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PUBLIC'S TRUST

VIA ELECTRONIC MAIL

January 16, 2025

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The Honorable Edward N. Siskel Counsel to the President
The White House
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Eric J. Soskin
Inspector General
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Re: Request for Investigation into Apparent Hatch Act Violations by Dani Simons, Matt Lehner, and Kerry Arndt with the Department of Transportation and officials at the White House

Dear Mr. Dellinger:

As you are aware, soon after President Trump announced in November 2022 that he would seek a second term as president, the Office of Special Counsel (OSC) expressly advised federal employees against using campaign slogans while conducting government business or performing their duties as government officials. OSC expressly identified the slogan “MAGA.”¹

Yet, emails recently released to PPT reveal that Assistant Administrator for Communications for the Department of Transportation (DOT) Matt Lehner, DOT Press Secretary Kerry Arndt, and Assistant to the Secretary and Director of Public Affairs for DOT Dani Simons,

¹ U.S. Office of Special Counsel, *Hatch Act Advice Now that Former President Trump is a Presidential Candidate*, (Dec. 14, 2022)

<https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Hatch%20Act%20Advice%20Now%20that%20Former%20President%20Trump%20is%20a%20Presidential%20Candidate.pdf>)



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all used the words “Extreme MAGA Republicans,” or “Finish the Job” in official communications, both with the Secretary and with all political appointees within the DOT. Additionally, it seems apparent that Ms. Simons’s messaging containing the prohibited campaign slogans had originated with individuals in the White House. Accordingly, by using these terms White House officials may also have violated the Hatch Act.

We request the Office of Special Counsel to open up an investigation of these individuals pursuant to 5 U.S.C. §1216(a)(a).

I. Who We Are

Protect the Public’s Trust is a group of retired and former public servants dedicated to the idea that public service is a public trust. Too often, we have seen high-level public servants play fast and loose with their rules that other government officials must live with, creating the perception of a two-tiered system and resulting in an unprecedented dip in trust in our elected officials. We believe that the American public deserves a government that is impartial, free from conflicts of interest, and that operates without political interference or favoritism. Our goal is to ensure our nation fulfills that promise.

II. Background

Despite OSC’s unambiguous warnings the previous year, members of DOT leadership appear to have violated the Hatch Act in emails uncovered by PPT. In an e-mail dated March 30, 2023, political appointees Matt Lehner and Kerry Arndt advised Secretary Buttigieg to state during a press conference that “*Extreme MAGA Republicans in Congress*” had proposed legislation to achieve certain policy objectives.² The remarks provided by the DOT press officials also included the phrase “We have to *finish the job*.”³

In a second series of talking points prepared for the Secretary to use with the press, Matt Lehner re-emphasized that the Secretary use the slogans “MAGA Republicans” and “finish the job”.⁴

Another e-mail, authored by Dani Simons on March 28, 2023, to “DOT-Political-Appointees,” was titled “Investing in America podium signs & message guidance.”⁵ Simons says “here is what I have so far in terms of Investing in America messaging and signage.”⁶ Attached is a document titled “Investing in America-Event in a Box.”⁷ The “Key Message Points on Investing in America” section of the document, states that *Extreme MAGA Republicans in*

² U.S. Department of Transportation, Records from Third Production from FOIA, OST-2023-0485 (“The Production”), Pg 144, <https://protectpublicstrust.org/wp-content/uploads/2025/01/OST-2023-0485-Records-Part-3.pdf>.

³ The Production, Pg 145.

⁴ The Production, Pp. 148-151.

⁵ The Production, Pg. 1017.

⁶ Ibid.

⁷ The Production, Pg. 1019.



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Congress, however, have proposed legislation”⁸ It states again, “But *extreme MAGA Republicans in Congress* want to roll back all this progress” and “President Biden and Congressional Democrats believe we need to *finish the job*....”⁹ Another attachment to this email has a handout example, which states “*Extreme MAGA Republicans in Congress* have proposed legislation....,” echoing the language from the previous document.¹⁰ Notably, as of 2021, DOT had ninety-one politically appointed positions.¹¹ Assuming that Ms. Simons’s email addressed to “DOT-Political-Appointees” reached all of its intended recipients, she may have committed as many as 364 violations of the Hatch Act.

Moreover, it appears that Ms. Simons was forwarding materials to DOT political appointees violative of the Hatch Act that she had received from the White House.¹² This is indicated by the fact that the attachments to her email were designated as being from the “WH” and that the attachments included “IIA Event in a Box” pdf that provided standardized signage, other written materials, and messaging for events that could be used by ANY agency. In fact, the very point of the materials was to maintain consistent messaging about the administration’s actions as a whole:

The Biden-Harris Administration is investing in America again to rebuild our economy from the bottom up and middle out, through generational investments in the American Rescue Plan, the Bipartisan Infrastructure Law, the Inflation Reduction Act, and the CHIPS and Science Act.

This guide contains everything you need to hold a successful event that showcases the impact of the Administration’s Investing in America Agenda. Using this content will ensure that we are telling a unified story, and the story is reaching families and communities across the country.¹³

As such, it is highly likely that individuals at the White House not only provided materials violative of the Hatch Act to DOT but that these very same materials were disseminated across the federal government when these standardized “Event in a Box” materials were disseminated by the White House to other Departments in order to “tell a unified story.” It would be no surprise if the White House had in fact engaged in violations of the Hatch Act as your office

⁸ The Production, Pg. 1020. Emphasis added.

⁹ The Production, Pg. 1022. Emphasis added.

¹⁰ The Production, Pg. 1027.

¹¹ Partnership for Public Service, Center for Presidential Transition, *Presidentially Appointed Positions* (Rev. Apr. 12, 2021) <https://presidentialtransition.org/wp-content/uploads/sites/6/2020/12/Presidentially-Appointed-Positions.pdf>.

¹² The Production, Pg. 1017.

¹³ The Production, Pg. 1019.



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has found numerous violations of the Hatch Act – by both White House Press Secretaries^{14 15}, a Deputy White House Press Secretary¹⁶, and a former White House Chief of Staff.¹⁷ Accordingly, PPT requests that your investigation include those individual(s) at the White House who may have forwarded the “Event in a Box” materials to DOT and across the government.

III. The Hatch Act, OSC Guidance, and Precedent.

The Hatch Act prohibits federal executive branch employees from using their official authority or influence to interfere with or affect the result of an election.¹⁸ It applies to any individual, other than the President or Vice President, “employed or holding office in...an Executive agency other than the Government Accountability Office.”¹⁹ The Act prohibits federal employees from engaging in political activity while on duty or in a federal room or building.²⁰ Employees cannot use their official authority to influence or affect an election, including political activity while acting in one’s official capacity.²¹ Political activity is anything directed at the success or failure of a political party, partisan political group, or candidate for partisan political office.²²

As noted above, soon after President Trump announced in November 2022 that he would seek a second term as president, OSC expressly advised federal employees against using campaign slogans while on duty, explicitly identifying use of the slogan “MAGA.”²³ It stated that “The Hatch Act prohibits federal employees from engaging in political activity while on duty or in a federal room or building.”²⁴ “This prohibition is broad and encompasses more than displays or communications (including in-person *and via email* or social media) that expressly advocate for or against former President Trump’s election.”²⁵ The examples in this guidance are

¹⁴ Citizens for Responsibility and Ethics in Washington, Press Release, *OSC Confirms Psaki Hatch Act Violation* <https://www.citizensforethics.org/news/press-releases/osc-confirms-psaki-hatch-act-violation/>

¹⁵ U.S. Office of Special Counsel, Letter Closing Investigation of Hatch Act Investigation into White House Press Sec. (June 7, 2023). <https://protectpublictrust.org/wp-content/uploads/2023/06/23.06.07-Closure-letter-to-Complainant-Chamberlain-HA-22-000216.pdf>

¹⁶ U.S. Office of Special Counsel, Letter Closing Investigation of Hatch Act Investigation into White House Press Sec. and Dep Press Sec (Oct. 19, 2023). <https://protectpublictrust.org/wp-content/uploads/2023/11/23.10.19-Closure-letter-to-complainant-HA-23-000172-and-000173-1.pdf>

¹⁷ Sam Fossom, CNN, *White House on Ron Klain Violating the Hatch Act: “We are not Perfect,”* (Oct. 27, 2022). <https://www.cnn.com/2022/10/27/politics/ron-klain-hatch-act>

¹⁸ 5 U.S.C. § 7323(a)(1).

¹⁹ 5 U.S.C. § 7322(1)(A).

²⁰ 5 U.S.C. § 7324(a).

²¹ 5 U.S.C. § 7323(a)(1); U.S. Office of Special Counsel, *Hatch Act Advisory Opinion Regarding the Use of Presidential Campaign Slogans*, (June 7, 2023).

²² 5 C.F.R. § 734.101.

²³ U.S. Office of Special Counsel, *supra* fn. 16.

<https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Hatch%20Act%20Advice%20Now%20that%20Former%20President%20Trump%20is%20a%20Presidential%20Candidate.pdf>

²⁴ *Ibid.*

²⁵ *Ibid.* Emphasis added.



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slogans like “Make America Great Again,” “MAGA,” or any other campaign materials from the 2016, 2020, or 2024 election cycles.

OSC has separately advised that employees may not wear or display items, post, or tweet “Build Back Better,” “Finish the Job,” “Make America Great Again,” or “MAGA” while they are on duty or in the workplace.²⁶ “Employees may not use these campaign slogans when they are conducting government business or performing their duties as government officials.”²⁷ This includes “communicating...via email, text, social media, press releases, etc.”²⁸

OSC pointed out that “‘Make America Great Again’ or ‘MAGA’ is not associated with any current administration policy.”²⁹ It is “not OSC’s position” that this represents a broader political ideology that avoids the Hatch Act.³⁰ “MAGA remains the campaign slogan of a current candidate for partisan political office, therefore, its use constitutes political activity.”³¹ “This is true regardless of whether the slogan is used positively or negatively” including terms like “MAGA officials,” “MAGA Republicans,” “MAGA policies,” or “*MAGA Members of Congress*.”³²

OSC has also issued findings against White House Press Secretary Karine Jean-Pierre.³³ Ms. Jean-Pierre had stated during a press briefing that “mega MAGA Republican officials who don’t believe in the rule of law...” and “other derogatory statements.”³⁴ OSC’s investigation of these comments resulted in a Hatch Act Violation.³⁵ “Although Ms. Jean-Pierre never expressly instructed viewers to vote for or against Republican candidates for elected office, OSC concluded that the timing, frequency, and content of Ms. Jean-Pierre’s references to ‘MAGA Republicans’ established that she made those references to generate opposition to Republican candidates.”³⁶

The Hatch Act carries a penalty of disciplinary action, assessment of civil penalty not to exceed \$1,000, or any combination of the two.³⁷

²⁶ U.S. Office of Special Counsel, *supra* fn. 16.

<https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Hatch%20Act%20Advice%20Now%20that%20Former%20President%20Trump%20is%20a%20Presidential%20Candidate.pdf>.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.* 2.

³⁰ *Ibid.* Emphasis in original.

³¹ *Ibid.*

³² *Ibid.* Emphasis added.

³³ U.S. Office of Special Counsel, *supra* fn. 16. <https://protectpublictrust.org/wp-content/uploads/2023/06/23.06.07-Closure-letter-to-Complainant-Chamberlain-HA-22-000216.pdf>

<https://protectpublictrust.org/wp-content/uploads/2023/06/23.06.07-Closure-letter-to-Complainant-Chamberlain-HA-22-000216.pdf>.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.* 1-2.

³⁷ 5 U.S.C. §7326.



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IV. Analysis

The DOT officials described above indisputably fall under the Hatch Act, as they are employees of an executive agency, they are neither the President nor Vice President, and their conduct was undertaken in their official capacities at DOT. By engaging in political activity while on duty or in a room or building occupied in the discharge of official government duties, including through the use of government emails, the Hatch Act was implicated.

Lehner, Arndt, and Simons all disseminated materials in their official capacities using the phrase “Extreme MAGA Republicans in Congress,” which has been explicitly forbidden by OSC. Additionally, the prohibited political phrase “finish the job” was also used by Mr. Lehner and Ms. Simons in official communications.

To make matters worse, each of the referenced emails were intended for use by the Secretary of DOT in dealings with the press (in the case of Lehner and Arndt) and what appears to be used by all political appointees at public events (in the case of Simons). It seems clear that the intention was for the anti - “MAGA” messaging to spread both within the Department and then to be used by Department employees with the press and directly with the public. Moreover, the record suggests that prohibited political activity may have been orchestrated out of the White House and included agencies beyond DOT.

As executive branch employees regulated by the Hatch Act, each use by these officials of the slogan “MAGA” or “Finish the Job” likely triggers a clear and direct violation of the Hatch Act’s prohibition against the use of their official positions to interfere with or affect the result of an election. As detailed above, untold hundreds of violations may have occurred across the entire federal government. Just as Ms. Jean-Pierre’s remarks constituted political activity with the potential to generate opposition to Republican candidates, so too did the subjects’ remarks. Indeed, the use of these phrases, especially when combined, gives the distinct impression of an inappropriate attempt to influence the vote, coming from the top down, with the intent to motivate a host of federal employees across the government to do the same.

The combination of the OSC having put federal employees on notice that the use of “MAGA” and “Finish the Job” constitutes political activity in violation of the Hatch Act and that these materials could have had the effect of motivating other federal employees to repeat this messaging, deserves extra attention. Because these combined factors make these violations particularly egregious, and because they appear to be part of a pattern of apparent Hatch Act violations by this administration that have, to date, gone unpunished, OSC should consider a penalty that exceeds a prohibition moving forward.

V. Conclusion

We ask your office to immediately investigate these allegations, including the actions of the unnamed White House officials from whom some of the emails originated. The Hatch Act



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authorizes penalties, including employment disciplinary actions or a civil penalty.³⁸ There should not be a two-tiered system of government ethics that subjects prominent executive officials to a lower standard of scrutiny than average public servants.

Sincerely,

Michael Chamberlain
Director
Protect the Public's Trust

³⁸ A recent OSC Advisory Opinion indicates that enforcement actions under the Hatch Act against current and former federal employees, including current and former White House officials, may be pursued in appropriate cases. See U.S. Office of Special Counsel, *Advisory Opinion Issued Updating Agency Approach to Enforcement of the Hatch Act as it Relates to Federal Employees*, (May 20, 2024). <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Updating%20Agency%20Approach%20to%20Enforcement%20of%20the%20Hatch%20Act.pdf>