

**RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES
FIND KELLYANNE CONWAY, SENIOR COUNSELOR TO THE PRESIDENT, IN
CONTEMPT OF CONGRESS FOR HER REFUSAL TO COMPLY WITH A
SUBPOENA DULY ISSUED BY THE COMMITTEE ON OVERSIGHT AND REFORM**

_____, 2019 Referred to the House Calendar and ordered to be printed

**Mr. Cummings, from the Committee on Oversight and Reform,
submitted the following**

R E P O R T

together with

_____ VIEWS

The Oversight Committee, having considered this Report, reports favorably thereon.

Resolved, That Kellyanne Conway, Senior Counselor to the President, failed to comply with a Committee subpoena issued on June 26, 2019, to testify before the Committee on July 15, 2019, about her violations of the Hatch Act and other ethics laws.

Resolved, The Chairman of the Committee on Oversight and Reform shall take all necessary steps to enforce the above-referenced subpoena, including, but not limited to, seeking authorization from the House of Representatives through a vote of the Bipartisan Legal Advisory Group pursuant to clause 8(b) of House Rule II, and H. Res. 430, to initiate or to intervene in proceedings in any federal court of competent jurisdiction, to seek judgments affirming the duty of the subpoena recipient to comply with the above-referenced subpoena, and to seek any appropriate ancillary relief, including injunctive relief.

Additionally or alternatively, the Committee on Oversight and Reform recommends that the report be approved. The form of Resolution that the Committee on Oversight and Reform would recommend to the House of Representatives for citing Kellyanne Conway, Senior Counselor to the President, for contempt of Congress pursuant to this Report is as follows:

Resolved, That Kellyanne Conway, Senior Counselor to the President, shall be found to be in contempt of Congress for failing to comply with a subpoena authorized by the

Committee on Oversight and Reform and duly issued by Chairman Elijah E. Cummings relating to Ms. Conway's failure to comply with the Hatch Act and other ethics laws.

Resolved, That Kellyanne Conway, Senior Counselor to the President, failed to comply with a Committee subpoena issued on June 26, 2019, to testify before the Committee on July 15, 2019.

Resolved, That the Report of the Committee on Oversight and Reform details the refusal of Kellyanne Conway, Senior Counselor to the President, to testify before the Committee on July 15, 2019, as required by subpoena.

Resolved, That the Speaker of the House shall take appropriate action to enforce the subpoena, including, but not limited to, certifying, pursuant to 2 U.S.C. §§ 192 and 194, the Report of the Committee on Oversight and Reform, detailing the refusal of Kellyanne Conway, Senior Counselor to the President, to testify before the Committee as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Ms. Conway be proceeded against in the manner and form provided by law.

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I. EXECUTIVE SUMMARY

The Committee on Oversight and Reform is investigating the Trump Administration's compliance with the Hatch Act and other federal ethics laws. Senior Counselor to the President Kellyanne Conway obstructed the Committee's investigation by defying a lawful subpoena for her testimony about her frequent violations of the Hatch Act and other federal ethics laws. As a result, the Committee is moving to contempt proceedings to seek enforcement of its subpoena in order to enable the Committee to fulfill its duties under the Constitution and the rules of the House of Representatives.

On June 13, 2019, the Office of Special Counsel (OSC) issued a report finding that Ms. Conway repeatedly violated the Hatch Act—the law that ensures that the federal government is administered in a nonpartisan manner and that federal employees are protected from political coercion in the workplace.¹ The Hatch Act prohibits executive branch employees from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.”²

In its report, OSC detailed how Ms. Conway knowingly and intentionally violated the Hatch Act dozens of times despite receiving training from the Office of White House Counsel and numerous warnings from OSC. OSC's report recommended that President Trump remove Ms. Conway from office for her “persistent, notorious, and deliberate Hatch Act violations.”³ President Trump refused to discipline Ms. Conway and declined to discourage her from violating the Hatch Act going forward.⁴

Ms. Conway did not limit her ethical violations to the Hatch Act. In February 2017, she violated ethics rules by promoting the business of the President's daughter, Ivanka Trump, on national television.⁵ When the Office of Government Ethics recommended that the White House take disciplinary action for this violation, the White House refused.⁶

¹ 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>) (attaching the report).

² 5 U.S.C. § 7323(a)(1).

³ 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>) (attaching the report).

⁴ *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).

⁵ *Kellyanne Conway Boosts Ivanka Trump's Products on TV: 'Go Buy Ivanka's Stuff,'* Time (Feb. 9, 2017) (online at <https://time.com/4665182/kellyanne-conway-ivanka-trump-products/>).

⁶ Letter from Stefan C. Passantino, Deputy Counsel to the President, The White House, to Walter M. Shaub, Jr., Director, Office of Government Ethics (Feb. 28, 2017) (online at

Ms. Conway also wasted thousands of taxpayer dollars by traveling on private planes with former Department of Health and Human Services (HHS) Secretary Tom Price. Although Secretary Price reimbursed taxpayers and resigned from office, Ms. Conway refused to reimburse taxpayers or comply with the Committee's investigation into White House travel practices.⁷

Ms. Conway's testimony is integral to the Committee's investigation. Her recurring violations of federal ethics laws reflect a larger pattern of Trump Administration officials abusing their positions of trust and wasting taxpayer dollars without recourse or discipline by the President. The Committee seeks to hear from Ms. Conway directly about her violations and abuses in order to examine whether laws within the Committee's jurisdiction are adequate or in need of reform.

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Oversight%20Response%20to%20Shaub%20re%20KAC.PDF>.

⁷ *Price Traveled By Private Plane At Least 24 Times*, Politico (Sept. 21, 2017) (online at www.politico.com/story/2017/09/21/tom-price-private-charter-plane-flights-242989); Letter from Ranking Member Elijah E. Cummings to Chairman Trey Gowdy, Committee on Oversight and Government Reform (Mar. 13, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-13.EEC%20to%20Gowdy%20re.WH%20Travel.pdf>) (describing the Committee's *in camera* review that revealed Ms. Conway's travel with Secretary Price.).

II. AUTHORITY AND PURPOSE

Congress has a constitutional responsibility to conduct oversight of the Executive Branch, and the Supreme Court has repeatedly affirmed that duty. The Court held in *McGrain v. Daugherty* that “the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.”⁸ In *Watkins v. United States*, the Court described Congress’ oversight jurisdiction as a “broad” power.⁹

Legislation has codified the oversight powers of House and Senate Committees. For example, the Legislative Reorganization Act of 1946 directed committees to “exercise continuous watchfulness” over the Executive Branch’s implementation of programs within their jurisdictions, and the Legislative Reorganization Act of 1970 authorized committees to “review and study, on a continuing basis, the application, administration, and execution” of laws.¹⁰

The rules of the House of Representatives—adopted pursuant to the Rulemaking Clause of the Constitution—establish the Committee on Oversight and Reform as a standing committee of the House of Representatives. Under House Rule XII, clause 2, the Speaker of the House “shall refer each bill, resolution, or other matter” to a standing committee “in such manner as to ensure to the maximum extent feasible that each committee that has jurisdiction under clause 1 of rule X over the subject matter of a provision thereof may consider such provision and report to the House thereon.”¹¹

Under House Rule X, clause 1(n)(1), the Committee has jurisdiction over the “Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.” Therefore, the language of House Rule X, clause 1(n)(1) sets forth that the Committee has jurisdiction over laws that regulate and modify actions of the federal civil service and officers and employees of the United States, including the Hatch Act and the Ethics in Government Act of 1978.¹²

The Committee has jurisdiction over the Hatch Act. The Committee has held many hearings on compliance with the Hatch Act.¹³ The Committee has also enacted revisions to the

⁸ 273 U.S. 135 (1927).

⁹ 354 U.S. 178 (1957).

¹⁰ P.L. 79-601; P.L. 91-510.

¹¹ House Rule XII, clause 2(a)-(b).

¹² House Rule X, clause 1(n)(1).

¹³ See, e.g., Committee on Oversight and Government Reform, *Hearing on New Allegations Against GSA Administrator Lurita Doan: Retaliation Against Government Officials Cooperating with Investigators*, 110th Cong. (2007) (H. Rept. 110-37) (online at www.govinfo.gov/content/pkg/CHRG-110hhr40149/pdf/CHRG-110hhr40149.pdf); Committee on Oversight and Government Reform, *Hearing on The Hatch Act: The Challenges of Separating Politics from Policy*, 112th Cong. (2011) (H. Rept. 112-67) (online at www.govinfo.gov/content/pkg/CHRG-112hhr71080/pdf/CHRG-112hhr71080.pdf); Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, U.S. Postal Service, and Labor Policy, *Hearing on Hatch Act: Options for Reform*, 112th Cong. (2012) (H. Rept. 112-155) (online at www.govinfo.gov/content/pkg/CHRG-112hhr75112/pdf/CHRG-112hhr75112.pdf).

law. For example, following a Committee hearing in 2012, the law was revised to allow for a greater range of penalties.¹⁴ The Committee’s oversight of the Hatch Act violations by Ms. Conway that were identified by OSC could assist the Committee in identifying additional reforms or clarifications of the law.

The Committee also has jurisdiction over the Ethics in Government Act of 1978.¹⁵ The Committee recently considered reforms to the Ethics in Government Act of 1978, and oversight of issues related to Ms. Conway’s compliance could lead to additional reforms of the law.¹⁶

In addition, House Rule X, clause 1(n)(4), provides the Committee with jurisdiction over government management and accounting measures, and clause 1(n)(6) provides jurisdiction over the overall economy, efficiency, and management of government operations and activities.¹⁷ The Committee has jurisdiction over the law that requires federal employees to travel in “the most expeditious means of transportation practicable.”¹⁸ The Committee may consider amending the statute to clarify its application and requirements.

As the principal oversight committee of the House of Representatives, the Committee also “may at any time conduct investigations of any matter.”¹⁹

Pursuant to House Rule XI, the Committee is authorized “to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary.”²⁰ The Committee may delegate the “power to authorize and issue subpoenas” to its chair within the Committee rules.²¹ Rules unanimously adopted by the Committee state that the Committee’s Chairman shall “[a]uthorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee.”²²

The Committee’s investigation into Ms. Conway’s compliance with the Hatch Act and other ethics rules is being undertaken pursuant to the authorities delegated to the Committee under the House Rules.

¹⁴ Hatch Act Modernization Act of 2012, P.L. 112-230.

¹⁵ 5 U.S.C. App. §§ 101-505.

¹⁶ *See, e.g.*, H.R. 745.

¹⁷ House Rule X, clause 1(n).

¹⁸ *See* Postal Revenue and Federal Salary Act of 1967, P.L. 90-206 (H.R. 7977, 90th Cong. (1967), as referred to the Committee on Post Office and Civil Service, a predecessor of the Committee).

¹⁹ House Rule X, clause 4(c)(2).

²⁰ House Rule XI, clause 2(m)(1)(B).

²¹ House Rule XI, clause 2(m)(3)(A)(i).

²² Rule 12(g) of the Committee on Oversight and Reform, 116th Cong.

III. CONWAY’S VIOLATION OF ETHICS LAWS

Since Ms. Conway joined the White House in January 2017, she has repeatedly and flagrantly abused her position of trust. She has violated the Hatch Act dozens of times, violated ethics rules by promoting Ivanka Trump’s business, and wasted thousands of taxpayer dollars by traveling around the country on private planes. President Trump has not disciplined Ms. Conway for any of these violations.

A. Conway Knowingly and Intentionally Violated the Hatch Act

1. Legal Standard

The Hatch Act prohibits executive branch employees from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.”²³ Under Hatch Act regulations, executive branch employees are prohibited from using their “official title while participating in political activity.”²⁴ The regulations define “political activity” as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”²⁵ Although the Hatch Act specifically exempts the President and Vice President, the law—and specifically the law’s prohibition on using one’s official authority to influence elections—applies to all other White House employees.²⁶

The Office of Special Counsel (OSC) is the independent agency responsible for investigating allegations of violations of the Hatch Act and recommending corrective and disciplinary action.²⁷ To enforce the Hatch Act against career executive branch employees, OSC must file a complaint with the Merit Systems Protection Board (MSPB).²⁸ The MSPB adjudicates the complaint and determines the appropriate disciplinary action, up to and including

²³ 5 U.S.C. § 7323(a)(1).

²⁴ 5 C.F.R. § 734.302(b)(1).

²⁵ 5 C.F.R. § 734.101.

²⁶ See 5 U.S.C. § 7322. The fact that Congress felt it necessary to expressly exempt the President and Vice President further confirms that the Hatch Act applies to all other White House employees. See, e.g., *United States v. Jicarilla Apache Nation*, 564 U.S. 162 (2011) (“As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”) (quoting *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988)). The Hatch Act also expressly exempts some White House employees from certain prohibitions of the Act, thereby confirming that its other prohibitions—including the prohibition on using one’s official authority to influence elections—apply to White House employees. See 5 U.S.C. § 7324(b) (exempting certain employees “paid from an appropriation for the Executive Office of the President” from the prohibition on engaging in political activities on duty).

²⁷ 5 U.S.C. § 1216.

²⁸ 5 U.S.C. § 1215(a)(1).

termination.²⁹ For presidential appointees, however, it is OSC’s practice to refer violations of the Hatch Act directly to the President for appropriate disciplinary action.³⁰

2. The Office of Special Counsel Recommended That Conway Be Fired for Dozens of Violations of the Hatch Act

On June 13, 2019, OSC publicly released a May 30, 2019, report finding that Ms. Conway committed dozens of “persistent, notorious, and deliberate Hatch Act violations.” The same day, Special Counsel Henry Kerner sent President Trump a letter recommending that Ms. Conway be removed from office for “numerous violations of the Hatch Act.” In the letter, the Special Counsel explained:

If Ms. Conway were any other federal employee, her multiple violations of the law would almost certainly result in removal from her federal position by the Merit Systems Protection Board. As a highly visible member of the Administration, Ms. Conway’s violations, if left unpunished, send a message to all federal employees that they need not abide by the Hatch Act’s restrictions. Her actions erode the principal foundation of our democratic system—the rule of law.³¹

The Special Counsel’s letter also noted that “Ms. Conway is a repeat offender.”³² In March 2018, OSC sent President Trump a report finding that Ms. Conway violated the Hatch Act by using her official authority with the purpose of influencing the result of an election during official media interviews leading up to the Alabama special election for U.S. Senate.³³ OSC described Ms. Conway’s behavior as a “well-established pattern of using her official authority as a platform to engage in blatantly partisan attacks.”³⁴

For example, during a November 20, 2017, interview with *Fox & Friends*, Ms. Conway pivoted from talking about tax reform to attacking a Democratic Senate candidate as “weak on crime, weak on borders,” and “strong on raising your taxes.” On December 6, 2017, Ms. Conway again attacked the same candidate during an interview with CNN. Ms. Conway told

²⁹ 5 U.S.C. § 1204; 5 U.S.C. § 7326.

³⁰ See, e.g., 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>) (referring Ms. Conway’s violations to the President for his “consideration of appropriate disciplinary action.”).

³¹ 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>) (attaching the May 30, 2019, report).

³² *Id.*

³³ 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>) (attaching the Mar. 6, 2018, report).

³⁴ 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>) (attaching the May 30, 2019, report).

viewers that the candidate was “out of step for Alabama voters” and that the President “does not want a liberal Democrat to represent Alabama.” OSC referred Ms. Conway to President Trump for appropriate disciplinary action, but he took no action against her.³⁵

Ms. Conway did not correct her conduct. Despite extensive training from the Office of White House Counsel and repeated warnings from OSC, Ms. Conway again violated the Hatch Act during official media interviews on at least ten occasions between February 2019 and May 2019. Examples of these violations include:

- **March 13, 2019, Interview with *The Ingraham Angle*:** Ms. Conway shifted from talking about the Trump Administration’s official position on border security to attacking a Democratic candidate’s candidacy for president. Ms. Conway stated: She “is running for President. She tried to appropriate somebody else’s ethnicity. She lied about that.”
- **An April 22, 2019, Interview with *Fox & Friends*:** Ms. Conway criticized the Democratic field of presidential candidates. She said: “Whether it’s one, whether it’s nineteen, whether it’s fifty, anything times zero equals zero. Simple multiplication. So fifty Democrats can run. Twenty of them, nineteen are now running. But if your message is zero, it’s a big zero.”
- **April 24, 2019, Interview with *Fox & Friends*:** Ms. Conway said that the only difference between a Democratic candidate and President Trump is that the Democratic candidate’s ideas “are terrible for America, and Donald Trump is a much better candidate.”³⁶

OSC stated in its report: “This type of partisan rhetoric, although lawful on the campaign trail, violates the Hatch Act when the speaker is a White House employee acting in her official capacity.”³⁷ The Special Counsel explained in his testimony to the Committee on June 26, 2019, that Ms. Conway remained free to make these statements if she joined the President’s campaign or if she was speaking in her private capacity, but she was prohibited from making these statements as a government employee:

³⁵ 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>) (attaching the Mar. 6, 2018, report).

³⁶ 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>) (attaching the May 30, 2019, report).

³⁷ *Id.*

So obviously, there are solutions short of her disappearing. She can go to the campaign. She can speak in her private capacity. There are other ways for Ms. Conway to make all the points on behalf of the President that we in no way want to silence.³⁸

OSC also found that Ms. Conway violated the Hatch Act’s prohibition on using one’s official authority to influence elections by using her Twitter account, @KellyannePolls, for both her official duties and for “partisan political purposes.” On 15 separate occasions between October 31, 2018, and November 6, 2018, Ms. Conway posted messages in support of the Republican Party or Republican candidates running in the midterm elections. Beginning in February 2019, Ms. Conway further violated the Hatch Act by using her Twitter account to post messages opposing or disparaging Democratic candidates for president and supporting President Trump for reelection, even going so far as to retweet a Trump campaign video.³⁹

3. Conway Refused to Respond to the Office of Special Counsel and Openly Mocked Enforcement of the Hatch Act

As shown in the following timeline, OSC contacted Ms. Conway and the White House numerous times regarding her violations, but she refused to respond or correct her conduct.⁴⁰

Timeline—OSC’s Repeated Attempts to Engage Ms. Conway

Jan. 25, 2018	During its investigation of Ms. Conway’s comments about the Alabama special election, OSC sent Ms. Conway interrogatories and requested that she respond by February 1, 2018. She never responded.
Feb. 7, 2018	OSC emailed Deputy Counsel to the President Stefan Passantino, writing that it would assume that Ms. Conway would not respond if a response was not received by February 12, 2018. She never responded.
Feb. 12, 2018	OSC granted Ms. Conway an extension until February 16, 2018. She never responded.
Feb. 2018	OSC granted Ms. Conway an opportunity to respond to its final report. She never responded. White House Counsel later provided OSC with brief explanations for Ms. Conway’s behavior.

³⁸ Committee on Oversight and Reform, Testimony of Special Counsel Henry Kerner, *Hearing on Violations of the Hatch Act Under the Trump Administration* (June 26, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration>).

³⁹ 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>) (attaching the May 30, 2019, report) (for events on timeline from Dec. 20, 2018 to June 13, 2019).

⁴⁰ 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>) (attaching the Mar. 6, 2018, report) (for events on timeline from Jan. 25, 2018, to Mar. 6, 2018); 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>) (attaching the May 30, 2019, report) (for events on timeline from Dec. 20, 2018 to June 13, 2019).

Mar. 6, 2018	The Special Counsel sent a letter to President Trump with OSC’s report finding Ms. Conway in violation. Ms. Conway never responded to OSC.
Dec. 20, 2018	OSC sent the White House a letter explaining why Ms. Conway’s use of the same Twitter account for official and political activity violated the Hatch Act and suggested various steps she could take to come into compliance. Ms. Conway never responded to OSC.
Mar. 2019	OSC attended two meetings with the Office of White House Counsel during which OSC “informed the Office of White House Counsel that Ms. Conway’s Twitter use violated the Hatch Act and her political activity during official media appearances raised similar concerns.”
Apr. 9, 2019	OSC sent another letter to the White House about Ms. Conway’s behavior. Ms. Conway disregarded OSC’s warnings.
May 29, 2019	OSC sent the White House its final report recommending that Ms. Conway be removed from office. Ms. Conway never responded.
June 11, 2019	The Office of White House Counsel sent OSC a letter refuting its report.
June 13, 2019	OSC sent a letter to the President and publicly released its report recommending that President Trump terminate Ms. Conway’s employment.

In addition to ignoring OSC’s attempts to engage with her, Ms. Conway openly mocked OSC’s enforcement of the Hatch Act. On May 29, 2019, when asked by a reporter about her violations of the Hatch Act, Ms. Conway responded “blah, blah, blah.” She added: “Let me know when the jail sentence starts.”⁴¹

During his testimony to the Committee on June 26, 2019, the Special Counsel explained that Ms. Conway’s refusal to correct her conduct contributed to his recommendation that she be removed from office:

OSC repeatedly offered Ms. Conway the opportunity to come into compliance with the law. She refused to do so. In fact, the frequency of her Hatch Act violations only increased. This left us with no choice but to make the recommendation we made, which is that given the evidence of her clear, repeated, and knowing violations of the Hatch Act, and her apparent unwillingness to come into compliance with the law, the only appropriate recommendation to the President under these circumstances was removal from office.⁴²

4. President Trump Has Refused to Hold Conway Accountable

In his testimony to the Committee on June 26, 2019, the Special Counsel explained that “Ms. Conway’s conduct created an unprecedented challenge to OSC’s ability to enforce the

⁴¹ *Kellyanne Conway Remarks to Reporters*, C-SPAN (May 29, 2019) (online at www.c-span.org/video/?461193-1/kellyanne-conway-defends-president-trumps-criticism-joe-biden).

⁴² Committee on Oversight and Reform, Testimony of Special Counsel Henry Kerner, *Hearing on Violations of the Hatch Act Under the Trump Administration* (June 26, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration>).

Hatch Act” because her “conduct sends a false message to other federal employees that they need not abide by the Hatch Act or that senior officials are above the law.”⁴³

President Trump has made clear that he will not take disciplinary action against Ms. Conway. During an interview with *Fox & Friends*, President Trump stated: “No. I’m not going to fire her. I think she’s a terrific person.” President Trump argued that “it looks to me like they’re trying to take away her right of free speech.” When asked whether he would discourage Ms. Conway from using her official position to disparage other candidates or politicians going forward, President Trump responded, “It doesn’t work that way.”⁴⁴ During an interview on June 24, 2019, Ms. Conway stated: “It’s not even clear to us here at the White House, according to White House Counsel, that the Hatch Act applies to Assistants to the President”⁴⁵

5. The White House Attempted to Suppress OSC’s Report and Threatened to Investigate OSC

On May 29, 2019—two weeks prior to public release—OSC provided the White House with an advance copy of its final report recommending Ms. Conway’s removal from office. On June 11, 2019, the White House responded to OSC’s report by criticizing the Special Counsel and OSC and threatening to investigate OSC. The White House demanded in its letter that OSC “withdraw and retract the Report” or provide the White House with its entire investigative file and internal and external correspondence related to the report.⁴⁶

On June 13, 2019, OSC issued a response explaining that the White House’s demands were “intrusive” and “inappropriate.” OSC stated:

These requests represent a significant encroachment on OSC’s independence. This attempt by the Counsel’s office to oversee our investigative and enforcement authority introduces a serious perception of undue influence in an apparent effort to bias the outcome of OSC’s independent investigation.⁴⁷

⁴³ *Id.*

⁴⁴ *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).

⁴⁵ *Kellyanne Conway: Democrats Want to Put a Big Roll of Masking Tape Over My Mouth Because I Helped Elect Trump*, Fox News (June 24, 2019) (online at <https://video.foxnews.com/v/6051607424001/#sp=show-clips>).

⁴⁶ Letter from Pat A. Cipollone, Counsel to the President, The White House, to Special Counsel Henry J. Kerner, Office of Special Counsel (June 11, 2019) (online at [https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White House Letter to Henry Kerner.pdf](https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White%20House%20Letter%20to%20Henry%20Kerner.pdf)).

⁴⁷ Office of Special Counsel, *OSC Response to June 11, 2019 Office of White House Counsel Letter* (June 13, 2019) (online at <https://osc.gov/News/pr-19-11.pdf>).

B. Conway Violated Ethics Rules by Promoting Ivanka Trump's Business on National Television

The White House also refused to discipline Ms. Conway for violating the Standards of Ethical Conduct for Employees of the Executive Branch.⁴⁸

On February 9, 2017, Ms. Conway gave an interview on *Fox & Friends* in which she advertised and endorsed a commercial line of products associated with President Trump's daughter, Ivanka Trump. Ms. Conway was acting in her official capacity, was identified as "Counselor to President Trump," and gave the interview at the White House in front of the White House seal. During the interview, Ms. Conway discussed the decision by some U.S. companies to stop selling products from Ivanka Trump's fashion line.⁴⁹

During the course of the interview, Ms. Conway repeatedly endorsed Ivanka Trump's products. She said, "Go buy Ivanka's stuff is what I would tell you." Later, she told viewers: "It's a wonderful line. I own some of it. I fully—I'm going to give a free commercial here. Go buy it today, everybody. You can find it online."⁵⁰

On February 13, 2017, the Office of Government Ethics (OGE) sent a letter to the White House recommending that it investigate Ms. Conway's actions during her February 9, 2017, television appearance and consider taking disciplinary action against her. OGE's letter cited the Standards of Conduct, which make clear that an executive branch employee "shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service, or enterprise."⁵¹ OGE's letter stated that "there is strong reason to believe that Ms. Conway has violated the Standards of Conduct and that disciplinary action is warranted."⁵²

On February 28, 2017, the White House sent OGE a letter conceding that Ms. Conway's statements implicated the Standards of Conduct. The letter stated:

Both before and after receiving your letter, I personally met with Ms. Conway and advised her that her comments regarding Ms. Trump's products implicated the prohibition on using one's official position to endorse any product or service. Ms.

⁴⁸ See 5 C.F.R. § 2635.702 (regulation prohibiting use of public office for private gain).

⁴⁹ *Kellyanne Conway Boosts Ivanka Trump's Products on TV: 'Go Buy Ivanka's Stuff,'* Time (Feb. 9, 2017) (online at <https://time.com/4665182/kellyanne-conway-ivanka-trump-products/>).

⁵⁰ *Id.*

⁵¹ 5 C.F.R. § 2635.702(c).

⁵² Letter from Walter M. Shaub, Jr., Director, Office of Government Ethics, to Stefan C. Passantino, Deputy Counsel to the President, The White House (Feb. 13, 2017) (online at [https://extapps2.oge.gov/FOIAStatus/FOIAResponse.nsf/OGE%20FOIA%20Responses_3/852580AC00659E1D852580F100473716/\\$FILE/RESPONSIVE%20RECORDS%20-%202017-202.pdf?open](https://extapps2.oge.gov/FOIAStatus/FOIAResponse.nsf/OGE%20FOIA%20Responses_3/852580AC00659E1D852580F100473716/$FILE/RESPONSIVE%20RECORDS%20-%202017-202.pdf?open)) (citing 5 C.F.R. § 2635.702).

Conway acknowledged her understanding of the Standards and has reiterated her commitment to abiding by them in the future.⁵³

However, the letter also stated that the White House would not take any disciplinary action against Ms. Conway because it concluded that “Ms. Conway acted inadvertently” and made the statement in a “light, off-hand manner.”⁵⁴

On March 9, 2017, OGE sent a letter to the White House warning that it remains “concerned about Ms. Conway’s misuse of position.” The letter explained that disciplinary action serves to deter future misconduct, and it warned further: “Not taking disciplinary action against a senior official under such circumstances risks undermining the ethics program.”⁵⁵ The same day, OGE also sent a letter to the Committee about its concerns that the White House would not take any disciplinary action against Ms. Conway.⁵⁶

C. Conway Squandered Thousands of Taxpayer Dollars Traveling on Private Planes

According to multiple reports and documents reviewed by the Committee, Ms. Conway wasted thousands of taxpayer dollars by traveling on private planes with former Department of Health and Human Services (HHS) Secretary Tom Price.

In September 2017, *Politico* reported that Secretary Price took multiple flights on private planes at the taxpayers’ expense without proper justification.⁵⁷ According to these reports and the Committee’s independent review of HHS documents, Ms. Conway joined Secretary Price on at least three of these flights:

- **May 9, 2017:** Secretary Price and Ms. Conway traveled on a private plane from Washington, D.C., to Lansing, Michigan, to Charleston, West Virginia, and back to Washington, D.C. The cost of these flights was not reported in documents produced to the Committee.⁵⁸

⁵³ Letter from Stefan C. Passantino, Deputy Counsel to the President, The White House, to Walter M. Shaub, Jr., Director, Office of Government Ethics (Feb. 28, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Oversight%20Response%20to%20Shaub%20re%20KAC.PDF>).

⁵⁴ *Id.*

⁵⁵ Letter from Walter M. Shaub, Jr., Director, Office of Government Ethics, to Stefan C. Passantino, Deputy Counsel to the President, The White House (Mar. 9, 2017) (online at <https://oge.app.box.com/s/r2t4v8ftjmxx4cfqfolqzievuhcvrfj2>).

⁵⁶ Letter from Walter Shaub, Jr., Director, Office of Government Ethics, to Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform (Mar. 9, 2017) (online at <https://oge.app.box.com/s/r2t4v8ftjmxx4cfqfolqzievuhcvrfj2>).

⁵⁷ *Price Traveled By Private Plane At Least 24 Times*, *Politico* (Sept. 21, 2017) (online at www.politico.com/story/2017/09/21/tom-price-private-charter-plane-flights-242989).

⁵⁸ *Id.*; Letter from Ranking Member Elijah E. Cummings to Chairman Trey Gowdy, Committee on Oversight and Government Reform (Mar. 13, 2018) (online at

- **May 10, 2017:** Secretary Price and Ms. Conway traveled on a private plane from Washington, D.C., to Augusta, Maine, to Concord, New Hampshire, and back to Washington, D.C. The total cost of these flights on May 9 and 10 for all passengers was \$44,531.45. Several staff to Ms. Conway were listed as accompanying her.⁵⁹
- **September 15, 2017:** Secretary Price and Ms. Conway traveled on a private plane from Washington, D.C., to Philadelphia, Pennsylvania, and back to Washington, D.C. The cost of these flights was not reported in documents produced to the Committee.⁶⁰

In addition, Ms. Conway traveled by private plane with other HHS personnel on July 6, 2017.⁶¹

In July 2018, the HHS Office of Inspector General (IG) confirmed that former Secretary Price improperly used federal funds for 20 trips and that his use of non-commercial flights did not always follow federal travel regulations. The IG report also confirmed that “White House staff accompanied HHS personnel.”⁶²

On September 28, 2017, Secretary Price apologized for abusing the public trust, promised not to take any more private flights, and pledged to repay his travel expenses of nearly

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-13.EEC%20to%20Gowdy%20re.WH%20Travel.pdf> (describing the Committee’s *in camera* review).

⁵⁹ *Id.*

⁶⁰ *Price’s Private-Jet Travel Breaks Precedent*, Politico (Sept. 19, 2017) (online at www.politico.com/story/2017/09/19/tom-price-chartered-planes-flights-242908); Letter from Ranking Member Elijah E. Cummings to Chairman Trey Gowdy, Committee on Oversight and Government Reform (Mar. 13, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-13.EEC%20to%20Gowdy%20re.WH%20Travel.pdf>) (describing the Committee’s *in camera* review).

⁶¹ *Price Traveled By Private Plane At Least 24 Times*, Politico (Sept. 21, 2017) (online at www.politico.com/story/2017/09/21/tom-price-private-charter-plane-flights-242989); Department of Health and Human Services, Office of Inspector General, *The Office of the Secretary of Health and Human Services Did Not Comply with Federal Regulations for Chartered Aircraft and Other Government Travel Related to Former Secretary Price* (July 13, 2018) (online at <https://oig.hhs.gov/oas/reports/region12/A121700002.pdf>).

⁶² Department of Health and Human Services, Office of Inspector General, *The Office of the Secretary of Health and Human Services Did Not Comply with Federal Regulations for Chartered Aircraft and Other Government Travel Related to Former Secretary Price* (July 13, 2018) (online at <https://oig.hhs.gov/oas/reports/region12/A121700002.pdf>).

\$52,000.⁶³ Ultimately, former Secretary Price repaid the government \$59,390 for his use of chartered aircraft.⁶⁴ Secretary Price resigned on September 29, 2017.⁶⁵

On October 4, 2017, then-Ranking Member Cummings sent a letter to Ms. Conway requesting information about her use of private planes, including flights she took with former Secretary Price.⁶⁶ On October 10, 2017, the White House responded to the Committee with a brief letter stating that the White House “seeks to ensure employee travel is conducted through the most economic and expeditious means of transportation available” and that “this Administration is committed to the responsible stewardship of taxpayer dollars.”⁶⁷ However, neither the White House nor Ms. Conway provided the Committee with any documents relating to her travel. Ms. Conway refused to reimburse the American taxpayers, and President Trump has taken no disciplinary action against her.⁶⁸

IV. CONWAY FAILED TO APPEAR BEFORE THE COMMITTEE AS REQUIRED BY THE COMMITTEE’S SUBPOENA

On June 13, 2019, the Committee invited Ms. Conway to testify at a hearing on June 26, 2019, about her “failure to comply with federal laws, including ethics laws and the Hatch Act.” The invitation asked Ms. Conway to confirm her attendance by June 17, 2019, but she failed to respond by that deadline.⁶⁹

⁶³ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Thomas E. Price, Secretary, Department of Health and Human Services (Sept. 22, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/170922EECtoPriceHHSrePrivateJetTravel.pdf>).

⁶⁴ Department of Health and Human Services, Office of Inspector General, *The Office of the Secretary of Health and Human Services Did Not Comply with Federal Regulations for Chartered Aircraft and Other Government Travel Related to Former Secretary Price* (July 13, 2018) (online at <https://oig.hhs.gov/oas/reports/region12/A121700002.pdf>).

⁶⁵ *HHS Secretary Tom Price Resigns Amid Criticism for Taking Charter Flights at Taxpayer Expense*, Washington Post (Sept. 29, 2017) (online at www.washingtonpost.com/news/post-politics/wp/2017/09/29/trump-to-decide-friday-night-whether-to-fire-hhs-secretary-price/?utm_term=.96dbddf18f46).

⁶⁶ Letter from Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Kellyanne Conway, Counselor to the President, The White House (Oct. 4, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-10-04.EEC%20to%20Conway-WH%20re%20Private%20Jet.pdf>).

⁶⁷ Letter from Marc T. Short, Assistant to the President and Director of Legislative Affairs, The White House, to Chairman Trey Gowdy and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform (Oct. 10, 2017) (online at [http://static.politico.com/a8/cd/3812f5c04ff2acc3992d239363d8/10.10.17%20Letter%20to%20Chairman%20Gowdy%20and%20Ranking%20Member%20Cummings%20\(Travel\).pdf](http://static.politico.com/a8/cd/3812f5c04ff2acc3992d239363d8/10.10.17%20Letter%20to%20Chairman%20Gowdy%20and%20Ranking%20Member%20Cummings%20(Travel).pdf)).

⁶⁸ Letter from Ranking Member Elijah E. Cummings to Trey Gowdy, Committee on Oversight and Government Reform (Mar. 13, 2018) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-13.EEC%20to%20Gowdy%20re.WH%20Travel.pdf>).

⁶⁹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Kellyanne Conway, Counselor to the President, The White House (June 13, 2019) (online at

On June 24, 2019, the White House sent a letter declining to make Ms. Conway available to testify at the hearing. The letter cited an opinion by the Department of Justice Office of Legal Counsel that said:

The Executive Branch’s longstanding position, reaffirmed by numerous Administrations of both political parties, is that the President’s immediate advisers are absolutely immune from congressional testimonial process.⁷⁰

Ms. Conway did not appear at the Committee’s June 26, 2019, hearing, which was entitled, “Violations of the Hatch Act Under the Trump Administration.”⁷¹

Since Ms. Conway failed to appear, the Committee proceeded on that date to debate and vote on a resolution authorizing Chairman Cummings to issue a subpoena “for testimony in connection with Ms. Conway’s failure to comply with the Hatch Act and other ethics laws.”⁷² The subpoena, which was issued on the same day by Chairman Cummings, compelled Ms. Conway to testify before the Committee at a hearing on July 15, 2019.⁷³ The Office of White House Counsel accepted service of the subpoena on Ms. Conway’s behalf.⁷⁴

Ms. Conway did not appear at the hearing on July 15, 2019.⁷⁵ Less than fifteen minutes before the hearing, the White House sent a letter informing the Committee that “the President has directed Ms. Conway not to appear at the Committee’s scheduled hearing.” The letter stated:

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-06-13.EEC%20GEC%20to%20Conway-WH%20re%20Witness%20Invitation.pdf>).

⁷⁰ Letter from Pat A. Cipollone, Counsel to the President, The White House, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 24, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/PAC%20Letter%2006.24.2019.pdf>).

⁷¹ Committee on Oversight and Reform, *Hearing on Violations of the Hatch Act Under the Trump Administration* (June 26, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration>).

⁷² Committee on Oversight and Reform, *Business Meeting on Vote on Resolution Authorizing Issuance of Subpoena Related to Hatch Act, as Amended* (June 26, 2019) (25 pages, 16 pages).

⁷³ Subpoena from Committee on Oversight and Reform to Kellyanne Conway, Counselor to the President, The White House (June 26, 2019).

⁷⁴ Email from Deputy Counsel to the President to Committee Staff (July 26, 2019) (confirming acceptance of service).

⁷⁵ Committee on Oversight and Reform, *Hearing on Violations of the Hatch Act Under the Trump Administration, Part II: Kellyanne Conway* (July 15, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration-part-ii-kellyanne>).

The Department of Justice (the “Department”) has advised me that Ms. Conway is absolutely immune from compelled congressional testimony with respect to matters related to her service as a senior adviser to the President.⁷⁶

V. THE WHITE HOUSE’S JUSTIFICATIONS FOR CONWAY’S VIOLATION OF THE COMMITTEE’S SUBPOENA ARE INVALID

A. Longstanding Precedent for Senior White House Advisors Testifying

The White House’s claim that Ms. Conway is absolutely immune from testifying before the Committee under any circumstances—including when she has repeatedly violated federal law—is not a valid rationale for defying the Committee’s subpoena. Many senior advisors have testified before the Committee in the past, including, for example, multiple White House Counsels, the Deputy Counsel to the President, an Associate Counsel to the President, a Deputy Assistant to the President, and the Director of the White House Office of Security.⁷⁷

B. Courts Have Rejected Absolute Immunity

The Supreme Court has clearly established that aides to the President do not have absolute immunity. In *Harlow v. Fitzgerald*, the Court held:

Having decided in *Butz* that Members of the Cabinet ordinarily enjoy only qualified immunity from suit, we conclude today that it would be equally untenable to hold absolute immunity an incident of the office of every Presidential subordinate based in the White House.⁷⁸

In 2008, the United States District Court for the District of Columbia rejected a claim by the George W. Bush Administration that former White House Counsel Harriet Miers was absolutely immune from testifying before the House Judiciary Committee. Citing *Harlow*, the Court explained, “Unfortunately for the Executive, this line of argument has been virtually foreclosed by the Supreme Court.” The Court also held, “The Executive’s current claim of

⁷⁶ Letter from Pat A. Cipollone, Counsel to the President, The White House, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (July 15, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/PACLetter07.15.2019.pdf>).

⁷⁷ See, e.g., Committee on Government Reform and Oversight, *Hearings on White House Compliance with Committee Subpoenas*, 105th Cong. (Nov. 6-7, 1997) (H. Rept. 105-61); Committee on Government Reform and Oversight, *Hearings on Johnny Chung: His Unusual Access to the White House, His Political Donations, and Related Matters*, 105th Cong. (Nov. 13-14, 1997) (H. Rept. 105-69); Committee on Government Reform, *Hearings on Missing White House E-Mails: Mismanagement of Subpoenaed Records*, 106th Cong. (Mar. 23, 2000, Mar. 30, 2000, May 3, 2000, and May 4, 2000) (H. Rept. 106-179); Committee on Government Reform, *Hearing on the Controversial Pardon of International Fugitive Marc Rich*, 107th Cong. (Feb. 8, 2001 and Mar. 1, 2001) (H. Rept. 107-11); Committee on Oversight and Government Reform, *Hearing on White House Procedures for Safeguarding Classified Information*, 110th Cong. (Mar. 16, 2007) (H. Rept. 110-28).

⁷⁸ *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

absolute immunity from compelled congressional process for senior presidential aides is without any support in the case law.”⁷⁹

In its letter on July 15, 2019, the White House relied on an opinion by Assistant Attorney General Stephen Engel. Mr. Engel’s opinion confirms that Ms. Conway’s violations of the Hatch Act were done as part of her official duties, but argues that acts of “official impropriety” have no impact on the absolute testimonial immunity of official advisors.⁸⁰

According to Mr. Engel, the basis for Ms. Conway’s claim is that “the President’s closest advisers serve as his alter egos” and that “compelling them to testify would undercut the independence and autonomy of the presidency” and “interfere directly with the President’s ability to faithfully discharge his responsibilities.”⁸¹

Although the Hatch Act does not apply to the President, it prohibits his senior advisors from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.”⁸² Therefore, the law prohibits Ms. Conway from acting as the President’s alter ego in order to interfere with the outcome of an election. Because the law precludes Ms. Conway from using her official position in such a manner, she cannot shield herself from a congressional subpoena by claiming that her testimony would involve actions taken in her official capacity.

As the Court in *Miers* noted: “The Executive’s proposed absolute immunity would thus deprive Congress of even non-privileged information. That is an unacceptable result.”⁸³

C. Executive Privilege Does Not Apply

No other basis to withhold Ms. Conway’s testimony exists. The Department of Justice’s own legal positions regarding executive privilege have limited the application of executive privilege where there is potential wrongdoing. In 1984, the Department’s Office of Legal Counsel issued an opinion advising: “An additional limitation on the assertion of executive privilege is that the privilege should not be invoked to conceal evidence of wrongdoing or criminality on the part of executive officers.” The 1984 opinion also stated:

⁷⁹ *Comm. on the Judiciary, U.S. House of Reps. v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008) (citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)).

⁸⁰ Letter from Steven A. Engel, Assistant Attorney General, Department of Justice, to Pat A. Cipollone, Counsel to the President, The White House (July 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/OLC%20Letter%20Opinion%20Conway.pdf>).

⁸¹ Letter from Steven A. Engel, Assistant Attorney General, Department of Justice, to Pat A. Cipollone, Counsel to the President, The White House (July 12, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/OLC%20Letter%20Opinion%20Conway.pdf>) (internal quotation omitted).

⁸² 5 U.S.C. § 7323(a)(1).

⁸³ *Comm. on the Judiciary, U.S. House of Reps. v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008) (citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)).

The greatest danger attending any assertion of executive privilege has always arisen from the difficulty, perhaps impossibility, of establishing with absolute certainty that no mistake or wrongdoing will subsequently come to light which lends credence to congressional assertions that the privilege has been improperly invoked.⁸⁴

The Committee did not subpoena Ms. Conway to testify about conversations she had with the President or about the President's policies. The Committee requested that Ms. Conway address allegations and findings from independent entities, OSC and OGE, that she personally committed multiple violations of federal laws. This has nothing to do with the core functions of the Presidency or with matters relating to the President's performance of his constitutionally assigned executive functions.

VI. HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the Committee's June 26, 2019, hearing entitled, "Violations of the Hatch Act Under the Trump Administration," and July 15, 2019, hearing entitled "Violations of the Hatch Act Under the Trump Administration, Part II: Kellyanne Conway," were used to develop this Report. At the first hearing, the Committee heard from the Special Counsel Henry Kerner about Ms. Conway's violations of the Hatch Act. The purpose of the second hearing was to hear directly from Ms. Conway about her violations of the Hatch Act and other ethics laws, but she failed to appear.⁸⁵

VII. COMMITTEE CONSIDERATION

On July [XX], 2019, the Committee met in open session and ordered the Report favorably reported to the House, with an amendment, by roll call vote of [XX] to [XX], a quorum being present.

VIII. COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of the Report: [INSERT]

IX. COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the

⁸⁴ *Congressional Subpoenas of Department of Justice Investigative Files*, 8 Op. O.L.C. 252 (1984) (online at www.justice.gov/olc/file/626836/download).

⁸⁵ Committee on Oversight and Reform, *Hearing on Violations of the Hatch Act Under the Trump Administration* (June 26, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration>); Committee on Oversight and Reform, *Hearing on Violations of the Hatch Act Under the Trump Administration, Part II: Kellyanne Conway* (July 15, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration-part-ii-kellyanne>).

Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this Report.

X. NEW BUDGET AUTHORITY AND TAX EXPENDITURES AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this Report from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this Report contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

XI. DUPLICATION OF FEDERAL PROGRAMS

No provision of the Report establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

XII. PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the purpose of the Report is to enforce the Committee's authority to subpoena Ms. Conway for testimony about her failure to comply with the Hatch Act and other ethics laws.

XIII. ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, the Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.