

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

April 5, 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 travel to Florida where he hosted a press conference with Rick Scott to announce his intent to exempt Florida from offshore drilling in the 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Program (Program). An early draft of the Program included plans to drill for oil and gas off most of the coastal United States including Florida. Rick Scott, who had previously been supportive of drilling off the Florida coast,¹ has been widely expected to run for Senate in 2018 since at least last year^{2,3,4} and has been heavily recruited to run by President Trump.^{5,6}

The Hatch Act permits most Cabinet members 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.”⁷ On January 9, 2018, Secretary Zinke flew to the Tallahassee International Airport where he joined Florida Governor Rick Scott to announce that “we’re going

¹ Sherman, Amy. “Gov. Rick Scott’s Full Flop on Oil Drilling.” *Politifact Florida*, Poynter Institute, 10 Jan. 2018, www.politifact.com/florida/statements/2018/jan/10/rick-scott/gov-rick-scotts-full-flop-oil-drilling/

² Nielsen, Allison. “Rick Scott Takes Double-Digit Lead Over Bill Nelson in 2018 Poll.” *Sunshine State News*, Sunshine State News, 1 Dec. 2017, sunshinestatenews.com/story/rick-scott-takes-double-digit-lead-over-bill-nelson-2018-poll.

³ Associated Press. “Florida Gov. Scott Mulls Next Political Move.” *Florida Today*, USA Today, 16 Dec. 2017, www.floridatoday.com/story/news/2017/12/16/florida-gov-scott-mulls-next-political-move/958886001/.

⁴ Dixon, Matt, and Marc Caputo. “Trump’s New Year’s Resolution: Getting Scott to Run for Senate in Florida.” *Politico Florida*, Politico, 31 Dec. 2017, www.politico.com/states/florida/story/2017/12/31/scott-to-meet-dine-with-trump-at-mar-a-lago-165109.

⁵ Ibid

⁶ Isenstadt, Alex, and Marc Caputo. “Trump Urges Rick Scott to Run for Prized Florida Senate Seat.” *Politico*, Politico, 31 Jan. 2017, www.politico.com/story/2017/01/donald-trump-rick-scott-234393.

⁷ 5 U.S.C. §7324(b)(1)

to take the new oil platforms, new oil and gas platforms, off the table off the Florida coast lines.”⁸ 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.”⁹ Consideration of the key factors is illustrative. Taken as a whole, the evidence is sufficient to warrant a full investigation.

Factor 1. “Identify the type of event, e.g. ribbon cutting, grant announcement, etc.”

The event was a press conference,¹⁰ preceded by a closed meeting.¹¹

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

Rick Scott was the only press conference attendee except Secretary Zinke. The governor was not the only elected official from Florida to express concern with the plan to drill off the coast before the Tallahassee airport announcement. Between January 4, when the Program was announced, and the press conference on January 9, Florida congressional delegation members on both sides of the aisle advocated against opening Florida’s coast lines for drilling for oil and gas, including Sen. Ben Nelson,¹² Sen. Marco Rubio,¹³ Rep. Brian Mast,¹⁴ Rep. Darren Soto,¹⁵ Rep. Francis Rooney,¹⁶

⁸ Sun Sentinel. “Florida Won’t Be Considered for Offshore Oil Drilling.” *SunSentinel*, Sun Sentinel, 9 Jan. 2018, www.sun-sentinel.com/news/politics/95706074-132.html.

⁹ 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>

¹⁰ Zinke, Ryan (secretaryzinke). “After talking with @FLGovScott, I am removing #Florida from the draft offshore plan.” 1 Jan. 2018, 6:50. Tweet.

¹¹ Zinke, Ryan (secretaryzinke). “Finally touched down to talk with @FLGovScott about our offshore energy proposal. Local voices matter.” 1 Jan 2018, 6:06. Tweet.

¹² Powers, Scott. “Bill Nelson on off-Shore Oil Drilling: ‘Not While I’m in Office.’” *Billnelson.senate.gov*, Florida Politics, 5 Jan. 2018, www.billnelson.senate.gov/newsroom/news/bill-nelson-on-off-shore-oil-drilling-not-while-i-m-in-office.

¹³ “Rubio Statement on Trump Administration’s Proposal to Consider Offshore Drilling in Eastern Gulf of Mexico.” *Marco Rubio*, Office of United States Senator Marco Rubio, 4 Jan. 2018, www.rubio.senate.gov/public/index.cfm/press-releases?ID=B09015C7-E734-4DA9-830A-8EDE9889065D.

¹⁴ “Mast Statement on Interior Department Oil Drilling Plan.” *Brian Mast*, Office of United States Representative Brian West, 4 Jan. 2018, mast.house.gov/2018/1/mast-statement-on-interior-department-oil-drilling-plan.

¹⁵ “Rep. Soto Fires Back at Trump Administration Over Oil Drilling Deregulation Plans.” *United States Congressman Darren*, Office of United States Representative Darren Soto, 2 Jan. 2018, soto.house.gov/media/press-releases/rep-soto-fires-back-trump-administration-over-oil-drilling-deregulation-plans.

¹⁶ “Congressman Rooney Letter to Interior Secretary Zinke Opposing Drilling in the Eastern Gulf of Mexico.” *Francis Rooney*, Office of United States Representative Francis Rooney, 4 Jan. 2018, francisrooney.house.gov/news/documentsingle.aspx?DocumentID=296.

Rep. John Rutherford,¹⁷ Rep. Kathy Castor,¹⁸ Rep. Lois Frankel,¹⁹ Rep. Matt Gaetz,²⁰ Rep. Stephanie Murphy,²¹ Rep. Ted Deutch,²² Rep. Val Demings,²³ and Rep. Vern Buchanan.²⁴ Any or all would have been a logical presence at a press conference to demonstrate that DOI was responding to state and local interests, the claimed official reason for the announcement.

Factor 3. “Determine who will be speaking at the event and the target audience. If party officials will be speaking to known donors, for example, then the event is most likely a political one”

Because the press conference was in Florida instead of Washington DC, the target audience was Floridians. The only two speakers were Secretary Zinke and Rick Scott.

Factor 4. “Assess the relationship, if any, between the event and official agency business”

The topic of the announcement is well within the purview of DOI. However, the decision behind the announcement was not a part of any official process. It did not coincide with any procedural milestones that are typically used to announce such changes to the program. It was not the result of any official analysis or public notice and comment. The opposite is true. The decision appears to have been arbitrary and capricious, and therefore a potential violation of the Administrative Procedures Act.²⁵ The announcement was outside the process established by Section 18 of the

¹⁷ “Rep. Rutherford Statement Opposing Drilling Off the Coast of Florida.” *U.S. Representative John Rutherford*, Office of United States Representative John Rutherford, 4 Jan. 2018, rutherford.house.gov/media/press-releases/rep-rutherford-statement-opposing-drilling-coast-florida.

¹⁸ “U.S. Rep. Castor’s Statement on Trump Administration’s Dangerous Proposal to Permit Off-Shore Drilling.” *Kathy Castor*, Office of United States Representative Kathy Castor, 4 Jan. 2018, castor.house.gov/news/documentsingle.aspx?DocumentID=398563.

¹⁹ Frankel, Louis (RepLoisFrankel). “Unacceptable. With this dangerous action the Trump administration threatens Florida’s unique ecosystem, beautiful wildlife, and vital tourism industry. We must protect our environment for future generations.” 4 Jan. 2018, 2:00. Tweet.

²⁰ “Congressman Matt Gaetz Issues Statement Opposing Interior Secretary Zinke’s Reversal of Drilling Off the Coast of Florida.” United States Congressman Matt Gaetz, Office of United States Representative Matt Gaetz, 5 Jan. 2018, gaetz.house.gov/media/press-releases/congressman-matt-gaetz-issues-statement-opposing-interior-secretary-zinke-s.

²¹ “Murphy Statement Opposing Trump Administration’s Plan to Expand Offshore Drilling.” *Stephanie Murphy*, Office of United States Representative Stephanie Murphy, 4 Jan. 2018, stephaniemurphy.house.gov/news/documentsingle.aspx?DocumentID=565.

²² Deutch, Ted (RepTedDeutch). “With thousands of miles of coastline, Floridians have a lot to lose in this terrible decision. The Deepwater Horizon spill significantly hampered Florida’s tourism economy. We can’t risk another disaster like that. With thousands of miles of coastline, Floridians have a lot to lose in this terrible decision. The Deepwater Horizon spill significantly hampered Florida’s tourism economy. We can’t risk another disaster like that.” 4 Jan. 2018, 4:33. Tweet.

²³ “Rep. Demings Slams Offshore Oil Drilling Expansion Proposal.” *Val Demings*, Office of United States Representative Val Demings, 4 Jan. 2018, demings.house.gov/media/press-releases/rep-demings-slams-offshore-oil-drilling-expansion-proposal.

²⁴ “Buchanan Opposes Plan to Expand Drilling Off Florida’s Coastlines.” *Vern Buchanan*, Office of United States Representative Vern Buchanan, 4 Jan. 2018, buchanan.house.gov/media-center/press-releases/buchanan-opposes-plan-expand-drilling-florida-s-coastlines.

²⁵ 5 USC §551 et seq.

Outer Continental Shelf Lands Act for developing a 5-year leasing program, and therefore a potential violation of that law as well.²⁶

Adding to the chaotic nature of the decision, since the January 9 announcement, the Secretary and others at DOI have made statements revealing that the actual status of drilling off the Florida coast is unsettled.

At an Energy and Mineral Resources (EMR) Subcommittee hearing on January 19, Acting Director of the Bureau of Ocean Energy Management (BOEM), Walter Cruickshank, indicated that Florida was still under consideration, stating that, “we will be including [Florida] in the analysis for the decisions that will come out later this year.” On March 13, Secretary Zinke told the Senate Energy and Natural Resources Committee that, “Florida is still in the process,” and two days later at our hearing he said, “Florida did not get an exemption,” and, “had I left Florida off, it would have been arbitrary and capricious.” But he appeared to contradict himself at our hearing as well, saying, “I committed to no new oil and gas platforms off the coast of Florida.”

An announcement that he and his own administration later contradicted, and which may have violated the law, creates the impression of an event that had little to do with official business.

Factor 5. “Determine who invited the agency official to attend and who is organizing the event (e.g., congressional office, campaign staff, other agency officials, political party, etc.). If, for example, the request came from a campaign manager or the event is being organized by a party organization, in the event is likely to be political.”

Though it is not clear who initiated the event, it is likely that the offices coordinated closely to plan it. See Factor 7 below.

Factor 6. “Ask whether a candidate’s request is a reason for the agency official to attend the event”

The announcement by Zinke would have had the same policy effect if it were announced from Washington DC in a press conference or press release instead of undertaking a trip to Florida. In addition, the trip may have been exclusively for the press conference and meeting. The Secretary flew into Tallahassee, met with Rick Scott and held the press conference all within minutes of each other, and was then back in Washington the following morning for an agency-wide meeting.

Factor 7. “Determine whether the event was scheduled prior to the candidate’s involvement, or vice versa. If the employee plan to attend before the candidate became involved, then it is more likely to be of an official nature”

²⁶ 43 U.S.C. §1331-1356b.

According to a review of over 1,200 documents by Politico Florida, the event was jointly planned between the Secretary's office and Rick Scott's office.²⁷

Records show that between the Jan. 4 announcement that Florida could see additional oil drilling rigs off its shore and the Jan. 9 meeting where the state was taken "off the table" Carbone spoke with (Rusty) Roddy, the Zinke advance staffer, 17 times, while (Rick Scott's Chief of Staff) Schutz Zeckman spoke with Kate MacGregor, who at the time was acting assistant secretary of (DOI's) Land and Minerals Management, seven times. MacGregor was the point person for much of the discussions, and traveled with Zinke for the Tallahassee rollout, records show.

Roddy, who is no longer with Zinke's office, acknowledged that the event was "planned" and that he was in Tallahassee prior to the airport meeting. Additional records further confirm the "off the table" airport event was not as hastily thrown together as it then seemed publicly. In emails, Roddy indicated he was planning to be in Florida before the event as early as Friday, Jan. 5, a day after Zinke announced Florida was on the oil drilling list, and days before the Jan. 9 airport event, which officials said was not planned.

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

The motivation may have been to support the Republican candidate running for Senate in the 2018. The Politico Florida article entitled, "Records show Trump aides plotted political win for Rick Scott," led the author to conclude, "The records reaffirm the perception at the time that the Trump administration's decision to reverse course and remove Florida from the list was carefully choreographed to give Scott a political win in his widely expected challenge this year to unseat Nelson."

Rick Scott previously supported drilling off Florida's coasts. However, Florida voters strongly oppose it.²⁸ He has recently changed his stance to oppose it as well,²⁹ potentially creating the public perception that he is not fully committed to the new position. Getting credit for protecting Florida's coast could help change that perception.

²⁷ Dixon, Matt. "Records Show Trump Aides Plotted Political Win for Rick Scott." *Politico New Jersey*, Politico, 27 Mar. 2018, www.politico.com/states/new-jersey/story/2018/03/27/records-zinkes-office-refute-scott-framing-of-impromptu-oil-drilling-reversal-330060.

²⁸ Saunders, Jim. "Offshore-Drilling Ban Not Rock Solid with Voters, Poll Finds." *SunSentinel*, Sun Sentinel, 15 Mar. 2018, www.sun-sentinel.com/news/florida/fl-reg-oil-drilling-poll-20180315-story.html.

²⁹ Sherman, Amy. "Gov. Rick Scott's Full Flop on Oil Drilling." *Politifact Florida*, Poynter Institute, 10 Jan. 2018, www.politifact.com/florida/statements/2018/jan/10/rick-scott/gov-rick-scotts-full-flop-oil-drilling/.

Further, President Trump, Secretary Zinke's boss, has openly and aggressively recruited Rick Scott to run for Senate.^{30,31}

Only an OSC investigation that accesses correspondence involved in the planning process and that interviews involved personnel can confirm whether the motivation for the event was to support the likely Republican Senate nominee from Florida.

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"

Secretary Sally Jewell announced the release of the 2017-2022 Draft Proposed Program in January 2015 and the Proposed Final Program in November 2016 through press releases. No travel was involved. In addition, no pre-decisional, informal changes to the program like the change announced by Secretary Zinke were announced publicly. When Secretary Salazar proposed an individual lease sale off the coast off Virginia in March 2010, he announced indefinite suspension of those plans two months later through a federal register notice.³² His decision, however, was an exercise of the well-established Secretarial discretion to not hold scheduled lease sales, not part of the development of a new Five Year Leasing Program.

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 Tallahassee press conference was on January 9, 2018. Rick Scott's formal announcement that he will run for senate is expected on April 9, 2018.^{33,34,35}

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 press conference was open to the press.

³⁰ Dixon, Matt, and Marc Caputo. "Trump's New Year's Resolution: Getting Scott to Run for Senate in Florida." *Politico Florida*, Politico, 31 Dec. 2017, www.politico.com/states/florida/story/2017/12/31/scott-to-meet-dine-with-trump-at-mar-a-lago-165109.

³¹ Isenstadt, Alex, and Marc Caputo. "Trump Urges Rick Scott to Run for Prized Florida Senate Seat." *Politico*, Politico, 31 Jan. 2017, www.politico.com/story/2017/01/donald-trump-rick-scott-234393.

³² Straub, Noelle. "Interior Suspends Planned Va. Offshore Oil and Gas Lease Sale." *The New York Times*, Greenwire, 6 May 2010, archive.nytimes.com/www.nytimes.com/gwire/2010/05/06/06greenwire-interior-suspends-planned-va-offshore-oil-and-73308.html.

³³ Sullivan, Sean. "Rick Scott Sets 'Big Announcement' for April 9 amid Expectations He Will Run for Senate." *Northwest Florida Daily News*, Washington Post, 1 Apr. 2018, www.nwfdailynews.com/news/20180401/rick-scott-sets-big-announcement-for-april-9-amid-expectations-he-will-run-for-senate.

³⁴ Bradner, Eric. "Rick Scott Teases a 'Big Announcement' amid Florida Senate Speculation." *CNN*, Cable News Network, 26 Mar. 2018, www.cnn.com/2018/03/26/politics/rick-scott-florida-senate/index.html.

³⁵ Dixon, Matt. "Flush with Cash and Popularity, Scott Appears Ready to Challenge Nelson for U.S. Senate." *Politico Florida*, Politico, 26 Mar. 2018, www.politico.com/states/florida/story/2018/03/26/flush-with-cash-and-popularity-scott-appears-ready-to-challenge-nelson-for-us-senate-328189.

Factor 12. "Review the PAS's prepared remarks if he or she plans to speak at the event. In addition, after the event, agency ethics official should review the PAS's actual remarks, as well as remarks made by other speakers, to assess whether the remarks were political in nature."

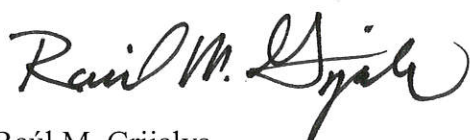
Mr. Zinke's remarks focused heavily on praising Rick Scott for multiple attributes and accomplishments (underlined below) while little time was spent on the policy aspects of his decision.

Hello Everybody. Great to be in Florida again. As the governor mentioned, this is the culmination of multiple meetings back and forth. Florida is obviously unique. The president has tasked me to develop an energy policy offshore but also take in consideration the local and state interests. After meeting the governor and watching his leadership with the hurricane and Lake Okeechobee and working together to find a solution to the water problem in Everglades, clearly your governor has articulated well, he's easy to work with and the decision is that we're going to take the new oil platforms, new oil and gas platforms, off the table off the Florida coast lines. And so for Floridians, we are not drilling off the coast of Florida which clearly the governor has expressed that it's important. So great to be with you.

According to one press account, "When asked what caused the administration to change its position on Florida drilling, Zinke said bluntly, 'The governor.'"³⁶ According to another press account, Secretary Zinke said "You have a tremendous governor that is straightforward, easy to work for, says exactly what he means. And I can tell you Florida is well-served."³⁷

Even though the event involved matters related to DOI's work, several facts may signify that the real reason for the holding the event was to further Rick Scott's campaign and not to advance the Department's mission. Only a full investigation can confirm whether Secretary Zinke violated the Hatch Act when traveling to Florida to announce his intent to exempt the state from an offshore drilling plan. We urge you to pursue it.

Sincerely,



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Ranking Member
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A. Donald McEachin
Ranking Member
Subcommittee on Oversight and
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³⁶ Fineout, Gary, and Matthew Daly. "Trump Administration Says No Oil Drilling off Florida Coast." Daily Commercial, Associated Press, 10 Jan. 2018, www.dailycommercial.com/news/20180109/trump-administration-says-no-oil-drilling-off-florida-coast/1.

³⁷ Caputo, Marc, et al. "Trump Delivers a Senate Race Sweetener to Scott." Politico, Politico, 9 Jan. 2018, www.politico.com/story/2018/01/09/florida-senate-scott-trump-oil-drilling-333144.