

November 2, 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 Seema Verma

Dear Special Counsel Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Seema Verma, Administrator of the Centers for Medicare & Medicaid Services (“CMS”), violated the Hatch Act by using an official government social media account to advocate against a political party and by participating in her official capacity in a video opinion piece by former Trump campaign senior advisor Boris Epshteyn.

Factual Background

The Senate confirmed Ms. Verma for her current position on March 13, 2017.¹ The official CMS website explains that “[a]s Administrator, Ms. Verma oversees a \$1 trillion budget, 26% of the total federal budget, and administers healthcare programs for more than 130 million Americans every day.”² In that capacity, Ms. Verma maintains an official government social media account on Twitter, with the handle Administrator Seema Verma, @SeemaCMS.³ Her account identifies her by the following biographical details: “Administrator for the Centers for Medicare & Medicaid Services (CMS). Mother and Wife. Proud alum of @UofMaryland and @JohnsHopkins Univ.”⁴ The CMS agency Twitter account, @CMSSGov, frequently retweets her postings from her official account.⁵

On the afternoon of October 31, 2018, Ms. Verma tweeted a number of political messages transparently designed to influence the upcoming midterm elections. One such message was Ms. Verma’s retweet of a tweet by former Trump campaign senior advisor Boris Epshteyn attacking the Democratic party: “.@SeemaCMS believes that the Democrat-backed

¹ See CMS (website), *Administrator*, <https://www.cms.gov/about-cms/leadership/> (last viewed Nov. 1, 2017).

² *Id.*

³ Administrator Seema Verma (@SeemaCMS), Twitter, <https://twitter.com/SeemaCMS?lang=en>.

⁴ *Id.*

⁵ See, e.g., CMSSGov (@CMSSGov), Twitter (Nov. 1, 2018) (retweeting @SeemaCMS: “#Wisconsin is also now the 17th state to receive approval to use federal #Medicaid funding to expand residential addiction treatment services for people impacted by the #OpioidCrisis.”), <https://bit.ly/2QceV9g>.

‘Medicare For All’ is simply a bad idea. The focus of the agency? Strengthening the Medicare program itself. Watch our interview here.”⁶



The message that Ms. Verma retweeted redirects the reader to an article that begins and ends with a condemnation of a position Mr. Epshteyn attributes to the Democratic party:

“Medicare for all” has become a popular slogan for many Democrats on the campaign trail. I spoke to the administrator of the Centers for Medicare and Medicaid Services, Seema Verma, about whether “Medicare for all” ... is a feasible notion.

...

Here’s the Bottom Line: The slogan “Medicare for all” may be useful to Democrats looking to fire up their base, but it is absolutely [sic] unrealistic idea. Single-payer healthcare would cost way too much and would actually hurt American people throughout the country.⁷

⁶ Administrator Seema Verma (@SeemaCMS), Twitter (retweet at approximate 3:00 p.m., Nov. 1, 2018), <https://twitter.com/SeemaCMS?lang=en> (original tweet by Mr. Epshteyn at <https://bit.ly/2yFSsuz>).

⁷ Boris Epshteyn, *CMS Administrator Seema Verma says 'Medicare For All is simply a bad idea'*, *WJLA*, Oct. 31, 2018, <https://bit.ly/2zIFyry>.

Embedded in the article is a video segment titled “The Bottom Line with Boris Epshteyn” that features Ms. Verma standing next to Mr. Epshteyn for much of the recording.⁸ In the video, Ms. Verma identifies herself as the CMS Administrator. She then proceeds to articulate her view that “Medicare for all” would be a bad policy. Their discussion is sandwiched between footage of Mr. Epshteyn standing alone and criticizing a policy goal he attributes to the Democratic party. Any Twitter user who clicks on the message Ms. Verma retweeted is taken directly to the article and embedded video.

That same afternoon, Ms. Verma tweeted two related messages of her own similarly criticizing the idea of “Medicare for all,” which Mr. Epshteyn associated with the Democratic party in the message she retweeted. One of her tweets reads: “This year’s scariest Halloween costume goes to...” and includes an image of a man wearing a tee shirt with the words “MEDICARE FOR ALL.”⁹ The other reads: “Did I get your attention? Good. Medicare for All isn’t a joke. It’s a multi-trillion dollar drain on the American economy that will bankrupt future generations. It’s government controlled health care that will strip choice away from millions. It’s a bad idea. And it IS scary.”¹⁰



These messages mirror a Republican party talking point that, as the *Washington Post* recently noted, is featured in a wave of Republican campaign ads.¹¹ Political analyst David Weigel notes that, “Each ad is talking about ‘Medicare for All,’ the idea of turning an insurance

⁸ *Id.*

⁹ See Administrator Seema Verma (@SeemaCMS), Twitter (1:04 p.m., Oct. 31, 2018), <https://bit.ly/2AGqMHs>.

¹⁰ See Administrator Seema Verma (@SeemaCMS), Twitter (5:16 p.m., Oct. 31, 2018), <https://bit.ly/2yK9dVe>.

¹¹ David Weigel, Republicans want to run on Medicare. Democrats say bring it on, *Washington Post*, Sept. 18, 2018, <https://wapo.st/2OjOBYX>.

program designed for the elderly into universal health insurance that's most regularly associated with a bill from Sen. Bernie Sanders (I-Vt)."¹² National Public Radio has also highlighted this Republican messaging constructed around the slogan "Medicare for All":

In a speech to the National Press Club on Oct. 8, House Speaker Paul Ryan, R-Wis., said almost exactly the same thing. "Democrats call it 'Medicare-for-all' because it sounds good, but in reality, it actually ends Medicare in its current form," Ryan said.

It's a sentiment being expressed by Republicans up and down the ballot.¹³

Potential Violations

The Hatch Act - 5 U.S.C. §§ 7321 – 26

The Hatch Act prohibits an executive branch employee from using "his official authority or influence for the purpose of interfering with or affecting the result of an election."¹⁴ Activities covered by this prohibition include the official using "his or her official title while participating in political activity."¹⁵ 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."¹⁶

OSC recently provided guidance on applying this prohibition to social media.¹⁷ 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."¹⁸ OSC has emphasized that "all such official social media accounts should remain politically neutral."¹⁹

Applying this legal standard to the facts, Ms. Verma violated the Hatch Act by using an official social media account to retweet Mr. Epshteyn's partisan message, using that account to post two tweets of her own that mirrored his criticism of a policy position he attributed to the Democratic party, and appearing in her official capacity in his video opinion segment. The context in which she engaged in these activities is relevant: Only six days remained before the

¹² *Id.*

¹³ Julie Rovner, GOP Revives Medicare Scare Tactics As Election Nears, *NPR*, Oct. 30, 2018, <https://n.pr/2EV7RNI>.

¹⁴ 5 U.S.C. § 7323(a)(1).

¹⁵ 5 C.F.R. § 734.302(b)(1).

¹⁶ 5 C.F.R. § 734.101.

¹⁷ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, <http://bit.ly/2J60680>.

¹⁸ *Id.* at 7.

¹⁹ *Id.*

midterm elections and healthcare – particularly the question of expanding Medicare – has been a key policy issue driving public conversation about the elections.²⁰

In retweeting Mr. Epshteyn’s message that “.@SeemaCMS believes that the Democrat-backed ‘Medicare For All’ is simply a bad idea.”, Ms. Verma adopted and endorsed the assertion that she was critical of what she viewed as the policy aim of a political party. In the article and embedded video hyperlinked in that tweet, Mr. Epshteyn attacks Democrats. Although Ms. Verma was not standing next to him at the time, she stood beside him both before and after his commentary. She then associated herself with the attack by retweeting a link to the full video segment on her government social media account.

Notably, Mr. Epshteyn’s title is Chief Political Analyst, and his specific assignment for Sinclair Broadcasting appears to be to disseminate politically conservative messages that Sinclair requires its affiliated television stations to run.²¹ In fact, Mr. Epshteyn has been explicit about the political bias of his segments, contending that he does not characterize them as news:

“As you see, my segments are very clearly marked as ‘commentary.’ The same cannot be said for cable and broadcast news hosts who inject their opinions and bias into news coverage all the time without drawing any lines between them,” he said, in part.²²

Any doubt about Ms. Verma’s intention regarding her own two tweets was resolved by her retweeting Mr. Epshteyn’s partisan message. Her two tweets must be viewed in the context in which Twitter users encountered them. She posted them approximately two hours before and after she retweeted Mr. Epshteyn’s message. They appear in her timeline in close proximity to Mr. Epshteyn’s partisan message, effectively sandwiching it and repeating the slogan he included in his message, “Medicare for All.”

The message Ms. Verma conveyed through these actions, six days before the partisan political elections, is that the government disapproves of “Medicare for All” and attributes that policy aim to one of the parties running in those elections. As noted above, the messaging that “Medicare for All” is an aim of the Democratic party is a key political message of the Republican party in the lead-up to the midterm elections.²³ Ms. Verma’s efforts were designed to influence the outcome of those elections with respect to competing political parties and, as such, they violate the Hatch Act.

²⁰ Haley Sweetland Edwards, *Forget ‘Repeal and Replace.’ The One Issue Unifying Americans Is Affordable Health Care*, *Time*, Nov. 1, 2018, <https://ti.me/2qoybVE>; Jodi L. Liu and Christine Eibner, *Medicare for All is an election talking point for all. What does it really mean?*, *USA Today*, Oct. 26, 2018, <https://bit.ly/2PotFEV>; Robert Pearl, *Healthcare Is The No. 1 Issue For Voters; A New Poll Reveals Which Healthcare Issue Matters Most*, *Forbes*, Aug. 13, 2018, <https://bit.ly/2JA62nC>.

²¹ Hadas Gold, *Sinclair increases ‘must-run’ Boris Epshteyn segments*, *Politico*, July 10, 2017, <https://politi.co/2iQ5CA7>.

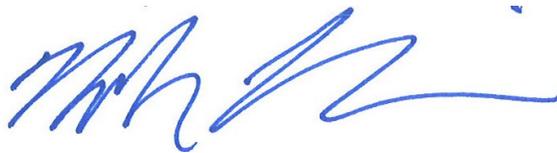
²² Erik Wemple, *Sinclair’s remarkable gaslighting operation*, *Washington Post*, Apr. 5, 2018, <https://wapo.st/2CT468i>.

²³ See Weigel, *Washington Post*, Sept. 18, 2018; Rovner, *NPR*, Oct. 30, 2018.

Conclusion

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

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