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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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STAFF DIRECTOR

July 14, 2014

The Honorable Lee E. Goodman
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Goodman:

The Committee on Oversight and Government Reform continues to conduct oversight of the political activities of Federal Election Commission employees during work hours. In April 2014, the Office of Special Counsel (OSC) announced the resignation of an FEC attorney who admitted to Hatch Act violations after an investigation by the OSC and the FEC Office of Inspector General (OIG).¹ Recent information obtained by the Committee suggests that the FEC OIG could not pursue criminal prosecution for the misconduct because the attorney's hard drive had been recycled by the FEC. Accordingly, we ask your assistance in better understanding the nature and circumstances of the FEC's recycling of this hard drive and the FEC's data retention policies.

On April 29, 2014, the OSC announced the resignation and accompanying two-year prohibition from federal employment of an FEC employee who admitted to violating the Hatch Act's prohibition on soliciting partisan campaign contributions.² Subsequent news reports identified the FEC employee as April Sands, an attorney in the FEC's Enforcement Division.³ The Enforcement Division is responsible for the "overall enforcement" of the Federal Election Campaign Act and, in particular, "investigates alleged violations of the law, recommends to the Commission appropriate action to take with respect to apparent violations, and directly negotiates conciliation agreements . . . with respondents or their counsel to resolve the matter."⁴

Documents obtained by the Committee during its oversight have raised concerns about the frequency and fervor of Ms. Sands' partisan political activities during her time as an FEC enforcement attorney. While employed as an FEC enforcement attorney, Ms. Sands utilized a

¹ Press Release, Office of Special Counsel, OSC Obtains Disciplinary Action in Two Hatch Act Cases (Apr. 29, 2014).

² *Id.*

³ J. Christian Adams, *Federal Election Commission Lawyer: Politicking for Obama on Taxpayer Time*, PJ MEDIA, Apr. 30, 2014; Hans A. von Spakovsky, *Illegal Political Activity at the FEC*, NAT'L REVIEW ONLINE, May 1, 2014.

⁴ Fed. Election Comm'n, Associate General Counsel for Enforcement, http://www.fec.gov/about/offices/OGC/AGC_enforcement.shtml (last visited July 7, 2014).

Twitter handle, @ReignOfApril, from which she engaged in overtly partisan political activities. For example, Ms. Sands posted Twitter messages during regular work hours soliciting or endorsing political contributions to Democratic candidates, including President Barack Obama:

Figure 1: Tweet of @ReignOfApril, Wednesday, July 18, 2012, 12:14 p.m.⁵



Figure 2: Tweet of @ReignOfApril, Tuesday, Aug. 21, 2012, 10:23 a.m.⁶



⁵ Tweet of @ReignOfApril (July 18, 2012, 12:14 p.m.). [FEC OIG 2289]

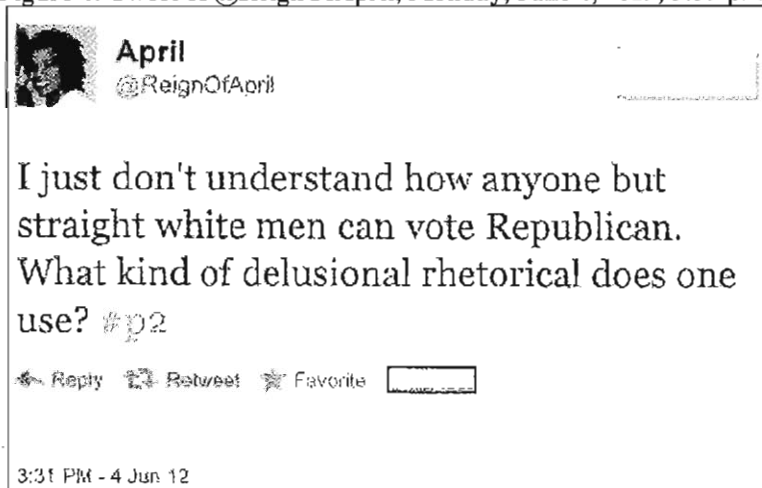
⁶ Tweet of @ReignOfApril (Aug. 21, 2012, 10:23 a.m.) [FEC OIG 2308]

In addition, during regular work hours, Ms. Sands posted Twitter messages critical of Republican elected officials and messages that demonstrated a discernible bias against Republican candidates:

Figure 3: Tweet of @ReignOfApril, Tuesday, Sept. 18, 2012, 9:53 a.m.⁷



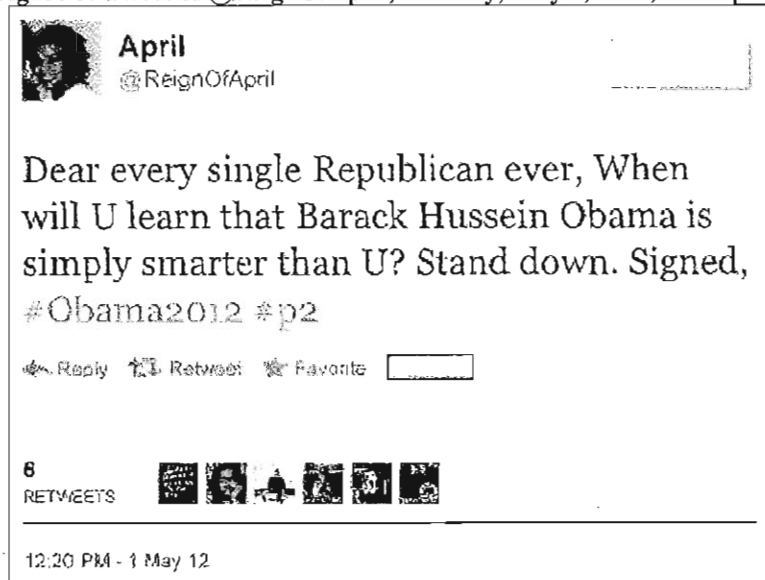
Figure 4: Tweet of @ReignOfApril, Monday, June 4, 2012, 3:31 p.m.⁸



⁷ Tweet of @ReignOfApril (Sept. 18, 2012, 9:53 a.m.). [FEC OIG 2497]

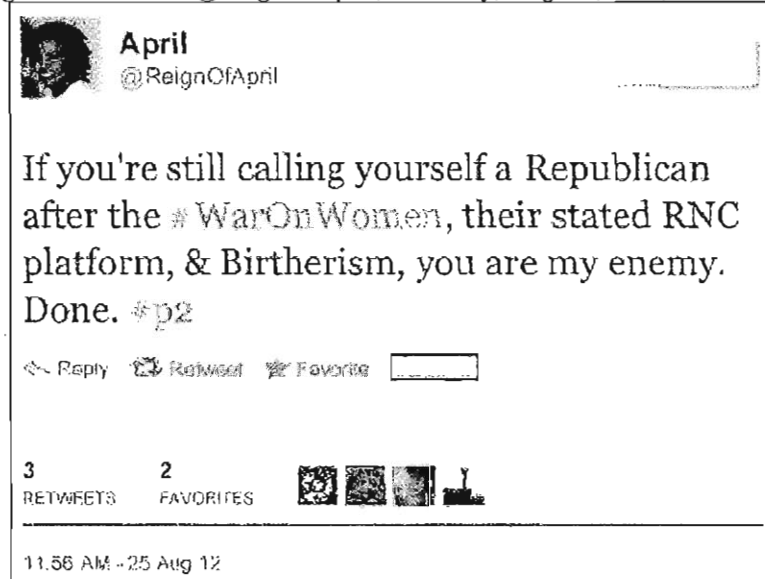
⁸ Tweet of @ReignOfApril (June 4, 2012, 3:31 p.m.). [FEC OIG 2531]

Figure 5: Tweet of @ReignOfApril, Tuesday, May 1, 2012, 12:20 p.m.⁹



The bias exhibited in these messages is striking, especially for an attorney charged with the responsibility to enforce federal election laws fairly and dispassionately. This bias was so strong that Ms. Sands even referred to all Republicans as her “enemy”:

Figure 6: Tweet of @ReignOfApril, Saturday, Aug. 25, 2012, 11:56 a.m.¹⁰



⁹ Tweet of @ReignOfApril (May 1, 2012, 12:20 p.m.). [FEC OIG 2535]

¹⁰ Tweet of @ReignOfApril (Aug. 25, 2012, 11:56 a.m.). [FEC OIG 2464]

Although we recognize and appreciate the right of every citizen to participate in the political process, the Hatch Act limits certain political activities conducted by employees of the Executive Branch.¹¹ In particular, the Act prohibits Executive Branch employees from engaging in partisan political activity while on official duty at a federal workplace.¹² Certain employees, including FEC employees, are further restricted by the Hatch Act from engaging in partisan political campaigns or management.¹³ Additionally, federal law makes it a crime for a federal employee “to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties”¹⁴

As a part of a settlement agreement with the OSC, Ms. Sands admitted to violating the Hatch Act by soliciting political contributions via Twitter, conducting political activity through her Twitter account, and participating in a political discussion “via webcam from an FEC conference room . . . while on duty.”¹⁵ The FEC OIG sought to pursue criminal charges stemming from Ms. Sands’ solicitation of political contributions while on duty inside the FEC building.¹⁶ However, the FEC recycled Ms. Sands’ hard drive before the OIG was able to seize it, and therefore the OIG was unable to show that Ms. Sands’ solicitations and political activity were done from an FEC computer.¹⁷ The U.S. Attorney’s Office for the District of Columbia thereafter declined criminal prosecution.¹⁸

According to news reports, Ms. Sands worked for former IRS official Lois Lerner when Ms. Lerner served as the FEC’s Associate General Counsel for Enforcement.¹⁹ It is unclear whether Ms. Sands ever communicated with Ms. Lerner after Ms. Lerner moved to the IRS; however, the Committee is aware that Ms. Lerner maintained communication with some former FEC colleagues.²⁰ Ms. Lerner even apparently shared information protected by section 6103 of the tax code with the FEC.²¹

The FEC’s failure to retain Ms. Sands’ hard drive prevented the FEC OIG from fully pursuing appropriate criminal sanctions for Ms. Sands’ admitted violations of federal law. Like the IRS’s destruction of Lois Lerner’s hard drive, the FEC’s recycling of Ms. Sands’ hard drive may have also destroyed material responsive to Freedom of Information Act and congressional oversight requests.²² Accordingly, to assist the Committee in better understanding how and

¹¹ 5 U.S.C. §§ 7321-26.

¹² *Id.* §§ 7323-24.

¹³ See U.S. Office of Special Counsel, The Hatch Act [https://www.osc.gov/Resources/HA%20Poster%20_Further%20Restricted%20Employees%20-%20with%20OSC%20contact%20info%20\(5-11\).pdf](https://www.osc.gov/Resources/HA%20Poster%20_Further%20Restricted%20Employees%20-%20with%20OSC%20contact%20info%20(5-11).pdf) (last visited July 8, 2014).

¹⁴ 18 U.S.C. § 607(a).

¹⁵ See Fed. Election Comm’n Office of Inspector Gen., Report of Investigation: Hatch Act Violations, Case No. INV-13-04, at 6 (June 25, 2014). [FEC OIG 2638-48]

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4.

¹⁸ *Id.*

¹⁹ See, e.g., Hans A. von Spakovsky, *Illegal Political Activity at the FEC*, NAT’L REVIEW ONLINE, May 1, 2014.

²⁰ See Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov’t Reform, to Ellen L. Weintraub, Fed. Election Comm’n (Aug. 7, 2013).

²¹ See Eliana Johnson, *Lerner’s FEC problem*, NAT’L REVIEW ONLINE, Aug. 12, 2013.

²² See Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov’t Reform, to Lee E. Goodman, Fed. Election Comm’n (May 27, 2014) (requesting material about Ms. Sands’s Hatch Act violations).

The Honorable Lee E. Goodman

July 14, 2014

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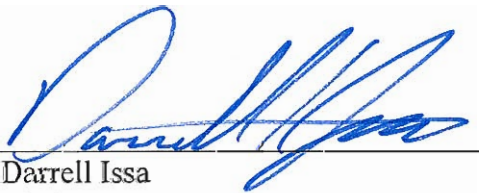
when the FEC recycled the hard drive used by Ms. Sands, we ask that you provide a briefing for Committee staff by July 28, 2014. In addition, we respectfully request that you produce the following material:

1. All documents and communications referring or relating to the recycling of Ms. Sands' hard drive, including all correspondence between or among FEC employees and outside vendors or contractors involved in the recycling, and all FEC requisition request forms and other records concerning the hard drive.
2. All documents and communications referring or relating to the FEC's practices and policies for retaining FEC documents responsive to congressional requests, inspector general investigations, the Freedom of Information Act, or litigation.
3. All documents and communications referring or relating to the FEC's practices and policies for retaining and archiving all FEC electronic information, including but limited to FEC e-mails, electronic files, instant messages, and Internet browsing histories.

We ask that provide this material as soon as possible, but no later than 5:00 p.m. on July 28, 2014.

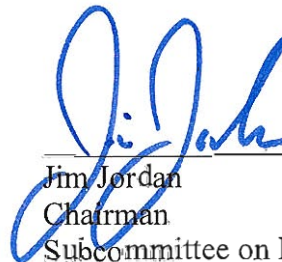
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact David Brewer or Drew Colliatie of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.



Darrell Issa
Chairman

Sincerely,



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.