

March 8, 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 - Supplemental Request

Dear Mr. Kerner:

This letter supplements Citizens for Responsibility and Ethics in Washington's ("CREW") February 27, 2018 request that the Office of Special Counsel ("OSC") investigate whether Senior Advisor and Assistant to the President Jared Kushner violated the Hatch Act by using his official title and position in a campaign press release in which he praised President Donald J. Trump's 2020 campaign manager. CREW respectfully requests that OSC also consider whether additional comments made by Mr. Kushner about the 2020 campaign manager in a White House staff meeting constitutes a violation of the Hatch Act.

The *Washington Post* reported that Mr. Kushner briefed senior staff on Wednesday, February 28, 2018, during a White House staff meeting on the selection of Brad Parscale to be the 2020 campaign manager.¹ According to the *Post*, Mr. Kushner indicated that Mr. Parscale was chosen because of his "digital savvy, and also stressed that Parscale has the full support of the president and his family."² The *Post* noted that it is "unusual for government officials to openly discuss campaign politics in a White House staff meeting."³

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."⁴ Federal employees in their official capacity are prohibited from, among other things, promoting the election or defeat of candidates for partisan political office.⁵

While not all of the facts and circumstances of the meeting are known (including the full details of Mr. Kushner's comments and of all the participants in attendance), there is credible evidence that Mr. Kushner may have violated the Hatch Act when he discussed and praised Mr.

¹ Philip Rucker, Ashley Parker, and Josh Dawsey, 'Jared has faded': Inside the 28 days of tumult that left Kushner badly diminished, *Washington Post*, Mar. 2, 2018, available at https://www.washingtonpost.com/politics/jared-has-faded-inside-the-28-days-of-tumult-that-left-kushner-badly-diminished/2018/03/02/62acb9ce-1ca8-11e8-9de1-147dd2df3829_story.html?utm_term=.ad4578747736.

² *Id.*

³ *Id.*

⁴ 5 C.F.R. § 734.302(a).

⁵ U.S. Office of Special Counsel Report of Prohibited Political Activity under the Hatch Act, OSC File No. HA-18-0966 (Kellyanne Conway), available at <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf#search=kellyanne%20conway>.

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Parscale during the meeting. The White House staff meeting is normally viewed as an official activity, and Mr. Kushner participated in the meeting by virtue of his official position. The comments Mr. Kushner made about Mr. Parscale, however, are reasonably viewed as “political activity” since they are directed toward the success of President Trump’s 2020 reelection bid.⁶ While White House employees paid from the Executive Office of the President (“EOP”) are permitted to engage in political activities during working hours and in a federal building,⁷ they are not permitted to engage in political activity while acting in their official capacity or to coerce other to participate.⁸ In fact, White House staff have been advised:

You may not use your official position to affect the result of an election. You may not, for example, use your official title when participating in any political activities, nor may you use your official authority to encourage or coerce anyone (including subordinates) to engage in or refrain from engaging in political activity.⁹

To the extent that Mr. Kushner attended the meeting in his official capacity, he may have violated this prohibition. Further, to the extent that subordinates were in attendance at the meeting and were not provided an opportunity to leave, they may have been “coerced” into participating in political activity. In addition, non-EOP employees are barred from engaging in political activity while on duty, in uniform, or in a government building.¹⁰ Therefore, additional facts need to be ascertained for your office to determine whether any such employees participated in the meeting and, if so, whether any additional violations may have occurred.

We note that your office has found a number of violations of the Hatch Act by White House advisors and senior administration officials over the past year, including violations by Senior Counselor Kellyanne Conway, Director of Social Media Dan Scavino Jr., and United Nations Representative Nikki Haley. As a result, Mr. Kushner’s conduct may be viewed as part of a systematic failure on the part of the administration to comply with its legal requirements under the Hatch Act. We encourage you to fully investigate and take every appropriate measure to ensure White House staff and administration officials are in compliance with the Hatch Act.

Sincerely,



Noah Bookbinder
Executive Director

⁶ See 5 C.F.R. § 734.101.

⁷ 5 C.F.R. §§ 734.306(b), 734.502.

⁸ 5 C.F.R. § 734.302.

⁹ See U.S. Office of Special Counsel Report of Prohibited Political Activity under the Hatch Act, OSC File No. HA-18-0966 (Kellyanne Conway) available at <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf#search=kellyanne%20conway>.

¹⁰ 5 C.F.R. § 734.306(b).