

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 Mercedes Schlapp

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Assistant to the President and Senior Advisor for Strategic Communications Mercedes Schlapp violated the Hatch Act by using her social media account to promote the Republican Party and President Donald J. Trump’s campaign slogan “Make America Great Again” among other political activity. These actions were directed toward the success or failure of a political party and Donald J. Trump, a candidate in a partisan race. By sharing these posts on a Twitter account that Ms. Schlapp uses primarily for official government business and refers to her official position, she likely engaged in political activity prohibited by law.

**Factual Background**

Ms. Schlapp was appointed Assistant to the President and Senior Advisor for Strategic Communications in September 2017.<sup>1</sup> As Senior Advisor for Strategic Communications, Ms. Schlapp works with other senior White House staff to promote the President’s agenda.<sup>2</sup> Ms. Schlapp uses the Twitter handle @mercedesschlapp.<sup>3</sup> Since joining the Trump Administration, Ms. Schlapp has routinely appeared on television and used her Twitter account to promote President Trump’s agenda.

@mercedesschlapp Twitter Account

There is little doubt that Ms. Schlapp has been using the @mercedesschlapp Twitter account for official government purposes since September 2017, when she joined the Trump Administration.<sup>4</sup> The account profile states that Ms. Schlapp is “@realDonaldTrump Asst to

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<sup>1</sup> The White House, *President Donald J. Trump Announces White House Appointments*, Sep. 12, 2017, available at <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-white-house-appointments-2/>.

<sup>2</sup> Elizabeth Williamson, *Meet the Schlapps, Washington’s Trump-Era ‘It Couple’*, Apr. 30, 2018, available at <https://www.nytimes.com/2018/04/30/us/politics/schlapp-trump.html>.

<sup>3</sup> Mercedes Schlapp (@mercedesschlapp), Twitter, <https://twitter.com/mercedesschlapp>.

<sup>4</sup> *Id.*

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POTUS.”<sup>5</sup> The header photo on Ms. Schlapp’s account is an image of President Trump standing in front of Air Force One.<sup>6</sup>



Since assuming her role in the White House, Ms. Schlapp 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.<sup>7</sup> For example, on September 30, 2018, Ms. Schlapp used her @mercedesschlapp account to retweet a link of her interview with Fox News while standing on the White House grounds.<sup>8</sup>

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *See generally id.*

<sup>8</sup> GOP (@GOP), Twitter (Sept. 30, 2018) <https://twitter.com/GOP/status/1046511390238887937>.



A review of Ms. Schlapp's tweets from her @mercedesschlapp account in August and September 2018 reveal that more than 75% of her tweets were related to official government business including, but not limited to posting videos of her interviews on behalf of the Trump Administration and retweeting posts from President Trump, Vice President Pence, and the White House.<sup>9</sup> Less than 25% of her posts during this period appeared personal in nature. These months appear consistent with Ms. Schlapp's practice of using her account during her tenure in the Trump Administration to tweet primarily about official government business. In addition, Ms. Schlapp often retweets the official Twitter accounts of the White House and senior administration officials from her @mercedesschlapp account.<sup>10</sup> The official Spanish language Twitter account of the White House, @LaCasaBlanca, has also referenced Ms. Schlapp's work on behalf of the administration by linking to her @mercedesschlapp account.<sup>11</sup>



<sup>9</sup> See generally, Mercedes Schlapp (@mercedesschlapp), Twitter, <https://twitter.com/mercedesschlapp>.

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., La Casa Blanca (@LaCasaBlanca), Twitter (Feb. 5, 2018) <https://twitter.com/LaCasaBlanca/status/960651264093839360>.

Ms. Schlapp's @mercedesschlapp account has been "verified" by Twitter. Ms. Schlapp's Twitter profile indicates that she joined Twitter in May 2009 and it does not appear that she maintains any other Twitter account for official business.<sup>12</sup>

Use of @mercedesschlapp for Partisan Political Purposes

Since March 2018, Ms. Schlapp appears to have used her official @mercedesschlapp Twitter account for partisan political purposes on numerous occasions. As detailed below, such actions likely violate the Hatch Act. These examples are illustrative but are by no means inclusive of every instance that Ms. Schlapp has used her Twitter account for partisan purposes.

On Friday, July 13, 2018, Ms. Schlapp retweeted a post from Brad Parscale, campaign manager of Donald Trump's 2020 reelection campaign saying: "It's a movement! #MAGA2020" and featuring a photo of what appears to be a campaign rally for President Trump.<sup>13</sup> The tweet reads in full:



That same day, Ms. Schlapp's @mercedesschlapp account also retweeted a tweet from CNN commentator Parris Dennard regarding the White House internship program including the hashtags: "#MAGA #Intern #DC #Spring #Millennial #GOP" and a link to the application landing page.<sup>14</sup> The entire tweet reads:

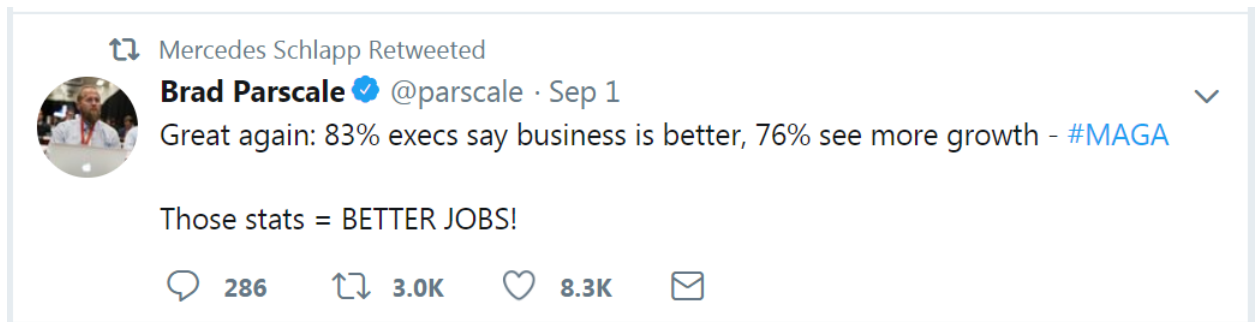
<sup>12</sup> Mercedes Schlapp (@mercedesschlapp), Twitter, <https://twitter.com/mercedesschlapp>.

<sup>13</sup> Brad Parscale (@parscale), Twitter (July 13, 2018), <https://twitter.com/parscale/status/1017907427705065472>.

<sup>14</sup> Parris Dennard (@PARISDENNARD), Twitter (July 13, 2018), <https://twitter.com/PARISDENNARD/status/1017855723974332418>.



On September 1, 2018, Ms. Schlapp retweeted another message from Brad Parscale including the President’s reelection campaign slogan.<sup>15</sup> The tweet reads in full:



Ms. Schlapp has also used her Twitter account to retweet several messages by Republican National Committee (“RNC”) Chairwoman Ronna Romney McDaniel’s Twitter account @GOPChairwoman. For example, on Monday, April 16, 2018, Ms. Schlapp retweeted a tweet from Ms. McDaniel using the campaign slogan “#MAGA”.<sup>16</sup> The tweet reads in full:

<sup>15</sup> Brad Parscale (@parscale), Twitter (Sept. 1, 2018), <https://twitter.com/parscale/status/1035945614574419968>.

<sup>16</sup> Ronna McDaniel (@GOPChairwoman), Twitter (Apr. 16, 2018), <https://twitter.com/GOPChairwoman/status/986012610733715457>.



On April 29, 2018, Ms. Schlapp used her @mercedesschlapp Twitter account to retweet another message from RNC Chairwoman McDaniel regarding the White House Correspondents' Association Dinner.<sup>17</sup> The tweet reads in full:



<sup>17</sup> Ronna McDaniel (@GOPChairwoman), Twitter (Apr. 16, 2018), <https://twitter.com/GOPChairwoman/status/990559964208029696>.

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.<sup>18</sup> The RNC’s website as listed on its FEC form is [www.gop.com](http://www.gop.com).<sup>19</sup>

### **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.”<sup>20</sup> Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”<sup>21</sup> “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.”<sup>22</sup>

OSC has provided recent guidance on applying this prohibition to social media.<sup>23</sup> 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.”<sup>24</sup> 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).<sup>25</sup>*

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.”<sup>26</sup> Those factors include, for example:

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<sup>18</sup> Republican National Committee, [FEC Form 1, Statement of Organization, Amended](http://docquery.fec.gov/pdf/901/201802229095515901/201802229095515901.pdf), Feb. 22, 2018, available at <http://docquery.fec.gov/pdf/901/201802229095515901/201802229095515901.pdf>; Republican National Committee, [Rules of the Republican Party, Rule 1\(a\)](https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules_of_the_Republican+Party_FINAL_S14090314.pdf), available at [https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules\\_of\\_the\\_Republican+Party\\_FINAL\\_S14090314.pdf](https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules_of_the_Republican+Party_FINAL_S14090314.pdf).

<sup>19</sup> *Id.*

<sup>20</sup> 5 U.S.C. § 7323(a)(1).

<sup>21</sup> 5 C.F.R. § 734.302(b)(1).

<sup>22</sup> 5 C.F.R. § 734.101.

<sup>23</sup> Office of Special Counsel, [Hatch Act Guidance on Social Media](http://bit.ly/2J60680), revised Feb. 2018, available at <http://bit.ly/2J60680>.

<sup>24</sup> *Id.* at 7.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 8.

(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.<sup>27</sup>

OSC guidance on "misusing personal social media accounts" also states that pursuant to the Hatch Act, federal employees "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."<sup>28</sup> 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 directed at the success or failure of a political party, candidate in a partisan race, or partisan political group.*<sup>29</sup>

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.<sup>30</sup> OSC found that Ambassador Haley violated the Hatch Act when she "retweeted a political message from President Donald Trump via her @nikkihaley Twitter account."<sup>31</sup> OSC acknowledged that Ambassador Haley's account was a personal Twitter account but that the account included significant "indicia of her official role."<sup>32</sup> 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.<sup>33</sup>

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.<sup>34</sup> On March 5, 2018, OSC published a document entitled, "Updated Guidance Regarding the Hatch Act and President Donald Trump Now That

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> 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>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> 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>.



He Is Officially a Candidate for Reelection.”<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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.”<sup>38</sup> 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 #MAGA or #ResistTrump in social media posts or other forums; or display non-official pictures of President Trump.<sup>39</sup>

On March 6, 2018, just one day after OSC’s updated Hatch Act guidance was published, OSC concluded a previous 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.”<sup>40</sup> 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.<sup>41</sup> On March 7, 2018, the White House counsel’s office sent a memo to White House staff highlighting OSC’s new Hatch Act guidance.<sup>42</sup>

In its March 2018 report regarding Ms. Conway’s 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:

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

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<sup>35</sup> 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>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> 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>.

<sup>41</sup> 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-Schlapp-discussed-hatch-act-violations-president-trump/story?id=53609559>.

<sup>42</sup> 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>.

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.<sup>43</sup>

*Mercedes Schlapp's Tweets Violated the Hatch Act*

As an initial matter, Ms. Schlapp's @mercedesschlapp 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. Schlapp's @mercedesschlapp Twitter account meets several of the identified criteria. Ms. Schlapp's account does include some personal content, but most of her posts since joining the Trump Administration have been related to or in support of her work as part of the White House communications team. The account also lists her official position as a federal employee, "@realDonaldTrump Asst to POTUS", features a header photo of the president in front of Air Force One, and the White House has referenced Ms. Schlapp's @mercedesschlapp account to highlight her official work. In addition, Ms. Schlapp regularly uses the @mercedesschlapp account to post photos and videos of her official activities including her various television interviews on behalf of the White House. Ms. Schlapp also frequently uses the @mercedesschlapp account to reference, retweet, like, comment, or otherwise share material related to official activities. As OSC decided in the Ambassador Haley matter, Ms. Schlapp's @mercedesschlapp account includes significant indicia of her official role. Based on this confluence of factors, Ms. Schlapp's use of the @mercedesschlapp account falls squarely within the purview of the Hatch Act, and Ms. Schlapp cannot use her @mercedesschlapp 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. Schlapp's use of her @mercedesschlapp Twitter account to post messages and tweets promoting the President's campaign slogan and RNC Chairwoman McDaniel's Twitter account constitute political activity under the Hatch Act. 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" or "#MAGA" is political activity under the Hatch Act. Ms. Schlapp not only retweeted several messages including the President's campaign slogan, but on at least two occasions retweeted messages from President Trump's campaign manager highlighting campaign activity. Similarly, Ms. Schlapp's retweets of RNC Chairwoman McDaniel promoting the Republican Party's official messages are directly aimed at success or failure of a political party. In fact, some of Ms. Schlapp's retweets of messages from RNC Chairwoman McDaniel's Twitter account are compounded by those same messages also promoting President Trump's campaign slogan.

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<sup>43</sup> 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>.

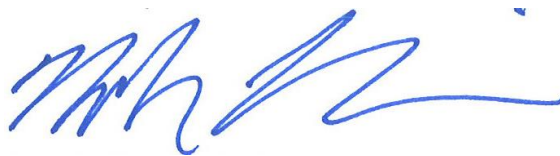
Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.

By using her official Twitter account to transmit the messages described above, Ms. Schlapp 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 following two prior Hatch Act violations by a White House employee. Given the volume of partisan political messages posted by Ms. Schlapp, it seems clear that neither prior guidance by OSC nor the White House Counsel's office have deterred her 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 his or her official position, including through a social media account used for official government business. By publishing the tweets at issue, which advocate the success or failure of a political party and the election or defeat of a partisan political candidate, Ms. Schlapp appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Schlapp.

Sincerely,



Noah Bookbinder  
Executive Director