

October 20, 2020

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

Re: Supplement to Office of Special Counsel Case File HA-20-000279 (Peter Navarro)

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) take immediate action to address egregious and ongoing violations of the Hatch Act by Assistant to the President and Director of Trade and Manufacturing Policy Peter Navarro. Despite several complaints by CREW and an ongoing investigation into his conduct by OSC, Mr. Navarro continues to abuse the law by advocating for the re-election of President Donald J. Trump and the defeat of his opponent, former Vice President Joe Biden, in media interviews conducted in his official capacity. New revelations suggest that Mr. Navarro is involved in an even more brazen attempt to use official resources to promote President Trump’s re-election by conducting studies of swing state economies ahead of Election Day. By mixing official government business with political activity, Mr. Navarro impermissibly continues to use his official authority or influence for the purpose of interfering with or affecting the result of an election.

As we noted in our October 5, 2020 letter, Mr. Navarro’s conduct demonstrates a “disregard for the law and signals that he will not comply with it.”<sup>1</sup> In light of additional egregious violations, we must reiterate our request that OSC recommend to the President that Mr. Navarro be removed from federal service.

### **Factual Background**

On October 19, 2020, *Fox News* reported that Mr. Navarro “is putting together a report on the swing state economies ahead of the 2020 election” and that he has “stressed that there is a stark contrast between the policies of President Trump and Joe Biden” evident in Michigan.<sup>2</sup>

That article was based on comments Mr. Navarro made when he participated in an interview on *Fox Business* in which he discussed administration policy, attacked the candidacy of Democratic nominee Joe Biden, promoted President Trump, and directly compared the

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<sup>1</sup> Letter from Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington to the Honorable Henry J. Kerner, Special Counsel, Office of Special Counsel, Oct. 5, 2020, <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2020/10/05162431/Peter-Navarro-Hatch-Act-10-5-2020-FINAL.pdf>.

<sup>2</sup> Talia Kaplan, *Michigan ‘Thriving’ Under Trump Policies: Navarro*, *Fox News*, Oct. 19, 2020, <https://www.foxbusiness.com/economy/michigan-thriving-under-trump-policies-navarro>.

candidates.<sup>3</sup> Host Maria Bartiromo introduced the segment by addressing Mr. Navarro using his official title and referencing his work on a report on swing states being prepared in relation to the election:

Joining me right now is the Assistant to the President for Trade and Manufacturing Policy, Peter Navarro. Peter, it is great to have you this morning and I know you are doing a report all week on the swing state economies. Swing states, going into the election. Talk to us about what you have found for Michigan, one of those swing states.<sup>4</sup>

Mr. Navarro confirmed his swing state work and offered political arguments comparing the candidates' potential impact on Michigan. He said:

Yeah. All job creation is indeed local here at the Trump administration. If you look at Michigan it's really an interesting study in contrast between the policies of President Trump and Joe Biden. You start with the Antrim Shale formation which is in the northern part of the lower peninsula, there's 9,000 wells there and they employ over 50,000 people, directly or indirectly, that's something that's thriving under President Trump, which would get shut down under Joe Biden.<sup>5</sup>

Later in the conversation, Mr. Navarro also said:

And then of course we had Joe Biden voting for NAFTA. We had President Trump renegotiating that and getting the USMCA. Guess what? That's the full employment act for auto workers in Detroit.<sup>6</sup>

After comparing the candidates' policy proposals on trade, Mr. Navarro then attacked Mr. Biden and his son, Hunter. He said:

One of the things we need to be thinking about in the next 14 days is the role of China in the world economy and who would stand up to China. We know who's laid down for China and now all this news about Hunter and emails and all that stuff – you wonder why the mainstream media won't cover that, but my gosh, if any of that stuff is true it's just unbelievable.<sup>7</sup>

Navarro then continued:

The previous presidents, it's like "Don't worry be happy. Just buy this stuff because it's cheap." And then you turn around and Michigan, and Wisconsin, and Pennsylvania are just ravaged. I mean don't forget – China – Biden let China into

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

the World Trade Organization. We lost 70,000 factories, 5,000,000 manufacturing jobs. We must not forget that. We can bring that stuff back with President Trump.<sup>8</sup>

Mr. Navarro made all of these remarks in his official capacity while standing on White House grounds.

### **Potential Violations**

#### **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.”<sup>9</sup> Activities covered by this prohibition include a federal employee’s use of their official authority or position while participating in political activity.<sup>10</sup> “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.”<sup>11</sup> OSC has explained that “a federal employee violates the Hatch Act if she promotes the election or defeat of candidates for partisan political office while speaking in her official capacity.”<sup>12</sup>

In its March 2018 report regarding Hatch Act violations by Counselor to the President Kellyanne Conway, OSC 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.<sup>13</sup> 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.<sup>14</sup>

More recently, in a letter to CREW concluding that Secretary of Agriculture Sonny Perdue violated the Hatch Act, OSC made clear that a federal employee can violate the law even

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<sup>8</sup> *Id.*

<sup>9</sup> 5 U.S.C. § 7323(a)(1).

<sup>10</sup> 5 C.F.R. § 734.302(b)(1).

<sup>11</sup> 5 C.F.R. § 734.101.

<sup>12</sup> Office of Special Counsel, Report of Prohibited Political Activity, OSC File Nos. HA-19-0631 & HA-19-3395 (Kellyanne Conway), at 4, May 30, 2019, <https://go.aws/36TBeLu>.

<sup>13</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, <https://bit.ly/33fDagi>.

<sup>14</sup> *Id.*

if he or she did not expressly request that others vote for or against a candidate.<sup>15</sup> Regarding Secretary Perdue's comments about why he expected voters to support President Trump's re-election and what Secretary Perdue believed would occur if President Trump won re-election, OSC explained:

[B]oth the federal judiciary and the Merit Systems Protection Board have ruled that statements that are intended to encourage others to vote for or against a candidate for partisan political office or otherwise promote or disparage that candidate's campaign are political activity, even where the employee making the statement does not expressly request that others vote for or against a candidate.<sup>16</sup>

Further explaining that "it is hard to imagine a better example of campaign rhetoric than telling constituents what a candidate would do if elected,"<sup>17</sup> OSC added:

Secretary Perdue referred to the president's actions and how the administration was currently helping American citizens. But he also chose to make a case for the president's reelection and encouraged those in attendance and watching remotely to support the president's reelection. In other words, he chose to campaign for the president and speak about the president as a candidate. While Secretary Perdue has an unquestioned First Amendment right to campaign for the president on his own time and in his personal capacity, he has no such right to do so in his official capacity and at taxpayer expense.<sup>18</sup>

There is no doubt that Mr. Navarro was acting in his official capacity. During the interview, Mr. Navarro was standing on the White House grounds and was identified by his name and official title. After being introduced and asked about his "report" on "swing state economies ... going into the election," Mr. Navarro confirmed his work on swing states economies and launched into a discussion of the results. Mr. Navarro also commented about official government business including the administration policy related to trade, China, and the coronavirus in the interview. His appearance in the *Fox Business* interview was similar to those by Ms. Conway and others that OSC has previously found to be a use of their official authority or position. Given these facts, Mr. Navarro used his official position, authority, and title during the interview in question.

There also is no doubt that Mr. Navarro's conduct and interview were aimed at influencing the success or failure of a candidate in a partisan election by explicitly and impliedly advocating for President's Trump's re-election and Mr. Biden's defeat. As Mr. Navarro confirmed to the *Fox Business* host, he is working this week on report on "swing state economies ... going into the election." Mr. Navarro's comments throughout the interview provide further

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<sup>15</sup> Letter from Erica S. Hamrick, Deputy Chief, Hatch Act Unit, U.S. Office of Special Counsel, to Donald K. Sherman, Deputy Director, Citizens for Responsibility and Ethics in Washington, Oct. 8, 2020,

<https://www.citizensforethics.org/wp-content/uploads/2020/10/HA-20-000394-Closure-Letter-to-CREW.pdf/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

Hon. Henry Kerner

October 20, 2020

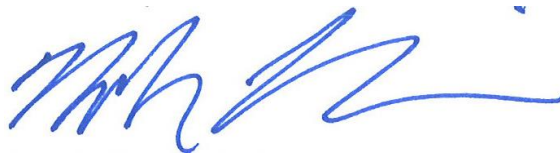
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evidence of this partisan work in his official capacity. First, he offered a comparison of the candidates and how their respective policies would impact Michigan if they won the election, arguing that a local industry is “something that’s thriving under President Trump that would get shut down under Joe Biden.” Then he compared the candidates’ policies on trade, including “Joe Biden voting for NAFTA” and “President Trump renegotiating that and getting the USMCA,” which he claimed led to “full employment” for Detroit’s auto workers. Mr. Navarro referenced the election, noting “one of the things we need to be thinking about in the next 14 days,” before again attempting to compare the candidates and attacking Mr. Biden’s son. Mr. Navarro’s swing state report and his statements during this interview about that report constituted political activity under the Hatch Act.

### **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 her official title or position. By using his official position, authority, and title to conduct a swing state report purporting to compare the two presidential candidates’ effect on the economies of closely contested states ahead of Election Day, Mr. Navarro has run afoul of the statute. Mr. Navarro also violated the Hatch Act by expressing political views about candidates in a partisan election amidst comments about official government business made in his official capacity. As we have previously noted, Mr. Navarro’s egregious and escalating violations of the Hatch Act warrant his removal from federal service. These abuses have been “egregious, notorious, and ongoing.” As such, OSC must take immediate action and issue findings and a recommendation to President Trump that Mr. Navarro should be removed from federal service.

Sincerely,



Noah Bookbinder  
Executive Director

cc: Peter Navarro  
Assistant to the President and Director of Trade and Manufacturing Policy

Pat Cipollone  
Counsel to the President