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THE HOUSE COMMITTEE ON
OVERSIGHT & GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE AND THE DISTRICT OF COLUMBIA

STATEMENT OF
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Before The:

UNITED STATES HOUSE OF REPRESENTATIVES
OVERSIGHT & GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE
DISTRICT OF COLUMBIA

HR 4272

AN ACT TO AMEND CHAPTER 15 OF TITLE 5, UNITED STATES CODE, TO
PROVIDE FOR AN ADDITIONAL, LIMITED EXCEPTION TO THE PROVISION
PROHIBITING A STATE OR LOCAL OFFICER OR EMPLOYEE FROM BEING A
CANDIDATE FOR ELECTIVE OFFICE.

Thursday September 11, 2008

2154 Rayburn House Office Bldg

Washington, D.C.

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Chairman Davis, Ranking Member Marchant, and members of the committee: good afternoon and thank you for the opportunity to testify today. My name is Anthony J. Guglielmi and I am the Director of Congressional and Public Affairs for the U.S. Office of Special Counsel (OSC), an independent investigative and prosecutorial agency. I appreciate the opportunity to appear before you today to provide our perspectives on HR 4272. The Special Counsel appreciates your request for OSC's perspective and wished he could be here but had a previous out of office engagement on OSC business that prevents his being here. However, I have brought an expert in Hatch Act state and local enforcement, and you will be able to receive the full complement of OSC expertise and perspective.

As each of you know, the Hatch Act restricts the political activity of individuals principally employed by state, county or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. The Office of Special Counsel (OSC) is the sole agency with exclusive jurisdiction to enforce the Hatch Act. The Act prohibits such employees from, among other things, being candidates in partisan elections for public office. H.R. 4272 would create an exception to this prohibition by allowing employees to be candidates in partisan elections for local office in counties or municipalities with populations of less than 100,000.

OSC takes no position on whether Congress should enact H.R. 4272. However, we feel it prudent to discuss the effects of the legislation and its potential impact on OSC's mission to enforce the Hatch Act. In addition, we offer a recommendation on how to address the underlying issue that prompted this proposed legislation without amending the Act.

First, OSC is concerned that H.R. 4272's choice of 100,000 as the population threshold for its candidacy exception will have a broader effect than intended. If enacted, this legislation will have a far-reaching impact. For example, according to population estimates from the U.S. Census Bureau's website, 75 percent of counties in the State of Michigan have populations of less than 100,000. Further, 99.6 percent of municipalities in

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the State of Michigan have populations of less than 100,000, including cities like Dearborn, Canton and Kalamazoo. Thus, it is not just employees in rural areas of Northern Michigan who would be affected by this legislation.¹

Further, in some cases, employees could see disparate outcomes in cities that are close in proximity and close in size. For example, in Michigan, the cities of Dearborn and Livonia are less than twenty miles apart – both are just outside the City of Detroit. However, in 2002, Livonia had about 2,600 more people than Dearborn, pushing it above the 100,000 population cutoff. Thus, a State of Michigan employee could have run for public office in Dearborn but not in Livonia.

In addition, in 2003, Livonia's population dropped below 100,000. So, an employee who was unable to run for office in Livonia in 2002 would have been able to do so the next year. Generally, populations change from year to year. An employee who runs for office in a municipality with a population of slightly less than 100,000 may see his ability to run for reelection vanish the next election cycle when the municipality's population rises above 100,000. OSC foresees such disparate outcomes resulting in increased litigation over both OSC's enforcement and the census data on which it relies.

In that same vein, it is likely that this legislation will increase the workload for OSC's Hatch Act Unit. In addition to determining whether a state or local government employee has duties in connection with federally funded programs, this legislation would require OSC to research the population of the county or municipality where the employee wants to run for

¹ Examples of other states, according to population estimates from the U.S. Census Bureau's website, include: Ohio, with 68 percent of its counties and 99.7 percent of its municipalities having populations under 100,000; New York, with 55 percent of its counties and 99 percent of its municipalities having populations under 100,000; Florida, with 43 percent of its counties and 95.6 percent of its municipalities having populations under 100,000; and California, with 40 percent of its counties and 87 percent of its municipalities having populations under 100,000.

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office. As mentioned above, populations change from year to year, so our research will have to remain current and continuous.²

OSC's greater concern with H.R. 4272, though, is the potential confusion it could create for employees who are subject to the provisions of the Hatch Act. While such employees, under the proposed legislation, would be permitted to run in partisan elections for local office in areas with a population of less than 100,000, they still would be subject to the Act's other two prohibitions -- the prohibitions against using their official authority or influence to affect the result of an election and coercing employees to contribute anything of value for political purposes. OSC's concern is that, because of the candidacy exception, employees may not realize that they still are subject to these two prohibitions, and thus, may violate them. We have seen this confusion occur with the candidacy exception currently in place for individuals holding elective office. Many times, these elected officials believe they are exempt from all of the provisions of the Hatch Act, even though they have duties in connection with federally funded programs and are subject to the other two provisions of the Act.

In addition, OSC is concerned that by allowing employees to be candidates in certain partisan elections, these employees will be more prone to violate other provisions of the Act. It is only natural that individuals are the most partisan when they are running for office, and it may be difficult for employees who are candidates to leave their partisan politics at the door when they come to work. Thus, OSC sees the potential for more egregious violations of the Hatch Act by employees who bring their candidacies into the workplace by, for example, coercing subordinates to campaign for or support them or using agency resources to further their candidacies. Again, we have seen this happen with elected officials who are exempt from the candidacy prohibition. Some of the most serious violations of the Hatch Act have

² In addition, OSC is unclear what census data it should rely on to determine whether an employee can be a candidate for local office in a certain locality -- data from the decennial census or the population estimates done every year by the U.S. Census Bureau.

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involved elected officials coercing subordinates to engage in activities in furtherance of their candidacies.

For example, OSC filed a complaint with the Merit Systems Protection Board against an elected county prosecutor for multiple violations of the Hatch Act. This prosecutor, during interviews of potential employees, would make it clear that contributing money to his political party was expected of employees. Further, he directed a subordinate employee to solicit other employees to attend political fundraising events or contribute to his political party and to volunteer for his reelection campaign. He also requested another subordinate employee to hold office within his political party, which she agreed to do. In addition, he announced his candidacy on the agency's official website.

This example is an egregious one, but unfortunately, it is not the only one. The Hatch Act Unit has seen an increase over the past year or so in allegations dealing with both candidacy and coercion. These cases involve employees in positions of authority who are running for office and are reported to be using their positions to bolster their campaign credentials and/or coerce subordinates to support their campaign. These cases are difficult to investigate and prove because, understandably, witnesses are not always willing to openly speak to OSC for fear of reprisal. However, prohibiting an employee from being a candidate in a partisan election diminishes an employee's personal interest or motivation for engaging in such activities in the first place.

OSC understands and respects Representative Stupak's concern that in rural areas, the Hatch Act sometimes can reduce the number of qualified candidates who can serve their communities through local elective office. Congress need not amend the Hatch Act, however, to address this problem. The Hatch Act does not prohibit employees from being candidates in nonpartisan elections. Therefore, this problem can be resolved at the state and local level. State and local governments are in the best position to recognize whether a local community lacks qualified candidates for public office. If they identify this problem, they can then make the decision to solve it by designating these local elections nonpartisan. In

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fact, in our experience investigating cases and advising employees across the country, we have found that many localities have designated their elections nonpartisan. Thus, the concerns raised today can be addressed without compromising the integrity and neutrality of federal programs. Local governments are free to exercise their power to hold nonpartisan elections if they are having difficulty locating candidates to run for public office.

Thank you for your attention, I would be happy to answer any questions you may have.

[END]