

C A M P A I G N F O R

ACCOUNTABILITY

September 21, 2020

SENT VIA E-MAIL: hotline@hudoig.gov ; ContactOGE@oge.gov

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036

The Honorable Rae Oliver Davis
Inspector General
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 8274
Washington, D.C. 20410

The Honorable Emory A. Rounds III
Director
U.S. Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, D.C. 20005

Re: Violation of the Hatch Act and OGE Regulations by Lynne Patton

Dear Special Counsel Kerner, Inspector General Davis and Director Rounds:

Campaign for Accountability (“CfA”), a non-partisan, nonprofit ethics watchdog, respectfully requests that the Office of Special Counsel (“OSC”), the Inspector General of the Department of Housing and Urban Development (“HUD”) and the Office of Government Ethics (“OGE”) investigate whether HUD Regional Administrator for Region II Lynne Patton violated the Hatch Act and applicable federal regulations by using the authority and resources of her office to solicit political activity from persons who had business before her office. The OSC has determined that Ms. Patton violated the Hatch Act on two prior occasions and warned her that any additional Hatch Act violations would be considered willful and knowing.¹ Accordingly, if you determine that Ms. Patton has committed a third and more egregious violation of the Hatch Act, it would be appropriate to remove her from federal service.

Factual Background

¹ Letter from Erica S. Hamrick, Deputy Chief, Hatch Act Unit, Office of Special Counsel to Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington (September 18, 2019) (*available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2019/09/18154856/Ltr-to-CREW-re-Patton.pdf>*).

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Lynne Patton is the Regional Administrator for HUD Region II, which has jurisdiction over all HUD programs in New York and New Jersey.² HUD Region II oversees all HUD programs involving the New York City Housing Authority (“NYCHA”). NYCHA is the largest public housing authority in North America with over three hundred public housing developments across all five boroughs of New York City. Tenants in NYCHA public housing properties pay a maximum rent equal to thirty percent of the household’s income with the remainder subsidized by the Department of Housing and Urban Development.³ Accordingly, NYCHA tenants are the ultimate beneficiaries of HUD grants to NYCHA.

In mid-August, Regional Administrator Patton, using the authority and resources of her office, recruited four NYCHA tenants to appear in a video praising President Donald J. Trump’s record on public housing (“the NYCHA video”).⁴ At the time that Regional Administrator Patton solicited the NYCHA tenants to appear in the video, they were told that the purpose of the video was to document the conditions in NYCHA’s buildings.⁵ In fact, Regional Administrator Patton knew at the time that she solicited the tenants’ participation in the video that the video was being produced by a video production company for Donald J. Trump for President, Inc. (“the Trump campaign”) and that the true purpose of the video was to show it at the upcoming Republican National Convention to support the re-election of President Trump.⁶

Regional Administrator Patton interviewed the four NYCHA tenants herself and the video contained three still photographs of Regional Administrator Patton in the process of carrying out her official duties overseeing NYCHA.⁷ It was only after the interviews had been filmed that three of the four NYCHA tenants were told that the interviews were for the Republican Party.⁸ They were never told the video would be shown at the Republican National Convention to support the re-election of President Trump.⁹ In an interview with the Fox News TV affiliate in New York City after the convention, Regional Administrator Patton admitted the video had been produced by Jamestown Associates, a video production company for the Trump campaign.¹⁰

² See, e.g., U.S. Department of Housing and Urban Development, Office of the Regional Administrator Serving New York and New Jersey (available at <https://www.hud.gov/states/shared/working/r2/fpm/contacts>).

³ New York City Housing Authority, NYCHA 2020 Fact Sheet (March 2020) (available at https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2020_Final.pdf).

⁴ Matthew Haag, *N.Y.C. Tenants Say They Were Tricked Into Appearing in R.N.C. Video*, New York Times (Aug. 28, 2020)(hereinafter “NYT HUD/RNC article”)(available at <http://www.nytimes.com/2020/08/28/nyregion/nyc-tenants-rnc-video-trump.html>).

⁵ *Id.*

⁶ *Id.*

⁷ *Republican National Convention-Night 4*, Republican National Convention (Aug. 27, 2020)(available at <https://www.youtube.com/watch?v=8cfl6UbltDK>).

⁸ NYT HUD/RNC article.

⁹ *Id.*

¹⁰ *Lynne Patton reacts to NYCHA video played at RNC* (Aug. 31, 2020)(available at <https://www.fox5ny.com/video/845797>). See also *Donald J. Trump for President, Inc.*, FEC Form 3P (Aug. 20, 2020)(online at <https://docquery.fec.gov/cgi-bin/forms/C00580100/1434701/sb/23/4>).

Potential Violations

The Hatch Act – 5 U.S.C. §§ 7321-26

One of the purposes of the Hatch Act was to prevent federal employees from using the implied threat of the denial of benefits to coerce recipients of public assistance into engaging in political activity.¹¹ “Political activity” is defined broadly to include any “activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”¹² Accordingly, the Office of Special Counsel advises federal employees that the Hatch Act prohibits them from “knowingly solicit[ing] . . . the participation in any political activity of anyone who has business before their employing office.”¹³ This broad prohibition applies specifically to soliciting political activity from individuals who are the beneficiaries of federal grants.¹⁴

There can be no doubt that Regional Administrator Patton solicited NYCHA tenants to engage in political activity. At the time she solicited their participation in the NYCHA video, Regional Administrator Patton knew the production of the video was going to be paid for by the Trump campaign and would be aired during the Republican National Convention. There scarcely could be a clearer example of an activity directed toward the success of a political party or candidate.

Nor is there any doubt that the NYCHA tenants who were solicited by Regional Administrator Patton to appear in the NYCHA video are members of a class of individuals who are intended to be protected from political coercion by the Hatch Act. All of the NYCHA tenants who appeared in the video are residents of NYCHA public housing developments.¹⁵ NYCHA uses grants from the Department of Housing and Urban Development to subsidize the

¹¹ 5 U.S.C. § 7323(a)(4)(A); 5 C.F.R. § 734.305(a). Indeed, the Hatch Act makes it a crime for a HUD official to use her official authority to coerce tenants in HUD-subsidized properties to engage in political activity to support the nomination or election of a candidate for President. Any “person employed in any administrative position by the United States, or by any department or agency thereof, . . . in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses [her] official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President . . . shall be fined under this title or imprisoned not more than one year, or both.” 18 U.S.C. § 595. It is also a crime for a HUD official to solicit tenants in HUD-subsidized properties for contributions, including in-kind contributions, for any political purpose. “Whoever solicits . . . or is in any manner concerned in soliciting . . . any contribution for any political purpose from any person known by [her] to be entitled to, or receiving [any] benefit provided for or made possible by any Act of Congress appropriating funds for . . . relief purposes, shall be fined under this title or imprisoned not more than one year, or both.” 18 U.S.C. § 604.

¹² 5 C.F.R. § 734.101.

¹³ U.S. Office of Special Counsel, *A Guide to the Hatch Act for Federal Employees* (Sept. 2014)(available at <https://osc.gov/Documents/Outreach%20and%20Training/Handouts/A%20Guide%20to%20the%20Hatch%20Act%20for%20Federal%20Employees.pdf>).

¹⁴ 5 U.S.C. § 7323(a)(4)(A); 5 C.F.R. § 734.305(a).

¹⁵ *NYT HUD/RNC article*

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rent paid by these tenants.¹⁶ At any one time, NYCHA has numerous grant applications pending before Region II. Accordingly, it appears Regional Administrator Patton violated the Hatch Act by soliciting political activity from individuals who had business pending before her office.¹⁷

Misuse of Position – 5 C.F.R. § 2635 Subpart G

Office of Government Ethics regulations govern a federal employee’s use of her authority as well as the information and resources to which she has access because of her federal employment.¹⁸ A federal employee is prohibited from using her public office for the private gain of friends, relatives or persons with whom the federal employee is affiliated in a nongovernmental capacity.¹⁹ In particular, a federal employee is prohibited from using her government position or any authority associated with her public office in a manner “that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to . . . friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.”²⁰ In addition, a federal employee may not allow the improper use of nonpublic information to further the private interest of another person.²¹ “Nonpublic information” in this context is information the federal employee “gains by reason of Federal employment” and which she knows has not been made available to the general public.²²

Regional Administrator Patton is a close personal friend of President Trump and other members of his immediate family. She was an employee of the Trump Organization for over a decade, served as the vice president of the Eric Trump Foundation, and planned Eric Trump’s wedding.²³ As previously discussed, she used her authority as Regional Administrator for Region II to “coerce and induce” NYCHA tenants to appear in a video she knew was being paid

¹⁶ New York City Housing Authority, NYCHA 2020 Fact Sheet (March 2020) (available at https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2020_Final.pdf).

¹⁷ 5 U.S.C. § 7323(a)(4)(A); 5 C.F.R. § 734.305(a).

¹⁸ 5 C.F.R. § 2635.701.

¹⁹ 5 C.F.R. § 2635.702.

²⁰ 5 C.F.R. § 2635.702(a).

²¹ 5 C.F.R. § 2635.703(a). See, e.g., U.S. Department of State, *Memorandum re: Rules on Political Activities* from the Office of the Legal Advisor to All Presidential Appointees and All Political Appointees (Dec. 3, 2019) (available at <https://www.politico.com/f/?id=00000174-227a-d006-a7f4-e27fc5690000>). Moreover, it is a crime under the Hatch Act for a HUD official to share the names of tenants in a HUD-subsidized property with a candidate for President or his campaign committee for political purposes. “Whoever, for political purposes, furnishes or discloses any list or names of persons receiving . . . benefits provided or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for . . . relief purposes, to a political candidate, committee, campaign manager . . . and [w]hoever receives any such list or names for political purposes [s]hall be fined under this title or imprisoned not more than one year, or both.” 18 U.S.C. § 605. Accordingly, Regional Administrator Patton may have committed a criminal violation by providing the Trump campaign with the names of the tenants who appeared in the NYCHA video and the Trump campaign may have committed a criminal violation by accepting that information.

²² 5 C.F.R. § 2635.703(b).

²³ Yamiche Alcindor, “Give Me A Chance,” *Trump Associate-Turned-Housing-Official Says*, New York Times, June 26, 2017 (“I am close to the Trump family. I am loyal to the Trump family . . .”)(available at <https://www.nytimes.com/2017/06/26/us/politics/lynn-patton-hud.html>).

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for by the Trump campaign and would be shown at the Republican National Convention for the private benefit of her personal friend Donald Trump. OGE regulations prohibit a federal employee from using her authority to provide any benefit, “financial or otherwise,” to a personal friend.²⁴

Finally, Regional Administrator Patton misused her position by using information she would not have possessed but for her federal employment to further the private interests of Donald Trump. The four NYCHA tenants that Regional Administrator Patton solicited and induced to appear in the NYCHA video were all officers of tenant associations at different NYCHA public housing developments.²⁵ Regional Administrator Patton would not have known these individuals but for her employment at HUD. Moreover, Regional Administrator Patton would not have had the personal contact information for these individuals but for her federal employment. Regional Administrator Patton misused information she obtained in the course of her federal employment to further the private interests of Donald Trump by soliciting and inducing these individuals to appear in the NYCHA video to support his re-election.²⁶

Appropriate Disciplinary Action

Unfortunately, this is not Regional Administrator Patton’s first violation of the Hatch Act – far from it. The Office of Special Counsel has previously determined Regional Administrator Patton violated the Hatch Act on two separate occasions. The OSC determined Regional Administrator Patton violated the Hatch Act by using her official Twitter account, “@LynnePattonHUD,” to engage in political activity, liking tweets that advocated for and against partisan political candidates and that originated with a political party.²⁷ The OSC determined that Regional Administrator Patton committed a second violation of the Hatch Act by displaying a Trump campaign hat in her HUD office.²⁸ The OSC warned Regional Administrator Patton at the time of her second violation that “if in the future she engages in prohibited political activity while employed in a position covered by the Hatch Act, we will consider such activity to be a willful and knowing violation of the law, which could result in further action.”²⁹

The time for such action is now. Like other Trump Administration officials, Regional Administrator Patton has demonstrated contempt for the Hatch Act and other government ethics regulations. Moreover, her repeated Hatch Act violations have grown progressively more egregious. The actions described here, which took place well after she had been warned by the

²⁴ 5 C.F.R. § 2635.702(a).

²⁵ *NYT HUD/RNC article*.

²⁶ 5 C.F.R. § 2635.703(a).

²⁷ Letter from Erica S. Hamrick, Deputy Chief, Hatch Act Unit, Office of Special Counsel to Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington (September 18, 2019) (*available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2019/09/18154856/Ltr-to-CREW-re-Patton.pdf>*).

²⁸ *Id.*

²⁹ *Id.*

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Office of Special Counsel that any further violations would be regarded as willful and knowing, are deserving of the harshest possible sanction – removal from federal service.

There is ample precedent for such a sanction. The Merit System Protection Board, which adjudicates Hatch Act violations, has repeatedly held that removal is the appropriate sanction when federal employees were warned before engaging in prohibited political activity.³⁰

Indeed, the Office of Special Counsel just last year recommended that Regional Administrator Patton's colleague and fellow Hatch Act recidivist Kellyanne Conway be removed from federal service.³¹ Like Ms. Conway, Regional Administrator Patton's violations of the Hatch Act have been egregious, notorious and ongoing.³² Regional Administrator Patton was given a clear warning and had clear knowledge of the Hatch Act well before she engaged in her most recent violations, yet she continues to disregard the law.³³ Removal from federal service is clearly warranted.

Conclusion

The Hatch Act is intended to prevent federal employees from using their authority and the resources of their office to engage in partisan political activity. Regional Administrator Patton has repeatedly violated the Hatch Act and she has continued to do so even after being specifically warned about the consequences of any further violations. The Office of Special Counsel, the Inspector General of the Department of Housing and Urban Development, and the Office of Government Ethics should commence an immediate investigation of Regional Administrator Patton and take or recommend all appropriate disciplinary action, up to and including removal from federal service. Finally, should your investigation reveal that Regional Administrator Patton likely committed criminal violations of the Hatch Act, please refer this matter to the Department of Justice for further action.

Sincerely,



Michelle J. Kupper-Smith
Executive Director

³⁰ See, e.g., *Special Counsel v. Lewis*, 121 M.S.P.R. 109 (2014); *Special Counsel v. Ware*, 114 M.S.P.R. 128 (2010); *Special Counsel v. Briggs*, 110 M.S.P.R. 1 (2008); *Special Counsel v. Acconcia*, 107 M.S.P.R. 60 (2007); *Special Counsel v. Eisinger*, 103 M.S.P.R. 252; and *Special Counsel v. Simmons*, 90 M.S.P.R. 83 (2001).

³¹ U.S. Office of Special Counsel, *Report of Prohibited Activity Under the Hatch Act OSC File Nos. HA-19-0631 & HA-19-3395 (Kellyanne Conway)* (May 30, 2019) (available at [https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kellyanne%20Conway%20\(HA-19-0631%20&%20HA-19-3395\).pdf](https://osc.gov/Documents/Hatch%20Act/Reports/Report%20of%20Prohibited%20Political%20Activity,%20Kellyanne%20Conway%20(HA-19-0631%20&%20HA-19-3395).pdf)).

³² *Id.*

³³ *Id.*