



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

May 16, 2025

The President
The White House
Washington, DC 20500

Re: OSC File No. HA-25-000080

Dear Mr. President:

Pursuant to 5 U.S.C. § 1215(b), I am forwarding to you the U.S. Office of Special Counsel's (OSC) investigative findings regarding a Hatch Act violation by former Commissioner of Social Security Martin O'Malley. As explained in the accompanying Report of Prohibited Activity Under the Hatch Act (Report), OSC concludes that Mr. O'Malley violated the Hatch Act by advocating against a candidate for partisan political office while giving an interview in his official capacity. In so doing, Mr. O'Malley violated the Hatch Act's prohibition against using his official authority or influence for the purpose of interfering with or affecting the result of an election.¹

When an employee appointed by the President, by and with the advice and consent of the Senate, violates the Hatch Act, OSC transmits a report of the violation to the President for appropriate action.² Mr. O'Malley was such an employee. By law the report shall include "any response of the employee."³ Mr. O'Malley has not provided any response.⁴ Accordingly, OSC submits the Report with no response from Mr. O'Malley.

¹ See 5 U.S.C. § 7323(a)(1).

² See 5 U.S.C. § 1215(b).

³ *Id.*

⁴ In fact, Mr. O'Malley did not respond to any of OSC's attempts to contact him either during the investigation or to obtain his response to the Report. As part of OSC's investigation of the allegations, OSC first tried contacting Mr. O'Malley in January 2025, using the personal email address he provided to U.S. Social Security Administration (SSA) officials. After Mr. O'Malley did not respond to multiple emails, OSC left a voicemail on the personal phone number that Mr. O'Malley provided to SSA officials. Beginning in April 2025, after the investigation was completed, OSC sent three emails and left three voicemails asking for Mr. O'Malley's response to the Report. Mr. O'Malley did not respond.

The President
May 16, 2025
Page 2

Although Mr. O'Malley has left government service—and therefore disciplinary action is no longer possible—I am nevertheless transmitting this Report to you pursuant to 5 U.S.C. § 1215(b) and in accordance with OSC's past practice in such cases.⁵ I hope that the Report can be used by your Administration to educate incoming officials to help ensure compliance with the Hatch Act.

Respectfully,



Charles N. Baldis
*Senior Counsel and Designee
of Acting Special Counsel Jamieson Greer*

Enclosure

⁵ See U.S. Off. of Special Couns., *Report of Prohibited Political Activity Under the Hatch Act OSC File No. HA-20-000091 (The Honorable Carla Sands)* 1 n.1 (Feb. 12, 2021).



U.S. OFFICE OF SPECIAL COUNSEL

Report of Prohibited Activity Under the Hatch Act OSC File No. HA-25-000080 (Martin O'Malley)

April 25, 2025

This report represents the deliberative attorney work product of the U.S. Office of Special Counsel and is considered privileged and confidential. Any release of information beyond persons specifically designated by the U.S. Office of Special Counsel to have access to its contents is prohibited. All Freedom of Information Act inquiries regarding this report should be referred to OSC's FOIA Officer at (202) 804-7000.

I. INTRODUCTION

This Report of Prohibited Political Activity Under the Hatch Act (Report) contains the investigative findings of the U.S. Office of Special Counsel (OSC) in OSC File Number HA-25-000080. OSC opened this matter in response to a complaint filed October 23, 2024 alleging that Martin O'Malley, then Commissioner of the U.S. Social Security Administration (SSA), violated the Hatch Act by using his official authority to interfere with or affect the results of an election. Specifically, the complaint alleged that Mr. O'Malley engaged in political activity while giving a radio interview in his official capacity. Aside from the complaint that OSC received, Mr. O'Malley also self-disclosed to SSA ethics officials that he may have inadvertently violated the Hatch Act during the interview. That self-disclosure was subsequently referred to OSC.

As detailed below, OSC has determined that Mr. O'Malley violated the Hatch Act.¹ Accordingly, pursuant to the authority described in 5 U.S.C. § 1215(b), OSC submits this Report of Prohibited Political Activity to President Donald J. Trump.²

II. FACTUAL FINDINGS

President Biden nominated Mr. O'Malley to be Commissioner of Social Security. Mr. O'Malley was confirmed by the Senate and subsequently sworn into office on December 20, 2023. He held his position until resigning effective November 29, 2024.

On October 23, 2024, Mr. O'Malley was interviewed on the radio program WPTF Morning News. The interview was hosted by Chris Edwards and lasted approximately seven minutes.³ Mr. Edwards began the interview by introducing Mr. O'Malley in his official capacity:

Mr. Edwards: Social Security Commissioner Martin O'Malley will be in Raleigh today as he continues his travel across the country, where he's on a listening tour talking to those frontline employees to identify operational and policy changes that will improve customer service amidst the reality of a 50-year low in staffing. The Commissioner [is] kind enough to join us now via telephone. Commissioner O'Malley, thanks so much for the time today.

The entirety of the interview was focused on SSA and Mr. O'Malley's role as SSA Commissioner. At the end of the interview, the following exchange occurred:

¹ See 5 U.S.C. § 7323(a)(1) and 5 C.F.R. § 734.302.

² Mr. O'Malley has left government service and, although disciplinary action is no longer possible, OSC has decided to transmit this Report to the President because: (1) the violation was significant and the Report can be used by the Administration to educate incoming officials so that similar violations do not occur in the future; and (2) violations by high-level officials generate significant public interest and issuing a report ensures accountability.

³ The interview is available online at <https://rss.com/podcasts/wptf-morning-show/1716512/>.

Mr. Edwards: *Commissioner, as I let you go, what's the biggest thing you want to leave our listeners here of the Triangle with about the work that you're doing with Social Security?*

Mr. O'Malley: *Yeah, what I want to leave the listeners with is that Social Security is here for the long haul. It's here for you. But we all have a responsibility to use our own power to make sure it's strong for our kids and for our grandkids. I certainly can't tell anybody who to vote for, but I can tell you that the proposals that are coming from Donald Trump would quickly deplete Social Security and we wouldn't be able to pass it on to our kids as our grandparents passed it on to us. But to govern is to choose. Everybody has a choice to make. And for our part, we want to serve the public and we want to secure the future of the men, women, and children of the nation, including people of North Carolina.*

According to SSA ethics officials, after the interview Mr. O'Malley purportedly realized that some of his statements might be viewed as prohibited by the Hatch Act. Mr. O'Malley apparently also told ethics officials that he did not intend to violate the Hatch Act during the interview. During its investigation, OSC sent Mr. O'Malley a Request for Information and Documents (RFI) asking for further context for his statements during the radio interview. Mr. O'Malley did not respond to the RFI or to OSC's multiple attempts to contact him regarding this investigation.

During his time in office, Mr. O'Malley received information about the Hatch Act and had a team of ethics officials to advise him upon request. For example, he received an in-person ethics briefing on December 20, 2023, which covered the Hatch Act, and numerous emails explaining the Hatch Act. Three of those emails were sent in October 2024 prior to Mr. O'Malley's WPTF interview. It is clear from the fact that Mr. O'Malley self-disclosed a potential Hatch Act violation immediately after the WPTF interview that he was aware of the Hatch Act and its prohibitions at the time of the interview.

III. ANALYSIS

The Hatch Act restricts the political activity of "any individual, other than the President and the Vice President, employed or holding office in . . . an Executive agency other than the Government Accountability Office."⁴ SSA is a federal agency within the Executive branch.⁵ Mr. O'Malley was appointed by the President and confirmed by the Senate to be the Commissioner of Social Security. He was sworn into office on December 20, 2023, and served through November 29, 2024. Accordingly, at the time of the radio interview, Mr. O'Malley was a federal employee subject to the Hatch Act.

⁴ 5 U.S.C. § 7322(1).

⁵ See 42 U.S.C. § 901(a).

Among other things, the Hatch Act prohibits a federal employee from using his official authority or influence to interfere with or affect the result of an election.⁶ The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses. For example, the regulation makes clear that an employee may not use his official title or position while participating in political activity.⁷ Political activity is activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁸ Thus, a federal employee violates the Hatch Act if he promotes the election or defeat of a candidate for partisan political office while speaking in his official capacity.

Mr. O'Malley participated in the WPTF radio interview in his official capacity as Commissioner of Social Security. While speaking in his official capacity, Mr. O'Malley stated that the campaign proposals of then-presidential candidate Donald J. Trump would negatively affect Social Security. He first said that "we all have a responsibility to use our own power to make sure [Social Security is] strong for our kids and for our grandkids." Mr. O'Malley then stated that he could not tell anyone "who to vote for" but that "the proposals that are coming from Donald Trump would quickly deplete Social Security and we wouldn't be able to pass it on to our kids as our grandparents passed it on to us." He concluded by saying, "[e]verybody has a choice to make," which in the context of his comments about a presidential candidate was clearly a reference to voting. The only plausible conclusion to draw from Mr. O'Malley's comments is that, while speaking in his capacity as SSA Commissioner, he explicitly told listeners that they must vote against President Trump to satisfy their responsibility to preserve Social Security.

It is also notable that when making the remarks at issue, Mr. O'Malley was not responding to a question about the 2024 presidential election or candidates. Instead, he was asked about the "biggest thing [he wanted] to leave our listeners here of the Triangle with about the work that [he was] doing with Social Security." In response to that question, Mr. O'Malley voluntarily introduced the subject of voting and then-candidate Trump into the discussion. Despite couching his remarks as commentary about a policy proposal, Mr. O'Malley never actually described any of the purported Trump policies that would weaken Social Security. Instead, he made a blanket and facially unsubstantiated assertion that they would do so. The mere fact that Mr. O'Malley referenced nebulous policy "proposals" does not insulate him from Hatch Act liability for what was otherwise an express message to voters that they had a responsibility to vote against President Trump.

OSC recognizes that after the WPTF radio interview Mr. O'Malley self-reported his comments to SSA ethics officials. But that does not absolve him of liability for his conduct. Moreover, to the extent that his self-reporting might be viewed as mitigating the seriousness of

⁶ See 5 U.S.C. § 7323(a)(1).

⁷ See 5 C.F.R. § 734.302(b)(1).

⁸ See 5 C.F.R. § 734.101.

his Hatch Act violation, that mitigation is substantially undercut by Mr. O'Malley's complete lack of engagement with OSC during OSC's investigation of this matter.

In sum, although the Hatch Act permits federal employees—including senior officials such as Mr. O'Malley—to publicly support candidates and political parties in their *personal* capacity, it prohibits employees from engaging in such activity when acting in an *official* capacity. Here, Mr. O'Malley engaged in political activity while speaking in his official capacity. That is a clear violation of the Hatch Act.

IV. CONCLUSION

Mr. O'Malley violated the Hatch Act when, while speaking in his official capacity, he made comments directed toward the failure of then-candidate Donald J. Trump's presidential campaign. He did so despite knowing that the Hatch Act prohibited him from engaging in political activity while acting in an official capacity. While Mr. O'Malley may not have intended to violate the Hatch Act, he certainly intended to steer the interview towards a discussion of why listeners should not vote for President Trump. Accordingly, OSC has determined that Mr. O'Malley willfully engaged in political activity while speaking in his official capacity and that the violation warrants referral to the President.

OSC presents this Report of Prohibited Political Activity to the President pursuant to the authority described in 5 U.S.C. § 1215(b).