

May 7, 2020

The Honorable Henry Kerner  
Special Counsel  
Office of Special Counsel  
1730 M Street, N.W.  
Suite 218  
Washington, D.C. 20036-4505

Re: Violations of the Hatch Act by Marc Short

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 Chief of Staff to the Vice President Marc Short violated the Hatch Act by participating in a media interview given in his official capacity and in which he discussed government business, but also expressed his political views about the Democratic Party, President Donald Trump’s re-election prospects, and another candidate for partisan office. By giving this televised interview that mixed official government business with political views about partisan candidates from the grounds of the White House, Mr. Short appears to have used his official authority or influence for the purpose of interfering with or affecting the result of an election. This interview constitutes political activity prohibited by law.

**Factual Background**

Mr. Short was selected to become Chief of Staff to Vice President Mike Pence in February 2019.<sup>1</sup> Short previously served as President Trump’s Director of Legislative Affairs, where he distinguished himself from “many of his predecessors by making frequent media appearances to defend the president and his policies on air.”<sup>2</sup> Short also previously worked for Pence when he was a member of the House of Representatives and on the vice president’s 2016 campaign staff.<sup>3</sup>

As Chief of Staff, Mr. Short manages the staff of the Office of the Vice President, but as *Politico* noted he rejoined the Trump administration “as it begins to gear up for the 2020 campaign.”<sup>4</sup> Since rejoining the White House staff, Short has routinely appeared on television and other media platforms to promote President Trump’s agenda.<sup>5</sup>

---

<sup>1</sup> Katie Galioto and Gabby Orr, Marc Short to Return to White House as Pence's Chief of Staff, *Politico*, Feb. 19, 2019, available at <https://www.politico.com/story/2019/02/19/marc-short-to-return-to-white-house-as-vice-presidents-chief-of-staf-1175020>.

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

<sup>3</sup> *Id.*

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

<sup>5</sup> See e.g., Justin Baragona, Chris Wallace Relentlessly Grills Top Pence Aide on Russia Briefing: ‘You Say None of This Happened?!’ *The Daily Beast*, Feb. 23, 2020, available at <https://www.thedailybeast.com/chris-wallace-relentlessly-grills-marc-short-on-russia-briefing-asks-you-say-none-of-this-happened>.

*Use of White House Office and Title for Partisan Political Purposes*

On February 4, 2020, Mr. Short made comments to reporters in his official capacity as Chief of Staff to the Vice President that impermissibly mixed official government business with political views about the Democratic Party and candidates in partisan elections in the upcoming 2020 election.<sup>6</sup> Short was standing on the White House grounds when he spoke. The C-SPAN webpage for the exchange identifies Marc Short as Chief of Staff to Vice President Pence.<sup>7</sup>

FEBRUARY 4, 2020

Report Vide

**Marc Short Comments to Reporters**

Marc Short, chief of staff to Vice President Pence, spoke to reporters on issues that included the upcoming State of the Union address, the delay in Democratic results from the Iowa caucuses, the upcoming Senate vote on impeachment, and the coronavirus.



During his exchange with reporters, Mr. Short discussed a number of official issues, including the upcoming State of the Union address, the upcoming Senate vote on impeachment, and the government's response to the coronavirus. Amidst those comments, he also voiced political views about topics such as the President's re-election effort, the Iowa caucuses, the Democratic Party, and how Senator Doug Jones' potential vote on impeachment might impact his bid for re-election.<sup>8</sup>

Specifically, in response to a reporter's question about the Iowa caucuses, Short stated:

I think that regarding the Democrats fumbling the situation in Iowa, you know look the President is excited to get into campaign season. He feels like there was

---

<sup>6</sup> C-SPAN, Marc Short Comments to Reporters, Feb. 4, 2020, available at <https://www.c-span.org/video/?468962-1/marc-short-comments-reporters>.

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

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

[sic] a lot of promises made in 2016. Now we have promises kept we can talk about in 2020.<sup>9</sup>

When asked why the situation in the Iowa Democratic caucuses helped the president, Mr. Short added:

I think that the Democrat Party looks like they are in chaos at this point and I think that they seem unable to run a caucus in Iowa. So I think that as long as there is confusion on their side, I think it allows the President to be able to tell more of his story, which is what he will be doing.<sup>10</sup>

Mr. Short later responded to a question about whether the White House had reached out to Democratic Senators like Joe Manchin and Doug Jones regarding impeachment. He stated in part:

There has been a lot of space given for them to do what they think is in their best interest, but I certainly think that the American people are frustrated with this process, they are tired of it, and if they choose to vote against this president, I think there will be political consequences for them.<sup>11</sup>

#### *Donald J. Trump and Doug Jones are Candidates for Partisan Office*

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.<sup>12</sup> President Trump and his campaign have routinely used the slogan, “Promises Made, Promises Kept” to promote his reelection in 2020. For example, on March 6, 2018, Brad Parscale, campaign manager for President Trump’s reelection campaign tweeted, “Promises made. Promises kept. @realDonaldTrump is fixing the disasters of previous administrations. #MAGA”<sup>13</sup> In June 2018, the Trump campaign launched the website [www.promiseskept.com](http://www.promiseskept.com), to promote President Trump’s accomplishments.<sup>14</sup> As *Politico* recently noted, the phrase “Promises Made, Promises Kept” is one the Trump campaign “has regularly deployed to make his case for a second term.”<sup>15</sup> On April 23, 2020, for example, the Trump campaign widely disseminated a video of California Governor Gavin Newsom using the phrase “Promise Made, Promise Kept” in response to the administration

---

<sup>9</sup> *Id.*

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

<sup>11</sup> *Id.*

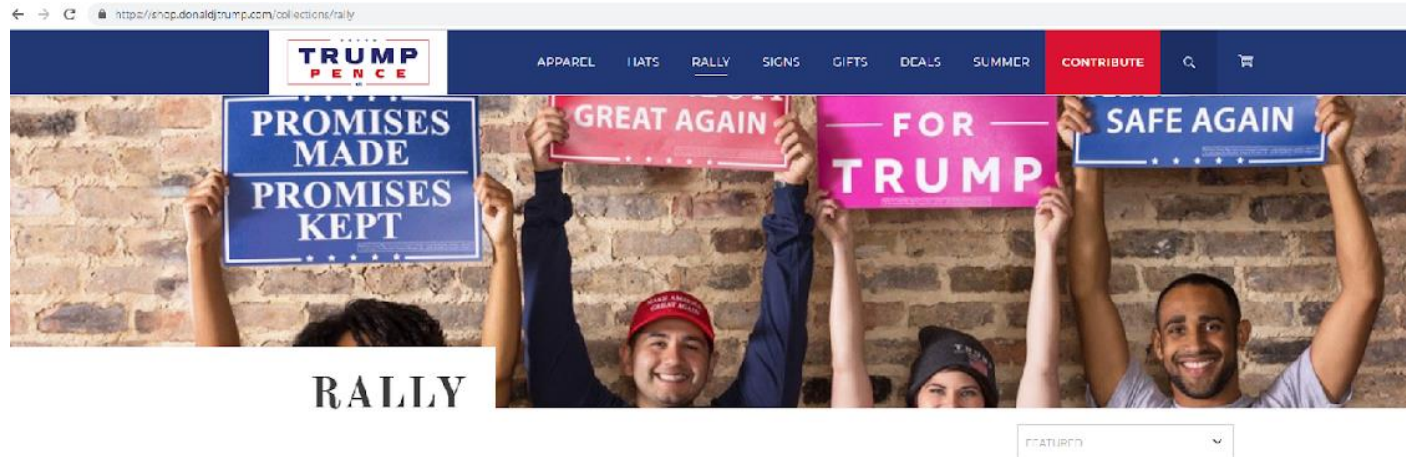
<sup>12</sup> Katie Rogers and Maggie Haberman, *Trump’s 2020 Campaign Announcement Had a Very Trumpian Rollout*, *New York Times*, Feb. 27, 2018, available at <https://www.nytimes.com/2018/02/27/us/politics/trump-2020-brad-parscale.html>.

<sup>13</sup> Brad Parscale (@parscale), Twitter Mar. 6, 2018, available at <https://twitter.com/parscale/status/971013823636426752>.

<sup>14</sup> Solange Reyner, *Trump 2020 Campaign Unveils New Website PromisesKept.com*, *NewsMax*, June 5, 2018, available at <https://www.newsmax.com/politics/kept-promises-2020-keep-america-great-again-maga/2018/06/05/id/864426/>.

<sup>15</sup> Jeremy B. White, *Trump Campaign Immediately Uses Newsom ‘Promise Kept’ Remark in Surrogate Video*, *Politico*, Apr. 23, 2020, available at <https://www.politico.com/states/california/story/2020/04/23/trump-campaign-immediately-uses-newsom-promise-kept-remark-in-surrogate-video-1279410/>.

following through with providing the state with medical supplies to fight the coronavirus.<sup>16</sup> In addition, the Trump campaign merchandise shop featured the image of a person holding a campaign sign that reads “PROMISES MADE PROMISES KEPT.”<sup>17</sup>



In February 2020, Senator Doug Jones was already running for re-election to the United States Senate from Alabama.<sup>18</sup> Following Mr. Short’s comments regarding potential political consequences for Senator Jones, *CNN* reported that “the impeachment trial had already infected [his] Senate race” noting that “Republicans said Jones’ decision would be his downfall.”<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 a federal employee’s use of their official authority or position 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> Penalties under the Hatch Act are

<sup>16</sup> *Id.*; see also [My coronavirus response is a promise made, promise kept](https://www.youtube.com/watch?v=9hQqg7fIQGs), Donald J. Trump YouTube page, available at <https://www.youtube.com/watch?v=9hQqg7fIQGs> (showing Trump campaign video that included Gov. Newsom’s comments).

<sup>17</sup> Donald J. Trump for President Inc., *Rally*, available at <https://shop.donaldjtrump.com/collections/rally>, accessed Oct. 24, 2018 (<https://web.archive.org/web/20190531200911/https://shop.donaldjtrump.com/collections/rally>).

<sup>18</sup> KimChandler, *In Alabama, Sen. Doug Jones Kicks Off 2020 Reelection Bid*, *Associated Press*, Sep. 8, 2019, available at [https://apnews.com/14e66aa10caf456c9e5849a854c8d720?utm\\_campaign=SocialFlow&utm\\_medium=APSouthRegion&utm\\_source=Twitter](https://apnews.com/14e66aa10caf456c9e5849a854c8d720?utm_campaign=SocialFlow&utm_medium=APSouthRegion&utm_source=Twitter).

<sup>19</sup> Alex Rogers, *Democrat Doug Jones Facing Reelection Headwinds as He Votes to Convict Trump*, *CNN*, Feb. 5, 2020, available at <https://www.cnn.com/2020/02/05/politics/doug-jones-impeachment-vote-reaction/index.html>.

<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.

generally administrative in nature, but can include removal from government service, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a civil fine.<sup>23</sup>

OSC's Hatch Act Guidance regarding President Trump's Reelection Candidacy

On February 27, 2018, Donald J. Trump announced his candidacy for re-election.<sup>24</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>25</sup> OSC's guidance noted that he became a "candidate for partisan political office" as described in the Hatch Act in 2018 once he appointed a campaign manager and publicly announced his candidacy.<sup>26</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>27</sup> Notably, the OSC guidance stated, "like with any other candidate, the Hatch Act prohibits federal employees from engaging in activity directed at the success or failure of the President's candidacy while they are on duty or in the workplace."<sup>28</sup>

OSC's Recent Hatch Act Decisions Involving Similar Conduct

On March 6, 2018, just one day after OSC published its updated Hatch Act guidance, the agency concluded a previous Hatch Act investigation of Counselor to the President Kellyanne Conway, finding that she violated the law in two television interviews.<sup>29</sup> In your letter to the President transmitting OSC's report for "appropriate disciplinary action," you wrote that during both media interviews, Ms. Conway "impermissibly mixed official government business with political views about candidates in the Alabama special election."<sup>30</sup> OSC's report described Ms. Conway's conduct in one of the interviews in this way:

By telling voters not to "be fooled" and contending that Doug Jones would be "terrible for property owners," Ms. Conway advocated for the failure of his candidacy. She also implied that voters should support Roy Moore, so the President could get the votes in the Senate needed to pass tax reform. Her

---

<sup>23</sup> 5 U.S.C. § 7326.

<sup>24</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>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, available at <https://osc.gov/Documents/HatchAct/AdvisoryOpinions/Federal/CurrentGuidanceonPresidentTrump'sReelectionStatus.pdf>.

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

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

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

<sup>29</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/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity.%20Kellyanne%20Conway%20\(HA-18-0966\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity.%20Kellyanne%20Conway%20(HA-18-0966).pdf).

<sup>30</sup> *Id.*

advocacy against one candidate and implied endorsement of another candidate constituted political activity under the Hatch Act.<sup>31</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 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>32</sup>

In a letter to CREW following its complaint against Assistant to the President for Economic Policy and Director of the National Economic Council Larry Kudlow, OSC found that Kudlow did not violate the Hatch Act despite invoking the President's campaign slogan, "Promises Made, Promises Kept" in response to a reporter's question while standing on the White House grounds.<sup>33</sup> OSC explained:

During one of the interviews, a reporter asked Mr. Kudlow why they should take the President's new tax proposal seriously when it was so close to an election. Mr. Kudlow responded, "You know, all I'll say is, the last couple years, President Trump, promises made, promises kept. And take him seriously when he comes out with these things. That has been his pattern for a long time. People should not underestimate that . . ." As you point out in your complaint, "Promises Made, Promises Kept" is a campaign slogan of President Trump's 2020 reelection campaign. However, we find that Mr. Kudlow's use of that phrase was a legitimate response to the reporter's question and not a gratuitous use [of] a campaign slogan in violation of the Hatch Act.

*Mr. Short Violated the Hatch Act in His February 4, 2020 Exchange with Reporters*

Mr. Short likely violated the Hatch Act in his February 4, 2020 comments to reporters by impermissibly mixing official government business with political views about President Trump's re-election bid, the Democratic Party, and Senator Doug Jones' political prospects. There is no doubt that Short spoke to these reporters in his official capacity. This appearance was similar to conduct OSC has previously found to violate the Hatch Act. Short engaged in an interview about official government business including the State of the Union address and the

---

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

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

<sup>33</sup> Letter from Erica S. Hamrick, Deputy Chief, Hatch Act Unit, U.S. Office of Special Counsel, to Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington, May 15, 2019, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2020/05/04151137/HA-19-1037.pdf>.

administration's response to the coronavirus. Short was standing on the White House grounds when he made these statements and the C-SPAN website documenting his comments identified him by his name and official title, Chief of Staff to Vice President Pence. Given these facts, Short used his official position, authority, and title while answering these reporters' questions.

There is also no doubt that Mr. Short's statements were aimed at influencing the success or failure of a political candidate and party in a partisan election. Short responded to a question regarding the Iowa caucuses by attacking the Democratic Party for "fumbling" the caucus, then pivoted to statements promoting the President's re-election. He said, "the President is excited to get into campaign season. He feels like there was [*sic*] a lot of promises made in 2016. Now we have promises kept we can talk about in 2020." In contrast to the statements made by Kudlow in 2018, here, Short's use of the 2020 Trump campaign slogan was not in response to the reporter's question. Rather, after briefly commenting about the topic of the reporter's question – the Iowa Democratic caucuses – Short himself turned to discussing how President Trump's thoughts and feelings about the 2020 general election, making his reference to the slogan gratuitous. Also unlike Kudlow, Short specifically invoked the 2016 presidential campaign and plans to discuss "promises kept" during the 2020 campaign season.

Then, Short provided another political answer in response to a campaign related question about whether the delay in getting results from the Iowa Democratic caucuses helped the President, attacking the Democratic party in the midst of an ongoing presidential campaign: "The Democratic Party looks like they are in chaos at this point and I think that they seem unable to run a caucus in Iowa. So I think as long as there is confusion on their side, I think it allows the President to be able to tell more of his story." Finally, in response to a question about whether the White House was doing outreach to Senator Jones and a colleague on their upcoming vote to remove President Trump from office following his impeachment trial, Short made a threat of "political consequences." He said: "if they choose to vote against this president, I think there will be political consequences for them." Much like Kelleyanne Conway's comments about then-candidate Doug Jones, which OSC found violated the Hatch Act, Short implied that voters should vote against Senator Jones if he votes to remove the President from office. Short's implied advocacy against a candidate for a partisan office constituted political activity under the Hatch Act.

### **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 her official title or position.

By using his official position, authority, and title to express political views about a political party and candidates in partisan elections amidst comments about official government business, Mr. Short ran afoul of the statute. OSC should commence an immediate investigation into the conduct described in this letter and take any appropriate disciplinary action against Mr.

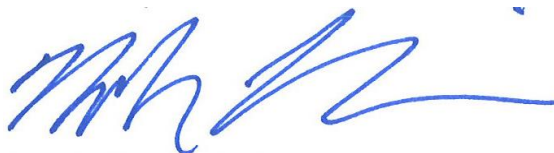
Hon. Henry Kerner

May 7, 2020

Page 8

Short, up to and including instituting disciplinary proceedings against him in the Merit Systems Protection Board.

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