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March 15, 2012

The Honorable Carolyn Lerner
U.S. Office of Special Counsel
1730 M Street, NW
Suite 218
Washington, DC 20036-4505

Dear Ms. Lerner:

I am writing to request that the U.S. Office of Special Counsel (OSC) open an investigation into whether Health and Human Services (HHS) Secretary Kathleen Sebelius violated the Hatch Act when she allegedly endorsed a state gubernatorial candidate during a public appearance. On Saturday, February 25, 2012, at an event in North Carolina, Secretary Sebelius reportedly stated, “[y]our lieutenant governor, Walter Dalton, who needs to be the next governor of North Carolina, is in the house.”¹

The Hatch Act prohibits federal employees from engaging in certain types of political activities.² In particular, it prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the results of an election.³ This Committee has a long, bipartisan history of examining Hatch Act enforcement. As a recent example, in 2007, the former Committee Chairman, Rep. Henry A. Waxman, initiated a series of investigations into allegedly improper political activity in the Executive Branch. Those investigations focused on presentations given by White House political staffers on the current political environment to the President’s political appointees at various departments and agencies. They also centered on allegations that the White House political staff coordinated the travel of senior administration officials such as Cabinet secretaries.

According to news reports in *Politico* and the *Charlotte Observer*, both enclosed for your ready reference, Secretary Sebelius attended the North Carolina event in her official capacity.⁴ One of the event co-chairs stated that there was “no doubt” the Secretary was appearing in her

¹ Byron Tau, *Sebelius will reimburse taxpayers for 'political' trip*, POLITICO, Mar. 2, 2012, available at <http://www.politico.com/politico44/2012/03/sebelius-rescinds-endorsement-will-reimburse-taxpayers-116248.html>; see also Tim Funk, *Sebelius' comments seen as endorsement*, CHARLOTTE OBSERVER, Mar. 3, 2012, available at <http://www.charlotteobserver.com/2012/03/03/3065270/sebelius-comments-seen-as-endorsement.html>.

² 5 U.S.C. §§ 7321-6326.

³ 5 U.S.C. § 7323(a)(1).

⁴ Tau, *supra* note 1.

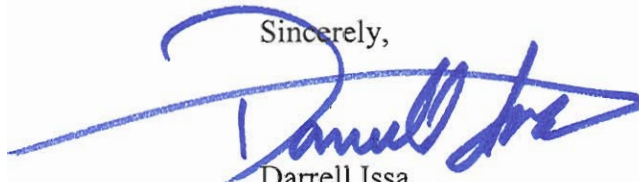
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capacity as an Obama Administration representative.⁵ An ethics expert quoted in the *Politico* article observed that “[t]his would be a Hatch Act violation if the government paid for the trip, and it would also be a violation if her official title was used at the event or she in any way purported to speak in an official capacity in other parts of the speech.”⁶

HHS has already stated that Secretary Sebelius will reimburse taxpayers for the trip because her policy speech included “political components.”⁷ If she appeared in her official capacity, however, reimbursement for the cost of the trip does not remedy her endorsement of gubernatorial candidate Walter Dalton. Other factors to also consider are whether the invitations for the event included the Secretary’s official title, how she was introduced at the event, and whether taxpayers were reimbursed for HHS staff who attended the event, apart from security personnel. A timely inquiry by OSC will provide clarification on the limits of political activity for Cabinet officials under the Hatch Act.

Thank you for your attention to this matter. Please contact Ashok Pinto or Jessica Donlon of the Committee Staff at (202) 225-5074 with any questions about this request.

Sincerely,



Darrell Issa
Chairman

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; see also Funk, *supra* note 1.

POLITICO

Sebelius will reimburse taxpayers for 'political' trip

By [BYRON TAU](#)

3/2/12 4:24 PM EST

Secretary of Health and Human Services Kathleen Sebelius is backing off what sounded like an endorsement of North Carolina gubernatorial candidate Walter Dalton in a Tar Heel state appearance — a move that experts say may have run afoul of federal law preventing government employees from politicking on the job.

"Your lieutenant governor, Walter Dalton, who needs to be the next governor of North Carolina, is in the house," Sebelius said during an address to the gay rights group Human Rights Campaign last week, [the Charlotte Observer reports](#). Dalton faces a competitive Democratic primary and Sebelius' endorsement could be seen as the Obama administration picking favorites.

According to ethics experts, a key distinction in the law, called the Hatch Act, revolves around whether Sebelius was attending in an official or personal capacity. HHS told POLITICO that Sebelius went in her official capacity but will now reimburse taxpayers for the trip because of the political content that came up.

"The Secretary attended the Human Rights Campaign dinner in Charlotte to highlight the work of the U.S. Department of Health & Human Services on LGBT issues. The trip included political components, and so the federal government will not be paying for it," an HHS spokesperson told POLITICO.

The fact that Sebelius appeared in her official capacity was confirmed by one of the HRC gala co-chairs who said there was "no doubt" she was appearing as a representative of the Obama administration.

"This would be a Hatch Act violation if the government paid for the trip, and it would also be a violation if her official title was used at the event or she in any way purported to speak in an official capacity in other parts of the speech," ethics expert and former Bush administration ethics counsel Richard Painter told POLITICO.

"The bigger problem is that if this was an official capacity speech -- use of official title, etc. -- she should not have endorsed a political candidate; the Hatch Act prohibits it. Who paid for the trip is irrelevant," Painter said. "This is exactly the kind of screw up I worry about when cabinet officers are used for partisan political activity."

"It's just a real screw-up," said Painter, who has long advocated for rules barring cabinet officials and government employees from political events — and who admitted that the Bush administration too skirted some of the rules. "It's what happens when you roll out the cabinet people or get the senior administration people involved in partisan politics"

Sebelius' comments seen as endorsement

By Tim Funk

PUBLISHED IN: LOCAL NEWS

Kathleen Sebelius, President Barack Obama's secretary of Health and Human Services, is walking back what appeared to be an endorsement of Lt. Gov. Walter Dalton for N.C. governor during a speech last Saturday night in Charlotte.

And because her policy speech at the Human Rights Campaign gala included "political components," the federal government will not pay for Sebelius' trip to Charlotte, an HHS spokesperson said in response to questions from the Observer.

The HHS spokesperson also said this in the statement: "The secretary attended the Human Rights Campaign dinner in Charlotte to highlight the work of the U.S. Department of Health & Human Services on LGBT issues. The trip included political components, and so the federal government will not be paying for it."

On Saturday, Sebelius started her speech to about 1,400 people at the gay-rights fundraiser in the Charlotte Convention Center by acknowledging state and local politicians in attendance, including U.S. Sen. Kay Hagan, D-N.C., and Charlotte Mayor Anthony Foxx.

She also mentioned Dalton, saying, "Your lieutenant governor, Walter Dalton, who needs to be the next governor of North Carolina, is in the house."

Because Dalton has five Democratic primary opponents - including former U.S. Rep. Bob Etheridge and state Rep. Bill Faison - Sebelius' comments made some political observers wonder whether the Obama administration was signaling that it has a favorite in the race.

But a statement from an HHS spokesperson to the Observer made it clear that Sebelius did not mean to endorse Dalton in the primary.

"Outside of her planned policy remarks, she made some informal acknowledgements and comments and no endorsement was intended," said the HHS spokesperson.

Sebelius' comments also got some notice in Washington. One party official, familiar with what happened, accused Dalton of misleading Sebelius during a backstage meeting by presenting himself as the only Democratic candidate in the race.

"It was a bush-league move," said the party official, who asked not to be identified. "It was a clear lie of omission . . . and it left a bad taste in the mouth of party leaders in Washington."

Dalton spokesman Pearse Edwards acknowledged that Dalton met briefly with Sebelius before her speech, but "we did not have any prior knowledge that she was going to acknowledge his campaign for governor," he said.

Asked about the party official's charge, Edwards added: "That claim is ridiculous and false. We didn't request an endorsement and we didn't characterize our campaign in that manner."

Funk: 704-358-5703