

May 16, 2017

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

Dear Ms. Lerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Sarah H. Sanders, Deputy Assistant to the President and Principal Deputy Press Secretary, violated the Hatch Act when she used her official Twitter account to post a photograph of Secretary of Commerce Wilbur Ross autographing a campaign sign supporting President Donald J. Trump’s reelection at a political event in Harrisburg, Pennsylvania. By posting the tweet from an official account, Ms. Sanders likely engaged in political activity prohibited by law.

Factual Background

President Trump’s April 29, 2017 Campaign Rally

President Trump held a rally in Harrisburg, Pennsylvania on April 29, 2017 on his 100th day in office.¹ The rally was a political event. Although President Trump has not formally announced he will be a candidate in the 2020 presidential election, he filed a statement of candidacy with the Federal Election Commission (“FEC”) on January 20, 2017, and his campaign committee, Donald J. Trump for President, Inc. (“Trump for President”), has already raised and spent millions of dollars on his 2020 campaign.² Some of that spending paid for a series of campaign rallies in February and March,³ and the campaign also funded the one in Harrisburg, according to Trump for President’s executive director.⁴ By funding the event, Trump for President was able to use campaign money to advertise the rally and sell campaign

¹ Jon Tamari and Aubrey Whelan, [Trump rips media, rallies supporters in Harrisburg to mark 100 days](http://www.post-gazette.com/news/politics-nation/2017/04/29/Donald-Trump-Harrisburg-rally-100-days-border-wall-Obamacare/stories/201704300272?pgpageversion=pgevoke), *Pittsburgh Post-Gazette*, Apr. 29, 2017, available at <http://www.post-gazette.com/news/politics-nation/2017/04/29/Donald-Trump-Harrisburg-rally-100-days-border-wall-Obamacare/stories/201704300272?pgpageversion=pgevoke>.

² Letter from Donald J. Trump to Federal Election Commission (filed as FEC Form 2, Statement of Candidacy), Jan. 20, 2017, available at <http://docquery.fec.gov/pdf/569/201701209041436569/201701209041436569.pdf>; Donald J. Trump for President, Inc., [FEC Form 3P, April Quarterly Report](http://docquery.fec.gov/pdf/934/201704149052180934/201704149052180934.pdf), available at <http://docquery.fec.gov/pdf/934/201704149052180934/201704149052180934.pdf>.

³ *Id.* (reporting payments for facility rentals in Melbourne, FL, Nashville, TN, and Louisville, KY).

⁴ Elizabeth Sanders, [Trump Marking 100th Day With ‘Big Rally’](http://www.cnn.com/2017/04/22/politics/trump-100th-day-rally/), *CNN*, Apr. 22, 2017, available at <http://www.cnn.com/2017/04/22/politics/trump-100th-day-rally/>.

merchandise at it,⁵ and tickets for the event were made available by Trump for President through its website.⁶

Ms. Sanders's Tweets of the Harrisburg Rally

On the night of President Trump's rally, Ms. Sanders posted a tweet on her official government Twitter feed supporting the Trump for President reelection campaign. The tweet showed a photograph of Secretary Ross at the rally autographing a sign that reads "Trump Pence Make America Great Again! 45", along with Ms. Sanders's comment: ".@SecretaryRoss talks to supporters and signs autographs in PA. Glad to have him helping @POTUS #maga."⁷

Ms. Sanders also tweeted a photograph of President Trump that evening standing before the crowd at the Harrisburg event, about which she stated: "No better way to end #100days than at a rally with @POTUS & thousands of patriotic, hard working Americans".⁸

The hashtag symbol "#maga" is an abbreviation of "Make America Great Again", Trump for President's trademarked slogan.⁹ In addition, the "Trump Pence Make America Great Again! 45" sign featured in the photograph with Secretary Ross exactly replicates the logo used on the current Trump for President website.¹⁰ In addition, the sign and logo are identical to ones used by Trump for President in the 2016 presidential election, except that the earlier references to "2016" have been replaced with "45" to be used in connection with 2020 campaign activity.¹¹

The Twitter handle "@SecretaryRoss" referred to in Ms. Sanders's tweet is the official Twitter account of Secretary Ross,¹² and "@POTUS" is President Trump's official Twitter account.¹³

⁵ *Id.*

⁶ Tracie Mauriello, Trump to speak next Saturday in Harrisburg rally, *Pittsburgh Post-Gazette*, Apr. 22, 2017, available at <http://www.post-gazette.com/news/state/2017/04/22/Donald-Trump-to-speak-next-Saturday-in-Harrisburg-rally/stories/201704220111?pgpageversion=pgevoke>. Information about the event is no longer available on the Trump for President website, but is archived at <https://web.archive.org/web/20170426080145/https://www.donaldjtrump.com/schedule/> and <https://web.archive.org/web/20170426080132/https://www.donaldjtrump.com/schedule/register/harrisburg-pa2>.

⁷ See <https://twitter.com/SHSanders45/status/858523832331776000>.

⁸ See <https://twitter.com/SHSanders45/status/858522186138759168>.

⁹ Karen Tumulty, How Donald Trump Came Up With 'Make America Great Again', *Washington Post*, Jan. 18, 2017, available at https://www.washingtonpost.com/politics/how-donald-trump-came-up-with-make-america-great-again/2017/01/17/fb6acf5e-dbf7-11e6-ad42-f3375f271c9c_story.html?utm_term=.2a5adac08bda; <http://tmsearch.uspto.gov/bin/gate.exe?f=searchss&state=4807:qph84i.1.1>.

¹⁰ See <https://www.donaldjtrump.com/about>. The sign also appears to have a disclaimer, which likely states it was paid for by Trump for President. See <https://twitter.com/SHSanders45/status/858523832331776000>.

¹¹ See <https://twitter.com/seanspicer/status/820692653977272320>.

¹² See <https://twitter.com/SecretaryRoss>.

¹³ See <https://twitter.com/POTUS>.

Ms. Sanders' Twitter Accounts

Both of the tweets were posted on @SHSanders45, which almost certainly is Ms. Sanders' official White House Twitter account. In that account's profile, Ms. Sanders identifies herself as "@WhiteHouse Principal Deputy Press Secretary. Proud to work for @POTUS", and it includes a hyperlink to the WhiteHouse.gov website.¹⁴ The profile also states that @SHSanders45 joined in January 2017, and the first post from the account is dated February 9, 2017 – just after Ms. Sanders was appointed to her White House position on or around January 20, 2017.¹⁵ In addition, Ms. Sanders' profile photograph for @SHSanders45 is a view of the north side of the White House, and in her header photograph she appears on the front lawn of the White House in the process of being interviewed.¹⁶

Ms. Sanders also appears to have at least one separate personal Twitter account, @SarahHuckabee.¹⁷ This account significantly predates her appointment to the White House – the profile states it joined Twitter in April 2007.¹⁸ Ms. Sanders used this account extensively to conduct political activity related to President Trump's 2016 campaign and for the Trump transition following the election.¹⁹ In addition, the photographs on the @SarahHuckabee account profile do not show the White House in the background, and the profile has no hyperlink to the White House website.²⁰

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."²¹ Activities covered by this prohibition include the official "[u]sing his or her official title while participating in political activity."²² "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."²³

OSC guidance on applying the Hatch Act prohibitions to social media, including Twitter, generally admonishes employees to "not engage in political activity in an official capacity at any

¹⁴ See <https://twitter.com/SHSanders45>.

¹⁵ Tom Kludt, [Sarah Huckabee Sanders, daughter of Mike Huckabee, gets job in Trump White House](http://money.cnn.com/2017/01/19/media/sarah-huckabee-sanders-donald-trump/), CNN, Jan. 19, 2017, available at <http://money.cnn.com/2017/01/19/media/sarah-huckabee-sanders-donald-trump/>.

¹⁶ See <https://twitter.com/SHSanders45>.

¹⁷ See <https://twitter.com/sarahhuckabee>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ 5 U.S.C. § 7323(a)(1).

²² 5 C.F.R. § 734.302(b)(1).

²³ 5 C.F.R. § 734.101.

time.”²⁴ The guidance specifically provides that a federal employee may not “use a Facebook or Twitter account in his official capacity to engage in political activity,” and requires that “[a]ny social media account created in a federal employee’s official capacity should be limited to official business and remain politically neutral.”²⁵ With regard to an agency official’s attendance or speech at a political event for a candidate in a partisan race, OSC guidance further provides that no such “information or links to information . . . should be posted on the agency’s Facebook or Twitter account.”²⁶

In determining what activity is covered by the Hatch Act’s prohibition, OSC in the past advised that an incumbent president is considered a “candidate” when he officially announces his candidacy for reelection.²⁷ In guidance issued on February 7, 2017, however, OSC noted that while President Trump has not officially declared his candidacy, he has filed the statement of candidacy with the FEC.²⁸ As a result, and “because the 2020 election is still more than three years away,” OSC provided that some but not all expressions of support or opposition to President Trump at this time would constitute political activity for purposes of the Hatch Act.²⁹ For example, the guidance asserts, a federal employee, “whether on or off duty, is not prohibited from wearing or displaying pictures of President Trump or items from his 2016 campaign, or expressing their approval or disapproval of President Trump or his Administration, policies, or actions.”³⁰ On the other hand, federal employees who are on duty or in the workplace are prohibited by the Hatch Act from “expressly advocating for or against” President Trump’s reelection in 2020.³¹

OSC does not appear to have defined the term “expressly advocated,” but FEC regulations do.³² Under those rules, “expressly advocating” includes, among other things, “communications of campaign slogan(s) . . . which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s).”³³

Applying this guidance, Ms. Sanders’ tweet likely violated the Hatch Act. Ms. Sanders’ tweet was posted from her official Twitter account, @SHSanders45. Ms. Sanders started that account in January 2017 and began tweeting from it on February 9, just after she began her White House position. In addition, the account’s profile includes Ms. Sanders’ official title,

²⁴ See [https://osc.gov/Resources/FAQ%20Hatch%20Act%20Employees%20and%20Social%20Media%20\(revised%2012-18-2015\).pdf](https://osc.gov/Resources/FAQ%20Hatch%20Act%20Employees%20and%20Social%20Media%20(revised%2012-18-2015).pdf) (emphasis in original).

²⁵ *Id.*

²⁶ See <https://osc.gov/Pages/The-Hatch-Act-Frequently-Asked-Questions--on-Federal-Agencies-and-the-Use-of-Official-Social-Media-Accounts.aspx>.

²⁷ U.S. Official of Special Counsel, Guidance on President Trump’s Status as a Candidate and Its Effect on Activity in the Federal Workplace, Feb. 7, 2017, available at <https://osc.gov/Resources/2017-President-Candidate-Guidance.pdf>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² 11 C.F.R. § 100.22

³³ *Id.*

asserts she is working for @POTUS, and has links to the official White House Twitter account and website, and both photographs in the profile show the front of the White House, one of which includes Ms. Sanders. By contrast, Ms. Sanders' other account has been active for a decade, was used extensively during President Trump's campaign and transition, and does not include photos of Ms. Sanders at the White House. As a result, Ms. Sanders may not use her official @SHSanders45 account to engage in political activity.

Ms. Sanders' tweet, however, constituted political activity. President Trump already is a candidate – he filed an official statement of candidacy for the election, and Trump for President is raising and spending money toward that end. The event depicted in the photograph Ms. Sanders tweeted was a political rally designed to boost support for President Trump's reelection in 2020. It was sponsored and funded by Trump for President, which reportedly paid for advertising the event, distributed the tickets, and sold campaign merchandise at it. The tweeted photograph further showed Secretary Ross autographing a campaign sign that advocated for President Trump's reelection. In fact, the sign exactly replicated the logo on the current Trump for President website, and displayed Trump for President's trademarked slogan. The text of Ms. Sanders' tweet further reinforced the photograph's political nature by ending with "#maga," the hashtag representing the campaign slogan. The text of the tweet also referred to the official position and authority of Secretary Ross while he was engaged in political activity.

Under these circumstances, the tweet clearly was "directed toward the success" of President Trump's reelection, and thus met OSC's criteria for political activity. The tweet also expressly advocated President Trump's reelection. Both the sign and text of the tweet communicated Trump for President's campaign slogan, "Make America Great Again"/"#maga". In the context of a campaign-funded rally for a candidate who has already filed his statement of candidacy, where the slogan appears on a sign that exactly replicates the campaign's logo, the tweet can have no other reasonable meaning than to urge the election of the clearly identified candidate, President Trump. As a result, Ms. Sanders' tweet appears to have violated the Hatch Act.

OSC guidance makes clear that official Twitter accounts like the one at @SHSanders45 should be limited to official business matters and remain politically neutral, and may not be used to post information about a federal official's attendance or speech at a political event. Nor is she permitted to refer to Secretary Ross in his official capacity while he may be engaged in political activity.

Conclusion

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. In applying the statute to official media accounts, OSC has made clear that those accounts should be limited to official business matters and remain politically neutral. Ms. Sanders' tweet from her official Twitter account was neither, and thus appears to have violated the statute. Her conduct is of particular concern because it may be part of a pattern of White House officials using social media for political purposes. White House

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Director of Social Media Dan Scavino Jr., for example, recently used Twitter to call on President Trump's followers to defeat a member of Congress in a primary, a matter CREW previously called on OSC to investigate. It is therefore imperative that OSC commence an immediate investigation and take or recommend any appropriate disciplinary action against Ms. Sanders.

Sincerely,



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Executive Director
Citizens for Responsibility and Ethics in Washington