



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

October 15, 2021

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M Street, NW
Suite 218
Washington, DC 20036-4505

Re: Violations of the Hatch Act by Jen Psaki

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether White House Press Secretary Jen Psaki violated the Hatch Act by advocating for the election of Terry McAuliffe to be governor of Virginia during an official White House press briefing. These actions were directed specifically toward the success or failure of a political candidate in a partisan race. By mixing official government business with support of a candidate for partisan political office in the weeks before the election and engaging in political activity while on duty, Ms. Psaki appears to have used her official authority or influence for the purpose of interfering with or affecting the result of an election, political activity that is prohibited by law.

Factual Background

Ms. Psaki was named to be President Joe Biden’s Press Secretary in November 2020 and began serving in that role on January 20, 2021, the day of President Biden’s inauguration.¹

Use of Official Position for Partisan Political Purpose

On October 14, 2021, Ms. Psaki held a press briefing in the White House Press Briefing Room.² Speaking from the podium, Ms. Psaki discussed a number of official issues from the podium, including donating COVID vaccines to the African Union,

¹ Annie Karni, Jennifer Psaki to Be Press Secretary as Biden Names All-Female Communications Team, *New York Times*, Nov. 29, 2020, <https://nyti.ms/3vfSxRx>; Press Briefing by Press Secretary Jen Psaki, January 20, 2021, White House, Jan. 20, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/01/20/press-briefing-by-press-secretary-jen-psaki-january-20-2021/>.

² Press Briefing by Press Secretary Jen Psaki, October 14, 2021, White House, Oct 14, 2021, <https://www.whitehouse.gov/briefing-room/press-briefings/2021/10/14/press-briefing-by-press-secretary-jen-psaki-october-14-2021/> (“October 14 briefing transcript”); White House Daily Briefing, C-SPAN, Oct. 14, 2021, <https://bit.ly/3AKb17e>.

efforts to pass a voting rights bill, and budget negotiations.³ Ms. Psaki also was asked about the upcoming election for governor in Virginia, in which former Governor McAuliffe is seeking another term:

Q I'm curious if the White House sees the Virginia governor's race as a bellwether — we talked about it a lot in here — and if the outcome is basically a (inaudible) support of the President's agenda since McAuliffe is running on it quite a bit.

MS. PSAKI: Well, I have to be a little careful about how much political analysis I do from here and not (inaudible)⁴ into that too much.

Look, I think the President, of course, wants former Governor McAuliffe to be the future governor of Virginia. There is alignment on a lot of their agenda, whether it is the need to invest in rebuilding our roads, rails, and bridges, or making it easier for women to rejoin the workforce.

I will say as — I will leave it to other outside analysis to convey that off-year elections are often — are often not a bellwether, but — and there's a lot of history here in Virginia. But, again, we're going to do everything we can to help former Governor McAuliffe, and we believe in the agenda he's representing.⁵

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.”⁶ Activities covered by this prohibition include a federal employee's use of their official authority or position while participating in political activity.⁷ “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.”⁸ The Hatch Act further prohibits most federal employees from engaging in political activity while on duty, but it does not prohibit certain employees appointed by the President from doing so.⁹ However, if these officials do engage in political activity, they must do so in their personal capacities and the costs associated with their political activity must not be paid with money derived from the United States Treasury.¹⁰

In its August 2012 report regarding Hatch Act violations by then-Secretary of Health and Human Services Kathleen Sebelius, OSC found that she violated that Hatch Act by

³ October 14 briefing transcript.

⁴ Ms. Psaki appears to say “traipse” here. White House Daily Briefing, C-SPAN, Oct. 14, 2021.

⁵ October 14 briefing transcript.

⁶ 5 U.S.C. § 7323(a)(1).

⁷ 5 C.F.R. § 734.302(b)(1).

⁸ 5 C.F.R. § 734.101.

⁹ 5 U.S.C. § 7324(b).

¹⁰ *Id.*

making “extemporaneous” political remarks in a speech delivered in her “official capacity.”¹¹ OSC stated:

Secretary Sebelius appeared at the [Human Rights Campaign] gala in her official capacity as HHS Secretary. As explained above, twice during the speech, Secretary Sebelius diverged from her prepared remarks. First, she endorsed the gubernatorial campaign of North Carolina Lieutenant Governor Walter Dalton and stated that it is “hugely important” to elect a Democratic Governor in North Carolina. Although Secretary Sebelius testified that she “had not intended to endorse him,” her words had that effect. Because she made this endorsement in her official capacity as HHS Secretary, she violated the Hatch Act.

In addition, Secretary Sebelius advocated for the reelection of President Obama in a series of extemporaneous remarks. ... These statements were made in Secretary Sebelius’ official capacity and therefore violated the Hatch Act’s prohibition against using official authority or influence to affect the results of an election.¹²

In its March 2018 report regarding Hatch Act violations by then-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.¹³ 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.¹⁴

Ms. Psaki Appears to Have Violated the Hatch Act in Her Press Briefings

Ms. Psaki appears to have violated the Hatch Act in her October 14 press briefing by impermissibly mixing official government business with advocacy for former Governor McAuliffe’s election. There is no question Ms. Psaki was speaking in her official capacity and was on duty. Her remarks were made during an official press briefing from behind the podium in the White House Briefing Room, and she discussed numerous official issues during the briefing.

There is also little doubt that Ms. Psaki’s statements were aimed at the success or failure of a candidate in a partisan election. The Virginia gubernatorial election is scheduled

¹¹ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-12-1989 (Kathleen G. Sebelius), Aug. 23, 2012, <https://bit.ly/3mVOiZz>.

¹² *Id.*

¹³ 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>.

¹⁴ *Id.*


for November 2, 2021, less than three weeks after Ms. Psaki's comments. In the briefing, Ms. Psaki unequivocally stated that President Biden wants Governor McAuliffe to be the next governor of Virginia, and said "we're doing everything we can to help" him. While Ms. Psaki referred to former Governor McAuliffe "agenda," he is not currently in office, leaving little question that she was speaking about his upcoming election. As a result, while Ms. Psaki did not explicitly urge voting for Governor McAuliffe, her statements appear to have been aimed at his success in a partisan political election.

We further note in February 2021, Ms. Psaki tweeted that "@POTUS clearly opposes any effort to recall @GavinNewsom,"¹⁵ referring to California Governor Gavin Newsom. At the time, there was no actual recall election of Governor Newsom to be influenced, only an effort to secure enough signatures on a petition to initiate a recall election, and thus her tweet did not violate the Hatch Act. Nonetheless, in a letter to White House Counsel Dana Remus regarding Ms. Psaki's tweet and Secretary of Housing and Urban Development Marcia Fudge's remarks during a White House press briefing about the Democratic Party's strength in an upcoming Ohio election, CREW noted that Ms. Psaki's tweet came closer than necessary to the situations the Hatch Act contemplated, and emphasized the need for Hatch Act training and compliance.¹⁶

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 her official position, authority, and title to advocate for the success of a candidates in a partisan election, Ms. Psaki appears to have run afoul of the statute. OSC should commence an immediate investigation into the conduct described in this letter and take any appropriate disciplinary action against Ms. Psaki.

Sincerely,



Noah Bookbinder
President

¹⁵ Jen Psaki (@PressSec), Twitter (Feb. 9, 2021), <https://twitter.com/PressSec/status/1359243295608754176>.

¹⁶ Letter from Noah Bookbinder to Hon. Dana Remus, Mar. 22, 2021, <https://bit.ly/3aFLYhj>.