

August 26, 2020

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M Street, N.W.
Suite 218
Washington, D.C. 20036-4505

Re: Violations of the Hatch Act by Sonny Perdue

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Secretary of Agriculture Sonny Perdue violated the Hatch Act by participating in an event in his official capacity and in which he expressed his political views about the Republican nominee for president, Donald Trump. By making these remarks during an event that mixed official government business with political views about a candidate for partisan political office, Secretary Perdue appears to have used his official authority or influence for the purpose of interfering with or affecting the result of an election. His statements during this event constitutes political activity prohibited by law.

Factual Background

Sonny Perdue has served as President Trump’s Secretary of Agriculture since 2017.¹ Secretary Perdue previously served as the Governor of Georgia.²

Use of Official Position for Partisan Political Purposes

On August 24, 2020, Secretary Perdue made comments during an official government event related to the Farmers to Families Food Box Program in his official capacity as Secretary of Agriculture that impermissibly mixed official government business with political views about President Donald Trump, a candidate for partisan political office.³ Prior to his remarks, Secretary Perdue was introduced at the event by President Trump, who stated: “And I’ll introduce Sonny Perdue, Secretary of Agriculture. Thank you all very much.” Secretary Perdue delivered his remarks standing next to a podium emblazoned with the official seal of the President of the United States.⁴

¹ Bartholomew D. Sullivan, *Sonny Perdue is Confirmed by the Senate as the Next Agriculture Secretary*, *USA Today*, Apr. 24, 2017, <https://www.usatoday.com/story/news/politics/2017/04/24/sonny-perdue-confirmed-senate-next-agriculture-secretary/100851620/>.

² *Id.*

³ *President Delivers Remarks on Farmers to Families Food Box Program*, *C-SPAN*, Aug. 24, 2020, <https://www.c-span.org/video/?475118-1/president-delivers-remarks-farmers-families-food-box-program>.

⁴ *Id.*

Before discussing the federal program, Secretary Perdue made a series of political statements. First, he said:

Mr. President, as you saw those throngs of people lining both sides of the road from the airport all the way to Mills River here, those were a part of those forgotten people that voted for you for 2016. And I've got better news for you: they and many others are gonna vote for you for four more years in 2020. Because they understand under your administration, they've not been forgotten and this program is a great example of that.⁵

After discussing the origins of the Farmers to Families Food Box Program in greater detail, Secretary Perdue added:

I saw last week – some of you may have watched, I didn't watch much but I read a little bit about of it. We were trying to talk about personalities in politics – let me tell you what, people don't vote for personalities. They vote for policies and people that get it done, like Donald J. Trump. You know, that's what people want. They want somebody who can get it done. They want a decider-in-chief. And if you've ever sat in that office, this man can decide.⁶

Secretary Perdue stated further:

We've never seen an outpouring of compassion like that for people who matter, because people matter to you. And that's what's important to me. And that's what's gonna continue to happen — four more years — if America gets out and votes for this man, Donald J. Trump.”⁷

Secretary Perdue's remarks prompted a chant of “four more years!” from the assembled crowd.⁸ It is unclear whether Secretary Perdue's political statements were planned in advance or extemporaneous.

Following this event, Secretary Purdue's appearance at this event was promoted both on his official government Twitter account and the official White House Twitter account.⁹

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See Secretary Sonny Perdue (@SecretarySonny), Twitter (Aug. 24, 2020), <https://twitter.com/SecretarySonny>; The White House (@WhiteHouse), Twitter (Aug. 24, 2020), <https://twitter.com/WhiteHouse/status/1297986499258982400?s=20>; see also, The White House (@WhiteHouse), Twitter (Aug. 24, 2020), <https://twitter.com/WhiteHouse/status/1298017520620834816>.



Shortly after Secretary Perdue’s remarks, the Trump campaign posted the video of the event on Twitter.¹⁰ The @TeamTrump twitter account notes that it is the “official Twitter account for the Trump Campaign.”¹¹

¹⁰ Team Trump (@TeamTrump), Twitter (Aug. 24, 2020), <https://twitter.com/TeamTrump/status/1297990366629699584>.

¹¹ See generally Team Trump (@TeamTrump), Twitter, <https://twitter.com/TeamTrump>.



The next day, the Department of Agriculture (“USDA”) issued a press release highlighting Secretary Perdue’s attendance at the event, which included an excerpt from his remarks.¹²

Secretary Perdue’s remarks are not the first time that the Department of Agriculture has attempted to use the Farmers to Families Food Box Program to promote President Trump’s campaign. In July, Secretary Perdue today announced that USDA would launch a third round of purchases for the program with distributions to occur beginning by September 1 with completion by October 31, 2020, three days before Election Day.¹³ According to reporting by *Fox News*, this round of deliveries was to include a “new letter from President Trump” bearing the President’s signature.¹⁴ The letter includes guidelines related to COVID-19 and a declaration from the President that, “As part of our response to the coronavirus, I prioritized sending nutritious food from our farmers to families in need throughout America.”¹⁵

¹² U.S. Department of Agriculture, [Trump Administration Announces Additional \\$1 billion for the Farmers to Families Food Box Program](https://www.usda.gov/media/press-releases/2020/08/25/trump-administration-announces-additional-1-billion-farmers), Aug. 25, 2020, <https://www.usda.gov/media/press-releases/2020/08/25/trump-administration-announces-additional-1-billion-farmers>.

¹³ U.S. Department of Agriculture, [USDA Announces a Third Round of Farmers to Families Food Box Program Purchases](https://www.usda.gov/media/press-releases/2020/07/24/usda-announces-third-round-farmers-families-food-box-program), July 24, 2020, <https://www.usda.gov/media/press-releases/2020/07/24/usda-announces-third-round-farmers-families-food-box-program>.

¹⁴ John Roberts and Alex Pappas, [Trump to Include Letter on Coronavirus Guidelines in Food Delivery Program for Those in Need](https://www.foxnews.com/politics/trump-to-include-letter-on-coronavirus-guidelines-in-food-delivery-program-for-those-in-need), *Fox News*, July 31, 2020, <https://www.foxnews.com/politics/trump-to-include-letter-on-coronavirus-guidelines-in-food-delivery-program-for-those-in-need>.

¹⁵ *Id.*

Potential Violations

The Hatch Act - 5 U.S.C. §§ 7321-26

The Hatch Act prohibits any executive branch employee from “us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.”¹⁶ Activities covered by this prohibition include a federal employee’s use of their official authority or position while participating in political activity.¹⁷ “Political activity” is defined as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”¹⁸ The Hatch Act further prohibits most federal employees from engaging in political activity while on duty, but it does not prohibit certain employees appointed by the President, by and with the advice and consent of the Senate, such as cabinet secretaries, from doing so.¹⁹ However, if these officials do engage in political activity, they must do so in their personal capacities and the costs associated with their political activity must not be paid with money derived from the United States Treasury.²⁰ Penalties under the Hatch Act are generally administrative in nature, but can include removal from government service, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a civil fine.²¹

In its August 2012 report regarding Hatch Act violations by then-Secretary of Health and Human Services Kathleen Sebelius, OSC found that she violated that Hatch Act by “making extemporaneous political remarks in a speech delivered in her official capacity.”²² OSC stated:

Secretary Sebelius appeared at the [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. ... These statements were made in Secretary

¹⁶ 5 U.S.C. § 7323(a)(1).

¹⁷ 5 C.F.R. § 734.302(b)(1).

¹⁸ 5 C.F.R. § 734.101.

¹⁹ 5 U.S.C. § 7324(b).

²⁰ *Id.*

²¹ 5 U.S.C. § 7326.

²² Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-12-1989 (Kathleen G. Sebelius), Aug. 23, 2012, [https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20\(HA-12-1989\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20(HA-12-1989).pdf).

Sebelius' official capacity and therefore violated the Hatch Act's prohibition against using official authority or influence to affect the results of an election.²³

Following the Hatch Act violation by Secretary Sebelius, the Department of Health and Human Services "took appropriate and timely steps to ensure that the government received reimbursement for all travel related costs and expenses" in order to cure any violation of § 7324(b).²⁴

In its March 2018 report regarding Hatch Act violations by Counselor to the President, Kellyanne Conway, OSC acknowledged that the Hatch Act does not provide an exemption for executive branch employees speaking on behalf of a principal who is in fact exempt from the Hatch Act's restrictions.²⁵ OSC stated:

While the President is exempt from the Hatch Act, his exemption does not extend to any other employee, including those employed in the White House Office. OSC understands that [an employee's] job duties may include publicly reinforcing the Administration's positions on a host of policy issues. And the Hatch Act does not prohibit [an employee] from doing so, provided she carries out her job duties in a manner that complies with the law.²⁶

Secretary Perdue Violated the Hatch Act in His August 24, 2020 Remarks

Secretary Perdue likely violated the Hatch Act during his August 24, 2020 speech at a government event to promote the Farmers to Families Food Box Program by impermissibly mixing official government business with political views about President Trump's re-election. There is no doubt that Secretary Perdue was speaking in his official capacity and was on duty. This appearance was similar to conduct OSC has previously found to violate the Hatch Act. Secretary Perdue made political statements endorsing President Trump's candidacy during an event where he appeared in his official capacity. He was introduced by President Trump by his official title and made his remarks standing alongside the official seal of the President of the United States. The Secretary and the White House promoted the event on their official Twitter accounts and USDA issued a press release highlighting his appearance and some of his remarks the next day. Given these facts, Secretary Perdue used his official position, authority, and title while making these remarks.

There is also no doubt that Secretary Perdue's statements were aimed at influencing the success or failure of a candidate in a partisan election. First, Secretary Perdue spoke to the crowd and the President, stating that voters would support him "for four more years in 2020" and

²³ *Id.*

²⁴ *Id.*

²⁵ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018, available at <https://bit.ly/33fDagi>.

²⁶ *Id.*

explicitly linked the Farmers to Families Food Box program to President Trump's electoral prospects, by stating that voters, "understand under your administration, they've not forgotten and this program is a great example of that."²⁷ Then Secretary Perdue made an oblique reference to the Democratic National Convention, noting that "I saw last week ... We were trying to talk about personalities in politics – let me tell you what, people don't vote for personalities."²⁸ He went on to explicitly endorse the President, adding that people vote based on "policies and people that get it done, like Donald J. Trump. That's what people want. They want somebody who can get it done. They want a decider-in-chief. And if you've ever sat in that office, this man can decide."²⁹ Finally, Secretary Perdue suggested that the President has "compassion" for "people who matter," and "that's what's important to me. And that's what's gonna continue to happen — four more years — if America gets out and votes for this man, Donald J. Trump."³⁰ Secretary Perdue's partisan remarks were not only included in promotional materials posted by the White House Twitter account, the same video was retweeted by the Trump campaign. Secretary Perdue's explicit advocacy in favor of President Donald Trump, a candidate for a partisan political office, constituted political activity under the Hatch Act.

Conclusion

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. The statute prohibits an employee from undertaking any activity directed toward the success or failure of a political candidate or a political party while using her official title or position.

By using his official position, authority, and title to express political views about a candidate in a partisan election amidst comments about official government business, Secretary Perdue ran afoul of the statute. OSC should commence an immediate investigation into the conduct described in this letter and recommend any appropriate disciplinary action against Secretary Perdue.

Sincerely,



Donald K. Sherman
Deputy Director

²⁷ President Delivers Remarks on Farmers to Families Food Box Program, *C-SPAN*, Aug. 24, 2020.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

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