

October 15, 2020

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

Re: Violations of the Hatch Act by William Barr

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Attorney General William Barr violated the Hatch Act by participating in a media interview given in his official capacity and in which he discussed government business, but also expressed his political views about the Democratic Party and the re-election of President Donald Trump, a candidate for partisan office. By giving this interview that mixed official government business with political views about a partisan candidate, Attorney General Barr appears to have used his official authority or influence for the purpose of interfering with or affecting the result of an election. This interview constitutes political activity prohibited by law.

**Factual Background**

On February 14, 2019, Barr was confirmed by the Senate to serve as Attorney General of the United States.<sup>1</sup> Mr. Barr previously served as Attorney General under President George H.W. Bush.<sup>2</sup> During the confirmation process, Senators asked for assurances that he would remain independent as America’s chief law enforcement officer.<sup>3</sup> Since rejoining the government, Attorney General Barr has routinely appeared on television and other media platforms to promote President Trump’s agenda.<sup>4</sup>

*Use of Official Office and Title for Partisan Political Purposes*

On or around September 11, 2020, Attorney General Barr participated in an interview in his official capacity where he impermissibly mixed official government business with political views about partisan candidates in the 2020 presidential election.<sup>5</sup> The interview was broadcast

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<sup>1</sup> Politico Staff, William Barr Confirmation: Here's How Senators Voted, *Politico*, Feb. 14, 2019, <https://www.politico.com/interactives/2019/william-barr-senate-confirmation-vote-count/>.

<sup>2</sup> *Id.*

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

<sup>4</sup> See e.g., Aaron Rugar, Bill Barr’s Interview on CNN was a Train Wreck *Vox*, Sept. 3, 2020, <https://www.vox.com/2020/9/3/21419821/bill-barr-cnn-interview-wolf-blitzer>.

<sup>5</sup> The Chicago Way w/John Kass: AG & OB – Bill Barr on an “out of control” Chicago and Ed O’Bradovich on life before the NFL, WGN Radio 720, Sept. 14, 2020 (“WGN Interview”), <https://bit.ly/2SOhYHu>.

on a “The Chicago Way w/John Kass” podcast episode that aired on September 14, in which the host introduced Barr by his title “Attorney General William Barr” and noted that the interview took place in a “tiny room” with “about a dozen Department of Justice and U.S. Attorney staffers all around us crowding.”<sup>6</sup> In a column in the *Chicago Tribune* discussing the interview, Mr. Kass similarly said that it took place “in a small room in the federal building.”<sup>7</sup>

During his interview with Mr. Kass, Attorney General Barr discussed a number of official issues, including Department of Justice (“DOJ”) prosecutions and political unrest in American cities. Amidst those comments, he also voiced political views about topics such as President Trump’s re-election effort, and the Democratic Party.<sup>8</sup> During the wide-ranging conversation, Attorney General Barr said the following regarding the Democratic Party:

Turn now to the mob violence, and the countenancing of mob violence, is another very disconcerting development because I think increasingly the message of the Democrats appears to seem to be uh uh Biden or no peace. . . . But also the only way if this is going to stop is if you vote Biden. That is rule by the mob and we are approaching that.<sup>9</sup>

Later in the interview, Attorney General Barr was asked explicitly about politics and the importance of the upcoming election.<sup>10</sup> While Mr. Barr acknowledged that he should not “get into politics” as Attorney General, he immediately did so by making comments about his views on the country’s future if President Trump is not re-elected. After agreeing that this was the most important election of our lifetime, Attorney General Barr said:

As an Attorney General I’m not supposed to get into politics, or at least you know, generally, for example, attorneys general don’t go out and campaign and so forth. But I do think, I think we were getting into a position where we were going to find ourselves irrevocably committed to the socialist path. And I think if Trump loses this election that that will be the case. In other words, I think there is now a clear fork in the road for our country.<sup>11</sup>

Attorney General Barr then went on to discuss administration policy and his views on school choice as well as voting by mail, which he called “a terrible danger.”<sup>12</sup> Mr. Barr added that because of voting by mail, there is no more secret vote “now we are back in the business of selling and buying votes.”<sup>13</sup>

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

<sup>7</sup> John Kass, [AG Bill Barr Says Federal Corruption Hunters Never 'At a Loss for Work' in Chicago](https://bit.ly/30YwLUv), *Chicago Tribune*, Sept. 11, 2020, <https://bit.ly/30YwLUv>.

<sup>8</sup> WGN Interview.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Following Attorney General Barr's statements about President Trump, the national spokesperson for the Republican National Committee, Elizabeth Harrington, promoted his remarks on social media.<sup>14</sup> She tweeted, "AG Barr on why this is the most significant election of our lifetimes: 'We are getting into a position where we are going to find ourselves irrevocably committed to a socialist path...there is now a clear fork in the road for our country.'" <sup>15</sup> Ms. Harrington's post also included audio from Attorney General Barr's interview with Mr. Kass.



### **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>16</sup> Activities covered by this prohibition include a federal employee's use of their official authority or position while participating in political activity.<sup>17</sup> "Political activity" is defined as "an activity directed toward the success or failure of a political party, candidate for partisan political office,

<sup>14</sup> Elizabeth Harrington @Liz RNC, Twitter, <https://twitter.com/LizRNC>.

<sup>15</sup> Elizabeth Harrington (@LizRNC), Twitter (Sept. 16, 2020), <https://twitter.com/LizRNC/status/1306407938505019392>.

<sup>16</sup> 5 U.S.C. § 7323(a)(1).

<sup>17</sup> 5 C.F.R. § 734.302(b)(1).

or partisan political group.”<sup>18</sup> Penalties under the Hatch Act are generally administrative in nature, but can include removal from government service, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a civil fine.<sup>19</sup>

OSC’s Hatch Act Decisions Involving Similar Conduct

On March 6, 2018, OSC concluded a previous Hatch Act investigation of Counselor to the President Kellyanne Conway, finding that she violated the law in two television interviews.<sup>20</sup> In your letter to the President transmitting OSC’s report for “appropriate disciplinary action,” you wrote that during both media interviews, Ms. Conway “impermissibly mixed official government business with political views about candidates in the Alabama special election for U.S. Senate.”<sup>21</sup> OSC’s report described Ms. Conway’s conduct in one of the interviews in this way:

By telling voters not to “be fooled” and contending that Doug Jones would be “terrible for property owners,” Ms. Conway advocated for the failure of his candidacy. She also implied that voters should support Roy Moore, so the President could get the votes in the Senate needed to pass tax reform. Her advocacy against one candidate and implied endorsement of another candidate constituted political activity under the Hatch Act.<sup>22</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 if he or she did not expressly request that others vote for or against a candidate.<sup>23</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>24</sup>

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<sup>18</sup> 5 C.F.R. § 734.101.

<sup>19</sup> 5 U.S.C. § 7326.

<sup>20</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://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kellyanne%20Conway%20\(HA-18-0966\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kellyanne%20Conway%20(HA-18-0966).pdf).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</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, *available at* <https://www.citizensforethics.org/wp-content/uploads/2020/10/HA-20-000394-Closure-Letter-to-CREW.pdf/>.

<sup>24</sup> *Id.*

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>25</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>26</sup>

*Attorney General Barr Violated the Hatch Act in His Interview*

Attorney General Barr likely violated the Hatch Act in his interview on or around September 11, 2020 with WGN host John Kass by impermissibly mixing official government business with political views about President Trump’s re-election bid and the Democratic Party. There is no doubt that Attorney General Barr spoke in his official capacity. In the interview, Mr. Barr discussed official government business, including DOJ prosecutions, voting by mail, and school choice. Attorney General Barr also participated in the interview from a federal building alongside “about a dozen” Department of Justice employees, and the host introduced him by his name and official title. Given these facts, Attorney General Barr used his official position, authority, and title while participating in this interview.

There is also no doubt that Attorney General Barr’s statements were aimed at influencing the success or failure of a political candidate and party in a partisan election. Mr. Barr responded to a question regarding political unrest in American cities by attacking the Democratic Party, suggesting that the party is engaged in “the countenancing of mob violence.” He added that “increasingly the message of the Democrats appears to seem to be uh uh Biden or no peace” consistent with “rule by the mob.” Not only did Attorney Barr’s comments denigrate the Democratic Party, but he also tied them to the candidacy of former Vice President Joe Biden, the Democratic nominee for president. Attorney General Barr’s remarks implied that the Democratic Party and Mr. Biden support “mob violence” if Mr. Biden is not elected. OSC previously found in the 2018 Conway matter that a government official’s comments implying that a candidate’s election or defeat will have a particular impact on voters or public policy is political activity. As such, Attorney General Barr’s statements constituted political activity under the Hatch Act.

Then, Attorney General Barr provided another political answer in response to an explicit question regarding politics. While Mr. Barr acknowledged that he as Attorney General he’s “not supposed to get into politics,” he then explicitly opined on President Trump’s re-election, stating: “I think we were getting into a position where we were going to find ourselves irrevocably

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

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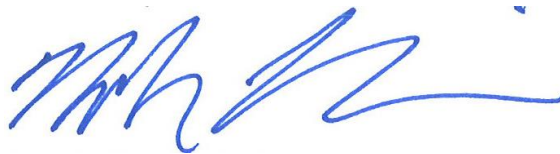
committed to the socialist path. And I think if Trump loses this election that that will be the case.” As OSC explained regarding Secretary Perdue’s Hatch Act violations, “it is hard to imagine a better example of campaign rhetoric than telling constituents what a candidate would do if elected.” Attorney General Barr’s remarks are of the same kind, telling constituents what would happen to them if candidate Trump is not re-elected. Like Secretary Perdue, Attorney General Barr “chose to campaign for the president and speak about the president as a candidate” during an event where he appeared in his official capacity. The fact that the national spokesperson for the Republican National Committee subsequently promoted Attorney Barr’s remarks as “why this is the most significant election of our lifetimes” confirms that they were aimed at the success of a partisan candidate. As a result, these statements also 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 express political views about a political party and a candidate in a partisan elections amidst comments about official government business, Attorney General Barr ran afoul of the statute. OSC should commence an immediate investigation into the conduct described in this letter and take any appropriate disciplinary action against him.

Sincerely,



Noah Bookbinder  
Executive Director