

February 27, 2018

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

Re: Violation of the Hatch Act by Jared Kushner

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Senior Advisor and Assistant to the President Jared Kushner violated the Hatch Act when he used his official title and position to praise President Donald J. Trump’s 2020 campaign manager in a press release issued by the Trump campaign. By using his official title and position to applaud the selection of President Trump’s 2020 campaign manager, Mr. Kushner likely engaged in political activity prohibited by law.

Factual Background

On February 27, 2018, President Trump’s 2020 campaign issued a press release, entitled “President Trump Announces 2020 Campaign Manager,” to announce the “appointment of Brad Parscale as Campaign Manager for his reelection committee.”¹ The press release was disseminated by email at approximately 11:10 a.m. to reporters and presumably to President Trump’s supporters, and also was posted on the Trump campaign website.²

The release indicated that as “advanced planning for the 2020 race begins,” the Trump Campaign” would be “focusing on building its infrastructure for the 2020 race” as well as engaging in the “2018 midterm elections” by “providing candidates with general support, endorsements, and rallying the support of the political grassroots by engaging Trump supporters in districts and states.”³

After being identified as “Senior Advisor and Assistant to the President, and President Trump’s son-in-law,” Mr. Kushner praised the selection of Mr. Parscale in the press release, stating: “Brad was essential in bringing a disciplined technology and data-driven approach to

¹ Trump Campaign Press Release, President Trump Announces 2020 Campaign Manager, Feb. 27, 2018, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/02/27232703/trump-press-release-jared-hatch.jpeg>.

² *Id.*; Trump Campaign Press Release, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/02/27232659/Kushner-2020-Hatch.jpeg>.

³ *Id.*

how the 2016 campaign was run. His leadership and expertise will [sic] help build a best-in-class campaign.”⁴ President Trump’s son Eric Trump also was quoted in the press release stating that Mr. Parscale “has our family’s complete trust and is the perfect person to be at the helm of the campaign.”⁵ Republican National Committee Chairman Ronna McDaniel also lauded Mr. Parscale in the press release, saying: “[W]e need to keep fighting to make America great. We’re committed to continuing this fight for our country by President Trump’s side and I’m thrilled Brad will help lead the effort.”⁶

After questions about the legality of the statement were raised,⁷ the Trump campaign apparently removed the reference to Mr. Kushner’s White House title and position in the version of the announcement that is now posted on the campaign’s website.⁸

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.”⁹ Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”¹⁰ “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.”¹¹

The OSC has provided guidance on applying this prohibition to social media and email. The guidance admonishes employees to “not engage in political activity in an official capacity at any time.”¹² 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.”¹³

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Robert Schroeder, Kushner may have broken law with Trump campaign statement, ethics group says, *Wall Street Journal*, Feb. 27, 2018, available at <https://www.marketwatch.com/story/kushner-may-have-broken-law-with-trump-campaign-statement-ethics-group-says-2018-02-27>.

⁸ Donald J. Trump for President, Inc. website, available at <http://www.donaldjtrump.com/media/president-trump-announces-2020-campaign-manager/>.

⁹ 5 C.F.R. § 735.101.

¹⁰ 5 C.F.R. § 734.302(b)(1).

¹¹ 5 C.F.R. § 734.101.

¹² U.S. Office of Special Counsel, The Hatch Act: Frequently Asked Question on Federal Employees and the Use of Social Media and Email, Dec. 18, 2015, available at [The-Hatch-Act-Frequently-Asked-Questions-on-Federal-Employees-and-the-Use-of-Social-Media-and-Email.aspx](http://www.osc.gov/The-Hatch-Act-Frequently-Asked-Questions-on-Federal-Employees-and-the-Use-of-Social-Media-and-Email.aspx).

¹³ *Id.*

Mr. Kushner's statement clearly is political activity under the statute. The statement that Mr. Parscale's "leadership and expertise" will help build a "best-in-class campaign" is an endorsement of the person President Trump selected to lead his 2020 reelection effort to a successful outcome. The statement was made in the context of the Trump campaign being in "advanced planning for the 2020 election" and focused not only on "building its infrastructure for the 2020 race" but also on engaging in the "2018 midterm elections" for which they intend to provide candidates with both general and grassroots support, as well as endorsements. Under these circumstances, Mr. Kushner's statement using his official title and position to endorse the appointment of the person to lead these efforts constitutes political activity since it is directed toward the success of President Trump being reelected in 2020 and toward Republican candidates in their running for partisan political office in the 2018 midterm elections.

In determining what activity is covered by the Hatch Act's prohibition, OSC has stated that an incumbent president is considered a "candidate" when he officially announces his candidacy for reelection.¹⁴ In guidance issued on February 7, 2017, however, OSC noted that while President Trump has not officially declared his candidacy, he has filed a statement of candidacy with the Federal Election Commission.¹⁵ Because the 2020 election was then "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.¹⁶ Yet, it specifically noted that 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 2020.¹⁷ Based on this interpretation, the fact that President Trump has not yet officially declared his candidacy is not relevant to this matter because Mr. Kushner's statement was made as part of a Trump campaign announcement in support of President Trump's reelection in 2020.

While the Trump campaign subsequently removed Mr. Kushner's title and position from the announcement posted on its website, the violation is nevertheless significant since the Trump campaign apparently acted to remove these items only after having broadly disseminated the press release by email to reporters and presumably its supporters, and only after questions about the legality of the statement were raised.

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. Mr. Kushner's use of his official title and position to praise President Trump's 2020 campaign manager is a blatant violation of the Hatch Act. OSC should commence

¹⁴ U.S. Office 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* [2017-President-Candidate-Guidance.pdf](#).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

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an immediate investigation and take or recommend appropriate disciplinary action against Mr. Kushner.

Sincerely,

A handwritten signature in blue ink, appearing to read 'NB', is positioned above the printed name.

Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in
Washington