U.S. OFFICE OF SPECIAL COUNSEL
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Re: OSC File No. XXXXXX

Dear Mr. XXXX:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. Specifically, you have expressed concern that while you have always considered petitions for ballot initiatives to be nonpartisan, some agency managers view them as political activity. Thus, you ask OSC to clarify the issue.

As you know, the Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. Covered employees, however, are prohibited from, among other things, engaging in political activity while on duty, in a government office or building, while wearing an official uniform, or using a government vehicle. 5 U.S.C. § 7324. Political activity has been defined as activity directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group. 5 C.F.R. § 734.101.

Circulating a petition in support of or opposed to a ballot question, such as one seeking to raise the state minimum wage, is not activity directed at the success or failure of a political party, candidate for partisan political office or partisan political group. Accordingly, engaging in such activity does not constitute political activity for purposes of the Hatch Act. Therefore, the Hatch Act would not prohibit union members, or other federal employees, from circulating such petitions, even while on duty or in a federal building.

Further, we agree with your position that petitions for ballot initiatives are nonpartisan in nature, and the Hatch Act generally permits federal employees to actively participate in nonpartisan political activities. For example, the Act permits a covered employee to express his opinion privately or publicly on political subjects or participate in the nonpartisan activities of a civic, community, social, labor, or professional organization. The Act also permits federal employees to be politically active in connection with a question that is not specifically identified with a political party, such as a constitutional amendment, referendum, etc. See 5 C.F.R. § 734.203(b).

Please note that this opinion addresses only the Hatch Act, and while the Act would not prohibit federal employees from circulating petitions for ballot initiatives while at work, there