

VIOLATIONS OF THE HATCH ACT UNDER THE TRUMP ADMINISTRATION

HEARING BEFORE THE COMMITTEE ON OVERSIGHT AND REFORM HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

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- * OSC Website front page; submitted by Rep. Armstrong.
- * Hatch Act Fact Sheet article; submitted by Rep. Hill.
- * Letter from White House to OSC, dated June 11, 2019; submitted by Rep. Meadows.
- * Relevant Code of Federal Regulations; submitted by Rep. Meadows.
- * Complaint by CREW to the OSC, dated May 8, 2019; submitted by Rep. Jordan.
- * U.S.C. 1212; submitted by Rep. Hill.
- * Complaint by CREW to the OSC, dated October 23, 2018; submitted by Rep. Jordan.
- * CREW Statement; submitted by Rep. Pressley.
- * QFR: Sent to Kerner (OSC) from Chairman Cummings and Rep. Clay.
- * QFR: Response from Kerner (OSC).

VIOLATIONS OF THE HATCH ACT UNDER THE TRUMP ADMINISTRATION

Wednesday, June 26, 2019

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND REFORM
Washington, D.C.

The committee met, pursuant to notice, at 10:04 a.m., in room 2154, Rayburn House Office Building, Hon. Elijah Cummings (chairman of the committee) presiding.

Present: Representatives Cummings, Maloney, Norton, Lynch, Cooper, Connolly, Krishnamoorthi, Raskin, Rouda, Hill, Wasserman Schultz, Sarbanes, Welch, Speier, Kelly, DeSaulnier, Lawrence, Plaskett, Khanna, Ocasio-Cortez, Pressley, Tlaib, Jordan, Amash, Gosar, Foxx, Massie, Meadows, Hice, Grothman, Comer, Cloud, Gibbs, Higgins, Norman, Roy, Miller, Green, Armstrong, and Steube.

Chairman CUMMINGS. The committee of Oversight and Government Reform will come to order. Without objection the chairman can declare a recess of the committee at any time. The full committee hearing is convening regarding violations of the Hatch Act under the Trump administration. I now recognize myself for five minutes to give my opening statement.

Today, we are holding a hearing on a very troubling report issued by the Office of Special Counsel on June 13 of this year. This report finds that Kellyanne Conway, counselor to President Donald Trump, violated the Hatch Act dozens of times, and it recommends that the President fire her immediately for her repeated violations.

There are rarely issues that come before our committee that are so clearcut, but this is one of them. This is about right and wrong. This is about the core principle of our precious democracy that nobody, not one person, nobody, in this country is above the law. Contrary to claims from Ms. Conway and President Trump, this is not a conspiracy to silence her or restrict her First Amendment rights. This is an effort to enforce Federal law, which, very clearly, there is no ambiguity here, which very clearly prohibits employees from engaging in political activities on Federal property or while using their official position. This report was issued by Special Counsel Henry Kerner.

Mr. Kerner leads the Office of Special Counsel, the independent agency charged with enforcing the Hatch Act. Listen to this – Mr. Kerner was nominated to his position by President Trump in 2017 and all of the Republicans and Democrats in the Senate approved his nomination by a voice vote. Mr. Kerner worked on the Repub-

lican staff of this very committee for several years under both Chairmen Darrell Issa and Jason Chaffetz.

In this report, the Special Counsel describes, and I quote: “Persistent, notorious, and deliberate Hatch Act violations.” end of quote. This report explains how Ms. Conway violated the law dozens of times by using her official position to criticize Democratic candidates and support Republican candidates. I should not have to say this, but obviously that is against the law. It is against Federal law. Unfortunately, this was not the first time the Special Counsel informed the President that Ms. Conway had violated the law.

In 2018, the Special Counsel sent President Trump a report finding that Ms. Conway violated the Hatch Act twice. Yet, the President took no disciplinary action against her. Instead, with the President’s full support, Ms. Conway has engaged in an astounding show of defiance by increasing the frequency of her illegal activity and disparaging the law itself.

On May 29, 2019, she answered a question from a reporter about her violations, saying, and I quote: “Blah, blah, blah.” end of quote. She then stated dismissively, and I quote: “Let me know when the jail sentence starts.” end of quote. Ms. Conway is apparently comfortable escalating her violations and her defiance because she knows President Trump will not take any disciplinary action against her.

The President stated during an interview with Fox News, and I quote: “No, I’m not going to fire her. I think she’s a terrific person. She’s a tremendous spokeswoman. She’s been loyal.” end of quote. This is not a question of whether somebody is a terrific person. It’s not a question of whether they are a tremendous spokesperson. It is not a question as to whether they are loyal. It is a question of whether they obeyed the law, period.

Now things are getting worse. In response to the special counsel’s report, the White House and Ms. Conway have gone on the offensive by arguing that the Hatch Act does not even apply to her. Tell that to all the other Federal employees that have to adhere to this law. In a letter to the Special Counsel on June 11, the White House counsel claimed there were no violations, quote, “even assuming that the Hatch Act applies to the most senior advisor to the President in the White House,” end of quote.

Similarly, Ms. Conway stated this week, quote: “It is not even clear to us at the White House, according to the White House counsel, that the Hatch Act applies to assistants of the President.” end of quote. Let me make this abundantly clear. The Hatch Act absolutely applies to Ms. Conway, period. It is written in black and white. We are the committee on jurisdiction over this law, and neither Congress nor the courts have ever suggested that a President’s advisors are exempt.

Finally, I want to address the White House’s baseless, and they truly are baseless, arguments for refusing our request for Ms. Conway’s testimony here today. They sent a letter to the committee on Monday arguing that Ms. Conway is, quote: “Absolutely immune.” end of quote. From testifying. They claimed that this principle has been, quote, “consistently adhered to by administrations of both political parties.” end of quote.

Ladies and gentlemen, this is simply not true. Congress has never accepted the claim that White House advisers are absolutely immune. In fact, our committee has obtained public testimony from numerous White House officials while they served in the White House. These include 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.

In the case of Ms. Conway, the White House's arguments have even less merit. We're not asking about any conversations she had with the President, and we're not asking about any advice she gave to the President. Here we have a clearcut case of a Federal employee violating Federal law over and over and over again. We have video of that same Federal employee mocking the law itself and claiming it does not apply to her.

And we have the White House asserting that Congress may not question this employee. May not investigate her repeated violations. And may not conduct oversight relating to legislation that we, on this committee, passed. This is the opposite of accountability. It is contrary to our fundamental system of laws in this country. Again, nobody is above the law, not even Ms. Conway.

For these reasons, we will hear from our ranking member. We will hear Special Counsel Kerner's opening statement. And then we will pause this hearing so the committee members can vote on a subpoena to compel Ms. Conway's appearance at a hearing later today.

With that, I will yield to the distinguished ranking member.

Mr. JORDAN. Mr. Chairman, the report from the Office of the Special Counsel is outrageous, it's unprecedented, it's unfair, and it's just flat out wrong. We should be honest. The reason we're here today is Mr. Kerner got his feelings hurt. He told that to the White House counsel's office. He said he took great offense to Ms. Conway's response, and that's why—that's why he rushed the report and only gave Ms. Conway 16 hours to respond. Mr. Kerner felt slighted. Ms. Conway didn't pay enough attention to him and his office. And you know why she didn't? Because the allegation is ridiculous.

Let's be clear about the Hatch Act. A Federal employee can't come to work and hand out partisan literature, can't come to work and hand out yard signs. A Federal employee can't come to work and raise funds for a candidate or pressure subordinates to support a particular political party, but a senior advisor to the President of the United States can sure as heck go on cable news shows and answer questions.

David Plouffe did it, David Axelrod did it, John Podesta they all did it for President Obama. But now that it's a strong-willed Republican helping President Trump, oh, can't have that. Can't have that—all of a sudden, nope, got to stop that.

Mr. Kerner and the Office of Special Counsel felt slighted. They also felt pressured. Again, he said it. He told the White House counsel he felt pressured by the left-wing political organization that filed the complaint, same left-wing political organization that raises tons of money by attacking President Trump and his admin-

istration. They felt slighted. They felt pressured, so they were unfair.

In the Obama Administration, Hilda Salize, Mr. Castro, and Josh Earnest were all found to have violated the Hatch Act. OSC didn't recommend they be fired. For some of those people, didn't even issue a public report. Americans hate unfairness, and they know it when they see it. They also hate double standards.

By the way, you know what else a Federal employee can't do? You know what else they can't do? They can't target people for their political beliefs. Remember this just a few years ago when the IRS systematically targeted people because they had different political persuasion. Federal employees can't do what Lois Lerner in the IRS did when they targeted Tea Party groups.

When they applied one standard to their ideological friends, but a different standard if you were conservative. And here is the irony. Office of Special Counsel seems to be doing the same thing to Ms. Conway. A Democrat political group who filed the complaint and the OSC, they don't like what Ms. Conway is doing. They don't like the fact that she's conservative. But you know what, it's not really that. It's not even really that.

The IRS didn't really target Tea Party groups because they were conservative. Do you know why they targeted them? Because they were effective. And that's the same thing we see in play here. Ms. Conway is being targeted not just because she's a conservative, not just because she's in the Trump administration, but she's being targeted because she's good at what she does. And that's why this should not stand.

And the idea that the Democrats are going to now subpoena her is just ridiculous. They are going to do it because she does her job so well, that's why we're here. And I hope in the next few hours that we can get the truth out about the Hatch Act and really expose the motives that drive this whole darn thing in the first place.

And with that, Mr. Chairman, I yield back.

Chairman CUMMINGS. I now would like to welcome our witness, the Honorable Henry J. Kerner, Special Counsel, Office of Special Counsel. If you would please rise and raise your right hand, I will begin by swearing you in.

Do you swear or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KERNER. I do.

Chairman CUMMINGS. You may be seated. Let the record show that the witness answered in the affirmative, and I want to thank you for being here.

Mr. Kerner, I remind, you since you're familiar with the hearing room and being in these settings, the microphones are very sensitive, so please speak directly into them.

Without objection, your written statement will be made a part of the record.

There has been a lot said by the ranking member, and I would hope that you would address some of those issues in your opening statement. If not, we'll get to them in questions.

With that, you're now recognized for five minutes.

**STATEMENT OF THE HONORABLE HENRY J. KERNER, SPECIAL
COUNSEL, OFFICE OF SPECIAL COUNSEL**

Mr. KERNER. Thank you Mr. Chairman. I have a prepared statement, but since the ranking member mentioned the IRS targeting scandal, I thought I'd point out that when I was working on the Senate side we authored a 37-page report criticizing the IRS for targeting conservative groups and Tea Party groups. I was the author of that report. And we were very strong in making clear that that was unacceptable and that the IRS should not have targeted the conservative groups.

Mr. JORDAN. No kidding.

Chairman CUMMINGS. Do not interfere with the witness. Let him testify.

Mr. JORDAN. He was speaking directly to me.

Chairman CUMMINGS. No, no, no, no. He's talking.

Mr. JORDAN. Got it.

Mr. KERNER. Sorry, I just wanted to make that clear. Otherwise, good morning to Chairman Cummings, also Ranking Member Jordan, and the members of the committee. Thank you for the opportunity to appear before this committee to discuss the important work of OSC's Hatch Act Unit. I'm proud to be here representing OSC, and I'm especially pleased to be back before this committee where I started my Federal career.

I came to work at what was then OGR because I wanted to make a difference, and I'm very proud of the work that we did to hold government officials accountable, all the way up to the attorney general. While a Republican staffer here on two separate occasions under Chairman Issa and Chaffetz, I learned two valuable lessons.

One, the importance of accountability, especially of high government officials. And, two, treating everybody the same. Holding the little guy to the exact same standard as those who are part of the politically well-connected class. We cannot have two sets of rules, instead we need to have equal treatment under the law, and I've internalized those two lessons and I've taken them with me to my new job at the Office of Special Counsel. Speaking of the Office of Special Counsel, I'm proud of the longstanding work of OSC to hold government officials at all levels accountability for violation of the Hatch Act.

When President Trump appointed me to the position of Special Counsel, and I'm honored by that appointment, I accepted this job with the expectation and obligation that I would uphold the Constitution and faithfully discharge my duties in a fair and impartial manner. I knew from my 18 years as a prosecutor in Los Angeles, that doing so would involve making hard calls. That leads me to our topic for the day. OSC's investigation in Kellyanne Conway's violations of the Hatch Act.

I want to make it very clear at the outset that with respect to Ms. Conway's First Amendment rights, we in no way wish to assist anyone in silencing her speech. The President has stated publicly that he considers her an effective proponent of his policies, and we have no intent in depriving the President of that assistance.

That said, over the past 1 1/2 years, OSC has received numerous separate Hatch Act complaints against Ms. Conway. As with all Hatch Act complaints that OSC receives, career Hatch Act Unit at-

torneys conduct thorough and impartial investigations of her alleged political activity.

On March 6, 2018, OSC issued a report to the President documenting multiple Hatch Act violations by Ms. Conway. Although Ms. Conway had the opportunity to respond to our report, she chose not to do so.

The most recent report was the result of a month's long investigation that began with complaints by her Twitter activity back in December of last year and came to include a multitude of violations during media appearances by which OSC has received complaints.

Let me also be clear, the statements made by Ms. Conway that violated the Hatch Act were her political opinions. Ms. Conway was not talking only about fact during her media appearances in question, instead she pivoted, sometimes completely unprompted, to attacking the Democratic candidates personally, such as calling the entire field of Democratic candidates wood chips, and calling Senator Booker tinny and sexist. Those statements are not facts, they are campaign rhetoric, and they are forbidden by the Hatch Act when she says them in her official capacity.

During the recent investigation of Ms. Conway, OSC had substantial communication with the White House counsel's 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.

I want to emphasize one more time that we did not make this recommendation lightly. But as Professor Jonathan Turley, a frequent witness on Capitol Hill and a nationally recognized constitutional law scholar, wrote on his blog: Ms. Conway's behavior presented a, quote, "direct and existential challenge to the Office of Special Counsel. They have to act in the face of such flagrant and repeated violations." end quote.

So why do we even have a Hatch Act? We have a Hatch Act, which was passed in 1939 because at 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.

To achieve these worthy goals, the Hatch Act places certain limitations on the political activity of Federal executive branch employees. Political activity as defined in the Hatch Act regulations is any activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.

One of the Act's core restrictions prevents government employees from using their official authority or influence to interfere with or affect the results of an election. The Supreme Court has twice af-

firmed the Hatch Act's constitutionality as a permissible regulation of speech. In the later of the two rulings, the Supreme Court said the Hatch Act had struck a delicate balance between fair and effective government, and the First Amendment rights of individual employees.

As a former congressional staffer, I'm well-aware of the restrictions placed on a congressional staff and even members in regard to mixing political activity with one's official duties. And just like the Hatch Act, those restrictions play a crucial role in reassuring the American people that their government is working on behalf, regardless of how they voted or which party or candidate they support.

Now some have questions why the Hatch Act should apply to someone like Ms. Conway, who was a former campaign manager for President Trump and presently serves as one of his senior counselors. But as the conduct of past administration officials in similar positions, people like David Axelrod, Karl Rove, has shown 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.

Another example is the now departed press secretary, Sarah Huckabee Sanders, who desperately pivoted away from questions that were posed to her by the press core about election issues. Ms. Conway's comments, by contrast, were indistinguishable from the partisan attacks that a campaign official would make. Ms. Conway's repeated personal attacks on multiple Democratic party candidates, which Ms. Conway, by the way, is permitted to make as a private citizen are wholly unrelated to the work of governing on behalf of the American people.

Some have tried to argue that OSC's holding Ms. Conway to a higher standard, and treating her more harshly than high level officials of the Obama Administration. The opposite is true. The career supervisor of OSC's Hatch Act Unit is not only aware of but investigated violations by Obama Administration officials, and their recommendations are carefully calibrated on the severity of the violations based on precedence.

For example, then HHS Secretary Kathleen Sebelius was found to have committed two Hatch Act violations at a single event. And, in response, acknowledged error and reimbursed the U.S. Treasury for all expenses associated with that event. Interesting at the time that OSC issued its report on Ms. Sebelius, some Republicans and outside conservative groups called for her removal.

In contrast to Ms. Sebelius, Ms. Conway has been found to have committed at least 10 separate Hatch Act violations, has expressed no remorse, and continues to express disdain for the law's long-standing restrictions.

As stated in the report, Ms. Conway's conduct created an unprecedented challenge to OSC's ability to enforce the Hatch Act. Our 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. I am here to emphatically say that that is not the case.

In closing, just as I did when I worked for this esteemed committee, I will continue to work hard to hold Federal employees ac-

countable when they fall short of the standards that Congress has mandated.

Accordingly, under my leadership, OSC will continue its distinguished history of enforcing the Hatch Act, and preserving the distinction between governing and campaigning.

Thank you. And I look forward to answering your questions.

Chairman CUMMINGS. Thank you very much, Mr. Kerner. We look forward to engaging you in questions when we reconvene after we dispose of some committee business. The hearing will now stand in recess.

[Whereupon, at 10:38 a.m., the committee recessed for a business meeting.]

Chairman CUMMINGS. The hearing will now reconvene. We'll get Mr. Kerner up here. Where is he? I want to thank all the members for are being here as soon as Mr. Kerner gets to the table, we will start the questioning.

The committee will come to order. Mr. Kerner, I want to thank you and the hardworking career experts at the Office of Special Counsel who spend many months doing a thorough and careful investigation. I understand your recommendation to President Trump that Kellyanne Conway be removed from office was not made without careful consideration.

I want to play a clip from a phone interview President Trump did last Friday on Fox & Friends responding to OSC's report. Play the clip please.

[Video shown.]

Chairman CUMMINGS. What message does the President's refusal to fire Ms. Conway send to the over 2 million people in our Federal work force?

Mr. KERNER. Thank you, Mr. Chairman. From our perspective, we follow the statute. We try to apply the laws—the facts to the law. And under the law we issue the report with a recommendation to the President, it is the prerogative of the President then to decide what discipline, if any, to impose. That's his choice. We respect his choice. And the President, obviously, decided to do what he does, and that's consistent with the statute.

Chairman CUMMINGS. Now, the Hatch Act was intended to provide the American people with confidence that the government is using tax dollars for the public good and not to influence or fund a political campaign. Is that a fair statement?

Mr. KERNER. Yes.

Chairman CUMMINGS. If a career civil servant violates the Hatch Act, the Office of Special Counsel can bring an action to discipline the employee before the Merit Systems Protection Board, OSC does not have the authority, however, to discipline political appointees. Is that correct?

Mr. KERNER. Yes, that's correct.

Chairman CUMMINGS. For political appointee, however, OSC can write a report and make a recommendation of discipline, but ultimately it's up to the President?

Mr. KERNER. Correct.

Chairman CUMMINGS. On March 6, 2018, you sent President Trump a report that found that Ms. Conway violated the Hatch Act

on two occasions and that she knew she was breaking the law. Did the President ever send you a response to your report?

Mr. KERNER. No, I don't believe so.

Chairman CUMMINGS. Are you aware whether President Trump took any action to discipline Ms. Conway after your first report?

Mr. KERNER. Ms. Conway mentioned on a couple of appearances that she may have been counseled, but we are not aware of any particular discipline, no.

Chairman CUMMINGS. Now, White House spokesperson Hogan Gidley released a statement to the press in response to your first report, and he said this. Kellyanne Conway, and I quote, "did not advocate for or against the election of any particular candidate. She simply expressed the President's obvious position that he had people in the House and Senate who support his agenda." end of quote.

Was that kind of response—was that the kind of response you would expect to see in the White House if the White House was taking your report seriously?

Mr. KERNER. Well, we've had conversations with the White House, and we obviously try to work with the White House in order to make sure that the Hatch Act is complied with. And so our hope is that we will continue to be able to get the White House to agree to comply with the Hatch Act as prohibitions.

Chairman CUMMINGS. On June 13, 2019, OSC released another report that found that Ms. Conway broke the law dozens of times. You recommended to the President that he fire her, and I'm sure that was not a decision you took lightly. Why did you recommend that the President fire Ms. Conway, because that's a pretty stiff penalty. Would you agree?

Mr. KERNER. Yes. Yes, sir. That is the harshest penalty, obviously, in a civil case like this. We did not take that lightly. It was based on the recommendation of the career folks who prepared the report. It's consistent with MSPB, Merit Systems Protection Board precedent, and it's based on the fact that we have never had a repeat offender. We've never had anyone that we had to write two reports to a President to. We've never had a situation where there were so many violations. And then ultimately she made a comment that seemed to suggest that she didn't feel she was bound by the Hatch Act. So there's no way to stay in Federal employment while she doesn't feel she's obligated to abide by this law.

Chairman CUMMINGS. I wonder if you've got, again, these 2 million Federal employees, and I'm sure these cases do come up, and where they may have one violation. I mean, you know, we talk about fairness, I mean, if a person had one or two violations, here we have somebody who has 25 alleged violations, and basically nothing happens. What does that say to them? I mean, is that fair?

Mr. KERNER. Well, Mr. Chairman, I think from OSC's perspective, we try to apply the law as fairly as we can. To emphasize what I said in my opener, we're going to treat the well-connected the same as the little guy we are going to have one standard. We're not going to have a two-tier Hatch Act enforcement system. Obviously, cases with ordinary Federal workers go to the board, the board sometimes also imposes punishment that may differ from what we recommend.

So sometimes that's simply—imposing discipline is not something OSC does, but we are going to bring cases fairly and equally, and that's what we've done here.

Chairman CUMMINGS. If she was just a regular civil servant, do you think she would have been disciplined?

Mr. KERNER. The professionals who work for me who have been doing this for just about 40 years have said that if this were a MSPB case, removal would be the very likely outcome.

Chairman CUMMINGS. All right. Very well. Mr. Amash.

Chairman CUMMINGS. Mr. Amash.

Mr. AMASH. Thank you, Mr. Chairman. I yield to the gentleman from North Dakota, Mr. Armstrong.

Mr. ARMSTRONG. Thank you.

Mr. Chairman, I think it is important to note at the outset that, while the Hatch Act does not apply to—it does not Members of Congress. And it is always interesting to hear from my friends on the other side about the blending of political and official when every day we see examples of elected officials using their current positions to propel their Presidential campaign messages.

Having looked through the materials in preparation for this hearing, I can't help but feel that the Office of Special Counsel's interpretation of the Hatch Act means that President Trump's top advisers must subscribe to the legal and political fiction that you can decouple an opponent's Presidential campaign from their current elected position.

And my concern with the OSC's interpretation of the Hatch Act at least appears to be bipartisan. Chairman Cummings even sent a letter to OSC on December 7 of last year, and here's a direct statement: OSC's guidance is wrong. There is no limit that criticizing a policy of a sitting President or any other politician is a violation of the Hatch Act.

Apparently that applies unless you're an adviser to this President.

But all that aside, President Trump's advisers are going to continue to act as his surrogates. So going forward, maybe we can help—maybe this hearing can help us understand what a senior counselor to the President is allowed to say on TV or social media without personally offending Mr. Kerner or anybody else in the OSC's office.

So if we're talking about a sitting Senator and we're talking about Medicare for All, I mean, is it okay to say I hope Bernie Sanders Medicare for All proposal is purely campaign rhetoric, because if he were to introduce a Senate bill which actually provided a \$32 trillion pay-for, people would have to give up the coverage they trust, and taxpayers would be on hook for trillions of dollars? Is that an okay statement?

Mr. KERNER. I'm not in a position to judge a statement like that. The way OSC works is we get complaints about statements. There is an investigation opened and started, and we don't just give—

Mr. ARMSTRONG. So what about—what if Senator Warren in her role as Senator, and I'm sure that her Presidential candidacy is purely coincidental, plans to cancel student loan debt for 95 percent of borrowers? Bribing people to vote for you for President is a bad way to legislate as a Senator.

What if an adviser was to ask about the status of the NDAA with several of the Senate Democrats campaigning for President instead of being present to support our military. Could an adviser say, "Senator Gillibrand, Harris, Warren, Sanders, Bennet, and Klobuchar should get off the Presidential campaign trail and back into the Senate to complete the NDAA"? Instead, the Senate minority leader is asking for a full stop in the Senate until the Democratic primary is complete.

What if an adviser makes an obvious connection between a policy proposal and a possible political motivation? Is the adviser allowed to highlight the intention of the lawmaker?

Senator Harris has introduced a new tax credit for renters. I'm sure introducing legislation that gives more free stuff to more people has nothing to do with her Presidential campaign.

What about if an adviser weighs in on a current U.S. Senator's campaign position on abortion? Can an adviser say, "Senator Gillibrand compared pro-life views with racism, this represents a morally vacant position not fitting of a United States Senator"?

Even further, what if a Senator claims to support something while running for office but refuses to actually introduce a bill? Can the President's adviser comment on how the sitting Senator is acting in a political and not governmental capacity?

Or what about this? Senator Gillibrand, in her role as Senator and not as a candidate for President, has introduced legislation to eliminate pesticides from school lunch programs, demonstrating her misunderstanding of science and production agriculture. I'm sure just a coincidence that it happened right around the same time it was mentioned in a campaign speech.

But if she wants to check with the former First Lady, I'm sure she will find out that rural America doesn't really like the Senate or the White House interfering with school lunch programs.

Can the President's advisers ask if Senator Elizabeth Warren introduced a bill that would make same-sex couples eligible for a retroactive tax refund, however, she has not supported a retroactive credit for other filers who would have a lower rate due to the recent tax cuts? This demonstrates that she is acting in the best interest of her political base and not in the best interest of the average citizen.

In closing, Mr. Chairman, I request unanimous consent to enter into the record the front page of the OSC website which, as of this morning, features a prominent link stating: OSC finds Kellyanne Conway repeatedly violated the Hatch Act, recommends removal from Federal office. The argument that this OSC is apolitical holds no water. OSC has routinely targeted this administration and not given evenhanded consideration.

Chairman CUMMINGS. Without objection, so ordered.

Mr. ARMSTRONG. And with that, I yield back.

Chairman CUMMINGS. Very well.

Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

And welcome Mr. Kerner.

I feel a little bit like the image of Diogenes with his lantern trying to find one honest man in town when it comes to my Republican friends in holding the Trump administration accountable. I

mean, my Lord, what happened to the passion of the Obama years? It's actually a marvel to behold. But maybe Diogenes found an honest man in you, Mr. Kerner.

Now, remind me of your political affinity. Are you a liberal Democrat from, I don't know, New York?

Mr. KERNER. No. No, sir.

Mr. CONNOLLY. What are you?

Mr. KERNER. Well—

Mr. CONNOLLY. Do you mind my asking?

Mr. KERNER. Sure. I consider myself a conservative Republican. I voted for Ronald Reagan, my first vote for President.

Mr. CONNOLLY. Oh, my Lord.

Mr. KERNER. When it was cool to vote for Ronald Reagan. I came to D.C. in 2011 when Chairman Issa took over, because I believe in good government.

Mr. CONNOLLY. You worked for Darrell Issa?

Mr. KERNER. I did work for Darrell Issa, yes.

Mr. CONNOLLY. Oh, do the horrors ever stop here?

So you're not bringing to your job some kind of political bias against this President. Is that correct?

Mr. KERNER. None whatsoever.

Mr. CONNOLLY. And you're an Obama appointee, though, or you're a holdover, right?

Mr. KERNER. No. I'm a Trump appointee.

Mr. CONNOLLY. President Trump appointed you?

Mr. KERNER. Yes, he did.

Mr. CONNOLLY. Oh, my Lord. Well, gosh.

So presumably, being who you are, you would be inclined not to violate the law, not to ignore your duties. But you'd probably, if you could, you'd bend over backward to counsel someone who was in trouble with the law that you're charged with enforcing to kind of right himself/herself, give them a little bit of a warning, a chance, so that it doesn't have to get to a level that it now is. Would that be a fair statement?

Mr. KERNER. Well, I wouldn't say bend over backward. I do believe that it is my job, but in a nonpartisan way, to assist the administration in complying with all the laws. OSC generally enforces whistleblower laws and whistleblower retaliation.

Mr. CONNOLLY. Right.

Mr. KERNER. So one of the things I'm really concerned about is to make sure that whistleblowers are protected.

We do have a very robust effort to train people on the Hatch Act. But it is not of a partisan reason. We have career professionals who do this who are not partisans whatsoever.

Mr. CONNOLLY. Right. So did you verbally counsel Ms. Conway, "Hey, you're crossing a line, don't do that"?

Mr. KERNER. I have never spoken to Ms. Conway. But the White House Counsel's Office gave her numerous trainings, in fact, some that our career staff sent over there, PowerPoints and other training materials on the Hatch Act, and specifically on using her official authority to influence an election, specifically on this violation.

Mr. CONNOLLY. Now, your office has issued a report on this. Is that correct?

Mr. KERNER. We've issued two reports on this.

Mr. CONNOLLY. Have you ever done that before with a White House official?

Mr. KERNER. No, we have never issued two reports on the same person.

Mr. CONNOLLY. Never?

Mr. KERNER. Never.

Mr. CONNOLLY. How old is your office?

Mr. KERNER. So 1989 is when we became independent.

Mr. CONNOLLY. Since 1989, 30 years.

Mr. KERNER. Thirty years.

Mr. CONNOLLY. Okay. And have you received a response to those reports from the subject in question, Ms. Conway?

Mr. KERNER. Ms. Conway never responded, no.

Mr. CONNOLLY. Never responded?

Mr. KERNER. No.

Mr. CONNOLLY. In the past, you know, the ranking member was comparing this case to Axelrod and Plouffe and Castro and Sebelius. Did those people respond to chastisements by our office verbal or—well, there hasn't been a written report like that.

Mr. KERNER. Right. I don't know if there is one. I wasn't there. And obviously that would go to the professional.

Mr. CONNOLLY. Well, we have your testimony earlier that, in fact, one of those people not only responded, she issued a mea culpa and reimbursed the government for expenses associated with the unfavorable act.

Mr. KERNER. That's correct. Secretary Sebelius reimbursed the Treasury.

Mr. CONNOLLY. In sharp contrast to the case in point.

Mr. KERNER. Correct.

Mr. CONNOLLY. Could this problem be solved if Ms. Conway simply moved to the campaign?

Mr. KERNER. Absolutely.

Mr. CONNOLLY. And was she counseled, do you know, or advised to do that?

Mr. KERNER. We have definitely suggested solutions, not just for moving to the campaign, but also how to come into compliance with her Twitter feed and how to stay within the rules on her media appearances.

Mr. CONNOLLY. And this is a matter of law.

Mr. KERNER. Correct.

Mr. CONNOLLY. And she's in violation of the law.

Mr. KERNER. That's correct.

Mr. CONNOLLY. And you have definitively determined that.

Mr. KERNER. That's correct.

Mr. CONNOLLY. And has the White House counsel been so informed?

Mr. KERNER. Yes.

Mr. CONNOLLY. And what is the reaction of the White House counsel?

Mr. KERNER. Well, they sent us an 11-page letter that disputed our findings.

Mr. CONNOLLY. I see.

Well, a final thing, if I may. Are you concerned about the impact of this defiance of the law on the two-plus million Federal employees who fall within the penumbra of the Hatch Act?

Mr. KERNER. I think it's very important to let the Federal work force know that OSC is going to treat everybody equally, that we're not going to have a two-tier Hatch Act enforcement system and that we're going to do everything in our power to treat everybody the same no matter how well connected they may or may not be.

Mr. CONNOLLY. Thank you very much for your honesty, Mr. Kerner.

And I yield back.

Mr. KERNER. Thank you, sir.

Chairman CUMMINGS. Mr. Roy.

Mr. ROY. I thank the chairman.

I thank the witness for being here today appearing before the committee.

I would suggest to my colleague on the other side of the aisle, he must not be saying when he's saying that he's seeking one honest that everyone on this side of the aisle is somehow dishonest. I know that can't be the case, particularly when some of us have broken ranks, for example, offering and asking for a subpoena with respect to child separation policies.

But to suggest that we're somehow dishonest by saying you're seeking to find one honest man because we believe that this is a charade and a waste of the time of the American people, I think that that is a questionable direction to go.

And with respect to the Obama years, I would just raise that it would be awfully nice if my colleagues on the other side would recognize the President sent up a request for \$762.8 million for ICE when the problem that we had on our border was nothing like it is today. And yet my colleagues on the other side of the aisle refuse to recognize that.

Mr. Kerner, on your office's official website it says that Congress enacted the Hatch Act to ensure that Federal programs are administered in a nonpartisan fashion, to protect Federal employees from political coercion in the workplace, and to ensure that Federal employees are advanced based not on merit—based on merit and not based on political affiliation. Is that right?

Mr. KERNER. That's correct.

Mr. ROY. Would you agree that arguably President Trump chose Ms. Conway to be one of his top advisers based on her partisan political affiliation?

Mr. KERNER. That he chose her because of that?

Mr. ROY. Right. Because she's a bipartisan, because she worked for him.

Mr. KERNER. I think he's made it clear he chose her because he feels she's an effective advocate for his policies.

Mr. ROY. Then it should not come as a surprise that Ms. Conway has advocated for her boss' policies and against the policies of Democrats, whether they're candidates or in office, correct?

Mr. KERNER. Yes.

Mr. ROY. So you would agree that the original intent of the Hatch Act was not to keep White House advisers from advocating

for their boss' policies or in defense of the President's positions as compared to others criticizing them?

Mr. KERNER. I would not agree with that. I think the Hatch Act only exempts two people, the President and the Vice President, from its reach, and so Ms. Conway is bound by it.

Mr. ROY. But you're saying that it would prevent the White House advisers from advocating on behalf of their boss' policies?

Mr. KERNER. No. 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.

Mr. ROY. Well, but in defense of the President's positions as compared to others criticizing them, can she defend the President's positions?

Mr. KERNER. Yes.

Mr. ROY. Okay. And with respect to the idea of a double standard, is it not true that there are two categories of employees, restricted and less restricted?

Mr. KERNER. That's correct.

Mr. ROY. Okay. So there is, in fact, two categories. So we do treat people differently depending on what their job is and what they're doing.

Mr. KERNER. But the enforcement is not different. So we don't treat people—

Mr. ROY. Yes. But we recognize there are differences. True or false? There are differences.

Mr. KERNER. The statute does recognize that. That's correct.

Mr. ROY. Correct. Thank you.

There's a significant gap, in my opinion, between OSC's own directives regarding political activity and how it's handling the conduct during office investigation into Ms. Conway.

If OSC claims that certain forms of political speech are permissible under the Hatch Act, where do we draw the line?

Let's look a hypothetical. Can Ms. Conway explain why open borders policy is a bad policy?

Mr. KERNER. As I indicated earlier to the gentleman from North Dakota, I can't get into a specific statement.

Mr. ROY. You can't say that whether or not she can advocate whether a specific policy choice is bad policy?

Mr. KERNER. I can say that she's allowed to advocate policy choices.

Mr. ROY. Okay. Thank you.

Can she explain why a policy of not encouraging people to claim asylum when it overwhelmingly is not found to be a credible claim under our laws by 88 percent is bad policy?

Mr. KERNER. She can certainly talk about policies. That's correct.

Mr. ROY. Can she explain why Democrat legislation that fails to take meaningful steps to solve the border crisis offered up while criticizing the people charged with guarding our border in a cynical political game, exploiting the tragedy of migrants dying, while those very same Democrats who denied the crisis refuse to address it and then act like they are the heroes for throwing money at it with no plan at all to deal with it, can she explain why that is flawed legislation?

Mr. KERNER. I just can't really comment on the specific statement.

Mr. ROY. But she could speak to the policy?

Mr. KERNER. She can absolutely speak to the policy.

Mr. ROY. Can she explain why that legislation should be roundly rejected and defeated? Can she call for its defeat, the legislation?

Mr. KERNER. I believe she can comment on legislation.

Mr. ROY. Can she criticize the Democrats, the Democrats as a group, who failed to take the crisis seriously and allowed the crisis to get so bad that people are now dying?

Mr. KERNER. I think it gets very close to who the Democrats are. And, once again—

Mr. ROY. Wait a minute. She can't criticize Democrats as a class for failing to do this?

Mr. KERNER. She can talk about policy proposals. When she starts to criticize people, including some who are running for office—

Mr. ROY. So if you're a Member of Congress, and we're perpetually running for office every two years, we can't criticize a Member—a member of the White House staff can't criticize a Member of this body for roundly unserious policy suggestions and make that clear to the American people that that should not be followed and that that is bad policy?

Mr. KERNER. No. There's a couple other rules. First of all, even though you run every two years—the President declared the day he got elected that he's going to be running again. We did not deem him a candidate until later.

So even though you're running every 2 years, if you choose, there's a date that we take from when you're actually, like, a declared candidate. So that's No. 1.

No. 2, as I indicated, absolutely, as an adviser of the President, you can comment on policies. However, when you ask me about—talk about Democrats and people are running potentially for office, it gets a little bit closer, which is why we have a very robust advisory function. The folks sitting behind me who are in the Hatch Act unit's permanent nonpartisan officers, they advise, and they get questions just like you said—

Mr. ROY. But point to me in the statute—point to me in the statute where it would say that the political adviser to the President can't comment about Democrats' bad policies or, if the President's party was reversed, couldn't comment on Republicans' bad policies.

Chairman CUMMINGS. The gentleman's time has expired.

You may answer the question.

Mr. KERNER. Thank you. Thank you, Congressman.

Chairman CUMMINGS. Then we'll be going to Mr. Raskin.

Mr. KERNER. The statute specifically says she's not allowed to use her official authority when she'd be speaking for the President in her official capacity in order to influence an election.

So if she's talking about folks who are running, there are restrictions on what she can say about them. And that's why we have this very robust advisory opinion that allows people to know exactly what—

Mr. ROY. When all of Congress is running?

Mr. KERNER. Well, they're not running all the time.

Chairman CUMMINGS. Mr. Raskin.

Mr. RASKIN. Thank you very much, Mr. Chairman.

Mr. Kerner, President Trump appointed you to this position. But that's irrelevant, of course, because you're a professional committed to the rule of law and you're governed by the Hatch Act itself.

I want to ask you about the Hatch Act, because I've got 65,000 constituents who are Federal employees. They've been told they cannot wear a button to work that says resist. They cannot talk about impeachment on the job. And the way I understand it is they can do whatever they want on their own private time in terms of electoral activity, but when they come to work they're there to work. They're not there to campaign for or against anybody.

Is that a basic intuitive understanding of the statute?

Mr. KERNER. Yes. Yes.

Mr. RASKIN. Okay. So what you found with Kellyanne Conway was that she was actually intervening in the election by making comments about specific candidates. Is that right?

Mr. KERNER. And in her official capacity, yes.

Mr. RASKIN. She's allowed to say whatever she wants on the weekend and the evening. But as long as the American taxpayers are paying her salary, Congress has said, and the Supreme Court has affirmed this, she can't go and inject herself into political campaigns. Is that right?

Mr. KERNER. That's correct.

Mr. RASKIN. Okay. But in January 2018, you started an investigation of Ms. Conway for making partisan statements strongly supporting Republican U.S. Senate candidate and accused child molester Roy Moore in the Alabama special election. You sent her interrogatories to get her side of the story, why she should be able to intervene in that campaign using her official capacity. And what did she say in response to that?

Mr. KERNER. We received no response.

Mr. RASKIN. She never responded?

Mr. KERNER. She did not respond.

Mr. RASKIN. Okay. You sent President Trump a report finding that Ms. Conway's media advocacy for Roy Moore violated the Hatch Act. Did you give her an opportunity to respond to that report before you released it?

Mr. KERNER. Yes, we did.

Mr. RASKIN. And did she respond?

Mr. KERNER. She did not.

Mr. RASKIN. Did President Trump respond in any way to discipline this employee when tens of thousands of my employees have been told they can't even wear a button to work if it says resist, which is a word in the English language, right?

Did President Trump respond to you?

Mr. KERNER. We did not get a response, no.

Mr. RASKIN. Okay. In December of last year, you sent Ms. Conway a letter explaining she could not use the same Twitter account for official government business and then use it to disparage Democratic Republicans and support Republican candidates like her beloved Roy Moore in Alabama. That letter gave Ms. Conway simple recommendations to come into compliance with the law to say here's how you separate what's your official business that

you're paid for by the American people and your partisan political activity.

How did she respond to that letter?

Mr. KERNER. We received no response.

Mr. RASKIN. Okay. So for 18 months you've engaged in, perhaps, eight, 10, 12 different attempts to get her to respond. Did she ever once respond to you?

Mr. KERNER. She did not.

I do want to clarify one thing. We did have conversations with the White House Counsel's Office. So there were—so on her behalf, if you will. So there were some back and forth in that regard. But we never heard from her directly.

Mr. RASKIN. Ms. Conway seemed to ridicule the enforcement of the Hatch Act, as the chairman stated. On one occasion, she had the audacity to mockingly ask: Let me know when the jail sentence starts.

What message does that send to my constituents who are governed by the Hatch Act? And what does it send—what message does it send to those postal workers who have been disciplined for violating the Hatch Act?

Mr. KERNER. I thought those comments were very unfortunate.

Mr. RASKIN. Does it send the message that there's one standard that applies to people who are in President Trump's favor and a different standard that applies to millions of Federal employees who are subject to the requirements of the Hatch Act?

Mr. KERNER. I think it sends the wrong message. It sends the message that the Hatch Act was not going to be evenly applied.

Mr. RASKIN. Okay. Now, look, we've heard some murmurings about freedom of speech from the other side of the aisle, which is unusual. So I want to pounce on the moment to say that's great that people are talking about freedom of speech.

The Hatch Act has been twice challenged in the Supreme Court by unions for working people saying we should be able to express ourselves politically at work. And generally, our colleagues say, no, that's not the case, we want a straitjacket on your political speech at work. But the Supreme Court has upheld the Hatch Act.

When you discipline employees, do you allow constitutional arguments to take place? Can people make a free speech argument before—

Mr. KERNER. Sure. When we take a case to the MSPB, they can make whatever argument they would like. It's just like a regular proceeding.

Mr. RASKIN. All right. And we just haven't heard anything from Ms. Conway about why the line should be drawn differently from her than it's been drawn for everybody else.

You know, I've got to say, her contemptuous defiance of your board and you, as the director of it, is unacceptable and intolerable. Her contemptuous defiance of this committee is unacceptable. And I hope we are going to render this subpoena quickly.

And I just want to say, the message should go out to all of the employees in the White House: If you act in contempt of the American people and Congress, we will find you in contempt of the American people and of Congress.

I yield back, Ms. Chairman.

Chairman CUMMINGS. Mrs. Miller.

Mr. MASSIE.

Mr. MASSIE. Thank you, Mr. Chairman.

Mr. Kerner, you're not saying that Kellyanne Conway couldn't say any of the things she said, right? She still has the First Amendment?

Mr. KERNER. Correct.

Mr. MASSIE. She could say whatever she wants.

Mr. KERNER. That's correct.

Mr. MASSIE. In fact, you agree that she could say all of those things. There's a legal way she could say all of those things.

Mr. KERNER. Yes. Correct.

Mr. MASSIE. What you have taken offense with is the manner in which she said them. You said she's violated the Hatch Act.

What are the determinants that you and your staff behind you use in deciding whether somebody's speech is their exercise of their First Amendment right or a violation of the Hatch Act? What are some of the factors that go into that?

Mr. KERNER. So the way I understand it—obviously, I don't conduct the investigation. It's done by the professional staff. But from what I understand is they look at is the person speaking in their official authority, in their official capacity.

Mr. MASSIE. And what factors would go into that?

Mr. KERNER. Is she introduced as counselor to the President. Is she speaking on the White House lawn. Is she in any other way speaking on behalf of the President rather than: I'm Kellyanne, I just want to talk to you what I think.

So once that's done—in a lot of these appearances, you will, she's introduced as counselor to the President. She's speaking for the President. So it's in her official capacity.

Mr. MASSIE. What about the time she says it? Mr. Raskin said to you in a question: She could say whatever she wants on the weekend and in the evening. And you said correct.

Mr. KERNER. Well, I thought there was more to that question.

Mr. MASSIE. There was a little more to that question.

Mr. KERNER. I thought the implication was in her own—

Mr. MASSIE. Do you ever take into account the time at which something is said?

Mr. KERNER. I'm sure our Hatch Act unit does look at when things—

Mr. MASSIE. What time does your Hatch Act unit show up to work?

Mr. KERNER. I'm sure they work regular work hours.

Mr. MASSIE. Like, regular—for America, that might be longer than D.C. But in D.C., I understand it to be about nine to five.

Mr. KERNER. I think they stagger their time so people are available. So let's say from seven to six or seven.

Mr. MASSIE. When you worked in Congress, what were the hours here?

Mr. KERNER. They were usually nine to six during session and nine to five during recess.

Mr. MASSIE. Okay. Very good.

Well, I went and looked at the first three videos, I watched the first three videos of Kellyanne Conway talking in interviews on TV.

And one thing I noticed in two—I didn't get a chance to go through all of your examples, but in the first three you gave, two of them were not on government property. And, in fact, all three of them were outside of the window of nine to five. There was one interview at 8:03 a.m., one at 8:44 a.m., and one at 10:17 p.m.

I would hope Mr. Raskin might agree that somebody acting at 10:17—

Mr. RASKIN. Would the gentlemen yield?

Mr. MASSIE. Yes, I would.

Mr. RASKIN. I think you make an astute point. The question is whether she's operating in an official capacity representing the government or not.

Mr. MASSIE. Reclaiming my time.

So, Mr. Kerner, what would you use to determine if, at 10:17 p.m., somebody is on their own time or they still belong to the taxpayer?

Mr. KERNER. Well, as the Congressman just said, and also as my staff informs me, I should be clearer, the issue isn't time, because—

Mr. MASSIE. So she's on the clock all the time, 3 a.m.—

Mr. KERNER. Right.

Mr. MASSIE. Okay. So what do you use to determine whether it's her time and her First Amendment or your time, the taxpayer?

Mr. KERNER. It all depends whether she's speaking on her own behalf or in her official capacity.

Mr. MASSIE. And how do you know that?

Mr. KERNER. "I'm speaking for the President." "I'm the counselor to the President." "I'm in front of the White House."

Mr. MASSIE. Okay. So I watched those interviews. She didn't introduce herself as such. The interviewer put that on the screen or introduced her as that.

Who gets to pick what goes on the chyron on the screen? Does Kellyanne Conway get to pick it?

Mr. KERNER. I think generally it's the producers of the show.

Mr. MASSIE. It's the producer. Can she even see what's on the screen?

Mr. KERNER. I think she knows when she's there representing the President.

Mr. MASSIE. But she can't see what's on the screen.

With all due respect to my friends Mark Meadows and Jim Jordan, who are in the Freedom Caucus, I've been introduced as a member of the Freedom Caucus. I am not in the Freedom Caucus. It shows up on the chyron. I don't get to pick that. I don't get to choose that. It is not her choice to pick that.

So I would maintain that the first three examples you gave us are extremely poor examples. They were outside of the work window. She didn't get the chance to put what was on the chyron or to make it her opinion. And, you know, she didn't say what her title was.

And I just think if you're trying to claim that all 24 hours of the day belong to the taxpayer, I think that's wrong. You're not affording her anyplace to express her personal opinion. And I think it's wrong. It's what makes this a sad pursuit because of the choices, the examples you've chosen.

And with that, I yield back, Mr. Chairman.

Mr. KERNER. Could I just respond to one thing?

Thank you.

I understand your argument. I'm just looking at the first example. She's standing at the White House. She's——

Mr. MASSIE. Okay. What about the second and third example. Where is she? She's at FOX studios, right?

You're telling me that that when she's at FOX studios at 10:17 p.m., you own her time. I disagree.

Chairman CUMMINGS. All right.

Mr. KERNER. The issue is not about time. It is not even about who operates the chyron. The issue is she talking about official administration matters. And if she's representing what the President thinks, what the President says, what the official position is, then she's bound by not being involved in the——

Mr. MASSIE. Mr. Chairman, could he explain a way that she could do it legally?

Chairman CUMMINGS. I hope he'll explain it a little bit later. Right now it's Rouda's——

Mr. MASSIE. Just looking for a legal way for her to——

Chairman CUMMINGS. Right now it is Mr. Rouda's turn, please, sir.

Mr. Rouda.

Mr. ROUDA. Thank you, Mr. Chairman.

Mr. Kerner, thank you for being here today. And I just want to reiterate again my understanding is you are a conservative Republican?

Mr. KERNER. Yes, sir.

Mr. ROUDA. You voted for Ronald Reagan?

Mr. KERNER. Sure did.

Mr. MEADOWS. Is that a political statement?

Mr. ROUDA. Reclaim my time.

I voted for Ronald Reagan as well. And while I disagreed with some of his policies, I miss his integrity and character, especially in these days.

But in your position, you were appointed by President Trump, as we heard earlier. Is that correct?

Mr. KERNER. Right. Yes.

Mr. ROUDA. So I just want to be very clear here. We have a conservative Republican who was appointed by a Republican President who delivered this report with how many violations?

Mr. KERNER. So there were 10 media appearances that we found there were violations along with the Twitter account.

Mr. ROUDA. So in total, how many violations?

Mr. KERNER. So 11, if you will.

Mr. ROUDA. Eleven violations.

How many violations did you have under the Obama Administration?

Mr. KERNER. So you mean for the entire administration?

Mr. ROUDA. Yes.

Mr. KERNER. If I may——

Mr. ROUDA. At least with the senior aides, senior counselors?

Mr. KERNER. So on the Cabinet members there were two letters we sent, on Secretary Sebelius and Secretary Castro. Obviously there were some other allegations.

Mr. ROUDA. Sure. But within the Cabinet. So how many in total for those two? Just one each?

Mr. KERNER. One each.

Mr. ROUDA. One each. So over 8 years——

Mr. KERNER. Yes.

Mr. ROUDA [continuing]. two violations. Yet we have one person here in the first 2 years of this administration, slightly over 2 years, who has 11 violations. Is that correct?

Mr. KERNER. Yes. Well, 11 on this report, and then 2 more on the first report.

Mr. ROUDA. Okay. And in an effort to get her to take action to rectify these mistakes, these violations, or these purposeful violations, she has not responded, she has not agreed to stop. In fact, we've seen her testimony just the opposite. She's basically making it very clear that she doesn't care what you think in this report. Is that correct?

Mr. KERNER. I think that's fair.

Mr. ROUDA. So we talk about double standards and hypocrisy. I believe that's what the ranking member said earlier. And yet I have here multiple quotes from the previous chair of this committee when the current minority was in the majority.

And it's very clear, when you look at what past Chairman Issa said, that demanding that these Hatch violations of Obama individuals, that they be held accountable, some often demanding for their resignation or firing, yet we see a completely different voice here today.

And I applaud you for bringing to the office the integrity that it deserves, the nonpartisanship that it deserves. I know it's very difficult to do that in these times, and I thank you on behalf of the committee and America for doing the right thing.

It's clear that this White House has systemically and pervasively interfered with and obstructed investigations undertaken by multiple independent agencies in government, including the Offices of Government Ethics, Special Counsel Robert Mueller, Inspectors General, the Government Accountability Office, and now the Office of Special Counsel.

And I think, if I recall correctly, you had stated that—I think I quote here—that the request from the White House that you withdraw and retract the report. Your response was, quote: Wholly inappropriate, these requests represent a significant encroachment on OSC's independence, unquote. Is that correct?

Mr. KERNER. Yes. That's correct.

Mr. ROUDA. Do you stand by that quote today?

Mr. KERNER. Yes, sir.

Mr. ROUDA. Can you elaborate on why you think it is so egregious that the White House is taking these actions?

Mr. KERNER. Sure. So OSC, while we're anchored in the executive, of course, we're an independent agency. And as an independent prosecutorial investigative agency, it's very important to preserve our ability to do essentially oversight over the executive branch.

If the White House can ask for our files and do oversight over us while we're doing oversight over their—over them—it really undermines our ability to be an independent force for the American taxpayer.

Mr. ROUDA. And usually in these types of situations you would see the conservative Republican appointed by the Republican President being attacked by the Democratic side of the aisle. But here we have just the opposite. You have the Democratic side of the aisle thanking you for your independence while the Republican side of the aisle is questioning your independent analysis and conclusions that you made.

And, again, I want to thank you for your time today.

And I yield back, Mr. Chairman.

Mr. KERNER. Thank you.

Chairman CUMMINGS. Thank you very much.

Mrs. Miller.

Mrs. MILLER. Thank you, Chairman Cummings and Ranking Member Jordan.

Can an executive branch employee state the truth when asked on a TV interview? Can someone working for the President in the White House state the truth?

Mr. KERNER. Sure. Of course they can state the truth. They just can't talk about—they just can't use the standard we talked about, use their official authority to influence an election or to talk about partisan politics. They just can't do that. They have to pivot away from that when they're employed, when they're in their official duties.

Mrs. MILLER. Is the same staff permitted to offer opinions? For example, could Valerie Jarrett, who was a senior adviser to President Obama similar to Ms. Conway, say something like George Bush enjoys painting and running?

Mr. KERNER. I don't know enough of the facts. Is he a candidate at that time? I just don't know.

Mrs. MILLER. He's President.

How about an opinion on policy? For example, could Valerie Jarrett go on TV and say former Vice President Dick Cheney is and hawkish and a hardliner on foreign policy?

Mr. KERNER. I think comments on policy are allowed. When they talk about someone who's running for office, a candidate, and they're done in their official duties, there are restrictions on that.

Mrs. MILLER. Mr. Kerner, is Joe Biden creepy? Because in your letter to President Trump, you stated that Ms. Conway is not allowed to state that. However, I think we have all seen pictures where Joe Biden has acted inappropriately.

Mr. RASKIN. Mr. Chairman.

Mrs. MILLER. Can she express her opinion about a former elected official? It's opinion.

Mr. KERNER. It's an opinion. I think the argument was made that she was just stating facts. And whether former Vice President Biden is creepy or not is not a fact. It's an opinion by Ms. Conway.

Mrs. MILLER. In March she stated: "So there's a whole hot mess in the Democratic Party beginning with right over the bridge here in Virginia."

Mr. Kerner, I think we can agree that this is also a statement of opinion on policy. I have seen the statement backed up with fact and illustrated in policies like the Green New Deal, which would try to enact efforts to stop air travel altogether and inhibit cow emissions, as well as instituting a single payer healthcare system which would take away Medicare from the elderly and make health costs skyrocket.

My colleagues across the aisle want to get rid of the recently passed tax cut which helped boost our economy. I don't know about you, Mr. Kerner, but this sounds like a hot mess to me.

Mr. Chairman, I am so disappointed that we are wasting our time on this hearing today. We have a crisis right now, right here on our southern border. We had 144,000 immigrants cross illegally into our country in May alone—144,000. We have lethal drugs flowing across a porous border. I know that for a fact in my state. They're killing our citizens.

And my colleagues across the aisle have chosen to focus on the false Hatch Act allegations. That's pathetic.

It's not as though 4 million jobs created since 2016, record low unemployment for African Americans and Hispanic Americans and major tax is reform enough. No. In order to hide and distract from all of the great growth that's happening in our country, they have to hold these hearings with a singular goal: to impeach and impugn our President.

It is disappointing that my colleagues across the aisle still have not accepted the results of the election that occurred nearly three years ago. And now at every turn they continue to divide our country and waste our time with these hearings instead of focusing on the real issues facing everyday Americans.

I yield back my time.

Chairman CUMMINGS. Ms. Hill.

Ms. HILL. Thank you, Mr. Chairman.

I ask unanimous consent to enter into the record a report from the congressional Research Service called "Hatch Act Restrictions on Federal Employees' Political Activities in the Digital Age."

Chairman CUMMINGS. Without objection, so ordered.

[*Report not submitted.]

Ms. HILL. And I'd like to point out a couple of issues within that report that are addressed in response to my colleagues—a few of my colleagues' remarks, the first of which is that there is guidance issued by OSC that's described in this that was issued in 2015, which is clearly before the Trump administration, around the use of social media.

And there are a number of things stated, which is that—let's see, we've got employees may not use their official authority to influence or interfere with or affect the results of an election, engage in political activity, the activity directed at the success or failure of a political party, comment to a blog or social media site that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group, may not use any email account or social media to distribute, send, or forward content that advocates for or against a partisan political party candidate for partisan political office or partisan political group.

And within this same report there is clarification for the exceptions to whom the Hatch Act applies, and it is around whether somebody is paid for by the Treasury or confirmed by the Senate, neither of which applies to Ms. Conway.

So, Mr. Kerner, I want to thank you and your staff for this investigation and report. And the White House counsel wrote in his letter on June 11, 2019, that the OSC's report finding dozens of Hatch Act violations by Kellyanne Conway was, and I quote, "the product of a fatally flawed process," and that it, quote, "raises serious concerns regarding OSC's current investigatory practices."

Can you respond to that? Do you believe that it was a fatally flawed process?

Mr. KERNER. No, I do not. I think it went through the exact process we always use, which means cases are started via a complaint. We are mandated by statute to investigate. The career nonpartisan civil servants do that. They conduct a thorough investigation, including whatever information they need, and then they take appropriate action or recommend appropriate action.

Ms. HILL. So there was nothing unique or different about the process you used to investigate allegations against Kellyanne Conway?

Mr. KERNER. No, other than the fact we already did that once. So there were some—we already had the fact that she was aware of the Hatch Act, because the first report lays out six or seven different times where she was informed. So there was a little bit of a—it was a little quicker in terms of that.

Ms. HILL. So the actual investigation of Kellyanne Conway's compliance with the Hatch Act was conducted by career staff in OSC's Hatch Act unit.

How experienced are the independent professionals who conducted this investigation?

Mr. KERNER. So I like to call them the world's greatest experts on Hatch. They have about—I don't want to age anyone, but they have about 40 years of combined experience, and they apply the law to the facts—the facts to the law, the law to the facts dispassionately and in a nonpartisan way. And they're they consummate and ultimate professionals. I'm very proud to be able to represent them here today.

Ms. HILL. So did any of them raise a concern to you that they felt like the work that went into the report released on June 13 was the product of a fatally flawed process?

Mr. KERNER. Absolutely not.

Ms. HILL. Additionally, you were a prosecutor for nearly 20 years. I assume you have a lot of experience evaluating whether law enforcement investigations you relied on were thorough. Is that correct?

Mr. KERNER. Yes.

Ms. HILL. The White House also accused you of rushing to judgment, in quotes. But according to the OSC's report, the agency gathered evidence over many months. Your report indicates that the OSC first began reviewing Ms. Conway's Twitter account in November 2018 and that the agency spent months conducting that review.

Mr. KERNER. That's correct.

Ms. HILL. Do you believe that you rushed to judgment?

Mr. KERNER. We did not.

Ms. HILL. OSC also contacted the White House many times before completing its report. Does the OSC give career employees that many chances before issuing a finding of a violation?

Mr. KERNER. I think this process had probably more back and forth with the White House than a normal case would.

Ms. HILL. So, if anything, Ms. Conway and the White House have been given possibly more deference than most employees would have received?

Mr. KERNER. I think that's right.

Ms. HILL. The White House was provided the opportunity to review OSC's report before it was publicly released. Did the White House ever raise any concern that Ms. Conway never actually said or tweeted the things that the OSC included in its report?

Mr. KERNER. No.

Ms. HILL. So the White House does not dispute the facts. The President just does not want to hold Kellyanne Conway accountable. And my observation is that the reason for that is that she has been doing exactly what he wants her to do.

As in so many other instances, this administration believes that it should not be held to the same laws that every other American should abide by. The executive branch is constitutionally established to carry out and enforce the laws of the land.

So my question is, what does it mean for us if they won't enforce the laws of the land on themselves?

Mr. KERNER. Well, that's a good question for the Congress. From OSC's perspective, we have to make sure that we abide by the statute and that we conduct fair, nonpartisan investigations that apply the facts to the law, and that's what we did here. And I think other steps are up to this committee and the Congress.

Ms. HILL. Thank you, Mr. Kerner.

I yield back.

Mr. KERNER. Thank you.

Chairman CUMMINGS. Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

Mr. Kerner, she made you mad, didn't she? Kellyanne Conway made you mad.

Mr. KERNER. I would not describe that, no.

Mr. MEADOWS. Well, you have mentioned to numerous people that she poked you in the eye. I mean, we've got—

Mr. KERNER. Sure.

Mr. MEADOWS. So you don't get mad when you get poked in the eye?

Mr. KERNER. I would describe my reaction as being disappointed, because what I—

Mr. MEADOWS. Well, I now you're describing that way.

Mr. KERNER. Sure.

Mr. MEADOWS. But you've talked to multiple people how you were mad and you felt pressured to put out this report. Isn't that true?

Mr. KERNER. That's not true, no.

Mr. MEADOWS. Oh, you—you're under oath, Mr. Kerner. I want—

Mr. KERNER. Sure.

Mr. MEADOWS. I want to caution you. You know the rules.

So you didn't talk to anyone to say that you felt heat from the media and from some on the left? You didn't feel any heat? You didn't mention that to anybody?

Mr. KERNER. That's not what I said. What I said was that the report was written prior to her making those statements. The report was already done.

Mr. MEADOWS. No, that's not the—I asked a different question.

Did you tell anybody that you felt pressure from media and others on the left to actually address this problem?

Mr. KERNER. I don't know what "address this problem" means.

Mr. MEADOWS. Write the report. It's fairly clear.

You didn't feel any pressure? You didn't tell anyone that you felt pressure?

Mr. KERNER. I——

Mr. MEADOWS. You're under oath. I know you did. Just answer it.

Mr. KERNER. I had a conversation in which I expressed that because she had made those statements I felt we ought to have an answer to those statements.

Mr. MEADOWS. That's not the context in which you said that, Mr. Kerner.

Mr. KERNER. Well, then you're going to have to give me the context.

Mr. MEADOWS. I am giving the context.

Did you tell anyone that you felt pressure to do something about Ms. Kellyanne Conway?

Mr. KERNER. Well——

Mr. MEADOWS. Have you mentioned that to anyone? Yes or no?

Mr. KERNER. I do not recall.

Mr. MEADOWS. You do not recall?

Mr. KERNER. I do not recall saying what you're saying——

Mr. MEADOWS. All right. Well, what about—what about——

Mr. KERNER. Or on the context, I can't answer that.

Mr. MEADOWS. All right. What about in the response that you actually had to the Office of General Counsel where you said that she poked you in the eye?

Mr. KERNER. I'm sorry. The Office of General Counsel?

Mr. MEADOWS. The White House.

Mr. KERNER. You mean the White House counsel.

I did tell them that I felt that what she said was inappropriate, that it was a poke in the eye. That's correct. But there was no pressure in terms—the report was written. So——

Mr. MEADOWS. Mr. Kerner, let me just tell you that dog doesn't hunt, because you've told multiple people. It wasn't just the White House counsel.

Under what authority do you have to write prohibitions against using Twitter? Does OSC have the legal authority to write those prohibitions?

Mr. KERNER. I believe we do.

Mr. MEADOWS. No. Under what statute? Quote the statute. Because it is uniquely reserved for OPM. We've got Office of Legal Counsel that has actually given an opinion, CRS that's been

quoted. It is not your authority, Mr. Kerner. Wouldn't you agree with that?

Mr. KERNER. No, I would not. I disagree with that.

Mr. MEADOWS. Okay. Where is the statute? Quote the statute.

Mr. KERNER. So the statute is—so there's the Hatch Act statute and its regulations.

Mr. MEADOWS. No. I know the Hatch Act statute. I actually read it.

When it was amended, what was the Senator's name that did the amendment?

Mr. KERNER. I don't recall.

Mr. MEADOWS. Well, you're the expert. You got experts behind you.

What was the Senator that actually was on the House floor—on the Senate floor—doing the amendment? Who was it? You're the expert.

It's my time, Tlaib.

Mr. KERNER. I'm sorry, sir. We don't know. I don't know who—

Mr. MEADOWS. Okay. Well, I can tell you it was Senator John Glenn. Because you know what? I've done the research. Everybody's talking about the rule of law here and upholding the rule of law. It's time that you stay consistent with the law, because you do not have the ability to even set the regulations for Twitter.

Mr. KERNER. Can I answer that now, since I got the section? It's 5 USC 1212(f), which provides the power for OSC to provide advisory opinions.

Mr. MEADOWS. Advisory opinions are not rules and regulations. They're very different. That's reserved for OPM. Advisory opinions, when it comes to regulations, it—I promise you, I've done the work. I have the homework.

Mr. KERNER. I'm not disagreeing with you. I'm just telling you what my professional staff, who's been doing this for 40 years, has told me. We are issuing guidance—

Mr. MEADOWS. So do you have an advisory opinion for this particular Twitter use? Do you have an advisory opinion that's out there from your OSC?

Mr. KERNER. I'm sorry. I couldn't hear the beginning—

Mr. MEADOWS. Do you have an advisory opinion on Twitter use from OSC?

Mr. KERNER. We have the social media guidance we've done. But on the Conway Twitter use, it's not actually done under that. The Conway Twitter use was done under the statute and what the—

Mr. MEADOWS. But isn't it her personal Twitter account? It's KellyannePolls, which she had before she ever was a Federal employee.

Mr. KERNER. You know, Congressman, it is. It is her personal account.

Mr. MEADOWS. And so you're telling her she can't use her personal Twitter account to tweet something out?

So is RealDonaldTrump his personal account or his official account?

Mr. KERNER. The President is exempt from the Hatch Act. But—

Mr. MEADOWS. Well, is anybody else exempt?

Mr. KERNER. The Vice President.

Mr. MEADOWS. Is anybody else exempt?

Mr. KERNER. Not that I know of.

Mr. MEADOWS. Well, you need to go to OPM and read the guidance. Because the guidance in subpart E—and I would ask unanimous consent that it be put in the record—that it actually gives other exemptions in the very CRS report that Ms. Hill identified. Have you read that?

Mr. KERNER. Yes. And I do not believe it gives exemptions for use of the official authority section that we have mentioned here.

Mr. MEADOWS. It gives—

Chairman CUMMINGS. The gentleman's time has expired.

Mr. MEADOWS. It gives exemptions for Presidential appointees and Cabinet members, and it would apply here, according to every outside counsel that we checked with.

I yield back.

Mr. KERNER. But not—

Chairman CUMMINGS. Let me—I do believe, as I'm listening to my colleague, that your integrity has been challenged. And I believe in fairness. And I want you to—I mean, if you want to clear up anything, I'm going to give you that opportunity.

Mr. KERNER. Well—

Chairman CUMMINGS. Let me finish. I haven't finish.

Mr. KERNER. Sorry. Apologies.

Chairman CUMMINGS. Because one of the things I noticed is in this committee there is a—folks are anxious to find—no, allege that people perjured themselves. And in fairness to you—Mr. Meadows said it at least four or five times, reminding that you are under oath.

I'm not questioning that. I'm just giving you an opportunity to clear yourself. That's all. And if you don't want to, that's fine.

Mr. KERNER. No, I'm happy to respond.

I did not understand the context of the question and Mr. Meadows didn't provide me the context. So I don't know when he says, did you tell anyone? I don't know what I told someone in a hypothetical. So—now, the issue on the—

Mr. MEADOWS. Well, I can give the context, Mr. Chairman, if you want the context. It's truthful—

Chairman CUMMINGS. Mr. Meadows.

Mr. MEADOWS [continuing]. a truthful witness is key.

Chairman CUMMINGS. Mr. Meadows, you're out of time. I'm trying to get—allow—

Mr. MEADOWS. Well, he was given 10 minutes for an opening statement, Mr. Chairman.

Chairman CUMMINGS. Well, please.

I am trying to be fair to this distinguished conservative Republican who has simply come to give his opinion.

Now, his integrity has been challenged. And I'm simply—if he doesn't want to take advantage of it—because I've seen what's happened in this committee over 23 years.

And all I'm saying is, if you want to clear up something, clear it up now. If not, you don't have to. But then I'm going to move on to my next questioner.

Mr. KERNER. I'm happy to—if I may just finish my point.

So as I indicated, I asked Mr. Meadows for the context. Prior to just now, he really didn't provide me the context.

Obviously, the report—so just on the release of the report. The report was written prior to these statements being done. When the statements by Ms. Conway on May 29 were made, it became clear that she was, A, not remorseful, which is one of the criteria that's used by the MSPB, and furthermore, that she was not interested in complying with the Hatch Act.

I felt, as an agency head, that she did, in fact, stick a—poked us in the eye. We felt, as Jonathan Turley said, that that was a direct attack on OSC, and that we felt that we had the report. And since there was almost practically no way that she was going to come into compliance, it was time to release the report. That was what happened there.

It wasn't done because she hurt my feelings or anything like that. I was disappointed that she said these things, because I had hoped that we could reach an agreement with her to get her to abide by the Hatch Act. And I know the White House had counseled her innumerable times on that.

And so I just want to be clear that whatever feelings I had were unrelated to the release of the report. They were just a recognition that she was just not going to comply. And so I just want to be clear.

Chairman CUMMINGS. And when you say poke in the eye, what do you mean? Is that figuratively or literally.

Mr. KERNER. It's a figure of speech, Mr. Chairman. It's not—

Chairman CUMMINGS. All right. Very well.

Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

You know, unfortunately, when some don't have facts on their side, they resort to bullying. And our history in America is replete with people who have, under the color of their authority, who have bullied convictions out of folks who were innocent, who have bullied and berated individuals accused wrongly of some conduct. And that results in admissions of guilt even when they are not guilty.

So I apologize on behalf of the folks on the other side of the aisle who clearly don't have facts on their side and have had to result to bullying tactics to really help contribute to trying to undermine your own credibility.

With that said, I'm one of the few members on this committee, if not only the one, that has balanced a partisan role, not a political role but a partisan role at the same time I had an official one. And you're right, you don't control what you're called on the chyron. I was usually called both, DNC chair and Member of Congress.

But I can assure you that when I was there in my official capacity—even though, by the way, the Hatch Act does not apply to Members of Congress, so I could be as political as I wanted to be in any interview—I always made sure, especially if the interviewer asked me a political question, I made sure that I clarified verbally that I was there in my official capacity and it wasn't appropriate to answer that question.

That having been said—so it's achievable if you're committed to actually abiding by the law or actually have some ethics.

So Special Counsel Kerner, I want to thank you for joining us today.

The Office of Special Counsel issued a report in March 2018 regarding Ms. Conway that recommended to President Trump that he take, quote, "appropriate disciplinary action." President Trump, as we've noted, however, failed to discipline Ms. Conway.

Ms. Conway's behavior did not change following that 2018 report. Is that correct?

Mr. KERNER. That's correct.

Ms. WASSERMAN SCHULTZ. In fact, her Hatch Act violations increased rather than decreased.

So let's watch the clips of interviews, so that we can see what we're dealing with here, that Ms. Conway conducted during one week in April 2019, more than a year after OSC's report.

[Video shown.]

Ms. WASSERMAN SCHULTZ. 9:04 a.m.

Mr. Kerner, are these the kinds of statements that you expect from a Federal official who has reformed her actions after being found in violation of the Hatch Act.

Mr. KERNER. I believe these—these are some of the statements that we found to have violated the Hatch Act.

Ms. WASSERMAN SCHULTZ. So Ms. Conway violated the Hatch Act not one, not two, not three, but four times. Is that correct?

Mr. KERNER. I think we chronicled about 10 appearances. And that's in our second report.

Ms. WASSERMAN SCHULTZ. Are you aware of any other senior official who OSC found to have violated the Hatch Act four-plus times or four times in one week like this one was?

Mr. KERNER. I'm not aware of that.

Ms. WASSERMAN SCHULTZ. Mr. Kerner, how does Ms. Conway's conduct undermine public confidence in the executive branch?

Mr. KERNER. I think it's very important to make sure that when we have a report like this and there's a hearing like this that people in the Federal work force understand that they are going to be treated the same, that we're not going to have a two-tier Hatch Act enforcement system.

Ms. WASSERMAN SCHULTZ. When Ms. Conway was asked about the committee's invitation to testify today, she said, and I quote, "It's not even clear to us at the White House, according to White House counsel, that the Hatch Act applies to assistants to the President."

Does the Hatch Act apply to assistants of the President?

Mr. KERNER. Yes, it does.

Ms. WASSERMAN SCHULTZ. Ms. Conway went on to say, and I quote, "It isn't even clear what the Hatch Act allows."

Is it credible to believe at this point that Ms. Conway does not know what the Hatch Act allows?

Mr. KERNER. No.

Ms. WASSERMAN SCHULTZ. I call on President Trump to hold Ms. Conway to the same standards as all other Federal employees. President Trump must fire Kellyanne Conway.

Thank you. I yield back the balance of my time.

Chairman CUMMINGS. Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

And I'd just like to point out, since it was mentioned in the previous comments, that 9:04 was on a Saturday.

Ms. WASSERMAN SCHULTZ. Do you work on—would the gentlemen yield? Do you work on Saturday? I work on Saturday.

Mr. GREEN. And the Jake Tapper show, it was on a Sunday.

You mentioned the 9:04, so I'm just pointing out that it was a Saturday.

Mr. Chairman, I love the fact that the Members of the other side say they want the rule of law abided by. I'm sure the several murdered individuals killed by previously held illegal immigrants by law enforcement from sanctuary cities, cities designed by the left for the exact purpose of breaking the law, I think they owe them an apology.

Mr. Chairman, I yield my time to the ranking member.

Mr. JORDAN. Mr. Kerner, who complained? You know, Kellyanne Conway said—talking about Senator Biden and Senator Sanders—she said they were two old White career politicians. Did Senator Biden or Senator Sanders complain? Who filed the complaint?

Mr. KERNER. I don't have that information.

Mr. JORDAN. You don't know who filed the complaint?

Mr. KERNER. No, I don't.

Mr. JORDAN. So how did you know that Ms. Conway was in maybe alleged violation of the Hatch Act?

You don't know who filed the complaint? That's how you figure this stuff out, right, that's how you start an investigation, someone complains?

Mr. KERNER. Someone files a complaint. My unit knows who filed—

Mr. JORDAN. Couldn't you ask them? They're right behind you, aren't they? Would you turn around and ask them who complained?

Mr. KERNER. Sure.

Mr. JORDAN. What organization?

Mr. KERNER. Apparently there are multiple complaints.

Also, I think we generally don't disclose who files complaints. We don't give the name of—

Mr. JORDAN. They don't get to know who their accuser is?

Mr. KERNER. Well, there is no accuser. They file a complaint.

Mr. JORDAN. Well, isn't it true—let me ask it this way, then. Isn't it true that an organization, CREW, has done press releases saying they are the ones who filed the complaint with the OSC about Mrs. Conway's alleged violation?

Mr. KERNER. I believe that's true.

Mr. JORDAN. So it was CREW who did complain. You knew that. It took us—it took me a minute just to get you to say that?

Mr. KERNER. Well, you know, like I said, we have to be careful—

Mr. JORDAN. They publicized it.

Mr. KERNER. Well, if they publicize, they publicize. But we still have obligations to protect complainants. We do this in the whistleblower area, obviously more prominently—

Mr. JORDAN. Do you happen to know who the former chairman of CREW is, Mr. Kerner?

Mr. KERNER. I know who the current chairman is.

Mr. JORDAN. Do you know the former chairman? David Brock?

Mr. KERNER. I'm aware of Mr. Brock.

Mr. JORDAN. Yes, you know Mr. Brock.

Do you know who the board members are on CREW, Mr. Kerner?

Mr. KERNER. No, I don't.

Mr. JORDAN. You don't? We checked. Zephyr Teachout, Impeach Trump Now individual, former Democrat candidate for New York state attorney general. Claire McCaskill, former Democrat Senator. Amy Pope, former deputy assistant to President Obama. All of those people are part of CREW, on their board. Wayne Jordan gave \$3 million to Democrat causes. He's on the board of CREW, the organization that complained to you all to start the investigation into supposed violation of the Hatch Act by Ms. Conway. It sounds like a lot of Democrats on this board.

There is one Republican. We found this out, too. One Republican. Evan McMullin. Never Trumper Evan McMullin.

Do you know who co-founded this organization?

Mr. KERNER. No, I don't.

Mr. JORDAN. You don't?

Mr. KERNER. No.

Mr. JORDAN. Norm Eisen. Do you know Mr. Eisen?

Mr. KERNER. Yes, I do know who he is.

Mr. JORDAN. Do you know what he's doing right now?

Mr. KERNER. He's an ethics guy. I don't know where he is at the moment.

Mr. JORDAN. Working for Jerry Nadler. He's the impeachment lawyer hired by Mr. Nadler and the Democrat committee. That's the organization that filed the complaint.

Do you know what else is interesting about this organization? CREW, same organization—you brought this up early on, after my opening statement, Mr. Kerner—CREW is the same organization sent a bunch of letters to the IRS. Guess what they said. Go after those Tea Party groups. It sounds like a little pattern here.

Do you know if CREW has filed any complaints since you did your June 13 letter to the White House and to Ms. Conway? Do you know if any organization—if they filed complaints, if they filed any more complaints, Mr. Kerner?

Mr. KERNER. I'm not—I'm not sure.

Mr. JORDAN. They did, June 20.

Mr. KERNER. Okay.

Mr. JORDAN. Do you know who they filed that complaint against?

Mr. KERNER. No, I don't.

Mr. JORDAN. You don't?

Mr. KERNER. No, I don't.

Mr. JORDAN. Ivanka Trump.

Again, it seems like a pattern here. First they go after Tea Party groups. Complaints to the IRS. Got to go after these folks. They're effective. Then complaints to you about Kellyanne Conway. Got to go after her. She's effective.

Oh, and now, one week after your report, they file a complaint against Ivanka Trump.

When Mr. Meadows was talking about feeling pressure, do you feel any pressure from CREW and these organizations who are filing these complaints, Mr. Kerner?

Mr. KERNER. No, I don't.

Mr. JORDAN. No pressure from them?

Mr. KERNER. None whatever.

Mr. JORDAN. Well, they sure are having a pretty good track record, IRS, two different times with you.

Mr. KERNER. They're entitled to file complaints. They don't do the investigation. Once the complaint is initiated, the investigation——

Mr. JORDAN. No, we know who does the investigation. We know it's you. We know it's you.

Mr. KERNER. I don't do the investigation, sir.

Mr. JORDAN. Well, it's your group.

Mr. KERNER. Well, no, no. Sure. But it's my—it's the nonpartisan staff.

Mr. JORDAN. You're not responsible for the investigation that took place? You're the guy in charge.

Chairman CUMMINGS. You may answer the question.

Mr. KERNER. Thank you.

Mr. JORDAN. Did they sign the letter or did you?

Mr. KERNER. I signed the letter and I'm absolutely responsible. But I don't conduct the investigation. That's all I was trying to say.

Chairman CUMMINGS. Thank you very much.

Let me, to clarify on what the ranking member just asked you. Were there others, other than CREW, who had complaints with regard to Ms. Conway? Were there other people?

Mr. KERNER. Yes, I believe so.

Chairman CUMMINGS. Other organizations?

Come on, man. I'm listening. I can't hear you.

Mr. KERNER. Yes, I think—I believe so.

Chairman CUMMINGS. Okay. I don't want to leave it—I don't want it left hanging——

Mr. KERNER. No. No.

Chairman CUMMINGS [continuing]. that CREW was the only folks that may have issued a—some type of complaint.

Mr. KERNER. There are other organizations, yes.

Chairman CUMMINGS. Very well. All right.

Who's next?

Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chair. I've said to you on more than one occasion that you have the patience of Job, and you are certainly showing it now.

I've been on this committee for a little over 6 years. And 6 years of it I was in the minority. We were in the minority. And the last administration was accused of everything they could have been accused of. And you would have thought it was the devil himself leading the country. So interesting to me now to hear comments of what the other side is accusing us of when it was embarrassing and so disrespectful what they did to the former President. But anyway.

OSC social media guidance states, and I quote: Employees may not use a social media account designated for official purposes to post or share messages directed at the success or failure of a political party candidate in a partisan race or partisan political group.

The conflicts of conflating official and political activity are innumerable. By reference, let's look at three of Kellyanne Conway's appearances on television in which she violated the Hatch Act.

Per FEC filings, on February 10, 2019, the Trump reelection campaign received 1,425 donations totaling \$71,740.70. On the 11th, the day of her interview, it received 1,558 donations totaling \$112,477.89, a 9 percent increase in donations and 57 percent increase in value. On the 12th it received 2,059 donations totaling \$162,216.05, a 44 percent increase in donations and a 126 percent increase in value from the 10th.

Her March 13 and March 18 appearances yielded similar results. The day after an appearance on average yielded 159 percent increase in daily donations from the day before an interview. Clearly conflicts about—and television is only the tip of the iceberg. Social media creates many more opportunities for conflicts of interest.

In November, your office issued warning letters to six White House employees appointed by President Trump who used their official Twitter accounts for political activity, specifically to promote President Trump's reelection campaign.

Ms. KELLY. At least six White House employees did not follow OSC's social media guidance. Correct?

Mr. KERNER. Yes.

Ms. KELLY. One of the employees who received a warning letter was Raj Shah, the former deputy press secretary at the White House. Mr. Shah tweeted a message on June 4, 2018, that included a link to a Republican National Committee web page on the accomplishments of President Donald Trump's first 500 days in office.

Should a Federal employee ever be tweeting political research from a party website on his or her official social media account?

Mr. KERNER. I believe the guidance that the Hatch Act Unit has given is that they should not.

Ms. KELLY. OSC did not find that Kellyanne Conway was using an official account, that we've talked about earlier, but her own personal Twitter account.

Can you explain how a message sent on an official's personal social media account can be a Hatch Act violation?

Mr. KERNER. Yes. Even though it's a personal account, if it has so many official statements on there that is essentially an official account, and if at an official media interview she gives that account as further reference, it can turn that into an account that's violating the Hatch Act.

Ms. KELLY. OSC social media guidance includes the following example: You are Federal employee and maintain only a personal Twitter account. While you have some personal posts about family vacations and events with friends, most of your posts are retweets of your agency's initiatives and photographs of you at official events. You may not use this account to make posts directed at the success or failure of a political party, candidate in a partisan race, or a partisan political group.

This example is exactly what Ms. Conway was doing, correct?

Mr. KERNER. Yes. Yes.

Ms. KELLY. Now that Kellyanne Conway got caught violating OSC's guidance, the White House is arguing that OSC does not have the authority to apply its guidance to Federal employees.

Do you agree with this new argument from the White House that OSC should not provide or use guidance in interpreting the Hatch Act?

Mr. KERNER. No, I don't.

Ms. KELLY. This committee is the authorizing committee for OSC, and I believe OSC does have the authority to issue guidance and the authority to apply that guidance to its determinations of whether the Hatch Act has been violated. The White House's novel argument is just a distraction, which they are very good at, from the fact that the President refuses to hold his advisor accountable for actions that clearly violate the law. The President should fire Kellyanne Conway.

And I yield back.

Chairman CUMMINGS. Ms. Foxx.

Ms. FOXX. Thank you, Mr. Chairman.

Mr. Kerner—

Mr. KERNER. Yes.

Ms. FOXX [continuing]. In 2013, the OSC initiated an investigation of then-Secretary of Labor Hilda Solis for Hatch Act violations. You want to talk about political activity, you want to talk about soliciting money, nothing says pushing for a particular partisan candidate or violating the Hatch Act like asking subordinates to help raise money for President Obama, which is exactly why the Hatch Act was initially enacted in the 1930's to keep FDR from doing the same thing.

In a voicemail left on a Labor Department employee's phone, Secretary Solis stated, quote: Hi, this is Hilda Solis calling. I'm just calling you off the record here. Wanted to ask you if you could, um, help us get folks organized to come to a fundraiser we're doing for Organizing for America for Obama campaign, end quote.

Mr. Kerner, this seems like a textbook Hatch Act violation. Is that correct?

Mr. KERNER. You know, I don't know all the facts, obviously, but it sounds like a Hatch Act violation just from what you've read.

Ms. FOXX. I think this aligns exactly with Congress' intent for enacting the law, quote, to protect Federal employees from political coercion in the workplace and to ensure that Federal employees are advanced based on merit and not based on political affiliation.

Mr. Kerner, did the OSC ever file a report against Secretary Solis?

Mr. KERNER. I believe we had an open investigation, but I do not believe we filed a report, no.

Ms. FOXX. Mr. Kerner, does OSC continue its Hatch Act investigations after the employee resigns from Federal office as a result of the investigation?

Mr. KERNER. I think it just depends. In most cases, OSC does not continue the investigation; in some cases, it does.

Ms. FOXX. And if it did open a case against Secretary Solis, would it have found that she violated the Hatch Act?

Mr. KERNER. That's a hypothetical. At the time, I wasn't even there, so it's very hard for me to evaluate. I suspect, based on the facts you recounted, that there may have been a Hatch Act violation. Given that Secretary Solis left Federal employment, I know there was no report sent to the President.

Ms. FOXX. But if you had found she did violate the Hatch Act, would the OSC have recommended that President Obama remove her from office?

Mr. KERNER. You know, I think what happened in that case, my staff tells me they actually referred her to the Justice Department for a criminal referral, which is very unusual, because obviously most cases are civil. But I think this case, because of the facts you articulated and some obviously other facts, I believe she was referred to DOJ for a criminal investigation—for an FBI investigation.

Ms. FOXX. And nothing was done by the Justice Department?

Mr. KERNER. Nothing that I'm aware of, correct.

Ms. FOXX. Okay. On May 4, 2016, OSC sent a letter to White House counsel's office regarding President Obama's press secretary Josh Earnest. In this letter, OSC laid out a series of Hatch Act violations perpetrated by Earnest. Let's go through some of Earnest's statements, because I think the Earnest case is pretty similar to Ms. Conway's, yet the treatment of these two individuals by OSC is vastly different.

Statement: At the podium in the White House press briefing room on December 8, 2015, Earnest made the following comments: Let me just step back and say the Trump campaign for months now has had a dust beneficiary-like quality to it from the vacuous sloganeering to the outright lies, to even the fake hair. The whole carnival barker routine we've seen for some time. The question now is about the rest of the Republican Party and whether or not they are going to be dragged into the dustbin of history with him. And right now, the current trajectory is not very good.

Is that a Hatch Act violation?

Mr. KERNER. I believe OSC, once again, before my time, but OSC investigated this case and did find a Hatch Act violation. I think that's correct.

Ms. FOXX. And did OSC write a letter to the White House asking President Obama to fire him?

Mr. KERNER. No, it didn't.

Ms. FOXX. But there were repeated comments made by Josh Earnest, very similar to those things that Ms. Conway is being accused of, and never did you write President Obama and say, fire Josh Earnest. Is that correct?

Mr. KERNER. That's correct. Can I indicate why that case might be a little different?

Chairman CUMMINGS. You may answer the question. The time is out, but you may answer the question.

Mr. KERNER. I completely agree with you, Congresswoman, the case was not referred to the President for disciplinary action. I think yet the facts are slightly different. In that case, after the violation came to OSC's notice, Mr. Earnest was apprised of the violations, he was counseled, and there were no further violations.

In our case with Ms. Conway, we have two reports. The first report was sent to the President on the first two violations, and then there was no course correction, and then that's why the second report resulted in the recommendation.

Ms. FOXX. Oh, I think it has to do with who's President and who's not President. I think that's really the base of it.

Thank you, Mr. Chairman. I yield back.

Chairman CUMMINGS. Mr. Khanna.

Mr. KHANNA. Thank you, Mr. Chairman.

Mr. Kerner, you were appointed by President Trump, correct?

Mr. KERNER. Yes, sir.

Mr. KHANNA. So it's a little ironic that he's accusing you of being biased. I mean, he is the one who picked you to lead this organization.

Mr. KERNER. I don't recall him—I don't recall the President accusing us of being biased. I think he accused us of not allowing Ms. Conway to exercise her First Amendment rights, but I don't remember bias, but maybe I forgot.

Mr. KHANNA. Has anyone in the White House accused you of conducting an improper investigation?

Mr. KERNER. Sure. The White House counsel's letter said that they didn't think our investigation was fair and thorough.

Mr. KHANNA. But I just want to be clear that, you know, you were appointed by this administration.

Mr. KERNER. That's correct.

Mr. KHANNA. Now, you know, I don't like going after people personally, and so let me ask you this. It's true that a lot of people in the past have had Hatch Act violations. I think the severity of these are many more.

Let's say Kellyanne Conway were to come to you today and say, I understand what the rules are. I'm willing to abide by these rules and be more willing to actually follow the law.

Do you think that could be a way that we can revolve this issue?

Mr. KERNER. I think that would be an excellent outcome. Make me very happy.

Mr. KHANNA. So I suggest that one way that we can move forward and start doing the country's business is to have that reasonable compromise where we're not attacking someone personally and we're upholding the rule of law. And my hope would be that Ms. Conway may just come to you and start abiding by the Hatch Act, and we can move forward as a country to focus on other pressing issues.

Mr. MEADOWS. Will the gentleman yield?

Mr. KHANNA. Yes.

Mr. MEADOWS. Mr. Khanna, you and I have worked in a bipartisan way on a number of issues. Here is one of the things that I think that today highlights. We have two different sides saying two different things in terms of their interpretation. I think we would all agree that if you read the statute, it is very ambiguous. And in clarity for our Federal work force, I'm willing to work with you in a bipartisan way to clarify the Hatch Act so that we do not use taxpayer dollars for campaign-related activities, but also work in a way that hopefully will stop this from being an ambiguous point going forward.

And I thank the gentleman's spirit. I thank you.

Mr. RASKIN. Will the gentleman yield?

Mr. KHANNA. Yes.

Mr. RASKIN. And I also appreciate where he's going with this. I think that—I think Mr. Kerner had given Ms. Conway multiple opportunities to come in, precisely to have a discussion and a correc-

tion about her conduct, which is clearly repetitively and egregiously in violation of the law. There was nothing ambiguous about what she did. If there is something ambiguous about it, my constituents—all of our constituents need to know, because our constituents understand there's a complete ban on their engaging in partisan activity and partisan speech when they're acting in their official capacity. And I think Ms. Conway is capable of understanding that, and I think she's capable of conforming her behavior to what the rule of law is.

But if the suggestion is by our colleagues across the aisle that the Hatch Act is unconstitutional, then we really should talk about that, especially with all of the labor unions, which have been arguing for a liberalization of the Hatch Act for a long time. Presumably, they don't just want a special rule for all the President's men and women, they would want a rule that applies to everybody in the Federal work force.

Do we want people using their official email for partisan campaign purposes? Now, I think that that is a line that's been drawn, which makes a lot of sense, that we make people use their personal emails and not mix it with their official emails, and that they not use the official platform and pulpit they're given as a Federal employee to attack candidates that they don't like or to promote candidates that they do like. So——

Mr. KHANNA. Mr. Raskin, if I could just reclaim.

Mr. RASKIN. Yes. I yield back.

Mr. KHANNA. And I welcome the effort to work with you and Mr. Meadows on clarifying further the Hatch Act, but I just want to emphasize, Mr. Kerner, that you remain open to having a conversation with Ms. Conway and welcome perhaps her acknowledgment of mistakes and/or willingness to abide by the Hatch Act?

Mr. KERNER. Absolutely.

Mr. KHANNA. Thank you.

Mr. KERNER. Thank you.

Chairman CUMMINGS. Mr. Gosar.

Mr. GOSAR. Thank you, Mr. Chairman.

Mr. Kerner, on April 30, 2013, you met with Lois Lerner and other high ranking officials from the IRS while you served as Senator John McCain's Senate Homeland Security Permanent Subcommittee on Investigations' staff director. Boy, that's a mouthful.

In this meeting, you recommended harassing nonprofit groups until they're unable to continue operating. You told Lerner; Steve Miller; then chief of staff to the IRS Commissioner, Nicole Flax; and other IRS officials, quote, maybe the solution is to audit so many that it is financially ruinous, end of quote. In response, Lerner responded that, quote, it is her job to oversee it all, end of quote.

Mr. Kerner, how can we take anything you say as objective when you yourself have a history of questionable ethics?

Mr. KERNER. So this is a debunked story. This has been brought up three times already, once in 2015 against Senator McCain, then in 2018, ironically, a couple of months after OSC released the first Conway report, and then the second Conway report.

Any claim that I urged the IRS to target the Tea Party is completely false. This meeting, when you talked about so many, was

not referring to any conservatives or Tea Party groups. I have the transcript here, the words “conservative” or “Tea Party” in a six-to eight-hour meeting never came up.

Lois Lerner was not infamous yet, she was merely the head of the exempt organizations committee. She was talking to us about sham groups, which the Tea Party, I believe, was not. And I was asking a question. Notice the quote you attribute to me is not a quote; it’s a paraphrase from a long meeting. And the paraphrase was: What tools do you have about sham organizations?

As I told the ranking member earlier, here is a copy that I’m holding in front of me of a dissent that we issued on the Senate Permanent Subcommittee on Investigations that excoriated the IRS for targeting conservative groups. I would never target conservative groups. I am here because of the Tea Party victory. The Tea Party won in 2010, and then I got the job on this committee in 2011, when Chairman Issa became the chairman.

So the notion that I would ever target the Tea Party is just false. These allegations are always trotted out when it’s time to punish me. And as the head of the whistleblower retaliation agency, I know what retaliation looks like, and that’s what it looks like, and it’s just a smear.

Mr. GOSAR. Gotcha. Well, you know, it does somewhat contradict your boss at the time. You know, because I’m from Arizona as well, and Senator McCain was fiery in regards to the Tea Party. Very contradictory to it. And, you know, from what he understood, a conflict of his McCain-Feingold jurisdiction. So just making sure I have that straight—that fact straight.

Mr. KERNER. Well, can I just respond real quick?

Mr. GOSAR. Sure.

Mr. KERNER. Thank you.

So Senator McCain was furious when this scandal hit. So our meeting was on April 30. Ten days later, Lois Lerner admitted that she had targeted the Tea Party 3 years earlier, by the way. So the TIGTA report comes out shortly. Senator McCain was furious. He instructed me to go to—we had a very cordial relationship with the Democrats because Senator McCain and Senator Levin were close, and the Senate has a different vibe than sometimes the House does. However, he instructed me to go all out to show that that’s unacceptable.

And, also, if you think about it, Senator McCain, you’re right, was really into campaign finance. That was one of his issues. This scandal destroyed the bipartisan efforts he was working on on campaign finance. In fact, he said, that’s it, we’re done.

Mr. GOSAR. Okay. I just wanted to clear it up—

Mr. KERNER. I appreciate the questions.

Mr. GOSAR [continuing]. because there are a lot of questions out there in Arizona.

Mr. KERNER. I appreciate it.

Mr. GOSAR. Now, the White House is standing behind Conway. White House counsel, Pat Cipollone, wrote a response to Special Counsel, yourself, claiming the report was based on numerous grave legal and procedural errors, end of quote. First, end of quote, even assuming that the Hatch Act applies to most senior—to the most senior advisors to the President in the White House, OSC has

violated its statutory obligation to provide Ms. Conway a reasonable opportunity to respond, violating Ms. Conway's due process rights, and abused its discretion by issuing a report tainted by inappropriate external influences, end of quote. The White House counsel's letter says, adding.

Second, OSC's overbroad and unsupported interpretation of the Hatch Act risks violating Ms. Conway's First Amendment rights and chills the free speech of all government employees. In fact, OSC has no legal authority to promulgate guidance on social media use that it treats effectively as binding rules in order to enforce its overbroad interpretation of the Act.

This was illustrated by my colleague, Mr. Meadows.

Third, contrary to your letter, Ms. Conway's Twitter account and her social media appearances do not violate even the standards used by OSC itself. Worst of all, OSC's call to the President to remove Ms. Conway from her Federal platform immediately is an outrageous as it is unprecedented.

Mr. Kerner, what is your response to the reasonable arguments made by White House Counsel Pat Cipollone?

Mr. KERNER. We put out a response. The White House unfortunately cited the wrong statute, among other things, made various errors. I will just say this. The procedure was followed—that we followed was absolutely appropriate. We did exactly what we do in these cases. We got a complaint, we investigated it. We found all these violations.

You will note, in everything you just read, they barely touch on the fact that she spoke 10 times to the media, and while using her official authority, expressed views that were simply opinions on the partisan electoral process. You can't do that.

I'm as interested as anyone to help her comply and get her into compliance. As I told Congressman Khanna, I would like to see nothing better than that. Unfortunately, she has not been willing to do that, but we are always ready and stand ready to engage any time she would like.

Chairman CUMMINGS. Ms. Hill for unanimous consent request.

Ms. HILL. Thank you, Mr. Chairman.

I hope I can actually clear a few of these things up with the pieces that I'm about to enter into the record. The first is a copy of the text of 5 U.S. Code Section 1212, which establishes the powers and function of the Office of the Special Counsel.

Mr. Meadows, when you mentioned that the Office of the Special Counsel can't prescribe regulations or advisory opinions on social media, that was concerning to me so I looked into it. And the Special Counsel—it says specifically, that the Special Counsel may prescribe such regulations as may be necessary to perform the functions of the Special Counsel, first. And then, second, it says that the Special Counsel may not issue any advisory opinion concerning any law, rule, or regulation.

I said, oh, my gosh, you might be right. But then the next sentence says, other than with regards to Chapter 15 or Subchapter 3 of Chapter 73. So I looked up those, and they say specifically around political activity.

So the Special Counsel may indeed issue advisory opinions around political activity, and they did, which is the second piece I'd

like to enter into the record, which is the Hatch Act Frequently Asked Questions on Federal Employees and the Use of Social Media and Email, published by the U.S. Office of Special Counsel on December 18 of 2015.

Chairman CUMMINGS. I'm going to admit the documents, but I want you to shorten your—

Ms. HILL. That's it. I'm good. Thank you so much.

Mr. MEADOWS. I have a unanimous consent request.

Chairman CUMMINGS. Mr. Meadows.

Mr. MEADOWS. So I appreciate the gentlewoman's nudging there, so let me clarify it, because I think it's very clear, and I think if your team goes back and looks at it.

I ask unanimous consent to put in the guidance that's actually from OPM, which would be subpart E, which says: Special provisions for certain Presidential appointees and employees paid from the appropriations of the Executive Office of the President. It is very clear there.

The other is, is to suggest that a statute that it was actually written and amended the last time before Twitter was ever, ever invented, that it somehow applies retroactively is the just not accurate. And so I would ask unanimous consent that we put this into the record.

Chairman CUMMINGS. Without objection.

Mr. JORDAN. Mr. Chairman?

Chairman CUMMINGS. Mr. Jordan. And then we're going to go to Ms. Ocasio-Cortez.

Mr. JORDAN. Unanimous consent to enter into the record two complaints sent to the Office of Special Counsel by CREW, both addressed to Mr. Kerner. The most recent one, May 8, 2019. It's amazing how he couldn't remember that CREW filed complaints, but they were both sent to him, and one of them was just last month.

Chairman CUMMINGS. Without objection, so ordered.

Chairman CUMMINGS. Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

Thank you, Mr. Kerner, for being here. In your testimony, you describe the purpose of the Hatch Act as being a separation of the nonpartisan governance of the country from partisan political campaigning, which I think is the best frame to put this in.

There may be some who are watching this hearing at home and they're saying, you know, so what, what's the harm? Can you explain why violations of the Hatch Act like Kellyanne Conway's should matter to the public?

Mr. KERNER. Yes. Thank you. It's very important—the Hatch Act is really important, even today. I know Mr. Meadows talked about how when it was last amended there was no Twitter. Well, obviously we've also talked about email and other forms of social media so—social media and communication. The principles are the same.

And the importance of the Hatch Act is that you have—it is very important to have a depoliticized work force, especially in these times. If you have a work force where everybody is campaigning on taxpayer money, that is not a good use of the taxpayer money, and taxpayers have a right to expect that Federal workers, while

they're in a building, in a Federal building and on duty are doing the taxpayers' functions rather than an electoral function.

Mr. SARBANES. And the law only prohibits political activity when an employee is acting in an official capacity or in the Federal workplace, correct?

Mr. KERNER. That's correct.

Mr. SARBANES. If the Hatch Act was not in place, could it lead to taxpayers who call the IRS or senior citizens who contact the Medicare hotline being faced with someone on the other end of the phone who is trying to convince them to vote for a particular candidate? That could happen, couldn't it?

Mr. KERNER. Yes. We've had a case like that where someone did call the IRS, and the IRS employee showed his support for a Presidential candidate.

Mr. SARBANES. There's also the danger that allowing Federal employees to advocate for political campaigns while on duty would undermine the public's confidence that the government is actually doing its job. Do you agree?

Mr. KERNER. Yes.

Mr. SARBANES. Since we're talking about an advisor to the President, I think it would be helpful to put this specifically in the context of the White House. Most people realize that the President is associated with a particular political party, correct?

Mr. KERNER. Yes.

Mr. SARBANES. I think most people also understand that the President's most senior advisors are also from the President's political party, typically. Most people want to believe, however, that once the President is in office, he or she will endeavor to act in the best interest of the country and not just a specific political party.

In other words, once you enter the office, you're supposed to, in a sense, elevate yourself when you can, and certainly when you're exercising your official duties, to a place of being above partisanship. Senior aides to the President, particularly those who speak on behalf of the White House, are the face of the President and the administration. And you've made that point here today.

Do you believe that when Kellyanne Conway uses her official platform as a spokesperson for the White House to criticize President Trump's political opponents, that it may erode public confidence in the Presidency itself?

Mr. KERNER. I believe that when—well, first of all, it's a violation of the law, so she just can't do it for that reason. I don't know if it erodes confidence in the Presidency. I think the Presidency is viewed as more partisan. I think there's a reason why the President and the Vice President are exempt from the Hatch Act.

But I do think that when Ms. Conway speaks on behalf of the President, official authority, she's required by law to stay away from those political partisan comments, and I think that's healthy.

Mr. SARBANES. One of the purposes of the Hatch Act is also to protect Federal employees from being forced into engaging in partisan political work while they're on duty. I understand that Ms. Conway gave her own press interviews and I assume wrote her own tweets.

Are you concerned that behavior like Kellyanne Conway's could discourage public servants from coming into government service if they believe their job will be campaigning for the President?

Mr. KERNER. Yes. I am a big believer in the depoliticized Federal work force. I think when people join the Federal work force, they do so out of a commitment to public service, and that should be for all Americans regardless of political affiliation.

Mr. SARBANES. Thank you. I just—as I'm closing, I want to emphasize, again, that I see this through two lenses. One is absolutely that the Hatch Act is there to protect Federal employees. But I think it's also there to enforce the kind of separation from politics and these official offices that people hold that the country has a right to expect. And it brings credit when you observe those lines to those offices, and it potentially can discredit them when you don't observe the boundary.

And the President, I think, must act to protect the integrity of the Federal work force to police that boundary that I've just spoken of. And for that reason, he needs to fire Kellyanne Conway.

I yield back my time.

Chairman CUMMINGS. Mr. Comer.

Mr. COMER. Mr. Chairman, I will have to admit, when I saw the agenda for the program today, I didn't think that anything productive would come out of this hearing, but I was wrong. There have been two productive things, in my opinion, that have come out of this hearing thus far.

First is there's universal unclarity about what the Hatch Act is and what it does and what congressional intent was with the Hatch Act. And, second, there was a pledge of bipartisanship between Representative Khanna, Meadows, and Raskin to try to come up with a solution to better define what the Hatch Act is, does, as we move forward.

So I just wanted to make that public, Mr. Chairman. So I appreciate you having this hearing.

Mr. Kerner, you said under oath that a Federal employee can say factual things. Is that correct?

Mr. KERNER. No, I did not. Whether something is factual or not isn't the test. The test is whether they use their official authority to talk about things related to the campaigns. It could be absolutely factual, it could even be true, but if it's related to influencing a partisan campaign, under their official authority they're not allowed to talk about that.

Mr. COMER. One of the alleged violations that you allege Kellyanne Conway committed with the Hatch Act was that she retweeted on Twitter a post about Senator Elizabeth Warren claiming that she was Native American to score a Harvard gig paying \$350,000 to teach one class.

Is that, sir, your definition of a violation of the Hatch—well, first of all, is that factual or not?

Mr. KERNER. I don't know if it's factual. I mean, Senator Warren has denied it, so I don't know if it's factual.

Mr. RASKIN. Mr. Chairman, point of order.

Chairman CUMMINGS. Yes.

Mr. RASKIN. If a false statement has been made at the hearing about a fellow Member of Congress, can it be corrected? Because I'd be happy to correct it.

Chairman CUMMINGS. Yes.

Mr. RASKIN. There is an article in The Boston Globe by Annie Linskey which refutes precisely that proposition that somehow Senator Warren lied about a recommendation.

Chairman CUMMINGS. Wait, wait, wait. I thought you said at the end?

Mr. RASKIN. Oh, sorry. Happy to do that.

Mr. MEADOWS. A point of order actually has to stay the rule.

Mr. RASKIN. I believe the rule—I believe that the rule states that we cannot disparage and defame other Members of Congress.

Mr. COMER. I did not disparage another Member of Congress. I'm reading one of the violations that they claim. This is a very serious hearing when you're ruling that someone—and you, each member on the Democrat side just about has said that Kellyanne Conway should be fired. I'm reading one of the allegations that you claim she violated in the Hatch Act.

I didn't say anything disparaging about Senator Warren. I asked if that was factual or not. I take offense to that, and, Mr. Chairman, I'd like to strike that from the record, what Mr. Raskin's—

Chairman CUMMINGS. Without objection.

All right. Let's go on.

Mr. COMER. Thank you.

Mr. Kerner, we go back to the—this is your interpretation of the Hatch Act. When she was on the Ingraham Angle show, which I've been on a few times and many on this committee have been on, again, she was asked about Elizabeth Warren's claims of her Native American ethnicity, and she answered the question.

Explain to me how that is a violation of the Hatch Act that would warrant her termination from a job that many of us think she does very well.

Mr. KERNER. Sure. And just to explain too, when we talk termination, it sounds like we or somebody wants to deprive the President from having an effective spokesperson. That's really not what we're talking about. We're talking about having a Federal employee abide by laws that apply to Federal employees.

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. So I just want to make that clear.

And then as to your specific question, when she talks about Senator Warren and the alleged claims about her heritage and how it might have affected it, when she talks about that, it's not the veracity of it that matters; it's that they're not related to a policy. They're related to her as a candidate. And why that would—

Mr. COMER. You know, my opinion, my interpretation of what you just said, if you misrepresent your race in order to take advantage of affirmative action laws, that is a serious issue. I don't think that's a unique Presidential partisan issue to point, in general. I mean, it's a—if she was asked the question, she answered the ques-

tion to the best of her knowledge factually, and in my opinion, you know, what I read, that has the potential to be factual.

But I think that we need to examine the Hatch Act moving forward. I'm glad that we've had some production here to where we can, in a bipartisan way, figure out the correct intent of the Hatch Act as we move forward, to where we don't create a scenario where someone who's doing her job, and, you know, her reputation is tarnished because of a misunderstanding of the Hatch Act.

Mr. Chairman, I yield back.

Chairman CUMMINGS. Thank you very much.

Ms. Ocasio-Cortez.

Ms. OCASIO-CORTEZ. Thank you, Mr. Chair.

You know, there's been a lot of comments made about the ambiguity of the Hatch Act, which I think is overall quite clear in its intent in saying we cannot use our official government capacities for partisan political purposes. That's a pretty clear line. And if there's any question about that, we ask.

And, in fact, I think that the proof of the clarity of the Hatch Act comes in what just happened earlier this year in the largest government shutdown in American history, because we had 800,000 Federal workers, from air traffic controllers to far beyond, Federal employees at the State Department here, 800,000 workers who are all subject to that same Hatch Act, and they knew what the rule was.

They weren't getting paychecks. They used up their entire life savings. They were struggling to pay their mortgages. They couldn't feed their kids, and they still didn't say anything. They still didn't engage in political organizing against the people who were committing this against them because they understood the law.

Beyond that, you said in your opening statement, correct, that even Sarah Huckabee Sanders acknowledges the—in her work she acknowledges the bars in the Hatch Act, correct?

Mr. KERNER. Yes, that's correct, Congresswoman.

Ms. OCASIO-CORTEZ. Okay. So we have many members of the President's own administration who honor the law and respect the law. The violations here, to the extent and the repetitiveness to which they are being committed, is unique to Ms. Conway, correct?

Mr. KERNER. Yes.

Ms. OCASIO-CORTEZ. Okay. And with that, I would like to show you all a video that highlights many of the violations that the Office of Special Counsel detailed in its report.

[Video shown.]

Ms. OCASIO-CORTEZ. So, Mr. Kerner, I want to walk through some of the specific Hatch Act violations that OSC found that Kellyanne Conway committed.

On November 20, she gave an interview with Fox & Friends, in which she called the Democratic Senate candidate Doug Jones a, quote, doctrinaire liberal. This was a Hatch Act violation, correct?

Mr. KERNER. That was in our first report, correct.

Ms. OCASIO-CORTEZ. And on December 6, 2017, Ms. Conway appeared in her official capacity on CNN and discussed why voters should support Republican Senate candidate Roy Moore and why they should not support Democratic candidate Doug Jones. OSC

then sent President Trump a report detailing these violations, but you did not recommend a specific form of discipline, you left that up to the President, correct?

Mr. KERNER. Correct. Correct.

Ms. OCASIO-CORTEZ. The President appears to have done nothing about this, and Ms. Conway continued to violate the law. OSC found that between October 31 and November 6, Ms. Conway posted at least 15 messages that violated the Hatch Act to her Twitter account.

Are you aware of any other senior aide to a President who has systematically violated the Hatch Act to this extent by attacking the potential opponents of the President?

Mr. KERNER. I am not aware.

Ms. OCASIO-CORTEZ. And I think this right here gets at the core of what we're talking about today, is that this is not even partisan, because members of Trump's own administration do not violate the law, this law, to the extent that she does. She is being subject to these reports because she is unique in her flagrant violation and disrespect for the law.

And, frankly, when she doesn't show up to her own congressional hearing today, she's not just disrespecting Democrats—I don't mind, that's something that she does on TV every day—she disrespects the entire body. She disrespects every Republican Member of this body, and disrespects the power that each and every single one of us has. And, moreover, I think that this taps into a deeper narrative and a deeper pattern of what is happening out of this administration where they believe that the rule of law only belongs and applies to some people and not others.

Right here and now, we're about 20 years away from the Central Park Five, where the President put out a full page ad demanding the death penalty for five Black and brown boys. Boys. They were not yet 18 years old, demanding the death penalty for something they were accused of and innocent of.

And here we have just documented evidence of multiple times of violation of the same law, and he won't even issue a slap on the wrist. This is a pattern about some people being subject to the rule of law and others not. And when that happens, there is no rule of law at all. At all. And that's why it's important that we make sure that everyone is held accountable, because whether it's a billionaire, whether it's an administration official, or whether it's a postal worker, or a kid on the street, we all must be held accountable to the same extent by the rule of law.

Thank you very much.

Chairman CUMMINGS. Thank you very much.

Mr. CLOUD. Mr. Cloud.

Mr. CLOUD. Thank you, Mr. Chair.

You refer to normal Federal employee hours for a Federal worker, nine to six, eight to five, give or take?

Mr. KERNER. I think Congressman Massie asked me about those hours. But as I tried to explain, they don't really impact on this violation.

Mr. CLOUD. Would you say that as counselor to the President, Kellyanne Conway's duties, quote, continue outside the normal duty hours and away from the normal duty post?

Mr. KERNER. Yes.

Mr. CLOUD. Would you list any cost associated with the alleged political activity by Kellyanne Conway that were paid for out of the U.S. Treasury?

Mr. KERNER. Would I list them?

Mr. CLOUD. Yes.

Mr. KERNER. I'm not sure what list means. But is she paid by those, is that what you mean?

Mr. CLOUD. The alleged political activity, can you trace it back to any funds paid out of the U.S. Treasury for each act?

Mr. KERNER. No.

Mr. CLOUD. Do you have a list of that?

Mr. KERNER. Right. So, no, but that provision only goes to the on-duty rules—

Mr. CLOUD. Is Kellyanne Conway paid for using appropriated funds from the Executive Office of the President?

Mr. KERNER. I believe so, yes.

Mr. CLOUD. Okay. 5 U.S.C. Section 7324 allows employees who are paid using appropriated funds from the Executive Office of the President whose duties continue outside the normal duty hours and while away from the normal duty post to engage in political activities prohibited under the Hatch Act, quote, if the costs associated with that political activity are not paid for by money derived from the Treasury.

Are Post Office employees paid out of the Executive Office of the President?

Mr. KERNER. I don't believe so.

Mr. CLOUD. Okay. They're not. So we're not really comparing apples to apples here when we paint Federal employees with a broad brush?

Mr. KERNER. But I think you're talking about the same provision that Mr. Meadows was talking about, and that provision doesn't cover the official duty—the official authority restriction.

Mr. CLOUD. Reclaiming my time. The purpose of the Act—according to the Office of Special Counsel overview of the Hatch Act on the website says that the purpose of this Act was to ensure that Federal programs are administered in a nonpartisan manner, to protect Federal employees from political coercion in the workplace, and to ensure that Federal employees are advanced based on merit and not on political affiliation.

Do you stand by that definition on the purpose of this Act?

Mr. KERNER. Sure.

Mr. CLOUD. Okay. Could you list the Federal programs administered by Kellyanne Conway?

Mr. KERNER. Well, I mean, she has a portfolio in the White House. I don't know—

Mr. CLOUD. Does she administer any Federal programs, that you're aware of?

Mr. KERNER. I mean, like I said, she has a portfolio. I don't think she administers anything—

Mr. CLOUD. How many Federal employees report to Kellyanne Conway?

Mr. KERNER. I actually don't—I don't know.

Mr. CLOUD. Okay. You mentioned a number of political organizations that filed complaints against her. Were any of these employees that report to her?

Mr. KERNER. Not that I'm aware of, no.

Mr. CLOUD. Okay. Thank you.

I yield my time to the ranking member.

Mr. JORDAN. Mr. Kerner, in the opening paragraph of your letter to the President June 13, the last sentence you said: Her actions erode the principal foundation of our democratic system—the rule of law.

Her actions erode the principal foundation of our democratic system. You really believe that?

Mr. KERNER. Yes, I do.

Mr. JORDAN. When she said Senator Biden and Senator Sanders are too old white career politicians, how does that erode the principal foundation of our democratic system?

Mr. KERNER. It's not the content of what she says. What happens is she's using her official authority—

Mr. JORDAN. But that's not what—you said you think that erodes the democratic system?

Mr. KERNER. I think her failure to follow the Hatch Act erodes our system, yes.

Mr. JORDAN. When she said 28 million Americans are without healthcare 9 years after Obama-Biden care passed, you think that erodes the principal foundation of our democratic system.

Mr. KERNER. I think her failure to follow the Hatch Act and to then announce that she's—essentially doesn't care, frankly, I think does, because it shows that the rule of law only applies to the little people. That people are connected—well-connected do not have to have—don't have to comply with the law.

Mr. JORDAN. When she said about Senator Warren—when she said about Senator Warren she had zero sympathy for—she is quoting Senator Warren. Senator Warren said she had zero sympathy for parents caught in the college admission scam. And Ms. Conway said, I have zero sympathy for adults who lie that they are Native Americans to gain advantage.

Do you think that undermines the principal foundation of our democratic system?

Mr. KERNER. I'm not taking issue with any of her statements. She's entitled to make those, but not when she's speaking in her official authority. And when she does that and she knowingly violates the rule of law, I think it does undermine it.

Mr. JORDAN. When she's speaking in her capacity, in her official capacity and says 28 million Americans don't have healthcare, how does that violate the principal foundation of our democratic system? I actually think it helps it.

I think it's someone stating a fact about one of the biggest pieces of legislation we've had in years around this place that did not work, and reinforces the First Amendment liberties we as every single American has. But, no, you in your letter say it undermines the principal foundation of our democratic system.

Stating the truth undermines—actually, stating the truth is the foundation of being able to speak in a First Amendment way, is the foundation. And, unfortunately, we got way too many people who

don't recognize that and are trying to limit First Amendment free speech rights.

Chairman CUMMINGS. All right. Let me say this. You know, I'm listening to all of this, and I got to tell you, I think we have gotten so far down the line, Mr. Kerner, that when there is—I mean, I'm just sitting here thinking about this. I mean, I practiced law for many years. And the idea that we would sit here and argue about violation of Federal law, that we've gotten that far down the road, it concerns me tremendously.

And I think—and I'm not going to put words in your mouth. I've heard every syllable that has been said here, I have not moved. It seems to me that what you're talking about is the law itself. And probably the best thing that has been said is the—was said by Mr. Comer and Mr. Khanna and Mr. Raskin. If there's some clarity that needs to be made, it needs to be made.

But it concerns me that we've gotten so far from the basic principles of obedience to the law—of the law. I mean, I feel—

Mr. CLOUD. Will the chairman yield.

Chairman CUMMINGS. No, I will not yield.

I mean, we've gotten to a point where it seems like it's normal, it's okay. Well, it's not okay. We do not teach our children to lie. We do not teach them to disobey—we do not teach them to disobey the law. And what we're trying to do—we've got—I don't know what we're supposed to do.

When we see somebody from your office that comes to us and says, or puts out in the universe, that somebody has basically thumbed their nose at the Congress, it's not just Democrats, it's all of us. And I think it does erode our democracy. I think it does take away from it.

Mr. CLOUD. Mr. Chairman, whose time are you speaking on?

Chairman CUMMINGS. Mine.

Mr. CLOUD. Point of information.

Chairman CUMMINGS. You're welcome.

Mr. CLOUD. Point of information.

Chairman CUMMINGS. Who am I talking to?

Mr. JORDAN. Mr. Cloud.

Mr. CLOUD. Has Ms. Conway been convicted of a crime? Because your statement seems to insinuate that it has. My understanding was that this is a discussion as to whether she has committed a crime.

Chairman CUMMINGS. That's exactly right. I'm talking about a general—I'm talking about generally, we are getting to a point where it seems that the whole idea of when we've been brought allegations in the past—let me just clarify something. You weren't on this committee, but I can tell you—buddy, let me tell you.

Mr. CLOUD. I was not here in the past, I'll admit that.

Chairman CUMMINGS. I'm sorry?

Mr. CLOUD. I was not here for any past discussions.

Chairman CUMMINGS. I can tell you, this would be—it would be holy hell in here, all right. So I just wanted to make that observation, that's all. We're better than this, as Mr. Meadows has stolen my phrase again, but—

Mr. MEADOWS. It was a good one, Mr. Chairman.

Chairman CUMMINGS. Ms. Tlaib.

Ms. TLAIB. Thank you so much, Mr. Chairman.

You know, no one reports to Ms. Conway, probably, and she doesn't run any Federal programs because she's campaigning on taxpayer dollars.

Are you aware she gets paid \$179,700?

Mr. KERNER. I think that's the maximum.

Ms. TLAIB. Yes. Mr. Kerner, under the Hatch Act, a Federal employee may not engage in political activity while on duty, or, and I quote, in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States.

Does that basically mean the grounds of any Federal building, government building?

Mr. KERNER. Yes, but that's also the provision that doesn't apply to her.

Ms. TLAIB. Okay. Does it include grounds of the White House? Does it apply to her?

Mr. KERNER. Yes.

Ms. TLAIB. Why is it important that Federal employees do not engage in political activity while they are on grounds of a Federal building?

Mr. KERNER. Yes, that's exactly the issue we talked about earlier. If we're going to have a depoliticized work force, we can't have people running around campaigning all day long while they're supposed to be doing—

Ms. TLAIB. On taxpayer dollars?

Mr. KERNER. Correct.

Ms. TLAIB. Yep. OSC found that on multiple occasions Kellyanne Conway engaged in political activity during press interviews on White House grounds. Is that correct?

Mr. KERNER. Yes. Using her official authority, yes.

Ms. TLAIB. And I hate wanting to go through the clip, but we got to go. So there's a clip, an interview on April 24, 2019, that I'd like to show my colleagues.

[Video shown.]

Ms. TLAIB. Mr. Kerner, based on that video, do you agree that Ms. Conway appears to be on White House grounds when she's making that statement?

Mr. KERNER. It does appear that way, yes.

Ms. TLAIB. Was she campaigning?

Mr. KERNER. It seems—I believe this was one of the violations we found in our report.

Ms. TLAIB. OSC noted that in a report released June 13 that Conway, quote, appeared in front of the White House.

Mr. Kerner, the news clip also identified Ms. Conway as, quote, a counselor to President Trump, correct?

Mr. KERNER. Yes. Counselor to the President, correct.

Ms. TLAIB. When you see the text in the news clip with the title counselor of the President of the United States, is that factor that supports that Ms. Conway is speaking in her official capacity?

Mr. KERNER. Yes, it does.

Ms. TLAIB. OSC found that this interview violated the Hatch Act, correct?

Mr. KERNER. I believe so, yes.

Ms. TLAIB. Can you explain what it was about Ms. Conway's comments during this interview that violated the Hatch Act?

Mr. KERNER. Yes. So the description was about existing Democratic Presidential candidates. It wasn't talking about a policy, it wasn't talking about anything other than them personally, and she was on White House grounds. OSC has found that she was using her official authority to talk about election-related incidents, which she's not supposed to be doing.

Ms. TLAIB. And it's obvious that Ms. Conway was willfully and openly disregarding the law on Federal premises in public view.

Do you believe that Ms. Conway has any intention of ever complying with the rule of law or following the directions regarding the Hatch Act?

Mr. KERNER. I'm an optimist, so I remain optimistic that she will.

Ms. TLAIB. And, Mr. Chairman, if I may, if there's a lot of disagreements about how the Hatch Act is implemented here, how it's applied to Ms. Conway, then the members of this body can change it. They can propose laws to change it.

He is applying the law as it exists to a person on taxpayer dollars campaigning for the President of the United States.

And, Mr. Chairman, I would urge the President to allow Ms. Conway to either resign or fire her and then hire her on the campaign side, where she obviously belongs, not working on behalf of the American people.

I yield the rest of my time.

Mr. MEADOWS. Ms. Tlaib, would you yield for—

Ms. TLAIB. No. No, Mr. Meadows, I yield the rest of my time to the chairman.

Mr. MEADOWS. It was a nice comment.

Ms. TLAIB. I know, I understand. And, you know, I have to say something, Mr. Meadows. You know, I am new here, and one of the things that is very obvious to me, and I'm also an attorney, and I can tell you, if I ever want to hire a defense team, I know exactly where to go, especially if I've, you know, allegedly committed a crime.

It is so absurd, and the chairman is correct. You know, sometimes I don't ask any of my clients whether they're Democrat or Republican. I ask, you know, what were the actions, whether or not to play. And sometimes I urge them to comply when they're in violation of the law, and I work it out.

But in this instance, we're allowing the American people to see it's okay to normalize the fact that a person that's being paid close to \$200,000 of our money to campaign on our dime, on our money and our time, where she's supposed to go advise on policy.

You know, I, in this chamber right here, in this body, I'm not allowed to specifically say something about a colleague in this chamber. I can say certain acts or certain things. I can talk about certain policies. And the chairman has been so patient with me in teaching me that process, and I abide by those rules.

But it's so absurd that we sit here and watch over and over again somebody that we're paying on government dime to go on national TV to campaign and talk about other candidates. It's just wrong.

Chairman CUMMINGS. Mr. Gibbs.

Mr. GIBBS. Thank you, Mr. Chairman.

Thank you for being here, Mr. Kerner. I'm wondering on the—so I understand this better on policy versus campaigning. So if a person, in this case, Ms. Kellyanne Conway, is out doing an interview and a reporter asks her a specific question that's policy and she answers it. But the reporter asks a question, asks something like, Bernie Sanders, blah, blah, blah, this, and it's policy, and she's answering the question, Bernie Sanders. Would that be okay?

Mr. KERNER. I think generally, yes. Obviously, there's always a case by case, you know, investigation. The professionals do these cases when they, you know, both in an—advisory opinions as well as when we get complaints. They'd have to look at all the circumstances. It's a very fact-intensive thing.

Mr. GIBBS. So your entity—you're in an advisory capacity, you offer the advisory opinion. So it's an opinion, correct?

Mr. KERNER. Correct.

Mr. GIBBS. Okay. And when you have a senior policy advisor to the President working in the White House, obviously—I don't think—did she ever go out and say, vote for Trump, or don't vote against Biden or Sanders?

Mr. KERNER. Well, I don't believe so.

Mr. GIBBS. Because that would be—I think that would be a violation. But when you got—tying policy to it, and she's a senior policy advisor, I think there should be a little leeway there.

And then I'm a little concerned. Some of the clips have been played, some maybe were at the White House, it appears it was, and some weren't, and some were late at night—later in the evening, but I don't know all the context was, you know, how that came up if it was policy and she was answering.

And also, is there any waiver provisions for senior White House advisors for the Hatch Act?

Mr. KERNER. Waiving the Hatch Act entirely? I don't believe so.

Mr. GIBBS. Okay.

Mr. KERNER. Waivers of other guidelines, but they specifically exclude the Hatch Act, so you're not waived. Now, the provision that Mr. Meadows has cited does set up a system where she's not bound by the on-duty prohibitions. So she can engage in various political activities on duty, but they still have to be permissible. And using her official authority to do the campaign work is not permissible, so she can't do that.

Mr. GIBBS. I'll yield the balance of my time to Mr. Meadows.

Mr. MEADOWS. I thank the gentleman.

So, Mr. Kerner, let me come back, because here is what I would like for you to get to this committee. In your response to the White House General Counsel, you didn't put any notations as to the possibility of a waiver. And so I'd ask your team to go back and address the waiver, because it's an open question that, quite frankly, I think demands an answer.

CRS, which is not a partisan entity, is actually indicating that the waiver does apply to Ms. Conway. And so when we have that—so we've got two different things, and so I would ask that you do that.

Mr. KERNER. We will do that.

Mr. MEADOWS. Earlier, you talked about how Josh Earnest and Ms. Conway are different because you, in May 2016, I guess, gave a report and he never did it again. That was your testimony?

Mr. KERNER. Right. Obviously, once again, that—

Mr. MEADOWS. But that's not correct. I mean, obviously, you did that. And so I ask unanimous consent that we put in—because on October 2016, you know, at the White House briefing, he says, so you're telling me that candidates who snorted their way through two debates—he's accusing other candidates of taking drugs.

Now, I think it's very clear in the context of everything that you laid out that Mr. Josh Earnest, once again, was violating, according to you, the Hatch Act.

Mr. KERNER. Uh-huh.

Mr. MEADOWS. And so to suggest that he stopped it once that you—you know, the OSC actually outlined it, it's just not accurate. So I would ask you to go back and review that.

Mr. KERNER. Well, just to clarify. On May 4, 2016, OSC, prior to my arrival, sent a letter to Mr. Earnest—

Mr. MEADOWS. Right. Right.

Mr. KERNER [continuing]. where they said what I testified to earlier, which was, during our investigation, we learned that on or about April 6, you were counseled, and a review of all the press briefings between April 6 and April 29 did not reveal any new violation, thus, although we have concluded you violated the Hatch Act, we have decided not to pursue disciplinary action and are closing the file with basically a warning.

Mr. MEADOWS. Right. But your comment would suggest that he didn't violate it. And what I'm saying, in his press briefing in October following that timeframe, he had violated it again and yet he got a free pass. And so it's the two standards. That's what I'm asking you to do.

Mr. KERNER. Okay.

Mr. MEADOWS. And the last questions I have.

At what point did Ms. Kellyanne Conway's personal twitter become official? And at what point will Kellyanne Conway's personal twitter that you now deem official go back to being personal? I need to know the red line.

Chairman CUMMINGS. The gentleman's time is expired. You may answer the question. Members, we got a 1:30 vote. I don't want to come back after the vote.

Mr. MEADOWS. We're having so much fun.

Chairman CUMMINGS. Well, wait a minute, man. I'm just trying to make you aware. We have a 1—I'm just making, as a courtesy, making the committee aware that we have a 1:30 vote. And I'm saying that we will finish the hearing. But I'm not anxious to come back whenever that is to keep this hearing going.

So I'd just ask you all to take that into consideration. You may answer the question.

Mr. KERNER. I'll do very briefly.

Just on your point, on Josh Earnest, apparently we closed the case after the—with the warning letter. From what I understand, once again, I wasn't there, I was told by the Hatch Act unit they did not receive a subsequent complaint about the incident you talked

about. Most of the time we investigate cases, though, we get complaints on. If none is received, there's no investigation.

As for your other question, we are certainly willing to—at some point, when we do an investigation, the Hatch Act unit looks at the Twitter account. And at that point in time, they try to determine whether it's an official account or not.

Mr. MEADOWS. I just need, if we're going to follow the law, when does it stop and when does it start? I mean——

Chairman CUMMINGS. Will you provide him with that information, please?

Mr. KERNER. Sure.

Chairman CUMMINGS. Okay.

Mr. KERNER. Of course.

Chairman CUMMINGS. Now, Ms. Plaskett. Ms. Plaskett. Yes, you're recognized.

Ms. PLASKETT. Thank you, Mr. Chair.

I've been sitting here listening for a while. And the first thing I'd like to say for my colleagues that are still here in the room is an observation about this committee. I've been on this committee now—this is my third term here. And I would really hope that my colleagues would remember the respect for the chair. And when the chair says rules or puts down the gavel, to respect that as Members of Congress being gentlemen and women of this body, because we are grown, and we need to keep our emotions and our actions in check while we are in this room. That's just a plea and an admonition of my colleagues.

Mr. Kerner, I wanted to ask you a couple of things.

You said that you were not in this office previously. And there's been some discussion about the Obama Administration. I understand that you weren't counsel during there. But the OSC did not recommend that President Obama fire Secretary Sebelius or Secretary Castro but did recommend that President Trump fire Kellyanne Conway. OSC did not give a specific recommendation for discipline in its first report to President Trump about Kellyanne Conway; is that correct?

Mr. KERNER. Just appropriate discipline from the statute, yes.

Ms. PLASKETT. And initially Conway was treated just the same as other officials. The difference is now that Conway refuses to change her behavior, and President Trump refuses to discipline her; is that correct?

Mr. KERNER. Yes. That's correct.

Ms. PLASKETT. And your motivation in having this is because you're doing your job; is that correct?

Mr. KERNER. Yes. That's correct.

Ms. PLASKETT. The job the President appointed you to?

Mr. KERNER. Correct.

Ms. PLASKETT. And the fact that this President, President Trump, appointed you to this position means that it's a little uncomfortable for you to be disciplining or recommending this of your own side; is that not correct?

Mr. KERNER. To tell you the truth, I don't feel like I really have a side at this point. I'm an independent agency head. I try to be as nonpartisan as possible.

Ms. PLASKETT. So that's interesting, because I've been in your position. I was counsel on the House Ethics Committee where we had to be nonpartisan during the time that we were there. We had Members on both sides of the aisle. And you have to act in that manner afterwards. I actually went and worked in the Bush Administration, the Justice Department. But the time that you're there, you act in a manner that's nonpartisan.

So in doing that, and because you are in that position now, do you believe that Ms. Conway has, in fact, violated the law?

Mr. KERNER. Absolutely.

Ms. PLASKETT. And if an individual allows her not to face those charges, are they, in some respect, aiding and abetting that individual in—continuing to be in violation of the law?

Mr. KERNER. You know, as a former criminal prosecutor, I would stay away from aiding and abetting. I think that sounds more like a criminal case.

Ms. PLASKETT. But some of these are referred to—

Mr. KERNER. Yes.

Ms. PLASKETT [continuing]. for criminal prosecution, are they not?

Mr. KERNER. Absolutely.

Ms. PLASKETT. Because if it were referred to criminal prosecution because she did not, in fact, change her behavior, had been advised, put on notice that she was, in fact, violating the law, an individual who continues to support her in violating that would, in fact, be aiding and abetting in some respect?

Mr. KERNER. I think under the statute the President is entitled to impose the discipline. That's part of the statute. So the President's choice and what discipline he imposes is really up to him.

Ms. PLASKETT. But if a President does not—a President can impose the punishment. But if a President tells the person to continue to violate the law, that is not what the President has been allowed to do under the law, is it not?

Mr. KERNER. Yes. I don't know that that's happening here. But, yes, the President shouldn't tell anyone—

Ms. PLASKETT. So the President has not told her that she—that this law does not apply to her and that we are, in fact, violating her free speech and so that she can continue doing and saying what she has done?

Mr. KERNER. I do believe the White House counsel has taken that position.

Ms. PLASKETT. And the White House counsel is appointed by who?

Mr. KERNER. They work for the President.

Ms. PLASKETT. For the President of the United States.

Mr. KERNER. That's correct.

Ms. PLASKETT. So the President has de facto allowed this individual, Kellyanne Conway, to continue to violate the law by doing this. Because the—let's not get caught up in this ambiguity, the discussion of Mr. Meadows and Mr. Raskin, about let's come together in a bipartisan manner to fix this, because it's not clear. If she was not clear, you've given her opportunity to come and sit with you and to discuss what that ambiguity is, have you not?

Mr. KERNER. Absolutely.

Ms. PLASKETT. And she has not followed that advice or sought that counsel from you, has she?

Mr. KERNER. She has not.

Ms. PLASKETT. So let's—in the letter that you've given, you state in there: The Congress passed the Hatch Act to recognize the inevitability that senior advisers to the President, such as Ms. Conway, were involved in campaign activity.

And then later you say: Or they could use their positions to secure television interviews. And rather than focus exclusively on the work of the administration, use that platform to gauge in partisan attacks against political opponents.

So when the communication that they're using with the public is by whatever device, be it television, Twitter account, Facebook account, they're communicating with the public. And they're supposed to do it on policy, and they are not. And since I'm not objective—since I do not have the Hatch Act which allows me to say and do whatever I want, I want to say that what's going on is, in fact, a hot mess.

Chairman CUMMINGS. Indeed.

The gentlelady's time is expired.

Mr. Higgins.

Mr. HIGGINS. Thank you, Mr. Chairman.

So I hope America is paying attention. So Ms. Kellyanne Conway is the current targeted Trump administration employee. But there'll be another. There'll be another next week or the following or the following. The future of this committee has been made clear. One attack after another against the President. Here we go again. Another oversight hearing. Another attack on the President's administration.

My colleagues say no one is above the law. The President refuses to discipline. The President refuses to hold Ms. Conway accountable. My colleague says worse it's the worst. It's the worse. I'll tell you what's worse. Michael Cohen lying six times to this committee after being warned with grim authority that if he lied once he'd be nailed to the cross. That was 119 days ago; 119 days of above the law, 119 days of worse, 119 days of refusal to hold accountable.

Ms. Conway had 16 hours to respond to the hurt feelings of Mr. Kerner, 119 days, and no action from Michael Cohen versus 16 hours and a subpoena for Kellyanne Conway. America recognizes persecution when it sees one.

Today's hearing was never a fact finding mission nor an honest investigation into Federal employee conduct. It's simply one in a series which will continue of hearings meant to discredit the President.

Like it or not, Federal law limits the authority of the Office of Special Counsel. In fact, OSC cannot charge any Senate confirmed employee or employees of the executive office of the President. Yet OSC has moved straight past formal charges and recommended a sentence.

One of my colleagues said you didn't recommend she was fired. You put on the first page of your letter: Therefore, OSC respectfully requests that Ms. Conway be held to the same standards as all other Federal employees. I'll get to that in a second. And as

such, you find removal from Federal service to be appropriate disciplinary action. It sounds like recommending to fire to me.

The Hatch Act was not intended to limit free speech. It was intended to keep bureaucrats from campaigning on the taxpayers' dime. But this is what most Americans don't know watching this. Listen to me. They don't know that Congress is not subject to this law.

To ensure fair and consistent application of Federal laws, I have a draft bill to include employees of Congress under the requirements of the Hatch Act. Mr. Chairman, I ask unanimous consent that this draft bill be entered into the record.

Chairman CUMMINGS. Without objection, so ordered.

Mr. HIGGINS. Let us no longer our staff to advocate on our behalf. Let us not allow them to share with constituents our views on politics or policy or contrast the damning views of our opponents with our own. congressional employees, some will say, oh, well, we're governed by the House and Senate ethics rules, ethics rules that we determine in every Congress every two years. It's a moving target. And who enforces those rules? We do. We're going to hold Ms. Conway and any employee of the Trump administration, because he's President Trump, to a very high standard of accountability. I suggest it's time Congress be held to that same standard.

And I yield the balance of my time respectfully to the ranking member.

Mr. JORDAN. I thank the gentleman for his remarks.

I would yield to the gentleman from North Carolina.

Mr. MEADOWS. I thank the gentleman.

So, Mr. Kerner, let me come back, because one of the issues that we started on early on was that you were not personally offended, I guess is what you said. When Ms. Kellyanne Conway did all of this, that it didn't make you mad; is that correct?

Mr. KERNER. I think I didn't understand your context of the question.

Mr. MEADOWS. Well, you've told staff here that you were upset. You told the White House counsel that you were personally offended; is that true?

Mr. KERNER. Yes, I believe that's true.

Mr. MEADOWS. All right. Thank you. I'm glad we cleared that up.

How much does Kellyanne Conway owe the Federal Government?

Mr. KERNER. How much does she owe the Federal Government?

Mr. MEADOWS. Yes. I mean, you're saying that she's in violation of this Federal law. I mean, Ms. Sebelius had to pay back money. How much does Kellyanne—to make this all right with an apology and paying back the Federal Government, how much does she have to pay back the Federal Government?

Mr. KERNER. Well, you know, Secretary Sebelius—the reason she had to pay money back is that she used official funds for a campaign visit.

Mr. MEADOWS. Sow what you're saying is that Kellyanne doesn't owe the government any money is what you're telling.

Mr. KERNER. I think our case with Kellyanne Conway is concluded. We sent the report to the President, which is what the statute requires. The President exercises his discretion—

Mr. MEADOWS. Yes or no. Does she owe money to the Federal Government?

Mr. KERNER. Not that I know of.

Mr. MEADOWS. Okay. Thank you.

Chairman CUMMINGS. Ms. Pressley.

Ms. PRESSLEY. Thank you, Mr. Chairman.

Mr. Kerner, this committee has jurisdiction over the Hatch Act, and we take it very seriously. Given her absence here today, it is clear that Kellyanne Conway, a senior adviser in the White House, does not share that outlook nor does she take it seriously. It would appear that she, like the boss she serves, believes herself to be above the law. But she certainly is not. She certainly is not above the law. And the American people agree.

I ask unanimous consent to include written testimony and a petition from Citizens for Responsibility and Ethics in Washington, which includes 30,000 signatures from people across the country, including dozens from my district, the Massachusetts 7th, asking for her termination.

Chairman CUMMINGS. Without objection, so ordered.

[**Material not submitted.*]

Ms. PRESSLEY. Before I move ahead, I did just want to speak to you—some comments that were made by my colleagues across the aisle just to clarify to the earlier point. CREW is a bipartisan organization. It includes two former Members of Congress on the board, so this isn't about partisanship. This is about ethics and the law. And you are correct. We will continue to be here and return here and have members of this cabinet and affiliated here as long as they are in violation of the law, because we are here to perform oversight and reform.

Before I begin my formal line of questioning, I wanted to show you a clip of Ms. Conway's reaction to your independent report which found she violated the law dozens of times.

[Video played.]

Ms. PRESSLEY. Mr. Kerner, what is your reaction to that clip?

Mr. KERNER. Well, Mr. Meadows has been asking me about this clip all day.

So what I was trying to convey was, obviously, I felt this was a—you know, a finger in the eye. I took professional umbrage. So as a head of an agency that enforces the Hatch Act, I was disappointed. That was my—really, one of my main emotions, because it just seemed clear that we were not going to get compliance from Ms. Conway through this process. And that was disappointing to me because one of my goals is to get people into compliance with the law.

Ms. PRESSLEY. And because Ms. Conway refused to testify here today and was a no-show, we cannot hear from her directly as to why she did what she did.

Mr. Kerner, do you believe Ms. Conway is simply ignorant of the law and the rules about what she can and cannot do under the Hatch Act?

Mr. KERNER. No, I do not.

Ms. PRESSLEY. Thank you. I agree.

To your knowledge, do all White House officials receive training on the Hatch Act?

Mr. KERNER. Yes, I believe they do.

Ms. PRESSLEY. Your report identified multiple instances where the Office of White House Counsel provided Hatch Act guidance to Ms. Conway.

During 2017 alone, Ms. Conway received training or guidance on six separate occasions. Mr. Kerner, does that sound about right?

Mr. KERNER. Yes.

Ms. PRESSLEY. All right. So, for example, on January 24, 2017, immediately after the inauguration of the occupant of the White House, Ms. Conway attended a senior staff ethics training that discussed the Hatch Act. On March 1, 2017, deputy House counsel, Stefan Passantino met individually with Ms. Conway to provide specialized Hatch Act training.

Does every Federal employee get the benefit of 1-on-1 Hatch Act training?

Mr. KERNER. No, I don't believe so.

Ms. PRESSLEY. Okay. In December 2017, the White House counsel sent an email to all White House employees with guidance on the use of official resources and official media accounts. That guidance said, and I quote: "You may not use your official position to effect the results of an election," unquote.

So let me get this straight. Ms. Conway even violated the guidance the White House itself provided employees?

Mr. KERNER. That's correct.

Ms. PRESSLEY. And yet Ms. Conway, despite receiving multiple forms of guidance and training both orally and written and in multiple settings, personal 1-on-1 training, she continued to violate the Hatch Act throughout 2018 and 2019; is that correct?

Mr. KERNER. That's correct.

Chairman CUMMINGS. The gentlelady's time is expired.

Ms. PRESSLEY. Thank you.

Chairman CUMMINGS. Thank you very much.

Mr. Grothman.

Mr. GROTHMAN. With all due regard to my wonderful Democrat friends, we're getting to the point where so many people are running for President it's almost going to be impossible to criticize a Democrat, because there aren't that many not running for President.

But be that as it may, we're in a very dangerous time here. Things are shifting dramatically. It seems like just yesterday to me, and I've been involved in politics for over 20 years, just yesterday that we had the Senate majority Harry Reid trying to put an end to birth right citizenship, and now we have situations—we have Governors pulling surveillance planes of the Air National Guard off the border. Almost impossible to get additional funding for the border patrol or things to protect us. Very dangerous times.

So obviously things are shifting. And ultimately, I think if we don't enforce our border, our country is done. And with that regard, I'm always looking out to hyper partisanship designed to go after people who are the last firewall on saving America.

Can I ask you: Who has been complaining about Ms. Conway here? Who is offended? Who is causing you to have to look into this?

Mr. KERNER. Well, so we get complaints from organizations. We also get complaints from citizens. And then, of course, in the public, you know, sphere, there's been a lot of complaints about the obvious violation—these violations. We can have a discussion about parts of the Hatch Act that may or may not need clarification. These are pretty obvious, they're pretty clearcut, especially on the media——

Mr. GROTHMAN. How many complaints are you getting, say, 8 years in the Obama Administration?

Mr. KERNER. We have stats on this I can get.

So during the Obama Administration, I guess we roughly got—right. So the law changed in 2012. So our complaints went down, because state and local officials were no longer covered. Prior to that, it was around 500. Then it went down to about 270, then 150, then 106, then it went up a little bit during the latest couple of years.

Mr. GROTHMAN. Okay. And during the—say, in the Trump administration, can I ask who was second or third in line of number of complaints they received?

Mr. KERNER. Other than Ms. Conway, you mean?

Mr. GROTHMAN. Yes.

Mr. KERNER. I did want to point out one more thing which is we get complaints from citizens, from organizations. We also get complaints from Congress. We have complaints from the House and the Senate.

So I just wanted to clarify that.

Mr. GROTHMAN. You apparently were upset about this. I guess the thing I'm getting to—I've noticed in politics that a lot of times an articulate conservative woman brings out the worst in people. They become engaged at a successful conservative woman. And that's why I wondered, were there any men out there who are subject to this vitriol like Ms. Conway is, or is she with the one who sends people into orbit?

Mr. KERNER. I think we get complaints about several White House officials. I think at one point we should—like six warning letters, so there were men and women on that. I think Sarah Huckabee Sanders was probably No. 2.

Mr. GROTHMAN. Another conservative women. Is that surprising, that of all the people that President Trump has appointed, that the two women—I wasn't aware that Sarah Huckabee was No. 2 on the list. That it's the two articulate woman that drive people nuts?

Mr. KERNER. Just to point out, we found no violations on this Huckabee Sanders, that I'm aware of.

Mr. GROTHMAN. Well, I'm glad you did. But apparently people were complaining about her.

Mr. KERNER. But they're the most visible, right? She's the press secretary. She talks to the press Kellyanne Conway is on the media shows all the time. They're going to get—I mean, I don't know anyone equivalent to that that we see all the time.

Mr. GROTHMAN. Okay. Well, I'm just pointing out. And I'll leave it at that. Apparently the two Trump administration officials—and I assume usually the complaints are ginned up by the left wing, the type of people who want open borders. The two Trump people who have gotten the most complaints happen to be two of the most sen-

ior women in his administration, Sarah Huckabee and Kellyanne Conway, who—very articulate women.

I yield the rest of my time.

Mr. KERNER. Mick Mulvaney was also one of them, just to finish up. But——

Mr. RASKIN.

[Presiding.] The committee will stand in recess until after votes. The committee will be notified as to when.

Thank you for your testimony.

Mr. RASKIN.

[Presiding.] Without any objection, I want to introduce into the record an article from the Boston Globe on September 1, 2018, entitled Ethnicity Not a Factor in Elizabeth Warren's Rise in Law.

[*Article not submitted.]

And now I will turn to Mr. Hice who is recognized for five minutes.

Mr. HICE. Thank you, Mr. Chairman.

I'd like to go back. Mr. Kerner, you referenced earlier that you said professionals make the determination. Who are they and how do they make the determination?

Mr. KERNER. So the professionals at OSC are civil servants hired through the merit system. They've been there a very long time. Our chief has been the chief for about 19 years. Her deputy has been there about 12 years as her deputy. And then they have a staff as well. And they make the determination based on complaints that come in.

They open a file. They do the investigation and then generally make at least—depending on the case, but sometimes they just make a recommendation to the front office, or they take some kind of action on their own.

Mr. HICE. Okay. All right. So when we come to this particular case in this situation here, I mean, it's pretty unprecedented action, the same place, would you agree with that?

Mr. KERNER. Yes, I would.

Mr. HICE. Because it's never happened before like this.

So going back to this professional group making a determination, do they look at this and just say—I mean, there's no one, two, three, clearcut, cross this line. At some point, they—in your words, they make a determination. So at some point, it's—they know it when they see it, and they make a call, a judgment call.

Mr. KERNER. But I think it's a little bit more complicated. There is more of a collaborative process. So, for example, in December 20th of last year, they sent a cure letter to Ms. Conway, via the White House counsel's office——

Mr. HICE. No. I get that. But at the end of the day, they make a determination. So it's a—it is a——

Mr. KERNER. Yes.

Mr. HICE [continuing]. “we know it when we see it” kind of a thing.

Mr. KERNER. Yes. They make a legal determination, yes.

Mr. HICE. All right. So when you made this—your part of it to make the recommendation to have her removed from office, who did you consult with? Do you have a group of professionals that you

consult with in making that determination, or is that solely in your lap? How did you make that recommendation?

Mr. KERNER. Sure. So the recommendation comes to me from the career staff. They have a recommendation in the report, because they do the investigation. They write the report. And then I do have some folks in the front office, political appointees. And we discuss what to do with a case. We do some edits, if needed, and that sort of thing. And so that's how the decision was made.

Mr. HICE. Did you consult with anyone outside the office?

Mr. KERNER. No, I did not.

Mr. HICE. So no phone calls—seeing that there was unprecedented, seeing that this has never happened before, again, you didn't seek any consultation whatsoever?

Mr. KERNER. On the inside. Inside, yes, but not outside, no.

Mr. HICE. All right. And you said that staff and who else?

Mr. KERNER. So the professional staff that I mentioned that are in the Hatch Act unit. And then I hire people. I have a political staff, including folks who used to work here. And they work for me directly. They're Schedule Cs. They're political—

Mr. HICE. So the recommendation to remove her was just between you and staff?

Mr. KERNER. Yes. Correct.

Mr. HICE. All right. And no other legal counsel? No one else? None of the professionals, the chief, the civil servants, no one else is involved?

Mr. KERNER. No one—

Mr. HICE. All right. Tell me about the external influence that impacted your decisionmaking.

Mr. KERNER. So I think the reference to external influences was not about the report. The report was done. But it was about how much time we would give the White House to respond. So we initially gave them that very short deadline, because our expectation was that the—that Kellyanne Conway has never responded to us, so we weren't going to hear from her.

Mr. HICE. So 16 hours your staff thought was adequate?

Mr. KERNER. I don't know if—I thought it was—it wasn't a question of adequacy. We didn't expect her to respond.

Mr. HICE. Well, when you write the White House—you contact the White House, 16 hours is a bit ridiculous in terms of shortness of notice. And you made that decision strictly yourself with the aid of some staff?

Mr. KERNER. Correct. That's correct.

Mr. HICE. All right. And you see nothing wrong with a demand like that in 16 hours?

Mr. KERNER. No, because if—because it was based on the expectation that neither the White House nor Kellyanne Conway—

Mr. HICE. But you were feeling outside pressure, that's what you told the White House, to release the report.

Mr. KERNER. Well, they characterized the outside pressure. I did not feel outside pressure. I felt—

Mr. HICE. Well, then, why 16 hours, then? I mean, that's pressure. There's something behind 16 hours. It's not a random number.

Mr. KERNER. Sure. The motivation behind that wasn't any outside pressure. It was I wanted to—we have the report ready, and I wanted to make sure that we released it within a fairly short time of what had occurred, both the conduct, all the violation—the violations were on TV like practically——

Mr. HICE. Did you communicate with this staff or the chairman prior to this hearing?

Mr. KERNER. With the chairman?

Mr. HICE. Yes.

Any of your answers today coordinated at all.

Mr. KERNER. I did not talk to the chairman.

Chairman CUMMINGS. The gentleman's time has expired.

The delegate from the District of Columbia, Ms. Norton.

Mr. MEADOWS. I have a unanimous consent request——

Chairman CUMMINGS. Yes.

Mr. MEADOWS [continuing]. real quickly.

I want to put in the record the White House response to Mr. Kerner dated July 11, 2019, where it says that Mr. Kerner, the witness, actually responded. The reason the timeframe was there was because there was the response to press questions concerning the media reports about Ms. Conway.

Mr. RASKIN. Without objection.

Thank you.

Mr. MEADOWS. Thank you.

Mr. RASKIN. Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

Mr. Kerner, I simply want to clear up matters.

Essentially going to the constitutional right to speak. Now, we know that Ms. Conway was speaking about the kind of political and public matters that we talk about every day. So some watching this hearing may wonder, well, what's wrong with her talking about what's happening and—as a public matter.

My interest in it comes because in another of my lives before I came to Congress, I was a 1st Amendment lawyer. So I am accustomed to arguing for peoples' right to say anything they want to say. So I've had to get used to the Hatch Act too and thus want to clarify, first of all, whether you consulted, when dealing with Ms. Conway with talking about public matters of the day, who you consulted with. Did they include lawyers who had any background in constitutional law.

Mr. KERNER. So the—our Hatch Act unit has lawyers on staff. In fact, I believe they're all lawyers. And they spoke to the White House counsel's office. They had regular communication. They made certain findings and asked her to cure her Twitter feed. And they had other communications in terms of the applicability of the Hatch Act to her media appearances.

Ms. NORTON. Now, her Twitter feed—I'm trying to see—you know, could she speak about issues of the day, political issues, in her private capacity?

Mr. KERNER. Absolutely.

Ms. NORTON. Would you give us examples of why you thought she was apparently not speaking in her private—well, first of all, I understood what I saw in that film.

Did you find that sometimes she spoke in her private capacity about some of the same issues that were conversant during the day?

Mr. KERNER. So I don't believe so. I think the folks who actually did the investigation informed me that they didn't—that all the media appearances that they looked at, she was speaking in her official capacity or——

Ms. NORTON. So most of the time when she came before the camera, she was really speaking in her official capacity. And you do not—you did not find circumstances where she tried to step outside of her official capacity to speak about events of the day.

Mr. KERNER. That's right.

Ms. NORTON. Mr. Chairman, I just want to say, I think that's the only way this statute is constitutional. I can conceive of people working in the White House, only the President and the Vice President are immune, where Kellyanne Conway could have avoided the issues before us today had she made it clear that—would it have been enough to say I'm not speaking in my public capacity. I'm not speaking as Kellyanne Conway, special assistant to the President. I'm speaking as Kellyanne Conway, private citizen. If she had said that and said some of the very same things she said officially, that would be constitutional? Yes or no?

Mr. KERNER. I think that's right.

Ms. NORTON. Thank you very much.

Mr. Chairman, I think it's very important to clarify that we don't want the public to believe that the Democrats on this committee are going after people for their free speech rights. And I simply want to clarify.

Mr. RASKIN. Would the gentlelady yield to the chair for just a moment?

Ms. NORTON. I'd be glad to yield.

Mr. RASKIN. Well, thank you very much for that important point. I know it's important to your constituents here in Washington, DC, Congresswoman Norton. It's important to my constituents in Maryland, because I have tens of thousands of Federal employees too. Many of them were told they could not wear a resist button. Many of them were told they could not talk about impeachment at work. And this is—I mean, there is meticulous comprehensive punctilious enforcement in the Hatch Act. And if we're going to change it, if our colleagues today are serious about it, they want to repeal the Hatch Act and allow anything to go in the Federal workplace, then it should be for everybody. It should not be a special deal just for all the President's men and women. Otherwise, Ms. Conway is going to have to respect the rule of law and the Hatch Act like the other 2 million Federal employees who are not employed to do campaign activity while at work.

And with that, Ms. Norton, you have nine seconds left.

Ms. NORTON. I thank you very much. I think you were making part of the point I was trying to make.

And thank you, Mr. Kerner.

Mr. RASKIN. And thank you very much.

We go now for five minutes, Mr. Armstrong is recognized.

Mr. ARMSTRONG. Thank you, Mr. Chairman. You look good up there.

Mr. RASKIN. Thank you very much.

Mr. ARMSTRONG. So I'm just going to followup on Mr. Hice's questions.

You know, earlier you had said—the Kellyanne Conway interview on May 29 was fairly early in the morning, right?

Mr. KERNER. Yes.

Mr. ARMSTRONG. And earlier you had said that the report had previously been written. But this was the straw that broke the proverbial camel's back.

Mr. KERNER. Correct.

Mr. ARMSTRONG. So my question is why did it take seven or eight hours to get to the White House?

Mr. KERNER. Well, I mean, the report was essentially written. We added a couple of things from the interview. It was the first paragraph, and then we had to add it to the fact that—

Mr. ARMSTRONG. So it was edited, emails back and forth consulting with your staff.

Mr. KERNER. Correct.

Mr. ARMSTRONG. Was the recommendation for her firing written before or after?

Mr. KERNER. So the recommendation for firing was already in the report, but it wasn't in the same way. It was something to the effect of termination up to and including her removal.

Mr. ARMSTRONG. Okay. And then I want to talk—we're talking a lot about of accountability. I want to talk about the advisory opinion.

Obviously, your office treats that as—with the force of law, right?

Mr. KERNER. Well, they're advisory opinions, so they're not binding. They're just our interpretation of the statute and the code. So the advisory opinion itself is not binding, but we have an advisory function. So if Federal workers want to get information, they can call, and they will get an opinion that's—

Mr. ARMSTRONG. So if a Federal workers violates those social media requirements in your advisory opinion, they can't be fired, suspended without pay, with pay because of that advisory opinion?

Mr. KERNER. They can, but it won't be because—just because of the opinion. There will still be an investigation. Because the advisory opinion is not binding. So the advisory opinion tells them where the guardrails are. If they choose to violate it and someone files a complaint and there's a case—

Mr. ARMSTRONG. But the advisory opinion is the guardrails. I mean, there's nothing else regarding social media that comes from OSC.

Mr. KERNER. Well, yes. But the—but like I said, the guidance only informs how OSC's professional staff views the statutes application to whatever the question might be. So the—

Mr. ARMSTRONG. Okay. So there have never been any subcommittees in the House on what constitutes social media—appropriate social media. None in the Senate either, right?

Mr. KERNER. I'm sorry. I don't understand the question.

Mr. ARMSTRONG. We're talking about social media. We're talking about Facebook. We're talking about Twitter.

Mr. KERNER. Yes.

Mr. ARMSTRONG. We're talking about something that is going on every day constantly and——

Mr. KERNER. Yes.

Mr. ARMSTRONG. I mean, we're getting—in the advisory opinion, we're getting to the point where, if you are working telephonically from at home on your lunch hour, there's a question——

Mr. KERNER. Yes.

Mr. ARMSTRONG [continuing]. as to whether or not you can have a yard sign in your yard.

Mr. KERNER. There's a question of whether you're on duty or not, yes.

Mr. ARMSTRONG. Yes. Well, I mean, so—and that's what I'm saying. And this is going on everywhere. So there's never been public comment period on this.

Mr. KERNER. That's right.

Mr. ARMSTRONG. OPM has never promulgated a rule. Never asked for regulated community to respond to this.

Mr. KERNER. Right. Because—well, first of all, like you said, OPM is doing the rules. But this isn't a rule. We're not rulemaking. We're only giving—it's basically just a listing of the advisory opinion that the folks in the Hatch Act unit give every day to people——

Mr. ARMSTRONG. So what is the rule on social—what is the rule on social media and the Hatch Act?

Mr. KERNER. So——

Mr. ARMSTRONG. What's the OPM rule on social media and the Hatch Act?

Mr. KERNER. I don't know that OPM has a regulation on social media. But, of course, we have to apply rules. The medium is only the medium, right? The violation is how you communicate the message if there's a violation.

Mr. ARMSTRONG. So the advisory opinion at OSC is the rule regarding social media.

Mr. KERNER. No. I just disagree with that. I think it's just a codification of what the advice function is that these—that the Hatch Act unit gives every day on how the rules would be applied to a particular——

Mr. ARMSTRONG. Well, codification implies that it has the force of—I mean, nobody's ever been convicted on an advisory opinion.

Mr. KERNER. As my staff just informs me, there's no OPM rule on emails in the Hatch Act either. And yet we still view emails in a certain way.

So it's not like a rule, like if you do X and, you know, we said that, that's an automatic violation of a rule, it's not. It's an advisory opinion. It's still a complete factual inquiry on what happened.

But this would guide you. It's supposed to advise the Federal work force on where the guardrails are. But it's not in and of itself a violation. At least that's how I understand it.

Mr. ARMSTRONG. But it's written by career nonpartisan officials. So we're okay with it.

Mr. KERNER. Well, I'm okay with it, but——

Mr. ARMSTRONG. James Comey, Andrew McCabe, Peter Strzok, Lisa Page, Lois Lerner, Gregory Craig, all career nonpartisan Federal officials. So I've been through this road a lot. I think when it

serves our purposes we say career nonpartisan Federal employees are beyond reproach. And when it doesn't serve our purposes, we say they are those other things.

But it seems to ebb and flow, because I've also watched a DOJ lawyer who has a video online right now being absolutely skewered who is a career nonpartisan Federal employee. And not only has it been shared by the same people in this committee that are arguing the same thing on the other side, she has received death threats. She had been voxed, and she's been dealing with it.

So I look forward to my friends on the other side defending her as well.

Mr. RASKIN. Thank you. The gentleman's time is expired.

We go to the gentlelady from California, Ms. Speier, for five minutes.

Ms. SPEIER. Thank you, Mr. Chairman.

Thank you, Mr. Kerner. You are someone who has withstood a great deal of questioning today, and you're still sitting. So I guess that's a good sign.

I'm reminded that the genesis of the Hatch Act was 1938 when Democrats were using the WPA for patronage jobs, and then those individuals, employees, were working on campaigns. That was something that we found very offensive at the time. And that's—the Hatch Act was born.

I find it stunning today that we have so many people on the other side of the aisle who took an oath of office that they would uphold the Constitution and all the laws of this country, and now we have the Hatch Act that's being violated. You have indicated there's 12 instances at least, and their effort is to somehow undermine the Hatch Act. And that's one of the acts that they swore to uphold.

Now, I want to share with you a recent Facebook post by Lynne Patton. This might be of interest to Mr. Meadows. She's the regional administrator for the Department of Housing and Urban Development. She's a political appointee who used to work for the President and his family before she joined HUD.

Ms. Patton wrote on May 22, and I quote, just re-tweeted this amazing tweet from both my Twitter accounts, professional and personal. It may be a Hatch Act violation; it may not be. Either way, I honestly don't care anymore.

Does it concern you that an executive branch official openly says they don't care about complying with the Hatch Act?

Mr. KERNER. Yes, it definitely concerns me when anybody says—who's bound by it doesn't want to abide by the Hatch Act.

As to the Patton case specifically, I can't comment on that because I believe we may have a case.

Ms. SPEIER. So as we look at your power and authority, it's pretty limited.

Mr. KERNER. Yes.

Ms. SPEIER. You can only make recommendations.

Mr. KERNER. Well, as to certain people. Obviously we do—when we have a functioning board, most Federal workers—we can go to the MSPB and file a complaint and get discipline through the board. It's only on the PAS, on the Presidential appointees, that we have more limited jurisdiction.

Ms. SPEIER. So since you have such limited jurisdiction on PAS, and you referred to them, do you think it might be effective if you could go to the MSPB and impose a fine of maybe \$10,000 for each violation? Do you think that would change behavior?

Mr. KERNER. It's obviously always possible to get a fine. I just don't know—obviously—first of all, the statute first precludes us from going to the MSPB on PAS appointees. And, second, of course, there are some separation of powers appointments clause considerations as well. So I just don't know how feasible that will be.

Ms. SPEIER. So you'll have the opportunity to weigh in on that, because both the chairman and I have—actually, the former chairman have just introduced legislation, H.R. 3499, that would give you that authority.

And I guess—let me just conclude by saying this: What we have seen over and over again by the President is a willful intentional action to evade the law, to basically violate the law. I'm thinking specifically now about the antinepotism law. That was put into place when John F. Kennedy hired his brother to be the attorney general. We thought that's not—that's not great.

So the President, President Trump, comes along, and wants to hire both his daughter and his son-in-law and was told, no, we have an antinepotism law in effect. So what does he do? He says, well, I'm just going to make them volunteers. But they're still doing the jobs in the administration, in the highest positions in the administration in the White House.

So once again, an effort by the President to not comply with the law. He does that consistently. I find it very offensive. I think the American people do as well, because nobody, nobody, is above the law. So I commend you for your work. I commend you for your candor. And I'd like to just underscore again: You are a Republican, correct?

Mr. KERNER. Yes, ma'am.

Ms. SPEIER. And you have been appointed by President Donald Trump?

Mr. KERNER. Yes.

Ms. SPEIER. Thank you.

I yield back.

Mr. KERNER. Thank you.

Chairman CUMMINGS.

[Presiding.] Mr. Jordan.

Mr. JORDAN. Mr. Kerner, you said the report was written prior to Ms. Conway making the now somewhat famous media appearance; is that right?

Mr. KERNER. Yes.

Mr. JORDAN. Okay. And you said that you had already decided you were going to recommend she no longer be allowed to work at the White House.

Mr. KERNER. The recommendation was going to read something like penalty up to—up to removal.

Mr. JORDAN. So you had already written in the report that you were in favor of her being removed from her position at the White House.

Mr. KERNER. Yes.

Mr. JORDAN. All right. She goes and does the media—you determined—when you had already decided and had written the report, were you going to give the typical two-week notice, when you sent the two-week notice to respond?

Mr. KERNER. We just hadn't decided when to release the report yet.

Mr. JORDAN. But then she does the media appearance. And as you have said to Mr. Meadows' questions, you felt like you had got poked in the eye, as you told the White House counsel's office, right?

Mr. KERNER. Yes.

Mr. JORDAN. So she does the media appearance. You've already got report written. You're already going to recommend she's fired. And then you say, you know what? Now we're really going to break tradition. We're really not going to follow the rules. We're going to give her 16 hours to respond. Is that how it all played out?

Mr. KERNER. Well, when you say not follow the rules, that's not one of the rules.

Mr. JORDAN. Have you ever done that before where you tell somebody you've got 16 hours to respond to our recommendation, our report?

Mr. KERNER. No. But that's—

Mr. JORDAN. So this was the first time you've ever done that.

Mr. KERNER. But it's not part of the rules. But, yes.

Mr. JORDAN. Okay. Let's say protocol or process, past experience.

Mr. KERNER. It was the second report we've authored, so—the first time we gave her eight days. She didn't respond. So this was—under my tenure.

Mr. JORDAN. Yes.

Mr. KERNER. So this was the second time we've done this. So I don't know that there's enough of a sample to really say what the rule might be, but—

Mr. JORDAN. Did you—and the reason you gave her just the short time, the 16-hour turnaround, was why?

Mr. KERNER. Because we did not expect a response and because we felt that the report—

Mr. JORDAN. So is that how government agencies should operate? Just because you don't expect a citizen or a taxpayer to respond in—to respond or maybe respond at all, you're not going to follow procedure? Not going to give them a chance that some kind of due process or some kind of response time.

Mr. KERNER. Well, you mentioned rules earlier. Now you mention procedure. The statute doesn't require any of that. The statute just says—

Mr. JORDAN. I didn't say it did. I'm just—

Mr. KERNER. Well, you mentioned rules and procedures. But there are no rules and procedures. This is—

Mr. JORDAN. Well, that's the scary thing.

Mr. KERNER. Completely—

Mr. JORDAN. That's the scary thing.

Mr. KERNER [continuing]. but that's the statute. It's not my fault that's how the statute is written.

Mr. JORDAN. All I'm saying is you broke from normal behavior of the office. The office always gives people—like, this is the first

time you issued a public report. This is the first time you recommend someone be fired. This is the first time you said, oh, darn. She just poked me in the eye with a media appearance. We're not going to give her any time. We're going to say, here's the report at five. Tomorrow, at 9 a.m., have some response if you're going to have any. That's unusual is all I'm saying.

Mr. KERNER. That's fair. It's not what happened, but it's fair. I mean, when the——

Mr. JORDAN. What? You didn't give her just 16 hours? You didn't say, first of all, nine the next morning?

Mr. KERNER. We did. But when the White House called and requested two weeks, we essentially gave them two weeks; so we didn't release the report for——

Mr. JORDAN. Let's go to her Twitter account.

In your letter to the President, you said—talking about Ms. Conway's Twitter account, you said about 2.7 million people follow her account.

Why was it important for you to put the number of followers she has?

Mr. KERNER. I suspect the difference was how she had basically taken off—once—the claim—her claim is that this is a personal account, and yet she has seen this big growth in the account because she's essentially using it as an official account.

Mr. JORDAN. How many accounts does—Twitter accounts does Ms. Conway have?

Mr. KERNER. I'm sorry. How many what?

Mr. JORDAN. How many Twitter accounts does Ms. Conway have?

Mr. KERNER. My understanding, she has one.

Mr. JORDAN. Did she have it prior to working for President Trump?

Mr. KERNER. She did.

Mr. JORDAN. Yes. Is it her personal account?

Mr. KERNER. Well, it's a hybrid. It's her personal account that she uses for

Mr. JORDAN. Was it her personal account—if she had it prior to working for Mr. Trump, it had to be her personal account.

Mr. KERNER. Sure. It was, yes.

Mr. JORDAN. And people are allowed to continue to have a personal account even if they work in government.

Mr. KERNER. Yes.

Mr. JORDAN. Okay. But in your report, you felt it was important to say 2.7 million people follow her account.

Mr. KERNER. Correct.

Mr. JORDAN. Why was it important to include that, again?

Mr. KERNER. Because by—because by virtue of her making the account an official account and referencing—when Kellyanne Conway goes and has official statements——

Mr. JORDAN. Well, let me ask——

Mr. KERNER [continuing]. she references the account. And that, in part, could explain the increase in followers.

Mr. JORDAN. Well, let me ask it this way. What if she had one follower and said the same things. Would she be in violation of the act?

Mr. KERNER. It's just one of the factors, though.

Mr. JORDAN. But you didn't answer my question.

Mr. KERNER. It is a factual analysis—

Mr. JORDAN. If she's got one follower—okay. We'll say she's—let's double that. She's got two followers and she says the exact same things, re-tweets and tweets the same things, would she be in violation of the Hatch Act, according to how you guys interpret it?

Mr. KERNER. I can't answer that, because it's a multi factor test. It isn't just how many followers.

Mr. JORDAN. Assuming all the other things that you reach—because you used the Twitter thing as a reason for her to be alleged violation of Hatch Act.

Mr. KERNER. Sure.

Mr. JORDAN. So two followers, everything else is the same, would she still be in violation of the Hatch Act?

Mr. KERNER. I think the followers—the fact of the increase in followers was only to suggest that she's not just using it for personal—for her personal account.

Mr. JORDAN. We don't know that.

Mr. KERNER. Well, we do, because we did an analysis—

Mr. JORDAN. Maybe she's got the best tweets in the world.

Mr. KERNER. Perhaps.

Mr. JORDAN. It seems to me when you put in the number, somehow you're looking at impact versus the underlying offense. Like, it should not matter if she's got one follower or 2.7 million. If she did something wrong, she did something wrong. I don't think she did. But you guys put that in there because, oh, you think this makes your case look better. And maybe more importantly you put it in there because this is the impact she is having with her communication so much so you thought you had to include the big number in your letter to the President.

Mr. KERNER. OSC has no interest in limiting her effectiveness. Her effectiveness and how she represents the President, that's for the President and her. We have no interest in that—

Mr. JORDAN. If that was the case, you wouldn't have put a number in there. You'd have just said she said things on her Twitter account she's not supposed to say. But you did it. You said no, because she's got 2.7 million. That's more followers than just about anyone in Congress.

Mr. KERNER. But it's not about her effectiveness. It's about getting a big increase—

Mr. JORDAN. Then why did you put the number in?

Mr. KERNER. Because the increase explains that it's an official account, not a—just a personal account. That's why

Mr. JORDAN. Even though it was a personal account, she had it prior to working for White House.

Mr. KERNER. But she didn't have those followers at that point. She got those extra followers—

Mr. JORDAN. Because she got great tweets.

Mr. KERNER [continuing]. because she made it an official account. That's our reasoning. I don't know what else to tell you.

Chairman CUMMINGS. Thank you. Thank you very much.

Thank you. The—you know, let me—first of all, I want to thank you for being here.

Mr. KERNER. Thank you.

Chairman CUMMINGS. And I—this is incredible, to be frank with you. I don't want to leave stuff hanging that doesn't need to hang. Mr. Jordan, as he was asking you questions, talked about—he spent, I think, seven or eight questions asking about 16 hours. Now, I'm just sitting here listening. And tell me something. You said that it actually wasn't 16 hours, but it was more like two weeks. Is that what you said?

Mr. KERNER. That's correct.

Chairman CUMMINGS. And explain that to me, please.

Mr. KERNER. So when we sent the letter over to the White House, we requested comments, 16 hours later, as Mr. Jordan correctly said. Once the White House reached out very shortly after receipt of the letter, they requested two weeks. And we essentially gave them—it turned out to be two weeks.

Chairman CUMMINGS. So you gave them two weeks.

There ain't no 16 hours, right?

Mr. KERNER. There were no 16 hours.

Chairman CUMMINGS. Thank you very much.

The whole idea of—the problem here is that there's been a constant, and what appears to be deliberate, effort to violate the Hatch Act. I don't care how you—different people interpret it different ways. I get that.

But there was a reason—and you talk about 25 times. And we are sitting here arguing about whether this committee should be even pursuing something—dealing with something like this. And it comes under the jurisdiction of this committee. As far as I'm concerned, it would be malpractice if we didn't do it.

We're going to take a look at all of this. But it does concern me, and it should concern all of us as Americans. And particularly it should concern the 2-million-plus Federal employees. And I've got tens of thousands in my own district. And I know Mr. Connolly has quite a few. And they're the ones that I see in the morning when I leave from Baltimore at 5. Them. Going over to social security, which is in my district. Some of them running to D.C. Going to drop off of the babies to the babysitter so they can get to work. Them.

And then they try as they might to obey the law. That's what they do. They're not asking for anybody to defend them. They're not asking for any awards for doing the right thing. They do it because it's the law.

Now, if folk want to change the law, that's a whole other thing. But right now that is the law. And from what I can see, this—all of this falls under the purview of your office; is that right? All of it.

Mr. KERNER. Yes, it does.

Chairman CUMMINGS. And so—and I want to go back to something Ms. Speier said. It is kind of interesting that a person who is a Trump appointee—when you don't come with the right information—and as a matter of fact, whatever you have to say don't fit the narrative—and that—I can say that from when Issa was chairman.

If something didn't fit the narrative, he literally canceled the hearing if he thought it wasn't going to fit the narrative. And the question is what about truth.

So I too—I want to—you know, I thank you for just doing your job. I do. And you may not get—you're not going to get no award from President Trump, I can tell you that. And you are not going to be applauded by too many people.

But I can tell you one thing, the road that you are on will lead us to where we need to be to that more perfect union. The road that your on will lead us to truth. The road that you and your staff are on will allow our democracy to be sustained even when I'm dancing with the angels. And so I know that may not mean a lot to you, but I want to thank you.

I spend every waking hour trying to figure out how do we get back to normal. How do we get back to truth. How do we get back to the rule of law. How do we get back to standing up for the very laws that we passed. How do we get to making sure that our legislative branch maintains its power. And I'm talking about Republicans and Democrats. How do we maintain our authority. And I'm not just here to tell you and your staff, again, we are on the right path from things that—the kinds of things that you have tried to explain to us today.

So, again, I want to thank our witnesses. Without objection—did you have something? Did you have something?

Mr. JORDAN. I'd be happy to yield to the gentleman from—

Chairman CUMMINGS. No. You got to let it go.

Mr. JORDAN. All right.

Chairman CUMMINGS. I asked you.

Okay. Without objection, all members will have five legislative days within which to submit additional written questions for the witness to the chair,—which will be forwarded to the witness for their response. And, again, Mr. Kerner—is that your staff back there?

Mr. KERNER. Yes, it is.

Chairman CUMMINGS. How many people you got on your staff?

Mr. KERNER. Well, the Hatch Act staff has five permanent employees.

Chairman CUMMINGS. Well, again, I want to thank you.

I ask our witness to please respond as promptly as possible. We may have some written questions for you. I just ask you to respond as fast as you can. All right?

Mr. KERNER. Yes, sir.

Chairman CUMMINGS. All right. The hearing is over.

[Whereupon, at 4:04 p.m., the committee was adjourned.]

