

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 Hogan Gidley

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 Deputy Press Secretary Hogan Gidley violated the Hatch Act by using his official social media account to tweet a message including President Trump’s campaign slogan “#MAGA” (Make America Great Again). 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 his official position, Mr. Gidley likely engaged in political activity prohibited by law.

Factual Background

Mr. Gidley was appointed White House Deputy Press Secretary in October 2017.¹ As Deputy Press Secretary for President Trump, Mr. Gidley serves under Press Secretary Sarah Huckabee Sanders as a spokesman to promote the president’s agenda.² Since joining the Trump Administration, Mr. Gidley has used the official Twitter handle @HoganGidley45.

@HoganGidley45 Twitter Account

There is little doubt that the @HoganGidley45 Twitter account is used by Mr. Gidley for official government purposes. According to his Twitter page, Mr. Gidley started using the handle in October 2017, when he joined the Trump Administration.³ The account profile states that Mr. Gidley is “Special Assistant to the President & Deputy Press Secretary.”⁴ Mr. Gidley’s @HoganGidley45 profile also states, “Tweets may be archived: <http://wh.gov/privacy>.”⁵ Furthermore, the account’s header features a photograph of President Trump standing in front of what appears to be a Marine helicopter on the White House grounds.⁶ Mr. Gidley also uses the

¹ Philip Rucker, [Trump hires Hogan Gidley as a White House spokesman](https://www.washingtonpost.com/news/post-politics/wp/2017/10/10/trump-hires-hogan-gidley-as-a-white-house-spokesman/?utm_term=.548f6d2ebd33), *The Washington Post*, Oct. 10, 2017, available at https://www.washingtonpost.com/news/post-politics/wp/2017/10/10/trump-hires-hogan-gidley-as-a-white-house-spokesman/?utm_term=.548f6d2ebd33.

² *Id.*

³ Hogan Gidley (@HoganGidley45), Twitter, <https://twitter.com/hogangidley45>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

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@HoganGidley45 Twitter account to post about official White House activities and also links to the official website for the White House, www.whitehouse.gov.⁷ The account also has been “verified” by Twitter.

Mr. Gidley also maintains a personal Twitter account, @JHoganGidley.⁸ His profile indicates that he started using this account in March 2010.⁹ The account profile states: “Christ alone. Ole Miss. Republican. Frmr Sr. Comms Advisor to Gov. Huckabee, Frmr Exec Dir: HuckPAC & SCGOP, etc. Instagram: @jhogangidley Tweets are my own.”¹⁰ It also links to the official website for the White House, www.whitehouse.gov.¹¹ On October 17, 2017, Mr. Gidley wrote from his personal Twitter account: “Please follow me at [@hogangidley45](https://twitter.com/hogangidley45) for official [@WhiteHouse](https://twitter.com/WhiteHouse) news & updates.”¹²

Use of @HoganGidley45 for Partisan Political Purposes

On March 5, 2018, Mr. Gidley appears to have used his official @HoganGidley45 Twitter account to tweet a partisan political post. As detailed below, this action likely violates the Hatch Act. On this date, Mr. Gidley tweeted about his work at the White House along with the hashtag “MAGA.”¹³ The tweet reads in full:

⁷ See generally Hogan Gidley (@HoganGidley45), Twitter, <https://twitter.com/HoganGidley45>.

⁸ Hogan Gidley @JHoganGidley, Twitter, <https://twitter.com/jhogangidley>.

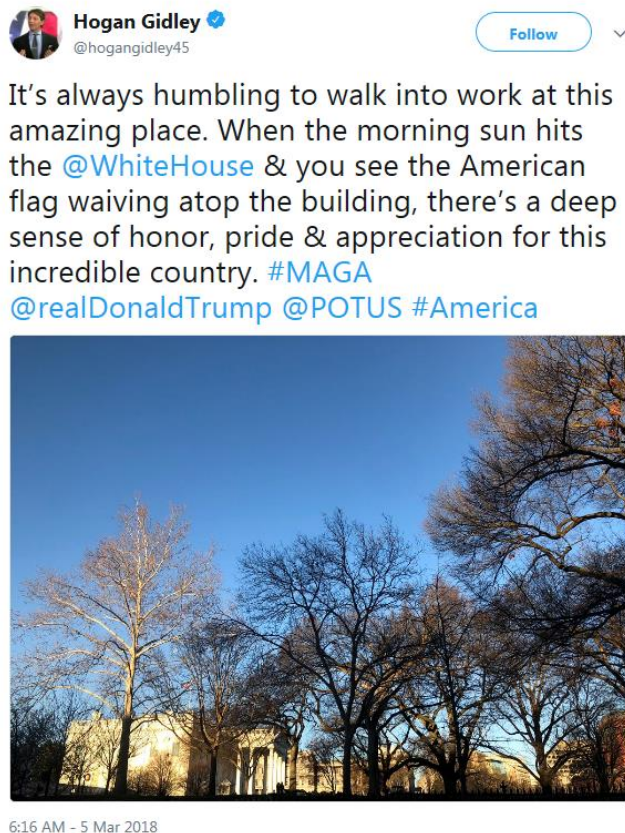
⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Hogan Gidley (@JHoganGidley), Twitter (Oct. 17, 2017), <https://twitter.com/JHoganGidley/status/920354630848131072>.

¹³ Hogan Gidley (@HoganGidley45), Twitter (Mar. 5, 2018), <https://twitter.com/hogangidley45/status/970664341413531648>.



The tweet is accompanied by a photo of the White House that appears to have been taken when Mr. Gidley entered the complex for work that day.¹⁴

March 2018 OSC 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.¹⁵ 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.”¹⁶ The document acknowledged that President

¹⁴ *Id.*

¹⁵ Katie Rogers and Maggie Haberman, [Trump’s 2020 Campaign Announcement Had a Very Trumpian Rollout](https://www.nytimes.com/2018/02/27/us/politics/trump-2020-brad-parscale.html), *New York Times*, Feb. 27, 2018, available at <https://www.nytimes.com/2018/02/27/us/politics/trump-2020-brad-parscale.html>.

¹⁶ Office of Special Counsel, [Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection](https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf), Mar. 5, 2018, available at <https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf>. See also Office of Special Counsel, [Guidance on President Trump’s Status as a Candidate and its Effect on Activity in the Federal Workplace](https://osc.gov/Resources/2017-President-Candidate-Guidance.pdf), Feb. 7, 2017, available at <https://osc.gov/Resources/2017-President-Candidate-Guidance.pdf> (OSC “advised that an incumbent President is considered a ‘candidate’ for purposes of this prohibition when he officially announces his candidacy for reelection”).

Trump became a “candidate for partisan political office” as described in the Hatch Act in February when he publicly announced his candidacy.¹⁷ 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.¹⁸ 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.”¹⁹ 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.²⁰

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.”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

In September 2016, OSC published a public notice reporting that a U.S. Postal Service employee in Colorado had violated the Hatch Act by displaying a “Make America Great Again”

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

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.

sign – the slogan of Donald Trump’s presidential campaign – behind the desk at the post office.²⁶ OSC indicated that it “contacted the postmaster of that facility and advised that the Hatch Act prohibited display of the sign” and confirmed that the sign was immediately removed from the post office.²⁷

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 once again prohibited from using the campaign slogan “Make America Great Again” or “MAGA” on official social media accounts.²⁸

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 Kellyanne 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.²⁹

As an initial matter, there is no question that the @HoganGidley45 Twitter account is “a social media account designated for official purposes.” The account lists his official position as “Special Assistant to the President & Deputy Press Secretary”, 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, Mr. Gidley regularly uses the @HoganGidley45 account to post about official White House activities and links to other official government Twitter accounts. He also maintains a separate personal Twitter account. Thus, the @HoganGidley45 account clearly is an official account and Mr. Gidley’s use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Mr. Gidley’s use of the @HoganGidley45 Twitter account to post the March 5, 2018 tweet featuring the Trump campaign slogan constitutes political activity under the Hatch Act. The tweet at issue is a clear example of a political message. It includes an

²⁶ Office of Special Counsel, Recent Cases Highlight the Hatch Act’s Prohibition on Federal Employees from Partisan Displays In the Workplace, Sep. 16, 2016, available at <https://osc.gov/News/pr16-25.pdf>.

²⁷ *Id.*

²⁸ 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>.

²⁹ 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>.

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image of the White House and appears to have been taken from the White House grounds while Mr. Gidley was at work, and President Trump's campaign slogan, "#MAGA", which OSC has advised White House staff constitutes a political slogan.

By using his official Twitter account to transmit this message, Mr. Gidley ran afoul of the Hatch Act, which requires him to remain politically neutral when using official social media accounts. In fact, Mr. Gidley engaged in the type of conduct expressly identified by OSC as an example of prohibited activity when he used his official social media account to tweet President Trump's campaign slogan and an image of the White House. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.³⁰ While it is unclear whether Mr. Gidley's March 5, 2018 tweet occurred before or after OSC's updated Hatch Act guidance posted on the same date, Donald Trump became a candidate in a partisan race days earlier. As OSC explained in both February and March 2018, Donald Trump's candidacy, rather than OSC's guidance, triggered the compliance requirements for the Hatch Act.

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

Sincerely,



Noah Bookbinder
Executive Director

³⁰ Office of Special Counsel, Hatch Act Guidance on Social Media, at 7.