

August 2, 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 Alyssa Farah

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Press Secretary for Vice President Mike Pence, Alyssa Farah, violated the Hatch Act by using her official social media account to tweet messages that included President Trump’s campaign slogan “MAGA” (Make America Great Again). These tweets were directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By tweeting these posts on a Twitter account that refers to her official position, Ms. Farah likely engaged in political activity prohibited by law.

Factual Background

Ms. Farah was appointed Press Secretary to the Vice President in September 2017 following her role as a top adviser to the House Freedom Caucus.¹ As Press Secretary, Ms. Farah serves as the Vice President’s primary spokesperson.² Shortly after joining the Trump Administration, Ms. Farah began using the official Twitter handle @VPPressSec.

@VPPressSec Twitter Account

There is little doubt that the @VPPressSec Twitter account is used by Ms. Farah for official government purposes. According to her Twitter page, the handle was created in January 2017, when Donald Trump began serving as the 45th President of the United States.³ The account profile states that Ms. Farah’s account, @VPPressSec, is the “Official Account of Press Secretary for @VP Mike Pence. Proudly representing @POTUS Trump’s Administration.”⁴ Ms. Farah’s @VPPressSec profile also states, “Tweets may be archived: <http://wh.gov/privacy>.”⁵ Furthermore, the account’s profile header features a photograph of Vice President Pence addressing a group of servicemen and servicewomen.⁶ Ms. Farah also uses the @VPPressSec

¹ Matthew Nussbaum and Jacob Sherman, *Pence taps top Freedom Caucus aide as press secretary*, *Politico*, Sept. 18, 2017, available at <https://www.politico.com/story/2017/09/18/alyssa-farah-mike-pence-press-secretary-242844>.

² *Id.*

³ Alyssa Farah (@VPPressSec), Twitter, <https://twitter.com/VPPressSec>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

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Twitter account to post about official White House activities and links to the official Twitter account of @POTUS and @VP as well as the official website for the White House, www.whitehouse.gov.⁷ The account also has been “verified” by Twitter.

Ms. Farah also maintains a personal Twitter account, @Alyssafarah.⁸ Her personal Twitter account states in part: “Press Secretary for @VP Mike Pence. Hill vet, former @FreedomCaucus, @Jim_Jordan, & @RepMarkMeadows spox. Personal acct. For official updates follow:@VPPressSec.”⁹

Use of @VPPressSec for Partisan Political Purposes

Since March 2018, Ms. Farah appears to have used her official @VPPressSec Twitter account to tweet partisan political posts on multiple occasions. As detailed below, such actions likely violate the Hatch Act.

On Thursday, April 26, 2018, Ms. Farah retweeted a post from Vice President Pence regarding his visit to Indiana.¹⁰ The post included her own commentary: “Jobs! Jobs! Jobs! #MAGA.” The tweet reads in full:



On Friday, May 4, 2018, Ms. Farah retweeted an article from Fox News, adding her own commentary, stating: “This is what #MAGA looks like: Under @POTUS TRUMP, the unemployment rate is the lowest it’s been in 17 years.”¹¹

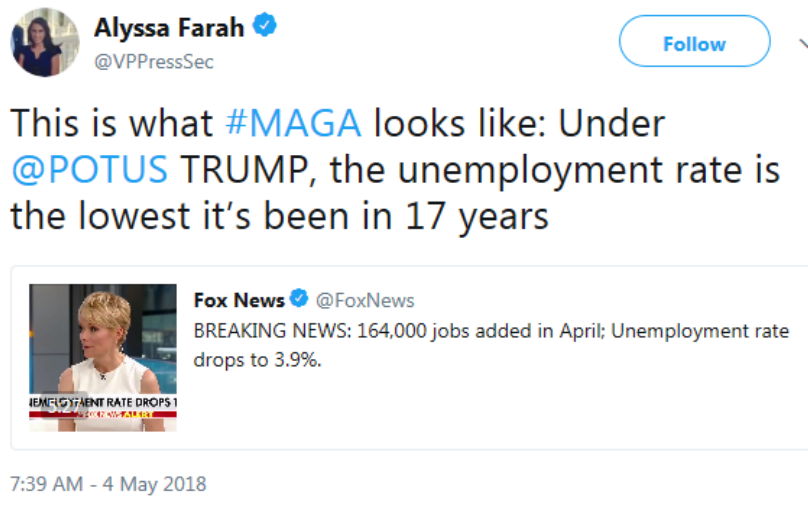
⁷ See generally Alyssa Farah (@VPPressSec), Twitter, <https://twitter.com/VPPressSec>.

⁸ Alyssa Farah (@Alyssafarah), Twitter, <https://twitter.com/AlyssaFarah>.

⁹ *Id.*

¹⁰ Alyssa Farah (@VPPressSec), Twitter (Apr. 26, 2018), <https://twitter.com/VPPressSec/status/989524977383825408>.

¹¹ Alyssa Farah (@VPPressSec), Twitter (May 4, 2018), <https://twitter.com/VPPressSec/status/992413498943725568>.



March 2018 OSC and White House Hatch Act Guidance

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.¹² 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.”¹³ The document acknowledged that President Trump became a “candidate for partisan political office” as described in the Hatch Act in February when he publicly announced his candidacy.¹⁴ 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 social media accounts.¹⁵ 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 or against President Trump’s reelection.”¹⁶ 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

¹² Katie Rogers and Maggie Haberman, *Trump’s 2020 Campaign Announcement Had a Very Trumpian Rollout*, *New York Times*, Feb. 27, 2018, available at <https://www.nytimes.com/2018/02/27/us/politics/trump-2020-brad-parscale.html>.

¹³ 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>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

#MAGA or #ResistTrump in social media posts or other forums; or display non-official pictures of President Trump.¹⁷

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."¹⁸ The White House defended Ms. Conway's conduct stating that she did not violate the Hatch Act, and no disciplinary action appears to have been taken in response to OSC's findings.¹⁹

On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.²⁰

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."²¹ Activities covered by this prohibition include the official "[u]sing his or her official title while participating in political activity."²² "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."²³

OSC has provided recent guidance on applying this prohibition to social media.²⁴ 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."²⁵

¹⁷ *Id.*

¹⁸ 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>.

¹⁹ Alexander Mallin, Kellyanne Conway says she discussed Hatch Act violations with President Trump, *ABCNews*, Mar. 8, 2018, available at <https://abcnews.go.com/Politics/kellyanne-conway-discussed-hatch-act-violations-president-trump/story?id=53609559>.

²⁰ 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>.

²¹ 5 U.S.C. § 7323(a)(1).

²² 5 C.F.R. § 734.302(b)(1).

²³ 5 C.F.R. § 734.101.

²⁴ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

²⁵ *Id.* at 7.

OSC's March 2018 updated Hatch Act guidance clarifies that since President Trump officially became a candidate for reelection on February 27, 2018, federal employees are prohibited from using the campaign slogan "Make America Great Again" or "MAGA" on official social media accounts.²⁶

OSC has already acknowledged that the Hatch Act does not provide an exemption for executive branch employees speaking on behalf of a principal who is in fact exempt from the Hatch Act's restrictions. In its report regarding Hatch Act violations by Ms. Conway, OSC stated:

While the President is exempt from the Hatch Act, his exemption does not extend to any other employee, including those employed in the White House Office. OSC understands that [an employee's] job duties may include publicly reinforcing the Administration's positions on a host of policy issues. And the Hatch Act does not prohibit [an employee] from doing so, provided she carries out her job duties in a manner that complies with the law.²⁷

As an initial matter, there is no question that the @VPPressSec Twitter account is "a social media account designated for official purposes." The Twitter page describes the account as the "Official Account of Press Secretary for @VP Mike Pence", and the profile features a picture of the Vice President. In addition, Ms. Farah regularly uses the @VPPressSec account to post about official White House activities and links to other official government Twitter accounts. She also maintains a separate personal Twitter account. Thus, the @VPPressSec account clearly is an official account, and Ms. Farah's use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Ms. Farah's use of the @VPPressSec Twitter account to post tweets featuring the Trump campaign slogan constitutes political activity under the Hatch Act. Both OSC and the White House have provided White House staff with legal guidance concluding that tweeting President Trump's campaign slogan "#MAGA" constitutes political activity because it is directed at the success or failure of a political party or candidate in a partisan race.²⁸ By using her official Twitter account to transmit these messages, Ms. Farah ran afoul of the Hatch Act, which requires her to remain politically neutral when using official social media accounts. This violation is even more egregious given the specific guidance provided by OSC in March and by the White House following Hatch Act violations by another White House employee.

²⁶ 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.

²⁷ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018, available at <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>.

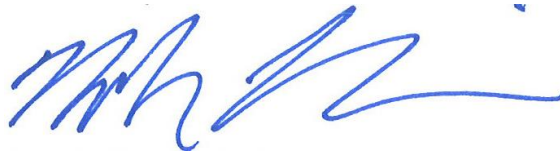
²⁸ Office of Special Counsel, Hatch Act Guidance on Social Media, at 7.

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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, including through an official social media account. By tweeting the messages at issue, which advocate the election or defeat of a partisan political candidate, Ms. Farah appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Farah.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director