



**U.S. OFFICE OF SPECIAL COUNSEL**  
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November 30, 2018

Mr. Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics in Washington  
455 Massachusetts Avenue, N.W.  
Washington, DC 20001

VIA EMAIL: [dsherman@citizensforethics.org](mailto:dsherman@citizensforethics.org)

Re: OSC File Nos. HA-18-5219, -5220, -5221, -5222, -5223, -5224, -5225, -5226, -5227, and -5228

Dear Mr. Bookbinder:

This letter is in response to ten complaints you filed with the U.S. Office of Special Counsel (OSC) alleging that employees in the Executive Office of the President (EOP) violated the Hatch Act. Specifically, you alleged that these ten EOP employees violated the Hatch Act by using their official Twitter accounts to engage in political activity. OSC addresses each allegation below.

The Hatch Act restricts certain political activities of federal executive branch employees, except for the President and the Vice President. Accordingly, EOP employees are covered by the Hatch Act and prohibited from, among other things, using their official authority or influence for the purpose of interfering with or affecting the result of an election.<sup>1</sup> For example, under this provision, they may not use their official titles while engaging in political activity or their official positions to advance or oppose candidates for partisan office. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.<sup>2</sup>

OSC Found Violations and Issued Warning Letters

*Madeleine Westerhout*

You alleged that Madeleine Westerhout, Executive Assistant to the President, violated the Hatch Act when she used her official “@madwest45” Twitter account to post and retweet a message and that included #MAGA. On April 26, 2018, she posted a message that read, “Congratulations to Mike Pompeo! He was a great CIA Director and will be an extraordinary

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<sup>1</sup> 5 U.S.C. § 7323(a)(1).

<sup>2</sup> 5 C.F.R. § 734.101.

Secretary of State! #MAGA.” And on March 9, 2018, she retweeted a message from @realDonaldTrump, which read, “JOBS, JOBS, JOBS! #MAGA.”

Because Ms. Westerhout uses the “@madwest45” Twitter account for official purposes, the Hatch Act prohibits her from using that account to engage in political activity.<sup>3</sup> Under the Hatch Act, tweeting a campaign slogan of a current candidate for partisan political office constitutes political activity. Thus, because President Trump is a candidate for reelection,<sup>4</sup> Ms. Westerhout engaged in political activity when she tweeted #MAGA (i.e., Make America Great Again) on April 26, 2018, and retweeted a message with #MAGA on May 4, 2018. Accordingly, OSC has concluded that she violated the Hatch Act when she engaged in this activity using her official Twitter account.<sup>5</sup>

*Alyssa Farah*

You alleged that Alyssa Farah, Press Secretary for the Vice President, violated the Hatch Act when she used her official “@VPPressSec” Twitter account to post two messages that included #MAGA. On April 26, 2018, she tweeted, “Jobs! Jobs! Jobs! #MAGA” along with a retweeted message from Vice President Mike Pence. On May 4, 2018, she tweeted, “This is what #MAGA looks like: Under @POTUS TRUMP, the unemployment rate is the lowest it’s been in 17 years,” along with a retweeted message from Fox News.

Ms. Farah uses the “@VPPressSec” Twitter account for official purposes, and she engaged in political activity on that account when she twice tweeted #MAGA. Accordingly, OSC has concluded that Ms. Farah violated the Hatch Act when she tweeted the April 26 and May 4, 2018 messages from her official Twitter account.

*Jacob Wood*

You alleged that Jacob Wood, Deputy Communications Director for the Office of Management and Budget (OMB), violated the Hatch Act he used his official “@JacobWood45” Twitter account to retweet a message from the chairwoman of the Republican National Committee (RNC), which included #MAGA. Mr. Wood retweeted an April 8, 2018 message that read: “@MickMulvaneyOMB: Business owners are no longer afraid of looming red tape, and families are beginning to see new opportunities to invest in their futures. #MAGA.”

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<sup>3</sup> See OSC’s February 2018 “Hatch Act Guidance on Social Media,” pg. 9, *available at*: <https://osc.gov/Resources/HA%20Social%20Media%20FINAL%20r.pdf>.

<sup>4</sup> See OSC’s March 5, 2018 “Updated Guidance Regarding the Hatch Act and President Trump Now That He Is Officially a Candidate for Reelection,” *available at*: <https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf>.

<sup>5</sup> On November 16, 2018, you filed an additional complaint against Ms. Westerhout, alleging that an October 2, 2018 message she tweeted from “@madwest45” also violated the Hatch Act. Prior to receipt of your complaint, OSC had identified the October 2 tweet as problematic under the Hatch Act and Ms. Westerhout was made aware of it. As of October 24, 2018, the tweet had been removed.

Mr. Wood uses the “@JacobWood45” Twitter account for official purposes. And under the Hatch Act, retweeting a message from a political party chairperson with the campaign slogan of a current candidate for partisan political office constitutes political activity. Thus, OSC has concluded that Mr. Wood violated the Hatch Act when he retweeted this message from his official Twitter account.<sup>6</sup>

*Raj Shah*

You alleged that Raj Shah, White House Principal Deputy Press Secretary, violated the Hatch Act when he used his official “@RajShah45” Twitter account to post a message that linked to the RNC website. On June 4, 2018, Mr. Shah tweeted a message that read: “Fantastic @RNCResearch release #Winning: 500 Days of American Greatness.” He included in his tweet a link to an RNC webpage titled, “#Winning: 500 Days of American Greatness,” which detailed RNC research on the accomplishments of President Donald Trump’s first 500 days in office.

Mr. Shah uses the “@RajShah45” Twitter account for official purposes. Because his June 4, 2018 message highlighted research done by a political party and provided a link to the party’s website and its research, OSC has concluded that he engaged in prohibited political activity in violation of the Hatch Act when he used his official account to tweet it.

*Jessica Ditto*

You alleged that Jessica Ditto, White House Deputy Director of Communications, violated the Hatch Act when she used her “@JessicaDitto45” Twitter account to retweet Raj Shah’s June 4, 2018 message, described above. Like Mr. Shah, Ms. Ditto uses the “@JessicaDitto45” Twitter account for official purposes. Thus, for the reasons explained above, OSC has concluded that she violated the Hatch Act when she used this account to retweet Mr. Shah’s message.

*Helen Aguirre Ferré*

You alleged that Helen Aguirre Ferré, then Special Assistant to the President and Director of Media Affairs,<sup>7</sup> violated the Hatch Act when she used as the header photograph on her “@haferre45” Twitter account an image with the text “Make America Great Again.” Because Ms. Ferré used the “@haferre45” Twitter account for official purposes and displayed the campaign slogan of a current candidate on it, OSC concluded that she violated the Hatch Act.<sup>8</sup>

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<sup>6</sup> You also alleged that Mr. Wood violated the Hatch Act when he tweeted a series of messages using the hashtag #MAGAnomics. As will be explained in the analysis of the allegation against OMB Director Mick Mulvaney, Mr. Wood did not violate the Hatch Act when he tweeted messages with #MAGAnomics from his “@JacobWood45” account.

<sup>7</sup> Shortly after you filed your complaint, Ms. Ferré left her position at the White House and is now Director of Strategic Media and Public Affairs at the National Endowment for the Arts.

<sup>8</sup> It also was alleged that Ms. Ferré violated the Hatch Act when she retweeted a March 18, 2018 message about recovery efforts in Puerto Rico, which included the text, “Adm McMahan @SBAGov & Sec Carson @HUDgov are making PR [Puerto Rico] great again.” However, OSC cannot conclude that using the words “making Puerto Rico great again” in this context, without more, constituted political activity for

Ms. Ferré deactivated the “@haferre45” Twitter account when she left the White House. And once Mses. Westerhout, Farah, and Ditto and Messrs. Wood and Shah became aware that their tweets violated the Hatch Act, they deleted the posts. Thus, although we have concluded that these six EOP employees violated the Hatch Act, we have decided not to pursue disciplinary action and are closing their files without further action. They all have been advised that if in the future they engage in prohibited political activity while employed in a position covered by the Hatch Act, we will consider such activity to be a willful and knowing violation of the law, which could result in further action.

OSC Found No Violations

*Sarah Huckabee Sanders and Lindsay Walters*

You alleged that White House Press Secretary Sarah Huckabee Sanders violated the Hatch Act when she used her official “@PressSec” Twitter account on March 6, 2018, to tweet “Great again: ‘The U.S. likely to overtake Russia to become the world’s largest oil producer,’” and link to a *Wall Street Journal* article about the United States overtaking Russia to become the world’s largest oil producer by 2023. You contended that using the words “great again” were supposed to invoke “Make America Great Again,” the campaign slogan of President Donald Trump. And you alleged that White House Deputy Press Secretary Lindsay Walters violated the Hatch Act when she used her official “@LWalters45” Twitter account to retweet this message.

But OSC cannot conclude that using the words “great again” in an otherwise official message, without more, constitutes political activity under the Hatch Act. Accordingly, OSC has determined that Mses. Sanders and Walters did not violate the Hatch Act, and we are closing their files without further action.

*Mick Mulvaney*

You alleged that OMB Director Mick Mulvaney violated the Hatch Act when he used his official “@MickMulvaneyOMB” Twitter account to tweet messages that included the hashtag #MAGAnomics. OSC previously opined, however, that because the Trump Administration branded its economic plan with the name “MAGAnomics,” OMB’s continued use of the name was not for the purpose of affecting the result of an election but rather to further the Administration’s economic agenda. Accordingly, OSC advised OMB that the Hatch Act would not prohibit the continued use of MAGAnomics in official communications, including in tweets from official Twitter accounts. Thus, OSC has concluded that Mr. Mulvaney did not violate the Hatch Act when he tweeted messages with #MAGAnomics from his “@MickMulvaneyOMB” account, and we are closing this file without further action.

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purposes of the Hatch Act. Accordingly, OSC has determined that retweeting this message from her “@haferre45” account did not violate the Hatch Act.

*Hogan Gidley*

You alleged that White House Deputy Press Secretary Hogan Gidley violated the Hatch Act when he used his official “@HoganGidley45” Twitter account to tweet a message that included #MAGA. Specifically, at 6:16 a.m. on March 5, 2018, Mr. Gidley tweeted a message that read: “It’s always humbling to walk into work at this amazing place. When the morning sun hits the @WhiteHouse & you see the American flag waiving [sic] atop the building, there’s a deep sense of honor, pride & appreciation for this incredible country. #MAGA @realDonaldTrump @POTUS #America.”

You alleged that Mr. Gidley violated the Hatch Act when he posted this message on his official Twitter account because he used #MAGA, the campaign slogan of President Trump. However, it was not until later that same day that OSC issued guidance advising that the use of #MAGA constitutes political activity now that President Trump has begun his reelection campaign.<sup>9</sup> Accordingly, OSC has concluded that Mr. Gidley’s activity did not violate the Hatch Act, and we are closing this file without further action.

We thank CREW for bringing these complaints to our attention. If you have any questions regarding these ten matters, you may contact me at 202-804-7054.

Sincerely,



Erica S. Hamrick  
Deputy Chief  
Hatch Act Unit

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<sup>9</sup> See footnote 4.