



September 5, 2012

VIA E-MAIL AND CERTIFIED MAIL

Calvin L. Scovel III
Inspector General
Office of Inspector General
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
7th Floor
Washington, D.C. 20590
Email: hotline@oig.dot.gov

RE: Request for Investigation

Dear Mr. Scovel:

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom.

We write to respectfully request that the Office of Inspector General (OIG) initiate an investigation into Deputy Associate Administrator for Aviation Safety John Hickey and Deputy Director of Flight Standards Field Operations Ray Towles. Mr. Hickey and Mr. Towles may have violated the Hatch Act of 1939, 5 U.S.C. §7321-7326 (Hatch Act). We have been informed that during mandatory meetings of Federal Aviation Administration (FAA) employees, Mr. Hickey and Mr. Towles encouraged employees to vote for Democratic politicians in upcoming elections, explaining that their jobs may very well depend on a Democratic victory.

A. Mr. Hickey and Mr. Towles Engaged in Political Activity While on Duty

It has come to our attention that on May 23, 2012, Mr. Hickey and Mr. Towles, two senior management employees at the FAA, traveled to the Seattle Flight Standards Division Office (Seattle FSDO), amongst other FAA offices and divisions.¹ While at the Seattle FSDO and during mandatory employee meetings, Mr. Hickey and Mr. Towles reportedly told employees that the election of Republican candidates in the upcoming 2012 presidential and congressional elections would be detrimental to their job security. Mr. Hickey, in particular, is

¹ See Exhibit 1, *attached*.

alleged to have stated that Republican politicians wished to cut the budget of the FAA, while Democratic politicians intended to keep the FAA budget at the same or similar levels as in recent years. Any cuts in the FAA budget would lead to furloughs, job losses, and pay reductions amongst FAA employees, so Mr. Hickey indicated that the assembled FAA employees should vote for Democratic candidates in order to preserve the FAA budget and, consequently, their jobs and pay.²

At least two Seattle FSDO employees present for Mr. Hickey and Mr. Towles' comments felt they were so inappropriate as to necessitate reporting to their supervisor, who in turn reported their allegations as possible Hatch Act violations to an Attorney and Deputy Regional Counsel in the FAA's Northwest Mountain Region Office of the Regional Counsel.³ Additionally, a source has informed Cause of Action that the Office of Special Counsel is conducting an investigation into Mr. Hickey and Mr. Towles and their comments to the Seattle FSDO.

The Hatch Act of 1939 prohibits certain federal employees from engaging in partisan political activity. It arose out of widespread allegations that Works Progress Administration officials were using their positions to gain votes for, and ensure the election of, their preferred politicians. To prevent future abuses, the Hatch Act prohibits Executive agency employees (with few exceptions) from engaging in political activity.⁴ This includes using his or her official authority or influence for the purpose of affecting the result of an election.⁵ Activity intended to affect the result of an election can take the form of efforts directed at the success of a political party or candidate for partisan political office.⁶ Previously, the Office of Special Counsel has indicated that such a standard also prohibits covered Executive agency officials from suggesting to subordinate employees that they undertake any partisan political activity.⁷ Mr. Hickey and Mr. Towles's alleged statements to FAA employees, in their roles as senior FAA management, amounts to illegal political activity under the Hatch Act.

To ensure compliance with the Hatch Act, the OIG is authorized to investigate violations of that Act and charge individual employees with violations.⁸ The Hatch Act is a key tool in ensuring that the power of the federal government is not captured by one individual or political party and warped to their exclusive benefit. Given the essential nature of the Act to a non-partisan civil service, potential violations should be treated with the utmost seriousness. Furthermore, in the case of Mr. Hickey and Mr. Towles, an investigation would not be overly burdensome to the OIG. If the alleged conduct is true, there will be numerous witnesses to the veracity (or lack thereof) of the allegations, as well as travel records and other evidence of Mr. Hickey and Mr. Towles's presence in those offices at the time the alleged statements were made.

² See Exhibit 2, *attached*.

³ See Exhibit 3, *attached*.

⁴ 5 U.S.C. §7322(1)(a).

⁵ 5 U.S.C. §7323(a)(1).

⁶ U.S. OFFICE OF SPECIAL COUNSEL, LESS RESTRICTED EMPLOYEES—POLITICAL RESTRICTIONS AND PROHIBITED ACTIVITIES, *available at* <http://www.osc.gov/haFederalLessRestrictionandActivities.htm> (last visited June 6, 2012).

⁷ *Id.*

⁸ 5 U.S.C. §1216(a)(2).

Cause of Action respectfully requests that the OIG immediately investigate Mr. Hickey and Mr. Towles for potential violations of the Hatch Act and, if warranted, make the appropriate referrals to the U.S. Department of Justice for investigation and prosecution. If indeed Mr. Hickey and Mr. Towles made these comments, we also encourage the OIG to investigate whether the comments, and Mr. Hickey and Mr. Towles's visits to FAA field offices, were made at the behest of their superiors or other individuals within the Executive Branch, including the Executive Office of the President.

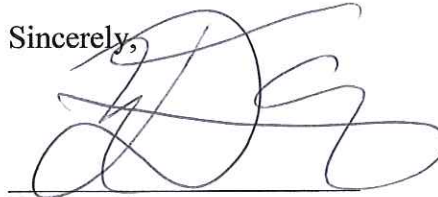
B. Mr. Hickey and Mr. Towles's Comments May Also Rise to a Threat

Because Mr. Hickey and Mr. Towles's comments to subordinate FAA employees allegedly indicated that their jobs and pay could depend on the election of Democratic politicians, the employees may very well have interpreted the comments as a veiled threat that the FAA would take adverse actions against them should they not vote in accordance with Mr. Hickey and Mr. Towles's wishes. Emails from FAA employees present at the mandatory Seattle FSDO meeting indicate that Mr. Hickey and Mr. Towles made clear that a Republican Congress and Administration would result in budget cuts and job losses at the FAA. Any employee who did not vote in accordance with their wishes, and whose vote became publicly known, could find themselves "first in line" should furloughs or pay cuts be necessary, or otherwise exposed to adverse actions and retaliation from co-workers and superiors such as Mr. Hickey and Mr. Towles. If employees were threatened in this manner, not only would Mr. Hickey and Mr. Towles have violated the Hatch Act, but they would have violated numerous other laws related to employment discrimination and retaliation as well.

In accordance with the OIG's mission, Cause of Action urges a swift investigation, not only into whether the comments made by Mr. Hickey and Mr. Towles at the Seattle FSDO violated the Hatch Act, but also whether their comments violated any other federal laws, as well as if they engaged in any other activities in violation of the Hatch Act or other applicable law.

Should you have any questions, comments, or concerns, please do not hesitate to contact either myself (Daniel.Epstein@causeofaction.org) or Adam Butschek (Adam.Butschek@causeofaction.org) at 202-507-5889. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "DE", with a large, stylized flourish extending from the end of the signature.

DANIEL EPSTEIN
EXECUTIVE DIRECTOR

CC: Eric H. Holder, Jr., Attorney General, U.S. Department of Justice
Sen. Joseph I. Lieberman, Chairman, Senate Homeland Security and Governmental Affairs Committee

Sen. Susan M. Collins, Ranking Member, Senate Homeland Security and Governmental Affairs Committee
Rep. Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform
Rep. Elijah E. Cummings, Ranking Member, House Committee on Oversight and Government Reform

Encl.: Exhibit 1: Letter from John Hickey, Deputy Associate Administrator for Aviation Safety, Federal Aviation Administration, to Rick Domingo, Flight Standards Division – Manager, Seattle Flight Standards Division Office, Federal Aviation Administration, et. al. (April 17, 2012) (on file with Cause of Action).

Exhibit 2: Letter from Seattle FSDO Employee 1 to Supervisor, Seattle Flight Standards Division Office, Federal Aviation Administration (May 24, 2012) (on file with Cause of Action), Letter from Seattle FSDO Employee 2 to Supervisor, Seattle Flight Standards Division Office, Federal Aviation Administration (May 24, 2012) (on file with Cause of Action).

Exhibit 3: Letter from Supervisor, Seattle Flight Standards Division Office, Federal Aviation Administration, to Douglas Anderson, Deputy Regional Counsel, Office of the Regional Counsel, Northwest Mountain Region, Federal Aviation Administration, and Jeffrey Harper, Attorney, Office of the Regional Counsel, Northwest Mountain Region, Federal Aviation Administration (May 24, 2012) (on file with Cause of Action).