

November 16, 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 post a tweet from President Donald J. Trump directed at the success or failure of a political party in the upcoming midterm elections. By tweeting this message 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: WH.gov/privacy.”⁵ Furthermore, the account’s profile picture is an image of Ms. Westerhout with President Trump and the header

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.*

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, @madwestt.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 Unlike Ms. Westerhout’s @madwest45 Twitter account, her @madwestt account is not verified by Twitter.

Use of @madwest45 for Partisan Political Purposes

On October 2, 2018, Ms. Westerhout appears to have used her official @madwest45 Twitter account to tweet a partisan political post. Ms. Westerhout used her Twitter account to share a tweet from the President’s @realDonaldTrump account stating, “THE ONLY REASON TO VOTE FOR A DEMOCRAT IS IF YOU’RE TIRED OF WINNING!”¹¹ Ms. Westerhout added her own commentary, “Never tired of winning!” 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>. On August 2, 2018, CREW filed a Hatch Act complaint with OSC alleging that Ms. Westerhout violated the Hatch Act using her @madwest45 account. Ms. Westerhout appears to have made her personal account private following that complaint.

¹¹ Madeleine Westerhout (@madwest45), Twitter (Oct. 2, 2018), <https://twitter.com/madwest45/status/1047157784595320833>.

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.”¹² Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”¹³ “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.”¹⁴

OSC has provided guidance in February 2018 on applying this prohibition to social media.¹⁵ 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.”¹⁶ 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).¹⁷*

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

¹² 5 U.S.C. § 7323(a)(1).

¹³ 5 C.F.R. § 734.302(b)(1).

¹⁴ 5 C.F.R. § 734.101.

¹⁵ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

¹⁶ *Id.* at 7.

¹⁷ *Id.*

prohibit [an employee] from doing so, provided she carries out her job duties in a manner that complies with the law.¹⁸

On September 20, 2018, OSC found that Deputy Assistant to the President and Communications Director for the Office of the First Lady Stephanie Grisham violated the Hatch Act by using her official White House Twitter account to engage in partisan political activity.¹⁹ OSC found that Ms. Grisham broke the law when she used that Twitter account, @StephGrisham45, to tweet a message that included President Trump's campaign slogan "#MAGA" and a picture from a 2015 Trump campaign rally.²⁰ OSC issued Ms. Grisham a warning letter noting that any future engagement in prohibited political activity will be considered "a willful and knowing violation of the law, which could result in further action."²¹

As an initial matter, there is no doubt that Ms. Westerhout's @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.

Nor is there any doubt that Ms. Westerhout's use of the @madwest45 Twitter account to share President Trump's political message constitutes political activity under the Hatch Act. Ms. Westerhout tweeted a message explicitly directed at the failure of a political party and candidates in partisan races for public office. President Trump's message "THE ONLY REASON TO VOTE FOR A DEMOCRAT IS IF YOU'RE TIRED OF WINNING!" directly advocated for the defeat of Democratic candidates and came five weeks before the midterm elections. Ms. Westerhout also added her own commentary indicating that she agreed with President Trump's political sentiment. Accordingly, this conduct was directed at the success or failure of a political party or candidates in a partisan race. By using her official Twitter account to transmit this message, 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 prior guidance provided by OSC as well as recent Hatch Act violations by other White House employees.

¹⁸ 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>.

¹⁹ Letter from Erica Hamrick, Office of Special Counsel to Noah Bookbinder, Citizens for Responsibility and Ethics in Washington, Re: OSC File No. HA-18-4852, Sept. 20, 2018, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/09/21140938/GrishamHatchLetter.pdf>.

²⁰ *Id.*


²¹ *Id.*

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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 partisan political candidates, 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,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director