

June 20, 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 Ivanka Trump

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 Ivanka Trump violated the Hatch Act by using her social media account, @IvankaTrump, to post messages including President Trump’s campaign slogan “Make America Great Again.” These actions were directed specifically toward the success or failure of Donald J. Trump, a candidate in a partisan election. By sharing these posts on a Twitter account that Ms. Trump uses for official government business, Ms. Trump engaged in political activity prohibited by law.

Factual Background

Ms. Trump was appointed to be Assistant to President Trump in March 2017.¹ In this capacity, Ms. Trump serves as an “unpaid advisor to her father in the White House.”² In response to nepotism and other ethical questions raised following her appointment, Ms. Trump issued a statement, saying:

I have heard the concerns some have with my advising the president in my personal capacity while voluntarily complying with all ethics rules, and I will instead serve as an unpaid employee in the White House Office, subject to all of the same rules as other federal employees.³

Ms. Trump uses the Twitter handle @IvankaTrump and identifies herself on that social media platform as “Advisor to POTUS on job creation + economic empowerment, workforce development & entrepreneurship.”⁴ Since joining the Trump Administration, Ms. Trump has primarily used her Twitter account to promote her work in the government and President Trump’s agenda.

¹ Maggie Haberman and Rachel Abrams, *Ivanka Trump, Shifting Plans, Will Become a Federal Employee*, *New York Times*, Mar. 29, 2017, available at <https://nyti.ms/2XuvJ2l>.

² *Id.*

³ *Id.*

⁴ Ivanka Trump (@IvankaTrump), Twitter, <https://twitter.com/IvankaTrump>.

Ms. Trump's Twitter Account

Since March 2017, Ms. Trump has used her @IvankaTrump Twitter account for official government purposes.⁵ The account profile states that Ms. Trump is an “Advisor to POTUS.”⁶ In furtherance of her role in the White House, Ms. Trump has primarily used the account to post about official Trump Administration activities and priorities.⁷ For example, Ms. Trump often links to the official website of the White House from her @IvankaTrump account.⁸ The profile photo on the account is an image of Ms. Trump at an official event with the South Korean president.⁹ The official Twitter accounts of the White House, @WhiteHouse, and the President of the United States, @POTUS, also have referenced Ms. Trump's work on behalf of the Trump Administration, linking to her @IvankaTrump account.¹⁰



Ms. Trump has also used her @IvankaTrump account to announce official Trump Administration policy.¹¹

⁵ *Id.*

⁶ *Id.*

⁷ *See generally id.*

⁸ *Id.*

⁹ European Press Agency, *Ivanka Trump in Seoul photo preview 54150123* (Feb. 23, 2018), available at <http://www.epa.eu/politics-photos/diplomacy-photos/ivanka-trump-in-seoul-photos-54150123>.

¹⁰ *See, e.g.*, The White House (@WhiteHouse), Twitter (June 18, 2019), <https://twitter.com/WhiteHouse/status/1141005742209687554>.

¹¹ *See, e.g.*, Ivanka Trump (@IvankaTrump), Twitter (April 14, 2019), <https://twitter.com/IvankaTrump/status/1117498097603698689>.



Although Ms. Trump claims that the @IvankaTrump is a “Personal Pg. Views are my own”, the account is also routinely cited in the press for official matters.¹² Since Ms. Trump's father became President of the United States on January 20, 2017, the number of people following her @IvankaTrump Twitter account has more than doubled.¹³ Currently, her follower count sits at approximately 6.54 million, over 3 million more than when she became a federal employee on March 29, 2017.¹⁴ While her adult siblings' Twitter followers have also seen a substantial increase during the Trump presidency, the 3 million follower boost for @IvankaTrump since Ms. Trump became a White House staffer outpaced that of her siblings, Donald Trump, Jr., Eric Trump, and Tiffany Trump by at least 900,000 people over the same time period.¹⁵ Ms. Trump's @IvankaTrump account has been “verified” by Twitter, and it does not appear that she maintains any other Twitter account for official business.

¹² See e.g., Joanne Lu, *Ivanka Trump Launches \$50 Million Program to Empower Women in The Workplace*, *National Public Radio*, Feb. 13, 2019, available at <https://n.pr/2SAi088>.

¹³ See, Social Blade (@IvankaTrump), available at <https://socialblade.com/twitter/user/ivankatrump>, accessed June 19, 2019.

¹⁴ *Id.*

¹⁵ Compare Social Blade (@IvankaTrump), available at <https://socialblade.com/twitter/user/ivankatrump>, accessed June 19, 2019, with Social Blade (@DonaldJTrumpJr), available at <https://socialblade.com/twitter/user/donaldjtrumpjr>, accessed June 19, 2019; Social Blade (@EricTrump), available

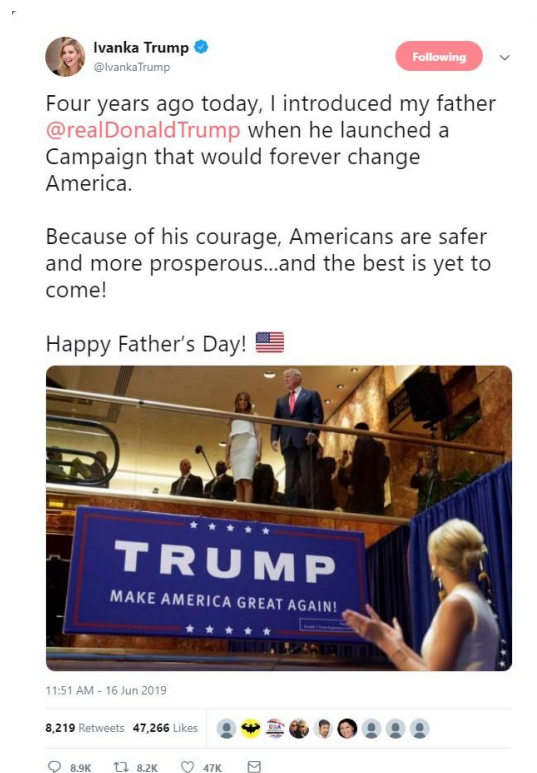
Use of @IvankaTrump for Partisan Political Purposes

Since March 2018, Ms. Trump appears to have used her @IvankaTrump Twitter account for partisan political purposes on several occasions. As detailed below, such actions likely violate the Hatch Act.

On June 16, 2019, Ms. Trump tweeted a message promoting the Trump campaign that included an image of a Trump campaign sign featuring the slogan, “Make America Great Again.” The message stated in part:

Four years ago today, I introduced my father @realDonaldTrump when he launched a Campaign that would forever change America. Because of his courage, Americans are safer and more prosperous...and the best is yet to come!¹⁶

The tweet reads in full:



at <https://socialblade.com/twitter/user/erict trump>, accessed June 19, 2019; and Social Blade (@TiffanyATrump), available at <https://socialblade.com/twitter/user/tiffanyatrump>, accessed June 19, 2019.

¹⁶ Ivanka Trump (@IvankaTrump), Twitter (July 16, 2019), <https://twitter.com/IvankaTrump/status/1140285841039855617>.

Ms. Trump tweeted the message two days before President Trump held a launch event for his re-election campaign on June 18, 2019.¹⁷ Notably, this tweet was also sent just three days after OSC issued a public report finding that Counselor to the President Kellyanne Conway violated the Hatch Act using her personal Twitter account and recommending her removal from government service.¹⁸

On or around April 1, 2019, Ms. Trump's @IvankaTrump account retweeted a message from Republican National Committee ("RNC") Chairwoman Ronna Romney McDaniel's @GOPChairwoman account reflecting on President Trump's Prison Reform Summit at the White House and including a reference to the President's campaign slogan, "Make America Great Again."¹⁹ The tweet reads in full:



The RNC is registered with the Federal Election Commission ("FEC") as a national party committee of the Republican Party and describes itself as the management arm of the Republican Party.²⁰

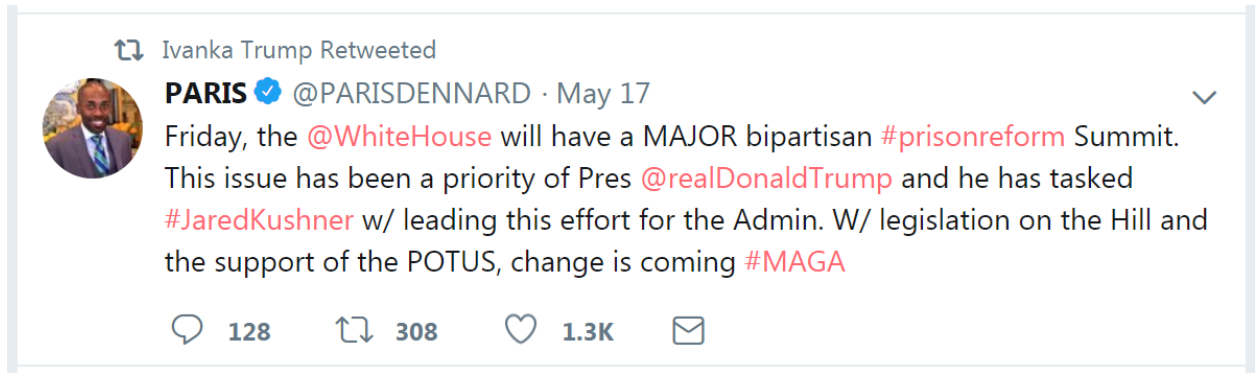
¹⁷ Jacob Pramuk, [Trump to Launch his 2020 White House Bid in Florida as Polls Show him Trailing his Democratic Rivals](https://www.cnbc.com/2019/06/18/trump-launches-2020-election-campaign-with-orlando-florida-rally.html), *CNBC*, June 18, 2019, available at <https://www.cnbc.com/2019/06/18/trump-launches-2020-election-campaign-with-orlando-florida-rally.html>.

¹⁸ Office of Special Counsel, [Report of Prohibited Political Activity under the Hatch Act OSC File Nos. HA-19-0631 & HA-19-3395 \(Kellyanne Conway\)](https://osc.gov/Resources/Report%20to%20the%20President%20re%20Kellyanne%20Conway%20Hatch%20Act.pdf), June 13, 2019, available at <https://osc.gov/Resources/Report%20to%20the%20President%20re%20Kellyanne%20Conway%20Hatch%20Act.pdf>.

¹⁹ Ronna McDaniel (@GOPChairwoman), Twitter (Apr. 1, 2019), <https://twitter.com/GOPChairwoman/status/1112901407903043584>.

²⁰ Republican National Committee, [FEC Form 1, Statement of Organization, Amended](https://docquery.fec.gov/pdf/976/201901309144181976/201901309144181976.pdf), Jan. 30, 2019, available at <https://docquery.fec.gov/pdf/976/201901309144181976/201901309144181976.pdf>; Republican National Committee, [Rules of the Republican Party, Rule 1\(a\)](https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules_of_the_Republican+Party_FINAL_S14090314.pdf), available at https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules_of_the_Republican+Party_FINAL_S14090314.pdf.

On or around May 17, 2018, Ms. Trump retweeted a message from self-described “GOP commentator” Paris Dennard that promoted a White House summit on prison reform and included the President’s campaign slogan, “#MAGA.”²¹ The tweet reads in full:



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.”²² Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”²³ “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.”²⁴

OSC Guidance on Social Media

OSC has provided recent guidance on applying this prohibition to social media.²⁵ In its guidance, OSC set 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. All such official social media accounts should remain politically neutral.”²⁶ An example of prohibited conduct includes:

Example 1: While accessing the Twitter account you use for official purposes, you see that a political party tweeted its support for a candidate in a partisan race.

²¹ Paris Dennard (@PARISDENNARD), Twitter (May 17, 2018), <https://twitter.com/PARISDENNARD/status/997303931897368577>.

²² 5 U.S.C. § 7323(a)(1).

²³ 5 C.F.R. § 734.302(b)(1).

²⁴ 5 C.F.R. § 734.101.

²⁵ Office of Special Counsel, Hatch Act Guidance on Social Media, revised Feb. 2018, available at <http://bit.ly/2J60680>.

²⁶ *Id.* at 7.

*You **may not** retweet or like that post from the account used for official purposes (or from your personal social media account if you are on duty or in the workplace).*²⁷

OSC has not provided a bright line rule regarding what constitutes an official Twitter account or when a personal social media account is being used for official purposes. However, OSC has outlined several factors that it will consider in determining that a personal social media account is “being used in ways to suggest it is an official social media account.”²⁸ Those factors include, for example:

(1) the account contains little to no personal content; (2) the account identifies the individual as a federal employee; (3) the account extensively uses photographs of the employee’s official activities; (4) the account often references, retweets, likes, comments, or otherwise shares material related to official activities; or (5) the account is linked to an agency website or other official page. No one factor is dispositive.²⁹

OSC guidance on “misusing personal social media accounts” also states that pursuant to the Hatch Act, federal employees “may not engage in political activity on a personal social media account if they are using such accounts for official purposes or posting in their official capacities.”³⁰ An example of prohibited conduct here includes:

*Example 1: You are a federal employee and maintain only a personal Twitter account. While you have some personal posts about family vacations and events with friends, most of your posts are retweets of your agency’s initiatives and photographs of you at official events. You **may not** use this account to make posts directed at the success or failure of a political party, candidate in a partisan race, or partisan political group.*³¹

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.³² 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.”³³ The document acknowledged that President Trump became a “candidate for partisan political office” as described in the Hatch Act in

²⁷ *Id.*

²⁸ *Id.* at 8.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* (emphasis added).

³² 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>.

³³ 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>.

February 2018 when he publicly announced his candidacy.³⁴ 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 social media accounts.³⁵ 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."³⁶ 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.³⁷

OSC's Prior Findings of Hatch Act Violations arising from Social Media Use

OSC's guidance is illuminated by its recent decisions finding several administration officials violated the Hatch Act using social media. For example, OSC has found that both U.S. Ambassador to the United Nations Nikki Haley and Counselor to the President Kellyanne Conway violated the Hatch Act using their personal Twitter accounts. OSC found that Ambassador Haley violated the Hatch Act when she "retweeted a political message from President Donald Trump via her @nikkihaley Twitter account."³⁸ OSC acknowledged that Ambassador Haley's account was a personal Twitter account but explained that the account included significant "indicia of her official role."³⁹ These indicia included that Ambassador Haley did not have any other Twitter accounts, that her profile listed her official title, and that many of her posts and photographs were about and of official matters, among other factors.⁴⁰ Similarly, OSC found that Ms. Conway violated the Hatch Act by "engaging in both official and political activity on her Twitter account, '@KellyannePolls.'"⁴¹ OSC found that although Ms. Conway created her @KellyannePolls account before she became a federal employee, since becoming Counselor to the President, her followers had quintupled, increasing to 2.7 million people, evidence that "the public has looked to Ms. Conway's account for news and announcements." OSC also noted that since Ms. Conway became a government employee, she has used the account "as a communications tool for official matters."⁴²

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* (emphasis added).

³⁸ Letter from Erica Hamrick, Office of Special Counsel to Noah Bookbinder, Citizens for Responsibility and Ethics in Washington, Sept. 28, 2017, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/10/03161101/DOC100217-10022017112049-1.pdf>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File Nos. HA-19-0631 & HA-19-3395 (Kellyanne Conway), June 13, 2019.

⁴² *Id.* President Trump has repeatedly declined to discipline Ms. Conway despite OSC's prior recommendation for "appropriate disciplinary action" and removal from federal service. See Alexander Mallin, Kellyanne Conway Says She Discussed Hatch Act Violations with President Trump, *ABC News*,

On November 30, 2018, OSC concluded that White House Office of Management and Budget employee Jacob Wood violated the Hatch Act when he used the Twitter account he uses for official purposes to retweet “a message from a political party chairperson with the campaign slogan of a current candidate for partisan political office.”⁴³ In that case, Mr. Wood retweeted a message from the chairwoman of the Republican National Committee stating, “@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.”⁴⁴

Ms. Trump’s Tweets Violated the Hatch Act

As an initial matter, Ms. Trump’s @IvankaTrump Twitter account appears to be a social media account that she uses for official purposes or posting in her official capacity. While OSC has made clear that no one factor is dispositive in making this determination, Ms. Trump’s @IvankaTrump Twitter account meets several of the identified criteria. As OSC’s example of prohibited conduct provides, even if a federal employee maintains only a personal Twitter account, she cannot use that account to post tweets directed at the success or failure of a political party or candidate if that account includes tweets mostly about government initiatives and photographs of the employee at official events. Ms. Trump’s account does include some personal content, but it appears that most of her posts since joining the Trump Administration have been related to or in support of her work for the Trump Administration and President Trump’s agenda. The account also lists her official position as a federal employee, “Advisor to POTUS”, and the White House has referenced Ms. Trump’s @IvankaTrump account to highlight her official work. Since becoming a federal employee in her father’s administration, Ms. Trump’s Twitter followers have nearly doubled, increasing by more than 3 million people, evidence that “the public has looked to [her] account for news and announcements.” This increase exceeds the bump in Twitter followers OSC noted that Kellyanne Conway received since becoming a government employee. In addition, Ms. Trump regularly uses the @IvankaTrump account to post photos and videos of her official activities including her various appearances at events on behalf of the Trump Administration.

There is ample evidence that Ms. Trump uses the @IvankaTrump account “as a communication tool for official matters” and that the “public has looked to [her] account for news and announcements.” Despite her reference to the account as a “Personal Pg.”, Ms. Trump frequently uses the @IvankaTrump account to reference, retweet, like, comment, or otherwise share material related to official activities. For example, more than 80% of her tweets in the six-month period between December 2018 and May 2019 related to official government business. As OSC has previously opined in the Haley and Conway matters, Ms. Trump’s @IvankaTrump

Mar. 8, 2018, available at <https://abcnews.go.com/Politics/kellyanne-conway-discussed-hatch-act-violations-president-trump/story?id=53609559>; see also Maegan Vazquez, *Trump Won’t Fire Conway Despite Federal Agency Recommendation*, CNN, June 14, 2019, available at <https://www.cnn.com/2019/06/14/politics/kellyanne-conway-trump-hatch-act/index.html>.

⁴³ Letter from Erica Hamrick, Office of Special Counsel to Noah Bookbinder, Citizens for Responsibility and Ethics in Washington, Nov. 30, 2018, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/11/30151422/CREW-ltr-re-10-complaints.pdf>.

⁴⁴ *Id.*

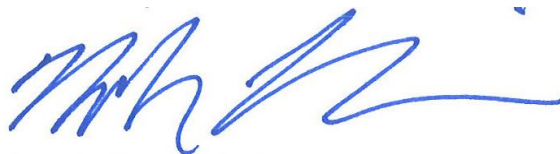
account may be a personal account, but it is used to support and includes substantial indicia of her official government role. Based on this confluence of factors, Ms. Trump's use of the @IvankaTrump account falls squarely within the purview of the Hatch Act, and she cannot use the account to make posts directed at the success or failure of a political party or candidate in a partisan race.

There is no doubt that Ms. Trump's use of the @IvankaTrump Twitter account to post messages promoting the President's campaign slogan and to share messages from RNC Chairwoman McDaniel's Twitter account constitute political activity under the Hatch Act. Both OSC and the White House have provided White House staff with legal guidance concluding that tweeting an image of President Trump's campaign slogan "Make America Great Again" is prohibited political activity. In fact, Ms. Trump's tweet of an image from President Trump's presidential campaign announcement is directly contrary to OSC's prohibition on the display or distribution of "materials from President Trump's 2016 or 2020 campaigns." Likewise, Ms. Trump's retweets of a message from RNC Chairwoman McDaniel and GOP commentator Paris Dennard that reference "Make America Great Again" or "#MAGA" are also explicitly prohibited by OSC's March 2018 guidance and appear to be directed at the success of the Republican Party and candidate Trump respectively. This conduct is substantially similar to prior Hatch Act violations found by OSC against Ambassador Haley, Ms. Conway, Mr. Wood, and others. By using the Twitter account she uses for official business to transmit the messages described above, Ms. Trump ran afoul of the Hatch Act, which requires her to remain politically neutral when engaging in official government 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 her official position. Based on the conduct at issue, which advocates the success or failure of a political party or and the election or defeat of a partisan political candidate, Ms. Trump appears to have violated the Hatch Act. OSC should commence an immediate investigation and take or recommend appropriate disciplinary action against Ms. Trump.

Sincerely,



Noah Bookbinder
Executive Director