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(Original Signature of Member)

118TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend title 5, United States Code, to increase the accountability of the Office of Special Counsel in enforcing certain provisions of that title vigorously, consistently, and without regard to the political affiliation, career status, or personal characteristics of individuals subject to those provisions, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. ROBERT GARCIA of California introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend title 5, United States Code, to increase the accountability of the Office of Special Counsel in enforcing certain provisions of that title vigorously, consistently, and without regard to the political affiliation, career status, or personal characteristics of individuals subject to those provisions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Hatch Act Enforce-  
3 ment Transparency and Accountability Act”.

4 **SEC. 2. ADDITION OF DEFINITIONS.**

5       (a) IN GENERAL.—Subchapter II of chapter 12 of  
6 title 5, United States Code, is amended by adding at the  
7 end the following:

8 **“§ 1219a. Definitions**

9       “In this subchapter:

10           “(1) CAREER EMPLOYEE.—The term ‘career  
11 employee’ means an individual who is—

12               “(A) an employee, as that term is defined  
13 in section 7322; and

14               “(B) not a noncareer employee.

15           “(2) COVERED ALLEGATION.—The term ‘cov-  
16 ered allegation’ means an allegation concerning po-  
17 litical activity prohibited under subchapter III of  
18 chapter 73.

19           “(3) NONCAREER EMPLOYEE.—The term ‘non-  
20 career employee’ means an individual who is—

21               “(A) an employee, as defined in section  
22 2105, serving in a position in the executive  
23 branch; and

24               “(B)(i) serving in a position to which the  
25 President appointed the individual (without re-  
26 gard to whether the advice and consent of the

1 Senate was required with respect to that ap-  
2 pointment), other than an individual who is—

3 “(I) a member of a uniformed service,  
4 as that term is defined in section 210(m)  
5 of the Social Security Act (42 U.S.C.  
6 410(m)); or

7 “(II) a member of the Foreign Service  
8 serving under a career appointment, as de-  
9 scribed in section 301 of the Foreign Serv-  
10 ice Act of 1980 (22 U.S.C. 3941);

11 “(ii) a noncareer appointee, as that term is  
12 defined in section 3132(a);

13 “(iii) serving in a position in a Federal ex-  
14 ecutive system that is comparable to the Senior  
15 Executive Service, the appointment to which is  
16 not made through merit-based procedures, such  
17 as a position in the Transportation Security  
18 Executive Service; or

19 “(iv) serving in a position with respect to  
20 which a determination has been made under  
21 section 7511(b)(2).”.

22 (b) CLERICAL AMENDMENT.—The table of sections  
23 for subchapter II of chapter 12 of title 5, United States  
24 Code, is amended by adding at the end the following:

“1219a. Definitions.”.

1   **SEC. 3. NOTIFYING CONGRESS IN THE EVENT OF A DECI-**  
2                   **SION NOT TO INVESTIGATE A NONCAREER**  
3                   **EMPLOYEE.**

4       Section 1217 of title 5, United States Code, is  
5   amended by adding at the end the following:

6       “(c) NOTIFICATION OF CONGRESS IN THE EVENT OF  
7   CERTAIN DECLINATIONS.—

8           “(1) IN GENERAL.—Not later than 180 days  
9       after the date of enactment of this subsection, and  
10      once every 180 days thereafter, the Special Counsel  
11      shall submit to the Chair and Ranking Member of  
12      each of the Committee on Homeland Security and  
13      Governmental Affairs of the Senate and the Com-  
14      mittee on Oversight and Accountability of the House  
15      of Representatives a written report that contains, for  
16      the period covered by the report, the number of com-  
17      plaints received by the Special Counsel that the Spe-  
18      cial Counsel referred for disciplinary action.

19           “(2) CONTENTS.—Each report required under  
20      paragraph (1) shall—

21           “(A) include—

22                   “(i) a copy of the applicable com-  
23                   plaint;

24                   “(ii) the name and position of the em-  
25                   ployee who is the subject of the applicable  
26                   complaint; and

1           “(B) be organized to indicate whether the  
2           employee who is the subject of each complaint  
3           contained in the report is a career employee or  
4           a noncareer employee.”.

5 **SEC. 4. REPORTING TO CONGRESS.**

6           (a) IN GENERAL.—Section 1218 of title 5, United  
7 States Code, is amended—

8           (1) in the section heading, by striking “**re-**  
9 **port**” and inserting “**reports**”;

10           (2) in the matter preceding paragraph (1), by  
11 striking “The Special” and inserting the following:

12           “(a) IN GENERAL.—The Special”; and

13           (3) by adding at the end the following:

14           “(b) REPORT REGARDING ALLEGATIONS AGAINST  
15 NONCAREER EMPLOYEES.—In addition to each report re-  
16 quired under subsection (a), the Special Counsel shall sub-  
17 mit to the Chair and Ranking Member of each committee  
18 of jurisdiction in Congress, on an annual basis, a report  
19 regarding the activities of the Special Counsel with respect  
20 to covered allegations against noncareer employees and  
21 former noncareer employees, which shall include—

22           “(1) for the year preceding the submission of  
23 the report, the number of such covered allegations  
24 received by the Special Counsel;

1           “(2) the number of such covered allegations  
2           that have resulted in an investigation conducted by  
3           the Special Counsel, whether the investigation was  
4           initiated during the year covered by the report or  
5           thereafter; and

6           “(3) in a confidential addendum submitted to  
7           the Chair and Ranking Member of each of the Com-  
8           mittee on Homeland Security and Governmental Af-  
9           fairs of the Senate and the Committee on Oversight  
10          and Accountability of the House of Representa-  
11          tives—

12                 “(A) with respect to each such covered al-  
13                 legation not investigated, the name and position  
14                 of the noncareer employee (or former noncareer  
15                 employee) who was the subject of the covered  
16                 allegation; and

17                 “(B) a description of each such covered al-  
18                 legation for which processing of the covered al-  
19                 legation ceased during the year covered by the  
20                 report, without regard to whether the covered  
21                 allegation was received during the year covered  
22                 by the report or earlier, which shall include—

23                         “(i) a description of the outcome of  
24                         the covered allegation; and

1 “(ii) in the case of a covered allega-  
2 tion against a noncareer employee who is  
3 not serving in a position with respect to  
4 which appointment by the President, by  
5 and with the advice and consent of the  
6 Senate, is required (or against a former  
7 noncareer employee who was not serving in  
8 such a position, as of the date on which  
9 the actions that are the subject of the cov-  
10 ered allegation occurred), a statement as  
11 to whether—

12 “(I) the Special Counsel, under  
13 section 1215(a), presented a com-  
14 plaint to the Merit Systems Protection  
15 Board against the noncareer employee  
16 (or former noncareer employee) con-  
17 cerning the actions that are the sub-  
18 ject of the covered allegation; and

19 “(II) any civil penalty assessed  
20 by the Merit Systems Protection  
21 Board under section 7326 with re-  
22 spect to the covered allegation has  
23 been collected in full.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—

25 The table of sections for subchapter II of chapter 12 of

1 title 5, United States Code, is amended by striking the  
2 item relating to section 1218 and inserting the following:

“1218. Annual reports.”.

3 **SEC. 5. PUBLIC TRANSPARENCY IN HATCH ACT ENFORCE-**  
4 **MENT.**

5 Section 1219 of title 5, United States Code, is  
6 amended—

7 (1) in subsection (a)—

8 (A) in paragraph (3), by striking “and” at  
9 the end;

10 (B) in paragraph (4), by striking the pe-  
11 riod at the end and inserting “; and”; and

12 (C) by adding at the end the following:

13 “(5) a detailed written explanation of the com-  
14 plete basis for each decision of the Special Counsel  
15 not to present, under section 1215(a), a complaint  
16 to the Merit Systems Protection Board against any  
17 noncareer employee determined by the Special Coun-  
18 sel to have violated subchapter III of chapter 73, ex-  
19 cept that this paragraph shall not apply with respect  
20 to a noncareer employee who is serving in a position  
21 for which nomination by the President, by and with  
22 the advice and consent of the Senate, is required  
23 (unless such a noncareer employee is serving in a  
24 position in the Foreign Service).”;



1           (2) by redesignating subsection (b) as sub-  
2       section (c); and

3           (3) by inserting after subsection (a) the fol-  
4       lowing:

5       “(b) PUBLICATION OF DEMOGRAPHIC STATISTICS  
6 REGARDING CERTAIN ENFORCEMENT.—

7           “(1) IN GENERAL.—The Special Counsel shall  
8       track, publish, and keep current on the official  
9       website of the Office of Special Counsel the following  
10      information, which shall remain on that website for  
11      a period of not less than 10 fiscal years, beginning  
12      with the fiscal year to which the information per-  
13      tains:

14           “(A) On an ongoing basis, the following  
15      anonymized information pertaining to covered  
16      allegations against career employees, which  
17      shall be organized by fiscal year:

18           “(i) The number of career employees  
19      who were the subject of covered allegations  
20      received by the Special Counsel during the  
21      applicable fiscal year.

22           “(ii) With respect to the career em-  
23      ployees identified under clause (i)—

24           “(I) the number of those career  
25      employees who the Special Counsel in-

1           vestigated, without regard to whether  
2           the investigation occurred during the  
3           fiscal year in which the Special Coun-  
4           sel received the initial covered allega-  
5           tion with respect to such a career em-  
6           ployee or during a subsequent fiscal  
7           year; and

8                   “(II) the number of those career  
9           employees who were the subject of a  
10          complaint presented to the Special  
11          Counsel with the Merit Systems Pro-  
12          tection Board with respect to the ap-  
13          plicable covered allegation, without re-  
14          gard to whether the Special Counsel  
15          presented such a complaint during the  
16          fiscal year in which the Special Coun-  
17          sel received the initial covered allega-  
18          tion with respect to such a career em-  
19          ployee or during a subsequent fiscal  
20          year.

21                   “(iii) For clauses (i) and (ii), demo-  
22          graphic information pertaining to the race,  
23          sex, ethnicity, national origin, and dis-  
24          ability status of the applicable career em-  
25          ployees.

1           “(B) On an ongoing basis, the following  
2           anonymized information pertaining to covered  
3           allegations against noncareer employees, which  
4           shall be organized by fiscal year:

5           “(i) The number of noncareer employ-  
6           ees who were the subject of covered allega-  
7           tions received by the Special Counsel dur-  
8           ing the applicable fiscal year.

9           “(ii) With respect to the noncareer  
10          employees identified under clause (i)—

11           “(I) the number of those non-  
12          career employees who the Special  
13          Counsel investigated, without regard  
14          to whether the investigation occurred  
15          during the fiscal year in which the  
16          Special Counsel received the initial  
17          covered allegation with respect to such  
18          a noncareer employee or during a sub-  
19          sequent fiscal year; and

20           “(II) the number of those non-  
21          career employees who were the subject  
22          of a complaint presented to the Spe-  
23          cial Counsel with the Merit Systems  
24          Protection Board with respect to the  
25          applicable covered allegation, without

1                   regard to whether the Special Counsel  
2                   presented such a complaint during the  
3                   fiscal year in which the Special Coun-  
4                   sel received the initial covered allega-  
5                   tion with respect to such a noncareer  
6                   employee or during a subsequent fis-  
7                   cal year.

8                   “(iii) For clauses (i) and (ii), demo-  
9                   graphic information pertaining to the race,  
10                  sex, ethnicity, national origin, and dis-  
11                  ability status of the applicable noncareer  
12                  employees.

13                  “(2) DEMOGRAPHIC INFORMATION.—The Di-  
14                  rector of the Office of Personnel Management, the  
15                  head of the agency employing an individual who is  
16                  the subject of a complaint filed with the Special  
17                  Counsel, and, as applicable, the White House Presi-  
18                  dential Personnel Office shall, upon request, provide  
19                  the Special Counsel with information pertaining to  
20                  the race, sex, ethnicity, national origin, disability  
21                  status, and status as a career employee or noncareer  
22                  employee of that individual, if that information has  
23                  already been collected in connection with the Federal  
24                  employment or former Federal employment of that  
25                  individual.”.

**1 SEC. 6. SEVERABILITY.**

2       If any provision of this Act, or of any amendment  
3 made by this Act, or the application of any provision of  
4 this Act, or of any amendment made by this Act, to any  
5 person or circumstance is held to be unconstitutional, the  
6 remainder of this Act, and the amendments made by this  
7 Act, and the application of the provision this Act, or of  
8 the amendment made by this Act, to any other person or  
9 circumstance shall not be affected by the holding.