

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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MEMORANDUM

June 21, 2019

To: Members of the Committee on Oversight and Reform

Fr: Majority Staff

Re: Full Committee Hearing on “Violations of the Hatch Act Under the Trump Administration” and Business Meeting

On Wednesday, June 26, 2019, at 10:00 a.m., in room 2154 of the Rayburn House Office Building, the Committee will hold a hearing to examine the recommendation of the independent Office of Special Counsel (OSC) that President Trump remove Counselor to the President Kellyanne Conway from federal service, as well as reports by OSC about Ms. Conway and other Trump Administration appointees. The Committee also will hold a business meeting to consider a subpoena in the event that Ms. Conway does not appear.

I. HEARING

The Hatch Act was enacted in 1939 “to ensure that federal programs are administered in a nonpartisan fashion, to protect federal employees from political coercion in the workplace and to ensure that federal employees are advanced based on merit and not based on political affiliation.”¹ According to OSC:

While the Hatch Act allows federal employees to express their views about candidates and political issues as private citizens, it restricts employees from using their official government positions for partisan political purposes, including by trying to influence partisan elections. In passing this law, Congress intended to promote public confidence in the Executive branch by ensuring the federal government is working for all Americans without regard to their political views.²

¹ Office of Special Counsel, *Overview of the Hatch Act* (online at <https://osc.gov/Pages/HatchAct.aspx>) (accessed on June 20, 2019).

² Letter from Special Counsel Henry J. Kerner, Office of Special Counsel, to President Donald J. Trump (Mar. 6, 2018) (online at <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>).

The Act restricts federal employees from engaging in “political activity” on federal property, while “on duty,” when “wearing a uniform or official insignia identifying the office or position of the employee,” or when using government property, such as vehicles, computers, printers, copiers and telephones. The President and the Vice President are not subject to the Hatch Act, but all other White House employees are required to comply with the law.

OSC is an independent agency that investigates potential Hatch Act violations and issues advisory opinions. OSC may seek disciplinary action against career federal employees before the Merit Systems Protection Board (MSPB). OSC does not have the authority to seek action by the MSPB for political appointees, but the agency can make recommendations for disciplinary action. When violations are not as serious, OSC may issue warning letters rather than making recommendations for discipline.

On March 6, 2018, OSC sent President Trump a report finding that Ms. Conway, acting in her official capacity, “violated the Hatch Act on two occasions by advocating for and against candidates in the December 2017 Alabama special election for United States Senate.” Special Counsel Henry Kerner informed President Trump that Ms. Conway “was aware of the Hatch Act’s prohibitions when she chose during both interviews to repeatedly identify reasons why voters should support one candidate in the Alabama special election.” The Special Counsel referred the violations to the President for his “consideration of appropriate disciplinary actions.”³ President Trump never indicated that he took any action on OSC’s report.

On June 13, 2019, the Special Counsel sent the President another letter with a new report finding that Ms. Conway violated the Hatch Act dozens of times. The Special Counsel called on President Trump “to remove Ms. Conway from her federal position immediately.” OSC found that Ms. Conway violated the Hatch Act during media appearances and through her Twitter account. OSC found:

Ms. Conway’s advocacy against the Democratic candidates and open endorsement of the President’s reelection effort during both official media appearances and on her Twitter account constitute prohibited personnel activity under the Hatch Act.⁴

President Trump said in an interview following the release of OSC’s report that he would not fire Ms. Conway.⁵

³ Letter from Special Counsel Henry J. Kerner, Office of Special Counsel, to President Donald J. Trump (Mar. 6, 2018) (online at <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>).

⁴ Letter from Special Counsel Henry J. Kerner, Office of Special Counsel, to President Donald J. Trump (June 13, 2019) (online at <https://osc.gov/Resources/Report%20to%20the%20President%20re%20Kellyanne%20Conway%20Hatch%20Act.pdf>).

⁵ *Trump on ‘Fox & Friends’: I Will Not Fire Kellyanne Conway After Watchdog Rebuke*, Fox News (June 14, 2019) (online at www.foxnews.com/politics/trump-on-fox-friends-i-will-not-fire-kellyanne-conway-after-watchdog-rebuke).

The Committee has jurisdiction over the Hatch Act and has facilitated the enactment of several reforms in recent years. The hearing will examine OSC’s findings that Ms. Conway violated the Hatch Act, the agency’s recommendation that Ms. Conway be terminated, and the compliance of other Trump Administration officials with the Hatch Act and OSC’s guidance. Testimony from the invited witnesses will inform whether Congress should enact further reforms to the Hatch Act or other federal laws.

The witnesses invited to the hearing are:

The Honorable Henry J. Kerner

Special Counsel
Office of Special Counsel

Ms. Kellyanne Conway

Counselor to the President
White House

II. BUSINESS MEETING

On June 13, 2019, Chairman Cummings and Chairman Connolly sent a letter inviting Ms. Conway to testify at the hearing. The letter invited Ms. Conway to address her “failure to comply with federal laws, including ethics laws and the Hatch Act,” and asked Ms. Conway to confirm her attendance by 5:00 p.m. on Monday, June 17, 2019.⁶ Neither Ms. Conway nor the White House has responded to the Committee to accept or decline this invitation.

If Ms. Conway does not testify at the hearing, the Committee plans to recess the hearing and hold a business meeting on **Wednesday, June 26, 2019, in room 2154 of the Rayburn House Office Building** to consider:

A resolution offered by Chairman Elijah E. Cummings authorizing the Chairman to issue a subpoena to Ms. Kellyanne Conway, Counselor to the President, for testimony in connection with her failure to comply with the Hatch Act and ethics laws.

The business meeting will occur upon recessing the hearing. This is expected to occur at approximately 10:20-10:40 a.m. The hearing will reconvene after the vote.

Staff contacts: Krista Boyd, Amish Shah, or Brandon Rios at (202) 225-5051.

⁶ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Gerald E. Connolly, Subcommittee on Government Operations, to Kellyanne Conway, Counselor to the President, White House (June 13, 2019).