

July 31, 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 Stephen Miller

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 Senior Policy Advisor Stephen Miller 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 presumptive Democratic nominee for president, Joe Biden. By giving this televised interview that mixed official government business with political views about a candidate for partisan political office from the grounds of the White House, Mr. Miller appears to have used his official authority or influence for the purpose of interfering with or affecting the result of an election. His statement in this interview constitutes political activity prohibited by law.

Factual Background

Stephen Miller has served as a senior policy advisor to President Donald Trump since 2017.¹ Prior to joining the Trump administration, Miller was a Republican political consultant who advised the Trump presidential campaign. Miller’s broad portfolio has included a range of domestic issues as well as immigration policy, including working to create the travel ban on people from seven predominantly Muslim countries.² Miller has also appeared on television on behalf of the White House to promote President Trump’s agenda.³

Use of White House Office and Title for Partisan Political Purposes

On July 31, 2020, Miller made comments during a Fox News interview in his official capacity as Senior Policy Advisory to the President that impermissibly mixed official government business with political views about former Vice President Biden, the presumptive

¹ Michal Kranz, Ellen Cranley, and Natalie Colarossi, Meet 34-year-old Stephen Miller, Trump's Longest-Serving Senior Adviser and Mastermind of his Most Inhumane Immigration Policies, *Business Insider*, Feb. 21, 2020, available at <https://bit.ly/2XeTCt0>.

² *Id*; see also Shelby Lin Erdman, Who is Stephen Miller, Senior Advisor to President Donald Trump?, *Atlanta Journal-Constitution*, Apr. 8, 2019, available at <https://bit.ly/2XcZF1e>.

³ *Id*.

Democratic nominee for president.⁴ Miller was standing on the White House grounds when he spoke. He was introduced by the host, who stated: “We are joined from the White House by Stephen Miller, Senior Policy Advisor.” The Fox News chyron for the interview also identifies Miller as “STEPHEN MILLER WHITE HOUSE SENIOR POLICY ADVISOR.”⁵



During his exchange with the hosts, Miller discussed a number of official issues, including the President’s claims about voting by mail, the administration’s response to protests in Portland, Oregon and the decision to deploy Department of Homeland Security agents to American cities to protect federal property. Amidst those comments, Miller offered his views about Biden and the Democratic Party.⁶

Specifically, in response to the host’s question about former President Obama’s eulogy of the late Rep. John Lewis, Miller made comments about Biden. Although the host prefaced that Miller was not on the “political side,” Miller answered the question stating:

Well as you know Joe Biden is stuck in a basement somewhere and he just emerges every now and again and somebody hands him a notecard and he says whatever his 23 year old staffer tells him to say and then, he dutifully disappears to be seen a week later. As for former President Obama the reality is that for eight years he delivered nothing but failure and betrayal to the people of this country...⁷

Shortly after Miller’s *Fox News* interview on White House grounds aired, the Trump campaign posted the video on Twitter with the caption: “Senior Advisor Stephen Miller: Obama

⁴ Stephen Miller: Nobody Who Mails in a Ballot has their Identity Confirmed, *Fox News*, July 31, 2020, available at <https://video.foxnews.com/v/6176997244001#sp=show-clips>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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and Biden delivered ‘failure and betrayal’ to the people of this country.’⁸ The clip only features an excerpt of the interview, but begins with Miller’s remarks regarding Biden.⁹



Team Trump (Text TRUMP to 88022) ✓

@TeamTrump

Senior Advisor Stephen Miller: Obama and Biden delivered "failure and betrayal" to the people of this country



9:15 AM · Jul 31, 2020 · Twitter Media Studio

The @TeamTrump twitter account notes that it is the “official Twitter for the Trump Campaign.”¹⁰

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.”¹¹ Activities covered by this prohibition include a federal employee’s use of their official authority or position while participating in political activity.¹² “Political activity” is defined as “an activity

⁸ Team Trump (@TeamTrump), Twitter (July 31, 2020), <https://twitter.com/TeamTrump/status/1289203068756795392>.

⁹ *Id.*

¹⁰ See generally Team Trump (@TeamTrump), Twitter, <https://twitter.com/TeamTrump>.

¹¹ 5 U.S.C. § 7323(a)(1).

¹² 5 C.F.R. § 734.302(b)(1).

directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”¹³ Penalties under the Hatch Act are 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.¹⁴

In its March 2018 report regarding Hatch Act violations by Counselor to the President, Kellyanne Conway, 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.¹⁵ 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.¹⁶

Miller Violated the Hatch Act in His July 31, 2020 Interview

Stephen Miller likely violated the Hatch Act in his July 31, 2020 interview on *Fox News* by impermissibly mixing official government business with political views about Biden. There is no doubt that Miller was speaking in his official capacity. This appearance was similar to conduct OSC has previously found to violate the Hatch Act. Miller engaged in an interview about official government business including the administration’s policy related to voting by mail and the deployment of federal agents to Portland and other cities across the country. Miller was standing on the White House grounds when he made these statements, and both the host and the *Fox News* chyron identified Miller by his name and official title. Given these facts, Miller used his official position, authority, and title while answering these reporters’ questions.

There is also no doubt that Miller’s statements were aimed at influencing the success or failure of a candidate in a partisan election. Miller responded to a question specifically prefaced as “political” in nature related to Biden by attacking the presumptive Democratic nominee for president as being stuck in the basement and taking direction from young staffers. Then he expanded on his comments by pivoting to a critique of the alleged “failure and betrayal” by President Obama. Although he does not explicitly mention Biden in his attack on Obama, the implication is quite clear that his remarks were meant to denigrate Biden as well. That implication is made obvious by the Trump campaign’s official Twitter account clipping and posting Miller’s comments within hours, with the caption, “Senior Advisor Stephen Miller: Obama and Biden delivered ‘failure and betrayal’ to the people of this country.”¹⁷ Miller’s

¹³ 5 C.F.R. § 734.101.

¹⁴ 5 U.S.C. § 7326.

¹⁵ 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://bit.ly/33fDagi>.

¹⁶ *Id.*

¹⁷ Team Trump (@TeamTrump), Twitter (July 31, 2020).

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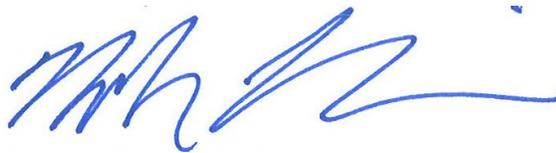
explicit and implied advocacy against Joe Biden, a candidate for a partisan political office, constituted political activity under the Hatch Act.

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 candidate in a partisan election amidst comments about official government business, Miller 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 Miller, 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', is written in a cursive style.

Noah Bookbinder
Executive Director