November 1, 2018

Special Counsel Henry Kerner  
U.S. Office of Special Counsel  
1730 M St. NW  
Suite 218  
Washington, DC 20036

Dear Special Counsel Kerner:

The Project On Government Oversight (POGO) requests an investigation into a potential violation of the Hatch Act by U.S. Department of Agriculture Secretary Sonny Perdue.

Secretary Perdue appeared at a public town hall meeting on October 24, 2018, in Belleville, Illinois, in his official capacity as Agriculture Secretary. There, the Secretary took questions from the public and discussed the impact on agriculture markets of the U.S. trade war with China, and answered questions on resulting farming subsidies. He also praised recent U.S. dairy and poultry deals made with Canada.1

In an email sent to the Project On Government Oversight on the matter, a USDA spokesperson confirmed: “Secretary Perdue participated in town hall-style meetings with the members of Congress and agriculture leaders at the invitation of the Congressmen….as part of his official duties as Secretary of Agriculture.”2

During this appearance, the Secretary appeared to endorse incumbent Representative Mike Bost, likely violating the Hatch Act. According to a press release by the Congressman, Perdue made the following remarks about Bost at the event:

(Bost) can bring the perspective of working folks in Illinois to D.C. and we need that very much so. It’s good to have him in [the House of Representatives] fighting for your interests. He is elected to listen to the people and communicate that to me. It is important for me to hear what he hears.3

---

3 United States Congressman Mike Bost, “Bost, USDA Secretary Perdue Tour Eckert’s and Host Farmers Forum,” October 24, 2018.  

(Hereinafter, “Bost, US Ag”)
The Secretary’s appearance seems to coincide with a campaign reelection event held for the benefit of Bost. While it’s unclear to what extent the campaign event and the town hall overlapped, we believe that the Secretary’s verbal endorsement at such a campaign event while in his official capacity and while discussing agency business may violate the Hatch Act. We believe this episode is ripe for investigation by the Office of Special Counsel.

As you know, 5 USC § 7321(a)(1) specifically prohibits federal employees from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.” Here, Secretary Perdue appears to have done just that.

In a 2016 letter to then-President Obama about then-Secretary of Housing and Urban Development Julián Castro, the Office of Special Counsel highlighted some of the factors to consider when determining whether remarks are made in an official or personal capacity:

While federal employees are permitted to make partisan remarks when speaking in their personal capacity, the Hatch Act restricts employees from doing so when using an official title or when speaking about agency business."

This situation involving Secretary Perdue is similar to one involving Federal Communications Commission Commissioner Michael O’Rielly in February during his tenure as Commissioner. While acting in his official capacity, the Commissioner advocated for President Donald Trump’s reelection. As you know, OSC subsequently found Commissioner O’Rielly’s statements to be in violation of the Hatch Act. We believe the comments made by Secretary Perdue amount to a similar violation.

We urge you to investigate this potential violation of the Hatch Act by Secretary Perdue and to take appropriate actions based on the findings of your office’s Hatch Act Unit.

Sincerely,

Danielle Brian
Executive Director

4 Bost, US Ag
5 Letter from Carolyn N. Lerner, Office of Special Counsel, to President Barak Obama regarding “OSC File No. HA-16-3113,” July 18, 2016. https://osc.gov/Resources/HA-16-3113%20Castro%20FINAL.pdf (Downloaded February 27, 2018)
8 5 U.S.C. § 1215(b)