

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 Helen Aguirre Ferré

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Special Assistant to the President and Director of Media Affairs Helen Aguirre Ferré violated the Hatch Act by using her official social media account to promote President Trump’s campaign slogan “Make America Great Again” or “#MAGA.” These actions were directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By sharing these posts on a Twitter account that refers to her official position, Ms. Ferré likely engaged in political activity prohibited by law.

Factual Background

Ms. Ferré was appointed White House Director of Media Affairs in January 2017 following her role as the Hispanic communications director for the Republican National Committee.¹ As Director of Media Affairs for President Trump, Ms. Ferré is now responsible for delivering and selling the president’s message to constituents.² Since joining the Trump Administration, Ms. Ferré has used the official Twitter handle @haferre45.³

@haferre45 Twitter Account

There is little doubt that the @haferre45 Twitter account is used by Ms. Ferré for official government purposes. According to her Twitter page, Ms. Ferré began using the handle in January 2017, when she joined the Trump Administration.⁴ The account profile states that Ms. Ferré is “@WhiteHouse Director of Media Affairs.”⁵ Ms. Ferré’s @haferre45 profile also states, “Tweets may be archived: WH.gov/privacy.”⁶ Furthermore, the account’s profile picture is an image of Ms. Ferré standing on the White House grounds with the White House in the

¹ Marc Caputo, *Hispanic former Trump critic signs on to his administration*, *Politico*, Jan. 19, 2017, available at <https://www.politico.com/story/2017/01/trump-helen-aguirre-ferre-233872>.

² Editorial, *Miami’s Woman in the White House*, *Miami Herald*, Feb. 1, 2017, available at <https://www.miamiherald.com/opinion/editorials/article130195159.html>.

³ Helen Aguirre Ferre (@haferre45), Twitter, <https://twitter.com/haferre45>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

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background.⁷ Ms. Ferré also uses the @haferre45 Twitter account to post about official White House activities and links to the official Twitter account of @WhiteHouse and the official website for the White House, www.wh.gov.⁸ The account also has been “verified” by Twitter.

Ms. Ferré also maintains a personal Twitter account, @helenaguirrefer.⁹ Her profile indicates that she started using this account in April 2009.¹⁰ The profile description identifies Ms. Ferré as “Special Assistant to the President and Director of Media Affairs @realdonaldtrump; former Dir of Hispanic Communications, Republican National Committee @GOP.”¹¹

Use of @haferre45 for Partisan Political Purposes

Since March 2018, Ms. Ferré appears to have used her official @haferre45 Twitter account for partisan political purposes on at least two occasions. As detailed below, such actions likely violate the Hatch Act.

While the profile picture for Ms. Ferré’s @haferre45 Twitter account is a picture of her standing in front of the White House, the header is a photo of what appears to be President Trump’s campaign slogan, “Make America Great Again.”¹² The image can be seen in full below:



It is unclear when Ms. Ferré originally made this image her header, but it was the header image on her account as of July 27, 2018.

On March 18, 2018, Ms. Ferré retweeted a post from Assistant to the President for Homeland Security and Counterterrorism Thomas Bossert regarding the Trump Administration’s

⁷ *Id.*

⁸ *See generally* Helen Aguirre Ferre (@haferre45), Twitter, <https://twitter.com/haferre45>.

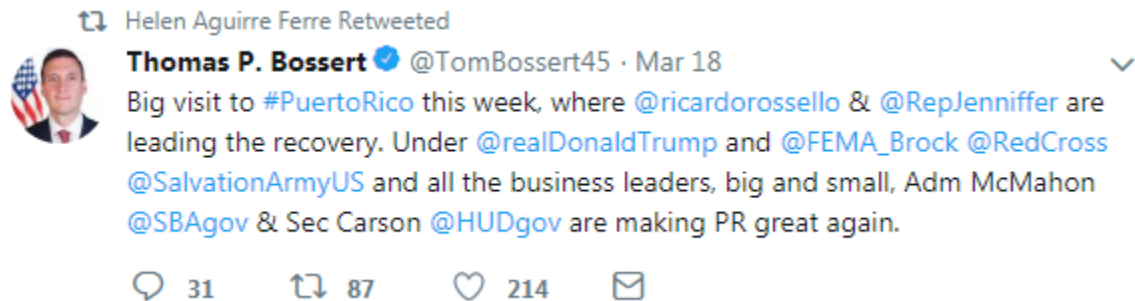
⁹ Helen Aguirre Ferre (@helenaguirrefer), Twitter, <https://twitter.com/helenaguirrefer>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Helen Aguirre Ferre (@haferre45), Twitter, <https://twitter.com/haferre45> (accessed July 24, 2018).

disaster relief efforts in Puerto Rico that invoked and promoted the President’s campaign slogan, “Make America Great Again”.¹³ The tweet reads in full:



Mr. Bossert left the Trump administration in April 2018.¹⁴

While Mr. Bossert did not recite the Trump campaign’s full slogan, using the term “great again” almost certainly was intended to invoke “Make America Great Again” and suggest that President Trump had fulfilled his campaign promise. In addition to the terms “Make America Great Again” and “MAGA”, Donald Trump has used “great again” in order to promote his political campaign. For example, during Mr. Trump’s June 2015 presidential campaign announcement speech, he used the term several times, saying:

We need somebody that can take the brand of the United States and make it great again. It’s not great again. We need— we need somebody— we need somebody that literally will take this country and make it great again. We can do that. . . . You know, all of my life, I’ve heard that a truly successful person, a really, really successful person and even modestly successful cannot run for public office. Just can’t happen. And yet that’s the kind of mindset that you need to make this country great again. So ladies and gentlemen . . . I am officially running . . . for president of the United States, and we are going to make our country great again.¹⁵

During the 2016 presidential campaign, then candidate Trump’s book previously published under the title “Crippled America” was republished as “Great Again: How to Fix Our Crippled America.”¹⁶ More recently, following a June 27, 2018 political rally in North Dakota, President

¹³ Tom Bossert (@TomBossert45), Twitter (Mar. 18, 2018), <https://twitter.com/TomBossert45/status/975390834991423488>.

¹⁴ Mike Calia and Eamon Javers, [Trump’s top homeland security advisor Tom Bossert resigns a day after John Bolton starts as national security advisor](https://www.cnn.com/2018/04/10/trumps-top-homeland-security-advisor-tom-bossert-to-resign.html), *CNBC*, Apr. 10, 2018, available at <https://www.cnn.com/2018/04/10/trumps-top-homeland-security-advisor-tom-bossert-to-resign.html>.

¹⁵ Time Staff, [Here’s Donald Trump’s Presidential Announcement Speech](http://time.com/3923128/donald-trump-announcement-speech/), *Time*, June 16, 2015, available at <http://time.com/3923128/donald-trump-announcement-speech/>.

¹⁶ Simon & Schuster, [Great Again: How to Fix Our Crippled America](http://www.simonandschuster.com/books/Great-Again/Donald-J-Trump/9781501138003) by Donald J. Trump, <http://www.simonandschuster.com/books/Great-Again/Donald-J-Trump/9781501138003>, accessed July 20, 2018.

Trump tweeted “Thank you North Dakota. Together, we are MAKING AMERICA SAFE AND GREAT AGAIN! #MAGA”.¹⁷

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.¹⁸ 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.”¹⁹ The document acknowledged that Trump became a “candidate for partisan political office” as described in the Hatch Act in February when he publicly announced his candidacy.²⁰ 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.²¹ 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.”²² 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.²³

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.”²⁴ The White House defended Ms. Conway’s

¹⁷ Donald J. Trump (@realDonaldTrump), Twitter (June 27, 2017),

<https://twitter.com/realdonaldtrump/status/1012169482272460800?lang=en>.

¹⁸ 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>.

¹⁹ 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>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 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>.

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.²⁵

On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.²⁶

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.”²⁷ Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”²⁸ “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.”²⁹

OSC has provided recent guidance on applying this prohibition to social media.³⁰ 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.”³¹ 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).³²*

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

²⁵ 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>.

²⁶ 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>.

²⁷ 5 U.S.C. § 7323(a)(1).

²⁸ 5 C.F.R. § 734.302(b)(1).

²⁹ 5 C.F.R. § 734.101.

³⁰ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

³¹ *Id.* at 7.

³² *Id.*

prohibited from using official social media accounts to use the campaign slogan “Make America Great Again” or “#MAGA.”³³

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.³⁴

As an initial matter, there is no question that the @haferre45 Twitter account is “a social media account designated for official purposes.” The account lists her official position as “@WhiteHouse Director of Media Affairs”, and the profile features a picture of Ms. Ferré on the White House grounds. 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. Ferré regularly uses the @haferre45 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 @haferre45 account clearly is an official account, and Ms. Ferré’s use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Ms. Ferré’s use of the @haferre45 Twitter account to post images and tweets promoting 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 an image of President Trump’s campaign slogan “Make America Great Again” constitutes political activity. Although the entirety of the slogan “Make America Great Again” cannot be viewed in the header image on Ms. Ferré’s official Twitter account, the image clearly is one of the Trump campaign slogan. As for Ms. Ferré’s retweet, while OSC’s guidance does not specifically include “making PR great again” in its list of slogans, there is no indication that OSC’s list was meant to be exhaustive. Furthermore, the term “making PR great again” was almost certainly used in the post retweeted by Ms. Ferré to specifically invoke President Trump’s political campaign slogan and suggest that President Trump had fulfilled his campaign promise to “Make America Great Again”. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.³⁵ By using her official Twitter account to

³³ 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.

³⁴ 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>.

³⁵ Office of Special Counsel, Hatch Act Guidance on Social Media, at 7.

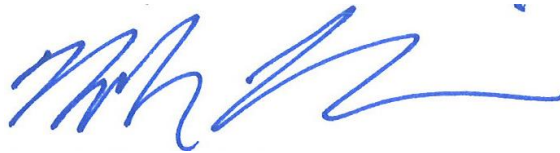
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transmit this message, Ms. Ferré ran afoul of the Hatch Act, which requires her to remain politically neutral when engaging in official government conduct. This violation is even more egregious given the guidance provided by OSC in March, and by the White House following two 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, including through an official social media account. By publishing the tweets at issue, which advocate the election or defeat of a partisan political candidate, Ms. Ferré appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Ferré.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', is written in a cursive style.

Noah Bookbinder
Executive Director