



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

**The Special Counsel**

April 18, 2023

The President  
The White House  
Washington, D.C. 20500

RE: OSC File No. HA-22-000223

Dear Mr. President:

Pursuant to 5 U.S.C. § 1215(b), I am forwarding to you the investigative findings of the U.S. Office of Special Counsel (OSC) regarding a complaint alleging prohibited political activity by Secretary of Health and Human Services Xavier Becerra. As explained in the accompanying report, OSC concluded that Secretary Becerra violated the Hatch Act by expressing support for Senator Alex Padilla's reelection while speaking in his official capacity at the Congressional Hispanic Caucus Institute Annual Awards Gala on September 15, 2022.

The Hatch Act prohibits federal employees from using their official authority or influence to affect the outcome of an election. In delivering his speech, Secretary Becerra impermissibly mixed his personal electoral preference with official remarks. While federal employees are permitted to express support for candidates when speaking in their personal capacity, the Hatch Act restricts employees from doing so when speaking as a government official.

With a presidential election approaching next year, this report offers an opportunity to deter violations by reminding federal employees at all levels of the Hatch Act's restrictions. Accordingly, I submit to you the enclosed report, together with Secretary Becerra's response, for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Henry J. Kerner". The signature is stylized and cursive.

Henry J. Kerner  
Special Counsel

Enclosures



## U.S. OFFICE OF SPECIAL COUNSEL

### Report of Prohibited Political Activity Under the Hatch Act OSC File No. HA-22-000223 (Xavier Becerra)

March 16, 2023

This Report represents the deliberative attorney work product of the U.S. Office of Special Counsel (OSC) and is considered privileged and confidential. Any release of information beyond persons specifically designated by OSC 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 U.S. Office of Special Counsel's (OSC) investigative findings in OSC File Number HA-20-000223, a complaint of prohibited political activity. The complaint alleges that Secretary of the U.S. Department of Health and Human Services (HHS) Xavier Becerra violated the Hatch Act on September 15, 2022, by expressing support for Senator Alex Padilla's reelection while speaking in his official capacity at the Congressional Hispanic Caucus Institute Annual Awards Gala. Upon receipt of the complaint, OSC investigated whether Secretary Becerra engaged in the alleged activity.

As detailed below, OSC has determined that Secretary Becerra violated the Hatch Act.<sup>1</sup> Thus, pursuant to the authority described in 5 U.S.C. § 1215(b), OSC presents this Report to the President for appropriate action.

## II. FACTUAL FINDINGS

Xavier Becerra was appointed by the President and confirmed by the Senate to be the Secretary of HHS, a federal agency within the Executive branch. He was sworn into office in March 2021.

### A. *Secretary Becerra attended the Congressional Hispanic Caucus Institute Annual Awards Gala and gave remarks in his official capacity.*

On September 15, 2022, Secretary Becerra attended the Congressional Hispanic Caucus Institute Annual Awards Gala (Gala) in his official capacity as Secretary of HHS. While at the event, Secretary Becerra was presented with the 2022 American Dream Medallion Award and made remarks to the audience about, among other things, the work of HHS and the Biden-Harris Administration. His prepared remarks were reviewed and approved by an HHS Ethics Division attorney in advance of the Gala.

During the Gala, Senator Alex Padilla, who at the time was a Democratic candidate in a 2022 United States Senate election, presented the award to Secretary Becerra and identified the Secretary with his official title. Afterwards, a short video about Secretary Becerra was played, which also identified him as the "25<sup>th</sup> Secretary of the U.S. Department of Health and Human Services" and included content related to his work at HHS. Once the video concluded, Secretary Becerra thanked Senator Padilla for the award and, deviating from his prepared remarks, stated, "To my brother, my friend and Senator, and someone I will be voting for in a little bit more than a month, Alex Padilla, thank you so much, Senator, for being there for all of us. We are proud to have you as our Senator." Present at the Gala were members of Secretary

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

Becerra's staff, who made a recording of his remarks. On the recording, someone on his staff can be heard gasping after the Secretary's comments about Senator Padilla and saying, "no, no, you can't say that."

B. *Secretary Becerra explained that his comments about Senator Padilla were "off-the-cuff."*

During OSC's investigation, Secretary Becerra responded to questions about his speech at the Gala and explained that his opening remarks about Senator Padilla were "off-the-cuff" and not something he had planned to say until he was at the podium. He said his remarks reflected his "longstanding personal relationship" with Senator Padilla. He also said, "I certainly am proud of Alex Padilla and his accomplishments and said so from the perspective of someone who has witnessed many of his achievements." With respect to his reference to the Senator as "someone [he] will be voting for in a little bit more than a month," Secretary Becerra stated, "I don't believe I thought of that as conveying anything more than what I as a responsible citizen would be doing in the near future."

C. *Secretary Becerra was advised about the Hatch Act.*

Since assuming office, Secretary Becerra has received ample information about the Hatch Act. For example, in March 2021, Secretary Becerra participated in an HHS initial ethics training that included a component on the Hatch Act and its prohibition against the use of official authority or influence for the purpose of interfering with or affecting the result of an election. Specifically, the training instructed employees not to use their official title or authority for partisan political purposes. It also addressed how the Hatch Act applies to presidential appointees with Senate confirmation, advising that they may not use their official title while engaging in political activity.<sup>2</sup>

In addition, just three months before the Gala, Secretary Becerra and other administration officials received Hatch Act-specific training from the White House Counsel's Office. The material presented during the training addressed speaking in an official capacity, stating that "Political remarks must be distinct from official remarks."<sup>3</sup> The training also warned that, while at an official event, they "**may not** encourage support for a candidate or remind attendees to vote for a particular candidate or group in an election" or "discuss candidates, elections, or partisan groups."<sup>4</sup>

Moreover, as Secretary of HHS, Mr. Becerra had unencumbered access to the HHS Ethics Division and easily could have availed himself of Hatch Act information if he had

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<sup>2</sup> The training document cites to 5 C.F.R. § 734.302(b)(1).

<sup>3</sup> Emphasis in original.

<sup>4</sup> Emphasis in original.

questions. It is clear that Secretary Becerra was aware of and made use of this access because his prepared remarks for the Gala were reviewed by an attorney in the HHS Ethics Division to ensure compliance with the Hatch Act and other laws.

### III. Analysis

#### A. *Secretary Becerra is subject to the Hatch Act.*

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.”<sup>5</sup> Mr. Becerra was appointed by the President and confirmed by the Senate to be the Secretary of HHS, a federal agency within the Executive branch. He was sworn into office in March 2021. Accordingly, Secretary Becerra is a federal employee subject to the Hatch Act.

#### B. *Secretary Becerra violated the Hatch Act’s use of official authority prohibition by promoting the reelection of Senator Alex Padilla while giving remarks in his official capacity.*

The Hatch Act prohibits federal Executive branch employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election.<sup>6</sup> The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses.<sup>7</sup> For example, the regulation makes clear that an employee may not use his official title or position while participating in political activity.<sup>8</sup> Political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office.<sup>9</sup> Thus, a covered federal employee violates the Hatch Act if he promotes the election or defeat of candidates for partisan political office while speaking in his official capacity.

It is undisputed that Secretary Becerra attended the September 15, 2022 Gala in his official capacity as Secretary of HHS. His official remarks were reviewed by an attorney in the HHS Ethics Division prior to the event; he was introduced with his official title; and, while giving his speech, he discussed, among other things, the work of HHS and the Biden-Harris Administration. Accordingly, because he was acting in his official capacity at the event, the Hatch Act prohibited Secretary Becerra from promoting or opposing candidates for partisan political office, like Senator Padilla.

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<sup>5</sup> 5 U.S.C. § 7322(1).

<sup>6</sup> *See id.* § 7323(a)(1).

<sup>7</sup> *See* 5 C.F.R. § 734.302.

<sup>8</sup> *See id.* § 734.302(b)(1).

<sup>9</sup> *See id.* § 734.101.

Secretary Becerra crossed the line by conveying his electoral support for the Senator. Not only did Secretary Becerra express pride at having Senator Padilla as his Senator, he referred to him as “someone [he] will be voting for in a little bit more than a month...” In doing so, Secretary Becerra violated the Hatch Act’s prohibition against using his official authority or influence to affect the result of an election.

Moreover, Secretary Becerra should have known that the Hatch Act prohibited him from expressing support for Senator Padilla’s reelection. Since joining HHS, he has participated in comprehensive training on the Hatch Act, including a presentation from the White House Counsel’s Office just three months before the Gala. His statement was so obviously concerning that a member of his own staff, present at the Gala, gasped and said, “no, no, you can’t say that” immediately after hearing it.

Lastly, OSC considered Secretary Becerra’s explanations as to why he made the remarks at issue. Because Secretary Becerra is well-informed about the Hatch Act’s prohibitions, he knew or should have known that his “longstanding personal relationship” with Senator Padilla did not exempt him from the Act’s prohibition about expressing, even extemporaneously, his electoral support for the Senator in an official speech. Similarly, this belief that his expressed intention to vote for Senator Padilla was merely the statement of a “responsible citizen” is belied by the fact that his speech was clearly conducted in his official capacity as HHS Secretary. Therefore, Secretary Becerra’s proffered explanations do not serve to mitigate the issuance of this Report to the President.

#### **IV. CONCLUSION**

The Hatch Act generally allows federal employees to publicly support candidates and political parties in their personal capacity. In contrast, when employees are using their official position or title, such as while giving remarks in an official capacity, they are prohibited from engaging in political activity. Here, Secretary Becerra impermissibly engaged in political activity by using his official authority during his speech at the Gala. The Secretary expressed his electoral support for Senator Padilla in a widely attended forum. His conduct followed recent and comprehensive Hatch Act training provided by the White House. Nonetheless, the Secretary provided an unavailing justification for his very public and political remarks.

Violations by high level officials that go unaddressed particularly undermine the viability of the Hatch Act and its purpose of ensuring a federal civil service free of partisan political influence. Accordingly, consistent with OSC’s statutory mission, OSC presents this Report of Prohibited Political Activity, together with Secretary Becerra’s response, to the President for appropriate action, pursuant to the authority described 5 U.S.C. § 1215(b).

**From:** [REDACTED] (OS/IOS)  
**To:** Resendes, Kelley; Galindo-Marrone, Ana  
**Cc:** [REDACTED] (HHS/OGC)  
**Subject:** Response to OSC Inquiry  
**Date:** Thursday, March 30, 2023 1:02:00 PM

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Thank you for the opportunity to respond to the Report of Prohibited Political Activity Under the Hatch Act, OSC File No. HA-22-000223 (Xavier Becerra), regarding the remarks I made in my acceptance speech at the 2022 CHCI gala.

I did not intend to use my official authority or influence for purpose of interfering with or affecting the result of an election, and I regret this inadvertent violation. While I did not realize at the time that my off-the-cuff remarks concerning my personal voting intentions were in violation of the Hatch Act, I now understand why they were not permitted.

I have received additional counseling on the Hatch Act from the Department's Ethics Division, and I will work hard to ensure that there are no future violations.

Sincerely,

Xavier Becerra

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