

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 Russ Vought

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Deputy Director of the White House Office of Management and Budget (“OMB”) Russ Vought violated the Hatch Act by using his official social media account to tweet a post promoting President Trump’s campaign slogan “MAGA” (Make America Great Again). These actions were directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By writing and sharing this tweet using his official position, Mr. Vought likely engaged in political activity prohibited by law.

Factual Background

Mr. Vought was confirmed by the Senate to serve as Deputy Director of OMB in February 2018 following his nomination by President Trump.¹ Shortly after joining the Trump Administration, Mr. Vought began using the official Twitter handle @RussVought45.²

@RussVought45 Twitter Account

There is little doubt that the @RussVought45 Twitter account is used by Mr. Vought for official government purposes. According to his Twitter page, the handle was created in March 2018, shortly after his confirmation as Deputy Director.³ The account profile states that Mr. Vought is the “Deputy Director, Office of Management and Budget” and “Tweets may be archived: wh.gov/privacy.”⁴ The account profile also includes a link to the official OMB website, “omb.gov.”⁵ Furthermore, the account’s header features an image of the OMB logo.⁶ Mr. Vought also uses the @RussVought45 Twitter account to post about official OMB activities.⁷

¹ Niv Elis, *Senate confirms Trump’s OMB deputy*, *The Hill*, Feb. 28, 2018, available at <https://thehill.com/policy/finance/376124-senate-confirms-trumps-omb-deputy>

² Russ Vought (@RussVought45), Twitter, <https://twitter.com/RussVought45>

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See generally Russ Vought, @RussVought45, Twitter, <https://twitter.com/RussVought45>

Additionally, the account has been “verified” by Twitter, which means that an account of public interest is authentic.⁸



Mr. Vought also maintains a personal Twitter account, @russvought.⁹ His profile indicates that he started using this account in March 2010.¹⁰ The account profile states: “OMB, Heritage Action alumni, christian, conservative, husband, father & avid sports fan and reader (views my own)”.¹¹ Mr. Vought’s @russvought Twitter account has not been verified.

Use of @RussVought45 for Partisan Political Purposes

On Friday, October 5, 2018, Mr. Vought used his official @RussVought45 account to tweet about President Trump’s economic policies using the hashtag “MAGAnomics.”¹² The tweet reads in full:

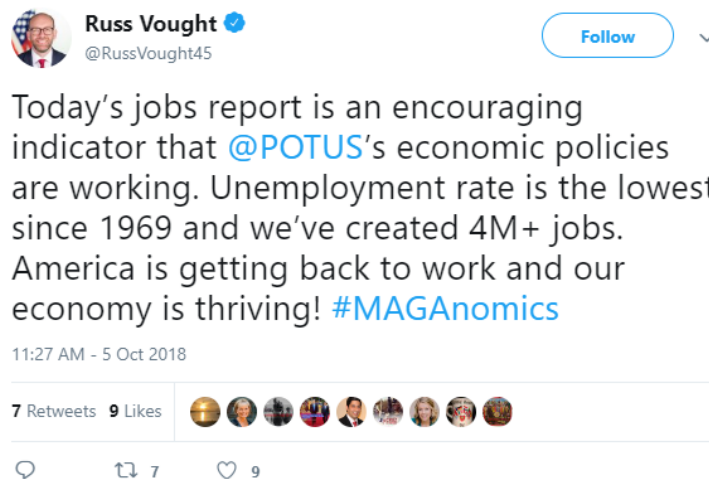
⁸ Twitter, *About verified accounts*, available at <https://help.twitter.com/en/managing-your-account/about-twitter-verified-accounts>, accessed Oct. 24, 2018.

⁹ Russ Vought (@russvought), Twitter, <https://twitter.com/russvought?lang=en>

¹⁰ *Id.*

¹¹ *Id.*

¹² Russ Vought (@RussVought45), Twitter (Oct. 5, 2018) <https://twitter.com/RussVought45/status/1048278437604020226>.



The term “MAGAnomics” has been routinely used by Trump Administration political appointees at OMB to promote President Trump’s economic policies. For example, earlier this year, OMB Director Mick Mulvaney penned an op-ed entitled ““MAGAnomics’ is working and defying critics.”¹³ On August 2, 2018, CREW filed a Hatch Act complaint with OSC against Mr. Mulvaney for his use of the term “MAGAnomics” in official communications including this op-ed. For the reasons detailed below, Mr. Vought’s use of his @RussVought45 Twitter account to tweet a post promoting President Trump’s campaign slogan “#MAGA” similarly is likely a violation of the Hatch Act.

March 2018 OSC and White House Hatch Act Guidance

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 He Is Officially a Candidate for Reelection.”¹⁵ 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.¹⁶ 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 the social media accounts.¹⁷ OSC’s

¹³ Mick Mulvaney, MAGAnomics is working and defying critics, *CNBC*, Apr. 5, 2018, available at <https://www.cnbc.com/2018/04/05/trump-budget-director-mulvaney-maganomics-is-working-and-defying-critics.html>.

¹⁴ 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>.

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.*

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."¹⁸ 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.¹⁹

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."²⁰ 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.²¹

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

¹⁹ *Id.*

²⁰ 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>.

²¹ 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>.

²² 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>.

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 has provided recent guidance on applying this prohibition to social media.²⁶ 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.”²⁷

OSC’s March 2018 updated Hatch Act guidance clarifies that since President Trump officially became a candidate for reelection on February 27, 2018, federal employees are prohibited from using the campaign slogan “Make America Great Again” or “MAGA” on official social media accounts.²⁸

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.²⁹

As an initial matter, there is no question that the @RussVought45 Twitter account is “a social media account designated for official purposes.” Mr. Vought’s @RussVought45 Twitter page describes him as the “Deputy Director, Office of Management and Budget” and the profile features a picture of the OMB logo. In addition, Mr. Vought’s @RussVought45 account handle features the number “45” to signify the 45th President of the United States, consistent with the practice of many other Trump Administration officials. It is also noteworthy that this account has been “verified” by Twitter, while his personal account has not. Mr. Vought also consistently uses his @RussVought45 account to post about official OMB activities. Thus, the @RussVought45 account clearly is an official account and Mr. Vought’s use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Mr. Vought’s use of the @RussVought45 Twitter account to post tweets promoting the Trump campaign slogan constitutes political activity under the Hatch Act. Both OSC and the White House have provided White House staff with legal guidance

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 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>.

²⁹ 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>.

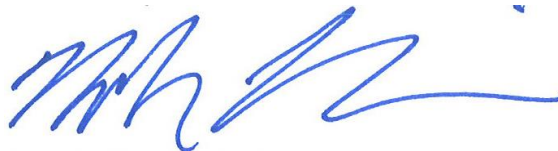
concluding that using official social media accounts to disseminate President Trump's campaign slogan "#MAGA" or "Make America Great Again" constitutes political activity. While Mr. Vought could have used any number of terms to describe the Trump Administration's economic policy, the term "MAGAnomics" specifically invokes President Trump's campaign slogan and ties his work on behalf of the federal government to the president's campaign. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.³⁰

By using his official Twitter account to transmit this message, Mr. Vought ran afoul of the Hatch Act, which requires him to remain politically neutral when engaging in official government conduct. 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, as well as CREW's prior Hatch Act complaints regarding the use of "MAGAnomics" in official OMB communications.

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 while using his or her official position, including through an official social media account. By publishing the October 5, 2018 tweet which advocates the election or defeat of a partisan political candidate, Mr. Vought appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Mr. Vought.

Sincerely,



Noah Bookbinder
Executive Director

³⁰ Office of Special Counsel, Hatch Act Guidance on Social Media, at 7.