

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 Jessica Ditto

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 Deputy Director of Communications Jessica Ditto violated the Hatch Act by using her official social media account to retweet a message promoting and disseminating research from the Republican National Committee (“RNC”) on its website, [www.gop.com](http://www.gop.com). This tweet was directed toward the success or failure of the Republican party and Donald J. Trump, a candidate in a partisan race. By tweeting this post on a Twitter account that refers to her official position, Ms. Ditto likely engaged in political activity prohibited by law.

**Factual Background**

Ms. Ditto was appointed Deputy Director of Communications in January 2017, after previously serving as on the Trump campaign and transition team.<sup>1</sup> As Deputy Communications Director for the President, Ms. Ditto is integral in overseeing the operations of the White House communications staff and helping to build out the President’s initiatives and agenda.<sup>2</sup> Since early in the Trump Administration, Ms. Ditto has used the official Twitter handle @JessicaDitto45.

@JessicaDitto45 Twitter Account

There is little doubt that the @JessicaDitto45 Twitter account is used by Ms. Ditto for official government purposes. According to her Twitter page, Ms. Ditto began using the handle in February 2017, shortly after Donald J. Trump became the 45th President of the United States.<sup>3</sup> The account profile states that Ms. Ditto is “@WhiteHouse Deputy Communications Director for

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<sup>1</sup> Matthew Nussbaum, [Trump announces 11 more White House hires](https://www.politico.com/blogs/donald-trump-administration/2017/01/trump-white-house-hires-233189), *Politico*, Jan. 4, 2017, available at <https://www.politico.com/blogs/donald-trump-administration/2017/01/trump-white-house-hires-233189>; see also [Kentucky governor’s spokeswoman leaving for Trump campaign](https://www.thegleaner.com/story/news/politics/elections/2016/09/19/kentucky-governors-spokeswoman-leaving-trump-campaign/90688618/), *The Associated Press*, Sept. 19, 2016, available at <https://www.thegleaner.com/story/news/politics/elections/2016/09/19/kentucky-governors-spokeswoman-leaving-trump-campaign/90688618/>; Daniel Marans, [Trump’s Trade Rep Pick Gets Some Actual Praise From Progressives](https://www.huffingtonpost.com/entry/us-trade-representative-trump-robert-lighthizer_us_586c106ae4b0de3a08f9de09), *Huffington Post*, Jan. 3, 2017, available at [https://www.huffingtonpost.com/entry/us-trade-representative-trump-robert-lighthizer\\_us\\_586c106ae4b0de3a08f9de09](https://www.huffingtonpost.com/entry/us-trade-representative-trump-robert-lighthizer_us_586c106ae4b0de3a08f9de09).

<sup>2</sup> *Id.*

<sup>3</sup> Jessica Ditto (@JessicaDitto45), Twitter, <https://twitter.com/JessicaDitto45>.

@POTUS @realDonaldTrump.”<sup>4</sup> Furthermore, Ms. Ditto’s profile picture features an image of her standing in the White House Briefing Room, and the account’s header features a photograph the White House from the inside the larger complex.<sup>5</sup> Ms. Ditto also uses the @JessicaDitto45 Twitter account to post about official White House activities and links to the official @Whitehouse and @POTUS Twitter accounts.<sup>6</sup> The account also has been “verified” by Twitter.

Ms. Ditto also maintains a personal Twitter account, @JessicaDitto.<sup>7</sup> Her profile indicates that she started using this account in November 2011.<sup>8</sup> On February 28, 2017, she tweeted from her personal account, “Hop on over to my official account @JessicaDitto45 for @POTUS updates from the @WhiteHouse. Join us live tonight for the #JointAddress!”<sup>9</sup>

#### Use of @JessicaDitto45 for Partisan Political Purposes

On June 4, 2018, Ms. Ditto appears to have used her official @JessicaDitto45 Twitter account to tweet support of a political party and a candidate. As detailed below, this action likely violates the Hatch Act. On this date, Ms. Ditto appears to have retweeted a post by White House Principal Deputy Press Secretary, Raj Shah, stating: “Fantastic @RNCResearch release #Winning: 500 Days Of American Greatness.”<sup>10</sup> The tweet includes a link to the RNC Research webpage on [www.gop.com](http://www.gop.com), titled, “#Winning: 500 Days of American Greatness President Trump’s First 500 Days By The Numbers”.<sup>11</sup> The linked webpage shared by Ms. Ditto in her retweet is RNC research outlining Trump Administration accomplishments from the first 500 days of his presidency.<sup>12</sup> As with other pages on the RNC website, the page shared by Ms. Ditto includes a button to “CONTRIBUTE” to the RNC at the top of the page and a sidebar to “JOIN THE TEAM.”<sup>13</sup> The tweet reads in full:

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See generally Jessica Ditto (@JessicaDitto45), Twitter, <https://twitter.com/JessicaDitto45>.

<sup>7</sup> Jessica Ditto (@JessicaDitto), Twitter, <https://twitter.com/JessicaDitto>.

<sup>8</sup> *Id.*

<sup>9</sup> Jessica Ditto (@JessicaDitto), Twitter (Feb. 28, 2017), <https://twitter.com/JessicaDitto/status/836748553158545408>.

<sup>10</sup> Raj Shah (@RajShah45), Twitter (June 4, 2018), <https://twitter.com/RajShah45/status/1003647867695828992>. Mr. Shah also used his official government account to post this message and CREW has filed a Hatch Act complaint with OSC arising from this activity.

<sup>11</sup> Republican National Committee, #Winning: 500 Days of American Greatness, June 4, 2018, available at <https://gop.com/winning-500-days-of-american-greatness-rsr>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*



The tweet appears along with an image from the RNC website of President Trump on stage clapping his hands at an event in front of an American flag. It is unclear whether the photo is from an official or a campaign event.<sup>14</sup>

The RNC is registered with the Federal Election Commission as a national party committee of the Republican Party and describes itself as the management arm of the Republican Party.<sup>15</sup>

#### *March 2018 OSC and White House Guidance on Hatch Act Compliance*

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.<sup>16</sup> 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.”<sup>17</sup> In addition to reminding federal employees

<sup>14</sup> Raj Shah (@RajShah45), Twitter (June 4, 2018), <https://twitter.com/RajShah45/status/1003647867695828992>.

<sup>15</sup> Republican National Committee, FEC Form 1, Statement of Organization, Amended, Feb. 22, 2018, available at <http://docquery.fec.gov/pdf/901/201802229095515901/201802229095515901.pdf>; see also Republican National Committee, Rules of the Republican Party, Rule 1(a), available at [https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules\\_of\\_the\\_Republican+Party\\_FINAL\\_S14090314.pdf](https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules_of_the_Republican+Party_FINAL_S14090314.pdf).

<sup>16</sup> 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>.

<sup>17</sup> 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>.

regarding the specific prohibitions of the Hatch Act on political activity, the updated guidance offered additional clarification regarding the use of social media accounts.<sup>18</sup> 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."<sup>19</sup>

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."<sup>20</sup> 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.<sup>21</sup>

On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.<sup>22</sup>

### **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."<sup>23</sup> Activities covered by this prohibition include the official "[u]sing his or her official title while participating in political activity."<sup>24</sup> "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."<sup>25</sup>

OSC has provided recent guidance on applying this prohibition to social media.<sup>26</sup> 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

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> 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>.

<sup>21</sup> 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>.

<sup>22</sup> 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>.

<sup>23</sup> 5 U.S.C. § 7323(a)(1).

<sup>24</sup> 5 C.F.R. § 734.302(b)(1).

<sup>25</sup> 5 C.F.R. § 734.101.

<sup>26</sup> Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

political party, candidate in a partisan race, or partisan political group. All such official social media accounts should remain politically neutral.”<sup>27</sup> 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).<sup>28</sup>*

As stated above, in March 2018, OSC 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 engage in activity directed at the success or failure of his campaign.<sup>29</sup> Under OSC’s updated guidance, using an official social media account to direct followers to the RNC’s website, share research from the Republican Party promoting candidate Trump’s accomplishments, and display an unofficial image of Donald Trump would constitute prohibited political activity under the Hatch Act.<sup>30</sup>

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.<sup>31</sup>

As an initial matter, there is no question that the @JessicaDitto45 Twitter account is “a social media account designated for official purposes.” The account lists her official position as “@WhiteHouse Deputy Communications Director for @POTUS @realDonaldTrump”, the profile features pictures of Ms. Ditto in the White House Briefing Room and of the White House complex, 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. Ditto regularly uses the @JessicaDitto45 account to post about official White House

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<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.*

<sup>29</sup> 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.

<sup>30</sup> *Id.*

<sup>31</sup> 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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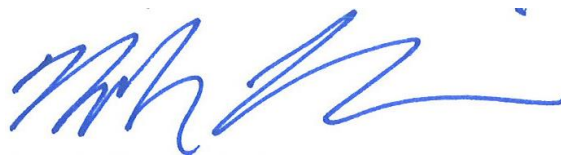
activities and links to other official government Twitter accounts. She also maintains a separate personal Twitter account that directs followers to @JessicaDitto45 as her official account. Thus, the @JessicaDitto45 account clearly is an official account, and Ms. Ditto's use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Ms. Ditto's use of the @JessicaDitto45 Twitter account on June 4, 2018 to retweet a tweet linking to RNC research touting Donald Trump's accomplishments as president constitutes political activity under the Hatch Act. The tweet at issue is a clear example of a political message in part because it mentions and links directly to the RNC webpage. Even more troubling is that before the reader can scroll to the content of the article, they are invited to "contribute" to and "join" the RNC. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race since the information in the tweet specifically references the RNC and links to RNC research on [www.gop.com](http://www.gop.com) supporting candidate Trump.<sup>32</sup> By using her official Twitter account to transmit this message, Ms. Ditto clearly 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.

### **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, link, and picture at issue, which advocate the success of a political party and election or defeat of a partisan political candidate, Ms. Ditto appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Ditto.

Sincerely,



Noah Bookbinder  
Executive Director

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<sup>32</sup> 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>.