

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 Madeleine Westerhout

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 Executive Assistant to the President Madeleine Westerhout violated the Hatch Act by using her official social media account to tweet messages including President Trump’s campaign slogan “#MAGA” (Make America Great Again). These tweets were directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By tweeting these posts on a Twitter account that refers to her official position, Ms. Westerhout likely engaged in political activity prohibited by law.

Factual Background

Ms. Westerhout was appointed Executive Assistant to the President in January 2017 following roles at the Republican National Committee and with the Trump transition team.¹ As Executive Assistant for President Trump, Ms. Westerhout schedules meetings and ensures that the president has all the tools he needs to execute his day.² Since joining the Trump Administration, Ms. Westerhout has used the official Twitter handle @madwest45.

@madwest45 Twitter Account

There is little doubt that the @madwest45 Twitter account is used by Ms. Westerhout for official government purposes. According to her Twitter page, Ms. Westerhout began using the handle in February 2017, when she joined the Trump Administration.³ The account profile states that Ms. Westerhout is “@WhiteHouse Executive Assistant to the President.”⁴ Ms. Westerhout’s @madwest45 profile also states, “Tweets may be archived: <http://wh.gov/privacy>.”⁵ Furthermore, the account’s profile picture is an image of Ms. Westerhout with President Trump

¹ Erin Gillespie, *College of Charleston grad named special assistant to president in Trump administration*, *Post and Courier*, Jan. 20, 2017, available at https://www.postandcourier.com/news/college-of-charleston-grad-named-special-assistant-to-president-in/article_c4452b3c-df26-11e6-bff8-733bf32dce3.html.

² *Id.*

³ Madeleine Westerhout (@madwest45), Twitter, <https://twitter.com/madwest45>.

⁴ *Id.*

⁵ *Id.*

and the header features a photograph of the White House.⁶ Ms. Westerhout also uses the @madwest45 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.⁷ The account also has been “verified” by Twitter.

Ms. Westerhout also maintains a personal Twitter account, @madwest.⁸ Her profile indicates that she started using this account in January 2010.⁹ In January 2017, in response to a reporter tweeting to her personal account that she would serve as “Executive Assistant to the president”, Ms. Westerhout responded with “Oval Office Gatekeeper ;)”¹⁰

Use of @madwest45 for Partisan Political Purposes

Since March 2018, Ms. Westerhout appears to have used her official @madwest45 Twitter account to tweet partisan political posts on at least two occasions. As detailed below, such actions likely violate the Hatch Act.

On Friday, March 9, 2018, Ms. Westerhout retweeted a tweet from @realDonaldTrump stating, “JOBS, JOBS, JOBS! #MAGA.”¹¹ The tweet reads in full:



⁶ *Id.*

⁷ See generally Madeleine Westerhout (@madwest45), Twitter, <https://twitter.com/madwest45>.

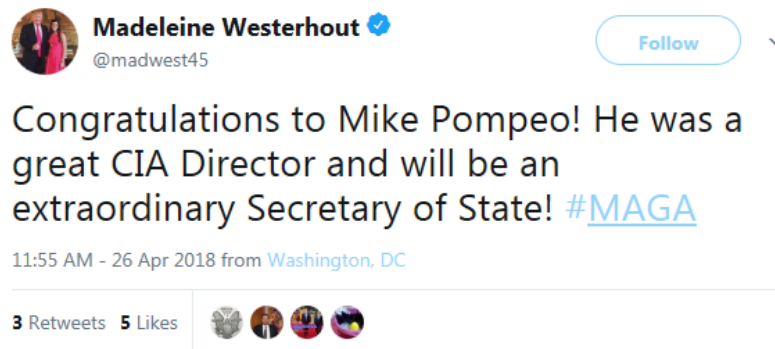
⁸ Madeleine Westerhout (@madwestt), Twitter, <https://twitter.com/madwestt>.

⁹ *Id.*

¹⁰ Madeleine Westerhout (@madwestt), Twitter (Jan. 19, 2017), <https://twitter.com/madwestt/status/822205727905300480>.

¹¹ Donald J. Trump (@realDonaldTrump), Twitter (Mar. 9, 2018), <https://twitter.com/realDonaldTrump/status/972151933782974464>.

On Thursday, April 26, 2018, Ms. Westerhout tweeted a note congratulating Mike Pompeo on his confirmation as Secretary of State, including the hashtag, “MAGA.”¹² The tweet reads in full:



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 of 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:

¹² Madeleine Westerhout (@madwest45), Twitter (Apr. 26, 2018), <https://twitter.com/madwest45/status/989578814152986625>.

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.*

[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

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

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>.

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>.

political party, candidate in a partisan race, or partisan political group. All such official social media accounts should remain politically neutral.”²⁶

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 using the campaign slogan “Make America Great Again” or “MAGA” on official social media accounts.²⁷ 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).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 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 the @madwest45 Twitter account is “a social media account designated for official purposes.” The account lists her official position as “@WhiteHouse Executive Assistant to the President”, the profile features a picture of Ms. Westerhout with the president and another of 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, Ms. Westerhout regularly uses the @madwest45 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 @madwest45 account clearly is an official account and Ms. Westerhout’s use of it falls squarely within the jurisdiction of the Hatch Act.

²⁶ *Id.* at 7.

²⁷ 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>.

²⁸ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

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>.

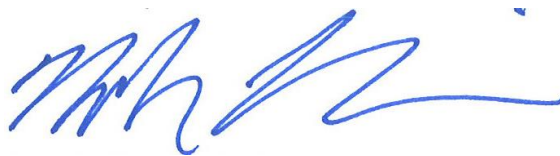
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Nor is there any doubt that Ms. Westerhout's use of the @madwest45 Twitter account to post tweets featuring the Trump campaign slogan constitutes political activity under the Hatch Act. Both OSC and the White House have provided White House staff with legal guidance concluding that tweeting President Trump's campaign slogan "#MAGA" constitutes political activity. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.³⁰ By using her official Twitter account to transmit these messages, Ms. Westerhout 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 publishing the tweets at issue, which advocates the election or defeat of a partisan political candidate, Ms. Westerhout appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Westerhout.

Sincerely,



Noah Bookbinder
Executive Director

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