k) In carrying out their responsibilities under this title with respect to candidates for office, the Clerk of the House of Representatives and the Secretary of the Senate shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

(l) Not later than 30 days after receiving notification of any transaction required to be reported under section 102(a)(5)(B), but in no case later than 45 days after such transaction, the following

persons, if required to file a report under any subsection of section 101, subject to any waivers and exclusions, shall file a report of the transaction:

(1) The President.

(2) The Vice President.

(3) Each officer or employee in the executive branch, including a special Government employee as defined in section 202 of title 18, United States Code, who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O-7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification.

(4) Each employee appointed pursuant to section 3105 of title 5, United States Code.

(5) Any employee not described in paragraph (3) who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, except that the Director of the Office of Government Ethics may, by regulation, exclude from the application of this paragraph any individual, or group of individuals, who are in such positions, but only in cases in which the Director determines such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(6) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Regulatory Commission who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.

(7) The Director of the Office of Government Ethics and each designated agency ethics official.

(8) Any civilian employee not described in paragraph (3), employed in the Executive Office of the President (other than a special government employee) who holds a commission of appointment from the President.

(9) A Member of Congress, as defined under section 109(12).

(10) An officer or employee of the Congress, as defined under section 109(13).

* * * * *

MINORITY VIEWS

Committee Republicans oppose H.R. 8109. This legislation seeks to legitimize a politically motivated narrative Democrats have promulgated to sow distrust in the U.S. Postal Service (USPS) prior to the 2020 elections.

I. H.R. 8109's elevation of USPS leadership to special Hatch Act requirements is unnecessary and does not take into account the politically balanced nature of the USPS Board of Governors

H.R. 8109 would unnecessarily broaden the Hatch Act's applicability to the USPS by designating the postmaster general, the deputy postmaster general, and members of the USPS board of governors as "further restricted employees."¹ Further restricted employees are prohibited from taking "an active part in political management or political campaigns."² The designation as a further restricted employee is currently limited to employees of the Federal Election Commission, the intelligence community, the Merit Systems Protection Board and Office of Special Counsel, certain judges, and other investigative or law enforcement branches in the federal government.³ These employees are "responsible for law enforcement or national security matters, such as the Federal Bureau of Investigations and the Central Intelligence Agency, as well as agencies that regulate elections."⁴

In other words, further restricted employees under the Hatch Act are required to avoid political activity because their positions require the appearance of utmost nonpartisanship. Such activities include practically any public political activity whatsoever. H.R. 8109 unnecessarily expands these restrictions to certain USPS members and indicts current USPS leadership for non-existent problems and unproven allegations.

All federal employees (including the postmaster general, the deputy postmaster general, and presidentially-appointed members of the board of governors) are already subject to the broader requirements of the Hatch Act,⁵ which "regulates the partisan political activities of most executive branch employees. . . The statute seeks to *balance the government's interest in an efficient and impartial workforce with employees' rights to participate in the political process.*"⁶ All employees subject to the Hatch Act may participate in partisan political activities "so long as the employee is not on duty

¹ H.R. 8109, Sec. 2(a)(2).

² 5 U.S.C. § 7323(b)(2)(A).

³ 5 U.S.C. § 7323(b)(2)(B).

⁴ Whitney K. Novak, Cong. Research Serv., IFH512, *The Hatch Act: A Primer* (2020).

⁵ *Id.* ("The Act generally defines "employee" as any individual employed or holding office in (A) an "executive agency" or (B) a position within the competitive service that is not in an "executive agency."").

⁶ *Id.* (emphasis added).

or in the workplace.”⁷ Only further restricted employees are restricted from playing an active part in political management or political campaigns.

H.R. 8109 seeks to solve a problem that does not exist by removing partisanship from USPS leadership. The USPS board of governors, however, is bipartisan by design—not nonpartisan—and does not need these further prohibitions on the activity of its members.

The board consists of eleven members, including the postmaster general and the deputy postmaster general. The nine other members are “appointed by the President, by and with the advice and consent of the Senate, not more than 5 of whom may be adherents of the same political party.”⁸ The postmaster general is appointed by the nine presidentially-appointed members of the board of governors.⁹ The deputy postmaster general is appointed by the nine presidentially appointed members of the board of governors and the postmaster general. None of the governors are to be “representatives of specific interests using the Postal Service[.]”¹⁰

The bill sponsors and Committee Democrats have failed to put forward a serious argument supporting H.R. 8109’s requirements to elevate members of the board of governors, the postmaster general, or the deputy postmaster general to the status of further restricted employees similar to leaders of the FBI, the CIA, or the FEC. In those agencies, the nonpartisanship of employees is paramount. In contrast, the partisanship of the members of the board of governors is not required to be mitigated but, instead, balanced through the appointment process of a bipartisan board.

A President’s prerogative to nominate the board of governors is balanced by the statutory framework restricting the board of governors from being made up of more than five members of the same political party. The USPS is not a law enforcement, intelligence, or elections oversight agency. Its management and executives should not be subject to the sort of political restrictions the further restricted employee status would entail.

II. H.R. 8109’s prohibitions on USPS leadership are unnecessary and would restrict public servants’ rights to fundraise and participate in the political process

Beyond the Hatch Act amendments, H.R. 8109 also prohibits a member of the board of governors from either holding political positions or soliciting funds for a political party or a campaign for a candidate for elected office.¹¹ As described above, the bill sponsors have failed to explain why restrictions on fundraising are necessary.

The board members’ partisan viewpoints are already accounted for in the board’s statutory framework. By restricting membership to a maximum of five members of the same political party, current law assures a balanced representation of views. Any restrictions on political activity, whether through the Hatch Act or direct legisla-

⁷ *Id.*

⁸ 39 U.S.C. § 202(a)(1).

⁹ 39 U.S.C. § 202(c).

¹⁰ 39 U.S.C. § 202(a)(1).

¹¹ H.R. 8109, Sec. 2(b)(3).

tion, must balance the free speech rights of individuals against the government's interest in promoting nonpartisanship in certain positions. The bill sponsors and Committee Democrats have failed to adequately consider the rights of board of governor members to participate in the political process.

Republicans do not see an immediate need to prohibit board members from raising funds for political parties or candidates. This legislation has been put forward in haste to solve a problem that does not exist. Congress should not legislate permanent legal reforms, especially those that further restrict the political participation of certain American citizens, based purely on politically motivated and unfounded accusations. Should a specific issue come to light, it should be dealt with through existing legal mechanisms and oversight functions.

III. The Democrats refused to accept commonsense amendments to H.R. 8109 during the markup, which is evidence of the unseriousness of this legislation

On September 15, 2020, the Committee on Oversight and Reform met to consider and mark up H.R. 8109.¹² At the meeting, Republicans offered amendments to the bill with the intention of balancing the legislation's requirements and ensuring more likely sources of political bias within USPS would be covered by the bill. Democrats rejected every Republican amendment to H.R. 8109 along party lines, thus demonstrating the narrow political motivations for advancing the legislation.

Rep. Thomas Massie (R-KY) introduced an amendment prohibiting USPS employees and other mail carriers from picketing or participating in other activities that demonstrated a "concerted refusal to work" prior to the 2020 election. In so doing, this amendment would have protected the public from one of the most likely ways in which USPS personnel could impact the election.¹³ Democrats rejected this amendment 18–21 along party lines.¹⁴

Rep. Massie introduced another amendment that would expand the further restricted employee status under the Hatch Act to not only the postmaster general, the deputy postmaster general, and the other members of the board of governors, but to the thousands of local postmasters across the nation.¹⁵ Democrats rejected this amendment 18–23 along party lines.¹⁶

Democrats have focused all of their scrutiny of USPS on leadership at headquarters, and specifically at Postmaster General DeJoy.¹⁷ However, USPS has given autonomy to the local postmasters and facility directors throughout the country. For example, in a briefing delivered to Committee staff, USPS explained how its recently created programs to facilitate the movement of election

¹² Business meeting on Nonpartisan Postmaster General Act (and other bills) before the H. Comm. on Oversight & Reform, 116th Cong. (2020).

¹³ Amend. offered by Rep. Thomas Massie (R-KY) to H.R. 8109 prohibiting striking or hindering the delivery of ballots (Sept. 15, 2020).

¹⁴ Business meeting, *supra*, note 12.

¹⁵ Amend. offered by Rep. Thomas Massie (R-KY) to H.R. 8109 designating local postmasters further restricted employees under the Hatch Act (Sept. 15, 2020).

¹⁶ Business meeting, *supra*, note 12.

¹⁷ See, e.g., Full Committee Hearing: "Protecting the Timely Delivery of Mail, Medicine, and Mail-in Ballots", H. Comm. on Oversight & Reform, 116th Cong. (2020) (Note also the title of the bill at issue).

mail (the Ballot Monitoring program and the Ballot Ambassador program), as well as the process by which the need for additional resources is evaluated and requested all take place on the local level with minimal guidance or input from USPS headquarters.¹⁸

There is an extraordinary amount of trust placed in thousands of local postmasters and their handling of election mail. Rep. Massie’s amendment represented a reasonable effort to focus not only on the highest levels of USPS leadership, but at the national local leadership officials where direct tampering with the mail can take place with less direct accountability to ongoing congressional oversight efforts.

Rep. Massie introduced a third amendment addressing the criminal law prohibiting counterfeiting and forgery of postmarking stamps (18 U.S.C. § 503) that would have increased the penalty for forging or otherwise manipulating an election mail postmarking from five years to ten years.¹⁹ The amendment also imposed a penalty for falsifying the date of a postmark.²⁰ Again, this was a commonsense and nonpartisan addition to H.R. 8109 that should not be controversial. Democrats rejected this amendment by a voice vote.²¹

Rep. Jody Hice (R-GA) introduced an amendment that would have prohibited USPS employees from using “official time,” which is defined as time used to perform “representational or consultative functions, including for a collective bargaining agreement.”²² Like Rep. Massie’s amendment before it, this amendment is meant to safeguard against the influence of postal unions on the timely, complete, and efficient delivery of election mail in the 2020 election. The amendment was necessary due to the postal unions’ historical and documented preferencing of certain political candidates.

Furthermore, there have been documented cases of impropriety by postal unions permitting activity meant to support specific political candidates. For example, in 2017, the Office of Special Counsel (OSC) found that the National Association of Letter Carriers inappropriately assisted Hillary Clinton’s presidential campaign during the 2016 election. It is unclear whether the USPS ever remedied the processes leading to OSC’s finding of this “institutional bias” towards the Clinton campaign.²³ Rep. Hice’s amendment would have helped ensure that time meant to be delivering the American people’s election mail is not spent on collective bargaining negotiations by and with the postal unions. Committee Democrats rejected this amendment by a voice vote.²⁴

¹⁸ USPS briefing with staff from the Committee on Oversight and Reform, September 17, 2020.

¹⁹ Amend. offered by Rep. Thomas Massie (R-KY) to H.R. 8109 imposing greater penalties for the manipulation of postmarks on election mail (Sept. 15, 2020).

²⁰ *Id.*

²¹ Business meeting, *supra*, note 12.

²² Amend. offered by Rep. Jody Hice (R-GA) to H.R. 8109 prohibiting the use of official time by USPS employees (Sept. 15, 2020).

²³ U.S. Office of Special Counsel, OSC File No. HA-17-0610, *Report of Hatch Act Investigation: Facilitating Labor Union’s Political Activity Through Use of “Union Official” Leave Without Pay* (July 14, 2017) available at https://www.hsgac.senate.gov/imo/media/doc/FINAL%202017%20HA%20USPS%20Report%207.14.17_Redacted.pdf.

²⁴ Business meeting, *supra*, note 12.

IV. Conclusion

Committee Republicans oppose H.R. 8109. The bill is an attempt to legitimize Democrats' unfounded conspiracy theories about the postmaster general and corruption of the Postal Service. They have proven none of these theories to be true and have also not shown this legislation is necessary. The Committee Democrats' unwillingness to accept commonsense amendments to their bill is further evidence that the legislation is not ready to advance through the House. Congress should not pass legislation with no demonstrated purpose or merely to advance political messaging based on unsubstantiated accusations. The House should not politicize or fuel distrust in the Postal Service, an institution relied upon by all Americans with an especially critical role to play in the upcoming national elections.

JAMES COMER,
*Ranking Member, Committee
on Oversight and Reform.*

