

June 9, 2020

Ana Galindo-Marrone
U.S. Office of Special Counsel
Hatch Act Unit
1730 M. St. NW, Suite 218
Washington, DC 20036

Re: Request for Investigation of Hatch Act Violations by Jared Kushner and other White House Staff

Dear Ms. Galindo-Marrone:

This letter requests that, pursuant to your authority under 5 U.S.C. § 1216(a)(1), the Office of Special Counsel promptly investigate allegations that several White House employees and a cabinet secretary, led by the President's son-in-law, Jared Kushner, violated the Hatch Act by abusing public funds and their own official authority to influence the result of an election. Specifically, Mr. Kushner, other White House staff and the cabinet secretary used taxpayer funds and official staff time to promote the candidacy of Michigan U.S. Senate candidate John James, by organizing, staffing and supporting an event at which President Trump repeatedly advocated Mr. James's election. The Trump Administration promoted the event as an opportunity to help the African American community recover from the coronavirus pandemic, but in reality staged it specifically for Mr. James's political benefit. We request that you promptly investigate these violations and immediately intervene to ensure that the Trump Administration does not further abuse taxpayer resources and official authority to influence the results of the 2020 elections.

I. Factual Background

On May 21, 2020, the Trump Administration held what it styled as an "official" event in Michigan, ostensibly to discuss economic recovery in the African American community (the "Event").¹ Described as a "Listening Session with African American Leaders," the Event was fashioned as a roundtable discussion with President Trump; Dr. Ben Carson, the U.S. Secretary of Housing and Urban Development; and African American community leaders in Michigan.² Both President Trump and Secretary Carson attended the Event in their official capacities: President Trump spoke from a lectern bearing the Presidential seal, and Secretary Carson used his official title as a U.S. Secretary in his remarks.³ Jared Kushner, the President's son-in-law, who has served as Assistant and Senior Advisor to the President since 2017, was also present in his official capacity and using his official title.⁴

¹ White House, Remarks by President Trump in Listening Session with African American Leaders (May 21, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-listening-session-african-american-leaders-ypsilanti-mi/>.

² *Id.*

³ See White House, President Trump Participates in a Listening Session with African-American Leaders (May 21, 2020), <https://www.youtube.com/watch?v=7JEKI24Ot7I>.

⁴ *Id.*

One of the five private sector “community leaders” featured at the Event was John James. Mr. James is a Republican candidate for U.S. Senate in Michigan.⁵ Mr. Kushner supported Mr. James’s previous, unsuccessful candidacy for the same office in 2018 and had urged President Trump to campaign for him actively.⁶ Indeed, President Trump endorsed Mr. James in 2018.⁷

At the Event, President Trump repeatedly endorsed Mr. James in remarks that were carried in the press and also published on the White House’s official website and YouTube page:⁸

- “A young man who has got a tremendous future, **he’s going to be a senator hopefully soon.** He’s representing a state that has already fallen in love with him.”
- “I saw him a few years ago; I watched him on television. I said, ‘Who is that guy?’ And I found out his name was John James, and I said, ‘He’s going to be fantastic.’ And he ran a great race. And now **he’s running a race that’s incredible.**”
- “He loves the people. He wants to help the people. **He’s running for the United States Senate—everybody knows that—in this great state of Michigan.**”
- “**You’re doing a fantastic job.** I’m getting all sorts of reports—glowing reports. **And if you do come to Washington, you have my ear.**”
- “**The great John James, who better win, because you would be missing something, Michigan, if you don’t vote for this guy.**”

President Trump also attacked the current U.S. Senator from Michigan, Senator Gary Peters, against whom Mr. James is running.⁹ During the Event, President Trump told Mr. James to “finish the job” and defeat Senator Peters: “And your gentleman that you’re opposing—I’ll tell you [Mr. James], nobody even knows who he is. Nobody knows who he is. Nobody ever heard

⁵ John James, FEC Form 2 Statement of Candidacy (filed December 3, 2019)

<https://docquery.fec.gov/pdf/377/201912039166152377/201912039166152377.pdf>; Tal Axelrod, Republican files signatures to run in Michigan Senate race, setting up primary battle, The Hill (Apr. 21, 2020), <https://thehill.com/homenews/campaign/493979-republican-files-signatures-to-run-in-michigan-senate-race-setting-up>.

⁶ Ashley Parker and Josh Dawsey, Adviser, son-in-law and hidden campaign hand: How Kushner is trying to help Trump win in 2020, The Washington Post (July 26, 2019), https://www.washingtonpost.com/politics/adviser-son-in-law-and-de-facto-campaign-manager-how-kushner-is-trying-to-help-trump-win-in-2020/2019/07/26/6e8d6dd4-a1ad-11e9-bd56-eac6bb02d01d_story.html.

⁷ David Eggert, Trump endorses ‘star’ John James in Michigan Senate Primary, AP (July 27, 2018), <https://apnews.com/07b4181b6b0a48a5bde289f94f133005/Trump-endorses-'star'-John-James-in-Michigan-Senate-primary>; @realDonaldTrump, Twitter (Sept. 17, 2018), <https://twitter.com/realdonaldtrump/status/1041810925450342401?lang=en>.

⁸ White House, Remarks by President Trump in Listening Session with African American Leaders (May 21, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-listening-session-african-american-leaders-ypsilanti-mi/>; White House, President Trump Participates in a Listening Session with African-American Leaders (May 21, 2020), <https://www.youtube.com/watch?v=7JEKI24Ot7I>; NBC News, Live: President Donald Trump Holds Roundtable With African American Leaders (May 21, 2020), <https://www.youtube.com/watch?v=fyhzep7Aw7w>.

⁹ Gary Peters, FEC Form 2 Statement of Candidacy (filed December 10, 2019) <https://docquery.fec.gov/pdf/629/201912109166168629/201912109166168629.pdf>.

of him, and he's a senator. **So go out and do the job. Finish the job.** And you're going to bring a lot of wealth back to this state because it deserves it, okay?"¹⁰

President Trump also used other speakers at the Event to promote Mr. James's candidacy. After hearing a policy proposal by an Event participant, Mr. Trump said, "That's a great [idea] — well, we're going to have John James work on it. If John works on it, I'll bet you it happens. Okay?"¹¹

Finally, Mr. James himself promoted his candidacy at the Event, referring to his campaign activity during his remarks: "Small businesses continue to need support, our food banks have capacity needs, and shelters need funds, which is why **we've repurposed our campaign funds in large part, giving back a nickel for every dollar we raise.** To help feed the hungry, to help clothe the naked, help heal the sick and take care of our veterans. Recently, we've given \$200,000 to a, to a medical facility in Detroit, in person testing Detroiters in the toughest hit area in the country."¹² Mr. James's campaign later uploaded Event footage to its social media pages and issued a press release publicizing his appearance with President Trump at the Event.¹³

Besides Mr. Kushner and Secretary Carson, several other employees of the White House Office and the U.S. Department of Housing and Urban Development attended and helped plan the Event, including Mark Meadows, President Trump's Chief of Staff; Kayleigh McEnany, the White House Press Secretary; Brooke Rollins, Assistant to the President for Strategic Initiatives and Acting Director of the Domestic Policy Council; Ja'Ron Smith, Deputy Assistant to the President and Deputy Director of the Office of American Innovation; Nicole Frazier, Special Assistant to the President and Director of Strategic Partnerships and African American Outreach; and Scott Turner, Executive Director of the White House Opportunity and Revitalization Council (collectively, "White House Staff").¹⁴

II. Legal Analysis

The Hatch Act prohibits federal executive branch employees from using their official authority to influence the outcome of an election.¹⁵ The Act 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."¹⁶

Both the U.S. Department of Housing and Urban Development and the Executive Office of the President are "Executive agencies" covered by the Hatch Act. As the Secretary of the U.S. Department of Housing and Urban Development, Secretary Carson is subject to the restrictions

¹⁰ White House, Remarks by President Trump in Listening Session with African American Leaders (May 21, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-listening-session-african-american-leaders-ypsilanti-mi/> (emphasis added).

¹¹ *Id.*

¹² *Id.*

¹³ @JohnJamesMI, Twitter (May 21, 2020), <https://twitter.com/JohnJamesMI/status/1263582154497425408>, <https://twitter.com/JohnJamesMI/status/1263561484761739265>; John James for Senate, Partisan Peters Prioritizes Political Attacks Over Helping Michigan (May 21, 2020), <https://t.co/wsMoygQHWI?amp=1>.

¹⁴ Malachi Barrett, MLive News (May 21, 2020), <https://twitter.com/PolarBarrett/status/1263507944387358722/photo/1>.

¹⁵ 5 U.S.C. § 7322(a)(1).

¹⁶ *Id.* § 7322(1)(A).

of the Hatch Act.¹⁷ And as employees of the U.S. Department of Housing and Urban Development or the White House, Executive Office of the President, Mr. Kushner and the White House Staff are also subject to the Hatch Act's restrictions.¹⁸ All of these individuals are prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election; all of them are prohibited from engaging in political activity while on duty.¹⁹

Still, Mr. Kushner, the White House Staff and Secretary Carson organized and executed the Event precisely to influence the outcome of an election. Cloaked in the guise of an official activity, the Event was nothing more than a campaign stop for Mr. James. The Event involved repeated advocacy of his election, the handing-over of a platform to Mr. James so he could tout his own campaign, and the use of White House press and social media resources to broadcast this same advocacy.

The Event meets several criteria the Office of the Special Counsel ("OSC") has identified as indicating political activity: (1) a candidate, Mr. James, was present; (2) the remarks were political, with both President Trump and Mr. James promoting Mr. James's candidacy; (3) the Event was targeted to Mr. James's potential voters; and (4) the Event was open to the press.²⁰

To the extent the Event involved non-political, official activity, it was not enough to override its otherwise overwhelmingly political nature.²¹ The President said that Mr. James was "going to be a senator hopefully soon," was "running a race that's incredible," was "running for the United States Senate," was "doing a fantastic job," had "better win," and needed to "finish the job." He did so while inviting another participant to endorse Mr. James, and allowing Mr. James to promote his own candidacy. That the Event "constituted political activity under the Hatch Act can hardly be debated in light of these statements."²²

Neither Mr. Kushner nor the White House Staff nor Secretary Carson was allowed to participate in this Event in an official capacity, while on duty. Even when the Hatch Act permits certain high-level federal employees to participate in political activity during working hours under highly limited circumstances, it still does not permit them to use their official authority to influence the outcome of an election, and it requires the U.S. Treasury to be reimbursed for all associated expenses.²³ There is no evidence that any of these laws were followed. The Event

¹⁷ See *id.* § 105 (defining "Executive agency" to include "an Executive department, a Government corporation, and an independent establishment."); *id.* § 101 (listing the U.S. Department of Housing and Urban Development as an Executive department).

¹⁸ See 19 U.S. Op. Off. Legal Counsel 103 (May 5, 1995); 27 U.S. Op. Off. Legal Counsel 118 (May 23, 2003).

¹⁹ 5 U.S.C. §§ 7323(a)(1); 7324(a)(1). "Political activity" is defined to include "activity directed at the success or failure of a ... candidate for partisan political office." 5 C.F.R. § 734.101.

²⁰ U.S. Office of Special Counsel, *OSC Advisory Regarding Mixed Travel by Presidentially-Appointed and Senate Confirmed (PAS) Employees* at 2-3 (Oct. 6, 2011), [https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Mixed%20Travel%20by%20Presidential%20Appointees%20with%20Senate%20Confirmation%20\(PAS\).pdf](https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Mixed%20Travel%20by%20Presidential%20Appointees%20with%20Senate%20Confirmation%20(PAS).pdf).

²¹ *Id.* at 3 (noting that although a "proposed event will likely involve matters related to the Department's work, several facts signify that the real reason for holding the event is to further the Representative's campaign and not to advance the Department's mission").

²² U.S. Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Election* at 67 (Jan. 2011).

²³ 5 U.S.C. § 7324(b)(1).

represents the exact kind of conduct the Hatch Act is designed to prevent - the improper use of federal government authority to influence an election. The OSC must immediately investigate the Event and the involvement of Mr. Kushner, Secretary Carson and the White House Staff in it.

The OSC should also investigate how this Event came to happen in the first place. President Trump and Mr. Kushner's close ties to Mr. James, and longstanding support for his campaign, evidence a clear intention to stage the Event for Mr. James's political benefit, in full view of the national press. "Encourag[ing] high-level agency political appointees to attend events with targeted Republican candidates in order to attract positive media attention to their campaigns" is conduct that the OSC has found to violate the Hatch Act in the past.²⁴ Here, the White House Staff planned the Event to feature Mr. James alongside President Trump and Secretary Carson in front of the national press. Extensive planning and contacts with the James campaign inevitably went into organizing the Event. While on duty and using their official titles, White House staff must have dedicated significant time to planning the Event, recruiting panelists, and preparing President Trump's remarks. The OSC must investigate the extent to which Mr. Kushner and other White House staff conceived and planned the Event for Mr. James's private political benefit.

We ask the Office of Special Counsel to immediately investigate these allegations, and prevent Mr. Kushner, Secretary Carson and White House Staff from engaging in any further activity to use their authority and taxpayer money to influence the results of an election.

Sincerely,

A handwritten signature in black ink that reads "Lavora Barnes". The signature is written in a cursive, flowing style.

Lavora R Barnes, Chair
Michigan Democratic Party

²⁴ U.S. Office of Special Counsel, Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Election at 44 (Jan. 2011).