

July 16, 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 Stephanie Grisham

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Deputy Assistant to the President and Communications Director for the Office of the First Lady Stephanie Grisham violated the Hatch Act by using her official social media account to tweet a message including President Trump’s campaign slogan “#MAGA” (Make America Great Again) along with a picture from a 2015 Trump campaign rally. This tweet was directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By tweeting this post on a Twitter account that refers to her official position, Ms. Grisham likely engaged in political activity prohibited by law.

Factual Background

Ms. Grisham was appointed as Communications Director for the Office of the First Lady in March 2017, after previously serving on the Trump campaign and as White House Deputy Press Secretary.¹ As communications director for the First Lady, Ms. Grisham is responsible for helping to build out the First Lady’s agenda and to promote Mrs. Trump’s initiatives as First Lady.² Since the beginning of the Trump Administration, Ms. Grisham has used the official Twitter handle @StephGrisham45.

@StephGrisham45 Twitter Account

There is little doubt that the @StephGrisham45 Twitter account is used by Ms. Grisham for official government purposes. According to her Twitter page, Ms. Grisham began using the handle in January 2017, when Donald J. Trump became the 45th President of the United States.³ The account profile states that Ms. Grisham is “@Whitehouse Director of Communications for @FLOTUS Melania Trump. Former Dep Press Sec for @potus.”⁴ Ms. Grisham’s @StephGrisham45 profile also states, “Tweets may be archived: <http://wh.gov/privacy>.”⁵

¹ Betsy Klein and Noah Gray, [Melania Trump hires communications director](https://www.cnn.com/2017/03/27/politics/melania-trump-stephanie-grisham-communications-director/index.html), CNN, Mar. 27, 2017, available at <https://www.cnn.com/2017/03/27/politics/melania-trump-stephanie-grisham-communications-director/index.html>.

² *Id.*

³ Stephanie Grisham @StephGrisham45, Twitter, <https://twitter.com/StephGrisham45>.

⁴ *Id.*

⁵ *Id.*

Furthermore, the account's header features a photograph of a Marine helicopter leaving the White House with the Washington monument in the background and appears to have been taken from the White House complex.⁶ Ms. Grisham also uses the @StephGrisham45 Twitter account to post about official White House activities and links to the official @Whitehouse, @POTUS, and @FLOTUS Twitter accounts.⁷

Use of @StephGrisham45 for Partisan Political Purposes

On July 11, 2018, Ms. Grisham appears to have used her official @StephGrisham45 Twitter account to tweet a partisan political post. As detailed below, this action likely violates the Hatch Act. On this date, Ms. Grisham tweeted:

Three years ago today I listened to my gut & joined the Trump team in [#PHX...](#)& life has never been the same. So proud to work for both [@POTUS](#) [@realDonaldTrump](#) & [@FLOTUS](#)  [#MAGA](#)⁸

The tweet is accompanied by a photo that appears to be from a 2015 campaign rally for then-candidate Donald J. Trump held in Phoenix, Arizona on July 11, 2015.⁹ Then-candidate Trump is visible in the image posted by Ms. Grisham and a campaign banner adorned with the candidate's slogan "Make America Great Again" can also be found in the far-left of the photograph.¹⁰

March 2018 OSC and White House Guidance on Hatch Act Compliance

On March 5, 2018, OSC published a document entitled, "Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection."¹¹ In addition to reminding federal employees regarding the specific prohibitions of the Hatch Act on political activity, the updated guidance offered additional clarification regarding the use of the social media accounts.¹² OSC's updated guidance stated that the Hatch Act's prohibition related to political activity "is broad and encompasses more than displays or communications (including in-person and via email or social media) that expressly advocate for

⁶ *Id.*

⁷ See generally Stephanie Grisham (@StephGrisham45), Twitter, <https://twitter.com/StephGrisham45>.

⁸ Stephanie Grisham (@StephGrisham45), Twitter (July 11, 2018), <https://twitter.com/StephGrisham45/status/1016969889842593793>.

⁹ Compare Stephanie Grisham (@StephGrisham45), Twitter (July 11, 2018), <https://twitter.com/StephGrisham45/status/1016969889842593793> with Donald Trump fires up supporters at Phoenix rally, *KTAR*, July 11, 2015, available at <http://ktar.com/story/493448/donald-trump-fires-up-supporters-at-phoenix-rally/>.

¹⁰ Stephanie Grisham (@StephGrisham45), Twitter (July 11, 2018), <https://twitter.com/StephGrisham45/status/1016969889842593793>.

¹¹ Office of Special Counsel, Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection, Mar. 5, 2018, available at <https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf>.

¹² *Id.*

or against President Trump’s reelection.”¹³ Notably, the OSC guidance included the following example:

[W]hile on duty or in the workplace, employees may not: wear, display, or distribute items with the slogan “Make America Great Again” or any other materials from President Trump’s 2016 or 2020 campaigns; use hashtags such as #MAGA or #ResistTrump in social media posts or other forums; or display non-official pictures of President Trump.¹⁴

On March 6, 2018, just one day after OSC’s updated Hatch Act guidance was published, OSC concluded its Hatch Act investigation of Counselor to the President Kellyanne Conway, finding that she violated the law in two television interviews and referring a report to the President for “appropriate disciplinary action.”¹⁵

On March 7, 2018, the White House counsel’s office sent a memo to White House staff highlighting OSC’s new Hatch Act guidance.¹⁶ According to public reports, the memo “cautioned staff to remove all campaign materials from their workplaces now that his reelection efforts are underway” including items adorned with the slogan “Make America Great Again.”¹⁷ White House personnel were also advised that under the Hatch Act, they are “restricted from using the campaign slogan, ‘Make America Great Again’ or ‘MAGA,’ in official White House communications or posting it to their personal social media accounts while they’re working.”¹⁸

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.”¹⁹ Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”²⁰ “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.”²¹

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Office of Special Counsel, OSC Concludes Hatch Act Investigation of Kellyanne Conway, Finds Two Violations, and Refers Findings to President for Appropriate Disciplinary Action, Mar. 6, 2018, available at <https://osc.gov/News/pr-18-24.pdf>.

¹⁶ Veronica Stracqualursi and Cristina Alesci, Trump’s legal team: No #MAGA at the White House, *CNN*, Mar. 8, 2018, available at <https://www.cnn.com/2018/03/08/politics/white-house-counsel-memo-hatch-act/index.html>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 5 U.S.C. § 7323(a)(1).

²⁰ 5 C.F.R. § 734.302(b)(1).

²¹ 5 C.F.R. § 734.101.

OSC has provided recent guidance on applying this prohibition to social media.²² 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.”²³ As stated above, in March 2018, published updated Hatch Act guidance making clear that since President Trump is officially a candidate for reelection, federal employees are prohibited from using official social media accounts to use the campaign slogan “Make America Great Again” or “MAGA.”²⁴ Under OSC’s updated guidance, using a social media account to display an unofficial image of Donald Trump or a Trump campaign rally displaying a “Make America Great Again” banner would also constitute prohibited political activity under the Hatch Act.²⁵

As an initial matter, there is no question that the @StephGrisham45 Twitter account is “a social media account designated for official purposes.” The account lists her official positions as “Director of Communications for @FLOTUS”, the profile features a picture that appears to have been taken from the White House grounds, and the handle features the number “45” to signify the 45th President of the United States, consistent with the practice of many other Trump Administration officials. In addition, Ms. Grisham regularly uses the @StephGrisham45 account to post about official White House activities and links to other official government Twitter accounts. Thus, the @StephGrisham45 account clearly is an official account and Ms. Grisham’s use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Ms. Grisham’s use of the @StephGrisham45 Twitter account to post the July 11, 2018 tweet about her service on the Trump campaign constitutes political activity under the Hatch Act. The tweet at issue is a clear example of a political message. The tweet includes an image of a political rally for then-candidate Trump where he can be seen standing at a podium and there is a “Make America Great Again” banner in the background. Moreover, the tweet includes President Trump’s campaign slogan “#MAGA” which both OSC and the White House have advised White House staff constitutes a political slogan.

By using her official Twitter account to transmit this message, Ms. Grisham clearly ran afoul of the Hatch Act, which requires her to remain politically neutral when using official social media accounts. In fact, Ms. Grisham engaged in the type of conduct expressly identified by OSC as an example of prohibited activity when she used her official social media account to tweet President Trump’s campaign slogan and an image from his 2015 campaign rally. It is difficult to argue that this conduct was not directed at the success or failure of a political party or

²² Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, *available at* <http://bit.ly/2J60680>.

²³ *Id.* at 7.

²⁴ Office of Special Counsel, Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection, Mar. 5, 2018, *available at* <https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf>.

²⁵ *Id.* at 7.

Hon. Henry Kerner
July 16, 2018
Page 5

candidate in a partisan race.²⁶ This violation is even more egregious given the specific guidance provided by OSC and the White House in March following the Hatch Act violations by another White House employee.

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 tweeting the message and picture at issue, which advocates the election or defeat of a partisan political candidate, Ms. Grisham appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Grisham.

Sincerely,



Noah Bookbinder
Executive Director

²⁶ Office of Special Counsel, Hatch Act Guidance on Social Media, at 7.