

Statement of Scott A. Coffina
Before the United States House of Representatives
Committee on Oversight and Government Reform

Hearing:

**White House Office of Political Affairs: Is Supporting Candidates and
Campaign Fund-Raising an Appropriate Use of a Government Office?**

Wednesday, July 16, 2014

Washington, DC

Chairman Issa, Ranking Member Cummings, and members of the Committee, my name is Scott Coffina and I appreciate your invitation to participate in this inquiry about the White House Office of Political Strategy and Outreach (“OPSO”), and the important question of whether supporting candidates and campaign fundraising is an appropriate use of a government office.

I have had the privilege to serve in President Reagan’s Office of Political Affairs as a staff assistant and the subsequent honor to advise that same office and the honorable men and women who served in it as an Associate White House Counsel during the last two years of the George W. Bush Administration. I believe that a political affairs office plays a valuable role in the operations of the White House. The president is not only the head of our government, but also the head of his party, and whether looking at it from policy strategy to electoral politics – including a president’s own re-election effort – “politics” are a constant in the White House, and the political affairs office provides him necessary support for both roles.

The political office in the White House historically has performed a number of useful and legally benign functions, serving as an important conduit to the president’s supporters on policy issues, personnel decisions and appointments. It also serves an appropriate clearinghouse function, vetting the many requests for the president’s assistance from political parties and candidates, while pitting them internally against the other competing demands on the president’s time. As I have noted in prior testimony before this Committee, having a defined political office in the White House allows for greater discipline in adhering to the Hatch Act within the White House and better visibility and accountability to Congress and the Office of Special Counsel in their respective oversight and enforcement functions.

The Hatch Act accommodates the unique environment of the White House. The president and vice president are exempt, and employees within the Executive Office of the President may engage in political activities that are otherwise prohibited while on duty and in a federal building, as long as their duties continue outside of normal working hours and while they are away from their normal posts. Note that the law does not make this distinction based upon the position a White House employee holds, or whether or not they are commissioned officers, but rather whether they are essentially always on duty.

This limited exception in the Hatch Act for employees of the EOP (and for Senate-confirmed appointees) undeniably is intended to accommodate the president’s dual role and his need for the assistance of his staff while carrying out his political activities. After all, there are many employees throughout the government whose duties extend beyond normal working hours and the immediate confines of their offices, yet the exception in the Hatch Act applies only to EOP employees.

Nevertheless, even the least restricted White House employees do operate under certain Hatch Act restrictions. For example, they may not use their “official authority or influence for the purpose of interfering with or affecting the result of an election.” Nor may they engage in political activity where the costs are paid for with funds “derived from the Treasury of the United States.”

There is cause to be concerned about the new OPSO. This Administration's record concerning compliance with the Hatch Act is spotty at best. In late 2009 or early 2010, former White House Chief of Staff Rahm Emanuel attempted to interfere with Pennsylvania's Democratic Senate primary by dispatching former President Bill Clinton to offer Joe Sestak a position in the Administration if he would agree to drop out of the primary and cede the election to then-Senator Arlen Specter. When questions were raised, the White House released a legal memorandum by the White House Counsel, who concluded that there was no wrongdoing because "[t]he Democratic Party leadership had a legitimate interest in averting a divisive primary fight"

The White House Counsel's post-hoc analysis actually proved the violation of the Hatch Act. It is a quintessential Hatch Act violation for the chief of staff to use his official authority by generating a job offer to entice a candidate to drop out of an election in order to advance the prospects of his political party. Rahm Emanuel was not working in the White House to serve the "legitimate" interests of the "Democratic Party leadership," but to serve the interests of you and me and our fellow citizens.

The Office of Special Counsel, which is charged with enforcing the Hatch Act, apparently never pursued an investigation of the Sestak job offer, but OSC did investigate and find that former Health & Human Services Secretary Kathleen Sebelius violated the Hatch Act in 2012.

In February 2012, Secretary Sebelius, during an official appearance at the Human Rights Campaign's gala in Charlotte, went off script to exhort the crowd that "It's hugely important to make sure that we reelect the president and elect a Democratic governor here in North Carolina." Following media inquiries about her obvious encroachment into partisan political advocacy at an official event, Secretary Sebelius took steps to have the Obama campaign and/or the Democratic National Committee reimburse the Treasury for her travel expenses. While reclassifying the expenses was a positive step, she could not un-ring the bell of using the platform of an official appearance to engage in political activity. Investigating a complaint about her speech in Charlotte, OSC determined that Secretary Sebelius violated the Hatch Act and, pursuant to the statute, referred it to the president to take "appropriate action."

"Appropriate action" for any other federal employee who violates the Hatch Act at that time was, presumptively, termination from employment. However, President Obama never took any action against Secretary Sebelius for violating the law. When asked about the matter shortly after it was referred from the Special Counsel's office, White House Press Secretary Jay Carney said, "I think it's safe to assume that action has been taken by the secretary and department to remedy what was the result of an inadvertent error based on extemporaneous remarks."

The IRS targeting scandal, which has been of great interest to this Committee, also reflects clear violations of the Hatch Act (in addition to other laws) if, as it appears, the official actions taken by IRS employees in subjecting 501(c)(4) applicants with conservative-sounding names to extra scrutiny and delayed approvals were motivated by a desire to help the Democratic party by keeping these groups out of the political arena. It is unclear whether OSC is investigating Lois Lerner or anyone else at the IRS for possible Hatch Act violations for their

roles in the targeting scandal, but two lower level employees have faced discipline this year. In these cases, two customer representatives advocated the re-election of President Obama or the defeat of the Republicans in the 2012 election cycle.

Consider the messages the Administration has sent concerning these violations of the Hatch Act: government jobs exist to advance the interests of the party, not the public; cabinet secretaries and chiefs of staff are above the law, but line employees are not. These sentiments are exactly what the Hatch Act was passed in 1939 to combat.

Finally, note the president's remarks at an official event in Scranton, Pennsylvania in November 2011 on the jobs bill he was promoting at the time. At this speech in the Scranton High School gym, the president criticized Republicans for "blocking" this legislation, prompting "boos" from his audience. According to the transcript of the "Remarks on the American Jobs Act," released by the White House Press Office, President Obama (one year away from reelection and in this battleground state) then touted his own accomplishments on a broad range of subjects:

But here's the good news, Scranton. Just like you don't quit, I don't quit. (Applause.) I don't quit. So I said, look, I'm going to do everything that I can do without Congress to get things done. (Applause.) . . . So let's just take a look over the past several weeks. We said, we can't wait. We just went ahead and started taking some steps on our own to give working Americans a leg up in a tough economy. For homeowners, I announced a new policy that will help families refinance their mortgages and save thousands of dollars. (Applause.) For all the young people out here -- (applause) -- we reformed our student loan process to make it easier for more students to pay off their debts earlier. (Applause.) For our veterans out here -- and I see some veterans in the crowd -- (applause) -- we ordered several new initiatives to help our returning heroes find new jobs and get trained for those jobs. (Applause.)

And in fact, last week I was able to sign into law two new tax breaks for businesses that hire veterans, because nobody out here who is a veteran should -- we have to make sure that they are getting the help that they need.

AUDIENCE MEMBER: Thank you, Mr. President!

THE PRESIDENT: And by the way, I think we're starting to get, maybe, to the Republicans a little bit, because they actually voted for this veterans bill. I was glad to see that. (Applause.)

* * * *

Now, I know you hear a lot of folks on cable TV claiming that I'm this big tax-and-spend liberal. Next time you hear that, you just remind the people who are saying it that since I've taken office, I've cut your taxes. (Applause.)

Your taxes today – the average middle-class family, your taxes today are lower than when I took office, just remember that. (Applause.) We have cut taxes for small businesses not once, not twice, but 17 times.

This checkered history of the Administration with the Hatch Act provides a basis for some skepticism about the rebranded White House political office, as do the circumstances of its re-establishment in January 2014. OPSO was re-opened as this important election cycle took shape, and as President Obama was promising Democrats that keeping control of the Senate was his top priority this year. The media consistently reported that the rebranded political office was driven by the midterm election; the Washington Post even reported on February 20 that top White House officials, including the new political director, were working with Senate leaders to “align the legislative calendar with the administration’s activities to help endangered Senators.”

Moreover, recent reports have noted that President Obama has attended 393 fundraisers so far in his presidency which amounts to around one every 5 days. As a point of reference, President Bush had attended 216 at the same point in his second term. While certainly a good portion of these fundraisers presumably supported President Obama’s own reelection effort in 2011-12, much of this political activity would have been done on behalf of his party or particular candidates, invoking all of the same questions about how these events were generated, planned and executed – and by whom within the White House – that OSC focused on with respect to the 2006 election cycle.

In 2011, the Office of Special Counsel issued a report on the political activities by the Bush White House and other federal officials during the 2006 election cycle. This report was highly critical of how the Office of Political Affairs operated in the 2006 cycle, characterizing it as a political boiler room. One thrust of this Committee’s investigation is how, under the standards used by OSC in its 2011 report, the activities of the rebranded White House political office compare to those of the Bush White House, about which OSC was so critical.

The name and the organization of the new office might be different than OPA, but there is ample reason to be concerned that the White House is violating the Hatch Act, most notably by spending taxpayer money for “official” events that under OSC’s standards in its 2011 report, should be classified as political events.

Two recent “mixed” official and political trips by President Obama deserve particular scrutiny. During a trip to Minnesota on June 26-27, 2014, the President added official events to a previously-scheduled fundraiser for the Democratic Congressional Campaign Committee, including a visit to a job placement center with Senator Al Franken, who is up for reelection. Just last week, the White House added an “official” economic speech to a fundraising trip to Denver for Senator Mark Udall, who is in a close race for reelection. As a result of the official activities added to the political trip, the cost of the president’s travel was borne to a greater degree by the taxpayers, and the campaign committees caught a financial break.

The Minnesota trip presents a good case study for the application of the analysis in the OSC report. OSC criticized one “official” event in the 2006 election cycle because the participating Cabinet official acknowledged the House member in whose district it occurred (and

who was in attendance at the event) as “a strong and effective advocate for your interests in the Congress.” Similarly, in at the “official” event on the economy in Minnesota, President Obama acknowledged, among others, Minnesota’s “wonderful” Senator (and candidate), Al Franken. Notably, at the jobs speech in Scranton discussed above, President Obama acknowledged Pennsylvania Senator Bob Casey, who was running for reelection, as a “great Senator” even though Senator Casey did not even attend the event.

Personally, I wouldn’t quarrel with the president’s acknowledgement of Senator Franken during this official event, but according to the OSC’s report, President Obama’s polite compliment of the Senator transformed the event into a political one. Moreover, under the OSC’s analysis, the addition of the trip with Senator Franken to the jobs placement program raises serious questions about whether that event was added to aid the Senator’s electoral chances. This is precisely the type of subjective analysis that can be applied to almost any official event in a battleground state or involving a Member of Congress running for reelection, and a primary reason why I was critical of the OSC’s analysis in my 2011 testimony before this Committee. At that time, I recommended that presidential and surrogate events be evaluated according to objective criteria, focusing on the execution of the event more than its subjective motivation.

Under even this objective standard, however, the Minnesota economy speech is problematic under the Hatch Act. Referring to House Republicans explicitly at this “official” event, the president said, “Rather than invest in working families getting ahead, they actually voted to give another massive tax cut to the wealthiest Americans.” After the audience “Booed,” President Obama responded, “Don’t boo, by the way. *I want you to vote*. I mean, over and over again, they show that they’ll do anything to keep in place systems that really help folks at the top but don’t help you” (emphasis added). This brief passage in the president’s 35-minute speech alone should transform this official event into a political event whose expenses should be borne by Senator Franken’s campaign or the Democratic Party, not the taxpayers.

It is ironic that this Committee meets today to address many of the same questions were raised during investigations and hearings in 2008. The Members are just sitting on different sides of the room. The situation calls for a renewed effort to establish a workable framework to reconcile the unique federal workplace that is the White House, with the fundamental restrictions of the Hatch Act. Congress could pass legislation that could ban an office like OPSO or its predecessor, OPA, but that will not make political activity in the White House go away. It obviously did not – could not – after President Obama closed OPA at the outset of his reelection campaign. It just made it harder for this Committee or for OSC to know how the political activities at the White House were run.

I do not advocate applying OSC’s standards from its 2011 report to evaluate the current White House political office. I respectfully submit that OSC’s approach to evaluating the conduct of the prior administration was not consistent with the text of the Hatch Act or with the considerable latitude that the Hatch Act affords White House employees in support of the president’s political activities. Rather, when it comes to questions about the propriety of White House activities under the terms of the Hatch Act, I would focus on the law’s prohibition on the use of one’s official authority to advance the election or defeat of a candidate or political party,

and on the potential use of spending Treasury funds for political activities. Then, to try to develop some standards to guide White House employees who are allowed to engage in political activity while on duty, I suggest applying objective criteria such as:

- White House employees should be able to inform and advise the president on political matters and to support directly the political activities of the president, subject to the overriding Hatch Act consideration that the costs of partisan political activities are not borne by the taxpayers. This Committee, or the OSC in its rulemaking capacity, might consider a reasonable timekeeping requirement to allow for some evaluation of the percentage of time spent by White House employees on partisan political activity to ensure that taxpayers are not paying the salary of an employee that ought to be covered by a political party.
- Whether events are properly classified as official or political should be determined objectively, by such criteria as:
 - Do the theme and content of the remarks in an official event reflect a matter of public concern, particularly in the locality where the event occurs?
 - Do the remarks and the setting for an official event align with its stated official purpose and not resemble a campaign stump speech and rally?
 - Where did the idea for the event originate from?
 - Is it part of an overall strategy to advance a particular public policy?
 - Did an invitation to participate in an “official” event in the district of an embattled incumbent originate from her Congressional office or from her campaign staff or the White House political office?
 - Was the official event added to a pre-existing political trip?
 - Is there a logical nexus between the selected location and the subject matter of an official event aside from an incidental political benefit? Is there a pattern of events in battleground states without such a nexus, suggesting a purpose to the events that is predominantly political rather than official?

Thank you again for the opportunity to again share my views about the application of the Hatch Act to the unique environment of the White House.

Drinker Biddle



Scott Coffina

Partner

Philadelphia
One Logan Square, Ste. 2000
Philadelphia, PA 19103-6996
(215) 988-2706 *phone*
(215) 988-2757 *fax*
Scott.Coffina@dbr.com

Washington D.C.
1500 K Street, N.W.
Washington, DC 20005-1209
(202) 230-5406 *phone*
(215) 988-2757 *fax*

Scott A. Coffina is a partner in the firm's White Collar Defense and Corporate Investigations Team. His practice focuses on internal investigations, False Claims Act litigation, political-legal controversies, and additional civil, criminal or regulatory enforcement actions.

A former Associate Counsel to President George W. Bush from May 2007 until January 2009 and a former Assistant U.S. Attorney, Scott has substantial experience with Congressional oversight matters and high-stakes prosecutions.

Commercial Litigation. Scott has represented corporate, university and individual clients in a wide range of matters including allegations of improper marketing by pharmaceutical companies, false claims by a medical device manufacturer, fraudulent mortgage lending, fraud in Small Business Administration programs, income tax fraud, allegations of sexual misconduct under Title IX and violations of the Clery Act. He also has assisted clients with investigating and pursuing recoveries in embezzlement cases, and in other affirmative anti-fraud litigation.

Advisor to the White House. While serving as Associate Counsel to President George W. Bush, Scott represented the interests of the President and Executive Branch in Congressional oversight matters and other investigations, and advised the White House staff on a wide range of political, government ethics and election law issues, including compliance with the Hatch Act. Scott also acted as the White House legal liaison to the Department of Energy, the Department of Veterans Affairs, the Federal Election Commission and the Office of Special Counsel, and evaluated and recommended candidates for federal judiciary appointments by the President. Scott also served in the Administration of President Ronald Reagan, in the White House Office of Political Affairs.

Former Assistant U.S. Attorney. Scott served as an Assistant United States Attorney in Philadelphia from 1997-2001, pursuing monetary recoveries for fraud against the government under the False Claims Act and other statutes, and defending the United States and federal employees in civil rights, employment discrimination, medical malpractice and other litigation. He successfully argued twice before the Third Circuit Court of Appeals, in *Elman v. United States* and *Taylor v. Garwood*.

In General. Scott is a frequent author and speaker. He has testified before Congress on political-legal issues, commented on national television and radio news programs and publications concerning political-legal controversies, and authored op-eds and articles for publications such as *National Review Online*, *Politico.com*, *The National Law Journal* and *The Legal Intelligencer*. He is on the board of the Committee of Seventy and a member of the National Association of College and University Attorneys, where he serves on the

Practices

White Collar Criminal Defense and Corporate Investigations

Industries

Compliance Counseling & Defense
Education
Pharmaceutical

Court Admissions

U.S. Supreme Court
U.S. Court of Appeals, Third Circuit
U.S. District Court, Eastern District of Pennsylvania
U.S. District Court, District of Columbia

Bar Admissions

Pennsylvania
New Jersey
District of Columbia

Education

University of Pennsylvania Law School,
J.D.
Cornell University,
B.A. with distinction

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planning committee for the 2014 Annual Meeting.

Scott began his legal career with the highly respected law firms Wiley, Rein & Fielding in Washington, D.C., and Miller, Alfano & Raspanti in Philadelphia, where he focused on developing anti-fraud investigations on behalf of major health insurers and whistleblowers, and on representing companies in fast-track government contracts litigation. Scott joined Drinker Biddle from Montgomery McCracken Walker & Rhoads in Philadelphia.

Representative Matters

Recent representative matters:

- Has represented a major public university in an independent investigation arising from allegations of sexual misconduct by a professor.
- Has filed an amicus brief in the U.S. Supreme Court on behalf of the National Federation of Independent Businesses in *Lawson v. FMR, et al.* (No. 12-3)
- Has represented a major pharmaceutical company in internal investigations into allegations of improprieties with an employee training program and allegations of misconduct with Medical Device Reporting.
- Has represented a government contractor in a bid protest related to the award of a contract for laundry services by a public university.
- Has represented two higher educational institutions in investigations concerning research grant management.
- Has represented an individual in an investigation involving alleged financial irregularities in a bridge construction project.
- Has represented a former Department of Energy official in a House Oversight Committee investigation into the Department's handling of loans under the Advanced Technology Vehicles Manufacturing Loan Program.
- Has represented a major pharmaceutical manufacturer in criminal and civil investigation by Department of Justice into off-label marketing.
- Has represented a university client in defense of a Department of Education investigation into alleged Clery Act violations.
- Has led an internal investigation, and obtained full recovery for a university client in connection with multi-million dollar embezzlement scheme.
- Has represented and advised a client in connection with a GAO audit into the client's eligibility for a Small Business Administration loan program.
- Has led internal investigation for a gas drilling company into multi-million embezzlement scheme.

Publications

6/24/2014

National Review Online

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Shaming Our Schools

5/20/2014

The Legal Intelligencer

Did Lois Lerner Waive Her Fifth Amendment Rights?

5/13/2014

Client Alert

Key Takeaways From Recent Reports On The Federal Government's Efforts To Combat Sexual Assault On Campus

3/25/2014

The Legal Intelligencer

Where Things Stand With Regulating 'Dark Money'

1/27/2014

The Legal Intelligencer

The Perilous Legal Landscape of 'Bridgewater'

11/15/2013

National Review

The Unlawful Delay

10/1/2013

The Legal Intelligencer

The Ethically and Legally Questionable Campaign to Promote Obamacare

7/16/2013

The Legal Intelligencer

Supreme Court to Review President's Recess Appointment Power

6/3/2013

Client Alert

Supreme Court Decides To Hear Applicability of Sarbanes-Oxley's Whistleblower Protections

5/29/2013

The Legal Intelligencer

Regulating Political Intelligence Is Less Than Intelligent

3/26/2013

Pennsylvania Law Weekly

The Legal and Ethical Issues Surrounding Organizing for Action

3/8/2013

Client Alert

Ninth Circuit Affirms Conviction and Sentence in InterMune Pharmaceutical Marketing Fraud Case

2/5/2013

The Legal Intelligencer

Our Overcriminalized Society and Methods for Ensuring Justice

1/16/2013

National Review Online

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Gun Control by Executive Order?

1/2/2013

The Legal Intelligencer

Let's Have an Open Debate About Privacy

11/16/2012

Pharmaceutical Law & Industry Report

Coming Soon: Increased Scrutiny of Compounding Pharmacies

11/15/2012

White Collar Criminal Defense Alert

Conducting Sound Internal Investigations: Now More Important Than Ever

10/30/2012

The Legal Intelligencer

"Obama Administration's Disregard of the Hatch Act and What it Means"

10/19/2012

Client Alert

HHS-OIG Work Plan

9/13/2012

National Review Online

"Secretary Sebelius Violates the Hatch Act"

9/4/2012

The Legal Intelligencer

"The Winding Road of Pennsylvania's Voter ID Litigation"

8/16/2012

National Review Online

"House Republicans vs. Holder"

7/3/2012

Inside Higher Ed

"When in Doubt, Investigate"

7/3/2012

The Legal Intelligencer

"Handicapping the Pennsylvania Voter ID Litigation"

5/18/2012

National Law Journal

"Amending the Hatch Act"

3/8/2012

The Legal Intelligencer

The Stock Act: Working to Close an Egregious Loophole

7/29/2011

The Legal Intelligencer

"The Hatch Act: A Shadowy Minefield for Federal Employees"

1/14/2011

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The Legal Intelligencer

"New Jersey State Senate: Your Move"

1/1/2002

ABA Litigation

"Claiming the Fifth in Civil Litigation"

Speaking Engagements

6/16/2014

Bill Martinez Live Radio Program & Justin Barclay Show

College Campus Attacks and Title IX Guidance

5/28/2014

Talk 101FM Radio Show

Government's New Title IX Guidance

5/27/2014

600 WBOB Radio Show

Government's New Title IX Guidance

5/22/2014

1380 The X with Lindsay Warden Radio Program

Government's New Title IX Guidance

5/19/2014

The Big Show with Bill Cunningham

College Campus Attacks

3/25/2014

Drinker Biddle Event

The Power of the Executive Branch

2/15/2014

The Blaze

Chris Salcedo Radio Program

2/14/2014

Jim Bohannon Radio Program

2/13/2014

Talk Radio 1210

The Rich Zeoli Radio Program

10/29/2013

14th Annual Pharmaceutical Regulatory and Compliance Congress

Handling Parallel Criminal, Civil and Administrative Investigations

6/27/2013

DRI Government Enforcement and Corporate Compliance Conference

Upon Further Review—Breaking Down the SEC Whistleblower Program

6/21/2013

National Association of College and University Attorneys Annual Meeting

Outside Investigations: When to Recommend Them and How to Survive

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Them

6/14/2013

Andrea Tantaros Radio Show

5/21/2013

Andrea Tantaros Radio Show

1/17/2013

Andrea Tantaros Radio Show

10/25/2012

DRI 2012 Annual Meeting

SOX to Dodd-Frank—10 Years of Increased Government Enforcement and Current Trends

10/2/2012

ERAPPA Annual Meeting

Friends, Co-Workers & Thieves: Coping with Fraud

10/2/2012

Penn Inn at Court Quarterly Meeting

Presentation on the White House Counsel's Office

9/6/2012

National Public Radio

All Things Considered

6/26/2012

Fox News Network

America Live With Megyn Kelly

5/16/2012

Witness in the House Oversight Committee Hearing on Amending the Hatch Act

6/21/2011

Witness in the House Oversight Committee Hearing on the Hatch Act

11/10/2010

Fox Broadcasting Company

Good Day Philadelphia

11/1/2010

Technology and Research Compliance Seminar for the National Association of College and University Attorneys

Ethics and Internal Investigations

10/1/2010

DRI Annual Meeting

Internal Investigations

6/1/2010

Fox News Channel

Fox & Friends

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5/28/2010

Fox News Channel

Hannity

5/1/2008

MMI Preparatory School

Commencement Speaker

11/1/2006

Pennsylvania Association of Criminal Defense Lawyers' "Criminal Law for the Experienced" Seminar

Nuts and Bolts for Federal Sentencings