

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
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May 7, 2018

The Honorable Henry Kerner  
Special Counsel  
Office of Special Counsel  
1730 M Street, NW, Suite 218  
Washington, DC 20036

Dear Mr. Kerner:

In light of several recent events, we write to request that you investigate all three Republican FCC Commissioners regarding their involvement with the 2018 Conservative Political Action Conference (CPAC). In addition to your finding last week that Commissioner Michael O’Rielly did in fact violate the Hatch Act during his appearance at CPAC,<sup>1</sup> the three Republican FCC Commissioners have also refused to cooperate with Congressional oversight into their promotion of and participation in CPAC. Moreover, a recent letter from the FCC’s General Counsel demonstrates a fundamental misunderstanding of the application of the Act, which may help explain a recent increase in political activity among the Republican FCC Commissioners. We therefore additionally request that your office consider conducting training sessions at the FCC to help employees better understand how to comply with the Hatch Act.

FCC Chairman Ajit Pai, Commissioner Michael O’Rielly, and Commissioner Brendan Carr participated at CPAC on February 23, 2018.<sup>2</sup> At the Conference, the National Rifle Association presented Chairman Pai with an award (which he later returned),<sup>3</sup> and Commissioner O’Rielly called for the re-election of the President.<sup>4</sup> Further, Chairman Pai’s name, official title,

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<sup>1</sup> Letter from Erica S. Hamrick, Deputy Chief, Hatch Act Unit, Office of Special Counsel, to Austin R. Evers, Executive Director, Project on Government Oversight (May 1, 2018).

<sup>2</sup> *The FCC’s Republicans went to a Conservative Confab. One won a gun, the Other an Ethics Complaint*, Washington Post, (Feb. 23, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

social media links, and photograph were featured prominently in promotional materials for the event, an example of which is attached.<sup>5</sup>

The Energy and Commerce Committee is charged with oversight of the FCC, an important function that ensures accountability for agencies led by unelected officials. Accordingly, we launched an investigation into whether the FCC Chairman and Commissioners acted appropriately as leaders of an independent agency. Our inquiry (attachment A) asked that Chairman Pai, Commissioner O’Rielly, and Commissioner Carr *separately* answer straightforward questions about their participation in CPAC and to provide supporting documentation.<sup>6</sup> We specifically asked for separate responses to reflect the individual facts of each case.<sup>7</sup>

Rather than respond to these serious issues, the Chairman and the Commissioners had the General Counsel write a blanket *post hoc* analysis they treated as an excuse to avoid Congressional oversight.<sup>8</sup> Even so, the General Counsel’s letter (attachment B) is misleading and incomplete, ultimately raising more questions than it answers.<sup>9</sup>

First, the letter is misleading on the law. Specifically, the General Counsel selectively quotes from your website to support his contention that because the group that organized CPAC—the American Conservative Union (ACU)—is a 501(c)(4) and not a “partisan political group” under the Hatch Act. As a result, the General Counsel’s letter argues that the Chairman and Commissioners were not required to abide by the Hatch Act by participating at the event. This contention is simply not true.

In fact, the General Counsel failed to note the very next sentence on your website that states “because 501(c)(4) organizations may participate in some political activity, employees should be cautious about engaging in any 501(c)(4)-related activity while at work.”<sup>10</sup> You have

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<sup>5</sup> CPAC 2018 Facebook Account (available at: [www.facebook.com/CPACNews/photos/a.10152159524067398.1073741826.18079407397/10155970417537398/?type=3&theater](https://www.facebook.com/CPACNews/photos/a.10152159524067398.1073741826.18079407397/10155970417537398/?type=3&theater)) (accessed May 1, 2018).

<sup>6</sup> Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, to Chairman Ajit Pai, Commissioner Brendan Carr, and Commissioner Michael O’Reilly (March 26, 2018).

<sup>7</sup> *Id.*

<sup>8</sup> Letter from Thomas Johnson, General Counsel, Federal Communications Commission, to Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, and Rep. Michael F. Doyle, Ranking Member, Subcommittee on Communications and Technology, House Committee on Energy and Commerce (Apr.16, 2018).

<sup>9</sup> *See id.*

<sup>10</sup> U.S. Office of Special Counsel, Hatch Act Federal FAQs ([osc.gov/Pages/HatchAct-FAQs.aspx](https://osc.gov/Pages/HatchAct-FAQs.aspx)) (accessed May 1, 2018).

similarly found that the Act does not prohibit employees from participating in the “nonpartisan activities” of a community organization, leaving open the question of whether federal officials are banned from participating in, or raising funding for, partisan activity conducted by the 501(c)(4).<sup>11</sup> The FCC’s General Counsel nonetheless makes the conclusory assertion that there was “no need for any Commissioner to abide by the limitations that the [Hatch] Act places on the use of appropriated funds, official staff, or agency resources in connection’ with the CPAC.”<sup>12</sup> Our questions to the Chairman and the Commissioners were specifically aimed at determining whether the Chairman, the Commissioners, or their staff participated in prohibited or inappropriate activity.

The letter from the General Counsel is also factually misleading. In particular, the General Counsel states that the participation of the Chairman and Commissioners at CPAC was not ethically questionable.<sup>13</sup> Yet, the General Counsel carefully avoids mentioning that Commissioner O’Rielly made prohibited partisan political remarks at the event by encouraging people to re-elect President Trump, which you have since found to violate the Hatch Act.<sup>14</sup> Chairman Pai also received an award at the conference that his own ethics office determined was impermissible.<sup>15</sup> These incidents run counter to the General Counsel’s overly broad claim that nothing about the event raised ethical questions.

Finally, the letter from the General Counsel was incomplete. We had asked for documentation showing any guidance the Chairman and each Commissioner had received from the FCC’s ethics officials *prior* to their participation in the event.<sup>16</sup> We also asked what research they did *prior* to the event to make sure their likenesses would not be used to raise funds that would be used for political purposes.<sup>17</sup> We specifically noted that the Chairman’s likeness and official title were used in advertisements used to encourage people to pay upwards of \$5,000 to attend the event.<sup>18</sup>

Rather than respond to these questions, the General Counsel simply states—without supporting evidence—that “career ethics officials advised the Chairman’s Office prior to the event that it would be appropriate for the three Commissioners to appear together on the panel in

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<sup>11</sup>U.S. Office of Special Counsel, Federal Hatch Act Advisory: Serving as an Officer for an Organization that has a PAC (Feb. 11, 2000).

<sup>12</sup>*See* note 7.

<sup>13</sup> *See* note 7.

<sup>14</sup> *See* note 1.

<sup>15</sup> *See* note 1.

<sup>16</sup> *See* note 5.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

question.”<sup>19</sup> The General Counsel provides no evidence that the Commissioners asked for separate counsel before attending CPAC or that the Chairman sought approval to lend his likeness and official title to raise funds for the event. The General Counsel also failed to provide any accounting for how much this event cost taxpayers.

These actions raise serious concerns about whether the Chairman and Commissioners’ may have knowingly violated ethical restrictions. We hope you will assist us in this investigation.

Should you have any questions regarding this letter, please contact Jerry Leverich of the of the Democratic Committee staff at (202) 225-3641.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone Jr." in a cursive style.

Frank Pallone, Jr.  
Ranking Member

A handwritten signature in blue ink that reads "Mike Doyle" in a cursive style.

Mike Doyle  
Ranking Member  
Subcommittee on Communications and  
Technology

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<sup>19</sup> See note 7.