



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

December 22, 2020

David S. Ferriero
Archivist of the United States
700 Pennsylvania Avenue, N.W.
Washington, D.C. 20408

BY EMAIL: david.ferriero@nara.gov

Re: Request for Specific Guidance on Social Media Content Preservation

Dear Mr. Ferriero:

As the United States moves forward with the ongoing peaceful transfer of power, we write to urge you to take immediate action to protect the ability to preserve all social media content sent or received by Trump administration officials on accounts used for official government business pursuant to the requirements of the Presidential Records Act (“PRA”) and the Federal Records Act (“FRA”).¹ While there is no ambiguity around government officials’ legal obligation to preserve presidential and federal records created or stored on social media platforms, this administration’s actions cast serious doubts on whether they will comply with those obligations. Because we cannot rely on Trump administration officials’ compliance with their statutory recordkeeping obligations, we are requesting that the National Archives and Records Administration (“NARA”) provide specific guidance regarding the capture of content that lives in any social media accounts that are used for official government business as part of its ongoing transition coordination with social media companies.

More than any of his predecessors, President Trump has routinely used social media to communicate directly with the American public in his official capacity. Many of President Trump’s most significant policy and personnel decisions have been announced using his @realDonaldTrump Twitter account — a nominally personal account that pre-dated his tenure in government. The myriad examples include his announcement in 2017, through a series of tweets, that he would issue a ban against transgender people serving in the United States military.² In 2018, the President announced on Twitter the firing of Secretary of State Rex Tillerson, and the appointments of Mike Pompeo and Gina Haspel as Secretary of State and CIA Director respectively.³ Earlier this year, President Trump directed Congress to follow his Twitter account for notification of potential military action against Iran, adding that “[s]uch legal notice is not

¹ 44 U.S.C. §§ 2201–2209; 44 U.S.C. §§ 3301 *et. seq.*

² See Twitter, Event: Trump Bans Transgender People from Serving in US Military (July 26, 2017), <https://twitter.com/i/events/890200249884651520>.

³ Donald J. Trump (@realDonaldTrump), Twitter (Mar. 13, 2018), <https://twitter.com/realDonaldTrump/status/973540316656623616>.

required, but is given nevertheless!”⁴ Indeed, President Trump’s practice of announcing major administration decisions via Twitter confirms the assessment by the *New York Times* that, “[f]or Mr. Trump, Twitter is often the beginning of how policy is made.”⁵

Likewise, numerous Trump administration officials have created or used social media accounts to conduct government business. Many current and former senior Trump aides such as White House Deputy Chief of Staff for Communications Dan Scavino, Chief of Staff to the Vice President Marc Short, and White House Deputy Press Secretary Judd Deere have adopted Twitter handles featuring the number “45” to signify the 45th President of the United States.⁶ In addition, several more prominent administration officials, like former Senior Counselor Kellyanne Conway and first daughter and Advisor Ivanka Trump, simply used their personal pre-existing Twitter accounts to conduct government business by communicating with millions of followers.⁷ Finally, there are numerous current and former Trump administration aides who have traditionally less public roles, but still use social media accounts to communicate with their followers about official government business.⁸

We understand that given Trump appointees’ prolific use of social media accounts to conduct government business, other federal agencies have already identified many such accounts. Since 2017, the Office of Special Counsel (“OSC”) has found that at least ten senior Trump administration aides, including former Interior Secretary Ryan Zinke and U.S. Ambassador to the United Nations Nikki Haley, violated the Hatch Act by impermissibly engaging in partisan political activity on social media accounts that they use for government business.⁹ While some of these violations were one-time occurrences, others were part of a

⁴ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 5, 2020), <https://twitter.com/realDonaldTrump/status/1213919480574812160>; see also, T.C. Sottek, [Trump Tells Congress to Follow Him on Twitter for Updates on War with Iran](https://www.theverge.com/2020/1/5/2020-1-5-trump-tells-congress-to-follow-him-on-twitter), *The Verge*, Jan. 5, 2020, <https://bit.ly/3nmz9h2>.

⁵ Michael D. Shear, Maggie Haberman, Nicholas Confessore, Karen Yourish, Larry Buchanan, and Keith Collins, [How Trump Reshaped the Presidency in 11,000 Tweets](https://www.nytimes.com/2020/11/02/us/politics/trump-tweets-reshaped-presidency.html), *New York Times*, Nov. 2, 2020, <https://nyti.ms/2Kux6sV>.

⁶ See generally Dan Scavino @Scavino45, Twitter, <https://twitter.com/scavino45> (“Official White House Twitter. Personal Twitter: DanScavino”); Marc Short @marcshort45, Twitter, <https://twitter.com/marcshort45> (“Chief of Staff for Vice President Mike Pence | Tweets may be archived: <http://WH.gov/privacy>”); Judd Deere @JuddPDeere, Twitter, <https://twitter.com/juddpdeere45> (“Deputy Assistant to @POTUS @realDonaldTrump and @WhiteHouse Deputy Press Secretary | Tweets may be archived: <http://WH.gov/privacy> | Personal: @JuddPDeere”).

⁷ See generally Kellyanne Conway @KellyannePolls, Twitter, <https://twitter.com/KellyannePolls> (“Mom. Patriot. Catholic. Happy Warrior. Counselor. Survivor.”); Ivanka Trump @IvankaTrump, Twitter, <https://twitter.com/IvankaTrump> (“Wife, mother, sister, daughter. Advisor to POTUS on job creation + economic empowerment, workforce development & entrepreneurship. Personal Pg. Views are my own”).

⁸ See generally Andrew Giuliani @AndrewHGiuliani, Twitter, <https://twitter.com/AndrewHGiuliani> (“Currently serving the American public as Special Assistant to President Donald J. Trump until January 20, 2025”); Lynn Patton @LynnPattonHUD, Twitter, <https://twitter.com/lynnpattonhud> (“Working across the aisle to advance smarter policies, less regulation, increased funding, stricter inspections, more preservation & basic common sense in NY/NJ”).

⁹ See Tal Axelrod, [Federal Investigators Concluded Ryan Zinke's MAGA Socks Violated Hatch Act](https://www.thehill.com/policy/immigration/federal-investigators-concluded-ryan-zinke-s-maga-socks-violated-hatch-act/2019/06/06/), *The Hill*, June 6, 2019, <https://bit.ly/3oQyW60>; Citizens for Responsibility and Ethics in Washington, [Haley Reprimanded for Hatch Act Violation](https://www.crew.org/haley-reprimanded-for-hatch-act-violation/), Oct. 3, 2017, <https://bit.ly/383jeOj>; Dartunorro Clark, [6 Trump officials engaged in political activity that violated Hatch Act](https://www.nbcnews.com/news/politics/federal-trump-officials-engaged-political-activity-violated-hatch-act-n1011871), *NBC News*, Nov. 30, 2018, <https://nbcnews.com/news/politics/federal-trump-officials-engaged-political-activity-violated-hatch-act-n1011871>; Citizens for Responsibility and Ethics in Washington, [FLOTUS Spokeswoman Reprimanded for Hatch Act Violation Following](https://www.crew.org/flotus-spokeswoman-reprimanded-for-hatch-act-violation-following/)

pattern of multiple violations. The most egregious example is Ms. Conway, who OSC indicated repeatedly broke the law by posting political messages with the Twitter account OSC found that she used for official government business.¹⁰ Most recently, the Office of Special Counsel issued a public report to President Trump recommending that White House Director of the Office of Trade and Manufacturing Policy Peter Navarro be disciplined for “repeatedly” violating the Hatch Act by engaging in illegal political activity with the @PeterNavarro45 Twitter account he used for official purposes.¹¹ While some social media platforms labeled some handles as a “Government Organization” or a “US government account”, including the White House Facebook page and White House Press Secretary Kayleigh McEnany’s “@PressSec” Twitter account, this effort barely scratches the surface of Trump administration officials using social media accounts for the conduct of government business.¹²

Despite their recordkeeping obligations under federal law, the Trump administration has failed to set up appropriate protocols to ensure that potential presidential and federal records created using Twitter, including tweets and direct messages, are retained and preserved. For instance, in April 2017, NARA directed the White House to preserve all of President Trump’s tweets including the ones he corrects or deletes.¹³ Although the White House reportedly said it would comply with this demand, it did not provide an explanation of how it would do so.¹⁴

There is simply no reasonable basis for believing that the Trump administration has taken steps to capture and preserve federal and presidential records created on social media accounts consistent with NARA guidance and federal statutes. Omission of this content from the historical record will deprive the American people of their right to examine a critical component of our history. We urge NARA to take immediate action to avoid this unacceptable outcome by working directly with social media platforms to identify content that can be captured for preservation on their end. To start, we have compiled a list of Twitter accounts used by Trump administration officials to conduct official business, so that you can work with social media companies to ensure preservation of federal and presidential records created using these platforms. We would welcome the opportunity to discuss any questions you may have regarding our request.

Thank you for your attention to this matter.

CREW Complaint, Sep. 21, 2018, <https://bit.ly/3oO8eLw>; Citizens for Responsibility and Ethics in Washington, Scavino Reprimanded for Hatch Act Violation, June 9, 2017, <https://bit.ly/3addJ27>.

¹⁰ Office of Special Counsel, Report of Prohibited Political Activity, OSC File Nos. HA-19-0631 & HA-19-3395 (Kellyanne Conway), at 3, May 30, 2019, <https://go.aws/36TBelu>.

¹¹ Office of Special Counsel, Report of Prohibited Political Activity, HA-20-000279, Dec. 7, 2020, <https://bit.ly/387VIFI>.

¹² See The White House, Facebook, <https://www.facebook.com/WhiteHouse/>; see also Kayleigh McEnany @PressSec, Twitter, <https://twitter.com/presssec> (“@WhiteHouse Press Secretary. Connecting the American People to President @realDonaldTrump’s agenda. Tweets may be archived: <http://wh.gov/privacy>.”).

¹³ Stephen Braun, National Archives to White House: Save All Trump Tweets, *Associated Press*, Apr. 3, 2017, <https://bit.ly/3mhLSAK>.

¹⁴ *Id.*

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Sincerely,



Noah Bookbinder
Executive Director

Enclosure: CREW preliminary list of Twitter accounts used by Trump administration officials to conduct official business

cc: The Honorable Carolyn Maloney
Chairwoman, House Committee on Oversight and Reform

The Honorable Ron Johnson
Chairman, Senate Homeland Security and Governmental Affairs Committee