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Submitted via complaint portal and email (hatchact@osc.gov)

Dear Special Counsel Baldis:

Campaign Legal Center (“CLC”) requests that the U.S. Office of Special Counsel (“OSC”) investigate whether federal employees of the U.S. Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), the U.S. Office of Management and Budget (“OMB”), and the White House engaged in prohibited political activity while on duty by producing and distributing political television advertisements.

Specifically, the following government officials were reportedly involved in creating taxpayer-funded commercials touting partisan and political rhetoric that were broadcast on national networks: OMB Director Russell Vought, OMB General Counsel Mark Paoletta, DHS Secretary Markwayne Mullin, White House Chief of Staff Susie Wiles, White House Counsel Will Scharf, and White House Appointments Secretary Natalie Harp.¹ An OSC investigation is needed to determine whether these officials and other federal employees were involved in this political activity, violating both the Hatch Act and criminal law.

The Hatch Act has been in place for almost 90 years “to prevent the use of federal power and taxpayer resources to shape electoral outcomes and to preserve public confidence in the nonpartisan administration of the law.”² Government communications should be

¹ See Kristen Holmes & Betsy Klein, *Trump Personally Helped Orchestrate Taxpayer-Funded Ads Promoting Himself and His Policies, Source Says*, CNN (Sept. 29, 2026), <https://www.cnn.com/2026/09/28/politics/trump-ads-taxpayer-funds>; Maggie Haberman et al., *Trump Directed Use of Taxpayer Money for Ads Praising His Presidency*, N.Y. Times (Oct. 2, 2026), <https://www.nytimes.com/2026/10/02/us/politics/trump-ads.html?smid=url-share>.

² Hatch Act Assessment and Advisory: Partisan Agency Communications During the 2025 Lapse in Appropriations, U.S. Off. of Special Couns. 7 (Sept. 25, 2026), [260925-assessment-and-advisory-of-partisan-communications-2025.pdf](#) [hereinafter Hatch Act Assessment and Advisory 2026]. See also Hatch Act Overview, U.S. Off. of Special Couns., <https://www.osc.gov/services/hatch-act/overview/>.

nonpartisan to ensure compliance with the Hatch Act.³ Furthermore, government employees are prohibited by criminal statute from coercing other federal employees to engage in any political activity.⁴ OSC is responsible for investigating and prosecuting federal employees who may have violated the Hatch Act or coerced other employees to violate the Hatch Act.⁵ Accordingly, OSC should review this blatant and widespread Hatch Act violation involving DHS, CBP, OMB, and White House employees.

I. Federal Law Prohibits Employees from Using Official Authority for Political Activity or Coercing Others to Participate

Pursuant to 5 U.S.C. § 7323(a)(1), the Hatch Act, federal employees are prohibited from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.”⁶ OSC’s written guidance advises that “an employee may not engage in political activity when acting in an official capacity.”⁷ “Political activity” is defined as activity “directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”⁸ This definition is broad, and a government “communication need not contain express electoral advocacy for that communication to constitute ‘political activity.’”⁹ If a government employee is using their official authority or influence to interfere with or affect the results of an upcoming election, then that would be considered political activity in violation of the Hatch Act.¹⁰

According to OSC, relevant factors to consider when assessing whether a government communication should be considered political activity include:

- (1) Whether the communication had a clear, contemporaneous non-electoral purpose;
- (2) The timing of each communication, and in particular its proximity to an upcoming election;

³ See Hatch Act Overview, U.S. Off. of Special Couns., <https://www.osc.gov/services/hatch-act/overview/> (last visited Oct. 7, 2026).

⁴ 18 U.S.C. § 610.

⁵ Hatch Act Policies & Procedures, U.S. Off. of Special Couns., <https://www.osc.gov/services/hatch-act/policies/>.

⁶ 5 U.S.C. § 7323(a)(1).

⁷ Hatch Act Assessment and Advisory 2026, *supra* note 2, at 6.

⁸ 5 C.F.R. § 734.101 (“Political activity”).

⁹ Hatch Act Assessment and Advisory 2026, *supra* note 2, at 6. See also Hatch Act Advisory Opinion Regarding the Use of Presidential Campaign Slogans, U.S. Off. of Special Couns. 1 (June 7, 2023), [hatch-act-advisory-opinion-regarding-the-use-of-presidential-campai-2a7a144a.pdf](#) (“The definition of political activity is broad and does not require any express advocacy for or against a political party or candidate.”).

¹⁰ See Hatch Act Advisory Opinion Regarding Official Agency Communications, U.S. Off. of Special Couns. 1 (Sept. 5, 2024), [260925-assessment-and-advisory-of-partisan-communications-2025.pdf](#) [hereinafter Hatch Act Advisory Opinion Regarding Official Agency Communications].

- (3) The tone of the communication, including whether it used inflammatory or insulting language; and
- (4) The context of dissemination, including the intended audience and the scale of distribution.¹¹

In addition to the Hatch Act requirements, government employees are prohibited under criminal statute 18 U.S.C. § 610 from “intimidat[ing], threaten[ing], command[ing], or coerc[ing]” other federal employees to engage in *any* political activity.¹² OSC regulations further provide that government employees are prohibited from using their official authority to coerce *any person* to participate in political activity.¹³ OSC has expressly forbidden government employees from “request[ing], encourag[ing], suggest[ing], or imply[ing] that subordinate employees assist [in] campaign efforts.”¹⁴ Taken together, these laws and guidance are intended to prevent government employees from encouraging or coercing other employees, including their subordinates, from participating in political activity that could be in violation of the Hatch Act.

II. Federal Employees Apparently Used Their Official Authority to Distribute Television Advertisements Featuring President Donald J. Trump

Beginning on or about September 23, 2026, television advertisements featuring President Donald J. Trump aired nearly 3,000 times on national broadcast networks and were observed by millions of people.¹⁵ Each advertisement includes imagery and references to the administration with the disclaimer “Paid for by the U.S. Government.” Airtime costs for the three advertisements were estimated to total over \$2.5 million as of September 30, 2026.¹⁶ Public reporting has found that the videos were created in-house by the White House communications team, and that they were produced using \$20 million of taxpayer money that

¹¹ See Hatch Act Assessment and Advisory 2026, *supra* note 2, at 8.

¹² 18 U.S.C. § 610 (emphasis added). “Any political activity” includes, but is 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. *Id.*

¹³ 5 C.F.R. § 734.302(b)(2) (emphasis added).

¹⁴ See The Hatch Act Modernization Act of 2012 – OSC’s Guidance Regarding the Use of Official Title by State and Local Employees Who Are Now Permitted to be Candidates in Partisan Elections, U.S. Off. of Special Couns. 2 (Sept. 17, 2013), [use-of-official-title-by-state-and-local-employees-who-may-run-for-afd1b2fd.pdf](https://www.osc.gov/sites/default/files/2013-09/osc_guidance_on_official_title_091713.pdf) [hereinafter The Hatch Act Modernization Act of 2012] at 2.

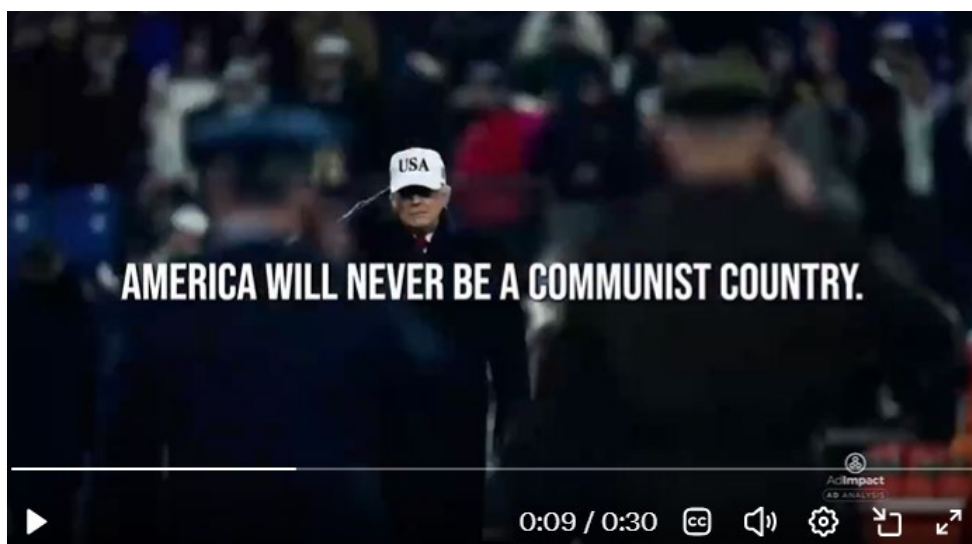
¹⁵ Kristen Holmes et al., *Trump’s Ads Have Cost Taxpayers at Least \$2.5 million, with Funding from Customs and Border Protection*, CNN (Sept. 29, 2026), <https://www.cnn.com/2026/09/29/media/trump-ads-cost-millions-customs-border-protection-funding>.

¹⁶ *Id.*

had been previously allocated for CBP.¹⁷ Each of the initial three advertisements are discussed in further detail below.

A. Advertisement 1 – “America Will Never Be a Communist Country”

The first 30-second advertisement aired on September 23, 2026, during programming on Fox News and Newsmax.¹⁸ The advertisement flashes dozens of images of President Trump with the song “Love Me” by JMSN playing in the background.¹⁹ The ad begins with audio and captions of President Trump saying, “TOGETHER WE WILL DEFEAT COMMUNISM, SOCIALISM, AND MARXISM IN AMERICA,” and “AMERICA WILL NEVER BE A COMMUNIST COUNTRY.”²⁰



The advertisement continues with bolded language highlighting President Trump’s accomplishments and policy issues during his current administration, including “LARGEST TAX CUTS IN HISTORY,” “REIGNITING AMERICAN MANUFACTURING,” and “DEFEND LAW AND ORDER AND POLICE.”²¹

¹⁷ See Holmes et al., *supra* note 1; Tarini Parti, Marianne LeVine & Michelle Hackman, *Homeland Security Money Financed Pro-Trump Television Ads*, The Wall Street Journal (Sept. 29, 2026), <https://www.wsj.com/politics/policy/homeland-security-money-financed-pro-trump-television-ads-54ac33bb?st=XitHhj>; Shane Goldmacher & Maggie Haberman, *Trump Does Not Plan to Reimburse Taxpayers for Promotional Ads*, N.Y. Times (Oct. 6, 2026), <https://www.nytimes.com/2026/10/06/us/politics/trump-taxpayer-funded-ads.html>.

¹⁸ Ananya Gairola, *Trump’s ‘America Will Never Be Communist’ Ad Sparks Hatch Act Fight as Critics Question Why Taxpayers Are Funding Pro-Trump Messaging*, Yahoo! News (Sept. 27, 2026), <https://www.yahoo.com/news/politics/articles/trump-america-never-communist-ad-203006414.html>.

¹⁹ *The Country He Loves*, ADMO Creative Alert, AdImpact, <https://host2.adimpact.com/admo/viewer/74bb6ac3-dbfc-4161-b290-94c2ef199c3b/>.

²⁰ *Id.*

²¹ *Id.*



The advertisement concludes with a statement by Ultimate Fighting Championship CEO Dana White saying, “[President Trump] IS THE TOUGHEST, MOST RESILIENT PERSON THAT I’VE EVER MET AND NOTHING IS GOING TO EVER STOP HIM FROM FIGHTING SO HARD FOR THE COUNTRY HE LOVES.”²² The words “Paid for by the U.S. Government” are prominently displayed at the bottom of the advertisement.²³



²² *Id.*

²³ *Id.*

B. Advertisement 2 – Mount Rushmore Speech

The second advertisement aired on September 25, 2026, and includes imagery and audio from President Trump's July 4, 2026, speech at Mount Rushmore commemorating America's 250th Anniversary.²⁴ The audio of the advertisement is as follows:

In all the chronicles of the ages, never before has any nation celebrated so magnificent a triumph as this one. We are the freest people on earth, and by the grace of God, the United States of America is the most successful, most accomplished, most exceptional nation ever to exist in human history. Liberty has prevailed here because of the culture and character of the people who declared it, defended it, and preserved it. We reach a milestone like no other and celebrate with joyful hearts and soaring spirits because after two and a half centuries, we know that this is not an ending. This is only the beginning of the golden age of America. God bless you all.²⁵

As with the other two ads, this advertisement includes the text "Paid for by the U.S. Government" at the bottom of the screen.²⁶



²⁴ See Ali Swenson, *Taxpayer-Funded Pro-Trump TV Ad Campaign Grows with New Spot, Wider Reach*, Wash. Post (Sep. 25, 2026), https://www.washingtonpost.com/politics/2026/09/25/paid-for-us-government-ad-trump-political/94081a3c-b8f7-11f1-94cb-d3d8f22a8c8b_story.html.

²⁵ *Celebrating The Enduring Spirit And*, ADMO Creative Alert, AdImpact, <https://host2.adimpact.com/admo/viewer/fc515b65-8eb4-4678-9297-306111a08507/>.

²⁶ *Id.*

C. Advertisement 3 – “The Final Battle” Speech

The third advertisement aired on September 27, 2026, and is a complete republication of a campaign ad originally created and paid for by Trump’s 2024 presidential campaign.²⁷ The ad features President Trump walking towards the camera with audio similar to comments he gave at a 2023 campaign rally.²⁸ The transcript of the audio is as follows:

This is the final battle. With you at my side, we will demolish the deep state, expel the warmongers from our government. We will drive out the globalists. We will cast out the communists, Marxists, and fascists. We will throw off the sick political class that hates our country. We will rout the fake news media, and we will liberate America from these villains once and for all.²⁹

Like the other two advertisements, the ad includes the disclaimer “Paid for by the U.S. Government.”



The original version of this advertisement first appeared via a Truth Social post by President Trump in July 2023,³⁰ and was shared by President Trump over a dozen times

²⁷ Bayliss Wagner, *A Trump 2024 Campaign Ad Returns, Now Brought to You by the Government*, N.Y. Times (Sept. 27, 2026), <https://www.nytimes.com/2026/09/27/us/politics/trump-ad-government-campaign.html>.

²⁸ Aileen Graef, *White House Airs Another Government-Funded Ad, This Time with Trump Warning of ‘Final Battle’*, CNN (Sept. 28, 2026), <https://www.cnn.com/2026/09/27/politics/white-house-trump-government-funded-ad>.

²⁹ *Final Battle*, ADMO Creative Alert, AdImpact, <https://platform.adimpact.com/viewer/13980fc0-e2cd-48b1-a86f-3789a1c03a89>.

³⁰ Video posted by Donald J. Trump (@RealDonaldTrump), Truth Social (July 2, 2023, at 22:36 ET), [donaldjtrump.com, https://truthsocial.com/@realDonaldTrump/posts/110647824389599624](https://truthsocial.com/@realDonaldTrump/posts/110647824389599624).

throughout the 2024 Presidential campaign.³¹ Several other versions of the ad using similar language were also used throughout the campaign.³² Most notably, the original ad was prominently displayed during the Republican National Convention in July 2024 when President Trump was officially nominated to be the Republican presidential candidate.³³ All iterations of the advertisement that were used during the 2024 presidential campaign ended with the disclaimer, "Paid for by Donald J. Trump for President 2024, Inc." below an image of the Trump campaign logo, and included the message "Join President Trump's Fight for America. TEXT TRUMP TO 88022."³⁴

III. The Television Advertisements Constitute Prohibited Political Activity Under the Hatch Act

As noted above, OSC has outlined four factors to consider when determining if a government communication constitutes political activity in violation of the Hatch Act. All three television advertisements could be considered political activity based on these four factors.

³¹ See, e.g., Video posted by Donald J. Trump (@realDonaldTrump), Truth Social (Nov. 7, 2023 at 00:01 ET), *Text TRUMP to 88022*, <https://truthsocial.com/@realDonaldTrump/posts/111367507621514940>; Video posted by Donald J. Trump (@realDonaldTrump), Truth Social (Jan. 12, 2024, at 14:05 ET), *Text TRUMP to 88022*, <https://truthsocial.com/@realDonaldTrump/posts/111744538940058802>; Video posted by Donald J. Trump (@realDonaldTrump), Truth Social (Apr. 14, 2024, at 17:37 ET), *JOIN TEAM TRUMP TODAY AT: donaldjtrump.com/join*, <https://truthsocial.com/@realDonaldTrump/posts/112271728717337912>; Video posted by Donald J. Trump (@realDonaldTrump), Truth Social (Aug. 12, 2024, at 12:40 ET), *DonaldJTrump.com*, <https://truthsocial.com/@realDonaldTrump/posts/112950040134296857>; Video posted by Donald J. Trump (@realDonaldTrump), Truth Social (Oct. 2, 2024, at 00:13 ET), *Text TRUMP to 88022*, <https://truthsocial.com/@realDonaldTrump/posts/113235881750146572>.

³² See, e.g., Video posted by Donald J. Trump (@realDonaldTrump), Truth Social (Nov. 21, 2023, at 13:24 ET), *2024 IS OUR FINAL BATTLE...*, <https://truthsocial.com/@realDonaldTrump/posts/111449934929093001>; Video posted by Donald J. Trump (@realDonaldTrump), Truth Social (Feb. 10, 2024, at 18:27 ET), <https://truthsocial.com/@realDonaldTrump/posts/111909775552395987>, ("From Columbia to Conway, from Greenville to Garden City, and from Folly Beach to Myrtle Beach, we stand on the shoulders of South Carolina Heroes who crossed the oceans, settled a continent, tamed the wilderness, laid down the railroads, raised up the skyscrapers, won Two World Wars, defeated fascism and communism, and made America the single greatest nation in the history of the world—But now we are a nation in decline..."); Video posted by Donald J. Trump (@realDonaldTrump), Truth Social (May 1, 2024, at 16:14 ET), *2024 IS OUR FINAL BATTLE...* *DonaldJTrump.com*, <https://truthsocial.com/@realDonaldTrump/posts/112367663537695038>.

³³ GOP Senator: Trump Ads "Shouldn't Be Paid for with Taxpayer Dollars"; Trump Contradict U.S. Ambassador On Talk of Weapon Sales to China; FBI Operating Under Assumption Hackers Stole Data On All Employees. Aired 7-8p ET, Erin Burnett Outfront, CNN Transcript (Sept. 28, 2026), <https://transcripts.cnn.com/show/ebo/date/2026-09-28/segment/01>.

³⁴ See *supra* notes 30-32.

A. The Advertisements Do Not Have a Clear, Contemporaneous Non-Electoral Purpose

First, the intention of the three advertisements appears to be political in nature, as they do not have a “clear, contemporaneous non-electoral purpose.”³⁵ OSC has advised that a government communication can be considered political activity under the Hatch Act if it was produced with the intent to influence an upcoming election.³⁶ Government communications that reference partisan political groups and are not tied to pending legislation or government policy especially run the risk of being considered political activity under the Hatch Act.³⁷

In this case, the impetus for the advertisements appears to be the upcoming midterm elections. Prior to the release of the advertisements, President Trump repeatedly urged voters to treat the midterms as though he were personally on the ballot, noting that “the midterms are not supposed to be won by the sitting president. We are going to change that.”³⁸

Additional public reporting shows that President Trump pushed for the creation of an ad campaign that would promote him and his administration in the lead-up to the midterm elections.³⁹ In August 2026, the president ordered a series of television advertisements about his own record that would serve as a “backdrop” to the upcoming midterm elections in the House and Senate.⁴⁰ Specifically, the proposed ad campaign would centralize the midterm elections broadly around President Trump’s own victories.⁴¹ This ad campaign may have been originally intended to be paid for by President Trump’s super PAC, MAGA, Inc.,⁴² but President Trump ultimately directed OMB Director Vought to use taxpayer money for television ads praising him and his presidency.⁴³

Additionally, one of the ads is a complete republication of a Trump 2024 Presidential campaign ad.⁴⁴ Republishing an advertisement originally created by a campaign committee is

³⁵ Hatch Act Assessment and Advisory 2026, *supra* note 2, at 8.

³⁶ *Id.* at 6.

³⁷ See Hatch Act Advisory Opinion Regarding Official Agency Communications, *supra* note 10, at 2.

³⁸ Matt Dixon, ‘I’m on the Ballot’: Trump Tries to Energize His Base by Placing Himself Front and Center, NBC News (Sept. 9, 2026), <https://www.nbcnews.com/politics/donald-trump/trump-energize-base-midterm-convention-dallas-rcna596592>.

³⁹ See Holmes et al., *supra* note 1.

⁴⁰ Yvonne Wingett Sanchez, Michael Scherer & Ashley Parker, *Trump Plans to Buy Midterm Ads About His Own Record*, The Atlantic (Aug. 25, 2026), <https://www.theatlantic.com/politics/2026/08/trump-midterms-ads-maga/688409/>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Haberman et al., *supra* note 1.

⁴⁴ Wagner, *supra* note 27.

generally clear evidence of an electoral purpose.⁴⁵ Indeed, if a person other than the U.S. government had paid to republish this same Trump campaign ad, federal law would likely treat the expenditure as an in-kind contribution.⁴⁶

Finally, the three advertisements do not have any apparent connection to pending legislation or government policy. No legislative or Congressional matters are mentioned at all, and the ads do not feature any forthcoming policy initiatives within the Executive Branch. Aside from the first advertisement's brief references to tax cuts and supporting American manufacturing,⁴⁷ there are no explicit references to federal government programs or specific agencies. There is therefore no apparent "non-electoral purpose" for the three advertisements, as the communications have no direct ties to ongoing events or policy initiatives within the federal government.

B. The Advertisements Were Released in Close Proximity to the Upcoming Midterm Elections

Second, the three advertisements were released in quick succession and in close proximity to the upcoming midterm elections, further suggesting that they should qualify as political activity under the Hatch Act. The relevant factor is "the timing of each communication, and in particular its proximity to an upcoming election."⁴⁸ All three advertisements aired less than 40 days before the November 3, 2026, midterm elections, and President Trump himself has encouraged his supporters to vote "as if he's on the ballot."⁴⁹ While OSC has not opined on what constitutes "close proximity to an upcoming election," the broadcasting of these advertisements barely a month before the midterm elections clearly coincided with the timeframe Congress has identified broadcast ads that mention an electoral candidate to be, *per se*, electioneering ads.⁵⁰

C. The Advertisements' Use of Inflammatory Language

The next factor is "the tone of the communication, including whether it used inflammatory or insulting language."⁵¹ Two of the advertisements' tone and inflammatory language push them towards political activity. OSC has held that language that is "framed as

⁴⁵ See 52 U.S.C. § 30116(a)(7)(B)(iii); 11 C.F.R. § 109.23; Federal Election Commission, MUR 6535 (Restore Our Future) (2015) (holding that the republication rules apply across election cycles); see also 52 U.S.C. § 30101(11) (excluding the U.S. government from FECA's definition of "person").

⁴⁶ See *id.*

⁴⁷ See *The Country He Loves*, *supra* note 19.

⁴⁸ Hatch Act Assessment and Advisory 2026, *supra* note 2, at 8.

⁴⁹ Dixon, *supra* note 38.

⁵⁰ See 52 U.S.C. § 30104(f)(3) (FECA definition of "electioneering communication").

⁵¹ Hatch Act Assessment and Advisory 2026, *supra* note 2, at 8.

an attack on a party” such as “illegals,” “gender mutilation,” and “radical leftist” is inflammatory and could be considered political activity.⁵²

Here, two of the advertisements’ inflammatory language reflects rhetoric President Trump used in both his 2024 presidential campaign and as president to describe his political opponents. For example, President Trump called his opponents during the 2024 presidential election “vicious Communists, Marxists, Fascists, and Radical Left Democrats,”⁵³ including referring to Democratic Presidential candidate Kamala Harris as a “radical left Marxist” and “Comrade Kamala.”⁵⁴ President Trump has also referred to New York City Democratic Mayor Zohran Mamdani as a “communist,”⁵⁵ and he publicly attacked Colorado Attorney General Phil Weiser for engaging in “Communist persecution by the Radical Left Democrats.”⁵⁶ Additionally, President Trump has used the term “liberated” to describe his own presidential activity, such as this post from August 11, 2025, addressing the public safety emergency in the District of Columbia: “Washington, D.C. will be LIBERATED today! Crime, Savagery, Filth, and Scum will DISAPPEAR. I will MAKE OUR CAPITAL GREAT AGAIN!”⁵⁷

Although the advertisements’ language reflects political rhetoric President Trump has previously used, it is still incredibly inflammatory and partisan language to be delivered via official government communication. The ads’ language is clearly “framed as an attack” on left-leaning groups the president perceives to be his enemies and is intended to mirror similar rhetoric he has used in the past. As noted above, the Hatch Act was implemented with the express purpose of ensuring that government programs are administered in a nonpartisan manner, as “an actively partisan governmental personnel threatens good administration.”⁵⁸ By using such inflammatory and derogatory language to describe partisan groups in these official government communications, White House, OMB, DHS, and CBP staff likely engaged in political activities in violation of the Hatch Act by producing and distributing these ads.

⁵² *Id.* at 4, 8, and 9.

⁵³ Donald J. Trump (@realDonaldTrump), Truth Social (July 19, 2023, at 11:08 ET), <https://truthsocial.com/@realDonaldTrump/posts/110741376683616413>.

⁵⁴ Donald J. Trump (@realDonaldTrump), Truth Social (July 25, 2024, at 13:12 ET), <https://truthsocial.com/@realDonaldTrump/112848244480423850>; Donald J. Trump (@realDonaldTrump), Truth Social (Aug. 18, 2024, at 02:11 ET), <https://truthsocial.com/@realDonaldTrump/112981541906268544>.

⁵⁵ Donald J. Trump (@realDonaldTrump), Truth Social (Nov. 19, 2025, at 20:29 ET), <https://truthsocial.com/@realDonaldTrump/115579432475646132>.

⁵⁶ Donald J. Trump (@realDonaldTrump), Truth Social (May 5, 2025, at 20:12 ET), <https://truthsocial.com/@realDonaldTrump/114457992767716636>.

⁵⁷ Donald J. Trump (@realDonaldTrump), Truth Social (Aug. 11, 2025, at 08:11 ET), <https://truthsocial.com/@realDonaldTrump/115010061198729847>.

⁵⁸ *American Federation of Government Employees v. Office of Special Counsel*, 1 F.4th 180, 185 (4th Cir. 2021) (quoting *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 97-99 (1947)).

D. The Advertisements Were Widely Distributed and Intended to Reach a Broad Audience

Finally, the advertisements were widely distributed via national channels and were clearly intended to reach a broad audience. The context of dissemination includes the intended audience and the scale of distribution.⁵⁹ OSC has noted that broad and public dissemination of a government communication could further suggest it to be a political activity with all other factors taken into consideration.⁶⁰ In this case, all three advertisements were aired on both cable channels and broadcast networks during primetime viewing, particularly targeting audiences viewing college football and National Football League games.⁶¹ As of October 2, 2026, the advertisements had aired on CBS, CNN, MS NOW, Fox News, ABC, NBC and Fox.⁶²

IV. Senior White House, OMB, DHS, and CBP Officials May Have Coerced Other Federal Employees to Violate the Hatch Act When Producing These Advertisements

Public reporting suggests that senior White House, OMB, DHS, and CBP officials may have coerced subsidiary government employees to participate in the production and distribution of these political ads.⁶³ As noted above, criminal statute 18 U.S.C. § 610 prohibits government employees from coercing other federal employees to engage in *any* political activity under the Hatch Act. OSC specifically forbids government employees from requesting, encouraging, suggesting, or implying that subordinate employees assist in campaign efforts, and OSC regulations provide that government employees are prohibited from using their official authority to coerce any individual—including other federal employees and their subordinates—to participate in political activity.⁶⁴

Despite these clear laws and regulations, public media reports suggest that OMB Director Vought, OMB General Counsel Paoletta, DHS Secretary Mullin, White House Counsel Scharf, White House Chief of Staff Wiles, White House Appointments Secretary Harp, and other White House, OMB, DHS, and CBP officials may have encouraged subordinate federal employees to assist in the production and distribution of these political ads.⁶⁵ Such abuse of

⁵⁹ See Hatch Act Assessment and Advisory 2026, *supra* note 2, at 8.

⁶⁰ *Id.* at 9.

⁶¹ See Holmes et al., *supra* note 1 (“About 30% of the ad spend has been dedicated to NFL and college football games, according to [AdImpact’s] research”). See also Haberman et al., *supra* note 1 (“[The ads] ran heavily on the network morning programs like ‘Good Morning America’ and ‘CBS Mornings,’..., and appeared in entertainment shows including ‘Jimmy Kimmel Live!’ and ‘The Amazing Race.’ One aired repeatedly during weekend football broadcasts on the Fox network.”).

⁶² Haberman et al., *supra* note 1; Holmes et al., *supra* note 1.

⁶³ See Haberman et al., *supra* note 1.

⁶⁴ The Hatch Act Modernization Act of 2012, *supra* note 14; 5 C.F.R. § 734.302(b)(2).

⁶⁵ See Haberman et al., *supra* note 1.

government authority could be considered a criminal violation. OSC should specifically investigate if these senior officials violated criminal statute 18 U.S.C. § 610 by coercing other federal employees to violate the Hatch Act.

V. The White House and President Trump's Statements Do Not Absolve the Advertisements of Being Hatch Act Violations

Importantly, the White House and President Trump's statements surrounding the advertisements do not absolve them of being possible Hatch Act violations. The White House released an official statement defending their contents and mischaracterizing the ads as "public service announcements." The White House's September 25, 2026, statement includes the following:

The announcements are very clearly not campaign ads; President Trump is not on the ballot and there is no call to action. Instead, the announcements are a reminder for Americans to love their country and know why it's worth defending – at home, at the border, and abroad. That's not partisanship – that's a government that still believes in the country it serves.⁶⁶

The White House's statement further says: "Patriotism isn't partisan. These public service announcements are unapologetically American, clearly disclosed, and aimed at the country – not a line on the ballot."⁶⁷

Other White House officials also provided public statements, one calling the advertisements "educational."⁶⁸ The same White House official said, "These public service announcements are about reminding Americans to love their country and understand what makes it worth defending, at home, at our borders, and abroad. . . . We should be proud of our country."⁶⁹

Moreover, President Trump personally addressed the advertisements in a statement to the press on September 30, 2026. The President said, "I'm not running for office, first of all. When I'm talking about making America great, making our country great, that's a countrywide

⁶⁶ Presidential Public Service Announcements Are Nothing New, The White House (Sept. 25, 2026), <https://www.whitehouse.gov/releases/2026/09/presidential-public-service-announcements-are-nothing-new/>.

⁶⁷ *Id.*

⁶⁸ Megan Shannon, Garrett Haake & Raquel Coronell Uribe, *White House Releases New Taxpayer-Funded Ad Describing 'Final Battle'*, NBC News (Sept. 27, 2026), <https://www.nbcnews.com/politics/trump-administration/white-house-releases-new-taxpayer-funded-ad-describing-final-battle-rcna600171>.

⁶⁹ *Id.*

ad. That's an ad for the spirit of our country."⁷⁰ He continued, "Now, if somebody said that that's wrong, I'll gladly pay the money, but these are ads for the country. I'm not promoting a candidate. I'm not promoting myself because I'm not running for office."⁷¹

Despite these statements, the Hatch Act applies to the advertisements. First, OSC and courts have made clear that a government communication need not contain express electoral advocacy for that communication to constitute political activity under the Hatch Act.⁷² President Trump and the White House's insistence that these are not "campaign ads" because President Trump is not on the ballot does not override this longstanding principle. The advertisements can easily be considered political activity under the Hatch Act when taking into consideration the other relevant factors, including their close proximity to the midterm elections, language and tone, and widespread dissemination.

Additionally, the inflammatory and derogatory tone of the communications makes any non-electoral purpose unclear, further establishing the advertisements as political activity under the Hatch Act. While the White House has argued that the advertisements are intended to promote patriotism and are a "reminder for Americans to love their country," it is not clear how this message is conveyed through language like "defeating communism" and "throw[ing] off the sick political class that hates our country." Rather, this wording is clearly partisan in nature and framed as an attack on specific groups and therefore should be considered government communications made in violation of the Hatch Act.

VI. Conclusion

After redirecting over \$20 million in taxpayer funds towards the advertisements,⁷³ on October 5, 2026, President Trump publicly announced that funding for the advertisements would come from MAGA, Inc. going forward.⁷⁴ Even if future advertisements do not use taxpayer funds, the foregoing facts establish possible violations of the Hatch Act and criminal statute 18 U.S.C. § 610.

An OSC investigation is needed to determine if White House, OMB, DHS, and CBP employees participated in political activity through the production and distribution of these advertisements while conducting their official government duties. This investigation should

⁷⁰ Julia Manchester, *Trump Defends Government-Funded Ad Campaigns: 'I'm Not Promoting a Candidate'*, The Hill (Sept. 30, 2026), <https://thehill.com/homenews/administration/6121727-trump-government-ads-white-house/>.

⁷¹ *Id.*

⁷² See Hatch Act Assessment and Advisory 2026, *supra* note 2, at 6 (citing *Burrus v. Vegliante*, 336 F.3d 82, 84 (2d Cir. 2003)).

⁷³ Haberman et al., *supra* note 1.

⁷⁴ See Donald J. Trump (@realDonaldTrump), Truth Social (Oct. 5, 2026, at 18:25 ET), <https://truthsocial.com/@realDonaldTrump/posts/117390649505706640>.

include, but not be limited to, OMB Director Vought, OMB General Counsel Paoletta, DHS Secretary Mullin, White House Counsel Scharf, White House Chief of Staff Wiles, and White House Appointments Secretary Harp. Moreover, an OSC investigation is needed to determine if these senior officials coerced subordinate federal employees to participate in this political activity. Such acts could be in violation of the Hatch Act and criminal statute 18 U.S.C. § 610 and therefore demand a wide-ranging fact-finding.

Respectfully submitted,

_____/s/_____

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_____/s/_____

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