

September 5, 2018

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M Street, N.W.
Suite 218
Washington, D.C. 20036-4505

The Honorable John F. Kelly
Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: Admissions of Politically Motivated Official Travel

Dear Mr. Kerner and Mr. Kelly:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) and the Office of the White House Chief of Staff review whether President Donald J. Trump and senior administration officials acted in compliance with the Hatch Act and other applicable laws and regulations governing the use of official government resources when they apparently used government resources to travel to and participate in official events for the purpose of supporting candidates in partisan races. According to public reports, senior White House aides recently admitted that several official government events in which President Trump, members of his cabinet, and other administration officials participated are part of the president’s efforts to help Republican candidates in the coming midterm elections. These actions appear to be directed toward the success or failure of candidates in partisan races and thus may constitute political activity prohibited by the Hatch Act, and the costs of attending them must be properly apportioned.

Factual Background

According to reporting by the *Huffington Post*, on August 21, 2018 senior White House aides revealed in a call with reporters that various “official” government events attended by President Trump and senior administration officials have been part of a coordinated effort “to help Republicans in the coming midterm elections.”¹ On the call, an unnamed White House official stated in response to a question about whether the president planned to visit “purple” congressional districts that several cabinet members, including Housing and Urban Development Secretary Ben Carson and Department of Energy Secretary Rick Perry, as well as Acting

¹ S.V. Date, [White House Admits Trump Is Using Official Events For Midterm Campaigning](https://www.huffingtonpost.com/entry/trump-official-campaign_us_5b7c896ce4b07295150dc45d), *Huffington Post*, Aug. 22, 2018, available at https://www.huffingtonpost.com/entry/trump-official-campaign_us_5b7c896ce4b07295150dc45d.

Hon. Henry Kerner
Hon. John E. Kelly
September 5, 2018
Page 2

Environmental Protection Agency Administrator Andrew Wheeler, already are doing so.² The official reportedly stated:

And while these are official events, and I want to be clear about that, official events obviously drive earned media attention. . . . You know, the president's Cabinet and senior staff have done 35 events with or affecting House districts in August already. Over 35 events in August already. I wanted to make sure I repeated that. And these include people and places like Secretary Carson in Mike Coffman's district in Colorado 6; Secretary Perry in John Katko's district in New York 24; acting Administrator Wheeler with David Young in Iowa 3; Ivanka Trump with Keith Rothfus and Mike Kelly in western Pennsylvania. All targeted districts. All fitting that, and I'm using air quotes, the suburban districts that I think you were inferring the president isn't spending a lot of time in.³

In addition to this admission, a second White House staffer stated that the President "was in Iowa and Illinois for Bost and Blum."⁴ The article notes that while previous administrations did schedule "official" events in cities where there would also be a political fundraiser or event in order to reduce the campaign's travel costs, "past presidents were careful not to make political statements at the official events."

The events mentioned by the White House officials were purportedly official government events and presumably paid for using government funds. In Colorado, for example, Secretary Carson toured public housing with Rep. Mike Coffman (R-CO) and promoted Trump Administration policies.⁵ In New York, Secretary Perry similarly toured a nuclear power plant with Rep. John Katko (R-NY) – an event promoted by the Department of Energy as Secretary Perry's first official visit as secretary to a nuclear power plant.⁶ Acting Administrator Wheeler visited the Iowa State Fair where he met with Rep. David Young (R-IA) and others.⁷ Advisor to the President Ivanka Trump's trip to Pennsylvania featured a visit to Pittsburgh's Robotics Row

² *Id.*

³ *Id.*

⁴ *Id.* "Bost" apparently refers to Rep. Mike Bost (R-IL) and "Blum" refers to Rep. Rod Blum (R-IA).

⁵ Joe Rubino, [Ben Carson tours Aurora housing development, touts public-private partnerships as was to address housing crunch](https://www.denverpost.com/2018/07/30/ben-carson-tours-aurora-housing-development/), *Denver Post*, July 30, 2018, available at <https://www.denverpost.com/2018/07/30/ben-carson-tours-aurora-housing-development/>.

⁶ Robert Harding, Rick Perry, Rep. John Katko tout nuclear energy at Oswego County plant, *Auburnpub.com*, Aug. 2, 2018, available at https://auburnpub.com/blogs/eye_on_ny/rick-perry-rep-john-katko-tout-nuclear-energy-at-oswego/article_f9389794-f801-547e-87cd-59baef9ac4a8.html; Department of Energy, Press Release, [Secretary Perry Tours FitzPatrick Nuclear Plant in New York](https://www.energy.gov/articles/secretary-perry-tours-fitzpatrick-nuclear-plant-new-york), Aug. 1, 2018, available at <https://www.energy.gov/articles/secretary-perry-tours-fitzpatrick-nuclear-plant-new-york>.

⁷ Environmental Protection Agency, Press Release, [EPA Acting Administrator Visits With Elected Officials and Stakeholders at Iowa State Fair](https://www.epa.gov/newsreleases/epa-acting-administrator-visits-elected-officials-and-stakeholders-iowa-state-fair), Aug. 13, 2018, available at <https://www.epa.gov/newsreleases/epa-acting-administrator-visits-elected-officials-and-stakeholders-iowa-state-fair>.

Hon. Henry Kerner
Hon. John E. Kelly
September 5, 2018
Page 3

with Reps. Keith Rothfus (R-PA) and Mike Kelly (R-PA).⁸ The senior White House officials, however, admitted that the true motive for those trips was political.⁹

President Trump's trips to Illinois and Iowa similarly were treated as official visits apparently paid for with government funds. President Trump's trip to Illinois included a visit to a steel plant in Rep. Bost's district, and the congressman flew to the event with President Trump on Air Force One.¹⁰ In Iowa, President Trump held a forum with Rep. Blum and others at a community college in Rep. Blum's district.¹¹ Again, though, it appears the true purpose of these events was political.

OSC previously has investigated instances of politically motivated official travel similar to those admitted to by White House officials on their recent conference call with reporters.¹² Following a complaint in 2007, the Office of Special Counsel launched an investigation to determine whether White House officials in President George W. Bush's Administration violated federal laws when, while on duty, they "coordinated the official travel of high-level agency political appointees in the Bush II administration for the purpose of assisting in the election or reelection of Republican candidates."¹³ In that case, OSC reviewed more than 100,000 pages of documents and conducted interviews with a range of officials from the Office of Political Affairs in the White House and federal agencies in furtherance of this review.¹⁴ In 2011, OSC released a public report finding that Bush Administration officials engaged in prohibited political activity in violation of the Hatch Act when they "[e]ncouraged high-level agency political appointees to

⁸ Rep. Keith Rothfus, Press Release, Rothfus Welcomes Ivanka Trump to Pittsburgh, Aug. 14, 2018, available at <https://rothfus.house.gov/media-center/press-releases/rothfus-welcomes-ivanka-trump-pittsburgh>; Rep. Mike Kelly (@MikeKellyPA), Twitter, Aug. 14, 2018, available at <https://twitter.com/MikeKellyPA/status/1029506952030810112>.

⁹ S.V. Date, White House Admits Trump Is Using Official Events For Midterm Campaigning, *Huffington Post*, Aug. 22, 2018, available at https://www.huffingtonpost.com/entry/trump-official-campaign_us_5b7c896ce4b07295150dc45d.

¹⁰ Monique Garcia and Rick Pearson, Trump claims 'great victory' at Downstate steel plant in first visit to Illinois since taking office, *Chicago Tribune*, July 26, 2018, available at <http://www.chicagotribune.com/news/local/politics/ct-met-donald-trump-granite-city-20180726-story.html>; Seung Min Kim, Trump uses taxpayer-funded trip to campaign for GOP candidates, *Washington Post*, July 26, 2018, available at https://www.washingtonpost.com/politics/trump-uses-taxpayer-funded-trip-to-campaign-for-gop-candidates/2018/07/26/5a1a2d3a-9121-11e8-9b0d-749fb254bc3d_story.html?utm_term=.0154b254f4d6.

¹¹ Brianne Pfannenstiel and William Petroski, President Donald Trump talks trade, politics and job training in Iowa, *Des Moines Register*, July 26, 2018, available at <https://www.desmoinesregister.com/story/news/politics/2018/07/26/president-donald-trump-iowa-gop-dubuque-county-marshalltown-kim-reynolds-rod-blum-farmers-tariffs/841431002/>.

¹² U.S. Office of Special Counsel, Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Election (Jan. 2011), available at http://www.judicialwatch.org/wp-content/uploads/2013/07/F_D_2011_2006MidTermElectionWHPolActivities.pdf (the report is no longer available on the OSC website).

¹³ *Id.*

¹⁴ *Id.*

attend events with targeted Republican candidates in order to attract positive media attention to their campaigns, a practice called ‘asset deployment.’”¹⁵

Applicable Legal Standards

The Hatch Act - 5 U.S.C. §§ 7321-26

The Hatch Act prohibits almost every executive branch employee from “us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.”¹⁶ Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”¹⁷ “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.”¹⁸

The President and Vice President are exempt from the Hatch Act. Nevertheless, in cases involving mixed travel – travel that includes attendance at both official and political events during the same trip – the law requires that costs be properly apportioned between the federal government and the relevant political organization or candidate to ensure that the federal government is appropriately reimbursed for taxpayer funds expended for political events.¹⁹

Other senior executive branch officials, such as presidentially-appointed and Senate-confirmed (“PAS”) officials like cabinet secretaries, are allowed to engage in political activity while on duty or in the federal workplace, but they remain subject to the Hatch Act’s other prohibitions.²⁰ Those provisions include the prohibition against using their official authority or influence to affect the result of an election.²¹ OSC has explained that this exception was created to ensure that PAS officials, who are considered to be “on-call by the President at all times,” would be able to engage in political activity like attending political events as long as the activity “was not paid for with funds from the U.S. Treasury.”²² OSC has previously noted that it may not always be clear whether an event is political or official, and has identified several factors to use when determining the purpose of an event.²³ These factors include (but are not limited to): (a) ascertaining whether candidates (including incumbents seeking reelection) will be present

¹⁵ *Id.*

¹⁶ 5 U.S.C. § 7323(a)(1).

¹⁷ 5 C.F.R. § 734.302(b)(1).

¹⁸ 5 C.F.R. § 734.101.

¹⁹ See Memorandum Opinion for the Counsel to the President, Payment of Expenses Associated with Travel by the President and Vice President, 6 Op. Off. Legal Counsel 214 (1982). If President Trump has routinely engaged in mixed travel in support of candidates in partisan races, then the White House must ensure that any taxpayer funds used for political travel are reimbursed in accordance with 11 C.F.R. § 100.93(e).

²⁰ 5 U.S.C. § 7323(a).

²¹ 5 U.S.C. § 7323(a).

²² U.S. Office of Special Counsel, OSC Advisory Regarding Mixed Travel by Presidentially-Appointed/Senate Confirmed (PAS) Employees (Oct. 6, 2011) (“OSC Advisory”). See 5 U.S.C. § 7324(b)(1); 5 C.F.R. § 734.503.

²³ OSC Advisory at 2-3.

and what their role will be; (b) assessing the relationship, if any, between the event and official agency business; (c) who invited the agency official to attend, and who is organizing the event; (d) whether a candidate's request is a reason for the agency official to attend the event; (e) whether the event was scheduled prior to the candidate's involvement, or vice versa; and (f) the agency official's motivation for attending the event.²⁴ If a trip involves both official and political events, the costs for the trip must be apportioned and any expenses associated with political events reimbursed to the federal government.²⁵

Potential Violations

Based on the facts currently available, although it is unclear whether the White House and senior Trump Administration officials complied with the Hatch Act and applicable laws regarding mixed travel, the admissions by senior White House officials raise troubling concerns. Public reporting suggests that Secretary Carson, Secretary Perry, Acting Administrator Wheeler, and Ms. Trump each took official trips to do "events with or affecting House districts."²⁶ These reports also make clear that these official trips were examples and not meant to be exhaustive.²⁷ In fact, a White House employee admitted that the President's cabinet and senior staff members had participated in 35 such events in August 2018 alone.²⁸ Given these admissions, it is important for OSC to understand how these events came about, the role of White House and campaign staff in planning these events, and exactly how many senior administration officials took official trips that were intended to support candidates in partisan races. It is also important to ascertain if costs associated with these trips were properly apportioned.

Although several open questions remain, the activity senior White House employees described to reporters seems similar to "[e]ncourag[ing] high-level agency political appointees to attend events with targeted Republican candidates in order to attract positive media attention to their campaigns," conduct that OSC has previously found violated the Hatch Act.²⁹ This conduct is even more troubling given what appears to be a consistent disregard by Trump Administration officials for laws limiting their use of taxpayer funded government resources to support partisan activities. Last year, for example, OSC cited both Ambassador to the United Nations Nikki Haley and White House Director of Social Media Dan Scavino Jr. for violating the Hatch Act.³⁰

²⁴ *Id.*

²⁵ *Id.* at 4-5; *See* 5 C.F.R. § 734.503.

²⁶ *Date*, *Huffington Post*, Aug. 22, 2018.

²⁷ *Id.*

²⁸ *Id.*

²⁹ U.S. Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Election* (Jan. 2011).

³⁰ *See* Letter from Erica S. Hamrick, U.S. Office of Special Counsel, to Noah Bookbinder, Citizens for Responsibility and Ethics in Washington, Re: OSC File No. HA-17-4341 (Nikki Haley) (Sept. 28, 2017), *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/10/03161101/DOC100217-10022017112049-1.pdf>; *see also* Letter from Ana Galindo-Marrone, U.S. Office of Special Counsel, to Adam Rappaport, Citizens for Responsibility and Ethics in Washington, Re: OSC File No. HA-17-2986 (Dan Scavino Jr.)

Hon. Henry Kerner
Hon. John E. Kelly
September 5, 2018
Page 6

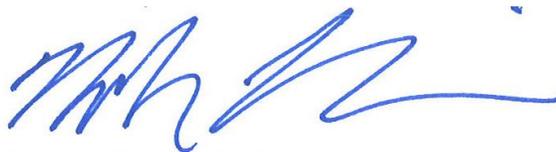
Earlier this year, OSC also determined that Counselor to the President Kellyanne Conway violated the Hatch Act in two television interviews during the 2017 election cycle.³¹

President Trump's travel to Illinois and Iowa raises similar concerns. Although he is not subject to the Hatch Act, governing legal policy requires him to reimburse any taxpayer funds expended for political activities. Accordingly, we request that the Office of the White House Chief of Staff review this matter and ensure full compliance with the law.

Conclusion

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacities. 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 official travel. The conduct to which White House officials have admitted regarding President Trump's mixed travel and a coordinated effort to use official travel by senior administration officials to support Republican candidates raises concerns that the Trump Administration is once again violating the Hatch Act and doing so on a much larger scale than previously known. OSC launched an extensive investigation into similar allegations following the 2006 midterm election cycle and found numerous violations of federal law. Consistent with its prior practice, OSC should commence an immediate investigation into the Trump Administration's conduct during the 2018 election cycle and take or recommend appropriate disciplinary action if government officials broke the law. Further, the White House Chief of Staff should ensure that any taxpayer funds expended for political activities by the President and other officials are appropriately reimbursed.

Sincerely,



Noah Bookbinder
Executive Director

(June 5, 2017), available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/06/09153036/DOC060817-06082017170020.pdf>.

³¹ U.S. 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>.