



SEP - 7 2012

Carolyn N. Lerner
U.S. Office of Special Counsel
1730 M Street, NW
Suite 300
Washington, DC 20036-4505

Re: OSC File No. HA-12-1989

Dear Ms. Lerner:

Enclosed is Secretary Sebelius's response to your August 23, 2012 report regarding political activity under the Hatch Act.

Sincerely,

A handwritten signature in blue ink that reads "William B. Schultz". The signature is written in a cursive style.

William B. Schultz
Acting General Counsel

Enclosure



THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

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Carolyn N. Lerner
U.S. Office of Special Counsel
1730 M Street, NW
Suite 300
Washington, DC 20036-4505

Re: OSC File No. HA-12-1989

Dear Ms. Lerner:

I have received your August 23, 2012 report regarding political activity under the Hatch Act. The report concerns remarks that I made on February 25, 2012, at a Human Rights Campaign event, which the Office of Special Counsel has determined were political in nature.

As you acknowledge, after the speech, at my direction, the event was reclassified as a political event and the costs of my travel were timely reimbursed to the U.S. Treasury. You state that this reimbursement cured any violation of 5 U.S.C. § 7324(b), which provides that the costs of political activity may not be paid by the U.S. Treasury.

You also note that all the statements that I made at the HRC event would have been permissible if I had been speaking in my personal capacity. Because my participation in the event was initially scheduled as an official appearance, you conclude that a violation of the Hatch Act relating to use of official title and authority occurred when I made statements that were political in nature. The report correctly states that I have acknowledged that the statements that you have identified were a mistake. You state that, "OSC is not aware of any prior or subsequent political comments in an official setting by" me. I am also not aware of having made other political comments in an official setting.

I believe that you should have concluded that any violation was corrected when the event was reclassified as political, just as you concluded that any potential violation of section 7324(b) was corrected when the U.S. Treasury was reimbursed for the expenses of the trip. It is my understanding that the Hatch Act permits Cabinet members to engage in political activities, without regard to location and duty hours, due to the 24-hour nature of our jobs. I believe that you should have concluded that the consequence of my going "off script" at an official event was to change the nature of my appearance for cost reimbursement purposes only.

I understand that my appearance was advertised as an official event by the organization and I spoke about Departmental programs and objectives. Under these circumstances, it seems somewhat unfair to conclude that, as a result of my off-hand statements, I used my official title for political purposes. At the time, use of my title was authorized in connection with the


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Human Rights Campaign event; it was in connection with an official appearance and not for the purpose of attracting attendees to a political event. Indeed, as I understand the rules, if the event had been classified as political at the outset, it would not have been a violation of the Hatch Act for me to have been introduced to the audience with a description of my job history that referred to my official title, as long as the introduction gave no greater prominence to my current position than to other positions that I have held. If there was a violation of the Hatch Act based on the use of my title, I believe the violation was technical and minor. These are not the type of violations that the Hatch Act is intended to address.

As I stated to your investigators, I regret making statements that converted my participation in the event from official to political. As I have also explained, keeping the roles straight can be a difficult task, particularly on mixed trips that involve both campaign and official stops on the same day. Since this incident, I have met with the ethics attorneys at the Department to ensure that I have an accurate understanding of what types of statements are prohibited at an official event.

I appreciate that OSC has not recommended to the President that any particular action be taken and I don't believe that any action would be appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is written in a cursive style with a large, stylized initial "K".

Kathleen Sebelius