



May 8, 2019

Ms. Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street NW
Suite 218
Washington, DC 20036-4505

Dear Ms. Galindo-Marrone:

The Campaign Legal Center (“CLC”) respectfully submits the following Hatch Act complaint with the U.S. Office of Special Counsel (“OSC”) against Kellyanne Conway, the Senior Counselor to the President.

CLC has submitted two prior complaints regarding Ms. Conway. The first complaint arose from a November 20, 2017, interview with *Fox & Friends*, in which she used her official authority to advocate against then-Senate candidate Doug Jones in the Alabama Senate race.¹ We subsequently filed another complaint on December 7, 2017 following a CNN *New Day* interview in which Ms. Conway again used her official authority to advocate against the election of Doug Jones and for the election of Jones’ opponent, Roy Moore.²

After reviewing Ms. Conway’s conduct, your office concluded that she “impermissibly mixed official government business with political views about candidates in the Alabama special election for U.S. Senate,” and referred the matter to the President for appropriate disciplinary action.³ Upon your referral, the White House disputed your office’s findings, and it remains unclear whether Ms. Conway faced any disciplinary action since.⁴

Ms. Conway has violated the Hatch Act again. In several televised interviews between April 30 and May 1, 2019, on the White House driveway, Ms. Conway, speaking in her official capacity, disparaged the primary campaign efforts of Democratic presidential candidate Joe Biden, effectively campaigning against him.

In comments to reporters on April 30, 2019, Ms. Conway stood in the White House driveway and diverted discussions about the economy and

¹ CLC Complaint to OSC Regarding Kellyanne Conway Hatch Act Violation, CAMPAIGN LEGAL CTR. (Nov. 29, 2017), <https://bit.ly/2DXF0oD>.

² CLC Complaint to OSC Regarding Kellyanne Conway Hatch Act Violation, CAMPAIGN LEGAL CTR. (Dec. 7, 2017), <https://bit.ly/2GZen4h>.

³ U.S. Office of Special Counsel, Letter on Prohibited Political Activity Under the Hatch Act to the President 10 (Mar. 6, 2018), <https://bit.ly/2HeoT5d> (OSC File No. HA-18-0966 (Kellyanne Conway)).

⁴ Alexander Mallin, *Kellyanne Conway Says She Discussed Hatch Act Violations with President Trump*, ABC NEWS (Mar. 8, 2018), <https://abcn.ws/2GYd98t> (“She didn’t advocate for or against the election of any particular candidate,” press secretary Sarah Sanders said in her briefing on Wednesday. “She simply expressed the President’s obvious position specific to policy, that he have people in the House and Senate who would support his agenda.”).

healthcare to an attack on Mr. Biden. After saying President Trump was responsible for a “booming” middle class, she pivoted, unprompted, to criticize Mr. Biden’s campaign promise to rebuild the middle class.⁵ Ms. Conway made clear that she was speaking in her official capacity as a Trump administration official when she said, “[w]e inherited that big mess and are turning that battleship around.”⁶ Ms. Conway then contrasted Biden’s campaign statements with the President’s record.⁷

After another minute of general policy discussions unrelated to Mr. Biden, Ms. Conway again diverted the discussion into a political attack, stating, unprompted: “By the way, while I’m on the subject of Biden, since he is hovering over everything now,” and then proceeded to speculate about Mr. Biden’s campaign positions on healthcare and infrastructure, and again criticized his record and contrasted it with President Trump’s record.⁸

Toward the end of the interview, after discussing administration policy on topics ranging from infrastructure to healthcare, a reporter said to Ms. Conway: “You brought up Joe Biden several times unprompted” Ms. Conway replied that her comments were not “unprompted,” since Mr. Biden was a frontrunner in the polls.⁹ Although Ms. Conway had been ending the interview and walking away from the podium, following this question she returned to the podium to discuss the Democratic primary at length, and to disparage the candidacy of Mr. Biden and the other candidate she described as the frontrunner, Bernie Sanders.¹⁰ She accused Mr. Biden of lying about refusing President Obama’s endorsement: “I know he said ‘I asked President Obama not to endorse me, I’m too busy getting the endorsement of the firefighters, but I don’t want a popular president among the Democrats—first African American president—to endorse me.’ Do any one of you believe that? You let him get away with his first lie.”¹¹ Ms. Conway then criticized Mr. Sanders’ record¹² before shifting back to the current administration’s policy plans for healthcare, insisting she is part of a “very large team” that is working on healthcare.¹³

The next day, on May 1, 2019, Ms. Conway again mockingly stated in an interview on White House property: “Oh, we must be worried about Biden,” apparently referencing the Trump campaign as a potential general election opponent to Mr. Biden.¹⁴ Ms. Conway then declared the interview a “free commercial about all the things Joe Biden didn’t get done for the eight

⁵ *Kellyanne Conway Comments to Reporters at the White House* 10:44-11:01, C-SPAN (Apr. 30, 2019), <https://cs.pn/2ZTOaM5> (“You’ve got middle class is booming now, despite what Joe Biden says. I don’t know exactly what country he is talking about, when he says rebuilding the middle class. He also just sounds like someone who wasn’t vice president for eight years. He’s got this whole list of grievances about what’s wrong with the country, as if he didn’t have—as if he wasn’t in that building for eight years.”).

⁶ *Id.* at 11:01-11:05.

⁷ *Id.* at 11:11-11:30.

⁸ *Id.* at 12:02-12:50 (“Is [Biden] for Medicare for all? Because Medicare for all means Obamacare didn’t work. So I’m just curious if he’s dumped Obama-Biden-care...And is he against infrastructure because he sat in this place—I’ve been here for just over two years—he was here for over eight, he’s been in government for nearly 50 years. Why are the roads and bridges crumbling? Why is our air traffic control system in such disrepair? Why do those water mains break? Why do they look the other way at so many things? More people are coming out of prison, more people are going into the workforce, more people are in drug treatment, more people are not under of the yoke of regulation, because of this president, not because of him and the president he served.”).

⁹ *Id.* at 26:02-26:09.

¹⁰ *Id.* at 26:16-26:42.

¹¹ *Id.* at 28:21-28:36.

¹² *Id.* at 28:50-29:09 (“... [H]e’s a lot like Donald Trump except for good ideas. Ideas that are mainstream and ideas that are part of a democracy and not socialism.”).

¹³ *Id.* at 29:13.

¹⁴ *The Last Word with Lawrence O’Donnell* 1:36, MSNBC (May 1, 2019), <https://on.msnbc.com/2vAiVaT>.

years he was vice president.”¹⁵ To clarify any confusion about whether she was discussing Mr. Biden as a presidential primary candidate, she continued: “It will be fascinating to watch the other candidates who are tied with a margin of error in most polls in the Democratic—I can talk about them too, if you’d like, no problem”¹⁶

Ms. Conway’s remarks, delivered in her official capacity on White House property, were an obvious attempt to use her official authority to advocate for the defeat of a particular candidate, Mr. Biden. She unequivocally suggested that Mr. Biden, as a current Democratic presidential candidate, lied about an endorsement, and she attacked his tenure as vice president and criticized his campaign pledges. This plainly violates the Hatch Act.

The Hatch Act prohibits a federal employee from using official authority or influence to interfere with or affect the result of an election. *See* 5 U.S.C. § 7323(a)(1). Hatch Act regulations make clear that the use of official authority includes, but is not limited to, instances where an employee uses the employee’s official title or position while participating in political activity. *See* 5 C.F.R. § 734.302(b)(1). Political activity is defined as activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group. *See* 5 C.F.R. § 734.101.

In finding that Ms. Conway’s comments during her *Fox & Friends* and *New Day* interviews were given in her official capacity, your office considered “the official arrangement of the interview, the use of her official title, the discussion of official topics, and her standing in front of the White House during the interview.”¹⁷ Similarly, the remarks at issue here were delivered on White House property, with the White House and the Executive Office buildings clearly visible in the background during some segments of the interviews. Ms. Conway discussed official topics alongside comments related to Democratic primary candidates, moving seamlessly between administration policy priorities and political attacks. The location of the interview and the topics discussed demonstrate that Ms. Conway was speaking in her official capacity as a Senior Counselor to the President.

Ms. Conway is free to discuss current events, policy issues, and matters of public interest, but may not use her official position to advocate against the election of a candidate for partisan political office.¹⁸ Ms. Conway’s remarks were not simply a comment on a past administration’s policies or a critique of a former vice president’s job performance. They were unprompted “intentional partisan jabs”¹⁹ at a candidate for the 2020 presidential election. She specifically criticized Mr. Biden’s endorsements and policy positions taken as a primary candidate, and referenced his polling relationship to other Democrats in the race. Her remarks were clearly attempts to advocate for the defeat of Mr. Biden, a candidate for partisan political office.

As your office has noted before, Ms. Conway has had numerous opportunities to study her obligations under the Hatch Act.²⁰ Last year, your office found that Ms. Conway violated the Hatch Act under strikingly similar circumstances, which certainly put her on heightened notice that her conduct during these interviews would break the law.

¹⁵ *Id.* at 1:39.

¹⁶ *Id.* at 2:06-2:14.

¹⁷ U.S. Office of Special Counsel, *supra* note 3, at 8.

¹⁸ U.S. Office of Special Counsel, Hatch Act Federal Frequently Asked Questions, <https://osc.gov/Pages/HatchAct-FAQs.aspx> (last visited May 3, 2019).

¹⁹ U.S. Office of Special Counsel, *supra* note 3, at 8.

²⁰ *Id.* at 5-6.

Even one violation of the Hatch Act could result in removal from federal service, suspension, reprimand, or civil penalties. *See* 5 U.S.C. § 7326. Your office has repeatedly sought removal of, or lengthy suspensions for, executive branch employees who violate the Hatch Act.²¹ Ms. Conway's repeated, knowing, and willful violations warrant a lengthy suspension or removal from federal service, or the message to the broader federal workforce will be that the rules do not matter.

We therefore ask that OSC open an investigation into Ms. Conway's conduct. If OSC finds she violated the Hatch Act, it should recommend that the President take appropriate action, including her removal from federal service or, at least, the imposition of a lengthy unpaid suspension.

Respectfully submitted,

_____/s/_____
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Director, Federal Reform

_____/s/_____
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²¹ For example, OSC sought removal of a National Oceanic and Atmospheric Administration employee for repeated Hatch Act violations. U.S. OFFICE OF SPECIAL COUNSEL, *JUDGE ORDERS REMOVAL OF NOAA EMPLOYEE FOR HATCH ACT VIOLATIONS*, (Jan. 31, 2017), <https://osc.gov/News/pr17-04.pdf>. In 2015, OSC secured a 112-day suspension for a Federal Emergency Management Agency employee who engaged in partisan political activity in the workplace and solicited political contributions. U.S. OFFICE OF SPECIAL COUNSEL, *MSPB ORDERS REMOVAL OF EMPLOYEE FOR HATCH ACT VIOLATIONS* (June 18, 2015), <https://osc.gov/News/pr15-13.pdf>. In 2014, OSC secured the resignation of a Federal Election Commission (FEC) attorney who had posted partisan political tweets and participated in an online media interview from an FEC facility where she criticized the Republican Party and its presidential candidate. U.S. OFFICE OF SPECIAL COUNSEL, *OSC OBTAINS DISCIPLINARY ACTION IN TWO HATCH ACT CASES* (Apr. 29, 2014), <https://osc.gov/News/pr14-09.pdf>. That same year, OSC entered into a settlement agreement with an Internal Revenue Service (IRS) employee who agreed to a 100-day unpaid suspension for urging callers to an IRS help line to reelect President Obama. U.S. OFFICE OF SPECIAL COUNSEL, *OSC OBTAINS DISCIPLINARY ACTION IN TWO HATCH ACT CASES* (July 10, 2014), <https://osc.gov/News/pr14-13.pdf>. OSC also secured a 14-day suspension of an IRS employee who criticized Republicans in her conversations with a taxpayer, despite the employee stating "I'm not supposed to voice my opinion, so you didn't hear me saying that." U.S. OFFICE OF SPECIAL COUNSEL, *OSC ENFORCES HATCH ACT IN A SERIES OF IRS CASES* (Apr. 9, 2014), <https://osc.gov/News/pr14-06.pdf>.