

U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

March 7, 2018

The Honorable Henry Kerner
Special Counsel
Office of the Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036-4505

Dear Special Counsel Kerner:

We write to request an investigation into whether Department of the Interior (DOI) Secretary Ryan Zinke violated the Hatch Act when he used taxpayer funds to announce funding for coal mine reclamation at a site one mile away from the boundary of the 18th District of Pennsylvania (PA-18). A special Congressional election will take place in the District less than three weeks after the announcement was made.

As you know, the Hatch Act permits most Cabinet members the ability to “engage in political activity otherwise prohibited ... if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.”¹ On February 24, 2017, Secretary Zinke appeared at a volunteer firehouse in East Bethlehem, Pennsylvania, to announce \$300 million in federal grants to clean up abandoned mine lands (AML) throughout the country, including \$56 million in Pennsylvania.^{2,3} The DOI event may constitute political activity.

An October 6, 2011 OSC Advisory “identified multiple factors to consider when determining whether an event is political for purposes of the Hatch Act.”⁴ Consideration of some of the key factors is illustrative. Alone, each piece of evidence is not necessarily compelling. Collectively, the evidence is sufficient to warrant a full investigation.

Factor 2. “Ascertain whether candidates (including incumbents seeking reelection) will be present and what their role will be”

¹ 5 U.S.C. §7324(b)(1)

² Linder, Courtney, “Pennsylvania receives \$55 million to redevelop coal refuse sites,” *Pittsburg Post-Gazette*, 24 Feb. 2018, <http://www.post-gazette.com/news/state/2018/02/24/grant-pennsylvania-coal-refuse-sites-piles-ryan-zinke-black-dog-hollow/stories/201802240082>

³ Shrum, Rick, “Interior secretary brings mine reclamation funds to area,” *Observer-Reporter*, 24 Feb. 2018, https://observer-reporter.com/news/localnews/interior-secretary-brings-mine-reclamation-funds-to-area/article_be68c8a2-19a1-11e8-a4d4-5f0a767c8cdf.html

⁴ U.S. Office of Special Counsel, “OSC Advisory Regarding Mixed Travel by Presidentially-Appointed/Senate Confirmed (PAS) Employees,” 6 Oct. 2011, <https://osc.gov/Resources/Advisory%20on%20Mixed%20Travel%20%2010%206%2011.pdf>

The Republican candidate for PA-18, a state representative, was in attendance for the announcement.^{5,6} His Democratic opponent did not appear to be in attendance. It is also unclear whether any other state representatives were in attendance, aside from the representative for the area that houses the venue that was used for the announcement.

Factor 8. "Inquire about the agency official's motivation for attending the event"

The motivation may have been to support the Republican candidate running in a special election in PA-18. In this case, DOI appears to have initiated the event and chosen the location for the announcement.⁷ Across the nation, 25 states and 3 tribes received the AML funding Secretary Zinke announced. Within Pennsylvania, there are over 850 large coal refuse piles.⁸ Any of those locations may have been suitable for the AML announcement. The announcement was held approximately 1 mile outside the boundaries of PA-18, roughly two-and-a-half weeks before the election. The PA-18 race is estimated to be a toss-up.⁹

The choice of location to make the announcement seemed puzzling to locals. State Representative Pam Snyder "was pleasantly surprised Zinke came to town. 'It probably wouldn't be unusual if the secretary of the Interior came to Harrisburg, Pittsburgh or Philadelphia,' she said. 'But to have the secretary in Fredericktown is unusual.'"¹⁰ The East Bethlehem Township posted on Facebook, "The Department of the Interior requested to make this announcement in East Bethlehem Township of all places."¹¹ The Observer Reporter opined, "Much about Ryan Zinke's trip to East Bethlehem fire hall, actually, was baffling – to local residents, the media and, likely, those who planned his appearance."¹²

⁵ Washington County Republican Party (PA) Facebook page. 24 Feb. 2018, <https://www.facebook.com/wcrppa/photos/a.243627032316002.76274.110953322250041/2145148398830513/?type=3&theater>

⁶ Secretary Ryan Zinke Twitter feed. 24 Feb. 2018. <https://twitter.com/SecretaryZinke/status/967500238473789440>

⁷ East Bethlehem Township Facebook page. 28 Feb. 2018, <https://www.facebook.com/FredericktownPA/posts/159203824739455>

⁸ Shrum, Rick, "Interior secretary brings mine reclamation funds to area," *Observer-Reporter*, 24 Feb. 2018, https://observer-reporter.com/news/localnews/interior-secretary-brings-mine-reclamation-funds-to-area/article_be68c8a2-19a1-11e8-a4d4-5f0a767c8cdf.html

⁹ Gonzales, Nathan L. "Rating Change: Special Election for Pennsylvania's 18th Moves to Toss-Up," 28 Feb. 2018, https://www.rollcall.com/news/gonzales/rating-change-special-election-pennsylvanias-18th-moves-toss/?utm_source=just-in&utm_medium=email&utm_campaign=newsletters

¹⁰ Shrum, Rick, "Interior secretary brings mine reclamation funds to area," *Observer-Reporter*, 24 Feb. 2018, https://observer-reporter.com/news/localnews/interior-secretary-brings-mine-reclamation-funds-to-area/article_be68c8a2-19a1-11e8-a4d4-5f0a767c8cdf.html

¹¹ East Bethlehem Township Facebook page. 28 Feb. 2018, <https://www.facebook.com/FredericktownPA/posts/159203824739455>

¹² *Observer-Reporter*, "EDITORIAL Interior secretary makes an odd visit," 6 Mar. 2018, https://observer-reporter.com/opinion/editorials/editorial-interior-secretary-makes-an-odd-visit/article_a0fe3cc6-1c02-11e8-ad56-9f8d2d4fca1c.html

Secretary Zinke also used the occasion to appear on a Fox News segment about the election and recent redistricting of Pennsylvania's Congressional districts.¹³ The summary of the YouTube clip provided by Fox News says, "Secretary Ryan Zinke on energy initiative, Pennsylvania race." The tagline on the screen below the Secretary's image said, "Interior Secretary Ryan Zinke on Pennsylvania Race Seen as Bellwether for Midterm Election." The lead-in question from Fox News host, Neil Cavuto was "Republicans could lose four seats at a minimum in this state just with that redistricting. Are you worried?" The remainder of the interview was devoted to asking the secretary's opinions about gun control proposals in the wake of the school shooting in Florida. Fox News clearly intended to conduct an interview about political topics.

Secretary Zinke cannot be held responsible for the actions of Fox News. However, if he knew ahead of the interview that it would be political in nature and accepted it, it could speak to the motivation for announcing the AML funding at the border of the 18th district of Pennsylvania.

Only an OSC investigation that accesses correspondence involved in the planning process and interviews involved personnel can confirm whether the motivation for the event was to support the Republican candidate for PA-18.

Factor 9. "Consider the frequency of similar types of events during non—election years and whether agency officials participated in such events in those years"

While Secretary Zinke has not been in his position long enough to announce more than one round of annual AML grants, it appears that neither of the two most recent secretaries before him traveled outside of Washington, D.C. to make the announcement, dating back to 2009.

Factor 10. "Consider the proximity of the event to the date of the election. Events with candidates that take place two weeks before an election are more likely to be for political purposes than events that occur, for example, eight months before an election."

The event was on February 24, 2018. The PA-18 special election is March 13, 2018.

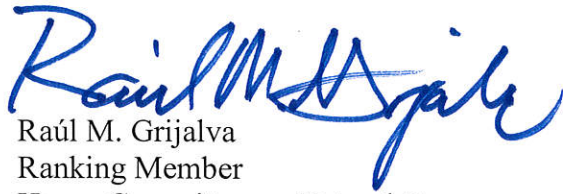
Factor 11. "Find out whether the event is open or closed to media. An event that is open to the media is more likely to be political than one that is closed to the press."

The event was open to the press.

Only a full investigation can result in an adequate evaluation of all the factors listed in the OSC advisory. Only a full investigation can clarify whether Secretary Zinke violated the Hatch Act when traveling to the PA-18 boundaries to announce AML funding. We urge you to pursue it.

Sincerely,

¹³ Fox News. "Secretary Ryan Zinke on energy initiative, Pennsylvania," 24 Feb. 2018, <https://www.youtube.com/watch?v=f05qHLzNarc>



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