

United States Senate
WASHINGTON, DC 20510

July 31, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Hampton Dellinger
Special Counsel
U.S. Office of Special Counsel

Dear Special Counsel Dellinger:

Around July 14, 2024, the Secretary of the Department of Education (DOE), Miguel Cardona, sent emails from an official DOE email address to student loan borrowers, responding to recent holdings by federal judges that temporarily blocked the Biden Administration's illegal student debt plan, the "SAVE Plan."¹ Secretary Cardona sent this letter after eighteen states filed suits in Kansas and Missouri federal district courts, and the judges—both nominated by President Obama—granted preliminary injunctions to stop this unilateral attempt to transfer \$475 billion over ten years in student loan debt to American taxpayers.² These rulings were entirely predictable after the Biden Administration attempted to make an end run around clear Supreme Court precedent striking down the administration's previous attempt to illegally engage in mass student loan forgiveness without the approval of Congress.³

In this mass communication to borrowers, Secretary Cardona attacked "Republican elected officials," claiming in a blatantly-misleading manner that they are "siding with special interests" and are trying to stop efforts by President Biden and DOE "to make repaying student debt affordable and realistic."⁴ The secretary also framed the SAVE Plan as "fighting" for borrowers, "no matter how many times Republican elected officials try to stop us," and ended

¹ Jillian Berman, *Student loan relief and payment cuts for many on hold after courts block parts of Biden's SAVE plan*, MarketWatch (June 25, 2024), <https://www.marketwatch.com/story/this-is-going-to-be-incredibly-chaotic-student-debt-relief-plan-blocked-in-part-by-two-federal-courts-f7489fe4>; email from Miguel A. Cardona, Secretary, U.S. Dep't of Education, *The Recent Federal Court Decisions on The Saving on a Valuable Education Income-Driven Repayment Plan*, Dep't of Education (June, 2024), <https://mirror.mail.studentaid.gov/nl/jsp/m.jsp?c=%40uJXGuybhu6MC0dBm31u7vmfMmcIXkcJXHeU0A3k0ZOk%3D>.

² *Id.*; *Kansas v. Biden*, No. 24-1057-DDC-ADM, 2024 U.S. Dist. LEXIS 101660 (D. Kan. June 7, 2024) (States include Kansas, Alabama, Alaska, Idaho, Iowa, Louisiana, Montana, Nebraska, South Carolina, Texas, and Utah). *Missouri v. Biden*, No. 4:24-cv-00520-JAR, 2024 U.S. Dist. LEXIS 110615 (E.D. Mo. June 24, 2024) (States include Missouri, Arkansas, Florida, Georgia, North Dakota, Ohio, and Oklahoma); Penn Wharton Budget Model, *Biden's New Income-Driven Repayment ("SAVE") Plan: Budgetary Cost Estimate Update*, Univ. of Pa. (July 17, 2023), <https://budgetmodel.wharton.upenn.edu/issues/2023/7/17/biden-income-driven-repayment-budget-update/>; Aliss Higham, *Barack Obama Judges Strike Down Joe Biden's Student Loan Forgiveness*, Newsweek (June 25, 2024), <https://www.newsweek.com/barack-obama-judges-save-plan-joe-biden-1916921>.

³ *Biden, President of the United States, et al. v. Nebraska, et al.*, 143 S. Ct. 2355 (2023).

⁴ Cardona email, *supra* n. 1.

the message with “We’ll keep fighting for you!”⁵ The “we” he was referring to was himself and President Biden, then the Democratic Party’s presumptive nominee for president, in the midst of an election season. This email has the DOE’s official seal on the top and ends with the secretary’s signature, his title, and the Department’s Washington, D.C. address.⁶ These statements were echoed in other partisan communications by an unnamed spokesperson for the DOE, quoted in the media, which I also ask OSC to identify and investigate for violation of the Hatch Act.⁷

Under the Hatch Act, “an employee may not engage in political activity . . . while the employee is on duty.”⁸ Federal regulation says that an employee is on duty when they are “representing any agency or instrumentality of the United States government in an official capacity.”⁹ According to your Hatch Act guide, this means covered federal employees are prohibited from using their official authority to influence, interfere with, or affect the result of an election and cannot use their official titles or positions while engaged in political activity.¹⁰ Political activity is defined as, “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”¹¹

It is also important to point out that a violation of the Hatch Act does not require an explicit endorsement of a candidate. The Act can be violated by partisan statements critical of a candidate’s policy positions. OSC previously has found Hatch Act violations for Republican officials when they criticized policies of Democrat candidates for office.¹²

Further, the Hatch Act prohibits the use of, “any email account to distribute content that advocates for or against partisan political parties, candidates, or groups while on duty.”¹³ This is exactly what Secretary Cardona did in his blatantly-partisan attack. The email was sent from his government account and used his title and signature claiming to be an informational statement on “The Recent Federal Court Decisions on The Saving on a Valuable Education Income-Driven Repayment Plan.”¹⁴ Instead, it resembles a political pamphlet directly from the then Biden-

⁵ *Id.*

⁶ *Id.*

⁷ See, e.g., Rebecca Carballot, *Appeals court blocks Biden’s student loan repayment plan, in latest legal blow to administration* (July 18, 2024) (quoting a DOE official statement saying using similar language, and stating “we won’t stop fighting against Republican elected officials’ efforts to raise costs on millions of their own constituents’ student loan payments”), <https://www.politico.com/news/2024/07/18/appeals-court-blocks-save-plan-00169401>.

⁸ 5 U.S.C. § 7324(a).

⁹ 5 C.F.R. § 734.101.

¹⁰ See, e.g., U.S. Off. of Special Couns., *A Guide to the Hatch Act for Federal Employees*, OSC (Sept. 2014), <https://osc.gov/Documents/Outreach%20and%20Training/Handouts/A%20Guide%20to%20the%20Hatch%20Act%20for%20Federal%20Employees.pdf>.

¹¹ 5 C.F.R. § 734.101.

¹² See, e.g., U.S. Off. of Special Couns., *Investigation of Political Activities by Senior Trump Administration Officials During the 2020 Presidential Election*, OSC (Nov. 9, 2021) at 18, <https://osc.gov/Documents/Hatch%20Act/Reports/Investigation%20of%20Political%20Activities%20by%20Senior%20Trump%20Administration%20Officials%20During%20the%202020%20Presidential%20Election.pdf>.

¹³ Cong. Research. Serv. *The Hatch Act: A Primer* (Apr. 20, 2020),

<https://crsreports.congress.gov/product/pdf/IF/IF11512>.

¹⁴ Miguel A. Cardona email, *supra* n. 1.

Harris Presidential Campaign delivered to a captive audience of borrowers who reasonably expect communications relevant to the servicing of their loans, rather than partisan slams during an election year.

The Hatch Act is an essential tool to prevent partisan influence and coercion from corrupting the federal workforce in the performance of official duties. OSC must ensure that proper care is taken to identify violations of the Hatch Act and to hold those who abuse their power accountable. Accordingly, I request that you immediately review the highly questionable conduct of Secretary Cardona and other officials in DOE to ensure they are held accountable to the law.

Thank you for your prompt review. If you have any questions, please contact James Layne on my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

Cc: The Hon. Sandra D. Bruce
Inspector General
U.S. Department of Education