



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

June 13, 2019

The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

Attached to this letter is a copy of the U.S. Office of Special Counsel's (OSC) investigative report detailing numerous violations of the Hatch Act committed by Counselor to the President Kellyanne Conway. Ms. Conway's disregard for the restrictions the Hatch Act places on executive branch employees is unacceptable. If Ms. Conway were any other federal employee, her multiple violations of the law would almost certainly result in removal from her federal position by the Merit Systems Protection Board. As a highly visible member of the Administration, Ms. Conway's violations, if left unpunished, send a message to all federal employees that they need not abide by the Hatch Act's restrictions. Her actions erode the principal foundation of our democratic system—the rule of law.

Since at least February 1, 2019, Ms. Conway has repeatedly violated the Hatch Act during her official media appearances by making statements directed at the success of your reelection campaign or at the failure of candidates for the Democratic Party's nomination for President. In doing so, she has used her official authority to advocate for or against declared candidates for partisan political office. OSC has given Ms. Conway multiple opportunities to come into compliance with the Hatch Act. Ms. Conway has ignored OSC's requests. To make matters worse, Ms. Conway is a repeat offender, whose violations detailed in the attached report are similar to those identified and referred to you in OSC's March 6, 2018 report. As with the prior case, OSC also offered Ms. Conway an opportunity to respond to this report. In both instances, however, she declined to do so.

OSC's career Hatch Act staff have long conducted thorough and impartial investigations of alleged Hatch Act violations, including by senior officials in administrations of both parties. Never has OSC had to issue multiple reports to the President concerning Hatch Act violations by the same individual. Ms. Conway's actions and statements stand in stark contrast to the culture of compliance promised by your White House Counsel and undermine your efforts to create and enforce such a culture. Therefore, OSC respectfully requests that Ms. Conway be held to the same standards as all other federal employees, and, as such, you find removal from federal service to be the appropriate disciplinary action.

Respectfully,

A handwritten signature in blue ink, appearing to read "HJ Kerner".

Henry J. Kerner
Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL

Report of Prohibited Political Activity Under the Hatch Act
OSC File Nos. HA-19-0631 & HA-19-3395 (Kellyanne Conway)

May 30, 2019

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EXECUTIVE SUMMARY

In a May 29, 2019 interview, Ms. Kellyanne Conway, Counselor to the President, reportedly scoffed at her responsibilities under the Hatch Act and ridiculed its enforcement by asserting, “Let me know when the jail sentence starts.”¹ Her defiant attitude is inimical to the law, and her continued pattern of misconduct is unacceptable. The U.S. Office of Special Counsel (OSC) calls on President Donald J. Trump to remove Ms. Conway from her federal position immediately.

OSC is an independent executive branch agency charged with Hatch Act enforcement. OSC opened two cases, OSC File Numbers HA-19-0631 and HA-19-3395, involving Ms. Conway in response to complaints alleging that her conduct during media interviews and on her Twitter account, “@KellyannePolls,” violated the law. After investigating these allegations, OSC has concluded that Ms. Conway has and continues to violate the Hatch Act. This report contains OSC’s investigative findings in these matters and refers the violations to the President.

Hatch Act Prohibition at Issue

The Hatch Act prohibits federal civilian executive branch employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election.² The attendant Hatch Act regulation provides that, for example, an employee may not use her official title or position while participating in political activity.³ Political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office.⁴ Additionally, an employee may violate this prohibition by misusing either official or personal social media accounts, and, specifically, OSC has advised that an employee may not engage in political activity on a personal social media account if OSC has determined that the account is used for official purposes.

Summary of Investigative Findings

OSC’s investigation determined that Ms. Conway violated the Hatch Act during media appearances and by engaging in both official and political activity on her Twitter account, “@KellyannePolls.” Ms. Conway regularly participated in official media interviews in her capacity as a White House spokesperson to answer reporters’ questions about the Administration. Beginning in February 2019, Ms. Conway, during official media appearances, engaged in a pattern of partisan attacks on several Democratic Party candidates shortly after they announced their candidacy for President, including Senator Cory Booker, Senator Elizabeth Warren, former Congressman Robert Francis “Beto” O’Rourke, and former Vice President Joe Biden. For example, in one interview, Ms. Conway insinuated that Senator Booker was “sexist” and a “tinny” “motivational speaker.” In another, Ms. Conway said Senator Warren was “lying” about her ethnicity and “appropriating somebody else’s

¹ Brett Samuels, *Kellyanne Conway dismisses Hatch Act violation: ‘Let me know when the jail sentence starts,’* The Hill (May 29, 2019), <https://thehill.com/homenews/administration/445914-kellyanne-conway-dismisses-hatch-act-violation-let-me-know-when-the>.

² 5 U.S.C. § 7323(a)(1).

³ See 5 C.F.R. § 734.302(b)(1).

⁴ 5 C.F.R. § 734.101.

heritage.” After Mr. O’Rourke announced his candidacy, Ms. Conway attacked him for not “think[ing] the women running are good enough to be President.”

In another instance, shortly after Mr. Biden declared his intention to run for President, Ms. Conway attacked his lack of “vision,” said his announcement video was “very dark and spooky,” and criticized his unwillingness to be “held to account for his record.” Ms. Conway also repeatedly singled out those she deemed to be “frontrunners” for the Democratic Party nomination — Senator Sanders and Mr. Biden. She referred to both candidates derisively as “two old white straight men career politicians,” attacked Senator Sanders’s ideas as “terrible for America,” and brought up Mr. Biden unprompted on at least four occasions in one interview. In addition to disparaging individual Democratic candidates, Ms. Conway directed insults at the entire Democratic field. For example, she compared the Democratic Party candidates to “woodchips” and reminded the American public “anything times zero equals zero” when it came to the number of Democratic candidates and their ideas. Each of these actions constitutes a violation of the Hatch Act’s prohibition on the use of official authority to interfere with or affect an election.

With respect to her Twitter account, OSC concluded that Ms. Conway uses “@KellyannePolls” to execute her official duties. OSC also found that Ms. Conway engages in significant political activity on this account. She tweeted, for example, that President Trump has “got this” and included “#2020:I’mWithHim,” mocked Senator Booker for sounding “like a Hallmark card,” and criticized Senator Warren for claiming to be Native American to benefit herself. Ms. Conway retweeted a March 31, 2019 message that referred to Mr. Biden as “Creepy Uncle Joe” and took it upon herself to outline other faults she found in Mr. Biden’s candidacy. And as recently as May 7, 2019, Ms. Conway retweeted a campaign advertisement that remarked positively on the President’s economy as compared to the “Obama-Biden economy.”

Ms. Conway’s advocacy against the Democratic candidates and open endorsement of the President’s reelection effort during both official media appearances and on her Twitter account constitute prohibited political activity under the Hatch Act. Accordingly, she repeatedly continues to violate the law.

Conclusion

Numerous aggravating factors support OSC’s recommendation that the President remove Ms. Conway from her federal position. First, Ms. Conway has substantial knowledge of the Hatch Act and was previously found to have violated the law by engaging in very similar conduct. Indeed, in March 2018, she was the subject of another disciplinary action referral from OSC to the President for engaging in political activity during official media interviews. Second, OSC repeatedly requested that Ms. Conway comply with the law. OSC sent a letter to Ms. Conway about her impermissible Twitter use in December 2018, warned the Office of White House Counsel in two March 2019 meetings about her political activity during official media appearances, and sent another letter to the Office of White House Counsel in April 2019 concerning her Twitter account. Lastly, Ms. Conway failed to comply with OSC’s requests and, in fact, escalated her partisan critiques of candidates after OSC had communicated to the White House that her conduct violated the law. In sum, Ms. Conway continues to violate the Hatch Act and signals that she will not comply with the law.

I. INTRODUCTION

OSC's report contains the findings and conclusions of the agency's investigation of allegations that Ms. Kellyanne Conway, Counselor to the President, violated the Hatch Act by using her official position to influence the 2018 midterm elections and 2020 presidential election through both media appearances and social media. After investigating these allegations, OSC has determined that Ms. Conway repeatedly violated the Hatch Act. Notably, this is not the first time that OSC has concluded that Ms. Conway broke the law. In March 2018, OSC issued a report to President Donald J. Trump informing him that Ms. Conway violated the law on two occasions when she engaged in political activity while speaking in her official capacity during media interviews. Yet, in blatant disregard for the law, Ms. Conway continues to violate the Hatch Act by engaging in this same misconduct. Accordingly, OSC refers these more recent violations to the President and requests her removal from federal employment.⁵

This investigation began when OSC received a complaint in October 2018 alleging, in part, that Ms. Conway engaged in prohibited political activity when she posted partisan political messages on her Twitter account, "@KellyannePolls," shortly before the 2018 midterm elections.⁶ OSC opened OSC File Number HA-19-0631 and began investigating the allegations. In May 2019, OSC received additional complaints alleging Ms. Conway was expressing her political views about candidates in the 2020 presidential election during her official media interviews. OSC consolidated these complaints and opened OSC File Number HA-19-3395.

II. LEGAL STANDARD REQUIRED TO ESTABLISH A HATCH ACT VIOLATION

For purposes of the Hatch Act, an employee is defined as "any individual, other than the President and the Vice President, employed or holding office in ... an Executive agency other than the Government Accountability Office."⁷

The Hatch Act prohibits (1) federal employees (2) from using their official authority or influence (3) for the purpose of interfering with or affecting the result of an election.⁸ The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses.⁹ For example, the regulation makes clear that it is a prohibited use of official authority for an employee to use her official title or position while participating in political activity.¹⁰ Political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office.¹¹ Thus, a federal employee violates the Hatch Act if she promotes the election or defeat of candidates for partisan political office while speaking in her official capacity.

⁵ See 5 U.S.C. § 1215(b).

⁶ OSC determined the other alleged incident, an early October interview, did not constitute a Hatch Act violation.

⁷ 5 U.S.C. § 7322(1).

⁸ See 5 U.S.C. § 7323(a)(1).

⁹ See 5 C.F.R. § 734.302.

¹⁰ See 5 C.F.R. § 734.302(b)(1).

¹¹ 5 C.F.R. § 734.101.

The Hatch Act also places limitations on a federal employee's engagement in political activity on official or personal social media accounts. OSC has advised that employees may not engage in political activity on official social media accounts or on a personal social media account if they are using that account for official purposes or posting in their official capacity. OSC uses a multi-factor test to determine if an ostensibly personal social media account is being used for official purposes. These factors include whether it (1) contains little to no personal content; (2) identifies the individual as a federal employee; (3) extensively uses photographs of the employee's official activities; (4) frequently references, retweets, likes, comments, or otherwise shares material related to official activities; or (5) is linked to an agency website or other official page. No single factor is dispositive.

OSC's February 2018 guidance published on our website specifically addresses the misuse of personal social media accounts and provides the following example:

You are a 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 partisan political group.¹²

III. INVESTIGATIVE FINDINGS

A. Ms. Conway is subject to the Hatch Act.

The Hatch Act restricts the political activity of "any individual, other than the President and the Vice President, employed or holding office in ... an Executive agency other than the Government Accountability Office."¹³ The White House Office is a component of the Executive Office of the President, which is considered an Executive agency for purposes of the Hatch Act.¹⁴ Ms. Conway is a commissioned officer in the White House Office and has been serving as Counselor to the President since January 20, 2017. Therefore, as a presidential appointee employed by the White House Office, Ms. Conway is subject to the Hatch Act.

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¹² See OSC's February 2018 "Hatch Act Guidance on Social Media," pg. 9, available at: <https://osc.gov/Pages/Hatch-Act-Social-Media-and-Email-Guidance.aspx>.

¹³ 5 U.S.C. § 7322(1).

¹⁴ See 19 U.S. Op. Off. Legal Counsel 103 (May 5, 1995), 1995 WL 1767065 (concluding that for Hatch Act purposes, the White House Office is an Executive agency); 27 U.S. Op. Off. Legal Counsel 118 (May 23, 2003), 2003 WL 25728359 (reaffirming conclusion that the Hatch Act applies to employees of the White House Office).

B. Ms. Conway violated the Hatch Act's prohibition against using her official authority or influence for the purpose of affecting the result of an election. From February 1, 2019, to May 1, 2019, she repeatedly commented on 2020 presidential candidates during official media interviews.

In her role as Counselor to the President, Ms. Conway has a diverse portfolio, which includes the opioid epidemic,¹⁵ veterans' issues, and healthcare reform.¹⁶ Also, Ms. Conway serves as a spokesperson for the Trump Administration. When she was appointed to her current position, the transition team announced that Ms. Conway would "work with senior leadership to effectively message and execute the Administration's legislative priorities and actions."¹⁷ Similarly, the President has described Ms. Conway as "a tireless and tenacious advocate of [his] agenda ... [who] has amazing insights on how to effectively communicate [his] message...."¹⁸ Ms. Conway reportedly characterized her role as supporting the President in "his effective connecting and communicating with America."¹⁹

Consistent with her duties in the Administration, Ms. Conway routinely gives official interviews promoting the President's agenda. From February to May 2019, Ms. Conway gave dozens of interviews in her official capacity. During these interviews, some of which occurred on White House grounds, she was introduced as Counselor to the President and discussed official matters. And while speaking in her official capacity, Ms. Conway also engaged in campaign rhetoric, remarking on the strength of President Trump's candidacy and/or the weaknesses of the Democratic Party's candidates in the upcoming 2020 presidential election. Her comments were directed at persuading voters not to support the Democratic Party candidates in the 2020 presidential election and garnering support for the President's candidacy, and therefore constituted political activity under the Hatch Act. By engaging in political activity while speaking in her official capacity, Ms. Conway used her official authority or influence for the purpose of affecting the result of an election in violation of the Hatch Act. The following examples illustrate the breadth and frequency of Ms. Conway's Hatch Act violations.

1. February Interviews

On February 1, 2019, Ms. Conway participated in a *Fox & Friends* interview in her official capacity.²⁰ At the outset, co-host Steve Doocy introduced Ms. Conway by her title, Counselor to the President. It was also evident that Ms. Conway was standing inside the White House during the

¹⁵ See The White House, *A Raw, Unfiltered Look at the 'Crisis Next Door'* (June 8, 2018), <https://www.whitehouse.gov/articles/raw-unfiltered-look-crisis-next-door/>.

¹⁶ C-Span, *Kellyanne Conway Comments to Reporters at the White House* (Apr. 30, 2019), <https://www.c-span.org/video/?460272-1/kellyanne-conway-defends-stephen-moore-nomination>.

¹⁷ Eric Walsh, Susan Heavey & Jeffrey Benkoe, *Kellyanne Conway joins Trump administration as counselor to the president*, Business Insider (Dec. 22, 2016), <https://www.businessinsider.com/trump-names-kellyanne-conway-counselor-to-the-president-2016-12>.

¹⁸ Louis Nelson, *Trump creates competing power centers in his West Wing*, Politico (Dec. 22, 2016), <https://www.politico.com/story/2016/12/kellyanne-conway-counselor-president-trump-232911>.

¹⁹ *Id.*

²⁰ Fox & Friends, *White House talks suspending nuclear pact with Russia, Cory Booker's presidential bid*, Fox News Channel (Feb. 1, 2019), <https://video.foxnews.com/v/5997378977001/#sp=show-clips>.

interview.²¹ As Ms. Conway spoke, the chyron alerted viewers that she was “Counselor to President Trump.” During the interview, Ms. Conway spoke about official Administration actions and policy. Specifically, she permissibly provided the Administration’s perspective on the United States’ withdrawal from a nuclear pact with Russia and discussed the Administration’s response to activities at the southern border.

Approximately two minutes into the interview, co-host Ainsley Earhardt asked Ms. Conway for the “Administration’s reaction” to Senator Cory Booker’s candidacy, announced earlier that morning.²² In response, Ms. Conway immediately proposed a series of questions that she would ask Senator Booker, all of which revolved around flaws she perceived in his candidacy. Ms. Conway rhetorically posited, “What’s wrong with the candidates that are already in there?” and “What’s your objection to Kamala Harris running, Elizabeth Warren, Kirsten Gillibrand, these others who have already announced, Tulsi Gabbard maybe?” Ms. Conway then reflected that if Senator Booker were a “Republican running against them” he would be called a “sexist.” Next, Ms. Conway said she would ask Senator Booker “what exactly” he had accomplished to qualify him to be President. And she responded to her own question with three main points — Senator Booker was a “motivational speaker who can be tinny,”²³ his record as mayor of Newark, New Jersey, was lacking, and he could not “even bring himself to continue to help those school children through school choice” because the Democratic Party had “moved so far to the left.”

On February 11, 2019, Ms. Conway gave another interview to *Fox & Friends*.²⁴ Again, Mr. Doocy introduced Ms. Conway using her official title, and the chyron periodically read, “Kellyanne Conway Counselor to the President.” The interview questions primarily concerned negotiations with Congress, border security, and the President’s Texas rally to bring attention to border security issues.

During the interview, Mr. Doocy named all of the declared Democratic Party candidates and noted that the list could grow. Ms. Conway retorted, “Great. Keep it coming. Just remember anything times zero still equals zero,” and she outlined President Trump’s accomplishments, suggesting that they were boons for his 2020 candidacy and obstacles for the opposition.²⁵ Co-host Brian Kilmeade

²¹ A seal that read “The White House” was mounted on the wall behind Ms. Conway.

²² Nick Corasaniti & Shane Goldmacher, *Cory Booker Announces Presidential Bid, Joining Most Diverse Field Ever*, The New York Times (Feb. 1, 2019), <https://www.nytimes.com/2019/02/01/us/politics/cory-booker-2020.html> (Senator Booker announced his candidacy on February 1, 2019).

²³ Ms. Conway was quoting David Axelrod.

²⁴ Fox & Friends, *Conway Slams ‘Big-Mouth Dems’ Over Calls to Defund ICE: They’re ‘Hurling Us Toward a Shutdown,’* Fox News Channel (Feb. 11, 2019), <https://insider.foxnews.com/2019/02/11/kellyanne-conway-slams-democrats-over-calls-defund-immigration-and-customs-enforcement>.

²⁵ OSC determined on March 5, 2018, that President Trump is a candidate for reelection for purposes of the Hatch Act. See OSC’s March 2018 “Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection,” available at:

<https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf>.

then played clips of Senators Amy Klobuchar,²⁶ Elizabeth Warren,²⁷ and Cory Booker announcing their candidacies. After the clips ended, Mr. Doocy stated, “Well, to some it’s a binary choice, Kellyanne.” Ms. Conway responded, “Yes, and that’s why the President is likely to be reelected because his-- he will say, ‘Here is what I have done for the three and a half years, by then the four years as President.’” She again outlined the President’s accomplishments and said about the Democrats, “I’m [sic] yet to see presidential timber. I just see a bunch of presidential woodchips. And what happened this weekend is equally unimpressive.”

Ms. Conway went on to attack several of the declared Democratic candidates individually, stating:

[Senator Klobuchar] seems to be a very nice person, I guess unless you’re on her staff. She’s had some terrible articles about the way she treats them. I’ve always known her to be Minnesota nice. But you can change the A to an O and get ‘O my’ instead of Amy there because I don’t think that was a very impressive rollout. It’s a lot of sing-songy, happy talk from these folks, or it’s virulently anti-Donald Trump at all times...

Ms. Conway then noted that Senator Warren “spent decades, folks, decades appropriating somebody else’s heritage and ethnicity,” and “she’s been lying about it.” Turning to Senator Kirsten Gillibrand,²⁸ Ms. Conway expressed incredulity: “This weekend, in her fifties, apparently was the first time she’s ever eaten fried chicken, and she waited for the cameras to roll. I mean this is just silly stuff.”

2. March Interviews

On March 13, 2019, Ms. Conway gave an interview on *The Ingraham Angle* during which she criticized Senator Warren.²⁹ Host Laura Ingraham introduced Ms. Conway as Counselor to the President and asked Ms. Conway to provide “the White House’s message” in response to critics of the President’s national emergency declaration regarding the southern border. The chyron reflected Ms. Conway’s official appearance by highlighting her title, “Counselor to the President.”

Ms. Conway’s interview covered the news of the day, including President Trump’s national emergency declaration, Congress’s related vote of disapproval, and the topic of border security generally. Near the end of the interview, she turned the conversation to Senator Warren and stated, “Elizabeth Warren is running for President. She tried to appropriate somebody else’s ethnicity. She

²⁶ Dan Merica & Devan Cole, *Sen. Amy Klobuchar enters presidential race*, CNN (Feb. 10, 2019), <https://www.cnn.com/2019/02/10/politics/klobuchar-announcement-2020-president/index.html> (Senator Klobuchar announced her candidacy on February 10, 2019).

²⁷ Kate Taylor, *Elizabeth Warren Formally Announces 2020 Presidential Bid in Lawrence, Mass.*, The New York Times (Feb. 9, 2019), <https://www.nytimes.com/2019/02/09/us/politics/elizabeth-warren-2020.html> (Senator Warren announced her candidacy on February 9, 2019).

²⁸ Shane Goldmacher, *Kirsten Gillibrand, New York Senator, Joins Democratic Race for President*, The New York Times (Jan. 15, 2019), <https://www.nytimes.com/2019/01/15/us/politics/gillibrand-president-election.html?module=inline> (Senator Gillibrand announced her exploratory committee on January 15, 2019).

²⁹ The Ingraham Angle, *Kellyanne Conway: Courts and Congress failed to do their jobs on immigration for decades*, Fox News Channel (Mar. 13, 2019), <https://video.foxnews.com/v/6013716232001/#sp=show-clips>.

lied about that.” Ms. Conway then summed up her perspective on the Democratic Party’s candidates by saying she had yet to see “presidential timber” and only saw “presidential woodchips.”

Just five days later, on March 18, 2019, Ms. Conway reappeared on *Fox & Friends* to discuss, among other things, the shooting in New Zealand, border security, and the President’s proposed budget.³⁰ Although the anchors did not introduce Ms. Conway using her official title, Ms. Conway appeared in front of the White House, and the chyron read, “Kellyanne Conway Counselor to the President.”

After discussing the President’s budget and the border wall, Mr. Kilmeade turned the conversation to David Axelrod’s negative assessment of President Trump’s 2020 campaign and whether the President would be competitive in several swing states. Ms. Conway offered an overview of the President’s campaign strategy and another negative assessment of the Democratic Party’s candidates:

Now we have thirteen, we have the baker’s dozen running. Biden maybe will get in because I guess none of them think the other can actually beat Donald Trump. There’s no strategy I see. You’ve got Beto O’Rourke³¹ and you’ve got Cory Booker promising that they would nominate a woman to be the VP. Do they not think the women running are good enough to be President? So there’s a whole hot mess in the Democratic Party beginning with right over the bridge here in Virginia.

Ms. Conway concluded her assessment of the 2020 presidential race by predicting that the President would be reelected because of his policies and accomplishments.

3. April Interviews

Ms. Conway’s negative comments about the Democratic candidates increased in late April and early May 2019. On April 22, 2019, during the White House’s Easter Egg Roll festivities, Ms. Conway sat for an interview on the White House lawn with host Ainsley Earhardt from *Fox & Friends*.³² The chyron periodically displayed her official title, “Counselor to the President,” and Ms. Conway fielded questions about holiday events at the White House and the First Lady’s “Be Best” platform. Ms. Conway also provided the White House’s response to the recent spate of shootings around the globe, the Mueller investigation, and the prospect of impeachment.

While discussing the Mueller report, Ms. Conway, unprompted, brought up the Democratic Party presidential candidates. Ms. Conway told viewers that the nineteenth Democrat, U.S.

³⁰ Fox & Friends, *Kellyanne Conway reacts to Trump being blamed in New Zealand massacre*, Fox News Channel (Mar. 18, 2019), <https://video.foxnews.com/v/6015238929001/#sp=show-clips>.

³¹ See David Siders, *Beto announces bid for president*, Politico (Mar. 14, 2019), <https://www.politico.com/story/2019/03/14/beto-orourke-2020-president-1207704> (Mr. O’Rourke announced his candidacy on March 14, 2019).

³² Fox & Friends, *Kellyanne Conway talks radical Islamic terror after Sri Lanka massacre, impeachment talk after Mueller report*, Fox News Channel (Apr. 22, 2019), <https://video.foxnews.com/v/6028692010001/#sp=show-clips>.

Representative Seth Moulton,³³ had announced his candidacy and that she wanted to “remind everybody simple math.” Ms. Conway continued, “Whether it’s one, whether it’s nineteen, whether it’s fifty, anything times zero equals zero. Simple multiplication. So fifty Democrats can run. Twenty of them, nineteen are now running. But if your message is zero, it’s a big zero.”

Two days later, on April 24, 2019, Ms. Conway again gave an interview in her official capacity on *America’s Newsroom*.³⁴ She appeared in front of the White House, and the chyron read “Kellyanne Conway Counselor to the President.” On this occasion, Ms. Conway spoke about the President’s attempts to resist House Democrats’ subpoenas, the Mueller report, and the Administration’s actions to combat opioid abuse. At one point, co-anchor Sandra Smith asked Ms. Conway about former Vice President Joe Biden,³⁵ who was expected to announce his candidacy for President later in the week. In addition to commenting on Mr. Biden, who was not yet a candidate, Ms. Conway brought up a declared Democratic Party candidate, Senator Bernie Sanders.³⁶ Ms. Conway said:

I think Biden’s timing actually benefits him because the Democrats seem really desperate to find an alternative to Bernie Sanders, who is the clear announced frontrunner right now in the polling and on the ground. Bernie Sanders has a lot in common with Donald Trump, which is he doesn’t really care what his party thinks about his candidacy at this point in the primaries. He’s connecting directly with the voters. He’s raising small dollar amounts. The only difference between Bernie Sanders and Donald Trump is Bernie Sanders’s ideas are terrible for America, and Donald Trump is a much better candidate, had [sic] connective tissue with the people.

In the same response, Ms. Conway also volunteered that she had seen “women on TV complaining about ‘the female candidates aren’t covered the same’” but that those criticisms were “just hogwash” because the female candidates “have terrible ideas.” Immediately following her statements about the candidates, the interviewer transitioned to an official topic, the President’s attendance at an opioid abuse summit in Atlanta.

On April 27, 2019, Ms. Conway appeared for an interview on *Smerconish*, and the chyron identified her as “Counselor to President Trump” throughout the interview.³⁷ During this segment, Ms. Conway was pressed to provide commentary on President Trump’s “fine people” statements, which he made in 2017 after a neo-Nazi march occurred in Charlottesville, Virginia, in the midst of a national

³³ Stephanie Murray, *Seth Moulton announces 2020 bid*, Politico (Apr. 22, 2019), <https://www.politico.com/story/2019/04/22/moulton-announces-2020-bid-1284347> (Representative Moulton announced his candidacy on April 22, 2019).

³⁴ Talia Kaplan, *Kellyanne Conway to Democrats: ‘Are you going to talk for the rest of 2019 into 2020 about impeachment or infrastructure?’*, Fox News Channel (Apr. 24, 2019), <https://www.foxnews.com/politics/kellyanne-conway-to-democrats-are-you-going-to-talk-for-the-rest-of-2019-into-2020-about-impeachment-or-infrastructure>.

³⁵ Marc Caputo & Natasha Korecki, *Biden dives into 2020 race*, Politico (April 25, 2019), <https://www.politico.com/story/2019/04/25/biden-launch-1279838> (Mr. Biden announced his candidacy on April 25, 2019).

³⁶ Senator Sanders announced his candidacy on February 19, 2019. See Scott Detrow & Jessica Taylor, *Bernie Sanders Launches 2020 Presidential Campaign, No Longer An Underdog*, NPR (Feb. 19, 2019), <https://www.npr.org/2019/02/19/676923000/bernie-sanders-enters-2020-presidential-campaign-no-longer-an-underdog>.

³⁷ *Smerconish, Conway on Charlottesville, Biden, economy, opioids and pot*, CNN (Apr. 27, 2019), <https://www.cnn.com/videos/tv/2019/04/27/conway-on-charlottesville-the-economy-opioids-and-pot.cnn>.

conversation about whether to remove monuments dedicated to Confederate leaders. Ms. Conway initially replied to the question by talking about President Trump's statements. However, she pivoted to recently announced presidential candidate Joe Biden. Ms. Conway accused Mr. Biden of bringing up Charlottesville in his announcement video because "he doesn't want to be held to account for his record or lack thereof." Ms. Conway then informed viewers that she found Mr. Biden's announcement video to be "unfortunate," "a missed opportunity," and "very dark and spooky" because he "doesn't have a vision for the future." She continued to discuss Mr. Biden's candidacy and the states where President Trump could win in 2020.

On April 28, 2019, one day later, Ms. Conway appeared in studio on *State of the Union* with host Jake Tapper.³⁸ Mr. Tapper introduced Ms. Conway as Counselor to the President, and the chyron reflected her title. During this interview, Mr. Tapper asked Ms. Conway about a multitude of topics, including President Trump's comments about white nationalism, the economy, and the Mueller report. Mr. Tapper engaged Ms. Conway in an exchange about the President's response to Charlottesville, and particularly his comments that there were "fine people" on both sides. Ms. Conway brought up Mr. Biden and said that he was revisiting the Charlottesville controversy because "he has no vision, and he doesn't want to be held to account for the Obama-Biden legacy." Later she added, "... But for Joe Biden, who's been in public life, who was elected at 29, to come out and have no vision, no -- no accountability for the Obama-Biden record, didn't even mention President Obama, but mentioned Charlottesville, to try to use that for political purpose, to lie about the President..."³⁹

For the next minute and a half, Mr. Tapper attempted to redirect Ms. Conway to the issue of President Trump's response to Charlottesville. But Ms. Conway returned to the subject of Mr. Biden by asking, "Why would Joe Biden bring that up? Why is he using Charlottesville to launch a candidacy as somebody who was in the Senate for decades, who was Vice President for eight years, who's 0 for two running for President, while Donald Trump is one for one?"

After, Mr. Tapper asked Ms. Conway whether the President was concerned about the strength of the economy. Ms. Conway initially discussed the economy's prospects under the President's leadership but then, for the fourth time, turned to the topic of Mr. Biden. Ms. Conway said Mr. Biden would need to run against "the Trump legacy" on the economy and that the country would have to wait to "see if he can even get that far" because "Joe Biden had a hard week vis-à-vis the Democratic primary."

On April 30, 2019, Ms. Conway responded to reporters' questions for approximately thirty minutes while standing in the White House driveway.⁴⁰ Toward the end of the question and answer session, Conway began to walk away when a reporter called out to her, "Hey Kellyanne, one more thing. You brought up Joe Biden several times unprompted. Do you guys see him--?" Ms. Conway retorted, "How was it unprompted? He's the frontrunner!" The reporter then asked if Ms. Conway

³⁸ *State of the Union, Tapper spars with Conway over Charlottesville*, CNN (Apr. 28, 2019), <https://www.cnn.com/videos/tv/2019/04/28/sotu-conway-full.cnn>.

³⁹ *California Synagogue Shooting; Interview With Rep. Seth Moulton (D-MA); Interview With Counselor to the President Kellyanne Conway; 2020 Election Discussion. Aired 9-10a ET*, CNN, <http://www.cnn.com/TRANSCRIPTS/1904/28/sotu.01.html> (last visited May 9, 2019).

⁴⁰ See C-Span, *supra* note 16.

considered Mr. Biden the frontrunner. Ms. Conway replied by attacking the Democratic primary electorate as “sexist” and “racist” because Mr. Biden and Senator Sanders were polling as the frontrunners. She suggested that the “two old white straight men career politicians” were ahead because the electorate has “a problem with the rest of the field.”

The reporter said a few words about Mr. Biden and Senator Sanders being the “most formidable challengers to President Trump” when Ms. Conway again defended the President and attacked the opposition:

So I think the debates will be very winnowing but it's not lost on us who the two frontrunners are among the Democratic primary electorate where I don't vote, where Donald Trump doesn't vote. So we're just watching the way the Democrats assess their own field.... I think the best way for the President to get reelected is what he does in this building. It's all the economic prosperity. They want to run against Donald Trump. They have to run against Donald Trump's economy, too. They have to run against Donald Trump getting the remains of our brave men who fell in Korea back home, getting 19 or 20 hostages back home. Some of these hostages were there, most of them were there, when Vice President Biden was here. So he's gonna be held to account, and I know he said that 'I asked President Obama not to endorse me. I'm too busy getting the endorsement of firefighters but I don't want a popular President among the Democrats' first African American President to endorse me.' Do any of you believe that? You let him get away with his first lie. Why'd you do that? So I will ask him if you're not going to, 'Hey Senator - Vice President Biden why are 28 million Americans without health insurance nine years after Obama-Biden care passed?' He should be asked that. And I think Bernie Sanders doesn't care what his party thinks, is connecting directly with people, and is raising money in small amounts, and goes out and has very specific points of view which is why he's got a following. He's a lot like Donald Trump except for good ideas, and ideas that are mainstream, and ideas that are part of a democracy and not socialism.

A different reporter next asked a question about healthcare. During her response, Ms. Conway offered negative commentary on Mr. Biden and Senator Sanders and suggested that Obamacare was an obstacle for Mr. Biden. She continued, “Is Joe Biden not endorsing Obamacare the way Obama is not endorsing Joe Biden? I wonder.”

4. May Interview

On May 1, 2019, during an interview in the White House driveway, Ms. Conway again brought up Mr. Biden unprompted.⁴¹ In segments of the interview that were broadcast by Lawrence O'Donnell, Ms. Conway said about her prior comments concerning Mr. Biden, “So thanks for the free commercial about all the things Joe Biden didn't get done for the eight years he was Vice President.”

⁴¹ Lee Moran, *Lawrence O'Donnell Runs Video Of Kellyanne Conway Allegedly Breaking The Law*, Huffpost (May 2, 2019), https://www.huffpost.com/entry/lawrence-odonnell-kellyanne-conway-breaking-law-video_n_5ccaa095e4b0e4d7572da402?ncid=APPLENEWS00001&guccounter=1.

Ms. Conway also commented that she found it “fascinating” that Mr. Biden said he asked former President Obama not to endorse him and that it was also going to be “fascinating” to watch the Democratic candidates who were not doing well in the polls. On the topic of those Democratic candidates, Ms. Conway dismissively said, “I can talk about them too if you like, no problem.”

* * *

The facts set forth above show that Ms. Conway engaged in a well-established pattern of using her official authority as a platform to engage in blatantly partisan attacks. Such political activity in her official capacity constitutes a clear and continuing violation of the Hatch Act.

C. Ms. Conway violated the Hatch Act’s prohibition against using her official authority or influence for the purpose of affecting the result of an election by engaging in both official and political activity on her Twitter account, “@KellyannePolls.”

As discussed above, OSC has advised that the Hatch Act prohibits an employee from engaging in political activity on a personal social media account if the employee also uses that account for official purposes. OSC reviewed over six months of posts on Ms. Conway’s Twitter account, “@KellyannePolls,” and discovered that Ms. Conway frequently posts both official and political messages on her account, in violation of the Hatch Act.

1. Ms. Conway used her Twitter account for official purposes.

Ms. Conway has one Twitter account, “@KellyannePolls,” which she created in January 2012, and has used as a tool to execute her official duties. Since Ms. Conway became Counselor to the President, the public has looked to Ms. Conway’s account for news and announcements.⁴² In fact, about 2.7 million people follow her account, a number that has more than quintupled since she assumed her official position with the White House. Furthermore, Ms. Conway confirmed her use of “@KellyannePolls” as a communication tool for official matters by appearing on a cable news network in her official capacity to discuss the President’s upcoming State of the Union address, border security, and abortion and, in that same interview, directed viewers to “@KellyannePolls” for more official information.⁴³

OSC reviewed several months’ worth of posts on “@KellyannePolls” and found that the majority of Ms. Conway’s posts were about official Administration actions, policies, and priorities.⁴⁴ Ms. Conway regularly posted about the White House’s efforts to combat the opioid crisis, a topic

⁴² The media consults “@KellyannePolls” to prepare for interviews during which Ms. Conway speaks in her official capacity. See Fox & Friends, *Kellyanne Conway: After 2 years wasted on the Russia probe, Democrats are running out of time for 2020* Fox News Channel (Mar. 25, 2019), <https://video.foxnews.com/v/6017702424001/#sp=show-clips>. The media also tweets at “@KellyannePolls” when referring to her official statements. See, e.g., Mark Knoller (@markknoller), Twitter (Dec. 14, 2018, 11:05 AM), <https://twitter.com/markknoller/status/1073655306096386048> and Mark Knoller (@markknoller), Twitter (Dec. 11, 2018, 7:08 AM), <https://twitter.com/markknoller/status/1072508329577144321>.

⁴³ Fox & Friends, *Kellyanne Conway previews President Trump’s ‘uplifting’ State of the Union address*, Fox News Channel (Feb. 5, 2019), <https://video.foxnews.com/v/5998668431001/#sp=show-clips>.

⁴⁴ OSC reviewed posts from September 2018 to May 2019.

directly related to her role in the Administration.⁴⁵ Ms. Conway also often retweeted the official posts of other Administration principals and videos of herself giving media interviews in her official capacity. Mixed with these official posts were retweets of stories about, or comments on, current news and events, which often mirrored the Administration's talking points. While a few personal messages appeared on Ms. Conway's Twitter feed, the bulk of the posts were related to her official duties.⁴⁶

2. Ms. Conway used her Twitter account for partisan political purposes.

Ms. Conway also engaged in political activity on "@KellyannePolls" on many occasions. OSC determined that between October 31 and November 6, 2018, Ms. Conway posted at least 15 messages in support of candidates running in the midterm elections or the Republican Party. For example, on November 1, 2018, Ms. Conway tweeted, "Missed you, #Michigan! The stakes are high. The choice is clear. Vote on Tuesday for @SchuetteOnDuty @JohnJamesMI @MIGOP to protect prosperity and freedom. Get to the polls!"⁴⁷ Three days before the 2018 midterm elections, on November 3, 2018, Ms. Conway responded to a message from the Republican Party Chairwoman by saying: "In my travels, blue-collar workers especially ask me to thank @POTUS for keeping his promises, for providing them with more dignity and more dollars through his trade, tax and deregulation policies. Vote @GOP to keep the gains going."

In February 2019, as Democratic Party candidates began to announce their presidential campaigns, Ms. Conway tweeted messages in opposition to those candidates and in support of President Trump's candidacy. On February 1, 2019, Ms. Conway retweeted a *Washington Examiner* article and added, "What does Cory Booker have against all the women already running for President? Are they not good enough? Too weak? Not likeable? (They're certainly liberal enough) (Pretend he's a Republican when you read this)." On the same day, Ms. Conway posted "Listen for it" and attached a tweet from CNN's Allie Malloy quoting Ms. Conway, "First WH reaction on Cory Booker running for 2020 from @KellyannePolls: 'I think Cory Booker often sounds like a Hallmark card and not necessarily a person who's there to tell you everything he's accomplished in the United States Senate and as Mayor of Newark.'" On February 5, 2019, Ms. Conway tweeted, "He's got this. #2020:I'mWithHim. @realDonaldTrump" along with an image of several declared Democratic Party presidential candidates. On February 11, 2019, Ms. Conway retweeted Ryan Fournier's post, "Senator Elizabeth Warren lives in a \$5.4 million dollar mansion, claimed 'Native American' status to score a Harvard gig paying \$350,000 to teach one class, and now lectures us that 'the system is rigged to benefit the rich.'"

On March 13, 2019, Ms. Conway tweeted in response to a CNBC message about Elizabeth Warren's comment that she had "'zero' sympathy for parents caught in the college admissions scam," "What a coincidence. I have 'zero' sympathy for adults who lie that they are Native American to gain advantage." Ms. Conway also targeted Mr. Biden for criticism on March 31, 2019, when she tweeted,

⁴⁵ See The White House, *supra* note 15.

⁴⁶ For example, on April 25, 2019, Ms. Conway retweeted a Philadelphia Eagles' post, which welcomed a new player to the football team.

⁴⁷ In the same message, Ms. Conway also explained that she would be unable to attend a Republican get out the vote event in Michigan.

“Other problems for @JoeBiden: Pres. Obama has not endorsed; Dem donors/talent with other candidates; Stacey Abrams seems to have rebuffed his advances to make her VP on his ticket, smartly saying if she were to run, it would be for top spot, not #2.” The March 31 message also included a retweet of “@FoxNewsSunday,” which quoted Ms. Conway as saying, “If anybody just types in ‘Creepy Uncle Joe Videos’ you come up with a treasure trove... I think Joe Biden has a big problem here because he calls it affection and handshakes, his party calls it completely inappropriate.” Finally, on May 7, 2019, Ms. Conway retweeted Donald Trump Jr.’s post: “What happens when you compare the Trump economy to the Obama economy? Hint: Obama doesn’t fair too well. #MAGA [Trump campaign advertisement video],” and she wrote, “You mean the Obama-Biden economy, @DonaldJTrumpJr?”

Ms. Conway violated the Hatch Act when she used “@KellyannePolls” to engage in political activity. She posted photos and videos of herself acting in her official capacity, often referenced, retweeted, commented on, or otherwise shared material related to the Administration’s official activities, and directed viewers to the account during an official interview. Therefore, Ms. Conway used the account for official purposes. At the same time, Ms. Conway often used this account to advocate explicitly for the election of Republican candidates in the 2018 midterm elections and criticize 2020 Democratic Party candidates. In fact, she recently retweeted a Trump campaign video. This activity, which is ongoing, is directed at bolstering the President’s candidacy and that of other Republicans and defeating Democratic Party candidates and, therefore, constitutes political activity. Because Ms. Conway uses “@KellyannePolls” for both official purposes and political activity, she has violated the Hatch Act’s prohibition against using her official authority or influence for the purpose of interfering with or affecting the result of an election.

IV. CONCLUSION

A. Ms. Conway’s Hatch Act violations are egregious, notorious, and ongoing.

Beginning in February 2019, Ms. Conway, while in her official capacity, engaged in a pattern of political activity in violation of the Hatch Act. In a number of media appearances during this period she openly criticized Democratic Party presidential candidates shortly after they announced their candidacy. For example, Ms. Conway criticized some candidates for lacking in vision, being “sexist” and “tinny,” or “lying” about their ethnicity. Ms. Conway repeatedly attacked Senator Sanders and Mr. Biden when she derisively referred to both candidates as “two old white straight men career politicians” and denigrated Senator Sanders’s ideas as “terrible for America.” In one interview, Ms. Conway brought up Mr. Biden unprompted on at least four separate occasions and repeated her refrain that he lacks any “vision” and does not want “to be held to account for the Obama-Biden legacy.” Ms. Conway also compared the Democratic Party candidates to “woodchips.” This type of partisan rhetoric, although lawful on the campaign trail, violates the Hatch Act when the speaker is a White House employee acting in her official capacity.

Ms. Conway’s critiques of newly announced candidates were clearly aimed at influencing voters and the election. Indeed, OSC’s investigation revealed at least 10 interviews where Ms. Conway used her official authority in an attempt to influence the presidential election. The sheer number of occurrences underscores the egregious nature of her violations. And her actions suggest

indifference to, or unwillingness to carry out, her responsibility to abstain from prohibited political activity.

Similarly, Ms. Conway used “@KellyannePolls” for dual purposes —disseminating both official and political messages. Just days before the November 2018 midterm elections, she posted at least 15 messages in support of candidates or the Republican Party. Even after OSC informed Ms. Conway that she was violating the Hatch Act and requested that she comply with the law, she continued to misuse “@KellyannePolls.” She advocated for President Trump’s candidacy by writing in a tweet “#2020:I’mWithHim,” and she opposed various Democratic Party candidates by, for example, posting that Senator Booker sounded “like a Hallmark card” and Mr. Biden was “Creepy Uncle Joe.” This partisan speech is violative of the Hatch Act on a Twitter account used for official purposes.

B. Ms. Conway has clear knowledge of the Hatch Act and yet continues to disregard the law.

Ms. Conway is well informed about the Hatch Act. The Office of White House Counsel advised Ms. Conway about the Hatch Act’s restrictions through a formal ethics training session, individual conversations, and multiple written communications.⁴⁸ And in March 2018, OSC issued a report to the President finding that Ms. Conway twice violated the Hatch Act by engaging in political activity directed at the failure of Democratic Senatorial candidate Doug Jones in the Alabama special election.

Ms. Conway again was informed about the Hatch Act after OSC received the October 2018 complaint about her Twitter account. Following that complaint, OSC made several requests that she bring her Twitter activity into compliance with the Hatch Act, including sending a letter on December 20, 2018, to Ms. Conway about her impermissible Twitter use. In that letter, OSC informed Ms. Conway that she was engaging in both official and political activity on “@KellyannePolls” in violation of the Hatch Act, and OSC requested that Ms. Conway cure her ongoing violation by taking several steps to disentangle the political and official content on her account.⁴⁹ But Ms. Conway did not take any noticeable steps to bring her Twitter account into compliance with the law.

In furtherance of our efforts to bring Ms. Conway into compliance, OSC attempted to work with the Office of White House Counsel, including discussing Ms. Conway’s actions on a couple of occasions. At about this time, OSC also learned that Ms. Conway was using official media appearances to advocate for President Trump’s candidacy and against the Democratic Party challengers. Therefore, during those discussions, OSC informed the Office of White House Counsel that Ms. Conway’s Twitter use violated the Hatch Act and her political activity during official media appearances raised similar concerns. Subsequently, OSC sent a letter to the Deputy Counsel to the

⁴⁸ For a fuller discussion of Ms. Conway’s Hatch Act knowledge, please see OSC’s March 6, 2018 report at: <https://osc.gov/Resources/Conway%20HA-18-0966%20Final%20Report.pdf>.

⁴⁹ OSC informed Ms. Conway that either she could create a separate official Twitter account or, if she was going to continue using “@KellyannePolls” for official purposes, she must delete all existing political activity and cease to engage in political activity on the account.

President on April 9, 2019, again requesting that Ms. Conway comply with the Hatch Act as it related to her Twitter account, but to no avail. OSC also began reviewing Ms. Conway's media interviews.

C. Ms. Conway's conduct warrants her removal.

In light of her knowledge of the Hatch Act's prohibitions and the fact that just last year OSC sent a disciplinary action referral to the President for similar violations, Ms. Conway's decision to continue using her media outreach to attack Democratic Party candidates is unacceptable. Ms. Conway's continued promotion of her partisan political views during official media appearances in April and May 2019 is especially troubling given that OSC advised the Office of White House Counsel that her activity was in violation of the Hatch Act on several occasions in March of this year.

Likewise, Ms. Conway continued to use her Twitter account in violation of the law despite OSC's explicit warnings and instructions in December 2018 and April 2019 that she cease doing so. Although Ms. Conway may promote the President's agenda and defend the Administration while performing her official duties, she is prohibited from expressing her electoral preferences. Here, after being fully apprised of the Hatch Act's prohibitions, Ms. Conway continued to campaign for the President and against Democratic candidates while acting in her official capacity.

Ms. Conway's persistent, notorious, and deliberate Hatch Act violations have created an unprecedented challenge to this office's ability to enforce the Act, as we are statutorily charged. She has willfully and openly disregarded the law in full public view. As recently as May 29, 2019, Ms. Conway defiantly rejected the Hatch Act's application to her activities, dismissed OSC's 2018 findings, and flippantly stated, "Let me know when the jail sentence starts."⁵⁰ And she made it clear that she has no plans to cease abusing her official position to influence voters.

Ms. Conway's conduct undermines public confidence in the Executive branch and compromises the civil service system that the Hatch Act was intended to protect. Her knowing and blatant disregard for the law aggravates the severity of her numerous violations. The Merit Systems Protection Board (MSPB), which adjudicates Hatch Act violations, repeatedly has held that removal is the appropriate discipline when employees were warned and/or had substantial knowledge before engaging in prohibited political activity.⁵¹ In accordance with MSPB precedent involving similar aggravating factors, OSC respectfully requests Ms. Conway's removal from federal service.

⁵⁰ See Brett Samuels, *supra* note 1.

⁵¹ See, e.g., *Special Counsel v. Lewis*, 121 M.S.P.R. 109 (2014); *Special Counsel v. Ware*, 114 M.S.P.R. 128 (2010); *Special Counsel v. Briggs*, 110 M.S.P.R. 1 (2008); *Special Counsel v. Acconcia*, 107 M.S.P.R. 60 (2007); *Special Counsel v. Eisinger*, 103 M.S.P.R. 252 (2006); and *Special Counsel v. Simmons*, 90 M.S.P.R. 83 (2001).