



February 27, 2018

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

Dear Special Counsel Henry Kerner:

The Project On Government Oversight (POGO) requests an investigation into a potential violation of the Hatch Act by Federal Communications Commission (FCC) Commissioner Michael O’Rielly during the Conservative Political Action Conference (CPAC) on February 23, 2018.

As you know, the Hatch Act bars federal employees from endorsing or advocating for or against partisan political candidates, political parties, or political organizations when speaking in their official capacity.

In response to a question at the 10:20 minute mark in the video footnoted below, Commissioner O’Rielly said before an audience of an indeterminate size:

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 re-elected. (Applause) But there’s another thing you can do. We’re going to have a fight over the Obama 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 that people take the right course on that really does affect what policies we’re able to keep in place going forward. So, could certainly use everyone’s help out along on those lines.¹

Commissioner O’Rielly was on a panel to discuss his agency’s mission and policies. His other two panelists were other Republican Commissioners, including its Chairman Ajit Pai.

As the Office of Special Counsel wrote regarding Obama’s Housing and Urban Development Secretary Julián Castro, highlighting 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.²

¹American Conservative Union, “CPAC 2018 - To Infinity and Beyond: How the FCC is Paving the Way for Innovation,” February 23, 2018. <https://www.youtube.com/watch?v=BZ6H1qxzaDg> (Downloaded February 27, 2018)

² Office of Special Counsel, “OSC File No. HA-16-3113,” July 18, 2016. [https://osc.gov/Resources/HA-16-3113%20\(Julian%20Castro\)%20FINAL.pdf](https://osc.gov/Resources/HA-16-3113%20(Julian%20Castro)%20FINAL.pdf) (Downloaded February 27, 2018)

O’Rielly was clearly speaking in his official capacity rather than a personal one, even while advocating for President Trump’s reelection and promoting the election of “good people” to the House and Senate. These statements therefore appear to violate the Hatch Act. Office of Special Counsel policy states that, “the Hatch Act does prohibit federal employees, while on duty or in the workplace, from expressly advocating for or against [Trump’s] reelection in 2020.”³ It would defy logic to argue that the comments at the root of this complaint were made in a personal capacity.

The situation involving O’Rielly is similar to one faced by President Obama’s Health and Human Services (HHS) Secretary Kathleen Sebelius. As the Office of Special Counsel wrote regarding Sebelius:

Secretary Sebelius appeared at the HRC [Human Rights Campaign] gala in her official capacity as HHS Secretary. As explained above, twice during the speech, Secretary Sebelius diverged from her prepared remarks. First, she endorsed the gubernatorial campaign of North Carolina Lieutenant Governor Walter Dalton and stated that it is “hugely important” to elect a Democratic Governor in North Carolina. Although Secretary Sebelius testified that she “had not intended to endorse him,” her words had that effect. Because she made this endorsement in her official capacity as HHS Secretary, she violated the Hatch Act.

In addition, Secretary Sebelius advocated for the reelection of President Obama in a series of extemporaneous remarks. Secretary Sebelius suggested that the effort to defeat Amendment One on the ballot in May could serve as a “great template to do what needs to be done to organize people and turn out people for November.” She noted that North Carolina is critical in the next election and emphasized that it is “hugely important to make sure we reelect the President.” These statements were made in Secretary Sebelius’ official capacity and therefore violated the Hatch Act’s prohibition against using official authority or influence to affect the results of an election.⁴

The Hatch Act contains important provisions to keep partisan politics out of the executive branch. We urge you to investigate this potential violation of the Hatch Act and to take appropriate actions based on the findings of your office’s Hatch Act Unit.⁵

Sincerely,



Danielle Brian
Executive Director

³ Office of Special Counsel, “Guidance on President Trump’s Status as a Candidate and Its Effect on Activity in the Federal Workplace,” February 7, 2017. <https://osc.gov/Resources/2017-President-Candidate-Guidance.pdf> (Downloaded February 27, 2018)

⁴ Office of Special Counsel, “OSC File No. HA-12-1989,” September 12, 2012. <https://osc.gov/Resources/Hatch%20Act%20Report%20on%20HHS%20Secretary%20Kathleen%20Sebelius.pdf> (Downloaded February 27, 2018)

⁵ 5 U.S.C. § 1215(b)