



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

March 22, 2021

The Honorable Dana Remus  
White House Counsel  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Ms. Remus:

Citizens for Responsibility and Ethics in Washington respectfully writes to emphasize the need for compliance with the Hatch Act by Biden administration officials and to request that the White House Counsel's Office, assisted by appropriate officials in executive branch agencies, ensures that incoming officials are receiving proper ethics training. The president and many in the administration have laudably expressed the importance of complying with ethics laws and rules, but some recent episodes have suggested that new officials may not be sufficiently focused on the requirements of the Hatch Act, a crucial ethics law for the fair and proper functioning of our democracy.

The Hatch Act provides that an executive branch employee may not "use his official authority or influence for the purpose of interfering with or affecting the result of an election."<sup>1</sup> Activities covered by this prohibition include the official "[u]sing his or her official title while participating in political activity" or otherwise participating in political activity while in their official capacity.<sup>2</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>3</sup>

Last week, Secretary of Housing and Urban Development ("HUD") Marcia L. Fudge may have run afoul of the Hatch Act by commenting during a White House press briefing about an upcoming Senate election in her home state of Ohio. Secretary Fudge was first asked if she "wanted to take the opportunity to weigh in on" the race to fill the House seat she vacated to become HUD Secretary, and she appropriately answered "no."<sup>4</sup> However, when the reporter followed up by asking whether there was a Democrat who should run in the Senate race to replace retiring Senator Rob Portman, Secretary Fudge responded:

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<sup>1</sup> 5 U.S.C. § 7323(a)(1).

<sup>2</sup> 5 C.F.R. § 734.302(b)(1).

<sup>3</sup> 5 C.F.R. § 734.101.

<sup>4</sup> Press Briefing by Press Secretary Jen Psaki and Secretary of Housing and Urban Development Marcia L. Fudge, White House, Mar. 18, 2021, <https://bit.ly/3s603Mv>.

Well, I have two friends that are thinking about it. Tim Ryan, of course, is thinking about it. I understand that Nan Whaley is thinking about it. I mean, I think we're going to put a good person in that race, no matter who we choose. But they're both friends.

I think we have a good shot at it. I know people have written off Ohio. I haven't written off Ohio. I believe we can win the Senate race.<sup>5</sup>

Secretary Fudge clearly was speaking in her official capacity, and by remarking on the Democratic Party's strength in the upcoming Senate election, may have engaged in prohibited political activity.<sup>6</sup>

One prior incident involving a new Biden administration official also suggests a need for awareness of and focus on Hatch Act requirements. On February 9, 2021, White House Press Secretary Jen Psaki tweeted from her official @PressSec account about efforts to recall California Governor Gavin Newsom, stating: "In addition to sharing a commitment to a range of issues with @GavinNewsom from addressing the climate crises to getting the pandemic under control, @POTUS clearly opposes any effort to recall @GavinNewsom."<sup>7</sup> The Hatch Act covers political activity that interferes with or influences the results of an election, including any "primary, special, runoff, or general election."<sup>8</sup> At the time of Ms. Psaki's comment, however, there was no covered election to be influenced, only an effort to secure enough signatures on a petition to initiate a recall election. Nonetheless, commenting on a potential coming election gets closer than necessary to the situations the Hatch Act does contemplate.

We appreciate that Secretary Fudge later acknowledged she should not have answered the question about the Ohio Senate race and that she takes compliance with these rules seriously.<sup>9</sup> That is a far cry from the open contempt for the Hatch Act shown by several officials of the prior administration. We further note that Ms. Psaki's tweet did not in fact violate the Hatch Act. Nevertheless, these incidents highlight the need for awareness of and adherence to the Hatch Act and other ethics rules.

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. Officials in the Trump administration repeatedly and flagrantly violated the Hatch Act, and despite efforts of the Office of Special Counsel, did not face consequences for their conduct. We appreciate that the Biden administration has voiced a very different attitude toward ethics rules, but we hope this new attitude will be backed up with rigorous efforts not just to avoid violations of the Hatch Act, but also to respect the spirit of the law and keep covered government officials away from partisan politics while in their official capacity. We strongly urge you to ensure that administration

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

<sup>6</sup> U.S. Office of Special Counsel, *Report of Prohibited Political Activity*, OSC File Nos. HA-19-0631 & HA-19-3395 (Kellyanne Conway), at 6, May 30, 2019, <https://go.aws/36TBelu>.

<sup>7</sup> Jen Psaki (@PressSec), Twitter (Feb. 9, 2021), <https://twitter.com/PressSec/status/1359243295608754176>.

<sup>8</sup> 5 C.F.R. § 734.101.

<sup>9</sup> Donald Judd and Maegan Vazquez, *HUD Secretary Marcia Fudge may have violated Hatch Act with comments at White House*, CNN, Mar. 20, 2021, <https://cnn.it/3tHENgq>.

March 22, 2021

Page 3

officials receive full Hatch Act and ethics training as quickly as possible and, moreover, that incoming officials make every effort to comply with this critical law.

Sincerely,

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

Noah Bookbinder  
President