

April 12, 2019

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 Lynne Patton

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Department of Housing and Urban Development (“HUD”) Regional Administrator Lynne M. Patton violated the Hatch Act by displaying official Trump campaign merchandise in her government office. These actions were directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By displaying this item in the workplace, Ms. Patton likely engaged in political activity prohibited by law.

**Factual Background**

Ms. Patton began her tenure as HUD Regional Administrator for Region II on June 26, 2017, after previously serving as Senior Advisor and Director of Public Engagement for HUD Secretary Ben Carson.<sup>1</sup> As HUD Regional Administrator for Region II, Ms. Patton is responsible for administering HUD’s programs and operations in New York and New Jersey.<sup>2</sup>

Ms. Patton’s Engagement in Partisan Political Activity in the Workplace

On March 30, 2019, Ms. Patton was profiled in an article by *New York* magazine regarding her role in the federal government as a political appointee at HUD.<sup>3</sup> The article notes that Ms. Patton maintains a 35th-floor office in Federal Plaza, which features “half a dozen photos of Patton with [President] Trump and HUD secretary Ben Carson.”<sup>4</sup> As noted on the HUD website, the Office of the Regional Administrator serving New Jersey and New York is at the Jacob Javits Federal Building in Federal Plaza in New York City.<sup>5</sup> The *New York* magazine profile explained further that in Ms. Patton’s HUD office, “A MAGA-inspired red ‘USA’ hat sits

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<sup>1</sup> Yamiche Alcindor, ‘Give Me a Chance,’ Trump Associate-Turned-Housing-Official Says, *New York Times*, June 26, 2017, available at <https://www.nytimes.com/2017/06/26/us/politics/lynne-patton-hud.html? r=0>.

<sup>2</sup> *Id.*

<sup>3</sup> David Freedlander, The ‘Chaos and Drama’ of Trump’s Woman in New York, *New York*, Mar. 30, 2019, available at <http://nymag.com/intelligencer/2019/03/the-chaos-and-drama-of-trumps-woman-in-new-york.html>.

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

<sup>5</sup> U.S. Department of Housing and Urban Development, Office of the Regional Administrator, available at <https://www.hud.gov/states/shared/working/r2/fpm/contacts>.

Hon. Henry Kerner

April 12, 2019

Page 2

on the shelf and in the corner lies an indoor golf-putting game.”<sup>6</sup> The article is accompanied by a picture featuring Ms. Patton sitting in what appears to be her official HUD office featuring several pictures of Ms. Patton with President Trump and Secretary Carson, as well as the aforementioned “MAGA-inspired” Trump campaign hat.<sup>7</sup> The article also notes that CREW “has filed numerous ethics complaints and requests for documents in regards to Patton’s tenure at HUD.”<sup>8</sup>



The official store of the Donald J. Trump 2020 presidential campaign makes clear that the hat displayed in Ms. Patton’s office is affiliated with the Trump campaign. The campaign store website describes the item as the “Official USA 45th Presidential Hat - Red” and features it for sale along with other campaign merchandise.<sup>9</sup>

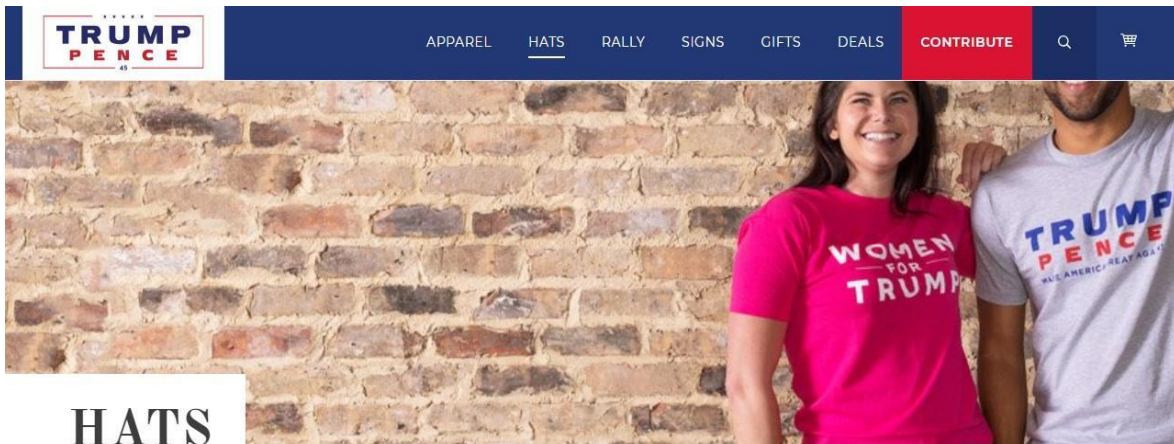
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<sup>6</sup> Freedlander, *New York*, Mar. 30, 2019.

<sup>7</sup> *Id.* According to the metadata for the *New York* magazine article, the photo in question appears to be have been taken on or around March 18, 2019. See *New York* magazine, available at <https://pixel.nymag.com/imgs/daily/intelligencer/2019/03/18/lynne-patton/Lynne-Patton-lede.w1100.h733.jpg>.

<sup>8</sup> Freedlander, *New York*, Mar. 30, 2019.

<sup>9</sup> Trump Make America Great Again Committee, <https://shop.donaldjtrump.com/collections/headwear?page=2> (last visited Apr. 9, 2019).



## HATS

FEATURED



Trump-Pence 45 Camo Hat - Breakup  
\$40.00

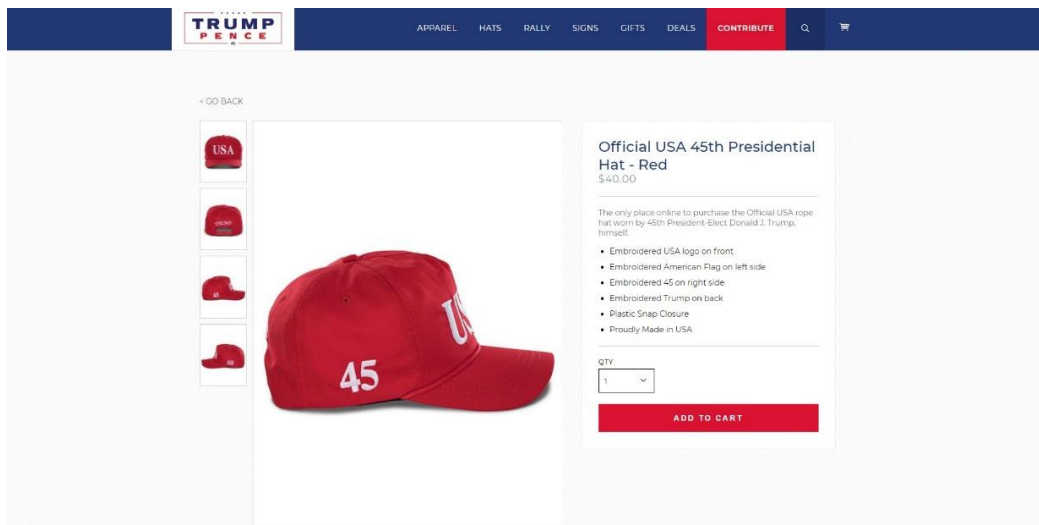


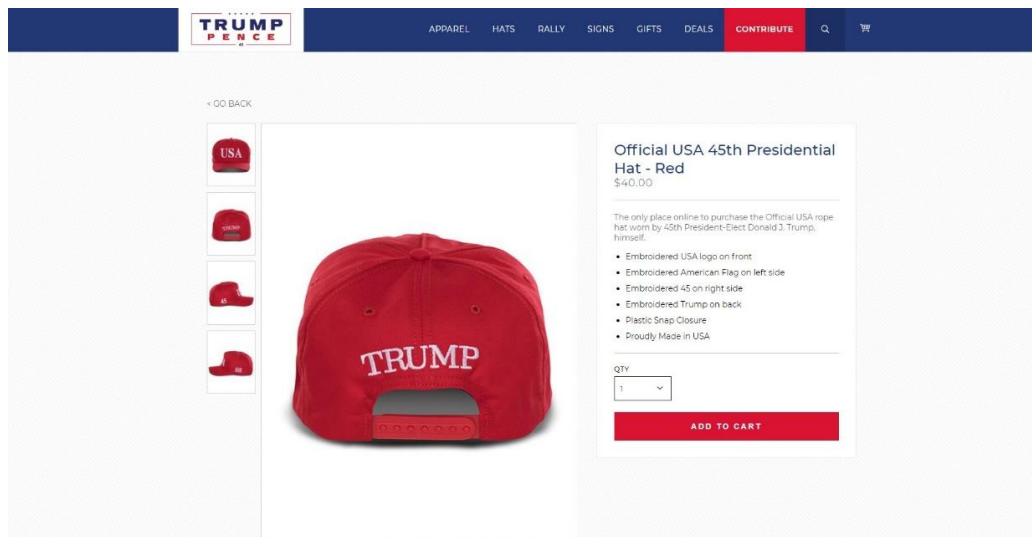
Official USA 45th Presidential Hat - Red  
\$40.00



Official USA 45th Presidential Hat - White  
\$40.00

The hat is also adorned with the number “45” on the side, signifying Donald Trump’s status as the 45th President of the United States and the word “TRUMP” on the back.





The webpage for the hat explains further that the Trump campaign store website is “[t]he only place online to purchase the Official USA rope hat worn by 45th President-Elect Donald J. Trump, himself.”<sup>10</sup> As the website notes, “The official Donald J. Trump Store offers unique, one-of-a-kind gifts. ... all while supporting our Make America Great Again Movement!”<sup>11</sup> Trump has worn the “Official USA 45th Presidential Hat” at both political and official government events, but as President, Trump, unlike Ms. Patton, is exempt from the Hatch Act’s restrictions.<sup>12</sup>

### March 2018 OSC Guidance

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.<sup>13</sup> 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.”<sup>14</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>15</sup> The guidance reminded federal employees regarding the specific prohibitions of the Hatch Act on political activity, noting that

<sup>10</sup> Trump Make America Great Again Committee, <https://shop.donaldjtrump.com/products/official-usa-45th-presidential-cap-red> (last visited Apr. 2, 2019).

<sup>11</sup> Trump Make America Great Again Committee, <https://shop.donaldjtrump.com/> (last visited Apr. 2, 2019).

<sup>12</sup> See e.g., Philip Rucker and John Wagner, On Victory Lap in Alabama, Trump Rallies his Base, but is He Building Bridges?, *Chicago Tribune*, Dec. 17, 2016, available at <https://www.chicagotribune.com/news/nationworld/politics/ct-trump-alabama-rally-20161217-story.html>; see also Peter Overby, Trump Wore USA Hat to Visit Hurricane Zone, And Trump Fans Can Buy The Look, *NPR*, Aug. 30, 2017, available at <https://www.npr.org/2017/08/30/547396137/trump-wore-usa-hat-to-visit-hurricane-zone-and-trump-fans-can-buy-the-look>.

<sup>13</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>.

<sup>14</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>15</sup> *Id.*

the prohibition “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>16</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>17</sup>

Since the issuance of its March 5, 2018 guidance, OSC has found several senior Trump Administration officials in violation of the Hatch Act including then-White House Principal Deputy Press Secretary Raj Shah. These incidents followed prior Hatch Act violations by White House adviser Kellyanne Conway and then-U.S. Ambassador to the United Nations Nikki Haley.<sup>18</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>19</sup> Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”<sup>20</sup> Employees also are expressly prohibited by the Hatch Act from engaging in political activity while on duty or in the workplace.<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’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 displaying items or materials from President Trump’s 2016 or 2020 campaigns

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Michelle Ye Hee Lee and Juliet Eilperin, *Six White House Officials Reprimanded for Violating the Hatch Act*, *Washington Post*, Nov. 30, 2018, available at [https://www.washingtonpost.com/politics/six-white-house-officials-reprimanded-for-violating-the-hatch-act/2018/11/30/e4a12cb8-f4bf-11e8-aeaa-b85fd44449f5\\_story.html?utm\\_term=.5aa1c347edff](https://www.washingtonpost.com/politics/six-white-house-officials-reprimanded-for-violating-the-hatch-act/2018/11/30/e4a12cb8-f4bf-11e8-aeaa-b85fd44449f5_story.html?utm_term=.5aa1c347edff).

<sup>19</sup> 5 U.S.C. § 7323(a)(1).

<sup>20</sup> 5 C.F.R. § 734.302(b)(1).

<sup>21</sup> 5 U.S.C. § 7324(a)(1)-(2); 5 C.F.R. § 734.306(a)(1), (3).

<sup>22</sup> 5 C.F.R. § 734.101.

while on duty or in the workplace.<sup>23</sup> This prohibition was reiterated by OSC in subsequent guidance to federal employees.<sup>24</sup>

There is no question that Ms. Patton displayed Trump campaign merchandise in her office. The *New York* magazine article describes a “MAGA-inspired red ‘USA’ hat” sitting on the shelf in her HUD office in Federal Plaza. Nor is there any doubt that Ms. Patton’s decision to display the hat in her office constitutes political activity under the Hatch Act. OSC has disseminated guidance to federal employees like Ms. Patton concluding that displaying items or any other materials from President Trump’s 2016 or 2020 campaigns in the workplace constitutes prohibited political activity. The hat is prominently displayed in Ms. Patton’s office as well as on the Trump campaign official store, and for sale to support the President’s reelection campaign. Furthermore, Ms. Patton’s decision to allow a publication to widely disseminate an image of her sitting in her government office while prominently displaying Trump campaign merchandise invokes President Trump’s campaign and ties her work on behalf of the federal government to it. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.<sup>25</sup>

By displaying Trump campaign merchandise in her office, Ms. Patton ran afoul of the Hatch Act, which requires her to remain politically neutral when engaging in official government conduct. This violation is even more egregious given the specific guidance provided by OSC in 2018 and the *New York* magazine profile’s acknowledgement of prior ethics complaints against Ms. Patton.

### **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 in the workplace. By displaying Trump campaign merchandise in her government office, Ms. Patton appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Patton.

Sincerely,

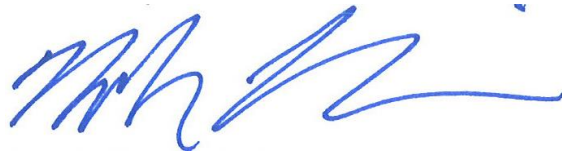
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<sup>23</sup> Office of Special Counsel, Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection, Mar. 5, 2018, available at <https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf>.

<sup>24</sup> See, e.g., Office of Special Counsel, Clarification of November 27, 2018 Email, Nov. 30, 2018, available at <https://osc.gov/Resources/OSC%20November%2027%202018%20Guidance%20Extension%20and%20Clarification.pdf>.

<sup>25</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.

Hon. Henry Kerner  
April 12, 2019  
Page 7

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

Noah Bookbinder  
Executive Director