

May 8, 2019

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M Street, N.W.
Suite 218
Washington, D.C. 20036-4505

Re: Violations of the Hatch Act by Kellyanne Conway

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether Counselor to the President Kellyanne Conway violated the Hatch Act by participating in media interviews given in her official capacity and in which she discussed government business, but in which she also expressed her political views about candidates in upcoming partisan elections. These actions were directed specifically toward the success or failure of a political party and candidates in partisan races, including Joe Biden, Bernie Sanders, Seth Moulton, Cory Booker, and Donald J. Trump. By giving these televised interviews, including several from the grounds of the White House, that mixed official government business with political views about partisan candidates, Ms. Conway appears to have repeatedly used her official authority or influence for the purpose of interfering with or affecting the result of an election and engaged in political activity prohibited by law.

Factual Background

Ms. Conway was selected to become Counselor to incoming President Donald Trump in December 2016 following her role as campaign manager on Trump’s presidential campaign.¹ As Counselor to the President, Ms. Conway serves “as a public face of the administration” and, according to Trump, provides expertise on “how to effectively communicate our message.”² Since joining the Trump Administration, Ms. Conway has routinely appeared on television and other media platforms to promote President Trump’s agenda.

Use of White House Office and Title for Partisan Political Purposes

On several occasions since the beginning of 2019, Ms. Conway has conducted interviews in her official capacity as Counselor to the President that impermissibly mixed official

¹ Michael D. Shear and Maggie Haberman, Trump Rewards Kellyanne Conway With a Top White House Staff Slot, *New York Times*, Dec. 22, 2016, available at <https://www.nytimes.com/2016/12/22/us/politics/trump-picks-gop-veterans-for-white-house-posts.html>.

² Elise Viebeck, Trump hires Conway, Spicer and other loyalists for senior White House jobs, Dec. 22, 2016, available at https://www.washingtonpost.com/politics/trump-hires-conway-spicer-and-other-loyalists-for-senior-white-house-jobs/2016/12/22/9f3c5692-c862-11e6-bf4b-2c064d32a4bf_story.html?utm_term=.c89fbc87e54f.

government business with political views about candidates in the upcoming 2020 presidential primaries and general election. This complaint highlights four examples of such conduct but is by no means exhaustive.

1. Ms. Conway's, April 27, 2019 CNN Interview

On April 25, 2019, former Vice President Joe Biden announced his candidacy for President of the United States.³ On April 27, 2019, Ms. Conway participated in a television interview on CNN.⁴ Ms. Conway was periodically identified on the chyron at the bottom of the interview by her official title “Counselor to President Trump.”⁵ In the course of answering questions from CNN host Michael Smerconish regarding President Trump’s response to the Charlottesville protests, Ms. Conway, unprompted, introduced Mr. Biden and his campaign-launching video into the conversation. She stated:

You want to revisit this the way Joe Biden wants to revisit [this], respectfully, because he doesn't want to be held to account for his record or lack thereof. And I found his announcement video to be unfortunate—certainly a missed opportunity, but also just very dark and spooky in that it's taking us—he doesn't have a vision for the future. He doesn't mention President Obama, the popular president he served for eight years in his video who has refused to endorse him. He doesn't lay out a vision for the future.⁶

Ms. Conway continued to discuss Mr. Biden's candidacy, stating:

He needs to first get past Democratic primary voters who are incredibly skeptical if not cynical about his past, his lack of record, what he did or did not have to do with President Obama's Administration ... He can't go up against Donald Trump until he gets past the Democratic [field].⁷

³ Alexander Burns and Jonathan Martin, [Joe Biden Announces 2020 Run for President, After Months of Hesitation](https://www.nytimes.com/2019/04/25/us/politics/joe-biden-2020-announcement.html), *New York Times*, Apr. 25, 2019, available at <https://www.nytimes.com/2019/04/25/us/politics/joe-biden-2020-announcement.html>. That same day, the Biden campaign announced Greg Schultz would serve as Mr. Biden's campaign manager. See, Jessica Wehrman, [Joe Biden's New Campaign Manager has Deep Ohio Roots](https://www.daytondailynews.com/news/local/joe-biden-new-campaign-manager-has-deep-ohio-roots/PY0kCRY2Z35JgEbPpQ2URI/), *Dayton Daily News*, April 25, 2019, available at <https://www.daytondailynews.com/news/local/joe-biden-new-campaign-manager-has-deep-ohio-roots/PY0kCRY2Z35JgEbPpQ2URI/>.

⁴ CNN, [Conway on Charlottesville, Biden, Economy, Opioids and Pot](https://www.cnn.com/videos/tv/2019/04/27/conway-on-charlottesville-the-economy-opioids-and-pot.cnn), Apr. 27, 2019, available at <https://www.cnn.com/videos/tv/2019/04/27/conway-on-charlottesville-the-economy-opioids-and-pot.cnn>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*



As the host turned to the topic of “What States Can Trump Win in 2020 that he Didn’t in 2016”, Ms. Conway added:

You’ve got a President including today with Prime Minister Shinzo Abe of Japan trying to broker, improve relationships all around the globe so that we have better trade deals that benefit Americans, American workers like the folks you and I grew up with around Philadelphia, and South Jersey, and the Delaware Valley that Joe Biden used to connect with.⁸

Following these comments, the interview continued for several minutes, during which Ms. Conway discussed the administration’s economic policy and the President’s efforts to address the opioids crisis among other topics.⁹

Underscoring that Ms. Conway’s political commentary was unprompted, Mr. Smerconish later noted that he intentionally avoided asking her to share her views regarding Mr. Biden in her official capacity during a discussion regarding administration policy.¹⁰ Discussing his interview with Ms. Conway on SiriusXM Radio, Mr. Smerconish said:

Can you stop that tape? I found this really interesting. Now she pivots to Vice President Biden. I had been told that you really can’t address particular Democratic candidates with Kellyanne Conway because there will be a Hatch Act issue. She’s on the payroll of the White House; she can’t be partisan in her comments. I understand that. I remember it from my days of serving in the Bush, meaning 41, administration. While I held a federal job, I couldn’t be involved in partisan politics. So I was a little taken aback when now she pivots and wants to talk about Biden and talk about how gloomy and creepy and dark she found his message to be. That’s what’s running through my head as she begins this

⁸ *Id.*

⁹ *Id.*

¹⁰ The Michael Smerconish Show, Sirius XM Radio, Apr. 29, 2019 (audio file available at Exhibit A).

pitch . . . and while we're talking Charlottesville . . . but then suddenly I'm quote "the one cutting her off." I just found it very interesting and very defensive that the White House wants to talk more about Joe Biden and the economy than this particular exchange.¹¹

2. Ms. Conway's April 24, 2019 Fox News Interview

On February 19, 2019, Senator Bernie Sanders announced his candidacy for President of the United States.¹² On April 24, 2019, Ms. Conway participated in a television interview on Fox News.¹³ Throughout her interview, Ms. Conway stood on the White House grounds with the White House visible in the background.¹⁴ The host started by indicating that the President may make a statement before leaving the White House, "but first we speak with Kellyanne Conway at the White House."¹⁵ Throughout the interview, Ms. Conway was periodically identified on the chyron at the bottom of the screen by her official title "Counselor to President Trump."¹⁶



The interview began with Ms. Conway answering questions about the Mueller investigation, impeachment, and ongoing congressional investigations into President Trump's

¹¹ *Id.*

¹² Sydney Ember, Bernie Sanders, Once the Progressive Outlier, Joins a Crowded Presidential Field, *New York Times*, Feb. 19, 2019, available at <https://www.nytimes.com/2019/02/19/us/politics/bernie-sanders-2020.html>. That same day, the Sanders campaign announced that Faiz Shakir would serve as campaign manager. See Gideon Resnick, Spencer Ackerman and Sam Stein, Sanders Hires Top Progressive Advocate, Faiz Shakir, as Campaign Manager, *Daily Beast*, Feb. 19, 2019, available at <https://www.thedailybeast.com/bernie-sanders-hires-top-civil-liberties-advocate-faiz-shakir-as-campaign-manager>.

¹³ Fox News, Kellyanne Conway: Executive Privilege is on the Table for the President, Apr. 24, 2019, available at <https://www.youtube.com/watch?v=KDgxxzcus2U>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

conduct including whether the president might assert executive privilege.¹⁷ Later in the interview, the host asked Ms. Conway about “a potential contest against Joe Biden” given his reportedly imminent campaign launch. Ms. Conway then, unprompted, brought up Senator Sanders’ candidacy. Ms. Conway stated:

Bernie Sanders has a lot in common with Donald Trump, which is he doesn’t really care what his party thinks about his candidacy at this point in the primaries. He’s connecting directly with the voters, he’s raising small-dollar amounts.

The only difference between Bernie Sanders and Donald Trump is Bernie Sanders’ ideas are terrible for America. And Donald Trump is a much better candidate, had connective tissue with the people. So, I think Biden will be seen as the alternative to Bernie Sanders, but he’s got a lot of people in his way.

And look—old, white male career politicians like Bernie Sanders and Joe Biden is not exactly what the Democratic party had in mind for 2020 when they’re running all these different folks who are talking about identity politics and what makes them different. And the women are complaining too. I see women on TV complaining about the female candidates are not covered the same. That’s just hogwash. They just have terrible ideas.¹⁸

Following Ms. Conway’s political statements about Democratic candidates for president, she discussed the administration’s efforts to address the opioids crisis.¹⁹

3. Ms. Conway’s April 22, 2019 Fox News Interview

On April 22, 2019, Congressman Seth Moulton announced his candidacy for President of the United States.²⁰ That same day, Ms. Conway participated in a television interview on Fox News while sitting in front of the White House during the annual White House Easter Egg Roll.²¹ During the interview, Ms. Conway was periodically identified on the chyron at the bottom of the screen by her official title “Counselor to the President.”²²

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Stephanie Murray, Seth Moulton Announces 2020 Bid, *Politico*, Apr. 22, 2019, available at <https://www.politico.com/story/2019/04/22/moulton-announces-2020-bid-1284347>. According to public reports, Mr. Moulton hired Jim Matheson to serve as campaign manager. See Daniel Strauss and Stephanie Murry, Moulton Hires Staff for Expected Presidential Campaign, *Politico*, Apr. 18, 2019, available at <https://www.politico.com/story/2019/04/18/seth-moulton-presidential-campaign-1280465>.

²¹ Anna Hopkins, Kellyanne Conway: Trump Can’t be Impeached by an Investigation Democrats Started, *Fox News*, Apr. 22, 2019, available at <https://www.foxnews.com/politics/kellyanne-conway-trump-impeachment-democrats>.

²² *Id.*



Ms. Conway started the interview by discussing the White House Easter Egg Roll and the President's response to a terrorist attack in Sri Lanka before she transitioned to the potential impeachment proceedings against President Trump and the Mueller investigation.²³ Then, unprompted, Ms. Conway began discussing Mr. Moulton's candidacy for president and the rest of the Democratic presidential field.²⁴ She stated:

And just today we have the 19th Democrat running for President. Seth Moulton—who? Seth Moulton, the fourth person from the House of Representatives . . . I would just remind everybody simple math, whether it's one, whether it's 19, whether it's 50, anything times zero equals zero, simple multiplication, so 50 Democrats can run, 19 are now running, but if your message is zero, it's a big zero.²⁵

Ms. Conway is then asked to discuss Press Secretary Sarah Huckabee Sanders and other topics before the host abruptly ends the interview for breaking news.²⁶

4. Ms. Conway's February 1, 2019 Fox News Interview

On February 1, 2019, Senator Cory Booker announced his candidacy for President of the United States.²⁷ That same day, Ms. Conway participated in an interview on Fox News standing

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Nick Corasaniti and Shane Goldmacher, Cory Booker Announces Presidential Bid, Joining Most Diverse Field Ever, Feb. 1, 2019, available at <https://www.nytimes.com/2019/02/01/us/politics/cory-booker-2020.html>. The Booker campaign also announced that Addisu Demissie would serve as campaign manager. See John Bowden, Booker Hires Gavin Newson's 2018 Campaign Manager to Run 2020 Bid, *The Hill*, Feb. 1, 2019 available at

in front of the White House seal in the James S. Brady Press Briefing Room at the White House.²⁸ In the opener to the interview, the host introduced Ms. Conway stating, “Let’s bring in Kellyanne Conway, Counselor to the President of the United States. She is inside the building. The weather outside [is] not great.”²⁹ Throughout parts the interview, Ms. Conway was identified on the chyron at the bottom of the screen by her official title “Counselor to President Trump.”³⁰



Ms. Conway’s interview began with a discussion of the United States suspending its nuclear pact with Russia, the administration’s “America First” policy, and other foreign policy issues. The hosts then asked Ms. Conway about Mr. Booker’s announcement of his candidacy for president. Ms. Conway stated:

Welcome, the water seems warm, welcome to dive in, along with, I don’t know, 10-15-30 other Democratic candidates. I would ask him a couple of questions today as he runs from my native New Jersey. One is—what’s wrong with the candidates that are already in there? What’s your objection to Kamala Harris running, Elizabeth Warren, Kirsten Gillibrand, these others who have already announced—Tulsi Gabbard, maybe. If he were a Republican running against them, they would immediately call him a sexist for running against these women in the Democratic field. But I’d also ask him—what exactly have you accomplished that qualifies you to be the commander-in-chief and President of the United States? And being a motivational speaker who’s, quote, “tinny,” the words of David Axelrod, the mastermind behind President Obama’s presidential

<https://thehill.com/homenews/campaign/427994-booker-hires-gavin-newsoms-2018-campaign-manager-to-run-2020-bid>.

²⁸ Conway on suspending nuclear pact with Russia, Booker’s 2020 bid, *Fox News*, Feb. 1, 2019, available at <https://www.youtube.com/watch?v=L3wIsP4MjL4&feature=youtu.be>.

²⁹ *Id.*

³⁰ *Id.*

victories, he sort of slammed him today by saying he doesn't really sound like an inspirational leader sometimes.³¹

Ms. Conway went on to attack Mr. Booker's tenure as Mayor of Newark and his position on school choice.³² The interview then continued with Ms. Conway discussing border policy and the President's then-ongoing negotiations with Speaker Nancy Pelosi over border wall funding.³³

Potential Violations

The Hatch Act - 5 U.S.C. §§ 7321-26

The Hatch Act prohibits any executive branch employee from “us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.”³⁴ Activities covered by this prohibition include the official “[u]sing his or her official title while participating in political activity.”³⁵ “Political activity” is defined as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”³⁶ Penalties under the Hatch Act are generally administrative in nature, but can include removal from government service, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a civil fine.³⁷

OSC’s Hatch Act Guidance regarding President Trump’s Reelection Candidacy

On February 27, 2018, Donald J. Trump announced his candidacy for re-election to the Office of President of the United States.³⁸ On March 5, 2018, OSC published a document entitled, “Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection.”³⁹ OSC’s guidance noted that he became a “candidate for partisan political office” as described in the Hatch Act in 2018 once he appointed a campaign manager and publicly announced his candidacy.⁴⁰ OSC’s updated guidance stated that the Hatch Act’s prohibition related to political activity “is broad and encompasses more than displays or communications (including in-person and via email or social media) that expressly

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ 5 U.S.C. § 7323(a)(1).

³⁵ 5 C.F.R. § 734.302(b)(1).

³⁶ 5 C.F.R. § 734.101.

³⁷ 5 U.S.C. § 7326.

³⁸ Katie Rogers and Maggie Haberman, Trump’s 2020 Campaign Announcement Had a Very Trumpian Rollout, *New York Times*, Feb. 27, 2018, available at <https://www.nytimes.com/2018/02/27/us/politics/trump-2020-brad-parscale.html>.

³⁹ Office of Special Counsel, Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection, Mar. 5, 2018, available at <https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf>.

⁴⁰ Office of Special Counsel, Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection, Mar. 5, 2018

advocate for or against President Trump’s reelection.”⁴¹ Notably, the OSC guidance stated, “like with any other candidate, the Hatch Act prohibits federal employees from engaging in activity directed at the success or failure of the President’s candidacy while they are on duty or in the workplace.”⁴²

Kellyanne Conway’s Prior Hatch Act Violations

On March 6, 2018, just one day after OSC published its updated Hatch Act guidance, the agency concluded a previous Hatch Act investigation of Ms. Conway, finding that she violated the law in two television interviews.⁴³ In your letter to the President transmitting OSC’s report for “appropriate disciplinary action,” you wrote that during both media interviews, Ms. Conway “impermissibly mixed official government business with political views about candidates in the Alabama special election.”⁴⁴ OSC’s report described Ms. Conway’s conduct in one of the interviews in this way:

Her intentional partisan jabs against Doug Jones were made in her official capacity and meant to persuade voters not to support him in the Alabama special election. By telling voters not to “be fooled” and contending that Doug Jones would be “terrible for property owners,” Ms. Conway advocated for the failure of his candidacy. She also implied that voters should support Roy Moore, so the President could get the votes in the Senate needed to pass tax reform. Her advocacy against one candidate and implied endorsement of another candidate constituted political activity under the Hatch Act.⁴⁵

In its March 2018 report regarding Ms. Conway’s previous Hatch Act violations, OSC acknowledged that the Hatch Act does not provide an exemption for executive branch employees speaking on behalf of a principal who is in fact exempt from the Hatch Act’s restrictions, stating:

While the President is exempt from the Hatch Act, his exemption does not extend to any other employee, including those employed in the White House Office. OSC understands that [an employee’s] job duties may include publicly reinforcing the Administration’s positions on a host of policy issues. And the Hatch Act does not prohibit [an employee] from doing so, provided she carries out her job duties in a manner that complies with the law.⁴⁶

⁴¹ *Id.*

⁴² *Id.*

⁴³ Office of Special Counsel, [OSC Concludes Hatch Act Investigation of Kellyanne Conway, Finds Two Violations, and Refers Findings to President for Appropriate Disciplinary Action](#), Mar. 6, 2018, available at <https://osc.gov/News/pr-18-24.pdf>.

⁴⁴ Office of Special Counsel, [Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 \(Kellyanne Conway\)](#), Mar. 6, 2018, available at <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>.

⁴⁵ *Id.*

⁴⁶ *Id.*

According to OSC's report, the two violations occurred within weeks of each other and after Ms. Conway "received significant training on Hatch Act prohibitions."⁴⁷ The White House defended Ms. Conway's conduct stating that she did not violate the Hatch Act, and no disciplinary action appears to have been taken in response to OSC's findings.⁴⁸ On March 7, 2018, the White House counsel's office sent a memo to White House staff highlighting OSC's new Hatch Act guidance.⁴⁹

Ms. Conway's 2019 Interviews Discussing Presidential Candidates Violated the Hatch Act

Ms. Conway's conduct in each of the interviews cited above likely violated the Hatch Act. In each case, Ms. Conway "impermissibly mixed official government business with political views about candidates" and a political party in the upcoming primaries and the 2020 general election for President of the United States.⁵⁰

1. Ms. Conway Violated the Hatch Act in Her April 27, 2019 CNN Interview

Ms. Conway likely violated the Hatch Act in her April 27, 2019 interview on CNN by impermissibly mixing official government business with political views about candidates in the upcoming political primaries and the 2020 general election for President of the United States. There is no doubt that Ms. Conway appeared on CNN in her official capacity. This appearance is similar to her earlier violations of the Hatch Act. Ms. Conway engaged in an interview about official government business including the administration's economic and drug policies and was periodically identified during the interview by her name and official title "Counselor to President Trump." Given these facts, Ms. Conway used her official title, position, and authority while participating in the interview.

There is also no doubt that Ms. Conway's statements were aimed at influencing the success or failure of a political candidate in a partisan election. In response to a question about President Trump's statements in the aftermath of the 2017 Charlottesville protests, Ms. Conway chose this forum to express personal political views about Mr. Biden, who had recently announced his candidacy for president. Unprompted, Ms. Conway commented on Mr. Biden's announcement video, asserting that he "doesn't want to be held to account for his record or lack thereof" and "doesn't have a vision for the future." She added that President Obama declined to endorse Mr. Biden's presidential campaign and that Democratic primary voters "are incredibly skeptical if not cynical about his past, his lack of record." Ms. Conway then stated that President Trump's trade policies benefit American workers in and around "Philadelphia, and South Jersey and the Delaware Valley," quipping that these were people "Joe Biden used to connect with."

⁴⁷ Office of Special Counsel, [OSC Concludes Hatch Act Investigation of Kellyanne Conway, Finds Two Violations, and Refers Findings to President for Appropriate Disciplinary Action](#), Mar. 6, 2018.

⁴⁸ Alexander Mallin, [Kellyanne Conway says she discussed Hatch Act violations with President Trump](#), ABC News, Mar. 8, 2018, available at <https://abcnews.go.com/Politics/kellyanne-conway-discussed-hatch-act-violations-president-trump/story?id=53609559>.

⁴⁹ Veronica Stracqualursi and Cristina Alesci, [Trump's legal team: No #MAGA at the White House](#), CNN, Mar. 8, 2018, available at <https://www.cnn.com/2018/03/08/politics/white-house-counsel-memo-hatch-act/index.html>.

⁵⁰ Office of Special Counsel, [OSC Concludes Hatch Act Investigation of Kellyanne Conway, Finds Two Violations, and Refers Findings to President for Appropriate Disciplinary Action](#), Mar. 6, 2018.

Ms. Conway's statements regarding Mr. Biden and his campaign during her interview regarding administration policy were clearly intended to influence the success or failure of Mr. Biden's candidacy in the Democratic primary and President Trump's candidacy in the 2020 general election, constituting prohibited political activity under the Hatch Act.

2. Ms. Conway Violated the Hatch Act in Her April 24, 2019 Fox News Interview

Ms. Conway likely violated the Hatch Act in her April 24, 2019 interview on Fox News by impermissibly mixing official government business with political views about candidates in the upcoming political primaries and the 2020 general election for President of the United States. There is no doubt that Ms. Conway appeared on Fox News in her official capacity. This appearance is similar to her earlier violations of the Hatch Act. Ms. Conway was interviewed on the White House grounds with the White House in the background for the entire duration and was periodically identified on the interview chyron by her name and official title "Counselor to President Trump." Ms. Conway engaged in an interview about official government business including the administration's response to the Mueller report and whether the President would assert executive privilege in pending congressional investigations. Given these facts, Ms. Conway used her official title, position, and authority while participating in the interview.

There is also no doubt that Ms. Conway's statements were aimed at influencing the success or failure of a political candidate or party in a partisan election. In response to a question about Mr. Biden's pending announcement as a candidate for president, Ms. Conway, again unprompted, chose to offer her political views about Senator Sanders, who was already a candidate for president. Ms. Conway first opined on the relative strengths of candidate Sanders and candidate Trump, asserting that the two have "a lot in common" but then denigrating Senator Sanders by stating that his "ideas are terrible for America." In the next sentence, Ms. Conway called President Trump "a much better candidate" who "had connective tissue with the people." Ms. Conway then described Mr. Biden and Senator Sanders as "old, white male career politicians . . . [who are] not exactly what the Democratic party had in mind for 2020." In addition, regarding female candidates running for president, Ms. Conway stated: "They just have terrible ideas." Ms. Conway's statements during her interview regarding administration policy were clearly intended to influence the success or failure of Senator Sanders, Mr. Biden, and other candidates in the Democratic primary, as well as President Trump's candidacy in the 2020 general election, constituting prohibited political activity under the Hatch Act.

3. Ms. Conway Violated the Hatch Act in Her April 22, 2019 Fox News Interview

Ms. Conway likely violated the Hatch Act in her April 22, 2019 interview on Fox News by impermissibly mixing official government business with political views about candidates in the upcoming political primaries and the 2020 general election for President of the United States. There is no doubt that Ms. Conway appeared on Fox News in her official capacity. The appearance is similar to her earlier violations of the Hatch Act. Ms. Conway was interviewed on the White House grounds with the White House in the background. She also was periodically identified on the interview chyron by her name and official title "Counselor to the President." Ms. Conway engaged in an interview about official government business including the White

House Easter Egg Roll, the President’s response to a terrorist attack in Sri Lanka, and the possibility of impeachment proceedings against the president.⁵¹ Given these facts, Ms. Conway used her official title, position, and authority while participating in the interview.

There is also no doubt that Ms. Conway’s statements were aimed at influencing the success or failure of a political candidate or party in a partisan election. During the interview, Ms. Conway offered unprompted political views regarding both Rep. Seth Moulton, a Democratic candidate for president, and the Democratic field for president. Ms. Conway further referred to both the Democratic Party message and candidate Moulton’s message as “a big zero.” Ms. Conway also denigrated Mr. Moulton personally by stating “Seth Moulton—who?” after independently broaching the topic of his campaign announcement. Ms. Conway’s statements during her interview regarding administration policy were clearly intended to influence the success or failure of Mr. Moulton’s candidacy in the Democratic primary as well as the Democratic Party and President Trump in the 2020 general election, constituting prohibited political activity under the Hatch Act.

4. Ms. Conway Violated the Hatch Act in Her February 1, 2019 Fox News Interview

Ms. Conway likely violated the Hatch Act in her February 1, 2019 interview on Fox News by impermissibly mixing official government business with political views about a candidate in the upcoming political primaries. Yet again, there is no doubt that Ms. Conway appeared on Fox News in her official capacity. The appearance is similar to her earlier violations of the Hatch Act. Ms. Conway was interviewed on the White House grounds, this time with the White House seal in the background. She was periodically identified on the interview chyron by her name and official title “Counselor to President Trump.” Ms. Conway engaged in an interview about official government business including the Trump Administration’s foreign policy objectives and ongoing negotiations with Congress regarding the southern border. Given these facts, Ms. Conway used her official title, position, and authority while participating in the interview.

There is also no doubt that Ms. Conway’s statements were aimed at influencing the success or failure of a political candidate or party in a partisan election. After being asked about Senator Booker’s entrance into the presidential race, Ms. Conway provided her personal political views “as he runs from my native New Jersey.” Ms. Conway first questioned why Senator Booker is running for president, claiming that “[if] he were a Republican . . . they would immediately call him a sexist for running against these women.” Ms. Conway then questioned Senator Booker’s credentials, asking “what exactly have you accomplished that qualifies you to

⁵¹ During the interview, Ms. Conway stated about the President’s political prospects, “I think it’s a large part why this President got elected and why he won’t be impeached. It’s a ridiculous proposition they are putting forward. You can’t impeach a Republican president for something the Democrats started.” Ms. Conway’s statements appear to violate OSC’s guidance prohibiting “conduct [that] advocates for or against impeachment of a candidate for federal office.” See U.S. Office of Special Counsel, Clarification of November 27, 2018 Email, Nov. 30, 2018, available at <https://osc.gov/Resources/OSC%20November%202018%20Guidance%20Extension%20and%20Clarification.pdf>.

Hon. Henry Kerner
May 8, 2019
Page 13

be the commander-in-chief and President of the United States?" Then Ms. Conway cited criticism from Mr. Axelrod about Senator Booker's leadership and demeanor before questioning his tenure as Mayor of Newark, New Jersey. These personalized comments during her interview regarding administration policy were clearly intended to influence the success or failure of Senator Booker's candidacy in the Democratic primary elections and President Trump in the 2020 general election, constituting prohibited political activity under the Hatch Act.

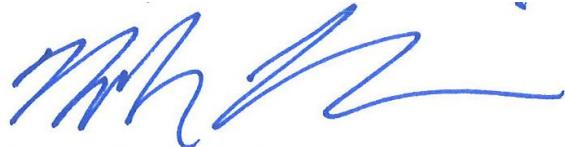
Conclusion

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. The statute prohibits an employee from undertaking any activity directed toward the success or failure of a political candidate or a political party while using her official title or position.

By using her official title, position, and authority to express political views about candidates in partisan elections during interviews about official government business, Ms. Conway ran afoul of the statute. These violations are even more egregious given the guidance provided by OSC and the White House in March 2018, previous Hatch Act guidance provided specifically to Ms. Conway, and her two prior Hatch Act violations in 2017. The four interviews described in this complaint are examples of Ms. Conway's impermissible mixing of official government business with political views about candidates in partisan elections, but they are by no means exhaustive. In short, Ms. Conway is a repeat offender and it seems clear that neither prior guidance by the White House Counsel's office nor prior admonition by OSC have deterred her from breaking the law.

OSC should commence an immediate investigation into the conduct described in this letter and, taking into account that Ms. Conway has engaged in a pattern and practice of violating the Hatch Act, should take or recommend appropriate disciplinary action against her.

Sincerely,



Noah Bookbinder
Executive Director