

United States Senate

WASHINGTON, DC 20510

May 3, 2019

The Honorable Henry Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington, DC 20036

Dear Special Counsel Kerner:

As you know, the Hatch Act generally prohibits certain categories of political activities for all covered employees.¹ I write today to request your assistance with a review of recent oral statements by Kellyanne Conway, Assistant to the President and Senior Counselor.

On April 27, 2019, Ms. Conway made the following statements during an interview on CNN:

“You want to revisit this the way Joe Biden wants to revisit, 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.”

The chyron on the bottom of the interview periodically identified Ms. Conway as “Counselor to President Trump.”²

On April 30, 2019, Ms. Conway made the following statements in response to a question about infrastructure:

“You’ve got middle-class is booming now despite what Joe Biden says. I don’t know exactly what country he’s talking about when he says he needs to rebuild 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 of what’s wrong with the country as if he didn’t have, as if he didn’t work in this building for eight years...I know he said that ‘I asked President Obama not to, not to endorse me. I’m too busy getting the endorsement of firefighters but I don’t want a popular president among the Democrats, first African-American president to endorse me.’ Do any of you believe that? You let him get away with his first lie. Why

¹ 5 U.S.C. § 7321 *et seq.* (2017).

² Video of the April 27, 2019, interview is available at the following link:
<https://www.facebook.com/CNNReplay/videos/kellyanne-conway-calls-bidens-launch-video-on-charlottesville-dark-and-spooky/418145955648919>.

did you do that? So I will ask him if you're not going to...hey Senator, Vice President Biden, why are 28 million Americans without health insurance nine years after 'Obama Biden Care' passed?"

As she began walking away, a reporter said, "You brought up Joe Biden several times unprompted..." Ms. Conway responded, "How was it unprompted? He's the frontrunner." During these statements, Ms. Conway stood on the White House grounds.³

On May 1, 2019, Ms. Conway made additional comments about Joe Biden:

"Oh we must be worried about Biden, look what Kellyanne said about him today. So thanks for the free commercial about all the things Joe Biden didn't get done for the eight years he was vice president...I do find it fascinating that the former Vice President Joe Biden said that he asked President Obama not to endorse him, 'do not endorse me,' but we know he's open to endorsements because he got it from the management of the firefighters..."

During these statements, Ms. Conway stood on the White House grounds.⁴

This is not the first controversy involving the Trump Administration's compliance with the Hatch Act. The Office of Special Counsel (OSC) has previously concluded that White House Director of Social Media Dan Scavino Jr. violated the Hatch Act in using his official position to oppose the election of Representative Justin Amash.⁵ OSC also concluded that former U.S. Ambassador to the United Nations Nikki Haley violated the Hatch Act in using her official position to retweet President Trump's endorsement of Ralph Norman in a special election.⁶ According to your office, Ms. Conway herself has already violated the Hatch Act on at least two separate occasions during discussions of the candidates in the 2017 Alabama special election for U.S. Senate.⁷ Even a White House official from the Office of the First Lady violated the Hatch Act after using her official Twitter account to post a message that included #MAGA and a photograph of a 2015 campaign rally.⁸ These actions demonstrate a troubling lack of concern with Hatch Act compliance on the part of the Trump Administration; instead, senior government officials appear free to use their office to influence political elections regardless of the law.

³ Video of Ms. Conway's comments from April 30, 2019, is available at the following links: <https://www.youtube.com/watch?v=35voQ8eJzLA>; <https://www.cnn.com/videos/politics/2019/04/30/kellyanne-conway-joe-biden-infrastructure-erin-burnett-monologue-ebof-vpx.cnn>.

⁴ Video of Ms. Conway's comments from May 1, 2019, is available at the following link: https://www.huffpost.com/entry/lawrence-odonnell-kellyanne-conway-breaking-law-video_n_5ccaa095e4b0e4d7572da402.

⁵ Letter from Ana Galindo-Marrone to Senator Tom Carper re OSC File No. HA-17-2986 (June 5, 2017).

⁶ *Nikki Haley Hit for Hatch Act Violation Over Trump Retweet*, POLITICO (Oct. 3, 2017).

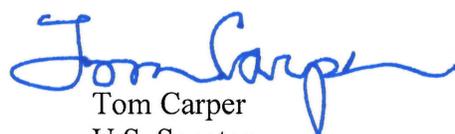
⁷ Letter from Special Counsel Henry Kerner to President Donald Trump re: OSC File No. HA-18-0966 (Mar. 6, 2018).

⁸ Letter from Erica Hamrick to Senator Tom Carper re OSC File No. HA-18-4852 (Sept. 20, 2018).

As the Special Counsel, you have authority to review potential Hatch Act violations. I request that you use the authority Congress granted you under the Hatch Act of 1939, as amended, to “receive any allegation of a prohibited personnel practice and...investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.”⁹ I request that you review this letter and act promptly on your findings. I also ask you to report to my staff any recommendation for disciplinary action, if warranted.

With best personal regards, I am

Sincerely yours,



Tom Carper
U.S. Senator

cc: The Honorable Margaret M. Weichert
Director (Acting)
U.S. Office of Personnel Management

⁹ 5 U.S.C. § 1214 (2015).