



June 1, 2022

The Honorable Henry J. Kerner
Special Counsel
Office of the Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: Potential Hatch Act Violations

Dear Mr. Kerner:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. We write to request that the Office of Special Counsel (“OSC”) investigate whether White House Chief of Staff Ronald Klain violated the Hatch Act by using his official “@WHCOS” Twitter account to retweet partisan political material, including a solicitation for political contributions.

I. Background

On February 27, 2018, Ronald Klain tweeted, “Using your WH title in a press release advocating the President's reelection is ILLEGAL.”¹



¹ @RonaldKlain, TWITTER (Feb. 27, 2018, 3:25 PM), <https://bit.ly/3M8PD0z>.

However, four years later, Mr. Klain seems to have forgotten the Hatch Act’s restrictions, which bar government officials from using the authority or influence of their office to affect elections. Now, Ron Klain uses @WHCOS as his official White House Twitter account.



Using this official government account, Mr. Klain re-tweeted a May 22, 2022, tweet from @StrikePAC,² stating “Get your Democrats Deliver merch today!” with a link to the PAC’s store.

² @StrikePac, TWITTER (May 22, 2022, 3:04 PM), <https://bit.ly/3xlAoDF>.



StrikePAC is a partisan political action committee whose mission includes “help[ing] to elect Democrats” who share its political views.³ By its own description, it is organized to “revolutionize how Democrats campaign” and “undermin[e] the Republican brand.”⁴ Their tweet contained a link to contribute to the PAC’s efforts to elect Democrats. The same link allowed users to buy branded merchandise from the PAC, with slogans like “Democrats Deliver” and “Elect Democrats.”⁵

II. Analysis

The Hatch Act prohibits any executive branch official or employee from “us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.” 5 U.S.C. § 7323(a)(1). The Act further prohibits executive branch officials and employees from knowingly soliciting political contributions from any person. *Id.* at § 7323(a)(2).

³ See <https://www.strikepac.com/our-playbook/>

⁴ StrikePAC, <https://www.strikepac.com/our-playbook/>.

⁵ See <https://shop.strikepac.com/>.

The Office of Special Counsel, charged with enforcement of the Hatch Act, has provided guidance on how these restrictions apply to social media.⁶ This guidance makes clear to executive branch officials that they “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. All such official social media accounts should remain politically neutral.”⁷

The guidance also reminds executive branch officials that “[e]mployees, even when not on duty or in the workplace, may not post or tweet a message that solicits political contributions or invites people to a fundraising event” including liking, sharing, or retweeting a post that solicits political contributions.⁸

Here, the use of an official government account, to promote a partisan political group and to engage in partisan political fundraising (benefitting a PAC no less), is a clear violation of the Hatch Act.

III. Conclusion

For the foregoing reasons, AFL respectfully requests that OSC investigate whether White House Chief of Staff Klain violated the Hatch Act when he used an official government Twitter account to share partisan political material.

Sincerely,

/s/ Gene P. Hamilton _____

Gene P. Hamilton
Vice-President and General Counsel
America First Legal Foundation

⁶ See Office of Special Counsel, “Hatch Act Guidance on Social Media,” <https://bit.ly/3x0wekm>.

⁷ *Id.* at 7.

⁸ *Id.* at 5.