

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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September 3, 2020

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

Dear Special Counsel Kerner:

The Committee requests that the Office of Special Counsel (OSC) conduct a series of independent investigations on multiple potential violations of the Hatch Act by the Trump Administration during the Republican National Convention.

Throughout the Convention, Administration officials repeatedly used their official positions and the White House itself to bolster President Trump's reelection campaign. The Trump Administration staged a pardon and naturalization ceremony in order to use video of the event during the Convention later that day, they repeatedly used the White House for Convention speaking engagements, and Secretary of State Michael Pompeo engaged in political activity speaking at the Convention while on official travel abroad.

We are particularly concerned with the consequences of White House actions on career employees who may have felt pressured to help organize and put on these events, potentially subjecting them to legal jeopardy. Career employees have faced severe consequences for behavior far less egregious than what the country witnessed last week. For example, a Department of Energy employee who provided a tour of a federal facility to a Congressional candidate was forced to resign, and a Defense Logistics Agency employee who included the phrase "Vote Republican" in a PowerPoint presentation received a suspension of 30 days without pay.¹

We are alarmed that President Trump and some senior Administration officials are actively undermining compliance with—and respect for—the law. President Trump reportedly "enjoyed the frustration and anger" in response to holding Convention events on the White House grounds and "relished the fact" that he could not be stopped, according to President

¹ *As Trump Appointees Flout the Hatch Act, Civil Servants Who Get Caught Get Punished*, Washington Post (online at www.washingtonpost.com/politics/hatch-act-trump-convention/2020/08/28/dce68a7e-e877-11ea-bc79-834454439a44_story.html).

Trump's aides.² According to one press report, President Trump "joked he would excuse anyone found to be violating the act on his behalf."³ White House Chief of Staff Mark Meadows reportedly disregarded the law because of his belief that "Nobody outside of the Beltway really cares" about the Hatch Act.⁴ Another Administration official explained, "What are the consequences? No one gets punished."⁵

When OSC recommended last year that President Trump fire White House counselor Kellyanne Conway for being a "repeat offender" of the Hatch Act, President Trump refused to take action, and she continued to frequently violate the Hatch Act throughout her tenure.⁶

Last year, you testified after President Trump declined to follow OSC's recommendation that Kellyanne Conway be terminated for her violations. You said this:

So why do we even have a Hatch Act? We have a Hatch Act, which was passed in 1939 because its central purpose remains unchanged, to separate the nonpartisan governance of the country from partisan political campaigning. By maintaining the separation, the Hatch Act protects two groups, Federal workers who are protected from the possibility they could be ordered or pressured into taking part in partisan campaigns, and the American people. They are also protected because they know that their tax dollars are being spent on government, and not on election campaigns they may or may not support.⁷

As the Committee of jurisdiction over the Hatch Act, we urge you to investigate and publicly report whether any of the actions taken by Administration officials during the Convention violated the law.

Application of Hatch Act to White House Employees

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."⁸ Under

² *Rival Themes Emerge as Race Enters Final Weeks: Covid vs. Law and Order*, New York Times (Aug. 28, 2020) (online at www.nytimes.com/2020/08/28/us/politics/joe-biden-trump-conventions.html).

³ *'No One Gets Punished': RNC Utilizes White House for Speeches and Surprises Despite Ethics Concerns*, CNN (Aug. 26, 2020) (online at www.cnn.com/2020/08/26/politics/donald-trump-rnc-speech-ethics/index.html).

⁴ *Meadows Dismisses Hatch Act Concerns at RNC: 'Nobody Outside of the Beltway Really Cares,'* Politico (Aug. 26, 2020) (online at www.politico.com/news/2020/08/26/mark-meadows-hatch-act-rnc-402194).

⁵ *'No One Gets Punished': RNC Utilizes White House for Speeches and Surprises Despite Ethics Concerns*, CNN (Aug. 26, 2020) (online at www.cnn.com/2020/08/26/politics/donald-trump-rnc-speech-ethics/index.html).

⁶ *Id.* See also *Trump is Urged to Fire Kellyanne Conway for Hatch Act Violations*, New York Times (June 13, 2019) (online at www.nytimes.com/2019/06/13/us/politics/kellyanne-conway-hatch-act.html).

⁷ Committee on Oversight and Reform, *Hearing on Violations of the Hatch Act Under the Trump Administration*, 116th Cong. (June 26, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration>).

⁸ 5 U.S.C. § 7323(a)(1).

Hatch Act regulations, executive branch employees are prohibited from using their “official title while participating in political activity.”⁹ 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.”¹⁰

Although the Hatch Act exempts the President and Vice President, the law and its prohibition on using one’s official authority to influence elections apply to all other White House employees.¹¹ The White House questioned whether Kellyanne Conway and other White House employees are covered by the Hatch Act.¹² However, you testified before our Committee that “the Hatch Act only exempts two people, the President and the Vice President, from its reach, and so Ms. Conway is bound by it.”¹³

You also made clear that the Hatch Act does not prevent White House employees from advocating on behalf of the President’s policies. Referring to Kellyanne Conway, you stated, “She’s entitled to advocate on behalf of his policies. She’s not allowed to use her official authority to inject herself in campaign activity.” You also explained, “being an advisor does not inherently require Ms. Conway to leverage her official authority to attack candidates of the opposing party, or otherwise engage in political activity as defined under the Act.”¹⁴

Official Actions to Influence the Election

On August 25, 2020, the Convention aired President Trump’s pardon and participation in a naturalization ceremony.¹⁵ The ceremony appeared to have been planned and designed as

⁹ 5 C.F.R. § 734.302(b)(1).

¹⁰ 5 C.F.R. § 734.101.

¹¹ 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).

¹² 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_House_Letter_to_Henry_Kerner.pdf)).

¹³ Committee on Oversight and Reform, *Hearing on Violations of the Hatch Act Under the Trump Administration* 116th Cong. (June 26, 2019) (online at <https://oversight.house.gov/legislation/hearings/violations-of-the-hatch-act-under-the-trump-administration>).

¹⁴ *Id.*

¹⁵ The White House, *President Donald Trump Issues a Full Pardon to Jon Ponder* (Aug. 25, 2020) (online at www.youtube.com/watch?v=X7icpKAqWfg); The White House, *President Trump Participates in a Naturalization Ceremony at the White House* (Aug. 25, 2020) (online at www.youtube.com/watch?v=Vb9qXvGAQTA); *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE).

content for the Convention broadcast in support of President Trump's reelection campaign. We are concerned that White House officials who are subject to the Hatch Act may have assisted in planning and carrying out these actions in a manner that violated the law.

According to a White House official, these were "official events." The official stated, "The White House publicized the content of both events on a public website this afternoon and the campaign decided to use the publicly available content for campaign purposes."¹⁶

The timing of the events, however, suggests that the official events were being used to support President Trump's candidacy. According to two aides, the "primary purpose" of the naturalization ceremony was to be broadcast as part of the Convention.¹⁷ White House reporters were not notified about the naturalization ceremony, and the ceremony was not listed on President Trump's public schedule.¹⁸ Jon Ponder, who was pardoned by President Trump, and former Federal Bureau of Investigation agent Richard Beasley, who was also featured in the pardon segment, were both listed in a Trump campaign press release previewing the speakers for the second night of the Convention.¹⁹ The White House posted the videos to its YouTube channel before the start of Tuesday's Convention broadcast, and the segments were aired during the Convention in their entirety.²⁰

A Hatch Act Advisory issued by OSC in 2018 stated that "OSC views candidates' requests to visit federal facilities that are coordinated by candidates' campaigns as presumptively for a campaign purpose and not official business."²¹ If the pardon and naturalization ceremonies were coordinated by or with President Trump's campaign or the Convention, this same presumption should apply.

Chad Wolf participated in the naturalization ceremony in his official capacity as Acting Secretary of Homeland Security. Mr. Wolf was announced as "Acting Secretary Wolf,"

¹⁶ *'No One Gets Punished': RNC Utilizes White House for Speeches and Surprises Despite Ethics Concerns*, CNN (Aug. 26, 2020) (online at www.cnn.com/2020/08/26/politics/donald-trump-rnc-speech-ethics/index.html).

¹⁷ *See Focus on Trump's Official White House Actions as Part of Republican Convention Programming Raises Hatch Act Concerns*, Washington Post (Aug. 26, 2020) (online at www.washingtonpost.com/politics/hatch-act-republican-convention/2020/08/25/53b72b44-e6f8-11ea-970a-64c73a1c2392_story.html).

¹⁸ *Id.*

¹⁹ Donald J. Trump for President, Inc., *America, Land of Opportunity: RNC Day Two Preview* (Aug. 25, 2020) (online at www.donaldjtrump.com/media/america-land-of-opportunity-rnc-day-two-preview/).

²⁰ *'No One Gets Punished': RNC Utilizes White House for Speeches and Surprises Despite Ethics Concerns*, CNN (Aug. 26, 2020) (online at www.cnn.com/2020/08/26/politics/donald-trump-rnc-speech-ethics/index.html).

²¹ Office of Special Counsel, *Federal Hatch Act Advisory: Candidate Visits to Federal Agencies* (Feb. 15, 2018) (online at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Candidate%20Visits%20to%20Federal%20Agencies.pdf>).

President Trump referred to Mr. Wolf by this title, and Mr. Wolf spoke on behalf of the Department of Homeland Security.²²

In OSC's analysis of former Secretary of Health and Human Services Kathleen Sebelius' violation of the Hatch Act, OSC wrote that "it is a use of official authority or influence to affect an election when an employee uses her 'official title while participating in political activity.'"²³ The use of the pardon and naturalization ceremonies as part of the Convention make it virtually impossible to separate them from campaign related activity.

White House employees and U.S. Citizenship and Immigration Services (USCIS) employees also coordinated the naturalization ceremony, according to reports. The week before the Convention, White House staff asked USCIS to organize a naturalization ceremony, and White House employees reportedly requested information about the potential participants and made suggestions as to the type of candidates for USCIS to identify.²⁴ Mr. Wolf also explained that there were multiple USCIS employees at the White House "making sure that ceremony goes off without a hitch."²⁵

Military personnel were also used as part of the naturalization ceremony. Although military personnel are not within OSC's jurisdiction, the military personnel who attended the ceremony may have been put in the position of violating Department of Defense guidance prohibiting them from "wearing military uniforms at political campaign events," and any Defense Department civilian employees who participated in the execution of the event may have violated the Hatch Act.²⁶

We are also concerned that Department of Housing and Urban Development Regional Administrator Lynne M. Patton may have misused her official position for political purposes. Regional Administrator Patton organized and interviewed four New York City tenants for a segment broadcast during the Convention. Three tenants later explained that they were not aware that the video would be included in Convention programming, raising questions about

²² The White House, *President Trump Participates in a Naturalization Ceremony at the White House* (Aug. 25, 2020) (online at www.youtube.com/watch?v=vb9qXvGAQTA).

²³ Letter from Special Counsel Carolyn N. Lerner, Office of Special Counsel, to President Barack Obama (Sept. 12, 2012) (online at [https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20\(HA-12-1989\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20(HA-12-1989).pdf)); 5 C.F.R. § 734.302(b)(1).

²⁴ *Trump Takes Night Off from Anti-Immigrant Talk to Swear In U.S. Citizens*, New York Times (Aug. 26, 2020) (online at www.nytimes.com/2020/08/26/us/politics/trump-naturalization-ceremony-rnc.html).

²⁵ *Wolf Says He Did Not Know Naturalization Ceremony Would Be Shown at RNC*, Axios (Aug. 30, 2020) (online at www.axios.com/chad-wolf-naturalization-ceremony-rnc-1edb07b9-d900-4709-ba14-57232709db13.html).

²⁶ *What is the Policy for Participating in Political Campaigns?*, Department of Defense (Mar. 4, 2019) (online at www.defense.gov/ask-us/faq/Article/1774809/what-is-the-policy-for-participating-in-political-campaigns/).

whether Regional Administrator Patton used her official position, title, and federal resources to organize and carry out this segment.²⁷

Use of the White House and Federal Property

The Republican National Convention filmed multiple segments and speeches on federal property. The Hatch Act prohibits federal employees from engaging in political activity while on duty, in any federal government room or building, or while wearing a uniform or official insignia identifying the office or position of the employee.

OSC issued an advisory opinion in 2018 that prohibits “authorizing the use of a federal building or office” for “campaign activities” including, among other examples, “speeches, fundraisers, press conferences, and photo ops. The advisory stated: “Federal agencies should ensure that candidates who visit their facilities to conduct official business do not engage in any political campaign or election activity during the visit.”²⁸

On August 12, 2020, OSC wrote to our Committee to explain that the President and Vice President are exempt from the Hatch Act and can give Convention speeches on White House grounds. However, OSC’s letter to the Committee made clear that:

White House employees are covered by the Hatch Act, so there may be Hatch Act implications for those employees, depending on their level of involvement with the event and their position in the White House.²⁹

President Donald Trump, First Lady Melania Trump, and Advisor to the President Ivanka Trump gave addresses on the White House grounds.³⁰ There were also multiple pre-recorded segments filmed in the White House. These segments include President Trump speaking with former hostages and Americans impacted by coronavirus.³¹ These segments raise serious questions about the use of White House employees and resources in coordinating and executing Convention programming.

²⁷ *N.Y.C. Tenants Say They Were Tricked Into Appearing in R.N.C. Video*, New York Times (Aug. 28, 2020) (online at www.nytimes.com/2020/08/28/nyregion/nyc-tenants-rnc-video-trump.html).

²⁸ Office of Special Counsel, *Federal Hatch Act Advisory: Candidate Visits to Federal Agencies* (Feb. 15, 2018) (online at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Candidate%20Visits%20to%20Federal%20Agencies.pdf>).

²⁹ Letter from Deputy Chief Erica S. Hamrick, Office of Special Counsel, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Aug. 12, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/AO%20re%20Convention%20speech%20at%20WH.pdf>).

³⁰ *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE); *Republican National Convention—Night 4*, Republican National Convention (Aug. 27, 2020) (online at www.youtube.com/watch?v=t0SS9jjaU6E).

³¹ *Republican National Convention—Night 1*, Republican National Convention (Aug. 24, 2020) (online at www.youtube.com/watch?v=GyqHUPoDpoM).

In addition, OSC's guidance addressed only political events held on White House grounds. OSC wrote:

Your staff also inquired into Hatch Act compliance related to political events held on federal property other than the White House. Because there are different types of federal property, under the custody and control of different federal agencies, we are unable to provide guidance without more specific information about the property at issue.³²

Vice President Mike Pence filmed multiple Convention segments on federal property. On August 25, 2020, Vice President Pence appeared in a pre-recorded segment filmed at the Lincoln Boyhood National Memorial in Lincoln City, Indiana.³³ The U.S. National Park Service (NPS) manages this memorial.³⁴ Vice President Pence also gave the keynote address on August 26, 2020, from Fort McHenry National Monument and Historic Shrine in Baltimore, Maryland.³⁵ NPS also manages Fort McHenry.³⁶

Political Activity on Official Travel Abroad

Secretary Pompeo filmed a video from the roof of the King David Hotel in Jerusalem, Israel that was shown as part of the Convention on August 25, 2020.³⁷ Secretary Pompeo's speech advocated for reelecting President Trump. He stated: "The way each of us can best ensure our freedoms is by electing leaders who don't just talk, but who deliver" and called on Americans to "stay the course."³⁸

Secretary Pompeo's speech raises concerns about the use of federal resources for the Secretary's political activity, including the cost of his travel. As part of its evaluation of Secretary Sebelius' compliance with the Hatch Act, OSC analyzed whether "the U.S. Treasury paid for the costs of her political activity, which would be a violation of 5 U.S.C. § 7324(b)."

³² Letter from Deputy Chief Erica S. Hamrick, Office of Special Counsel, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Aug. 12, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/AO%20re%20Convention%20speech%20at%20WH.pdf>).

³³ *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE).

³⁴ National Park Service, *Lincoln Boyhood National Memorial* (online at www.nps.gov/libo/index.htm).

³⁵ *Republican National Convention—Night 3*, Republican National Convention (Aug. 26, 2020) (online at www.youtube.com/watch?v=6SVFWxmKXt8).

³⁶ National Park Service, *Fort McHenry National Monument and Historic Shrine Maryland* (online at www.nps.gov/fomc/index.htm).

³⁷ *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE); *Pompeo Stirs Up Outrage Among Some Diplomats Over Speech to RNC*, Washington Post (Aug. 25, 2020) (online at www.washingtonpost.com/national-security/pompeo-stirs-up-outrage-among-some-diplomats-over-speech-to-rnc/2020/08/25/66dddf66-e6cf-11ea-a414-8422fa3e4116_story.html).

³⁸ *Republican National Convention—Night 2*, Republican National Convention (Aug. 25, 2020) (online at www.youtube.com/watch?v=gZRQL7jxsPE).

OSC concluded that particular issue was “resolved” because the Department of Health and Human Services received reimbursement for “all travel related costs and expenses” from the Obama for America campaign and the Democratic National Committee.³⁹ There has been no indication thus far of whether the Trump Campaign or Republican National Committee paid for or reimbursed the Department of State for any portion of Secretary Pompeo’s travel to Israel.

When Secretary Sebelius was found to have violated the Hatch Act for going “off script” and getting “a little caught up” during one official appearance, then-Chairman of the Committee on Government Reform Darrell Issa stated:

As he decides the appropriate consequences for Secretary Sebelius, the President should consider the important leadership role of cabinet secretaries and the example they must set for the entire executive branch.⁴⁰

Unlike the actions of Secretary Sebelius, Secretary Pompeo’s actions were planned in advance and clearly coordinated with the Republican National Committee. Secretary Pompeo’s video also appears to violate a directive from the State Department’s Office of the Legal Advisor warning that “Senate-confirmed Presidential appointees may not even attend a political party convention or convention-related event.” The memorandum emphasized:

This guidance reflects the provisions of the Hatch Act (the federal statute governing political activities by federal employees), government-wide regulations implementing that Act, and State Department policies.⁴¹

For these reasons we are referring these issues to your office for a thorough review of any Hatch Act violations related to the participation of White House and agency employees in the Republican National Convention. We request a response to our request by September 17, 2020.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. If you have any questions regarding this request, please contact the staff of the Committee on Oversight and Reform at (202) 225-5051.

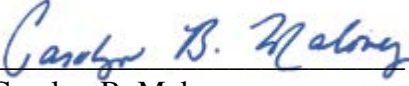
³⁹ Letter from Special Counsel Carolyn N. Lerner, Office of Special Counsel, to President Barack Obama (Sept. 12, 2012) (online at [https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20\(HA-12-1989\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kathleen%20Sebelius%20(HA-12-1989).pdf)).

⁴⁰ *OSC, HHS’ Sebelius at Odds over Hatch Act Violation*, Federal News Network (Sept. 12, 2012) (online at <https://federalnewsnetwork.com/all-news/2012/09/osc-hhss-sebelius-at-odds-over-hatch-act-violation/>).

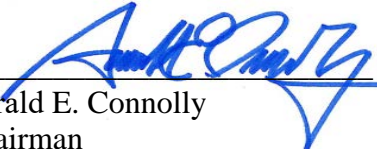
⁴¹ Department of State, *Memorandum from Office of the Legal Advisor to All Presidential Appointees and All Political Appointees* (Dec. 3, 2019) (online at www.politico.com/f/?id=00000174-227a-d006-a7f4-e27fc5690000).

Thank you for your assistance in this matter.


Sincerely,



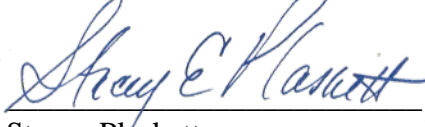
Carolyn B. Maloney
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cc: The Honorable James R. Comer, Ranking Member

The Honorable Glenn Grothman, Ranking Member
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