



# FACT

FOUNDATION FOR  
ACCOUNTABILITY  
AND CIVIC TRUST

October 25, 2024

Hampton Dellinger  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505

Email: [hatchact@osc.gov](mailto:hatchact@osc.gov)

RE: Hatch Act Violation by Department of Health and Human Services (HHS)

Dear Mr. Dellinger,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We request the Office of Special Counsel investigate whether Department of Health and Human Services (HHS) Secretary Xavier Becerra and other federal employees violated the Hatch Act by sending a blatant political email to Medicare recipients. The unsolicited email was paid for by HHS and utilized identification rolls kept by the Centers for Medicare and Medicaid Services (CMS). The email was entirely political in both its purpose and language, it was sent to citizens who are Medicare recipients from an official government email address and from an official department. This type of political advocacy from a government agency targeting citizens who interact with it is exactly the type of politicalization of government functions that the Hatch Act is designed to prevent. It is also critical to note how far beyond a standard Hatch Act violation this is, as it involved a potentially massive universe of government data (citizen email addresses) to commit it. It is not an overstatement to say this is an egregious and outrageous violation of the Hatch Act and we urge the Office of Special Counsel to act immediately.

**Facts.** On September 28, 2024, the Biden-Harris administration “sent a taxpayer-funded email blast to likely millions of Americans that praised Vice President Kamala Harris. The email from the Department of Health and Human Services went to everyone signed up to receive updates on the government’s Medicare program.”<sup>1</sup> The email, which has been described as a

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<sup>1</sup> Amanda Prestigiacomio, *Biden Admin Uses Taxpayer-Funded Email Blast To Praise Kamala Ahead Of Election*, Daily Wire (Sept. 28, 2024), <https://www.dailywire.com/news/biden-admin-uses-taxpayer-funded-email-blast-to-praise-kamala-ahead-of-election>; Jim Geraghty, *Department Of Health And Human Services Sends Email To Seniors Touting Kamala Harris*, National Review (Sept. 30, 2024, 7:49 AM), <https://www.nationalreview.com/corner/department-of-health-and-human-services-sends-e-mail-to-seniors-touting-kamala-harris/>.

“sales pitch for Kamala Harris,” tellingly identified Harris numerous times by name and used her campaign talking points.<sup>2</sup>

The email stated in part: “These historic reforms are a result of the Inflation Reduction Act that I signed into law and that Vice President Harris cast the tie-breaking vote to secure. . . . Vice President Harris and I believe that health care should be a right, not a privilege.”<sup>3</sup> The email concluded with: “This message is paid for by the U.S. Department of Health and Human Services. It was created and distributed by the Centers for Medicare & Medicaid Services. You’re receiving this message because you signed up for email updates from the Medicare Team.”<sup>4</sup> The email was sent from a .gov email address and was sent to up to 67.5 million enrollees of Medicare services.<sup>5</sup> The email in its entirety can be read in the attachment.

**Law.** The Hatch Act protects the public trust by ensuring federal programs are administered in a nonpartisan manner and protects taxpayer funds from being used for political purposes, as well as protecting federal employees from coercion in the workplace.<sup>6</sup> With the exception of the President and Vice President, the law generally applies to all employees working in the executive branch of the federal government, including the Secretary and employees of HHS and CMS.<sup>7</sup>

The Hatch Act restricts the political activity of federal civilian executive branch employees.<sup>8</sup> Among other things, employees are prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election.<sup>9</sup> An employee violates this prohibition, for example, by engaging in political activity while on duty, in a government office or building, while wearing an official uniform, or using a government vehicle.<sup>10</sup> Political activity is defined as activity directed at the success or failure of a political

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<sup>2</sup> Jim Geraghty, *Department Of Health And Human Services Sends Email To Seniors Touting Kamala Harris*, National Review (Sept. 30, 2024, 7:49 AM).

<sup>3</sup> Amanda Prestigiacomio, *Biden Admin Uses Taxpayer-Funded Email Blast To Praise Kamala Ahead Of Election*, Daily Wire (Sept. 28, 2024); *see also* Kamala Harris (@VP), Twitter (Aug. 15, 2025, 4:49 PM), <https://x.com/VP/status/182420168968072398> (stating “Health care should be a right—not just a privilege for those who can afford it.”).

<sup>4</sup> Amanda Prestigiacomio, *Biden Admin Uses Taxpayer-Funded Email Blast To Praise Kamala Ahead Of Election*, Daily Wire (Sept. 28, 2024).

<sup>5</sup> *Medicare Monthly Enrollment*, Centers for Medicare and Medicaid Services, <https://data.cms.gov/summary-statistics-on-beneficiary-enrollment/medicare-and-medicaid-reports/medicare-monthly-enrollment> (last visited Oct. 1, 2024).

<sup>6</sup> Hatch Act Overview, U.S. Office of Special Counsel, accessible at: <https://osc.gov/Services/Pages/HatchAct.aspx>.

<sup>7</sup> 5 U.S.C. § 7322(1)(A).

<sup>8</sup> *See* 5 U.S.C. §§ 7321-7326.

<sup>9</sup> *See* 5 C.F.R. § 734.302(b)(1).

<sup>10</sup> 5 U.S.C. § 7324.

party, partisan political group, or candidate for partisan political office.<sup>11</sup> Thus, while on duty or using government resources to do so, federal employees are prohibited from, among other things, making statements in support of candidates for partisan office, including the office of the President of the United States.<sup>12</sup>

Advisory opinions have made it clear that creating, sending, or forwarding an email that is for or against a candidacy for President of the United States violates the Hatch Act if done while on duty, acting in official capacity, in a government building, or with government resources.<sup>13</sup>

**Hatch Act Violation.** This is a clear violation of the Hatch Act because (1) the email was a blatant partisan political email and (2) it was sent from the Department of Human Services using taxpayer funded resources.

First, the email was a blatant partisan political communication. When read in its entirety it is clear the email's content was primarily directed at the success of a candidate in a partisan race.<sup>14</sup> Although the email's first two paragraphs contain a reminder for the upcoming open enrollment period for Medicare, this is simply a thinly-veiled attempt to disguise the political nature of the email. Even if there was a policy purpose in the first two paragraphs, the law does not allow **any** portion of the email to contain political content. The following eight paragraphs are an obvious political advertisement for Kamala Harris.

In fact, the email's verbiage stretching to include the Vice President's limited involvement Medicare is a dead giveaway. Additionally, the use of a candidate's name is specific to an election being held within 45 days—both are factors that the OSC has identified in finding Hatch Act violation. As the email has been described, it is a sales pitch for Harris in the upcoming election. Any political message in an email is a violation of the Hatch Act, and the fact that it contains a small portion of policy can not excuse its overtly political intent, specifically the success of a candidate in an upcoming election. The content of the email makes it clear it was written and sent to generate support for a political candidate in an upcoming partisan election.

Second, while the President is not covered by the Hatch Act, employees of the Executive Office of the President and HHS are. The employees were on duty when creating, sending, and using taxpayer-funded resources to distribute the email. The email was presumably approved by

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<sup>11</sup> 5 CFR § 734.101.

<sup>12</sup> 5 U.S.C. § 7324(b); 5 CFR § 734.101.

<sup>13</sup> U.S. Office of Special Counsel, Advisory Letter, OSC File No. AD-08-xxx (March 18, 2008), <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Example%20of%20Email%20that%20Constitutes%20Political%20Activity.pdf>

<sup>14</sup> Office of Special Counsel, Hatch Act FAQs, <https://osc.gov/Services/Pages/HatchAct-FAQ.aspx#tabGroup25> (“What is a partisan political e-mail? A partisan political email is an email that is directed at the success or failure of a partisan group or candidate in a partisan race.”).

Secretary Becerra and used information from CMS. Even more egregious is that it was sent unsolicited to citizens who had interacted with the government agency, which again could be more than 67 million Americans who are Medicare enrollees. The sheer size of the political advertisement here represents a severe and inexcusable breach of the public's trust.

Both by the clear letter of the law and direct precedent, this action was plainly and blatantly a violation. The government endorsement of a political candidate and the use of taxpayer-funded resources to do so is the exact political behavior forbidden by the Hatch Act. This example is so obvious, brazen and over-the-top that not acting on it would be a significant blow to the integrity of the law. Thus, we urge the Office of Special Counsel to immediately act and investigate whether Secretary Xavier Becerra and other employees of the Department of Health and Human Services and Executive Office of the President violated the Hatch Act.

Sincerely,

/s/Kendra Arnold

Kendra Arnold  
Executive Director, Foundation for Accountability & Civic Trust

# Biden Admin Uses Taxpayer-Funded Email Blast To Praise Kamala Ahead Of Election

[Amanda Prestigiacomo](#) Sep 28, 2024

The Biden-Harris administration on Friday sent a taxpayer-funded email blast to likely millions of Americans that praised Vice President Kamala Harris.

The email from the Department of Health and Human Services went to everyone signed up to receive updates on the government's Medicare program, which is used by 66 million people. It featured a letter from President Joe Biden highlighting the administration's "historic reforms" to the program, attributing the benefits to the work of Harris, the Democratic nominee for President.

Biden's letter touts the administration "lowering health care costs" for seniors and "save[ing] money for American taxpayers," for example. It says it's all thanks to Harris, noting that she cast the tie-breaking vote to give Americans these supposed benefits, and that Biden and Harris believe health care should be "a right," a common Democrat talking point on the campaign trail.

*Screenshot of HHS email / The Daily Wire*

Using government resources for campaigning is generally prohibited under the Federal Election Commission (FEC). Several recipients flagged the email for The Daily Wire after they received it on Friday, noting that it was inappropriate.

"It is nothing but a campaign ad for the Biden Administration and Kamala Harris," one recipient told The Daily Wire, noting that the email "even states that VP Harris cast the tie breaking vote."

The White House did not respond to a request for comment.

Biden emphasizes in the email that Medicare improvements are due to his Inflation Reduction Act, which was signed into law because of Harris.

"These historic reforms are a result of the Inflation Reduction Act that I signed into law and that Vice President Harris cast the tie-breaking vote to secure," the email reads. "These are just some of the ways my Administration has worked to help you save money on your health care costs and to provide a little more breathing room for you and your families," the email says.

"Vice President Harris and I believe that health care should be a right, not a privilege," President Biden continues in the email. "I encourage you to take advantage of these new, lower-cost benefits as part of stronger, better Medicare coverage that you deserve."

"This new law gives Medicare the power to negotiate lower prescription drug prices, like the U.S. Department of Veterans Affairs does on behalf of our nation's veterans and service members."

The email, which can be read in full at the bottom of this article, is signed by Biden and includes a disclaimer about its funding from HHS:

This message is paid for by the U.S. Department of Health and Human Services. It was created and distributed by the Centers for Medicare & Medicaid Services. You're receiving this message because you signed up for email updates from the Medicare Team.

Around 66 million Americans get their health coverage through Medicare. It's unclear how many Americans received the email from Biden.

The email could raise legal concerns for the Biden-Harris administration. FEC rules generally prohibit the use of taxpayer-funded agencies like HHS, and its employees, for campaign purposes. The Hatch Act bans civil-service employees in the executive branch of the federal government from engaging in some campaigning activity, too.

Back in June, Sen. Ted Cruz (R-TX) raised questions about the Biden administration placing signs near infrastructure projects to promote the president. The signs in question read, "Project Funded By President Joe Biden's Bipartisan Infrastructure Law."

Cruz [argued](#) that these are "nothing more than campaign yard signs courtesy of the American taxpayer" in a letter to the Office of Special Counsel.

"I write to refer this to you for investigation as a possible violation of the Hatch Act, federal law that broadly prohibits using taxpayer dollars for campaign activity," Cruz said. "Congress, not President Biden, wrote [the infrastructure law], and it did not do so to aid the President's reelection campaign."

More recently, the Federal Reserve cut interest rates for the first time in the Biden-Harris era this past week, which was viewed by many as an attempt to boost the economy with less than 50 days before the election.

Some politicians view the move as partially motivated by politics, an effort to get Harris to the White House. Her opponent, former President Donald Trump, suggested the same.

"I guess it shows the economy is very bad to cut it by that much, assuming they're not just playing politics," he said. "The economy would be very bad or they're playing politics, one or the other. But it was a big cut."

The full content of the HHS-funded email can be viewed below:

## ***A message from President Biden on Medicare Open Enrollment***

*Dear [redacted],*

*With Open Enrollment for Medicare around the corner, I want to make*



sure you're aware of historic changes to Medicare that are lowering health care costs and ensuring that every American has the peace of mind that comes with quality, affordable health care.

Because Medicare benefits are getting stronger, it is **more important than ever to look at your drug coverage for 2025 during Medicare Open Enrollment and make sure you are enrolled in the Medicare Part D plan that is best for you.** You can learn more about these benefits and review your options at [Medicare.gov](https://www.Medicare.gov) starting in early October. Medicare Open Enrollment runs from October 15th through December 7th.

These historic reforms are a result of the Inflation Reduction Act that I signed into law and that Vice President Harris cast the tie-breaking vote to secure. This new law gives Medicare the power to negotiate lower prescription drug prices, like the U.S. Department of Veterans Affairs does on behalf of our nation's veterans and servicemembers.

Medicare has been able to cap the cost of insulin for seniors with diabetes at \$35 a month for each covered insulin instead of as much as \$400 a month. Recommended vaccines, like those to treat shingles, are free for people with Medicare prescription drug coverage.

Starting in January 2025, your total out-of-pocket costs for prescription drugs will be capped at \$2,000 a year, no matter how expensive your prescription drugs are. **That means you will not pay more than \$2,000 per year on prescription drugs covered under Medicare prescription drug coverage, or Part D—** that includes expensive prescription drugs to treat cancer, chronic illnesses, and more.

And if you have had high drug costs in 2024 and have reached what's called the catastrophic coverage phase, you won't have to pay any more out of pocket.

*These reforms not only save seniors money, they also save money for American taxpayers. In fact, taxpayers are expected to save \$160 billion over the next decade because Medicare is now able to negotiate drug prices alongside other reforms — and we're just getting started.*

*In addition to these cost-saving benefits that are in effect in 2025, Medicare recently announced that it has reached agreement with pharmaceutical companies for new, lower prices for ten of the most expensive and most frequently used prescription drugs in Medicare. These new, lower prices will go into effect in 2026, and Medicare will continue to negotiate prices for additional drugs each year for the foreseeable future.*

*These are just some of the ways my Administration has worked to help you save money on your health care costs and to provide a little more breathing room for you and your families.*

*Vice President Harris and I believe that health care should be a right, not a privilege. I encourage you to take advantage of these new, lower-cost benefits as part of stronger, better Medicare coverage that you deserve.*

*Joe Biden*

*You can [update your preferences](#) or [unsubscribe](#) to stop receiving emails from Medicare.*

*This message is paid for by the U.S. Department of Health and Human Services. It was created and distributed by the Centers for Medicare & Medicaid Services. You're receiving this message because you signed up for email updates from the Medicare Team.*