

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 Raj Shah

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 Principal Deputy Press Secretary Raj Shah violated the Hatch Act by using his official social media account to tweet a message promoting and disseminating research from the Republican National Committee (“RNC”) on its website, 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 message from a Twitter account that refers to his official position, Mr. Shah likely engaged in political activity prohibited by law.

Factual Background

Mr. Shah was appointed Principal Deputy Press Secretary in September 2017, after previously serving as research director for the RNC and the Trump campaign as well as White House Deputy Communications Director.¹ In his White House roles, Mr. Shah is integral in overseeing the operations of the White House communications staff and helping to build out the President’s initiatives and agenda.² Since the beginning of the Trump Administration, Mr. Shah has used the official Twitter handle @RajShah45.

@RajShah45 Twitter Account

There is little doubt that the @RajShah45 Twitter account is used by Mr. Shah for official government purposes. According to his Twitter page, Mr. Shah began using the handle in January 2017, when he joined the Trump Administration.³ The account profile states that Mr. Shah is “@WhiteHouse Principal Deputy Press Secretary for @realDonaldTrump.”⁴ Mr. Shah’s

¹ Sarah Wheaton, [Trump staff arrives at the White House](https://www.politico.com/blogs/donald-trump-administration/2017/01/trump-day-one-raj-shah-233918), *Politico*, Jan. 20, 2017, available at <https://www.politico.com/blogs/donald-trump-administration/2017/01/trump-day-one-raj-shah-233918>; see also White House, [President Donald J. Trump Announces White House Appointments](https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-white-house-appointments-2/), Sep. 12, 2017, available at <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-white-house-appointments-2/>.

² *Id.*

³ Raj Shah (@RajShah45), Twitter, <https://twitter.com/rajshah45>.

⁴ *Id.*

@RajShah45 profile also states, “Tweets may be archived [whitehouse.gov/privacy](https://www.whitehouse.gov/privacy).”⁵ Furthermore, the account’s header features a photograph of Shah standing behind President Trump in front of a group of what appears to be photographers and reporters.⁶ Mr. Shah also uses the @RajShah45 Twitter account to post about official White House activities and links to the official @Whitehouse Twitter account as well as the official White House website, www.whitehouse.gov.⁷ The account also has been “verified” by Twitter.

Use of @RajShah45 for Partisan Political Purposes

On Monday, June 4, 2018, Mr. Shah appears to have used his official @RajShah45 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, Mr. Shah tweeted from his @RajShah45 account, “Fantastic @RNCResearch release #Winning: 500 Days Of American Greatness.”⁸ The tweet includes a link to the RNC webpage on www.gop.com, titled, “#Winning: 500 Days of American Greatness President Trump’s First 500 Days By The Numbers”.⁹ The linked webpage shared by Mr. Shah in his tweet is RNC research outlining Trump Administration accomplishments from the first 500 days of his presidency.¹⁰ As with other pages on the RNC website, the page shared by Mr. Shah includes a button to “CONTRIBUTE” to the RNC at the top of the page and a sidebar to “JOIN THE TEAM.”¹¹ The tweet reads in full:

⁵ *Id.*

⁶ *Id.*

⁷ See generally Raj Shah (@RajShah45), Twitter, <https://twitter.com/rajshah45>.

⁸ Raj Shah (@RajShah45), Twitter (June 4, 2018), <https://twitter.com/RajShah45/status/1003647867695828992>.

⁹ Republican National Committee, #Winning: 500 Days of American Greatness, June 4, 2018, available at <https://gop.com/winning-500-days-of-american-greatness-rsr>.

¹⁰ *Id.*

¹¹ *Id.*



10:41 AM - 4 Jun 2018

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.¹²

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.¹³

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.¹⁴ On March 5, 2018, OSC published a document entitled, “Updated Guidance Regarding the Hatch Act and President Donald Trump Now That

¹² Raj Shah (@RajShah45), Twitter (June 4, 2018), <https://twitter.com/RajShah45/status/1003647867695828992>.

¹³ 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.

¹⁴ Katie Rogers and Maggie Haberman, Trump’s 2020 Campaign Announcement Had a Very Trumpian Rollout, *The New York Times*, Feb. 27, 2018, available at <https://www.nytimes.com/2018/02/27/us/politics/trump-2020-brad-parscale.html>.

He Is Officially a Candidate for Reelection.”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

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.”¹⁸ 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.¹⁹

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

¹⁵ 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>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 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>.

¹⁹ 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>.

²⁰ 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>.

²¹ 5 U.S.C. § 7323(a)(1).

²² 5 C.F.R. § 734.302(b)(1).

²³ 5 C.F.R. § 734.101.

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.”

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.²⁵ 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.²⁶

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.²⁷

As an initial matter, there is no question that the @RajShah45 Twitter account is “a social media account designated for official purposes.” The account lists his official position as “@WhiteHouse Principal Deputy Press Secretary”, the profile features a picture that appears to be of Mr. Shah and President Trump, 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. Shah regularly uses the @RajShah45 account to post about official White House activities and links to other official government Twitter accounts. Thus, the @RajShah45 account clearly is an official account and Mr. Shah’s use of it falls squarely within the jurisdiction of the Hatch Act.

²⁴ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, *available at* <http://bit.ly/2J60680>.

²⁵ 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>.

²⁶ *Id.*

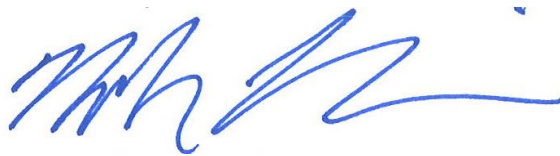
²⁷ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018, *available at* <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>.

Nor is there any doubt that Mr. Shah's use of the @RajShah45 Twitter account to post the June 4, 2018 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 a candidate in a partisan race since the information in the tweet specifically references the RNC and links to RNC research supporting candidate Trump.²⁸ By using his official Twitter account to transmit this message, Mr. Shah clearly ran afoul of the Hatch Act, which requires him 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, Mr. Shah appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Mr. Shah.

Sincerely,



Noah Bookbinder
Executive Director

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>.