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January 16, 2018

Mr. John Doe

VIA EMAIL: *Xxxxxx@xxxxx.xxx*

Re: OSC File No. AD-18-XXXX

Dear Mr. Doe:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act would prohibit you from taking various actions in support of your wife's candidacy for the U.S. Congress. We understand that you are a career member of the Senior Executive Service (SES).

The Hatch Act governs the political activity of federal civilian executive branch employees in order to protect the federal workforce from partisan political influence. *See generally* 5 U.S.C. §§ 7321-7326. The Hatch Act prohibits employees from: using their official authority or influence for the purpose of affecting the result of an election; knowingly soliciting, accepting, or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office. *See* 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. *See* 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. *See* 5 C.F.R. § 734.101.

In addition, some federal employees, such as career members of the SES, are "further restricted" and prohibited from actively participating in partisan political management and campaigning. 5 U.S.C. § 7323(b)(2); 5 C.F.R. § 734.401(a). Such employees are prohibited from engaging in any political activity that is "in concert" with a political party, partisan group, or candidate for partisan political office. *See, e.g., Blaylock v. U.S. Merit Sys. Prot. Bd.*, 851 F.2d 1348, 1354 (11th Cir. 1988) (concluding that "the statutory prohibition against taking an 'active part in political management or in political campaigns' encompasses only active participation in, on behalf of, or in connection with, the organized efforts of political parties or partisan committees, clubs, and candidates"); 5 C.F.R. § 734.402.

Thus, for example, further restricted employees may not engage in campaign-related activities on behalf of a political party, partisan group, or candidate for partisan political office. These activities include working as a campaign volunteer, circulating a nominating petition, distributing campaign literature, organizing campaign events, forwarding/sending campaign emails, making speeches at campaign events, and asking others to volunteer for a campaign. With respect to social media, the Hatch Act prohibits further restricted employees from: posting or linking to campaign or other partisan material of a political party, partisan group, or candidate for partisan political office; “sharing” these entities’ Facebook pages or their content; and “retweeting” posts from these entities’ Twitter accounts.

Your request seeks guidance on a variety of situations that could occur because of your wife’s campaign. For the purposes of this opinion, you ask that we assume that you will conduct zero activities in the federal workplace. Your questions are addressed below.

1) *Is your wife allowed to hold fundraising events at your home?*

Yes. Your wife may hold fundraising events at your home, and you may attend the events. While you may not actively participate in your wife’s campaign, including making a speech at the fundraiser in support of your wife’s candidacy; we have previously advised that further restricted employees may attend political events with their candidate-spouse, stand in the receiving line, and sit at the head table during a political dinner honoring the candidate-spouse. *See* 5 C.F.R. § 734.405 (Example 1). In addition, the further restricted employee may appear in a family photograph which is printed in a campaign flier, but the further restricted employee may not distribute any flier created by the campaign. *See* 5 C.F.R. § 734.405(2).

2) *Can you provide in-kind support during fundraising events held at your home?*

You first ask whether you can prepare food for fundraising events held at your home. As a further restricted employee, you may not act in concert with a candidate for partisan political office. *See* 5 C.F.R. § 734.402. The Hatch Act also prohibits further restricted employees from organizing, selling tickets to, promoting, or actively participating in a fundraising activity of a candidate for partisan political office. *See* 5 C.F.R. § 734.410(b). Therefore, because you may not provide volunteer services to a candidate, you may not prepare food for, or otherwise help organize, any fundraising event.

Next, you ask whether you can welcome guests during fundraising events held at your home. The Hatch Act does not prohibit you from welcoming guests or standing in the receiving line during campaign events. *See* 5 C.F.R. § 734.405 (Example 1). However, as previously mentioned, you may not make a speech in support of your wife’s candidacy, including making a welcome speech at the event.

You also ask whether your name can be on invitations to identify the location as “at the home of John and Jane Doe.” The Hatch Act prohibits all covered employees from hosting a political fundraising event or allowing the employee’s name to appear on an invitation to a fundraising event as a sponsor or as a point of contact for the event. *See* 5 C.F.R. § 734.303

(Examples 1 & 2). Therefore, even if you were not further restricted, you may not allow your name to appear on a fundraiser invitation.

3) *What in-kind donation or support are you allowed to make to your wife's campaign?*

You ask that this question be answered in the context of both monetary and time-related donations. You specifically ask whether you can purchase food and drink for a fundraising event at your home. The Hatch Act does not prohibit you from making monetary donations to your wife's campaign. Therefore, you may contribute financially to your wife's campaign, even if the proceeds of your donation will ultimately be used to purchase food and drink for a fundraising event at your home.

You clarify that, with respect to a time donation, you do not intend to canvass or attend voter registration drives. Rather, you wish to know whether you can assist, as a spouse, with events at your home. As mentioned above, you may not help prepare food or take part in the organization of fundraising events. Any similar activities that would be considered organizing before the event or actively participating during the event would likewise be prohibited.

4) *Are you allowed to introduce your wife at an event as your spouse, describe her educational and experience background, and mention that she is a candidate for Congress?*

No. As mentioned above, the Hatch Act prohibits further restricted employees from engaging in political activity that is performed in concert with a candidate for partisan political office. *See* 5 C.F.R. § 734.402. We take the position that this restriction extends to speaking on behalf of a candidate for partisan political office, such as making an introduction at a campaign event. *See* 5 C.F.R. § 734.402 (Example 2) (stating that an employee may not address a political rally on behalf of, or at the request of, an individual running as a candidate for partisan political office).

5) *Can you stand next to your wife on-stage at an event?*

Yes, but subject to limitations. As previously explained in question 1 above, the Hatch Act does not prohibit you from attending political functions with your wife. 5 C.F.R. § 734.405. However, you may not engage in any activity while on stage with your wife that could be construed as acting in concert with her as a candidate. *See* 5 C.F.R. § 734.402. But merely standing with her on stage while she speaks, or while another person is speaking about her, is not considered active participation for the purposes of the Hatch Act.¹

¹ You mentioned during our November 21, 2017, telephone call that this question also encompasses the possibility of you and your children appearing on stage with your wife while at a campaign event. Please note that the analysis would be the same if your children were also present at the campaign event.

- 6) *Are you allowed to wear a t-shirt or button displaying your wife's name and place a campaign bumper sticker on your car?*

Yes, but subject to limitations. With respect to the campaign t-shirt and button, you may wear those items but not while on duty or in the workplace. *See* 5 C.F.R. § 734.402(b). You may also put a campaign-related bumper sticker on your car;² however, you must cover any partisan political bumper stickers if you use your vehicle for official duties or if your vehicle is clearly identified as being on official business. *See* 5 C.F.R. § 734.406 (Example 2).

- 7) *If someone in the federal workplace asks about your wife's campaign, what is the appropriate response?*

In your advisory request you ask for guidance on what you can say while at work to people who ask about your wife's campaign. You also provide the following draft response for our review: "Yes, my wife is running for Congress. I am a member of the Senior Executive Service and am prohibited from publicly expressing support for a candidate. I will not discuss my wife's campaign at work."

There are two Hatch Act prohibitions generally relevant to your question. First, you may not participate in any political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a federal vehicle. *See* 5 C.F.R. § 734.406. Second, you may not use your official authority or influence for the purpose of interfering with or affecting the result of an election. *See* 5 C.F.R. § 734.407. Thus, you may not use your official title or authority to take any action for the purpose of affecting the result of an election or influencing others, even those persons outside the workplace, to support your wife's candidacy. The prohibition on the use of official authority places additional restrictions on any communications you may have with a subordinate, even when outside of work. Specifically, you may not tell subordinates how to vote or invite them to political events.

Given these two prohibitions, the Hatch Act restricts your ability to discuss your wife's campaign while at work. While your draft response above is appropriate—it is overbroad. For example, even if you were not a member of the SES, you would be prohibited as a federal employee under 5 C.F.R. § 734.406 from engaging in political activity while on duty or at work, including expressing support for your wife's candidacy. As such, when asked about your wife's candidacy while on duty or at work, we suggest you respond with the following: "Because of the Hatch Act, I cannot discuss my wife's campaign while on duty or at work."³

² For the purposes of this advisory opinion, we assume that you have a privately-owned vehicle. Please note that you may not place a partisan political bumper sticker on a Government-owned or leased vehicle. *See* 5 C.F.R. § 734.406 (Example 4).

³ *See Special Counsel v. Acconcia*, 107 M.S.P.R. 60 (2007) (finding that soliciting political contributions from a subordinate employee warrants removal); *Special Counsel v. Ware*, 114 M.S.P.R. 128 (2010) (concluding that respondent violated the Hatch Act by, among other things, sending partisan political emails while on duty and in the workplace); *Special Counsel v. Bagdade*, (CB-1216-09-0018-T-1), April 20, 2010 (Initial Decision) at 5 (finding that the respondent's use of his agency's email system to send partisan political emails to subordinate employees while on duty and at work is a serious offense).

The Hatch Act does not completely bar you from publicly expressing support for a candidate. In fact, independent of your wife or her campaign, you may express support for her candidacy. However, such activity is prohibited while on duty or in the workplace, including forwarding/sending emails or posting on social media.

8) *If someone from the community asks for information about your wife's campaign, what is the appropriate response?*

Lastly, you ask for guidance on how to respond to community members⁴ who ask for information about your wife's campaign while off duty and outside of the workplace. You mention that you would like to be able to direct them to your wife's campaign website but hesitate because her website lists fundraising information. As an alternative you ask whether it would be appropriate to instruct people to search the Internet for "Doe for U.S.A." to find your wife's campaign website on their own.

As previously mentioned, you may not distribute any campaign material with respect to your wife's candidacy—including a direct link to her campaign website.⁵ However, when prompted you may tell people to search "Doe for U.S.A." on the Internet to find additional information about your wife's campaign and how to contact her. This response, without more, does not violate the Hatch Act.

In sum, there is no exception to the prohibition that further restricted employees may not actively participate in a partisan political campaign—even when a spouse or other family member is the candidate at issue. The regulations concerning further restricted employees are found at 5 C.F.R. § 734.401-412.

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-7086 if you have any questions.

Sincerely,



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

⁴ For the purposes of this response, "community members" are individuals who do not work for the federal government. Please see our response in section 7 for guidance on speaking about your wife's campaign to federal employees outside of work.

⁵ This prohibition includes distributing campaign material by email and on social media.