

May 31, 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 Lynne Patton

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Department of Housing and Urban Development (“HUD”) Regional Administrator Lynne M. Patton violated the Hatch Act by using her official social media account to “like” tweets posted by the Republican National Committee (“RNC”), RNC Chairwoman Ronna McDaniel, and President Donald J. Trump. These tweets were directed toward the success or failure of candidates in partisan races in West Virginia and Florida, and toward the success and failure of the Republican and Democratic political parties. By “liking” the posts on a Twitter account that refers to her official position, Ms. Patton likely engaged in political activity prohibited by law.

**Factual Background**

Ms. Patton was appointed HUD Regional Administrator for Region II on June 26, 2017, after previously serving as Senior Advisor and Director of Public Engagement for HUD Secretary Ben Carson.<sup>1</sup> As HUD Regional Administrator for Region II, Ms. Patton is responsible for administering HUD’s programs and operations in New York and New Jersey.<sup>2</sup> Since she was appointed Regional Administrator, Ms. Patton has “liked” several tweets of a partisan nature while using her official @LynnePattonHUD Twitter account.

@LynnePattonHUD Twitter Account

There is little doubt that the @LynnePattonHUD Twitter account is used by Ms. Patton for official government purposes. The official agency acronym “HUD” is referenced multiple times in the account, including in its name, and the account profile states that Ms. Patton is “working across the aisle to advance smarter policies, less regulation, increased funding, stricter inspections, more preservation & basic common sense in NY/NJ”<sup>3</sup> – the states within her jurisdiction. Furthermore, the account’s header features a photograph of Ms. Patton and other

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<sup>1</sup> HUD Press Release, Lynne Patton Named HUD Regional Administrator for Region II, June 26, 2017, available at <http://bit.ly/2KSPINX>.

<sup>2</sup> *Id.*

<sup>3</sup> Lynne Patton (HUD) (@LynnePattonHUD), Twitter, <https://twitter.com/LynnePattonHUD>.

HUD officials standing behind Vice President Mike Pence, HUD Secretary Carson, and HUD Deputy Secretary Pam Patenaude.<sup>4</sup> Ms. Patton also uses the @LynnePattonHUD Twitter account to post about official HUD activities and links to the official @HUDgov and @HUDNY\_NJ Twitter accounts.<sup>5</sup>

Ms. Patton also appears to maintain a personal Twitter account, @LynnePatton.<sup>6</sup> In the @LynnePatton Twitter account profile, Ms. Patton states that tweets from this account “are my own & do not represent @HUDgov.” Notably, she goes on to encourage users to follow her “at @LynnePattonHUD for official tweets”<sup>7</sup> – a statement which further underscores the official status of the @LynnePattonHUD Twitter account.

### Use of @LynnePattonHUD for Partisan Political Purposes

Since December 2017, Ms. Patton appears to have used her official @LynnePattonHUD Twitter account to “like” partisan political posts on at least three occasions. As detailed below, such actions likely violate the Hatch Act.

The first instance involved a tweet by President Trump regarding U.S. Representative Ron DeSantis, who was then (and currently is) one of many candidates in the Florida gubernatorial race.<sup>8</sup> On December 22, 2017, President Trump tweeted:

Congressman Ron DeSantis is a brilliant young leader, Yale and then Harvard Law, who would make a GREAT Governor of Florida. He loves our Country and is a true FIGHTER!<sup>9</sup>

On or around December 23, 2017, Ms. Patton “liked” the President’s Tweet using her official @LynnePattonHUD Twitter account.<sup>10</sup>

Next, Ms. Patton used her official account to “like” a tweet by RNC Chairwoman Ronna McDaniel critical of Senator Joe Manchin (D-WV), who is running for reelection in November

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<sup>4</sup> *Id.* See also Lynne Patton (HUD) (@LynnePattonHUD), Twitter (Mar. 16, 2018), <https://twitter.com/LynnePattonHUD/status/974725750480949250> (“Surprise visit from @VP during our @HUDgov Senior Leadership Meeting who expressed both his & @POTUS’ full confidence in @SecretaryCarson for the innovative solutions being generated by him & his team to expand opportunities for families across this country!”).

<sup>5</sup> See generally Lynne Patton (HUD) (@LynnePattonHUD), Twitter, <https://twitter.com/LynnePattonHUD>.

<sup>6</sup> @LynnePatton, Twitter, <https://twitter.com/LynnePatton>.

<sup>7</sup> *Id.* (emphasis added.)

<sup>8</sup> Brendan Farrington, [Trump's tweeted choice for Florida governor enters the race](http://bit.ly/2xbyadX), *Associated Press*, Jan. 5, 2018, available at <http://bit.ly/2xbyadX>. See also Candidate Listing for Florida 2018 General Election, Florida Department of State website, available at <http://dos.elections.myflorida.com/candidates/CanList.asp>.

<sup>9</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 22, 2017), <http://bit.ly/2scAvzF>.

<sup>10</sup> Lynne Patton (HUD) (@LynnePattonHUD), Twitter, <https://bit.ly/2ILHeb3>. The dates on which Ms. Patton “liked” the tweets at issue in this letter are estimates based on CREW’s review of other tweets she liked on her @LynnePattonHUD Twitter account at approximately the same time.

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2018.<sup>11</sup> On February 7, 2018, Chairwoman McDaniel tweeted two side-by-side photographs, each featuring Senator Manchin standing next to a woman holding a sign pertaining to Planned Parenthood (“@GOPChairwoman Tweet”).<sup>12</sup> The women in the two photographs are different, and each woman’s sign features a different message. The tweet read:

These photos were taken less than 3 weeks apart. If Joe Manchin can’t be honest about where he stands, he doesn’t deserve to stand for West Virginians. #WVSen.<sup>13</sup>

On or around February 8, 2018, Ms. Patton “liked” Chairwoman McDaniel’s Tweet using her official @LynnePattonHUD Twitter account.<sup>14</sup>

Third, on or around April 19, 2018, Ms. Patton, using her official @LynnePattonHUD Twitter account, “liked” a tweet posted by the RNC’s official Twitter account, @GOP.<sup>15</sup> This tweet read:

MIKE POMPEO

- First in his class at West Point
- Served in the military and Congress
- Received bipartisan confirmation to be CIA Director
- Met with North Korean officials to talk denuclearization

That’s the appointee Democrats DON’T want as Secretary of State.<sup>16</sup>

The RNC is the management arm of the Republican Party.<sup>17</sup>

### **Potential Violations**

#### **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.”<sup>18</sup>

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<sup>11</sup> National Leadership, Republican National Committee website, available at <https://gop.com/leaders/national/>; West Virginia Secretary of State – Online Data Services, Elections, Candidate Detail, Joseph Manchin, III, available at <http://bit.ly/2KUJwFg>.

<sup>12</sup> Ronna McDaniel (@GOPChairwoman), Twitter (Feb. 7, 2018), <http://bit.ly/2GP8N1g>.

<sup>13</sup> *Id.*

<sup>14</sup> Lynne Patton (HUD) (@LynnePattonHUD), Twitter, <https://bit.ly/2IDVVR7>.

<sup>15</sup> Lynne Patton (HUD) (@LynnePattonHUD), Twitter, <https://bit.ly/2s31kqG>; GOP (@GOP), Twitter, <https://twitter.com/GOP> (describing account as the location for “official updates from the Republican National Committee”).

<sup>16</sup> GOP (@GOP), Twitter (Apr. 19, 2018), <http://bit.ly/2IIns49>.

<sup>17</sup> See 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15 (defining “Political party” as an organization that “nominates” or “selects a candidate for election to any Federal office, whose name appears on an election ballot as the candidate of the association, committee, or organization”); Rules of the Republican Party, Rule 1(a), available at <https://prod-cdn-static.gop.com/docs/2016-Republican-Rules-FINAL.pdf>.

<sup>18</sup> 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.”<sup>19</sup> “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.”<sup>20</sup>

OSC has provided recent guidance on applying this prohibition to social media.<sup>21</sup> In its guidance, OSC sets forth a rule prohibiting employees from using a “social media account designated for official purposes to post or share messages directed at the success or failure of a political party, candidate in a partisan race, or partisan political group. All such official social media accounts should remain politically neutral.”<sup>22</sup> One example of prohibited conduct provides:

*Example 1: While accessing the Twitter account you use for official purposes, you see that a political party tweeted its support for a candidate in a partisan race. You **may not** retweet or like that post from the account used for official purposes (or from your personal social media account if you are on duty or in the workplace).<sup>23</sup>*

The Hatch Act further governs conduct while on duty or in the federal government workplace. To this end, OSC guidance provides that federal employees “may not post, like, share, or retweet a message or comment in support of or opposition to a political party, candidate in a partisan race, or partisan political group while on duty or in the workplace,” even if it is from an employee’s personal Twitter account.<sup>24</sup>

As an initial matter, there is no question that the @LynnePattonHUD Twitter account is “a social media account designated for official purposes.” The account handle features the agency’s official acronym, the profile features a picture of Ms. Patton with elected and appointed political officials, and her personal twitter account describes the @LynnePattonHUD account as the place for “official tweets.” In addition, Ms. Patton regularly uses the @LynnePattonHUD account to post about official HUD activities and link to HUD Twitter accounts. Thus, the @LynnePattonHUD account clearly is an official account and Ms. Patton’s use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Ms. Patton’s use of the @LynnePattonHUD Twitter account to “like” partisan political posts by @GOPChairwoman, @GOP, and @realDonaldTrump constitutes political activity under the Hatch Act. Each of the tweets at issue are clear examples of political messages. President Trump’s tweet originated from his @realDonaldTrump Twitter

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<sup>19</sup> 5 C.F.R. § 734.302(b)(1).

<sup>20</sup> 5 C.F.R. § 734.101.

<sup>21</sup> Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2; see also 5 U.S.C. §§ 7324(a)(1)-(2), 5 C.F.R. § 734.306 (barring employees from engaging in political activity while on duty or in a government workplace).

account, which he frequently uses to tweet messages supporting Republican candidates for office.<sup>25</sup> In that tweet, President Trump stated that Rep. DeSantis “would make a GREAT Governor of Florida,” “loves our Country” and “is a true FIGHTER!”<sup>26</sup> – a clear expression of support for the success of Rep. DeSantis in the 2018 primary and general elections for governor of Florida.

Just as President Trump’s tweet featured a clear expression of support for a candidate for political office, Chairwoman McDaniel’s tweet criticized an opposing party’s candidate in an effort to defeat him in an upcoming election. Chairwoman McDaniel uses the @GOPChairwoman Twitter account in her position as the RNC Chairwoman, and she frequently tweets in support of the success of the Republican Party in elections and against Democratic Party candidates.<sup>27</sup> The tweet at issue is one such critique of the opposing party’s candidate for office. By stating “[i]f Joe Manchin can’t be honest about where he stands, he doesn’t deserve to stand for West Virginians” and using the “#WVSen” hashtag,<sup>28</sup> Chairwoman McDaniel is critiquing Senator Manchin in order to promote his failure as the Democratic Party candidate in the upcoming U.S. Senate election in West Virginia.

The third tweet at issue similarly implicates the Hatch Act, as it originated from the official Twitter account of the RNC and appears to criticize “Democrat[ic]” senators who opposed President Trump’s nominee for Secretary of State.<sup>29</sup> The purpose of the RNC’s Twitter account is to support the success of Republican Party candidates, and the account features slogans and posts that communicate the RNC’s desire to retain Republican Party control of Congress in the upcoming midterm elections.<sup>30</sup> A tweet on that account criticizing Democratic members of Congress is therefore political activity under the Hatch Act, as is liking that tweet.

By liking these three tweets from her official Twitter account, Ms. Patton clearly ran afoul of the Hatch Act, which requires her to remain politically neutral when using official social media accounts. In fact, Ms. Patton appears to have engaged in the type of conduct expressly prohibited by OSC’s example of prohibited activity when she used her official social media account to “like” tweets that are directed at the success or failure of a political party or candidate in a partisan race.<sup>31</sup> In addition, to the extent Ms. Patton may have “liked” the tweets at issue

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<sup>25</sup> For examples of other tweets supporting Republican political candidates, *see* Donald J. Trump (@realDonaldTrump), Twitter (May 21, 2018), <http://bit.ly/2GSzF00> (“@AsaHutchinson, the great Governor of Arkansas, is in a primary tomorrow. He has done an incredible job with a focus on lower taxes, border security, and crime prevention. Asa loves our military and our veterans. I fully endorse Asa for Governor!”); Donald J. Trump (@realDonaldTrump), Twitter (Aug. 14, 2017), <https://bit.ly/2LEpBF2> (“Luther Strange of the Great State of Alabama has my endorsement. He is strong on Border & Wall, the military, tax cuts & law enforcement.”)

<sup>26</sup> Donald J. Trump (@realDonaldTrump), Twitter (Dec. 22, 2017), <http://bit.ly/2scAvzF>.

<sup>27</sup> Ronna McDaniel (@GOPChairwoman), Twitter, <https://twitter.com/GOPChairwoman?lang=en>.

<sup>28</sup> Ronna McDaniel (@GOPChairwoman), Twitter (Feb. 7, 2018), <http://bit.ly/2GP8N1g>.

<sup>29</sup> GOP (@GOP), Twitter (Apr. 19, 2018), <http://bit.ly/2IIns49>.

<sup>30</sup> GOP (@GOP), Twitter, <https://twitter.com/GOP>. The use of the slogan “Defy History 2018” on the account’s banner picture refers to the GOP’s desire to retain control of Congress in the 2018 midterm elections. *See* Ronna McDaniel, *Republicans Are Set to Defy History*, *The Hill*, May 20, 2018, available at <http://bit.ly/2s9YEEYr>.

<sup>31</sup> Office of Special Counsel, *Hatch Act Guidance on Social Media*, at 7.

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while on duty or in a government workplace, she likely violated a separate provision of the Hatch Act barring employees from engaging in such activity while on duty or in a government workplace.<sup>32</sup>

### **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 or a political party while using his or her official position. By liking the tweets at issue, which advocate the election or defeat of partisan political candidates or are directed toward the success of the Republican Party and the failure of the Democratic Party, Ms. Patton appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Patton.

Sincerely,



Noah Bookbinder  
Executive Director

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<sup>32</sup> *Id.* at 2.