

October 12, 2018

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

Re: Violation of the Hatch Act by Sarah Huckabee Sanders

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Assistant to the President and Press Secretary Sarah Huckabee Sanders violated the Hatch Act by using her official social media account to tweet a picture of herself standing in the Oval Office with a visiting celebrity who was wearing a “Make America Great Again” hat. This action was directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By tweeting this post on a Twitter account referring to her official position and that she uses for official business, Ms. Sanders likely engaged in political activity prohibited by law.

Factual Background

Ms. Sanders was named as White House Press Secretary in July 2017 after previously serving as Principal Deputy Press Secretary under her predecessor Sean Spicer.¹ As Press Secretary, Ms. Sanders conducts the majority of the White House press briefings and is the primary spokesperson for the Trump White House.² Shortly after becoming White House Press Secretary, Ms. Sanders began using the official Twitter handle @PressSec.³

@PressSec Twitter Account

There is little doubt that the @PressSec Twitter account is used by Ms. Sanders for official government purposes. According to the @PressSec Twitter page, the handle was created in January 2017 when Donald J. Trump became the 45th President of the United States.⁴ The account profile states that Ms. Sanders is the “@WhiteHouse Press Secretary. Proudly representing @POTUS Trump’s Administration.”⁵ Ms. Sanders’s @PressSec profile also states,

¹ Jeremy Diamond, Kaitlan Collins, Jeff Zeleny, and Dana Bash, Sean Spicer, White House press secretary, resigns, CNN, July 21, 2017, available at <https://www.cnn.com/2017/07/21/politics/sean-spicer-resigns-anthony-scaramucci/index.html>.

² *Id.*

³ Sarah Sanders (@PressSec), Twitter, <https://twitter.com/PressSec>.

⁴ *Id.*

⁵ *Id.*

“Tweets may be archived: wh.gov/privacy.”⁶ Furthermore, the account’s profile picture is an image of Ms. Sanders at the podium in the White House briefing room and the header features an image of Ms. Sanders walking with President Trump on the White House grounds.⁷ Ms. Sanders also uses the @PressSec Twitter account to post about official White House activities and links to the official @POTUS Twitter account and the official website of the White House, www.whitehouse.gov.⁸

There are two other Twitter accounts associated with Ms. Sanders during her tenure in the Trump Administration. In January 2017, Ms. Sanders began using the @SHSanders45 Twitter account.⁹ The account states: “@WhiteHouse Press Secretary. Proud to work for @POTUS. Follow me @PressSec for updates”.¹⁰ On August 4, 2017, shortly after being promoted to White House Press Secretary, she tweeted from the account, “Signing off. Follow me @PressSec for updates.”¹¹ Ms. Sanders also maintains a personal Twitter account, @SarahHuckabee.¹² Her personal Twitter account states in part: “Personal account, Christian, wife to @Sanders_Bryan, mom to three, daughter of @GovMikeHuckabee and proud Arkansan.”¹³

Use of @PressSec for Partisan Political Purposes

On October 11, 2018, Ms. Sanders appears to have used her official @PressSec Twitter account to make a partisan political post supporting candidate Donald J. Trump. As detailed below, such action likely violates the Hatch Act. On this day, Ms. Sanders posted a picture of herself standing in the Oval Office next to musician Kanye West, who was wearing a “Make America Great Again” (MAGA) hat along with her commentary: “Never a dull moment in the @realDonaldTrump White House. Thank you Kanye West!”¹⁴ The tweet reads in full:

⁶ *Id.*

⁷ *Id.*

⁸ See generally Sarah Sanders (@PressSec), Twitter, <https://twitter.com/PressSec>.

⁹ Sarah H. Sanders (@SHSanders45), Twitter, <https://twitter.com/shsanders45>.

¹⁰ *Id.*

¹¹ Sarah H. Sanders (@SHSanders45), Twitter (Aug. 4, 2017), <https://twitter.com/SHSanders45/status/893604766051442688>.

¹² Sarah Sanders (@SarahHuckabee), Twitter, <https://twitter.com/sarahhuckabee>.

¹³ *Id.*

¹⁴ Sarah Sanders (@PressSec), Twitter (Oct. 11, 2018), <https://twitter.com/PressSec/status/1050536511173742592>.



Ms. Sanders’s tweet followed a meeting between Mr. West and President Trump in the Oval Office where Mr. West made a number of statements with political overtones. For example, Mr. West stated, “people expect that if you’re black you have to be Democrat” and offered his “support” of the President.¹⁵ When asked about his own political aspirations, Mr. West offered a tacit endorsement of President Trump’s re-election in 2020. He stated, “Only after him [President Trump]. It’ll be 2024.”¹⁶ Mr. West also spoke extensively regarding his appreciation for the MAGA hat he wore throughout the day, stating, “when I put this [MAGA] hat on, it made me feel like Superman.”¹⁷

March 2018 OSC and White House Hatch Act Guidance

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.¹⁸ On March 5, 2018, OSC published a document entitled, “Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection.”¹⁹ The document acknowledged that President Trump became a “candidate for partisan political office” as described in the Hatch Act in

¹⁵ Michelle Broder Van Dyke, Here’s The Full Transcript And Video Of Trump And Kanye’s Wild Meeting, *Buzzfeed News*, Oct. 11, 2018, available at <https://www.buzzfeednews.com/article/mbvd/heres-the-full-transcript-and-video-of-trump-and-kanyes>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Katie Rogers and Maggie Haberman, Trump’s 2020 Campaign Announcement Had a Very Trumpian Rollout, *New York Times*, Feb. 27, 2018, available at <https://www.nytimes.com/2018/02/27/us/politics/trump-2020-brad-parscale.html>.

¹⁹ Office of Special Counsel, Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection, Mar. 5, 2018, available at <https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf>.

February when he publicly announced his candidacy.²⁰ In addition to reminding federal employees regarding the specific prohibitions of the Hatch Act on political activity, the updated guidance offered additional clarification regarding the use of social media accounts.²¹ OSC's updated guidance stated that the Hatch Act's prohibition related to political activity "is broad and encompasses more than displays or communications (including in-person and via email or social media) that expressly advocate for or against President Trump's reelection."²² Notably, the OSC guidance included the following example:

[W]hile on duty or in the workplace, employees may not: wear, display, or distribute items with the slogan "Make America Great Again" or any other materials from President Trump's 2016 or 2020 campaigns; use hashtags such as #MAGA or #ResistTrump in social media posts or other forums; or display non-official pictures of President Trump.²³

On March 6, 2018, just one day after OSC's updated Hatch Act guidance was published, OSC concluded its Hatch Act investigation of Counselor to the President Kellyanne Conway, finding that she violated the law in two television interviews and referring a report to the President for "appropriate disciplinary action."²⁴ On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.²⁵ That same day, during the White House press briefing, Ms. Sanders maintained that despite OSC's findings, Ms. Conway did not violate the Hatch Act.²⁶ According to Ms. Sanders, "[Conway] didn't advocate for or against the election of any particular candidate. . . . She simply expressed the President's obvious position specific to policy, that he [sic] have people in the House and Senate who would support his agenda."²⁷ No disciplinary action appears to have been taken in response to OSC's findings.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Office of Special Counsel, OSC Concludes Hatch Act Investigation of Kellyanne Conway, Finds Two Violations, and Refers Findings to President for Appropriate Disciplinary Action, Mar. 6, 2018, available at <https://osc.gov/News/pr-18-24.pdf>.

²⁵ Veronica Stracqualursi and Cristina Alesci, Trump's legal team: No #MAGA at the White House, *CNN*, Mar. 8, 2018, available at <https://www.cnn.com/2018/03/08/politics/white-house-counsel-memo-hatch-act/index.html>.

²⁶ Alexander Mallin, Kellyanne Conway says she discussed Hatch Act violations with President Trump, *ABCNews*, Mar. 8, 2018, available at <https://abcnews.go.com/Politics/kellyanne-conway-discussed-hatch-act-violations-president-trump/story?id=53609559>.

²⁷ *Id.*

Potential Violation

The Hatch Act - 5 U.S.C. §§ 7321-26

The Hatch Act prohibits any executive branch employee from “us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.”²⁸ Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”²⁹ “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.”³⁰

OSC has provided recent guidance on applying this prohibition to social media.³¹ In its guidance, OSC sets forth a rule prohibiting employees from using a “social media account designated for official purposes to post or share messages directed at the success or failure of a political party, candidate in a partisan race, or partisan political group. All such official social media accounts should remain politically neutral.”³²

OSC’s March 2018 updated Hatch Act guidance clarifies that since President Trump officially became a candidate for reelection on February 27, 2018, federal employees are prohibited from using campaign slogans such as “Make America Great Again” or “#MAGA” on official social media accounts.³³

OSC has already acknowledged that the Hatch Act does not provide an exemption for executive branch employees speaking on behalf of a principal who is in fact exempt from the Hatch Act’s restrictions. In its report regarding Hatch Act violations by Ms. Conway, OSC stated:

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.³⁴

²⁸ 5 U.S.C. § 7323(a)(1).

²⁹ 5 C.F.R. § 734.302(b)(1).

³⁰ 5 C.F.R. § 734.101.

³¹ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, *available at* <http://bit.ly/2J60680>.

³² *Id.* at 7.

³³ Office of Special Counsel, Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection, Mar. 5, 2018.

³⁴ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018, *available at* <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>.

On September 20, 2018, OSC found that Deputy Assistant to the President and Communications Director for the Office of the First Lady Stephanie Grisham violated the Hatch Act by using her official White House Twitter account to engage in partisan political activity.³⁵ OSC found that Ms. Grisham broke the law when she used that Twitter account, @StephGrisham45, to tweet a message that included President Trump's campaign slogan "#MAGA" and a picture from a 2015 Trump campaign rally.³⁶ OSC issued Ms. Grisham a warning letter noting that any future engagement in prohibited political activity will be considered "a willful and knowing violation of the law, which could result in further action."³⁷

As an initial matter, there is no question that Ms. Sanders's @PressSec Twitter account is "a social media account designated for official purposes." This Twitter account describes Ms. Sanders as the "@WhiteHouse Press Secretary. Proudly representing @POTUS Trump's Administration" and the profile features a picture of her at the podium in the White House briefing room. In addition, Ms. Sanders regularly uses the @PressSec account to post about official White House activities and links to other official government Twitter accounts. She also maintains a separate personal Twitter account. Thus, the @PressSec account clearly is an official account and Ms. Sanders's use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Ms. Sanders's use of the @PressSec Twitter account to post a photo of her standing in the Oval Office with someone wearing a "Make America Great Again" hat constitutes political activity under the Hatch Act. Both OSC and the White House have provided White House staff with legal guidance concluding that tweeting President Trump's campaign slogan "#MAGA" or "Make America Great Again" violates the Hatch Act. Although Ms. Sanders is not the person wearing the MAGA hat in the image posted, OSC has not identified any exception under the Hatch Act that allows for posting political images on a social media account simply because a celebrity visits the White House wearing a MAGA hat. Creating such an exception would render useless much of OSC's guidance regarding Hatch Act compliance on social media. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.³⁸ By using her official Twitter account to transmit this message, Ms. Sanders ran afoul of the Hatch Act, which requires her to remain politically neutral when engaging in official government conduct. This violation is even more egregious given OSC's recent reports of Hatch Act violations by White House staff in March and September as well as the guidance provided by OSC and the White House counsel's office.

³⁵ Letter from Erica Hamrick, Office of Special Counsel to Noah Bookbinder, Citizens for Responsibility and Ethics in Washington, Re: OSC File No. HA-18-4852, Sept. 20, 2018, *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/09/21140938/GrishamHatchLetter.pdf>.

³⁶ *Id.*

³⁷ *Id.*

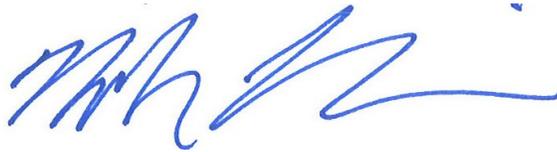
³⁸ Office of Special Counsel, Hatch Act Guidance on Social Media, at 7.

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Conclusion

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. The statute prohibits an employee from undertaking any activity directed toward the success or failure of a political candidate or a political party while using his or her official position, including through an official social media account. By publishing the tweet at issue, which advocates the election or defeat of a partisan political candidate, Ms. Sanders appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Sanders.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director