

October 23, 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 Kellyanne Conway

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Counselor to the President Kellyanne Conway violated the Hatch Act by using her social media account, in connection with the upcoming midterm elections in November, to promote the Republican Party and to post an image of President Trump’s campaign slogan “Make America Great Again” among other political activity. CREW also requests that OSC investigate whether Ms. Conway violated the Hatch Act when she participated in a media interview in her official capacity and expressed her political views about partisan candidates who are running in the upcoming November elections. These actions were directed specifically toward the success or failure of a political party and candidates in partisan races including Donald J. Trump. By sharing these posts on a Twitter account that Ms. Conway uses for official government business and giving a television interview from the grounds of the White House that mixed official government business with political views about partisan candidates only weeks before their elections, she engaged in political activity prohibited by law.

Factual Background

Ms. Conway was selected to be Counselor to President Trump in December 2016 following her role as campaign manager on Donald Trump’s presidential campaign.¹ As Counselor to the President, Ms. Conway serves “as a public face of the administration” and, according to President Trump, provides expertise on “how to effectively communicate our message.”² Ms. Conway uses the Twitter handle @KellyannePolls, and identifies herself on that social media platform exclusively by her official title.³ Since joining the Trump Administration, Ms. Conway has routinely appeared on television and used her Twitter account to promote President Trump’s agenda.

¹ Michael D. Shear and Maggie Haberman, *Trump Rewards Kellyanne Conway With a Top White House Staff Slot*, *New York Times*, Dec. 22, 2016, available at <https://www.nytimes.com/2016/12/22/us/politics/trump-picks-gop-veterans-for-white-house-posts.html>.

² Elise Viebeck, *Trump hires Conway, Spicer and other loyalists for senior White House jobs*, Dec. 22, 2016, available at https://www.washingtonpost.com/politics/trump-hires-conway-spicer-and-other-loyalists-for-senior-white-house-jobs/2016/12/22/9f3c5692-c862-11e6-bf4b-2c064d32a4bf_story.html?utm_term=.c89fbc87e54f.

³ Kellyanne Conway (@KellyannePolls), Twitter, <https://twitter.com/KellyannePolls>.

Ms. Conway's Twitter Account

There is little doubt that Ms. Conway has been using the @KellyannePolls Twitter account for official government purposes since January 2017, when she joined the Trump Administration.⁴ The account profile states only that Ms. Conway is “Counselor to the President.”⁵ Since assuming her role in the White House, Ms. Conway has primarily used the account to post about official Trump Administration activities and priorities including various interviews on behalf of the Trump Administration in front of the White House.⁶ For example, on September 10, 2018, Ms. Conway used her @KellyannePolls account to retweet a link of her interview with Fox News, which she conducted while standing on the White House grounds.⁷



⁴ *Id.*

⁵ *Id.*

⁶ *See generally id.*

⁷ Fox & Friends (@foxandfriends), Twitter (Sept. 10, 2018)
<https://twitter.com/foxandfriends/status/1039131625743732736>.

A review of Ms. Conway's tweets from her @KellyannePolls account in August and September 2018 reveal that more than 70% of her tweets were related to official government business including, but not limited to, posting videos of interviews she conducted in an official capacity on behalf of the Trump Administration and retweeting posts from President Trump, Vice President Pence and the White House.⁸ Less than 30% of her posts during this period appeared to be personal in nature. Ms. Conway's social media activity during these months appears to have been consistent with her activity throughout her tenure in the Trump Administration, revealing a practice of tweeting primarily about official government business. In addition, Ms. Conway often links to the official website of the White House from her @KellyannePolls account.⁹ The official Twitter accounts of the White House, @WhiteHouse, and the President of the United States, @POTUS, also have referenced Ms. Conway's work on behalf of the Trump Administration, and they have specifically linked to her @KellyannePolls account.¹⁰



⁸ See, e.g., Kellyanne Conway (@KellyannePolls), Twitter (Sept. 19, 2018) <https://twitter.com/KellyannePolls/status/1042476857613082624>.

⁹ *Id.*

¹⁰ See, e.g., The White House (@WhiteHouse), Twitter (Sept. 6, 2018) <https://twitter.com/WhiteHouse/status/1037826031254757376>.

Hon. Henry Kerner
October 23, 2018
Page 4

Ms. Conway’s @KellyannePolls account has been “verified” by Twitter and it does not appear that Ms. Conway maintains any other Twitter account for official business.

Use of @KellyannePolls for Partisan Political Purposes

Since March 2018, Ms. Conway appears to have used her official @KellyannePolls Twitter account for partisan political purposes on several occasions. As detailed below, such actions likely violate the Hatch Act.

On July 10, 2018, Ms. Conway tweeted an article from media outlet Mediaite with the headline: “Democratic Party Mocked for Accidentally Using Photo of Hardiman in Article Slamming Kavanaugh.”¹¹ Ms. Conway’s commentary reads in part, “This just about says it all.” The tweet reads in full:



On August 16, 2018, Ms. Conway’s @KellyannePolls account retweeted a tweet from Republican National Committee (“RNC”) Chairwoman Ronna Romney McDaniel’s

¹¹ Kellyanne Conway (@KellyannePolls), Twitter (July 10, 2018), <https://twitter.com/KellyannePolls/status/1016795441676083200>.

@GOPChairwoman account stating: “A woman is actually leading the Republican Party.”¹² Chairwoman McDaniel’s tweet was a retort in response to a tweet from Democratic National Committee (“DNC”) Chair Tom Perez stating: “Let’s be clear: Women are leading the Democratic Party.”¹³ Mr. Perez’s tweet included a link to a Democratic Party video praising Democratic women candidates in the 2018 elections. The entire tweet-chain reads:



The RNC is registered with the Federal Election Commission (“FEC”) as a national party committee of the Republican Party and describes itself as the management arm of the Republican Party.¹⁴ The DNC is registered with the FEC as a national party committee of the Democratic Party, and according to its website, the DNC and Mr. Perez are responsible for governing the Democratic Party.¹⁵ Ms. Conway’s retweet occurred less than three months before the upcoming mid-term elections.

On or around September 17, 2018, Ms. Conway retweeted a message from *Washington Examiner* reporter Paul Bedard that featured a photograph of President Trump wearing a white “Make America Great Again” hat and linked to a *Washington Examiner* article entitled, “Happy Days: Record low 12% worried about economy, great time to get a job.”¹⁶ The tweet reads in full:

¹² Ronna McDaniel (@GOPChairwoman), Twitter (Aug. 16, 2018), <https://twitter.com/GOPChairwoman/status/1030252620093513731>.

¹³ *Id.*

¹⁴ Republican National Committee, FEC Form 1, Statement of Organization, Amended, Feb. 22, 2018, available at <http://docquery.fec.gov/pdf/901/201802229095515901/201802229095515901.pdf>; 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.

¹⁵ DNC Services Corp/Democratic National Committee, FEC Form 1, Statement of Organization, Amended, Sept. 10, 2018, available at <http://docquery.fec.gov/pdf/637/201809179121727637/201809179121727637.pdf>; Democratic National Committee, The Democratic National Committee, 2018, available at <https://democrats.org/about/party-organization/>.

¹⁶ Paul Bedard (@SecretsBedard), Twitter (Sep. 17, 2018), <https://twitter.com/SecretsBedard/status/1041712351840493568> (linking to Paul Bedard, Happy Days: Record low 12% worried about economy, great time to get a job, *Washington Examiner*, Sept. 17, 2018), available at



The *Washington Examiner* article was based on a *Gallup* report published the same day that notably did not include an image of the president.¹⁷ While the *Gallup* report was linked to and heavily cited in the *Washington Examiner* piece, the message Ms. Conway chose to retweet was one that featured the image of President Trump in the “Make America Great Again” hat.

<https://www.washingtonexaminer.com/washington-secrets/happy-days-record-low-12-worried-about-economy-great-time-to-get-a-job>.

¹⁷ Frank Newport, *Record-Low 12% Cite Economic Issues as Top U.S. Problem*, *Gallup*, Sept. 17, 2018, available at <https://bit.ly/2xPVBrm>; see also GallupNews (@GallupNews), Twitter (Sept. 17, 2018), <https://twitter.com/GallupNews/status/1041809252195729408>.

Use of White House Office and Title for Partisan Political Purposes

On October 3, 2018, Ms. Conway participated in a television interview with Fox News.¹⁸ Throughout her interview, Ms. Conway stood on the White House grounds with the White House visible in the background.¹⁹ At the beginning of the interview, Ms. Conway was introduced by the host as “Kellyanne Conway from the North Lawn,” a specific reference to her location on the White House grounds.²⁰ Ms. Conway was periodically identified on the chyron at the bottom of the interview by her official title “Counselor to the President.”²¹ The initial focus of the interview was about Judge Brett Kavanaugh’s prospects for confirmation to serve on the Supreme Court of the United States, but then Ms. Conway stated:

I think if you are a red-state Democrat right now, you are stuck choosing between this – being complicit in a process that has been about delay and destruction and the will of your own people in your states. If you are one of those three Democratic senators who voted for Neil Gorsuch just over a short year ago – Senators Manchin, Heitkamp and Donnelly in Indiana – you’ve got to think about this. What has changed because your voters want a Supreme Court nominee to be confirmed. They don’t want this obstruction. They don’t like the socialist way the Democratic party is going.²²

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.”²³ Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”²⁴ “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.”²⁵

¹⁸ Kellyanne Conway Interview, Fox News, Oct. 3, 2018, 10:00 AM ET, *available at* https://www.youtube.com/watch?time_continue=641&v=1A5IoSMuE-U.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ 5 U.S.C. § 7323(a)(1).

²⁴ 5 C.F.R. § 734.302(b)(1).

²⁵ 5 C.F.R. § 734.101.

OSC Guidance on Social Media

OSC has provided recent guidance on applying this prohibition to social media.²⁶ In its guidance, OSC set 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.”²⁷ An example of prohibited conduct includes:

*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 not provided a bright line rule regarding what constitutes an official Twitter account or when a personal social media account is being used for official purposes. However, OSC has outlined several factors that it will consider in determining that a personal social media account is “being used in ways to suggest it is an official social media account.”²⁹ Those factors include, for example:

(1) the account contains little to no personal content; (2) the account identifies the individual as a federal employee; (3) the account extensively uses photographs of the employee’s official activities; (4) the account often references, retweets, likes, comments, or otherwise shares material related to official activities; or (5) the account is linked to an agency website or other official page. No one factor is dispositive.³⁰

OSC guidance on “misusing personal social media accounts” also states that pursuant to the Hatch Act, federal employees from “may not engage in political activity on a personal social media account if they are using such accounts for official purposes or posting in their official capacities.”³¹ An example of prohibited conduct here includes:

*Example 1: You are a federal employee and maintain only a personal Twitter account. While you have some personal posts about family vacations and events with friends, most of your posts are retweets of your agency’s initiatives and photographs of you at official events. You **may not** use this account to make posts*

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

²⁷ *Id.* at 7.

²⁸ *Id.*

²⁹ *Id.* at 8.

³⁰ *Id.*

³¹ *Id.*

*directed at the success or failure of a political party, candidate in a partisan race, or partisan political group.*³²

This guidance is illuminated by OSC's September 28, 2017 response to a complaint filed by CREW regarding U.S. Ambassador to the United Nations Nikki Haley.³³ OSC found that Ambassador Haley violated the Hatch Act when she "retweeted a political message from President Donald Trump via her @nikkihaley Twitter account."³⁴ OSC acknowledged that Ambassador Haley's account was a personal Twitter account but explained that the account included significant "indicia of her official role."³⁵ These indicia included that Ambassador Haley did not have any other Twitter accounts, that her profile listed her official title, and that many of her posts and photographs were about and of official matters, among other factors.³⁶

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.³⁷ 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."³⁸ 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.³⁹ 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.⁴⁰ 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."⁴¹ 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

³² *Id.*

³³ Letter from Erica Hamrick, Office of Special Counsel to Noah Bookbinder, Citizens for Responsibility and Ethics in Washington, Sept. 28, 2017, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/10/03161101/DOC100217-10022017112049-1.pdf>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ 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>.

³⁸ 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>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

#MAGA or #ResistTrump in social media posts or other forums; or display non-official pictures of President Trump.⁴²

Kellyanne Conway's Prior Hatch Act Violations

On March 6, 2018, just one day after OSC's updated Hatch Act guidance was published, OSC concluded a previous Hatch Act investigation of Ms. Conway, finding that she violated the law in two television interviews and referring a report to the President for "appropriate disciplinary action."⁴³ OSC described Ms. Conway's conduct in one of the interviews in this way:

Her intentional partisan jabs against Doug Jones were made in her official capacity and meant to persuade voters not to support him in the Alabama special election. By telling voters not to "be fooled" and contending that Doug Jones would be "terrible for property owners," Ms. Conway advocated for the failure of his candidacy. She also implied that voters should support Roy Moore, so the President could get the votes in the Senate needed to pass tax reform. Her advocacy against one candidate and implied endorsement of another candidate constituted political activity under the Hatch Act.⁴⁴

According to OSC's report, these violations occurred within weeks of each other and after Ms. Conway "received significant training on Hatch Act prohibitions."⁴⁵ 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.⁴⁶ On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.⁴⁷

In its March 2018 report regarding Ms. Conway's previous Hatch Act violations, OSC 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, stating:

⁴² *Id.*

⁴³ 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>.

⁴⁴ 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>.

⁴⁵ 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>.

⁴⁶ Alexander Mallin, Kellyanne Conway says she discussed Hatch Act violations with President Trump, *ABC News*, Mar. 8, 2018, available at <https://abcnews.go.com/Politics/kellyanne-conway-discussed-hatch-act-violations-president-trump/story?id=53609559>.

⁴⁷ 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>.

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.⁴⁸

Kellyanne Conway's Tweets Violated the Hatch Act

As an initial matter, Ms. Conway's @KellyannePolls Twitter account appears to be a social media account that she uses for official purposes or posting in her official capacity. As OSC's example of prohibited conduct provides, even if a federal employee maintains only a personal Twitter account, she cannot use that account to post tweets directed at the success or failure of a political party or candidate if that account includes tweets mostly about government initiatives and photographs of the employee at official events. While OSC has made clear that no one factor is dispositive in making this determination, Ms. Conway's @KellyannePolls Twitter account meets several of the identified criteria. Ms. Conway's account does include some personal content, but it appears that most of her posts since joining the Trump Administration have been related to or in support of her work promoting the Trump Administration's messaging. The account also lists her official position as a federal employee, "Counselor to the President" without any other description and the White House has referenced Ms. Conway's @KellyannePolls account to highlight her official work. In addition, Ms. Conway regularly uses the @KellyannePolls account to post photos and videos of her official activities including her various television interviews on behalf of the White House. Ms. Conway also frequently uses the @KellyannePolls account to reference, retweet, like, comment, or otherwise share material related to official activities. In fact, more than 70% of her tweets in August and September 2018 related to official government business. As OSC decided in the Ambassador Haley matter, Ms. Conway's @KellyannePolls account includes significant indicia of her official role. Based on this confluence of factors, Ms. Conway's use of the @KellyannePolls account falls squarely within the purview of the Hatch Act, and Ms. Conway cannot use the account to make posts directed at the success or failure of a political party or candidate in a partisan race.

There is no doubt that Ms. Conway's use of the @KellyannePolls Twitter account to post messages and tweets critical of the Democratic Party and promoting RNC Chairwoman McDaniel's Twitter account constitute political activity under the Hatch Act. Ms. Conway's tweet of an article denigrating the Democratic Party as being "mocked" for using an incorrect photo just months prior to the midterm elections is aimed at the failure of a political party. Likewise, Ms. Conway's retweet of a message from RNC Chairwoman McDaniel's Twitter account countering DNC Chair Perez's tweet regarding leadership of women in their respective parties appears to be directed at the success of the Republican Party in the election at the expense of the Democratic Party. Ms. McDaniel's tweet was a retort aimed at Mr. Perez's post of a

⁴⁸ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018.

video about Democratic women candidates in the 2018 elections. Ms. Conway's retweet occurred less than three months before the midterm elections referenced in the video.

Similarly, Ms. Conway's use of the @KellyannePolls Twitter account to post a tweet featuring an image of the Trump campaign slogan constitutes political activity. Both OSC and the White House have provided White House staff with legal guidance concluding that tweeting an image of President Trump's campaign slogan "Make America Great Again" is political activity under the Hatch Act. Although the image included with Ms. Conway's tweet came from the original source, rather than Ms. Conway herself, OSC has not identified any exception under the Hatch Act that allows for posting political images on a social media account if those images are not created by the poster. To the contrary, OSC found that Ambassador Haley violated the Hatch Act by retweeting a political message from President Trump. Creating such an exception would render useless much of OSC's guidance regarding Hatch Act compliance on social media. Furthermore, Ms. Conway easily could have retweeted the *Gallup* report that did not include the photograph with the slogan "Make America Great Again" rather than the *Washington Examiner* article that did include it. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.

Kellyanne Conway's Television Interview Violated the Hatch Act

Ms. Conway's October 3, 2018 appearance on Fox News is nearly identical to her earlier violations of the Hatch Act when OSC found her to have impermissibly engaged in political activity while participating in two media interviews in her official capacity from the White House grounds.⁴⁹ Ms. Conway stood for the October 3, 2018, interview in the same physical location as those of her prior violations – on the White House grounds with the White House in the background – and was periodically identified on the chyron at the bottom of the interview by her name and official title "Counselor to the President," as she was in the interviews that gave rise to the prior violations. To reinforce the location of her October 3 interview, the Fox News host stated that Ms. Conway was speaking "from the North Lawn" of the White House. There is no question Ms. Conway was using her official title, position, and authority while participating in the interview on government property.

As with the earlier incidents, Ms. Conway's October 3 interview initially focused on the official business of the White House – in this case about the prospect of Judge Kavanaugh's confirmation – but then veered into a discussion of her political views. By focusing the discussion on "red-state Democrats" and "three Democratic senators," and naming Joe Manchin, Heidi Heitkamp and Joe Donnelly, who are all Democratic Party candidates in the November midterm elections, Ms. Conway appeared to be intending to influence the outcome of this November's election.⁵⁰ Ms. Conway also referred to their constituents as "voters" and expressed

⁴⁹ See Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018.

⁵⁰ Leigh Ann Caldwell, Red State Democrats in tight spot over Kavanaugh confirmation, *Reuters*, Sept. 3, 2018, available at <https://www.nbcnews.com/politics/congress/red-state-democrats-tight-spot-over-kavanaugh-confirmation-n905551>.

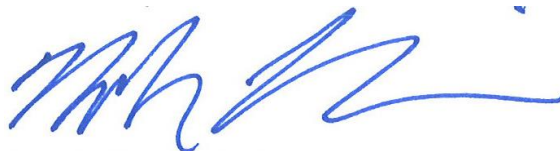
her view that these voters would not support “delay and destruction,” “don’t want obstruction,” and “don’t like the socialist way the Democratic party is going.” Her partisan critiques against these three Senators were made in her official capacity and meant to persuade voters not to support them in the forthcoming midterms elections. By stating that voters “don’t want obstruction” from these Senators and “don’t like the socialist way” their party is going, Ms. Conway advocated for the failure of their candidacies. Her suggestion that voters should punish the three named Senate candidates at the polls if they fail to support the confirmation of Judge Kavanaugh were clearly intended to influence the outcome of the upcoming election. This conduct is reminiscent of one of her prior Hatch Act violations in which she encouraged voters to oppose a Democratic candidate who would vote against the tax bill that President Trump supported. Under these circumstances, this portion of Ms. Conway’s interview is reasonably viewed as political activity that violates the Hatch Act.

By using the Twitter account she uses for official business to transmit the messages described above and by using her official title, position, and authority to express political views about candidates in partisan elections, Ms. Conway ran afoul of the Hatch Act, which requires her to remain politically neutral when engaging in official government conduct. These violations are even more egregious given the guidance provided by OSC and the White House in March, previous Hatch Act guidance provided specifically to Ms. Conway, and following her two prior Hatch Act violations in 2017. It seems clear that neither prior guidance by the White House Counsel’s office nor prior admonition by OSC have deterred Ms. Conway from breaking the law.

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 her official position. Based on the conduct at issue, which advocates the success or failure of a political party or and the election or defeat of a partisan political candidate, Ms. Conway appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Conway.

Sincerely,



Noah Bookbinder
Executive Director