

November 16, 2018

The Honorable Henry J. 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 Sarah Huckabee Sanders

Dear Special Counsel Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Sarah Huckabee Sanders, White House Press Secretary, violated the Hatch Act by issuing an official White House statement on Election Day that advocated for the success of a particular political party.

**Factual Background**

Ms. Sanders serves as the Press Secretary for the Trump White House.<sup>1</sup> At 6:51 p.m. on November 6, 2018, she released to the White House press corps an official statement.<sup>2</sup> At the time of this Election Day issuance, polling sites in every state in the union were open.<sup>3</sup> In fact, polling sites in various states would remain open for anywhere from an hour (e.g., Pennsylvania) to another six hours (Alaska’s Aleutian Islands) after issuance of this statement.<sup>4</sup> The White House statement attributed the following comments to Ms. Sanders:

“As President, Donald J. Trump has headlined an unprecedented 50 rallies—30 in the last two months alone—and he has campaigned for dozens of candidates at all levels of government. The President has energized a staggering number of Americans at packed arenas and in overflow crowds at rallies across the country. Under President Trump’s leadership, the Republican National Committee has raised more than a quarter billion dollars, fueling an extraordinary ground game geared toward defying midterm history and protecting the GOP’s majorities. He has made the choice clear to the American people: Tonight, we can continue down the path of American prosperity and security or we can go backwards. The

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<sup>1</sup> See Meghan Keneally and Adam Kelsey, Sarah Huckabee Sanders named press secretary after Sean Spicer resignation, *ABC News*, July 27, 2017, <https://abcn.ws/2PdKLGc>.

<sup>2</sup> See White House points to Trump’s campaign for GOP, *Associated Press*, Nov. 6, 2018, <https://bit.ly/2Qr8Oy7>; Seung Min Kim (@seungminkim), Twitter (Nov. 6, 2018) (“the White House pool report with her statement was emailed to the press corps at 6:51 p.m.”), <https://bit.ly/2RHJ13E>.

<sup>3</sup> Politico staff, What time do polls close? 2018 poll closing times by state, *Politico*, Nov. 6, 2018, <https://politi.co/2AQddoK>.

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

President and First Lady look forward to watching the results come in with friends and family in the White House residence.<sup>5</sup>

### **Potential Violations**

#### *The Hatch Act - 5 U.S.C. §§ 7321-26*

As a Presidential appointee serving in the White House,<sup>6</sup> Ms. Sanders is subject to the Hatch Act.<sup>7</sup> That law prohibits an executive branch employee from using his or her “official authority or influence for the purpose of interfering with or affecting the result of an election.”<sup>8</sup> Activities covered by this prohibition include the official using “his or her official title while participating in political activity.”<sup>9</sup> OSC defines the term “political activity” as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”<sup>10</sup>

OSC and other sources have reported that, during Ms. Sanders’ tenure in the White House, the White House Counsel’s office provided Hatch Act training, an employee manual addressing the Hatch Act, and a memorandum on the Hatch Act to at least some staff members.<sup>11</sup> On November 20, 2017, Ms. Sanders revealed her own knowledge of the Hatch Act by explaining to the White House press corps that the Hatch Act prohibited her from commenting on the candidacy of Roy Moore.<sup>12</sup> In a report finding that Kellyanne Conway, Senior Counselor to the President, violated the Hatch Act during two televised interviews from the White House grounds, OSC rejected the notion that speaking for the President exempts White House appointees from the Hatch Act’s coverage:

Although Ms. Conway’s statements about the candidates in the Alabama special election during her *New Day* interview were portrayed as the President’s position, she was still providing voters with reasons to vote for Roy Moore and against Doug Jones. Indeed, framing her responses to reflect the President’s position arguably served as an additional and more persuasive reason for voters to support Roy Moore and not Doug Jones. Therefore, her statements advocating for the defeat of Doug Jones and the election of Roy Moore constituted political activity under the Hatch Act. Because Ms. Conway engaged in political activity while

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<sup>5</sup> Matt Shuham, *WH: Trump ‘Has Energized A Staggering Number Of Americans’*, *TPM*, Nov. 6, 2018, <https://bit.ly/2Op0I8X>.

<sup>6</sup> See 3 U.S.C. § 105(a)(2)(A).

<sup>7</sup> See *Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office*, 41 Op. O.L.C. 1, 9 n.4 (2017), <https://bit.ly/2QayEWE>.

<sup>8</sup> 5 U.S.C. § 7323(a)(1).

<sup>9</sup> 5 C.F.R. § 734.302(b)(1).

<sup>10</sup> 5 C.F.R. § 734.101.

<sup>11</sup> See 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 (“Conway opinion”), <https://bit.ly/2HeoT5d>; Veronica Stracqualursi and Cristina Alesci, *Trump’s legal team: No #MAGA at the White House*, *CNN*, Mar. 8, 2018, <https://cnn.it/2D8ST3L>.

<sup>12</sup> *Sarah Huckabee Sanders on Hatch Act*, *C-SPAN*, Nov. 20, 2017, <https://cs.pn/2OwnTfY>.

acting in her official capacity as Counselor to the President, she violated the Hatch Act's prohibition against using one's official authority or influence for the purpose of interfering with or affecting the result of an election.<sup>13</sup>

Ms. Sanders violated the Hatch Act by issuing an official White House statement that expressed political views about the midterm elections while many polling sites were still open on Election Day. She went beyond merely commenting on the President's activities by talking about the aim of "protecting the GOP's majorities." She editorialized about his "leadership" in Republican campaign fundraising and boasted that "[t]he President has energized a staggering number of Americans at packed arenas and in overflow crowds at rallies across the country." In this regard, her statement appears to employ a bandwagon approach to marketing a political party's message to voters. She also pitched that the election presented voters with a "clear" choice: "Tonight, we can continue down the path of American prosperity and security or we can go backwards." As OSC demonstrated in its report on Ms. Conway's Hatch Act violations, the fact that Ms. Sanders attributed this characterization of the choice to President Trump did not exempt her from the Hatch Act's prohibitions.

Ms. Sanders' statement appears to have been an effort to influence the election at a critical moment when many voters were arriving at polling sites at the end of the workday. Her statement was not a spontaneous response to a reporter's question; rather, it was an official White House statement disseminated proactively in writing on Election Day. Given the timing, medium and the content of her statement, Ms. Sanders clearly used her official authority to engage in an effort to influence the outcome of the election in favor of a political party.

### **Conclusion**

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in an official capacity. Based on the conduct at issue, which advocates the success or failure of a political party, Ms. Sanders has violated the Hatch Act. OSC should investigate this matter and recommend appropriate disciplinary action against her.

Sincerely,



Noah Bookbinder  
Executive Director

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<sup>13</sup> See Conway opinion, 9.