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May 1, 2018

Mr. Austin R. Evers  
Executive Director  
American Oversight  
1030 15<sup>th</sup> Street, N.W., Suite B255  
Washington, DC 20005

VIA EMAIL: [foia@americanoversight.org](mailto:foia@americanoversight.org)

Re: OSC File No. HA-18-2573

Dear Mr. Evers:

The U.S. Office of Special Counsel (OSC) completed its investigation into allegations that Federal Communications Commission (FCC) Commissioner Michael O’Rielly violated the Hatch Act during an appearance at the Conservative Political Action Conference (CPAC) on February 23, 2018. As explained below, OSC concluded that Commissioner O’Rielly violated the Hatch Act and issued him a warning letter.

The Hatch Act restricts certain political activities of federal executive branch employees, except for the President and the Vice President. 5 U.S.C. §§ 7321-7326. Accordingly, Commissioner O’Rielly is covered by the Hatch Act and prohibited from using his official authority or influence for the purpose of interfering with or affecting the result of an election. *Id.* § 7323(a)(1). Under this provision, he may not use his official title while engaging in political activity or his official position to advance or oppose candidates for partisan political office. Political activity is 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.

At issue here are comments Commissioner O’Rielly made during an official appearance at CPAC on February 23, 2018, when he participated in a panel discussion entitled, “To Infinity and Beyond: How the FCC is Paving the Way for Innovation.” FCC Chairman Ajit Pai and Commissioner Brendon Carr also participated on the panel, which was moderated by Michelle Connolly from Duke University. Their appearance at CPAC provided an opportunity to explain recent FCC decisions and the underlying thinking on issues of interest to the organization.

At one point during the panel session, Ms. Connolly noted that “during different election cycles the FCC can very quickly swing and change policy” and then asked the panel “what can we do to avoid this regulatory ping pong every time there is a new election.” Commissioner O’Rielly chose to respond first and said:

I think what *we* can do is make sure as conservatives that we elect good people to both the House, the Senate, and make sure that President Trump gets reelected. *But* there’s another thing you can do. We’re going to have a fight over the Obama

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internet rules in the next couple months in the U.S. Senate. And that's going to matter and that vote matters, and so making sure people take the right course on that really does affect what policies we're able to keep in place moving forward. So we can certainly use everyone's help along those lines. (emphasis in speech).

Despite his words, Commissioner O'Rielly explained to OSC that he was not advocating President Trump's reelection but was attempting to answer the question asked, which he understood to be about preventing the next Administration from reversing the FCC's net neutrality decision. Commissioner O'Rielly explained that his "answer was meant to relay the point that the only way to retain that current outcome was to maintain the current leaders in government. In other words, retaining the current Administration is the only sure way to prevent regulatory ping-ponging." But Commissioner O'Rielly did in fact have an answer to the moderator's question that was not partisan – legislative action by the Senate – which he expressed only after suggesting the solution was to "make sure that President Trump gets reelected."

Regardless of his explanation, Commissioner O'Rielly advocated for the reelection of President Trump in his official capacity as FCC Commissioner. Therefore, he violated the Hatch Act's prohibition against using his official authority or influence to affect an election. Although OSC has decided to issue a warning letter in this instance, OSC has advised Commissioner O'Rielly that if in the future he engages in prohibited political activity while employed in a position covered by the Hatch Act, we will consider such activity to be a willful and knowing violation of the law, which could result in further action pursuant to 5 U.S.C. § 1215.

Please contact me at (202) 804-7054 if you have any questions.

Sincerely,



Erica S. Hamrick  
Deputy Chief  
Hatch Act Unit