



CONTENT OF THE CLC COMPLAINT AGAINST SPECIAL COUNSELOR TO THE PRESIDENT KELLYANNE CONWAY

CLC filed the original complaint with the Hatch Act Unit of the U.S. Office of Special Counsel (OSC) by electronic mail. The content of CLC's complaint and the content of OSC's response, which was also sent by electronic mail, have been reprinted below. Also included is an opinion that CLC Senior Director, Ethics Walter Shaub wrote regarding this complaint for the Washington Post.

CONFIRMATION FROM OSC (NOVEMBER 22, 2017):

Dear Mr. Shaub,

We received your Hatch Act complaint and will open a case file to address this matter. Should you have any questions please call me at the number below.

Kind regards,

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel
[number redacted]

CLC COMPLAINT (NOVEMBER 22, 2017):

Dear Hatch Act Unit,

This email constitutes a complaint regarding a violation of the Hatch Act by Senior Counselor to the President Kellyanne Conway.

On Monday, November 20, 2017, Ms. Conway appeared on Fox News in her official capacity for an interview. During the interview, she was introduced with her official government title and she stood in front of the White House while unlawfully advocating against a candidate who is running in a partisan election for political

office. Specifically, Ms. Conway advocated against Doug Jones, who is running as a major party candidate for Senate in Alabama. These actions violate the Hatch Act.

The facts of this matter are not in dispute, for Ms. Conway's advocacy was recorded and distributed publicly to a broad television audience. The following is an excerpt from the interview:

KILMEADE: Kellyanne Conway, she's the Counselor to the President of the United States. She joins us from our nation's capitol on this Monday of Thanksgiving week. Kellyanne, good morning.

EARHEARDT: Good morning.

CONWAY: Good Morning.

KILMEADE: All right. So the President tweeted out yesterday, "Hey Congress, don't disappoint the American people, on tax reform. How close are to finally getting a tax cut?"

CONWAY: We feel very confident but it is up to those legislators, who for years if not decades, have been promising their constituents they're going to get meaningful tax cuts and tax overhaul. And we're very happy that the House and Senate have come up with what I call Trump speed, not swamp speed in getting their bills to the floor fairly quickly. We feel really great that both bills adhere to the President's four core principles for tax cuts and tax relief: repatriation, simplification, middle class tax cut and reducing that corporate tax rate so that we're below the average for developed countries instead of the highest in the entire OECD. So we feel great. My colleagues and I have been traveling around the country, as has the President, and up on Capitol Hill constantly. This one feels like everybody's oriented in the same direction. And to your point about the Democrats, the President has said from day one, he wants tax cuts to be bipartisan. That's a question for the Democrats. Surely there are business owners and taxpayers, and property owners, moms and dads, and moms and pops in every state in this country who feel they serve a tax cut—

KILMEADE: But Kellyanne, the Democrats—

CONWAY: Petty partisan politics will not get in the way.

KILMEADE: But partisan politics is getting in the way. And Democrats don't want to give the President a win.

CONWAY: That's too bad because it's a win for the American people. This is not about a win for the President. This is about giving the forgotten man and forgotten woman who put this man in office because they've been forgotten for decades. Regulation and taxation and just the overbearance of a government that's too intrusive, invasive, expensive and expansive. This administration is for them. And this is not about giving the President a win, that's silly. He's the President. He won it—tell Hillary Clinton by the way, p.s.—but this is about people winning and I really, I do hope in the legacy of Presidents John Kennedy, Ronald Reagan, George W. Bush, who achieved a much smaller tax cut, that we have bipartisan support. I think the Democrats are in big trouble because they have to defend 25 Senate seats next year. Ten in states the President won, five he won by massive double digits. They're going to go home and say when I had a chance to give you more of your hard earned money, give you a childcare tax credit, an adult dependent—double your personal exemptions so your first 24 thousand dollars is completely tax free at zero percent, they're going to say, but I didn't do it because of X, Y, Z when we know is for petty partisan political reasons. And Doug Jones in Alabama? Folks, don't be fooled. He'll be a vote against tax cuts. He's weak on crime, weak on borders. He's strong on raising your taxes. He's terrible for property owners."

KILMEADE: "So vote Roy Moore?"

CONWAY: And Doug Jones is a doctrinaire liberal, which is why he's not saying anything and why the media are trying to boost him.

KILMEADE: "So vote Roy Moore?"

CONWAY: I'm telling you that we want the votes in the Senate to get this tax, this tax bill through. And the media—If the media were really concerned about all these allegations and that was what this was truly about with the Democrats, Al Franken would be on the ash heap of bygone, half-funny comedians. He wouldn't be here on Capitol Hill. He still has his job. What's Bob Menendez doing back here? That's the best New Jersey can do? Huh, Doocy? You live there.

DOOCY: But but I'm just saying—

CONWAY: Let me tell you something, Doug Jones is a doctrinaire liberal."

DOOCY: —the RNC has withdrawn support for Roy Moore.

CONWAY: Excuse me?

DOOCY: But the RNC has withdrawn support for Roy Moore. Mitch McConnell has withdrawn support. So has the Young Republicans, withdrawn support for Roy Moore.

EARHEARDT: And a lot of women.

CONWAY: (pause) Right. And you know what? The—I just went over the no to Doug Jones. Nobody ever says his name. And [t]hey pretend he's some kind of conservative Democrat, and he's not.

Ms. Conway's remarks were an obvious attempt to influence the election by convincing the public that voting for Roy Moore would jeopardize passage of the tax plan the President endorsed. The unmistakable message of her remarks was: Don't vote for Doug Jones.

The video of Ms. Conway's appearance on Fox News can be accessed by clicking on the following hyperlink: https://www.youtube.com/watch?time_continue=1&v=-kdX0xIm0Ss.

As the U.S. Office of Special Counsel explained in a report finding that Secretary Julian Castro had violated the Hatch Act, the Hatch Act prohibits a federal employee from using official authority or influence to interfere with or affect the result of an election. *See* 5 U.S.C. § 7323(a)(1). The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses. For example, it is a use of official authority or influence to affect an election when an employee uses the employee's official title while participating in political activity. *See* 5 C.F.R. § 734.302(b)(1). Political activity is defined as activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group. *See* 5 C.F.R. § 734.101. While the Hatch Act allows federal employees, including cabinet secretaries and White House appointees, to express their personal views about candidates and political issues as private citizens, it restricts employees from using their official government positions for partisan political purposes. In passing this law, Congress intended to promote public confidence in the Executive branch by ensuring that the federal government is working for all Americans without regard to their political views. In a letter to the President, OSC provided the following summary of its findings with regard to Secretary Castro:

As explained in the accompanying report, OSC concluded that Secretary Castro violated the Hatch Act by advocating for and against Presidential candidates while giving a media interview in his official capacity on April 4, 2016. Secretary Castro's statements during the interview impermissibly mixed his personal political views with official agency business despite his efforts to clarify that some answers were being given in his personal capacity.

See [https://osc.gov/Resources/HA-16-3113%20\(Julian%20Castro\)%20FINAL.pdf](https://osc.gov/Resources/HA-16-3113%20(Julian%20Castro)%20FINAL.pdf).

Ms. Conway's actions are indistinguishable from Secretary Castro's, except that Secretary Castro at least attempted to clarify that he was speaking in his personal capacity while Ms. Conway offered no such clarification. In this regard, Ms. Conway's actions were worse than Secretary Castro's actions, and OSC held Secretary Castro accountable for violating the Hatch Act.

If OSC is to hold this administration's Presidential appointees to the high standard to which it held the last administration's appointees, OSC must open an investigation and similarly find that Ms. Conway has violated the Hatch Act.

Sincerely,

Walter M. Shaub, Jr.
Senior Director, Ethics
Campaign Legal Center

Kellyanne Conway violated the Hatch Act. Will she be charged?

By **Walter Shaub** November 27 at 8:04 PM

Walter Shaub is a senior director at the Campaign Legal Center. He previously served as director of the Office of Government Ethics.

The special counsel is facing the biggest test of his career. I'm referring not to Robert S. Mueller III but to Henry Kerner of the Office of Special Counsel (OSC), the small agency that investigates Hatch Act violations. That law prohibits executive branch employees from using their government positions to influence elections, which is precisely what presidential counselor Kellyanne Conway did last week. Whether Kerner will enforce the law is another matter.

When Conway appeared on "Fox and Friends" last Monday, it was clear she was doing so in an official capacity: One of the show's hosts introduced her by her title and she articulated the administration's views as she stood in front of the White House. In discussing whether the president has enough votes to get a tax bill through the Senate, Conway (without prompting) attacked Doug Jones, the Democratic candidate for Senate in Alabama. "And Doug Jones in Alabama?" she said, "Folks, don't be fooled. He'll be a vote against tax cuts. He's weak on crime, weak on borders. He's strong on raising your taxes. He's terrible for property owners."

Conway's intent was clear enough already, but she decided to make it clearer. "I'm telling you that we want the votes in the Senate to get this tax bill through," she admitted. Playing down the sexual misconduct allegations against Jones's Republican opponent Roy Moore, Conway added, "If the media were really concerned about all these allegations and that was what this was truly about with the Democrats, Al Franken would be on the ash heap of bygone, half-funny comedians." After a startled "Fox and Friends" host pointed out that even the Republican National Committee had withdrawn support for Moore, Conway doubled down on her advocacy against Jones. "Nobody ever says his name, and they pretend he's some kind of conservative Democrat, and he's not," she said.

Based on this obvious violation of the Hatch Act, the Campaign Legal Center (where I am a senior director) filed a complaint against Conway with the OSC. The White House has offered typical misdirection in response, asserting that Conway was innocently championing the president's agenda. The question is not whether Conway was championing the agenda of the

president — who, it’s worth noting, actively supports Moore — but whether she was advocating against Jones. Only in a world of alternative facts could Conway’s televised words amount to anything other than advocacy against Jones.

In short, the case against Conway is airtight. Or it would be, that is, if President Trump hadn’t appointed Kerner to lead the OSC.

Kerner comes from a conservative group called the Cause of Action Institute. When I served as director of the Office of Government Ethics (OGE), Cause of Action was the only organization that wrote to me in defense of Conway after she told Americans to “go buy Ivanka’s stuff.” The group claimed Conway was exempt from OGE’s ethics regulations and that OGE lacked authority to oversee the White House’s ethics program, despite four decades of White House compliance with OGE oversight and an example in OGE’s White House-approved regulations expressly highlighting their applicability to White House staff.

Kerner and his group also went after potential whistleblowers at the Environmental Protection Agency. Shortly after the incoming administration demanding that the Energy Department turn over lists of employees who had worked on climate change issues, a small group of EPA employees understandably feared for their jobs and used encrypted texts to forge networks for potential whistleblowing. Cause of Action sued the EPA for release of the texts, which would have revealed the names of the would-be whistleblowers to the Trump White House and its allies. That action alone should have disqualified Kerner from consideration for a position that makes him the federal government’s top guardian of whistleblowers.

But Kerner got the job anyway, and the Conway incident now presents him with as clear a violation of the Hatch Act as he’s likely to encounter during his five-year term. The trouble for Kerner is that Conway is close to his new boss, who notably sided with her the last time she violated ethics rules. Kerner criticized the last administration for its Hatch Act issues, saying that, “The law is clear: public officials paid by taxpayers cannot use their position to engage in political activities,” and “the Obama administration’s unprecedented history of Hatch Act violations threatens to undermine this important protection.” If Kerner plans to hold Trump’s administration to the same standard, he’ll have to issue a clear finding that Conway violated the Hatch Act. To do so, he’ll have to sign a letter asking Trump to take action against Conway. Kerner will have broad discretion in recommending a penalty because consequences for violating the Hatch Act range from a letter of reprimand to a civil penalty of up to \$1,000 to suspension, termination or even debarment from federal employment for up to five years.

What happens to Conway will send an unmistakable message to the rest of the federal workforce about this administration’s commitment to enforcing the Hatch Act. Kerner asked for this thankless job, and he’s taken an oath to enforce the Hatch Act. His willingness to pursue this slam-dunk case will tell us whether he has any intention of fulfilling that oath. If he does seek to hold Conway accountable, his penalty recommendation will tell us how vigorously he intends to go about fulfilling that oath. We should all watch what Kerner does next.

Read more here:

Dana Milbank: How will this sexual assault moment end? With a whimper.