

August 2, 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 Sarah Huckabee Sanders

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 Press Secretary Sarah Huckabee Sanders violated the Hatch Act by using her official social media account to tweet a message using the term “Great again” that invoked the president’s campaign slogan “Make America Great Again” and promoted his campaign. This action was directed toward the success or failure of Donald J. Trump, a candidate in a partisan race. By tweeting this post on a Twitter account referring to her official position, Ms. Sanders likely engaged in political activity prohibited by law.

**Factual Background**

Ms. Sanders was appointed as White House Press Secretary in July 2017 after previously serving as Principal Deputy Press Secretary under her predecessor Sean Spicer.<sup>1</sup> As Press Secretary, Ms. Sanders conducts the majority of the daily White House press briefings and is the primary spokesperson for the Trump White House.<sup>2</sup> Shortly after becoming White House Press Secretary, Ms. Sanders began using the official Twitter handle @PressSec.<sup>3</sup>

@PressSec Twitter Account

There is little doubt that the @PressSec Twitter account is used by Ms. Sanders for official government purposes. According to the @PressSec Twitter page, the handle was created in January 2017 when Donald J. Trump became the 45th President of the United States.<sup>4</sup> The account profile states that Ms. Sanders is the “@WhiteHouse Press Secretary. Proudly representing @POTUS Trump’s Administration.”<sup>5</sup> Ms. Sanders’s @PressSec profile also states,

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<sup>1</sup> Jeremy Diamond, Kaitlan Collins, Jeff Zeleny, and Dana Bash, Sean Spicer, White House press secretary, resigns, CNN, July 21, 2017, available at <https://www.cnn.com/2017/07/21/politics/sean-spicer-resigns-anthony-scaramucci/index.html>.

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

<sup>3</sup> Sarah Sanders (@PressSec), Twitter, <https://twitter.com/PressSec>.

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

<sup>5</sup> *Id.*

“Tweets may be archived: <http://wh.gov/privacy>.”<sup>6</sup> Furthermore, the account’s profile picture is an image of Ms. Sanders at the podium in the White House briefing room and the header features an image of Ms. Sanders walking with President Trump on the White House grounds.<sup>7</sup> Ms. Sanders also uses the @PressSec Twitter account to post about official White House activities and links to the official @POTUS Twitter account and the official website of the White House, [www.whitehouse.gov](http://www.whitehouse.gov).<sup>8</sup>

There are two other Twitter accounts associated with Ms. Sanders during her tenure in the Trump Administration. In January 2017, Ms. Sanders began using the @SHSanders45 Twitter account.<sup>9</sup> The account states: “@WhiteHouse Press Secretary. Proud to work for @POTUS. Follow me @PressSec for updates”.<sup>10</sup> On August 4, 2017, shortly after being promoted to White House Press Secretary, she tweeted from the account, “Signing off. Follow me @PressSec for updates.”<sup>11</sup> Ms. Sanders also maintains a personal Twitter account, @SarahHuckabee.<sup>12</sup> Her personal Twitter account states in part: “Personal account, Christian, wife to @Sanders\_Bryan, mom to three, daughter of @GovMikeHuckabee and proud Arkansan.”<sup>13</sup>

#### *Use of @PressSec for Partisan Political Purposes*

On March 6, 2018, Ms. Sanders appears to have used her official @PressSec Twitter account to make a partisan political post supporting candidate Donald J. Trump. As detailed below, such action likely violates the Hatch Act. On this day, Ms. Sanders shared a Wall Street Journal article regarding U.S. oil production along with her commentary: “Great again: ‘The U.S. is likely to overtake Russia to become the world’s largest oil producer’”.<sup>14</sup> The tweet reads in full:

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<sup>6</sup> *Id.*

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

<sup>8</sup> See generally Sarah Sanders (@PressSec), Twitter, <https://twitter.com/PressSec>.

<sup>9</sup> Sarah H. Sanders (@SHSanders45), Twitter, <https://twitter.com/shsanders45>.

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

<sup>11</sup> Sarah H. Sanders (@SHSanders45), Twitter (Aug. 4, 2017), <https://twitter.com/SHSanders45/status/893604766051442688>

<sup>12</sup> Sarah Sanders (@SarahHuckabee), Twitter, <https://twitter.com/sarahhuckabee>.

<sup>13</sup> *Id.*

<sup>14</sup> Sarah Sanders (@PressSec), Twitter (Mar. 6, 2018), <https://twitter.com/PressSec/status/970991949233651712>.



**Sarah Sanders** ✓  
@PressSec

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Great again: "The U.S. is likely to overtake Russia to become the world's largest oil producer"



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The U.S. will overtake Russia to become the world's largest oil producer by 2023, accounting for most of the global growth in petroleum supplies, according to the I...  
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3:58 AM - 6 Mar 2018

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While Ms. Sanders did not recite the Trump campaign's full slogan, using the term "Great again" almost certainly was intended to invoke "Make America Great Again" and suggest that President Trump had fulfilled his campaign promise. In addition to the terms "Make America Great Again" and "MAGA", Donald Trump has used "Great again" in order to promote his political campaign. For example, during Mr. Trump's June 2015 presidential campaign announcement speech, he used the term several times, saying:

We need somebody that can take the brand of the United States and make it great again. It's not great again. We need— we need somebody— we need somebody that literally will take this country and make it great again. We can do that. . . . You know, all of my life, I've heard that a truly successful person, a really, really successful person and even modestly successful cannot run for public office. Just can't happen. And yet that's the kind of mindset that you need to make this country great again. So ladies and gentlemen . . . I am officially running . . . for

president of the United States, and we are going to make our country great again.<sup>15</sup>

During the 2016 presidential campaign, then-candidate Trump's book previously published under the title "Crippled America" was republished as "Great Again: How to Fix Our Crippled America."<sup>16</sup> More recently, following a June 27, 2018 political rally in North Dakota, President Trump tweeted "Thank you North Dakota. Together, we are MAKING AMERICA SAFE AND GREAT AGAIN! #MAGA".<sup>17</sup>

### 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.<sup>18</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>19</sup> The document acknowledged that Trump became a "candidate for partisan political office" as described in the Hatch Act in February when he publicly announced his candidacy.<sup>20</sup> 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.<sup>21</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>22</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>23</sup>

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<sup>15</sup> Time Staff, Here's Donald Trump's Presidential Announcement Speech, *Time*, June 16, 2015, available at <http://time.com/3923128/donald-trump-announcement-speech/>.

<sup>16</sup> Simon & Schuster, Great Again: How to Fix Our Crippled America by Donald J. Trump, <http://www.simonandschuster.com/books/Great-Again/Donald-J-Trump/9781501138003>, accessed July 20, 2018.

<sup>17</sup> Donald J. Trump (@realDonaldTrump), Twitter (June 27, 2018), <https://twitter.com/realdonaldtrump/status/1012169482272460800?lang=en>.

<sup>18</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>19</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>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

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."<sup>24</sup> 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.<sup>25</sup>

On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.<sup>26</sup> That same day, during the White House press briefing, Ms. Sanders maintained that despite OSC's findings, Ms. Conway did not violate the Hatch Act.<sup>27</sup> According to Ms. Sanders, "[Conway] didn't advocate for or against the election of any particular candidate. . . . She simply expressed the President's obvious position specific to policy, that he have people in the House and Senate who would support his agenda."<sup>28</sup> No disciplinary action appears to have been taken in response to OSC's findings.

### **Potential Violation**

#### **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>29</sup> Activities covered by this prohibition include the official "[u]sing his or her official title while participating in political activity."<sup>30</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>31</sup>

OSC has provided recent guidance on applying this prohibition to social media.<sup>32</sup> 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

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<sup>24</sup> 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>.

<sup>25</sup> 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>.

<sup>26</sup> 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>.

<sup>27</sup> 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>.

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

<sup>29</sup> 5 U.S.C. § 7323(a)(1).

<sup>30</sup> 5 C.F.R. § 734.302(b)(1).

<sup>31</sup> 5 C.F.R. § 734.101.

<sup>32</sup> Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

political party, candidate in a partisan race, or partisan political group. All such official social media accounts should remain politically neutral.”<sup>33</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 using official social media accounts to use campaign slogan such as “Make America Great Again” or “MAGA.”<sup>34</sup>

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.<sup>35</sup>

As an initial matter, there is no question that Ms. Sanders’s @PressSec Twitter account is “a social media account designated for official purposes.” Ms. Sanders’s Twitter page describes her as the “@WhiteHouse Press Secretary. Proudly representing @POTUS Trump’s Administration” and the profile features a picture of her at the podium in the White House briefing room. In addition, Ms. Sanders regularly uses the @PressSec account to post about official White House activities and links to other official government Twitter accounts. She also maintains a separate personal Twitter account. Thus, the @PressSec account clearly is an official account and Ms. Sanders’s use of it falls squarely within the jurisdiction of the Hatch Act.

Nor is there any doubt that Ms. Sanders’s use of the @PressSec Twitter account to post a tweet 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 concluding that tweeting President Trump’s campaign slogan “#MAGA” or “Make America Great Again.” While OSC’s guidance does not specifically include “Great again” in its list of slogans, there is no indication that OSC’s list was meant to be exhaustive. Ms. Sanders could have used any number of terms to describe the Trump administration’s energy policy, but she almost certainly used the term “Great again” in her tweet to specifically invoke President Trump’s political campaign slogan and suggest that President Trump had fulfilled his campaign

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<sup>33</sup> *Id.* at 7.

<sup>34</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.

<sup>35</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/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>.

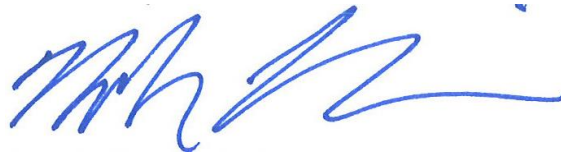
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promise to “Make America Great Again”. Accordingly, this conduct was directed at the success or failure of a political party or candidate in a partisan race.<sup>36</sup> By using her official Twitter account to transmit this message, Ms. Sanders ran 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 guidance provided by OSC in March, one day before the offending conduct.

### **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 his or her official position, including through an official social media account. By publishing the tweet at issue, which advocates the election or defeat of a partisan political candidate, Ms. Sanders appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Sanders.

Sincerely,



Noah Bookbinder  
Executive Director

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<sup>36</sup> Office of Special Counsel, Hatch Act Guidance on Social Media, at 7.