



U.S. OFFICE OF SPECIAL COUNSEL

## Memorandum

U.S. Office of Special Counsel

Report of Prohibited Political Activity under the Hatch Act  
OSC File No. HA-07-1160 (Lurita A. Doan)

May 18, 2007

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Pursuant to the authority described in 5 U.S.C. § 1215(b), the United States Special Counsel presents this complaint and statement for appropriate action. As detailed below, the Special Counsel has determined that appropriate disciplinary action should be taken against the Administrator of the General Services Administration (“GSA”), Ms. Lurita A. Doan, for her violation of 5 U.S.C. § 7323 of the Hatch Act and 5 C.F.R. § 734.302, a corresponding regulation promulgated by the Office of Personnel Management. Because Administrator Doan was appointed by the President of the United States of America, with the advice and consent of the Senate, Section 1215(b) of Title 5 of the United States Code mandates that the Special Counsel present this complaint to the President for appropriate action.

## INTRODUCTION

This report contains the investigative findings in OSC File Number HA-07-1160, a complaint of prohibited political activity referred to the U.S. Office of Special Counsel (“OSC”) by the GSA Office of the Inspector General. The complainant alleged that the Administrator of GSA, Ms. Lurita A. Doan, violated the Hatch Act by soliciting her subordinate employees to participate in political activity during a meeting held at GSA headquarters on January 26, 2007. Upon receipt of the complaint, OSC investigated whether Administrator Doan used her official authority or influence for the purpose of interfering with or affecting the result of an election in violation of section 7323(a)(1) of the Hatch Act.

### I. INVESTIGATION BACKGROUND

On February 20, 2007, the GSA Office of the Inspector General contacted the U.S. Office of Special Counsel concerning a potential Hatch Act allegation that had been reported to their office. Recognizing that 5 C.F.R. § 734.102 gives OSC the exclusive authority to investigate allegations of political activity prohibited by the Hatch Act, the GSA Office of Inspector General referred the complaint to OSC.

Upon receipt of the complaint, OSC conducted an independent, thorough and complete investigation into the allegations that Administrator Doan engaged in prohibited political activity. Specifically, OSC interviewed over twenty individuals who were in attendance at the January 26, 2007, meeting where the alleged prohibited political activity occurred. OSC also interviewed the invited guest speaker and Administrator Doan. Each interview was electronically recorded to preserve accurately the testimony of each witness, and each witness testified under oath. In addition, OSC reviewed over 1100 pages of documentary evidence collected during this investigation.

It is important to note that numerous GSA political appointees asked that their names not be released in OSC’s investigation report because they fear that they will be retaliated against for providing testimony adverse to the Administrator. Consequently, specific witness names will not be used in this report, unless the witness authorized the release of his/her name.

## II. FACTUAL FINDINGS

Lurita A. Doan (“Ms. Doan” or the “Administrator”) is the Administrator of GSA, a federal agency within the executive branch.<sup>1</sup> Mrs. Doan was appointed by the President and confirmed by the Senate.<sup>2</sup> During Ms. Doan’s confirmation hearings, she testified that she was qualified to be the Administrator because, among other things, she was a “decisive, detail-oriented, hands-on manager, though not a micromanager.” Ms. Doan was sworn in as GSA Administrator on May 31, 2006.

On January 26, 2007, Ms. Doan attended a meeting of GSA employees (the “January 26 meeting”). The January 26 meeting was one in a series of “brown bag luncheons” organized and conducted by the GSA White House Liaison, Mr. John “J.B.” Horton. Mr. Horton is Administrator Doan’s subordinate employee and reports directly to Ms. Doan’s Chief of Staff. The purpose of the brown bag luncheons is team building.<sup>3</sup> Only GSA political appointees are invited to attend the brown bag luncheon team building meetings. As the Administrator of GSA, Ms. Doan is the highest ranking official in attendance at the brown bag luncheons.

Although Administrator Doan testified that the brown bag luncheons “are not her meetings,” she always tries to attend. The Administrator tries to attend because Mr. Horton expressed to Ms. Doan that it “means a lot” to the other political appointees for her to come to the meetings. Administrator Doan opined that it means a lot to the political appointees for her to attend because people like to be around or near the person in charge, she does not see many of the lower level (Schedule C) political appointees very often, and people feel that her presence will make the meeting better. Administrator Doan has attended all the brown bag luncheons with the exception of one or two.

### *A. The January 26, 2007 Meeting*

The January 26 meeting took place at the GSA headquarters building, in Room 5141, at 1800 F Street, NW, Washington, D.C., from approximately 1:30 to 2:30 p.m. Over thirty GSA political appointees attended the January meeting, some in person, some via telephone and some through the use of video conferencing technology. The GSA political appointees who attended the January 26 meeting were all subordinate employees of Administrator Doan.

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<sup>1</sup> Section 301 of Title 40 of the United States Code provides: “The General Services Administration is an agency in the executive branch of Federal Government.”

<sup>2</sup> Section 302(a) of Title 40 of the United States Code provides: “The Administrator of General Services is the head of the General Services Administration. The Administrator is appointed by the President with the advice and consent of the Senate. The Administrator shall perform functions subject to the direction and control of the President.”

<sup>3</sup> According to the GSA website, one of GSA’s articulated values is teamwork.

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Mr. J. Scott Jennings (“Mr. Jennings”) was the guest speaker at the January 26 meeting. Mr. Jennings’ position is, and was on January 26, 2007, Special Assistant to the President and Deputy Director of Political Affairs. Mr. Jennings is a Presidential appointee.

At the January 26 meeting, Mr. Jennings gave a PowerPoint presentation to the GSA political appointees in attendance, including Administrator Doan. Mr. Jennings’ presentation consisted of 28 slides. (A hard copy printout of the full presentation is attached as Exhibit 1 to this report.) Mr. Jennings discussed the content of the slides, each of which related to partisan election issues.

The initial slides of Mr. Jennings’ PowerPoint presentation appeared to focus on the 2006 midterm election results. His presentation included, among other things, slides explaining where the Republican Party lost ground with swing voters and slides detailing long term problems for the Republican Party. Mr. Jennings’ PowerPoint presentation also contained numerous slides showing how the Republican Party’s “72 Hour” campaign made a difference in narrowly won races for Republican candidates and how Republican candidates who did not utilize the “72 Hour” campaign lost ground. The presentation also contained slides discussing the Democratic Party’s “precarious hold on power.”

Mr. Jennings’ presentation then focused on the upcoming 2007 and 2008 elections. The slides included a list of Congressional Democrats targeted to be unseated in the 2008 election, followed immediately by a list of Congressional Republicans whose seats need to be defended in the 2008 election. Mr. Jennings’ presentation also contained a list of Congressional Senate seats up for election in 2008 and specifically designated the Senate seats the Republican Party needed to defend, as well as, the Senate seats targeted for a Republican Party offense. Mr. Jennings’ presentation concluded with a slide entitled “Battle for Governors ‘07/’08.” The slide identified all the states with 2007 and 2008 gubernatorial elections; the slide designated four states as “Republican Offense,” five states as “Republican Defense,” and five states as “Not Competitive.”

A question and answer session immediately followed Mr. Jennings’ PowerPoint presentation. Numerous GSA political appointees testified under oath that during the question and answer session, the Administrator asked a question about, “How can we help our candidates?”<sup>4</sup>

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<sup>4</sup> A review of the witnesses’ testimony reveals that some of the appointees remember the Administrator asking Mr. Jennings, “How can we help our candidates?” Other witnesses testified that the Administrator asked, “What can we do to help our candidates?” Other witnesses remember the Administrator posing the question, “How can we use GSA to help our candidates?” While another witness remembers “How can we use GSA to support our candidates?” Despite the slight variations regarding the witnesses’ testimony as to what the Administrator said, the intent behind the various statements is the same – what can we, the GSA political appointees, do to help our candidates? Furthermore, each of the witnesses testified that they interpreted the term “our candidates” to mean “Republican candidates” because they are all Republican political appointees. Moreover, although some of the witnesses acknowledged during their interviews that

Many political appointees testified that after Administrator Doan asked how can we help our candidates, Mr. Peter Stamison, the GSA Regional Administrator for Region 9, referred to a new environmental “green” federal building that was to be opened in San Francisco. The witnesses recalled Mr. Stamison discussing that Speaker Nancy Pelosi was going to be attending the groundbreaking ceremony and how we need to get “our people” to attend the event.<sup>5</sup> The witnesses testified that Administrator Doan then mentioned the opening of a federal courthouse in Miami that former President Clinton might be attending and emphasized the importance of having Senator Mel Martinez attend the event. Numerous political appointees testified that Mr. Jennings interrupted the conversation and indicated that the discussion needed to be “taken off-line.” The January 26 meeting concluded after Mr. Jennings’ comment.

*B. Administrator Doan’s Testimony*

OSC also interviewed, under oath, Administrator Doan about the January 26 meeting. Administrator Doan testified that although she was extremely busy during the week of the January 26 meeting, she attended the brown bag luncheon as a sign of respect for Mr. Jennings because of his “stature [being] from the White House” and because he is a special advisor to President Bush. Ms. Doan testified that she arrived about ten minutes late to the January 26 meeting and believes that Mr. Jennings was just beginning his PowerPoint presentation.

When questioned concerning Mr. Jennings’ PowerPoint presentation, Administrator Doan testified that she did not remember seeing any of the slides from his presentation, nor did she recall any of the comments that were made by Mr. Jennings during his presentation. Ms. Doan alleged that she was not paying attention during Mr. Jennings’ presentation for the following reasons: she dislikes PowerPoint presentations; she was uninterested in the topic; she does not care about polls<sup>6</sup>; and, she felt the

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they could not remember verbatim what the Administrator said, they did remember her saying something to the effect of how can we help our candidates or how can we use GSA’s resources to help our candidates.

<sup>5</sup> When questioned as to how they interpreted Mr. Stamison’s reference to “our people,” the witnesses testified that they believe he was referring to Republicans.

<sup>6</sup> The Administrator contributed over \$226,000 to various Republican candidates and Republican organizations, such as the National Republican Congressional Committee, the Republican Senatorial Committee, and the Republican National Committee. The common purpose of these organizations is to support the election of Republican candidates through financial contributions to candidates and partisan organizations. During her interview, OSC asked the Administrator to explain why she contributed money to these organizations when she allegedly does not care about polls or election results. Administrator Doan responded by testifying that the contributions had been “taken out of context.” She explained that the contributions were made over several years and she doesn’t believe \$225,000 is a substantial contribution in light of her other contributions to nonpolitical organizations. She testified that in 2004, she donated over a million dollars to her college, over half a million dollars to the New Harman Center of Shakespeare Theater, and over

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presentation had nothing to do with her or what she does on a daily basis at GSA. Lastly, Administrator Doan testified that she was on her Blackberry (personal digital assistant device) reviewing emails during Mr. Jennings' presentation and only periodically looked up and down.

After Mr. Jennings concluded his PowerPoint presentation, a question and answer session immediately followed. Administrator Doan testified that she does not remember whether she made any remark concerning "How can we [or GSA] help our candidates?" Ms. Doan testified that the first thing she remembers is Mr. Stamison speaking about the opening of a new environmental federal building in San Francisco and how GSA had been trying to get the President to attend the opening of the building. Ms. Doan testified that she then asked Mr. Jennings something about how can GSA help its cabinet liaison understand that this would be a perfect event for President Bush to attend. According to Ms. Doan's testimony, Mr. Jennings responded by telling her that they should write a "white paper" or "one-pager" explaining the project, its importance, why it would be relevant for the President to attend, and include a list of possible dates for the opening. She testified that Mr. Stamison may have made a comment explaining that GSA had rescheduled the building opening four times to accommodate Speaker Pelosi. According to Ms. Doan, the January 26 meeting concluded at that time. The Administrator testified that she thanked Mr. Jennings and left the meeting.<sup>7</sup>

Despite being unable to remember anything about Mr. Jennings' presentation, Ms. Doan was able to recall other facts about the January meeting. Administrator Doan testified that as she was getting ready to leave for the January 26 meeting, she was interrupted by a phone call or her personal digital assistant. She testified that she told Meghan and Brittany, her two assistants, that she would be down to the meeting in a few minutes. She remembered that they took with them the cookies she had purchased previously for the meeting. Upon entering the meeting, she remembers being surprised that the video conferencing system and the refresh rate were working. Ms. Doan also testified that she remembered thinking that there were not that many people at the meeting. Administrator Doan also remembered that she sat near Mr. Jennings and was sitting near a "young perky looking" woman, whom she thought might be a new GSA employee. Administrator Doan remembers that Kevin Messner was sitting at the far end of the table. She also remembered that three or four people left during the presentation,

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fifty thousand dollars to fund minority businesses. She then testified that she has a long list of philanthropic donations "of which a small piece of it is the \$226,000 that was spread over a four or five-year period." Although Ms. Doan again repeated that her donations to these Republican organizations have been taken out of context, she failed to explain why she donated any amount to these organizations whose purpose is to elect Republican candidates.

<sup>7</sup> OSC questioned Administrator Doan as to whether she gave Mr. Jennings a tour of GSA or its offices on January 26, 2007. She testified that she did not give him a tour of GSA or the offices, and she testified that she does not know if he went elsewhere in the building. In contrast to her testimony, both Mr. Jennings and Mr. Horton testified that after the January 26 meeting ended, Ms. Doan gave Mr. Jennings a tour of the immediate area around her office while describing some of the artwork in the area.

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including her Associate Administrator for Congressional and Intergovernmental Affairs. Despite remembering all of these details concerning the meeting, Administrator Doan testified that she could not remember whether she made any comment about “how can we help our candidates.”

*C. OSC Was Unable to Corroborate Administrator Doan’s Testimony Regarding Her Blackberry Use*

As detailed above, Administrator Doan testified that she does not recall any of the slides from Mr. Jennings’ PowerPoint presentation, and she does not remember any comments or statements Mr. Jennings made during his presentation. Ms. Doan stated that she was not paying attention to Mr. Jennings’ PowerPoint presentation because she was on her Blackberry and periodically looked up. OSC attempted to corroborate Ms. Doan’s testimony that she was on her Blackberry during the January meeting.

Specifically, OSC requested all of her private and government email records for January 26, 2007, in an attempt to establish that Administrator Doan sent, read, composed, deleted, or moved messages on her Blackberry during the January meeting, which was scheduled from 1:30 to 2:30 p.m. The documentation produced shows that Ms. Doan sent only one message on the day in question from her private email account and it was sent at 7:54 a.m., over five hours before the January 26 meeting started. The documentation establishes that Ms. Doan received nine email messages to her private email account on January 26, 2007, with the latest one received at 1:08 p.m. The documentation Ms. Doan provided concerning her private email account did not establish that she sent, read, composed, deleted or moved any messages during the January meeting.

OSC also obtained records pertaining to her GSA government email account. The government email records show that Ms. Doan received three emails during the 1:30 to 2:30 scheduled meeting time. With respect to emails the Administrator sent from her GSA account, the documentation provided shows that the last email sent from her government account was at 7:53 a.m. on January 26, 2007. The next record showing that an email was sent from Ms. Doan’s GSA account was dated January 27, 2007, at 1:36 p.m., almost 23 hours after the January 26 meeting concluded. Thus, despite our efforts, OSC was unable to corroborate that Administrator Doan was utilizing her Blackberry or other personal digital assistant during the January 26 meeting.

*D. None of the Witnesses Corroborated the Administrator’s Testimony Regarding the San Francisco Building*

As stated above, OSC interviewed over twenty individuals who attended the January 26 meeting. None of the GSA political appointees interviewed by OSC corroborated Administrator Doan’s account of the alleged comments she made after Mr. Jennings’ presentation. Specifically, not one of the attendees interviewed by OSC testified that the Administrator asked Mr. Jennings about how GSA could help the cabinet liaison understand that the San Francisco federal building opening is the perfect

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event for President Bush to attend. In addition, none of the witnesses testified that Mr. Jennings advised Ms. Doan that GSA should submit a "white page" or "one-pager" about the San Francisco building. Indeed, none of the witnesses, including Mr. Jennings, testified that (s)he remembered any comments about GSA's cabinet liaison or any reference to a written briefing, "white paper," or "one-pager" for the White House.

OSC specifically questioned Ms. Doan concerning the testimony by numerous GSA political appointees that she asked how can we [the attendees] help our candidates. Administrator Doan testified that she could neither recall nor remember asking how can we or GSA help our candidates. Ms. Doan did not, however, categorically deny such an inquiry.<sup>8</sup>

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<sup>8</sup> During our interview of the Administrator, OSC questioned Ms. Doan as to whether she denied making such a statement. Ms. Doan initially denied understanding the difference between testifying that she never made a statement verses testifying that she does not remember making a statement. Specifically, the questioning was as follows:

Question: Is your testimony that you never said, how do we help our candidates, or something to that effect? Or is it that you don't remember saying anything like that?

Ms. Doan: I don't understand the difference. I just do not understand the difference that you're trying to make because if you don't remember the comment, how can you ascertain that you made or didn't make the comment? How does this work? I don't understand this. I'm not trying to be philosophical or quibble with you. I just don't remember.

This line of questioning continued for many minutes, during which the Administrator continued to state that she did not understand the difference. The veracity of Administrator Doan's testimony that she, an English major, did not understand the difference is suspect in light of her March 28, 2007, testimony before the House Committee on Oversight and Government Reform where she appears to have had no difficulty understanding the distinction. Specifically, she was questioned and testified as follows:

Tom Davis: Now, we're told by some witnesses - - there are some witnesses that say you said something, some that say you didn't, and it was a long time ago. Did anybody at any point say these were inappropriate subjects, where somebody said, "We should move away from this?" Do you remember any of that?

Ms. Doan: I really do not remember anything about this meeting.  
(Crosstalk)

Tom Davis: OK.

But you don't deny what people are saying. You're just saying . . .

Ms. Doan: No, no. I'm not denying what they're saying. I'm simply saying there were cookies on the table. I remember coming in late. I remember we had - - it seemed like we had quite a few people who were actually missing.

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OSC also questioned Ms. Doan about whether she remembered any discussion concerning a Florida courthouse during the January 26 meeting. Administrator Doan testified that she does not remember any discussion of the Florida courthouse. Similarly, Ms. Doan testified that she does not remember anyone at the January 26 meeting mentioning former President Clinton, and she testified that she would “find it hard to believe that that would have come up.” In addition, Administrator Doan testified that she does not remember anyone mentioning Senator Mel Martinez at this meeting. Lastly, Ms. Doan testified that she does not remember Mr. Jennings indicating that the discussion needed to be taken “off-line,” and she claimed she does not know what the term “off-line” means.

In contrast to Ms. Doan’s testimony, over half of the political appointees whom OSC interviewed,<sup>9</sup> testified under oath that they remembered a discussion of a Florida courthouse opening and specifically remembered Senator Mel Martinez being mentioned. Moreover, seven of the political appointees that OSC interviewed also remembered former President Clinton’s name being mentioned in connection with the Florida courthouse opening. Lastly, a majority of the witnesses testified that Mr. Jennings made reference to the discussion needing to be “taken off-line.” Indeed, Mr. Jennings testified that he remembers stating that the discussion needed to be “taken off-line” because he wanted to end the meeting.

*E. Administrator Doan’s Allegation that the Witnesses Were Biased Against Her is Not Supported by the Evidence*

During her interview, Administrator Doan testified that she could neither recall nor remember posing a question about how can we help our candidates. Although Ms. Doan did not categorically deny asking such a question, when confronted with the

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Tom Davis: Which - - there was no conversation about excluding Democrats or excluding one party from any of these openings whatsoever, was there?

Ms. Doan: Absolutely not. In fact, we try to get everyone to come.

The Administrator’s testimony before Congress demonstrates that she understands the difference between not remembering making a statement and stating it did not happen. This is evidenced by her unequivocal answer of “absolutely not” to Congressman Davis’ question as to whether there was a conversation during the January 26 meeting about excluding one party from GSA building openings. Her answer is particularly illuminating because when questioned by Congressman Braley concerning whether she made certain statements during the January 26 meeting, she responded, no less than eight times, “I have no recollection of making that statement.” Thus, on March 28, 2007, Administrator Doan clearly understood the difference between not remembering making a statement and categorically denying – her testimony of “absolutely not” - that a statement was made.

<sup>9</sup> Some of the GSA political appointees who were interviewed by OSC testified that they left the January meeting while Mr. Jennings was giving his PowerPoint presentation, which was before the question and answer session.

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evidence that numerous witnesses testified under oath that she did so, Administrator Doan implied that the witnesses were biased against her. Specifically, Ms. Doan testified as follows:

And I will tell you, at least for the names of the people that appeared in the papers, there's not a single one of those who did not have somewhere in between a poor to totally inferior performance, not the least of which is Emily Murphy . . . . She is known widely throughout federal government as an absolute disaster, and she has been a failure in her role at GSA . . . .

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I do find it highly disturbing that some of the most vocal proponents or the most articulate speaking out against me are also the people who are people I've either moved on or they are, I don't want to say permanently demoted but they're kind of, until extensive rehabilitation of their performance occurs, they will not be getting promoted and they will not be getting bonuses or special awards or anything of that nature.

Administrator Doan provided the above testimony, while under oath, to OSC on May 3, 2007. During her March 28, 2007, hearing before the House of Representatives' Committee on Oversight and Government Reform, Ms. Doan was confronted and specifically questioned regarding the adverse testimony of GSA political appointees Justin Busch, Jennifer Millikin, Emily Murphy, Christiane Monica, Matthew Sisk, and Michael Berkholtz. A report issued on the same day by Congressman Tom Davis made reference to the six individuals listed above and GSA political appointee Dennis Smith.<sup>10</sup> The testimony of these seven political appointees was widely reported in numerous news articles and programs. Thus, Administrator Doan appears to have been referring to these seven individuals when she implied to OSC that the most vocal and articulate individuals speaking out against her are poor performers.

As a result of Ms. Doan's implication that witnesses provided adverse and/or inaccurate testimony because they were poor performers, OSC reviewed copies of all of the January 26 meeting attendees' most recent performance reviews. In addition, OSC requested copies of any adverse actions proposed or taken against any of the January 26 meeting attendees from the time Ms. Doan was sworn in as GSA's Administrator until March 31, 2007.

With respect to the seven GSA political appointees listed above whose adverse testimony was widely reported, each received a performance appraisal rating of level 3 or higher. A level 3 rating is defined as, "Meets performance expectations. Objectives, activities, and specific tasks associated with each critical element are carried out with expected levels of quantity, quality, timeliness and cost-effectiveness in accordance with performance plan." In further contrast to Doan's testimony that they were poor

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<sup>10</sup> See HOUSE COMM. ON OVERSIGHT AND GOV'T REFORM, 110<sup>TH</sup> CONG., Preliminary Staff Report, "Allegations of Misconduct at the General Services Administration: A Closer Look" (T. Davis March 28, 2007).

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performers, one of the individuals received a level 4 rating, while another employee received the top rating of level 5.<sup>11</sup> In addition, Ms. Doan's testimony that these witnesses had performance problems and were not getting promoted, bonuses, special awards or anything of that nature, was incorrect. Two of the witnesses received a within grade increase, one of the witnesses received an individual cash award, another witness received a performance based pay adjustment, and another received a promotion. Lastly, with respect to any adverse or disciplinary action imposed on the above witnesses, only one witness received any type of adverse action, and it was a minor counseling session concerning her use of annual leave during an advance trip.

Furthermore, Administrator Doan's testimony that Emily Murphy was a "poor to totally inferior" performer, that "she is known widely throughout federal government as an absolute disaster," and "she has been a failure in her role at GSA," is contradicted by Emily Murphy's most recent performance evaluation. Ms. Murphy received a rating level of 3, documenting that she was meeting expectations, and Emily Murphy received favorable mid-year comments, such as, "Emily has been an extremely proactive and valued member of the top management team." Lastly, although Ms. Murphy was alleged to have been "a failure in her role at GSA," no documentation was produced showing that GSA proposed or initiated any disciplinary or adverse employment action for this failure.

Administrator Doan's statement that "at least for the names of the people that appeared in the papers, there's not a single one of those who did not have somewhere in between a poor to totally inferior performance" is not only unsupported and contradicted by the documentary evidence produced by GSA – evidence Ms. Doan reviewed and produced to our office – but appears to have been purposefully misleading and false.<sup>12</sup>

Nevertheless, in the event that OSC misunderstood the above seven witnesses to be those whom Administrator Doan was referring, OSC also reviewed the performance reviews of every other political appointee who provided testimony adverse to Administrator Doan. Each and every witness received a performance appraisal rating of level 3 or higher. In addition, with respect to those witnesses who testified that Ms. Doan asked how can we help our (or Republican) candidates, more than one of the witnesses received the top performance rating of level 5. In addition, another witness received a performance rating of level 4. Lastly, many of these witnesses received group or individual awards.

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<sup>11</sup> Ms. Doan testified that it was almost impossible to receive a rating of five. Specifically, she testified as follows: "But you know, Dennis got a four in a rating scale of one to five, and that's pretty good. It's almost impossible to get a five. So I thought, you know, Dennis had like a 3-plus – four in his rating scale, so I know this is not a man who has an axe to grind."

<sup>12</sup> Ms. Doan testified that if a political appointee engaged in activity where the employee might have to be reprimanded, written up or possibly released, it would probably come to her attention. Consequently, Administrator Doan knew that none of the above named witnesses had ever been subjected to written disciplinary action. On the contrary, each was performing at or above GSA's performance expectations.

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In summary, none of the performance reviews indicates that any of the witnesses who provided testimony adverse to Ms. Doan were poor to totally inferior performers as she alleged. Thus, Administrator Doan's implication that the adverse witnesses were biased against her simply is not credible. Finally, it is troubling that Administrator Doan made the above unsubstantiated allegations during an official investigation of *her* actions. It arguably indicates a willingness on her part not only to use her position in a way that is threatening to anyone who would come forward, but also a suggests a willingness to retaliate against anyone who would be so "disloyal" as to tell the truth about a matter she confesses she does not remember.

*F. Administrator Doan Unsuccessfully Attempts to Exonerate Herself by Shifting the Focus from Her Lack of Memory to the Witnesses' Memory*

In addition to indicating that the witnesses were biased against her, Administrator Doan also tried to exonerate herself by questioning the memory of the witnesses' who provided adverse testimony. Specifically, she testified:

So I guess I have to question, I question the memory of the folks who say they remember. I have to question that because, while there is a similarity to all of the statements that you're saying that folks are claiming that I said, there is not really a semantic or a unified statement there. Those are very different statements that you read to me. They're all very different, and they're very different nuances. They're just very different statements.

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Dramatic variations. There's a big difference between, "Can you help our candidates at an election position?" or something like that and "Can you help our candidates?" These are very different. One is a very long statement, for one thing, and one is a shorter one. But those are different. Maybe it's just the English major in me. These are very different.

Administrator Doan's implication that the adverse testimony provided by her political appointees should be questioned because of the alleged variations is unconvincing. Administrator Doan is holding the adverse witnesses to a standard which she does not hold herself. First, Ms. Doan does not recall or remember anything about Mr. Jennings' presentation or any comments that Mr. Jennings' made, yet she claims to remember the statements made by attendees after Mr. Jennings' presentation concluded. Second, with respect to the alleged statements she can remember, they were prefaced with a caveat that she could not recall verbatim what was said. For example, Administrator Doan testified: "And I remember - - and this is not a perfect memory, please. But what I kind of remember doing is is [sic] turning to Scott and saying something like, Scott, is there any way - - can you tell us how we can help our cabinet liaison understand that this would be a perfect building opening, a perfect event for the President to attend?"

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Finally, Ms. Doan's assertion that there are "dramatic differences" between the witnesses' testimony is unsupported by the record. There is no dramatic difference between the statements: "How can we help our candidates?" "What can we do to help our candidates?" "How can GSA help our candidates?" "How can we use GSA to support our candidates?" Although there might be slight variations to these statements, the meaning behind each statement is the same when considering that the statement was made to an audience composed almost exclusively of GSA political appointees.

*G. Administrator Doan's Hatch Act Knowledge*

Ms. Doan was sworn in as the GSA Administrator on May 31, 2006. As a new government official, Ms. Doan received information on the Hatch Act. The documents she received outlined all of the political activities prohibited by the Act, including the prohibition that a federal employee may not solicit, accept, or receive the uncompensated volunteer services from an individual who is a subordinate. (Copies of these documents are attached as Exhibit 2 to this report). Administrator Doan also received an OSC booklet entitled "Political Activity and the Federal Employee," which contains a summary of the Hatch Act's prohibitions.

On June 16, 2006, Ms. Doan attended an ethics and standards of conduct briefing, during which the political activity restrictions of the Hatch Act were discussed. Specifically, materials were distributed explaining that Presidential Appointees with Senate Confirmation ("PAS") employees may not personally solicit employees to participate or volunteer in a campaign.

On July 25, 2006, a mandatory Hatch Act briefing was held for all GSA political appointees. The most senior attorney from OSC's Hatch Act Unit conducted the Hatch Act briefing.<sup>13</sup> Numerous witnesses testified that they remember Administrator Doan attending at least a portion of this briefing.

Administrator Doan also received numerous documents outlining the political activity restrictions imposed by the Hatch Act. For example, she received a document which provided the following cautionary advice for PAS employees:

Conducting political activities on Federal premises poses other risks for PAS officials. Their subordinates, whether career or political, cannot participate in partisan political activities while on duty or at work, and even the presence of these employees at a political meeting or other activity conducted by a PAS could constitute a violation of the Hatch Act.

(A copy of this document is included in Exhibit 2 attached to this report.)

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<sup>13</sup> A copy of the PowerPoint presentation given and materials distributed during this training are available upon request.

Finally, Administrator Doan received a copy of an October 13, 2006, memorandum with the subject line "Participation in Political Activities – Hatch Act Guidance." The memorandum describes those activities prohibited by the Act and contains the following warning:

Unlike other political appointees, PAS officials may engage in political activities (except fundraising) during duty time and in the Federal workplace or while using a Government vehicle. If you are a PAS official, please bear in mind that this is a *personal* exception only and it does not apply to your non-PAS staff members. Consequently, if you carry out political activities in the presence or with the support of your non-PAS staff, you could be putting them at risk of inadvertent violation of the Hatch Act.

(italics in original). (A copy of the October 13, 2006, memorandum is also included in Exhibit 2 of this report).

As detailed above, Administrator Doan received numerous briefings and documents outlining the political activity restrictions imposed by the Hatch Act.

### III. ANALYSIS

The Hatch Act complaint received by OSC alleged that Administrator Doan engaged in prohibited political activities during the January 26, 2007 meeting. After conducting a thorough investigation into the complaint, the Special Counsel has concluded that Administrator Doan's actions were in violation of the Hatch Act.

#### A. *The Hatch Act*

In 1939, Congress enacted the Hatch Act, 5 U.S.C. § 7321 *et seq.*, to proscribe certain political activity by federal employees. One of the primary purposes of the Act was to ensure that the rapidly expanding government work force not be employed to build a powerful, invincible, and perhaps corrupt political machine. Civil Service Commission v. National Ass'n of Letter Carriers, (hereinafter "Letter Carriers") 413 U.S. 548, 566 (1973). Summarizing Congress' intent in enacting the Hatch Act, the United States Supreme Court recognized one of the purposes of the Act was to ensure:

that employment and advancement in the Government service not depend on political performance, and at the same time to make sure that Government employees would be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out their own beliefs.

Id. Thus, one of Congress' primary objectives in enacting the Hatch Act was to protect federal employees from express or implied pressure by their supervisors to engage in political activity.

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Included among the Hatch Act proscriptions is 5 U.S.C. § 7323(a)(1), which states in relevant part:

...an employee may take an active part in political management or in political campaigns, except an employee may not – (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election[.]

Pursuant to its authority under 5 U.S.C. § 1103, the Office of Personnel Management has promulgated regulation 5 C.F.R. § 734.302 to further interpret the above statutory restriction. That regulation states in pertinent part:

(a) An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

(b) Activities prohibited by paragraph (a) of this section include, but are not limited to:

\* \* \*

(2) Using his or her authority to coerce any person to participate in political activity; and

(3) Soliciting, accepting or receiving uncompensated individual volunteer services from a subordinate for any political purpose.<sup>14</sup>

*B. Administrator Doan is a Covered Employee for Purposes of the Hatch Act*

The Hatch Act restricts the political activity of certain employees. 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 General Accounting Office.” 5 U.S.C. § 7322(1). Ms. Doan is the Administrator of the General Services Administration, which, pursuant to 40 U.S.C. § 301, is an agency in the executive branch of federal government. Consequently, Administrator Doan is “an employee” for purposes of the Hatch Act, and she is subject to the Act’s political activity restrictions.

*C. Administrator Doan’s Inquiry Concerning How Can We Help Our Candidates Violated the Hatch Act and its Implementing Regulations*

As detailed above, the Hatch Act prohibits a covered federal employee from using her official authority or influence for the purpose of interfering with or affecting the

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<sup>14</sup> The Hatch Act’s fundraising prohibition found at section 7323(a)(2) also prohibits a federal employee from soliciting, accepting, or receiving uncompensated volunteer services from an individual who is a subordinate. 5 C.F.R. § 734.303(d). Indeed, the third example in section 734.303 of Title 5 of the federal Code of Regulations states: “An employee may not ask a subordinate employee to volunteer on behalf of a partisan political campaign.”

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result of an election. 5 U.S.C. § 7323(a)(1). This section of the Act prohibits, among other things, a federal employee from “using her authority to coerce any person to participate in political activity.” 5 C.F.R. § 734.302(b). Political activity is defined as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.” 5 C.F.R. § 734.101. Examples of political activity include, but are not limited to: wearing political party buttons; distributing campaign literature or stuffing envelopes on behalf of a partisan political candidate; writing or making a political speech on behalf of a political party or partisan political candidate; soliciting uncompensated volunteer services on behalf of a political party or partisan political candidate; circulating a nominating petition on behalf of a partisan political candidate; organizing or giving a speech at a fundraiser or at a meet the candidate event; asking people to vote for or otherwise support a partisan political candidate; or organizing, managing, or strategizing for a partisan political campaign.

The political activity proscription found at section 7323(a)(1) has been interpreted to prohibit a supervisor from soliciting or exerting any coercion on subordinate employees to engage in political activity. Furthermore, due to the nature of supervisor-subordinate relationship, it is a well-established rule that, absent exculpatory circumstances, it is inherently coercive for a supervisor to ask a subordinate employee to contribute to a political cause. This is consistent with the Civil Service Commission’s early interpretation that the language found in section 7323(a)(1) “prohibit[s] a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates.” Political Activity of Federal Officers and Employees, U.S. Civil Service Commission, Pamphlet 20, at p. 23 (May 1966).

Consequently, section 7323(a)(1) of the Hatch Act prohibits a supervisor from requesting, inviting, directing, encouraging, or discouraging a subordinate employee to engage in political activity. Moreover, to further protect federal employees from feeling any pressure to perform political chores in order to curry favor with their superiors, the proscription at section 7323(a)(1) prohibits supervisors from accepting or receiving political services from a subordinate, even if the subordinate volunteers such services. 5 C.F.R. § 734.302(b)(3).<sup>15</sup> Therefore, inviting subordinate employees to participate in a discussion of ideas and/or political strategies on how to best help or promote a political party or a partisan political candidate is prohibited by the Hatch Act.

The facts in this case establish that Administrator Doan violated the Hatch Act. It is undisputed that Ms. Doan attended the brown bag luncheon on January 26, 2007, at GSA headquarters. As the Administrator, she was the highest ranking GSA employee at the January 26 meeting. Also in attendance were over thirty GSA political appointees, all of whom were subordinate to Administrator Doan.

It is also uncontested that during this meeting, Mr. Jennings, the Special Assistant to the President and Deputy Director of Political Affairs, gave a PowerPoint presentation.

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<sup>15</sup> The activity is also prohibited by section 7323(a)(2) of the Hatch Act. See 5 C.F.R. § 734.303.



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Mr. Jennings' initial slides analyzed the 2006 election results. The presentation included slides discussing where the Republican Party lost ground with swing voters and slides on the long term problems for the Republican Party. His presentation also contained numerous slides showing how the Republican Party's "72 Hour" campaign made a difference in closely won races for Republican candidates and how Republican candidates who did not utilize the "72 Hour" campaign lost ground.

Mr. Jennings' slide presentation concluded by looking ahead towards the 2007 and 2008 elections. The slides included a list of Congressional Democrats targeted to be unseated in the 2008 election, followed immediately by a list of Congressional Republicans whose seats need to be defended in the 2008 election. Mr. Jennings' presentation also contained a list of Congressional Senate seats up for election in 2008 and specifically designated the Senate seats the Republican Party needed to defend, as well as, the Senate seats targeted for a Republican Party offense. Mr. Jennings' presentation concluded with a slide entitled "Battle for Governors '07/'08." The slide identified all the states with 2007 and 2008 gubernatorial elections and designated four states as "Republican Offense," five states as "Republican Defense," and five states as "Not Competitive."

A question and answer session immediately followed Mr. Jennings' PowerPoint presentation. Numerous GSA Republican political appointees testified under oath that during the question and answer session, the Administrator asked, "how can we help our candidates?"

Considering the context in which Ms. Doan posed this question, is it clear that her question was an activity directed toward the success of the Republican Party and Republican candidates. Administrator Doan, a Republican Presidential Appointee, posed this question to an audience of more than thirty GSA Republican political appointees. Administrator Doan posed this question immediately after seeing a presentation that summarized the results of the 2006 election from the Republican Party's perspective, outlined future problems faced by the Republican Party, discussed the success and importance of the Republican Party's "72 Hour" campaign efforts, and highlighted important upcoming elections from the Republican Party's perspective. Thus, it is clear that when the Administrator asked, "What can we do to help our candidates," she was referring to Republican candidates. This conclusion is further evidenced by the numerous witnesses who testified that they interpreted the term "our candidates" to mean "Republican Candidates."

The Administrator's asking "how can we help our [Republican] candidates" during a meeting in which over thirty subordinates were participating is a *per se* violation of section 7323(a)(1). It was inherently coercive for Administrator Doan to ask and/or encourage her subordinates to engage in political activity. Not only did Administrator Doan solicit her subordinates for ideas about how to help our candidates, her question was an implied, and arguably direct, solicitation for the uncompensated volunteer services of her subordinates.

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Ms. Doan was attending the January meeting in her official capacity as the GSA Administrator – she opined that “it means a lot” for her to attend the brown bag luncheons because her political appointee subordinates like to be around the person in charge. As Administrator, she posed the question of how can we help our candidates to an audience made up almost entirely of her subordinate political appointees, many of whom she knew recently had volunteered for the Republican Party’s “72 hour” campaign. Therefore, her question was a tacit, and arguably express, solicitation for her subordinate employees to help the Republican candidates. This is evidenced by the Administrator’s framing of her inquiry in terms of how can “we” help; using the term “we” indicates that she was asking not on her own behalf, but on behalf of all of her subordinate employees who were participating in the meeting.

In addition, posing this question to a group of her subordinate political appointees, as opposed to Mr. Jennings in private, indicates that Administrator Doan was soliciting ideas on how to assist candidates not only from Mr. Jennings, but also from her subordinates. Indeed, the interaction that followed Administrator Doan’s question was akin to a political brainstorming or strategy session utilized by political operatives. Numerous witnesses testified that, following Ms. Doan’s question about what can we do to help, Mr. Stamison immediately raised the opening of the San Francisco federal building. He noted that Speaker Pelosi would be in attendance and stressed the importance of having “our guys” attend. The Administrator then discussed the Florida courthouse opening and emphasized the importance of having Senator Mel Martinez attend because former President Clinton might be there. Mr. Martinez’s importance as a United States Senator and also the co-chair of the Republican National Committee should not be overlooked. This political brainstorming session abruptly ended when Mr. Jennings stated that the discussion needed to be “taken off-line.”

Administrator Doan induced her subordinates to engage in the type of political brainstorming session that is prohibited from occurring while the political appointees are on duty or in a federal workplace. The GSA Administrator displayed no reservations in her willingness to commit GSA resources, including its human capital, to the Republican Party. Her actions, to be certain, constitute an obvious misuse of her official authority and were made for the purpose of affecting the result of an election. One can imagine no greater violation of the Hatch Act than to invoke the machinery of an agency, with all its contracts and buildings, in the service of a partisan campaign to retake Congress and the Governors’ mansions.

As explained above, one of Congress’ primary purposes of enacting the Hatch Act was to protect federal employees from pressure and from express or tacit invitations to perform political chores in order to curry favor with their superiors rather than to act out their own beliefs. To protect federal employees from such pressure, section 7323(a)(1) of the Act prohibits supervisors from soliciting or encouraging their subordinate employees to engage in political activity, and from soliciting or accepting the uncompensated volunteer services from a subordinate. Thus, the purpose of section 7323(a)(1) is to protect employees from the precise political actions that occurred during the January 26 meeting.

Based on the above, the Special Counsel has concluded that Administrator Doan violated the Act's prohibition against using one's official authority to affect the result of an election.

#### **IV. DISCIPLINARY ACTION**

As explained above, the Special Counsel has concluded that the evidence supports a finding that Administrator Doan violated the section 7323 of the Hatch Act. Section 7326 of the Act provides:

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

Notwithstanding the above, section 1215 of Title 5 of the United States Code provides:

(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having . . . violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216,<sup>16</sup> . . . the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the [Merit Systems Protection] Board.

\* \* \*

(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate . . . , the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

Due to Administrator Doan's status as a Presidential appointee confirmed by the Senate, the President, not the Merit Systems Protection Board must make any decision

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<sup>16</sup> Section 1216 states: "(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning - (1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees . . . ."

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regarding imposition of disciplinary action. Therefore, pursuant to 5 U.S.C. § 1215, the Special Counsel hereby submits this Report of Prohibited Political Activity, together with any response of Administrator Doan, to the President for appropriate action.