

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 Jacob Wood

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Deputy Communications Director for the White House Office of Management and Budget (“OMB”), Jacob Wood, violated the Hatch Act by using his official social media account to tweet messages promoting President Trump’s campaign slogan “MAGA” (Make America Great Again). These actions were directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By tweeting these messages from an account using his official position, Mr. Wood likely engaged in political activity prohibited by law.

Factual Background

Mr. Wood was appointed Deputy Communications Director of OMB in May 2017.¹ Mr. Wood previously served as Digital Director for Senator Pat Roberts (R-KS) and as Director of Information Technologies for Senator Lisa Murkowski (R-AK).² Shortly after joining the Trump Administration, Mr. Wood began using the official Twitter handle @JacobWood45.³

@JacobWood45 Twitter Account

There is little doubt that the @JacobWood45 Twitter account is used by Mr. Wood for official government purposes. According to his Twitter page, the handle was created in May 2017 when Mr. Wood joined the Trump Administration.⁴ The account profile states that Mr. Wood is the “@OMBPress/@MickMulvaneyOMB Deputy Comms.”⁵ Mr. Wood’s @JacobWood45 profile also states, “Tweets may be archived: <http://wh.gov/privacy>.”⁶ Furthermore, the account’s header features an image of the OMB logo.⁷ Mr. Wood also uses the @JacobWood45 Twitter account to post about official OMB activities and links to the official

¹ Jacob Wood, LinkedIn, available at <https://www.linkedin.com/in/jacob-wood-4614254/>.

² *Id.*

³ Jacob Wood (@JacobWood45), Twitter, <https://twitter.com/JacobWood45>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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website of the White House Office of Management and Budget, www.whitehouse.gov/omb.⁸
The account also has been “verified” by Twitter.

Use of @JacobWood45 for Partisan Political Purposes

Since March 2018, Mr. Wood appears to have used his official @JacobWood45 Twitter account to tweet partisan political posts on at least two occasions. As detailed below, such actions likely violate the Hatch Act.

On Thursday, April 5, 2018, Mr. Wood’s @JacobWood45 account tweeted a link to an op-ed by OMB Director Mick Mulvaney published by CNBC.⁹ The post included Mr. Woods’ commentary: “.@MickMulvaneyOMB: Confidence in the American economy among businesses and consumers is near historic highs. #MAGAnomics is working!” The language is similar to Mr. Mulvaney’s CNBC op-ed. The entire tweet reads:



⁸ See generally Jacob Wood (@JacobWood45), Twitter, <https://twitter.com/JacobWood45>.

⁹ Jacob Wood (@JacobWood45), Twitter (Apr. 5, 2018), <https://twitter.com/JacobWood45/status/981954605402804225>.

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In addition to the language in Mr. Wood's tweet, the op-ed disseminated by Mr. Wood makes several references to the term "MAGAnomics" when discussing the administration's economic policy. For example, the op-ed states:

While many are predicting GDP growth for the first three months of this year may not be as high, we should weigh that possibility against this certainty: the Left, and many in the media, will pounce on any report to throw doubt on not only the health of the American economy, but on the efficacy of President Donald Trump's *MAGAnomics (Make America Great Again)* agenda of tax reform, deregulation, trade renegotiation and domestic energy independence.¹⁰

On Friday, May 4, 2018, Mr. Wood's @JacobWood45 account tweeted a link to a CNBC article regarding unemployment with Mr. Wood's additional commentary: "The #MAGAnomics formula is working!"¹¹ The entire tweet reads:

¹⁰ Mick Mulvaney, "MAGAnomics" is working and defying critics, *CNBC*, Apr. 5, 2018, available at <https://www.cnbc.com/2018/04/05/trump-budget-director-mulvaney-maganomics-is-working-and-defying-critics.html>.

¹¹ Jacob Wood (@JacobWood45), Twitter (May 4, 2018), <https://twitter.com/JacobWood45/status/992399327657123840>.

 **Jacob Wood** 
@JacobWood45 Follow

 The unemployment rate fell to 3.9 percent in April, an 18-year low 

This is the result of deregulation and the tax reform. The #MAGAnomics formula is working!

cnbc.com/2018/05/04/non... #JobsReport



6:43 AM - 4 May 2018

In addition, on or around, April 8, 2018, Mr. Wood’s @JacobWood45 account retweeted a tweet from Republican National Committee Chairwoman Ronna Romney McDaniel’s @GOPChairwoman account stating: “.@MickMulvaneyOMB: Business owners are no longer afraid of looming red tape, and families are beginning to see new opportunities to invest in their futures. #MAGA.”¹² The entire tweet reads:



¹² Ronna McDaniel (@GOPChairwoman), Twitter (Apr. 8, 2018), <https://twitter.com/GOPChairwoman/status/982990446862503936>.

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.¹³ 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.”¹⁴ 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.¹⁵ 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.¹⁶ 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.”¹⁷ 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.¹⁸

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.”¹⁹ 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.²⁰

¹³ 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>.

¹⁴ 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>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 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>.

²⁰ 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>.

On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.²¹

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.”²² Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”²³ “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.”²⁴

OSC has provided recent guidance on applying this prohibition to social media.²⁵ 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.”²⁶ 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).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 prohibited from the campaign slogan “Make America Great Again” or “MAGA” on official social media accounts.²⁸

²¹ 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>.

²² 5 U.S.C. § 7323(a)(1).

²³ 5 C.F.R. § 734.302(b)(1).

²⁴ 5 C.F.R. § 734.101.

²⁵ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

²⁶ *Id.* at 7.

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>.

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.²⁹

As an initial matter, there is no question that Mr. Wood's @JacobWood45 Twitter account is "a social media account designated for official purposes." Mr. Wood's Twitter page describes him as the "@OMBPress/@MickMulvaneyOMB Deputy Comms." and the profile features a picture of the OMB logo. The handle also 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. Wood regularly uses the @JacobWood45 account to post about official White House Office of Management and Budget activities and links to other official government Twitter accounts. Thus, the @JacobWood45 account clearly is an official account and Mr. Wood's use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Mr. Wood's use of the @JacobWood45 Twitter account to post tweets featuring the Trump campaign slogan and to retweet messages from GOP Chairwoman McDaniel's Twitter account 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. While Mr. Wood could have used any number of terms in his tweets to describe the Trump Administration's economic policy, the term "MAGAnomics" specifically invokes the president's campaign slogan. The term is used in multiple tweets published by Mr. Wood as well as several times in the text of the op-ed authored by Mr. Mulvaney and disseminated by Mr. Wood from his official Twitter account. The use of the term in Mr. Wood's tweets, the op-ed he shared on April 5, 2018, and his retweeting of messages from GOP Chairwoman McDaniel's Twitter account unmistakably tie OMB's work on behalf of the federal government to the president's campaign for office and to the success of the Republican Party. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.³⁰ By sharing the op-ed and using his official Twitter account to transmit these messages, Mr. Wood ran afoul of the Hatch Act, which requires him to remain politically neutral when engaging in official government conduct. This violation is even more egregious given the specific guidance provided

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>.

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

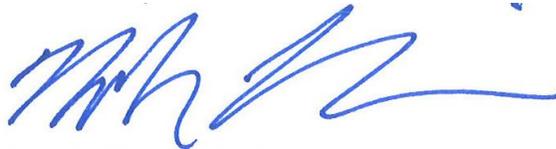
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by OSC in March and by White House following Hatch Act violations by another White House employee.

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, Mr. Wood appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Mr. Wood.

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