

**Congress of the United States**  
**Washington, DC 20515**

October 30, 2020

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

Dear Special Counsel Kerner:

I'm writing to respectfully request that the Office of Special Counsel (OSC) investigate whether the Department of the Interior Secretary David Bernhardt and his staff violated the Hatch Act on October 27, 2020 by producing and posting a video on his official Twitter account that touted the record of President Trump in a campaign-style video a week before the presidential election. This action appears to be clearly directed toward the specific success of President Trump in the upcoming November election and in violation of the Hatch Act.

The video that Secretary Bernhardt shared on his official Twitter account, which appears to have been produced by his department, features campaign-style footage of fishermen, wildlife, and families enjoying nature while quotes such as "more imperiled species recovered in first term ever" and "more than 5 million acres of land treated to prevent wildfires" appear on the screen in reference to the claimed accomplishments of President Trump.<sup>1</sup>

Under the Hatch Act, any executive branch employee is explicitly barred from "us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election."<sup>2</sup> Activities covered by this prohibition include the official "[u]sing his or her official title while participating in political activity," with the act defining "political activity" as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group."<sup>3</sup>

Notably, the OSC has already acknowledged in its report on Kellyanne Conway that while the President and Vice President are exempt from the Hatch Act, executive branch employees acting on their behalf are not in turn exempted:

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.<sup>4</sup>

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<sup>1</sup> [Secretary David Bernhardt](#), *Twitter*. October 27, 2020.

<sup>2</sup> 5 U.S.C. § 7323(a)(1).

<sup>3</sup> 5 C.F.R. § 734.302(b)(1), 5 C.F.R. § 734.101.

<sup>4</sup> Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018

The video posted by Secretary Bernhardt was created by the Interior Department, presumably using taxpayer funds, but rather than announcing news regarding the Interior Department's own activities, specifically frames them as achievements of President Trump's first term in office in the same manner as a campaign advertisement. Tim Fullerton, the Director of Digital strategy for the Interior Department during the Obama administration, noted that "he was struck by how the video's tone, structure and timing of its release placed the Interior Department, which historically has not been overtly political, in the middle of a contentious election between Trump and Democratic presidential nominee Joe Biden."<sup>5</sup> Secretary Bernhardt's Twitter post is the latest example in a clear pattern of willful disregard toward the Hatch Act by members of the administration, including former White House counselor Kellyanne Conway, Secretary of State Mike Pompeo, and acting Homeland Security secretary Chad Wolf.<sup>6</sup>

The Hatch Act explicitly prohibits federal employees from participating in partisan political activity in an official capacity, barring them from engaging in any activity directed toward the success or failure of any political party or candidate. The video posted by Department of the Interior Secretary David Bernhardt, which applauds President Trump exactly seven days before the general election, appears to have violated the Hatch Act, and OSC should immediately commence an investigation and take appropriate disciplinary action against those involved and responsible.

We request an update on your actions on this matter by November 11<sup>th</sup>.

Sincerely,

A handwritten signature in black ink, appearing to read "Raja Krishnamoorthi". The signature is fluid and cursive, with the first name "Raja" being particularly prominent.

Raja Krishnamoorthi  
Member of Congress

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<sup>5</sup> [The interior secretary shared a video hailing Trump's 'historic feats.' Critics called it 'propaganda.'](#) *Washington Post*. October 28, 2020.

<sup>6</sup> *Ibid.*