

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 Lindsay Walters

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 Lindsay Walters violated the Hatch Act by using her official social media account to retweet a message using the term “Great again” that invoked the president’s campaign slogan “Make America Great Again” and promoted his campaign. This action 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 referring to her official position, Ms. Walters likely engaged in political activity prohibited by law.

Factual Background

Ms. Walters was appointed Deputy White House Press Secretary in January 2017.¹ She had previously served as Press Secretary for the Republican National Committee.² As Deputy Press Secretary, Ms. Walters serves as an advisor to Press Secretary Sarah Huckabee Sanders and she frequently leads press gaggles aboard Air Force One.³ Shortly after being named White House Deputy Press Secretary, Ms. Walters began using the official Twitter handle @LWalters45.⁴

@LWalters45 Twitter Account

There is little doubt that the @LWalters45 Twitter account is used by Ms. Walters for official government purposes. According to her Twitter page, the handle was created in January 2017 when she joined the Trump Administration.⁵ The account profile states that Ms. Walters is

¹ Matthew Nussbaum, Trump team announces additional White House hires, *Politico*, Jan. 19, 2017, available at <https://www.politico.com/story/2017/01/trump-transition-white-house-hires-233863>.

² ProPublica, Trump Town, Lindsay Walters, available at <https://projects.propublica.org/trump-town/staffers/lindsay-walters>.

³ The White House, Press Gaggle by Deputy Press Secretary Lindsay Walters Aboard Air Force One, June 28, 2018, available at <https://www.whitehouse.gov/briefings-statements/press-gaggle-deputy-press-secretary-lindsay-walters-aboard-air-force-one-062818/>.

⁴ Lindsay Walters (@LWalters45), Twitter, <https://twitter.com/LWalters45>.

⁵ *Id.*

the “White House Deputy Press Secretary.”⁶ Ms. Walters’s @LWalters45 profile also states, “Tweets will be archived.”⁷ Furthermore, the account’s profile includes a header featuring an image of the White House complex.⁸ Ms. Walters also uses the @LWalters45 Twitter account to post about official White House activities.⁹ The account also has been “verified” by Twitter.

Ms. Walters also maintains a personal Twitter account, @LWalters.¹⁰ Her profile indicates that she started using this account in August 2009 and has the same profile picture as her @Lwalters45 account.¹¹ On February 13, 2017, she tweeted from her personal account, “With a new position comes a new [@Twitter](#) handle. You can find me [@LWalters45](#). Follow along for updates from the WH.”¹²

Use of @LWalters45 for Partisan Political Purposes

On March 6, 2018, Ms. Walters appears to have used her official @LWalters45 Twitter account to retweet a partisan political post by Press Secretary Sanders supporting candidate Donald J. Trump. As detailed below, such action likely violates the Hatch Act. On this day, Ms. Walters retweeted Ms. Sanders’ post sharing a Wall Street Journal article regarding U.S. oil production along with her commentary: “Great again: ‘The U.S. is likely to overtake Russia to become the world’s largest oil producer’”.¹³ The tweet reads in full:

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *See generally* Lindsay Walters (@LWalters45), Twitter, <https://twitter.com/lwalters45>.

¹⁰ Lindsay Walters (@Lwalters), Twitter, <https://twitter.com/LWalters>.

¹¹ *Id.*

¹² Lindsay Walters (@Lwalters), Twitter (Feb. 13, 2017), <https://twitter.com/LWalters/status/831261231709376513>.

¹³ Sarah Huckabee Sanders (@PressSec), Twitter (Mar. 6, 2018), <https://twitter.com/PressSec/status/970991949233651712>.



While Ms. Sanders 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.¹⁴

During the 2016 presidential campaign, then candidate Trump's book previously published under the title "Crippled America" was republished under as "Great Again: How to Fix Our Crippled

¹⁴ 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/>.

America.”¹⁵ More recently, following a June 27, 2018 political rally in North Dakota, President Trump tweeted “Thank you North Dakota. Together, we are MAKING AMERICA SAFE AND GREAT AGAIN! #MAGA”.¹⁶

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.¹⁷ 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.”¹⁸ 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.¹⁹ 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.²⁰ 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.”²¹ 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.²²

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.”²³ The White House defended Ms. Conway’s

¹⁵ Simon & Schuster, Great Again: How to Fix Our Crippled America by Donald J. Trump, <http://www.simonandschuster.com/books/Great-Again/Donald-J-Trump/9781501138003>, accessed July 20, 2018.

¹⁶ Donald J. Trump (@realDonaldTrump), Twitter (June 27, 2017), <https://twitter.com/realdonaldtrump/status/1012169482272460800?lang=en>.

¹⁷ 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>.

¹⁸ 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>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ 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>.

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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.²⁴

On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.²⁵

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."²⁶ Activities covered by this prohibition include the official "[u]sing his or her official title while participating in political activity."²⁷ "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."²⁸

OSC has provided recent guidance on applying this prohibition to social media.²⁹ 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."³⁰ 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).³¹*

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

²⁴ Alexander Mallin, [Kellyanne Conway says she discussed Hatch Act violations with President Trump](https://abcnews.go.com/Politics/kellyanne-conway-discussed-hatch-act-violations-president-trump/story?id=53609559), *ABCNews*, Mar. 8, 2018, available at <https://abcnews.go.com/Politics/kellyanne-conway-discussed-hatch-act-violations-president-trump/story?id=53609559>.

²⁵ Veronica Stracqualursi and Cristina Alesci, [Trump's legal team: No #MAGA at the White House](https://www.cnn.com/2018/03/08/politics/white-house-counsel-memo-hatch-act/index.html), *CNN*, Mar. 8, 2018, available at <https://www.cnn.com/2018/03/08/politics/white-house-counsel-memo-hatch-act/index.html>.

²⁶ 5 U.S.C. § 7323(a)(1).

²⁷ 5 C.F.R. § 734.302(b)(1).

²⁸ 5 C.F.R. § 734.101.

²⁹ Office of Special Counsel, [Hatch Act Guidance on Social Media](http://bit.ly/2J60680), revised Feb. 2018, available at <http://bit.ly/2J60680>.

³⁰ *Id.* at 7.

³¹ *Id.*

prohibited from using official social media accounts to us campaign slogan such as “Make America Great Again” or “MAGA.”³²

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.³³

As an initial matter, there is no question that Ms. Walters’s @LWalters45 Twitter account is “a social media account designated for official purposes.” Ms. Walters’s Twitter page describes her as the White House Deputy Press Secretary”, and the profile features a header containing an image of the White House. 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. Walters regularly uses the @LWalters45 account to post about official White House activities and links to other official government Twitter accounts. Thus, the @LWalters45 account clearly is an official account, and Ms. Walters’s use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Ms. Walters’s use of the @LWalters45 Twitter account to retweet Ms. Sanders’ tweet 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 President Trump’s campaign slogan “#MAGA” or “Make America Great Again” from an official account violates the Hatch Act.³⁴ While OSC’s guidance does not specifically include “great again” in its list of slogans, there is no indication that OSC’s list was meant to be exhaustive. Furthermore, that the term “great again” was almost certainly used in the original tweet to specifically invoke the 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 transmit

³² 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.

³³ 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>.

³⁴ 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.

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

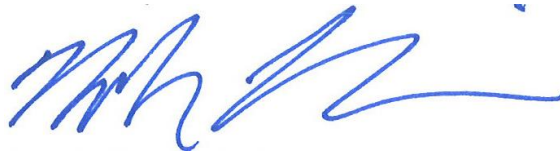
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this message, Ms. Walters ran afoul of the Hatch Act, which requires her to remain politically neutral when engaging in official government conduct. This violation is even more egregious given the guidance provided by OSC in March and by the White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

Sincerely,

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

Noah Bookbinder
Executive Director