

June 27, 2017

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

Dear Mr. Miles,

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether United States Ambassador to the United Nations Nikki Haley violated the Hatch Act by retweeting a tweet that President Donald J. Trump posted in support of Ralph Norman, at the time a candidate running in a special Congressional election. By posting this tweet on an account that referred to her official position, Ambassador Haley likely engaged in political activity prohibited by the law.

Factual Background

On February 16, 2017, Representative Mick Mulvaney was confirmed as Director of the Office of Management and Budget and vacated his seat representing South Carolina’s 5th Congressional District. On the same day, Ralph Norman resigned as member of South Carolina’s House of Representatives and declared his candidacy in a special election to replace Mulvaney.¹ Mr. Norman formally filed as a candidate on March 3, 2017.² Mr. Norman and fellow Republican candidate Tommy Pope advanced to a runoff in a primary held on May 2.³ Mr. Norman won the primary runoff election on May 16, 2017,⁴ and proceeded to win the general election on June 20, 2017.⁵

At 1:27 PM on June 19, 2017, the day before the general election, President Trump posted two connected tweets calling on his followers to support Mr. Norman. The second tweet was posted as a reply to the first, creating a “thread” – a series of connected tweets that

¹ Bristow Marchant, *SC Legislator Resigns Seat To Run For Congress*, *The State*, Feb. 16, 2017, available at <http://www.thestate.com/news/politics-government/article133163614.html>.

² Ralph Norman, *Statement Of Intention Of Candidacy & Party Pledge*, Mar. 3, 2017, available at <https://info.scvotes.sc.gov/VRS.Public.Web.Ballot.aspx?Type=SICPledge&Id=7893&QSHelperHash=AE3616A5364704EDD22F1A6C0AE23F218F2326D0>.

³ *South Carolina Election Results: Two Republicans Advance, Democrat Wins In U.S. House Primaries*, *New York Times*, May 3, 2017, available at <https://www.nytimes.com/elections/results/south-carolina-house-special-election-primary>.

⁴ *Election Results: Norman Advances In Race For South Carolina’s Fifth Congressional District*, *New York Times*, May 19, 2017, available at <https://www.nytimes.com/elections/results/south-carolina-house-special-election-primary-runoff>.

⁵ *Election Results: Republican Wins U.S. House Seat in South Carolina*, *New York Times*, Jun. 21, 2017, available at <https://www.nytimes.com/elections/results/south-carolina-house-special-election>.

automatically nest together when viewed by President Trump's Twitter followers.⁶ In the first tweet, President Trump wrote, "Ralph Norman, who is running for Congress in SC's 5th District, will be a fantastic help to me in cutting taxes, and...."⁷ President Trump continued (in the second tweet), "....getting great border security and healthcare. #VoteRalphNorman tomorrow!"⁸

Later that same day, Ambassador Haley retweeted the first tweet in President Trump's thread.⁹ By doing so, Ambassador Haley reposted President Trump's tweet on her own timeline and caused President Trump's tweet to appear on the timeline of users who followed Ambassador Haley.¹⁰ Ambassador Haley served as Governor of South Carolina from January 2011 until she was confirmed as UN Ambassador in January 2017. As of June 21, 2017, Ambassador Haley had at least 356,000 followers, many of whom appear to be from South Carolina.¹¹

Ambassador Haley retweeted President Trump's tweet from her @nikkihaley Twitter account. At the time of the tweet (and as of today), Ambassador Haley's account profile photograph was a cropped version of her official photo on the State Department's website.¹² The header photograph on her account shows Ambassador Haley standing with President Trump in the Diplomatic Reception Room of the White House, along with 14 UN ambassadors from nations that are members of the UN Security Council.¹³ On the account's profile, Ambassador Haley identifies herself as the "United States Ambassador to the United Nations."¹⁴

Ambassador Haley appears to have removed her retweet after two journalists pointed out that it might constitute a violation of the Hatch Act.¹⁵

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."¹⁶

⁶ Joe Wadlington, *How To Use Tweet Threads*, *Twitter*, Mar. 21, 2017, available at <https://business.twitter.com/en/blog/How-Tweet-threads.html>.

⁷ See <https://twitter.com/realDonaldTrump/status/876899176562524160>.

⁸ See <https://twitter.com/realDonaldTrump/status/876899250071904256>.

⁹ Although Ambassador Haley later removed the retweet, a copy captured by a journalist is attached as Exhibit A. See also <https://twitter.com/christinawilkie/status/877008277787340800>; <https://twitter.com/AndrewBeatty/status/876983817717895169>.

¹⁰ See FAQs about Retweets, *Twitter*, available at <https://support.twitter.com/articles/77606>.

¹¹ See <https://twitter.com/nikkihaley/followers>.

¹² United States Mission to the United Nations, *The Leadership*, available at <https://usun.state.gov/leadership>.

¹³ See <https://twitter.com/nikkihaley/status/856584912861876224>.

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

¹⁵ See <https://twitter.com/christinawilkie/status/877008277787340800>; <https://twitter.com/AndrewBeatty/status/876983817717895169>.

¹⁶ 5 U.S.C. § 7323(a)(1).

Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”¹⁷ “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.”¹⁸

OSC has provided guidance on applying this prohibition to social media, both on an account used in a federal employee’s official capacity and on an employee’s personal account.¹⁹ In general, the guidance admonishes employees to “not engage in political activity in an official capacity at any time.”²⁰ More specifically, the guidance provides that “the Hatch Act prohibits employees from . . . referring to their official titles or positions while engaged in political activity at any time.”²¹ The guidance plainly states that it is impermissible to use an official account for political activity: “Any social media account created in a federal employee’s official capacity should be limited to official business matters and remain politically neutral.”²² The guidance notes, however, that “inclusion of an employee’s official title or position on one’s social media profile, without more, is not an improper use of official authority.”²³

Ambassador Haley’s retweet of President Trump’s tweet supporting Ralph Norman’s campaign is clearly political activity under the statute. Ambassador Haley’s retweet occurred the day before polls opened in Mr. Norman’s the race and it was directed to her followers – a group particularly likely to include individuals who were voting in that election. Although Ambassador Haley was reposting President Trump’s tweet, the effect of her retweet was the same for the purposes of the Hatch Act as if the tweet were her own: Ambassador Haley used her office to support Mr. Norman’s special election campaign.

While it is not fully clear if Ambassador Haley’s @nikkihaley Twitter account is an official or personal account, she appears to be using it in an official capacity. Ambassador Haley’s @nikkihaley profile describes her as the “United States Ambassador to the United Nations,” and does not contain any mention of “personal” use. In addition, as noted above, the @nikkihaley account uses Ambassador Haley’s official photographs taken of her capacity as the United States’ UN Ambassador.²⁴

¹⁷ 5 C.F.R. § 734.302(b)(1).

¹⁸ 5 C.F.R. § 734.101.

¹⁹ Office of Special Counsel, The Hatch Act: Frequently Asked Questions on Federal Employees and the Use of Social Media and Email, Dec. 18, 2015, *available at* <https://osc.gov/Pages/The-Hatch-Act-Frequently-Asked-Questions-on-Federal-Employees-and-the-Use-of-Social-Media-and-Email.aspx>.

²⁰ *Id.* (emphasis in original).

²¹ *Id.* See also Office of Special Counsel, Letter Re: OSC File No. HA-17-2986, June 5, 2017 (notifying CREW of disciplinary action taken against White House Director of Social Media Dan Scavino Jr. for violating the Hatch Act), *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/06/09153036/DOC060817-06082017170020.pdf>.

²² *Id.*

²³ *Id.*

²⁴ To the best of CREW’s knowledge, Ambassador Haley only maintains one public twitter account.

The strong suggestion that Ambassador Haley's @nikkihaley account is official is further reflected in the way she and the State Department use the account. The official Twitter account of the United States Mission to the United Nations, @USUN, routinely directs traffic to Ambassador Haley's @nikkihaley account by referring to "Amb @nikkihaley" in its tweets.²⁵ Similarly, the official Twitter account of the State Department, @StateDept, has referred to "Ambassador @nikkihaley" in a tweet.²⁶ Ambassador Haley also uses the account to distribute her official statements as UN Ambassador. On June 20, 2017, for instance, Ambassador Haley tweeted a photo and statement about Syrian refugees attributed to "Ambassador Haley on World Refugee Day,"²⁷ and that tweet was then retweeted by @USUN. On June 6, 2017, Ambassador Haley retweeted a @USUN tweet encouraging followers to "Read Ambassador @nikkihaley's full speech on UN Human Rights Council Reform → <http://bit.ly/2sByCMu>."²⁸ Furthermore, Ambassador Haley uses her @nikkihaley account to tweet about her meetings with foreign dignitaries and has directed tweets to or retweeted posts from the official Twitter accounts of those individuals. Last month, for example, she used the account to correspond with the official accounts of Israeli Prime Minister Benjamin Netanyahu,²⁹ Israeli President Reuven Rivlin,³⁰ and Palestinian Prime Minister Rami Hamdalla.³¹ Accordingly, Ambassador Haley's @nikkihaley account should be considered an official account and may not be used for any political activity such as her retweet supporting Mr. Norman's campaign.

Even if Ambassador Haley's @nikkihaley Twitter account could be considered personal, her political activity would still be improper. As the OSC's guidance makes clear, an executive branch employee's political activity on personal accounts violate the Hatch Act when the employee refers to his official title or position. Here, Ambassador Haley clearly referred to her official position by identifying herself as the United States Ambassador to the United Nations, and by using her official State Department photograph as her profile picture and a photograph of herself in the Diplomatic Reception Room of the White House alongside President Trump and other UN ambassadors as her header photo.

Nor is Ambassador Haley absolved by the fact that she only retweeted the first tweet in President Trump's thread supporting Mr. Norman's campaign. The first tweet alone is clearly political: it expressed support for a candidate, mentioned him by name, and specified the office for which he was seeking election – all on the eve of the election.³² The first tweet also was part of a thread that ended midsentence and was picked up without interruption in the second, with

²⁵ See, e.g., <https://twitter.com/USUN/status/872030462272786432>, <https://twitter.com/USUN/status/857674428259467266>, <https://twitter.com/USUN/status/840294324424302596>.

²⁶ See <https://twitter.com/StateDept/status/856569056635142144>.

²⁷ See <https://twitter.com/nikkiahaley/status/877203430774845441>.

²⁸ See <https://twitter.com/USUN/status/872209788201054208>.

²⁹ See <https://twitter.com/netanyahu/status/872426623529779207>.

³⁰ See <https://twitter.com/PresidentRuv/status/872398879089721344>.

³¹ See <https://twitter.com/nikkiahaley/status/872558992354136065>.

³² See Office of Special Counsel, *Letter Re: OSC File No. AD-08-xxxx*, Mar. 18, 2008 (email that refers to Senator Obama's candidacy for president, makes negative comments about him, and implies what he would do as president is "clearly directed against" his candidacy and is thus political), available at <https://osc.gov/Resources/Obama%20email.pdf>.

Hon. Adam Miles
June 27, 2017
Page 5

ellipses that invited the reader to continue. In these circumstances, Ambassador Haley's retweet of the first tweet was tantamount to retweeting the full two-tweet thread, which contained an even more explicit message in support of Mr. Norman's candidacy.

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 while using or referring to his official position. Ambassador Haley's election-eve retweet of President Trump's support for Mr. Norman – a candidate running for election to the House of Representatives in the same state that Ambassador Haley served as governor – appears to violate that rule. OSC should therefore commence an immediate investigation and take or recommend appropriate disciplinary action against Ambassador Haley.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

Encl.

EXHIBIT A



Andrew Beatty ✓
@AndrewBeatty

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Is Nikki Haley not covered by the Hatch Act?

↻ Nikki Haley Retweeted



Donald J. Trump ✓ @realDonaldTrump · 5h ✓

Ralph Norman, who is running for Congress in SC's 5th District, will be a fantastic help to me in cutting taxes, and....

💬 3,233

↻ 9,140

♡ 33.4K



Retweets
87

Likes
151



7:03 PM - 19 Jun 2017

💬 13

↻ 87

♡ 151

