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December 1, 2021

Mr. Noah Bookbinder  
Executive Director  
Citizens for Responsibility & Ethics in Washington

VIA EMAIL: [arappaport@citizensforethics.org](mailto:arappaport@citizensforethics.org)

Re: OSC File Nos. HA-22-000004

Dear Mr. Bookbinder:

This letter is in response to a complaint your organization filed with the U.S. Office of Special Counsel (OSC) alleging that White House Press Secretary Jen Psaki violated the Hatch Act during an October 14, 2021 press briefing by advocating for the election of then-Virginia gubernatorial candidate Terry McAuliffe. As explained below, OSC concluded Ms. Psaki violated the Hatch Act as alleged, but we are closing our file with the issuance of a warning letter.

The Hatch Act governs the political activity of federal civilian executive branch employees,<sup>1</sup> and Ms. Psaki is covered by the law by virtue of her position as White House Press Secretary. The Hatch Act prohibits employees from, among other things, using their official authority or influence for the purpose of interfering with or affecting the result of an election.<sup>2</sup> For example, it is a prohibited use of official authority for employees to use their official title or position while participating in political activity.<sup>3</sup> Political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office.<sup>4</sup> Thus, federal employees, in their official capacity, are prohibited from, among other things, promoting the election or defeat of candidates for partisan political office.

OSC analyzed whether Ms. Psaki violated this prohibition when, during an October 14, 2021 press briefing given in the James S. Brady Press Briefing Room, a reporter asked the following question:

*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.*

To which Ms. Psaki replied:

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<sup>1</sup> See generally 5 U.S.C. §§ 7321-7326.

<sup>2</sup> 5 U.S.C. § 7323(a)(1).

<sup>3</sup> See 5 C.F.R. § 734.302(b)(1).

<sup>4</sup> 5 C.F.R. § 734.101.

*Well, I have to be a little careful about how much political analysis I do from here and not (inaudible) 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.*

During the October 14 press briefing Ms. Psaki was performing her official duties as White House Press Secretary. And her statement, that the president wanted former Governor McAuliffe to be the next governor of Virginia and they were going to do everything to help him, was directed at Mr. McAuliffe's success in the 2021 Virginia gubernatorial election. Accordingly, because Ms. Psaki engaged in political activity while speaking in her official capacity, OSC has concluded that she violated the Hatch Act's prohibition against using her official authority or influence to affect an election.

OSC notes, however, that Ms. Psaki has publicly accepted responsibility for her statements, voiced her commitment to ethics, and has since handled similar questions from the press in an appropriate way. Accordingly, we are closing our file in this matter without further action. OSC has warned Ms. Psaki that if in the future she engages in prohibited political activity while employed in a position covered by the Hatch Act, we will consider such activity to be a willful and knowing violation of the law, which could result in further action.

Please contact me at (202) 804-7054 if you have any questions.

Sincerely,



Erica S. Hamrick  
Deputy Chief, Hatch Act Unit