



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

February 12, 2021

The President
The White House
Washington, D.C. 20500
c/o Office of the White House Counsel

Re: OSC File No. HA-20-000091

Dear Mr. President:

Pursuant to 5 U.S.C. § 1215(b), I am forwarding the U.S. Office of Special Counsel's (OSC) investigative findings regarding allegations that Carla Sands, former U.S. Ambassador to the Kingdom of Denmark, engaged in prohibited political activity. As detailed in the accompanying Report, OSC concluded that Ambassador Sands violated the Hatch Act on several occasions when she used her official Twitter account to engage in political activity, including soliciting political contributions. According to 5 U.S.C. § 1215(b), Ambassador Sands was given an opportunity to respond to OSC's Report, and her response is included with the Report. Ambassador Sands has left government service—and although disciplinary action is no longer possible—I am transmitting this Report to you as required by 5 U.S.C. § 1215(b). I also hope the Report can be used by your Administration to educate incoming officials to help ensure compliance with the Hatch Act.

Respectfully,

A handwritten signature in black ink, appearing to read "Henry J. Kerner". The signature is fluid and cursive, with a large initial "H" and "J".

Henry J. Kerner
Special Counsel

Enclosure



U.S. OFFICE OF SPECIAL COUNSEL

Report of Prohibited Political Activity Under the Hatch Act
OSC File No. HA-20-000091 (The Honorable Carla Sands)

February 12, 2021

This report represents the deliberative attorney work product of the U.S. Office of Special Counsel and is considered privileged and confidential. Any release of information beyond persons specifically designated by the U.S. Office of Special Counsel to have access to its contents is prohibited. All Freedom of Information Act inquiries regarding this report should be referred to OSC's FOIA Officer at (202) 804-7000.

I. INTRODUCTION

This report contains the findings and conclusions of the U.S. Office of Special Counsel's (OSC) investigation of allegations that Carla Sands, the U.S. Ambassador to the Kingdom of Denmark, violated the Hatch Act by using her official Twitter account, "@USAmbDenmark," to engage in prohibited political activity. OSC's investigation uncovered several instances of Ambassador Sands retweeting content critical of Democratic Party presidential candidates. In response, OSC contacted the U.S. Department of State (State Department) about the allegations and provided the agency with a list of tweets that raised Hatch Act concerns. This information was shared with the Ambassador, and the tweets at issue were removed from the Ambassador's official Twitter account. However, despite notice of OSC's investigation and reminders from State Department ethics officials about the Hatch Act, Ambassador Sands continued to engage in political activity on her official Twitter account, including by tweeting a message soliciting political contributions for a congressional candidate. Disciplinary action is warranted in this case because Ambassador Sands's conduct was knowing and willful, and she failed to come into compliance with the law when given an opportunity to do so. Accordingly, OSC submits this Report of Prohibited Political Activity to President Joseph R. Biden.¹

II. LEGAL STANDARD REQUIRED TO ESTABLISH A HATCH ACT VIOLATION

Under 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."²

The Hatch Act prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election.³ This restriction generally prohibits the use of an employee's official position to encourage or discourage support for a political party or candidate for partisan political office. The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses.⁴ 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.⁵ 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.⁶

Thus, employees may not use official agency websites or social media accounts to engage in political activity. In fact, OSC's February 2018 social media advisory opinion specifically

¹ See 5 U.S.C. § 1215(b). Ambassador Sands has left government service and, although disciplinary action is no longer possible, OSC decided to transmit this Report to the President because: (1) the violations were significant and the Report can be used by the Administration to educate incoming officials so that similar violations do not occur in the future; and (2) violations by high-level officials generate significant public interest and issuing a report ensures accountability.

² 5 U.S.C. § 7322(1).

³ 5 U.S.C. § 7323(a)(1).

⁴ See 5 C.F.R. § 734.302.

⁵ See 5 C.F.R. § 734.302(b)(1).

⁶ 5 C.F.R. § 734.101.

addresses the misuse of official social media accounts and provides the following example:

While accessing the Twitter account you use for official purposes, you see that a political party tweeted its support for a candidate in a partisan race. You **may not** retweet or like that post from the account used for official purposes (or from your personal social media account if you are on duty or in the workplace).⁷

The Hatch Act also restricts federal employees from knowingly soliciting, accepting, or receiving a political contribution from any person by any means.⁸ A political contribution is any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.⁹ And political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.¹⁰

III. INVESTIGATIVE FINDINGS

A. Ambassador Sands 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.”¹¹ The U.S. Embassy in the Kingdom of Denmark is a component of the U.S. Department of State, which is an Executive agency for Hatch Act purposes. Ms. Sands was confirmed by the U.S. Senate as the U.S. Ambassador to the Kingdom of Denmark on November 2, 2017, and, by virtue of her position, is subject to the Hatch Act.

B. Ambassador Sands knew about the Hatch Act and its requirements.

Ambassador Sands received Hatch Act training or reminders at least 11 times during her tenure with the State Department, nine of which occurred before the conduct at issue in this Report. In addition to these trainings, the Ambassador was also provided with online resources, like recorded Hatch Act trainings and other materials, which were available to any State Department employee. And on eight occasions she was given specific one-on-one guidance about engaging in political activity on “@USAmbDenmark” in the months before and during OSC’s investigation.

Furthermore, on May 15, 2020, OSC contacted Ambassador Sands to give her notice of its investigation into tweets posted on the official Twitter account and to request an interview.

⁷ See OSC’s February 2018 “Hatch Act Guidance on Social Media,” pg. 7, available at: <https://osc.gov/Pages/Hatch-Act-Social-Media-and-Email-Guidance.aspx>.

⁸ 5 U.S.C. § 7323(a)(2).

⁹ 5 C.F.R. § 734.101.

¹⁰ *Id.*

¹¹ 5 U.S.C. § 7322(1).

Ambassador Sands retained legal counsel after OSC's communication.¹² This May 2020 contact put the Ambassador on notice of the Hatch Act allegations OSC was investigating.

C. Ambassador Sands violated the Hatch Act when she engaged in political activity on the “@USAmbDenmark” Twitter account.

The “@USAmbDenmark” Twitter account was created in December 2017, shortly after the U.S. Senate confirmed Ambassador Sands to her current position. The account's biography reads, “Official Twitter account of Ambassador Carla Sands, U.S. Ambassador to the Kingdom of Denmark” and links to the U.S. Embassy webpage. Furthermore, the U.S. Embassy & Consulate in the Kingdom of Denmark website includes a feed of Ambassador Sands's tweets from the “@USAmbDenmark” account.¹³ In addition to operating the “@USAmbDenmark” Twitter account, Ambassador Sands maintains a second Twitter account, “@CarlaHSands,” which states in the biography, “For official tweets follow @usambdenmark.” The evidence shows that “@USAmbDenmark” is an official social media account, and, thus, Ambassador Sands is prohibited from using it to engage in political activity.

Since at least December 2019, Ambassador Sands engaged in a pattern of tweeting messages critical of Democratic Party presidential candidates from the “@USAmbDenmark” Twitter account. On this official account, Ambassador Sands attacked then-presidential candidates, including Mayor Pete Buttigieg, Senators Bernard Sanders and Kamala Harris, and former Vice President Joseph Biden. While many of Ambassador Sands's prohibited tweets in early- and mid-2020 were critical of Democratic Party presidential candidates, she also retweeted several messages from political groups that were supportive of then-President Trump's reelection campaign.

For example, Ambassador Sands retweeted a January 25, 2020 message that read, “‘You don't know how much your plan costs?’ @BernieSanders: ‘You don't know. Nobody knows. This is impossible to predict.’ ‘You're going to propose a plan to the American people and you're not going to tell them how much it costs.’” She also included a video interview of Senator Sanders being asked about the cost of several campaign promises. On or around February 3, 2020, Ambassador Sands retweeted a message that stated, “‘Socialism Takes, Capitalism Creates’: Pro-Capitalism Bus Tour Takes On Democrats Ahead of Iowa Caucuses,” and, “A pro-Trump bus tour sailed into Iowa with the message ‘Socialism takes, Capitalism creates.’” This tweet also linked to an article, which included statements like, “This really gives us the opportunity to talk with Iowan voters about Democratic candidates who have embraced these socialistic policies and really contrast them with the Trump administrations [sic] economic achievement,” and, “The [‘Socialism Takes, Capitalism Creates’ campaign] says it wants to highlight ‘the benefits of capitalism vs. what socialism has done to other countries’ to give the American people a clear choice between the two in the upcoming elections.”

¹² OSC first contacted the U.S. Department of State about the “@USAmbDenmark” Twitter account in April 2020 and corresponded with the agency about the tweets that raised Hatch Act concerns. After Ambassador Sands obtained legal counsel, her attorneys responded to all investigative requests concerning this matter.

¹³ *Ambassador Carla Sands*, U.S. Embassy & Consulate in the Kingdom of Denmark, <https://dk.usembassy.gov/our-relationship/our-ambassador/> (last visited November 10, 2020).

On the same date, the “@USAmbDenmark” Twitter account retweeted a message reading, “A Communist is leading the Democrat party today We sent our @TPUSA productions team to Cuba to see first-hand what his policies lead to What they saw is definitive proof that Socialism Sucks This is a much watch account of the evil of Communism.” [sic] The message also included a video of individuals visiting Cuba and commenting about their experience in the country.

On or around March 8, 2020, “@USAmbDenmark” retweeted a message that included a video from a political action committee (PAC) requesting that individuals “support President Trump through 2020.” And on or around March 20, 2020, the “@USAmbDenmark” account retweeted a message with a link to a *Breitbart* article titled, “Fact Check: Joe Biden Claims We Have Coronavirus Because of Trump.” This article stated in part, “Not once has Biden offered President Trump his support in the fight against the coronavirus. Instead, he and his campaign are trying to score political points as Americans suffer. That is worse than ‘false.’ It is disqualifying.”

By sending each of these tweets from the “@USAmbDenmark” Twitter account, Ambassador Sands violated the Hatch Act by using her official authority to influence the outcome of the presidential election. The retweeted messages linked concerns about socialism to the electoral success of the Republican Party or suggested that viewers not support the “Communist...leading the Democrat Party today,” and one suggested that former Vice President Biden was disqualified from the presidency. The Ambassador also retweeted a Republican political consultant’s message that included a video from a PAC requesting that viewers “support President Trump through 2020,” a message that is arguably a solicitation for political contributions. Each of these messages constituted political activity, and Ambassador Sands violated the Hatch Act when she retweeted them from her official social media account.

D. While knowing she was under investigation, Ambassador Sands continued to attack Democratic Party candidates and solicited political contributions using her official Twitter account.

On May 15, 2020, OSC wrote to Ambassador Sands to inform her that an investigation was being conducted into tweets posted on the “@USAmbDenmark” account. During summer 2020, OSC corresponded with Ambassador Sands through counsel, ensured the tweets at issue were removed from “@USAmbDenmark,” and received assurances that Ambassador Sands would not continue to engage in conduct prohibited by the Hatch Act on her official Twitter account. Despite these attempts to obtain and ensure compliance with the law, OSC learned that Ambassador Sands continued to engage in prohibited political activity on her official Twitter account.

For example, on or around June 26 and 27, 2020, the “@USAmbDenmark” account retweeted several messages from “@SheriffTNeHls,” the Twitter account of Sheriff Troy Nehls, a Republican candidate for the U.S. House of Representatives in the November 2020 elections.

One of the tweets related to Sheriff Nehls's claims that a Postal Service worker threw away his campaign mailers, and the second included a solicitation for political contributions:

We're running a grassroots campaign and don't have money for TV. I rely on mailers to reach voters and it's sad to see a federal employee interfering with that. If you'd like to pitch in a few dollars to help our campaign reach more voters, click here: [link to donate page on the "Troy Nehls for Congress" page]

Additionally, shortly after former Vice President Biden announced that he had selected Senator Kamala Harris as his running mate, Ambassador Sands retweeted an article titled, "Some questions for Kamala Harris about eligibility," which included the subtitle, "There are significant questions surrounding Kamala Harris' constitutional eligibility for the second-highest office in the land." Moreover, Ambassador Sands used the "@USAmbDenmark" account to like several tweets that criticized Mr. Biden or endorsed President Trump for reelection.

Here again, while using an official agency Twitter account, Ambassador Sands disseminated information from a political campaign and suggested that the then-recently announced candidate for Vice President was not eligible for the position. Furthermore, Ambassador Sands engaged in prohibited conduct by soliciting political contributions, which the Merit Systems Protection Board has opined is "...one of 'the most pernicious of the activities made unlawful by the Hatch Act.'"¹⁴ In sum, after knowing she was under investigation by OSC for Hatch Act violations, Ambassador Sands continued to use her official position to promote or oppose candidates for partisan office and also solicited political contributions to support a congressional candidate.

E. Ambassador Sands' arguments that the "@USAmbDenmark" tweets were permissible are groundless.

OSC sent Ambassador Sands two requests concerning the "@USAmbDenmark" tweets; the first request was sent on June 30, 2020, and the second was sent on August 20, 2020. In her July 22, 2020 response to OSC's initial request, Ambassador Sands admitted that she approved of or retweeted each of the messages identified in OSC's request.¹⁵ In addition, the Ambassador asserted that, rather than engaging in political activity, she was merely retweeting accurate quotes of news interviews, providing "a defense of free market capitalism," or retweeting factual information in news articles without comment.

It is well established that "political activity" encompasses activity beyond express advocacy for the electoral success or failure of a candidate.¹⁶ The case law makes clear that a

¹⁴ *Special Counsel v. Acconcia*, 107 M.S.P.R. 60 (2007) (quoting *Special Counsel v. Purnell*, 37 M.S.P.R. 184, 201-02 (1988)).

¹⁵ OSC's June 30 request for information did not include the Sheriff Nehls solicitation retweet or the message attacking Senator Harris's eligibility to be Vice President. Ambassador Sands admitted in response to OSC's second request that she had posted the attack on Senator Harris's eligibility.

¹⁶ See *Burrus v. Vegliante*, 336 F.3d 82, 84 (2d Cir. 2003) (concluding that the display of a poster comparing the positions and voting records of two candidates for president constituted political activity even though it purported to present only factual information); *Special Counsel v. Malone*, 84 M.S.P.R. 342, 363-65 (1999) (finding that an

federal employee acting in her official capacity may not make statements that are intended to encourage others to vote for or against a candidate for partisan political office or otherwise promote or disparage a candidate's campaign. Those statements can take the form of comparing candidates' records and positions,¹⁷ providing factual information for the purpose of promoting a campaign,¹⁸ or advancing a candidate's campaign promise.¹⁹

Ambassador Sands's tweets were not merely messages in defense of capitalism or accurate quotes of news interviews disseminated for purely factual reasons. As explained above, the Ambassador's tweets were targeted attacks on presidential candidates that specifically linked issues, like those related to the economy, to electoral success or defeat. These tweets were for the purpose of denigrating presidential candidates at times when those candidates were leading in the polls or otherwise contending for the Democratic Party's presidential nomination. Indeed, Ambassador Sands's attacks shifted as various presidential candidates became more or less likely to be selected as the Democratic Party's nominee. The evidence shows that Ambassador Sands engaged in prohibited political activity when she tweeted messages attacking Democratic Party candidates and their campaign platforms from "@USAmbDenmark," and her arguments to the contrary are without merit.

OSC sent a second request to Ambassador Sands on August 20, 2020, when we became aware that the Ambassador continued to engage in prohibited conduct using the "@USAmbDenmark" account. OSC, among other things, asked Ambassador Sands to confirm that she had retweeted the Sheriff Nehls solicitation for political contributions on her official Twitter account and to explain why she had done so despite knowing she was under investigation for potential Hatch Act violations. In response, Ambassador Sands asserted that she had no knowledge of Nehls or his candidacy for Congress, and she denied posting the solicitation without providing an alternate explanation as to how the retweet could have appeared on "@USAmbDenmark."²⁰

OSC evaluated the Ambassador's assertions related to Sheriff Nehls and the solicitation retweet. First, OSC obtained documentary evidence showing that the solicitation was retweeted from the "@USAmbDenmark" account. Second, not only did Ambassador Sands's official

employee violated the Hatch Act when he informed people doing business with his agency of an upcoming partisan fundraiser because, even though he did not solicit attendance or a contribution, he "intended to promote the fundraiser for political purposes"); *Special Counsel v. DePaolo*, MSPB Docket No. CB-1216-18-0016-T-1, at 11, 21-22 (Sept. 13, 2019) (holding that an employee violated the use of official authority prohibition when she "tout[ed]," "advertised," and "advanced [a candidate's] campaign promise" while acting in the scope of her official duties).

¹⁷ See *Burrus*, 336 F.3d at 84.

¹⁸ See *Malone*, 84 M.S.P.R. at 363-65.

¹⁹ See *DePaolo*, MSPB Docket No. CB-1216-18-0016-T-1, at 21-22.

²⁰ In a subsequent response, Ambassador Sands suggested that the solicitation retweet may have been inadvertently posted to her official Twitter account because it was part of Sheriff Nehls's thread involving campaign mailer allegations, a topic that interested her, and "[i]t appears that when tweets are threaded, one does not have to retweet each tweet in the thread, but will retweet the entire thread by retweeting any of the thread." OSC was unable to replicate this result and understands that only messages chosen from a thread to be retweeted will appear on an account's timeline with the retweeted designation. This designation is separate from Twitter's function allowing an individual to "show this thread" under a retweeted message to reveal the original thread's other messages.

account retweet Sheriff Nehls—her personal account did so too around the same time. In fact, both accounts retweeted the exact same message from Sheriff Nehls alleging that a Postal Service worker threw his campaign mailers in a dumpster. Third, State Department ethics officials contacted Ambassador Sands on July 10, 2020, about the Sheriff Nehls campaign mailer retweet on the official account and requested that she remove it due to Hatch Act concerns. At no point in her correspondence with the ethics officials did the Ambassador claim an unauthorized third-party retweeted Sheriff Nehls on her official account. Taken together, the inferences from this evidence show that the Ambassador knew of Sheriff Nehls well before OSC contacted her on August 20, and that she only disavowed the retweets about the Sheriff when OSC sought an explanation for the solicitation retweet. Thus, the available evidence does not support Ambassador Sands’s assertion that she had no knowledge of Sheriff Nehls or his candidacy for Congress, but rather supports the conclusion that the Ambassador retweeted his solicitation for political contributions on her official Twitter account in violation of the Hatch Act.

IV. CONCLUSION

Ambassador Sands’s Hatch Act violations were knowing and willful. The Ambassador had knowledge of the Hatch Act, and for months ethics officials warned her about prohibited messages on her official Twitter account. Despite these warnings, Ambassador Sands continued to disseminate partisan political messages and even retweeted a solicitation for political contributions. Because the Ambassador refused to comply with the Hatch Act despite ample opportunity to do so, OSC determined that disciplinary action is warranted.

The U.S. Constitution confers on the President authority to appoint officers of the United States, such as Ambassador Sands, by and with the advice and consent of the Senate. Considering that constitutional authority, Congress has determined that violations of the Hatch Act by such officers be referred to the President. Accordingly, OSC hereby submits this Report of Prohibited Political Activity to the President.²¹

²¹ See 5 U.S.C. 1215(b).

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January 12, 2021

By Email Only

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RE: In re Ambassador Carla H. Sands
OSC File No. HA-20-000091
McGlinchey File No. [REDACTED]
Response to U.S. Office of Special Counsel (OSC)'s Draft Report dated December 22, 2020

Dear Ms. Galindo-Marrone:

Thank you for allowing us to respond to your draft report concerning Ambassador Sands. As you are aware, we disagree with your legal analysis and conclusions, as is reflected in our prior correspondence, but there is no need to repeat those arguments here. We rely on our prior explanation and analysis in support of our position.

The question of Ambassador Sands purported "retweet" of a fundraising solicitation by congressional candidate Sheriff Troy Nehls is nonetheless worthy of further discussion because your letter suggests that Ambassador Sands (or her counsel) was not credible or truthful in a prior response disavowing any knowledge of Sheriff Nehls or his candidacy, or of the retweet of a campaign solicitation from the Ambassador's official account. We ask that this language be changed to remove any suggestion that Ambassador Sands was not truthful or credible in her factual assertions, or at a minimum note our objection.

The issue of this particular retweet was first raised in your August 20, 2020 correspondence, which attached as an exhibit a hard copy printout of the Nehls fundraising tweet with a symbol and notation above the tweet suggesting a retweet by the Ambassador Sands official account. As you know, this case involved many controversial retweets, all of which were alleged to violate the Hatch Act by your office. Ambassador Sands (and by extension her counsel) freely admitted that she retweeted or authorized the implicated retweets in every instance except the Nehls's tweet. With respect to that one alleged retweet, we made clear that: (a) Ambassador Sands had no connection to Nehls, his campaign, or his district; and (b) that Ambassador Sands had

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no recollection of ever retweeting the fundraising tweet. The Ambassador and the two of us as her attorneys were confident in those representations because: (a) they were true; and (b) the Ambassador has never disagreed that a fundraising solicitation or retweet of the same would be inappropriate under the Hatch Act and thus she would never have knowingly retweeted a fundraising flyer during an ongoing Hatch Act investigation.

In response to your most recent letter, we have searched for evidence of the alleged retweet on numerous Twitter archives (colloquially known as “wayback machines”) and still have not found a record of the retweet from the Ambassador’s official account. You have also kindly provided us with a retweet from the Ambassador’s personal account of a June 26, 2020 tweet by Nehls discussing a video and particular allegations Nehls made regarding discarded mail-in ballots, and suggested that this somehow demonstrates that Ambassador Sands was familiar with Sheriff Nehls or more likely to have retweeted the fundraising tweet from her official account. To be clear, Ambassador Sands still has no connection to Sheriff Nehls and no recollection of retweeting his fundraising tweet.

However, while we maintain that Ambassador Sands did not ever knowingly retweet the Nehls fundraising tweet, a review of the Nehls mail-in voting/voter fraud retweet from the Ambassador’s personal account may provide an explanation that reconciles the Ambassador’s recollection with the record you have provided. Our review indicates that the mail-in voting/voter fraud tweet retweeted from Ambassador Sands’s personal account is the first of the three-tweet “thread” by Nehls on June 26, 2020—meaning that three of his consecutive tweets were linked or “threaded” together on Twitter so that a reader can scroll them in order. It appears that when tweets are threaded, one does not have to retweet each tweet in the thread, but will retweet the entire thread by retweeting any of the thread.

As it turns out, the third tweet in that same June 26, 2020 thread is the fundraising tweet from Nehls. Thus, it would appear from Ambassador Sands personal account retweet of the mail-in voting/ voter fraud allegations of Nehls that it was that tweet, and that topic, rather than an interest in Nehls himself, that interested Ambassador Sands. This explanation makes sense because, although the Ambassador has no recollection of this particular tweet, the mail-in voting and voter fraud allegations by Nehls are of the kind she would have been interested in and likely retweeted from her personal account. If Ambassador Sands used her official account to retweet that same (nonfundraising) tweet it is easy to see how that fundraising tweet, as part of that original thread or possibly inadvertently, might have been retweeted by her from the official account. This further context makes clear a possible explanation for a retweet of the Nehls fundraising tweet that does not undermine Ambassador Sands’s consistent position that she (a) has no connection to Nehls or his campaign, and (b) no recollection of retweeting a fundraising tweet from him.

As previously stated, with this one significant exception, we rely on our previous submissions. However, in light of the discussion above, we believe that it is only fair and appropriate for your final report to remove any suggestion that Ambassador Sands, or her counsel, were less than truthful or candid with OSC with respect to the Nehls tweet.

Ana Galindo-Marrone
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January 12, 2021
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We are prepared to discuss this matter further at your convenience. Thank you.

Sincerely,



Robert N. Driscoll
cc: Stefan C. Passantino, Michael Best & Friedrich LLP