

**American Democracy Legal Fund
455 Massachusetts Avenue, NW
Washington, DC 20001**

November 4, 2016

U.S. Office of Special Counsel
Hatch Act Unit
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505

Re: Hatch Act Violation, Federal Bureau of Investigation Agents

To the Office of Special Counsel:

Pursuant to 5 U.S.C. § 1216 (a)(1)(2), this letter constitutes a formal complaint and request that the Office of Special Counsel promptly investigate blatant violations of the Hatch Act by unnamed agents of the Federal Bureau of Investigation (“FBI” or “Bureau”). Publicly available news reports indicate that FBI agents throughout the Bureau – agents “known to be hostile to Hillary Clinton” – are using their official positions to leak information to surrogates of the Trump campaign in order to influence the presidential election.¹ Such blatant abuse of authority is a clear violation of federal law and should be investigated immediately. We request the Office of Special Counsel not only launch an investigation but also take immediate and appropriate remedial action against the FBI to ensure these violations do not continue through election day.

Over the past week, unnamed FBI sources began leaking information to the media regarding FBI investigations into Hillary Clinton and the Clinton Foundation.² News reports indicate that FBI agents were disappointed with FBI Director James Comey’s decision not to press charges against Clinton over the summer, which has prompted agents to leak information in the days leading up to the presidential election, specifically to influence the outcome of the election.³ FBI sources also describe the Bureau as “Trumpland,” and explain that “the reason why they’re leaking is

¹ Mark Hosenball, *FBI Fear of Leaks Drove Decision on Emails Linked to Clinton: Sources*, Reuters (Nov. 3, 2016), available at <http://www.reuters.com/article/us-usa-election-fbi-leaks-idUSKBN12Y2QD>; Wayne Barrett, *Meet Donald Trump’s Top FBI Fanboy*, Daily Beast (Nov. 3, 2016), available at <http://www.thedailybeast.com/articles/2016/11/03/meet-donald-trump-s-top-fbi-fanboy.html?via=desktop&source=twitter>.

² Spencer Ackerman, *The FBI is Trumpland: Anti-Clinton Atmosphere Spurred Leaks, Sources Say*, The Guardian (Nov. 3, 2016), available at <https://www.theguardian.com/us-news/2016/nov/03/fbi-leaks-hillary-clinton-james-comey-donald-trump>; Eric Tucker, *AP Sources: FBI Agents Sought Clinton Foundation Probe*, Business Insider (Nov. 3, 2016), available at <http://www.businessinsider.com/ap-ap-sources-fbi-agents-sought-clinton-foundation-probe-2016-11>; Bret Bair, *FBI’s Clinton Foundation Investigation Now ‘A Very High Priority,’ Sources Say*, Fox News (Nov. 2, 2016), available at <http://www.foxnews.com/politics/2016/11/02/fbis-clinton-foundation-investigation-now-very-high-priority-sources-say.html>.

³ Ackerman, *supra* note 2.

they're pro-Trump.”⁴ According to one FBI source, “a large swath of FBI personnel” consider Hillary Clinton to be “the antichrist personified.”⁵

What’s more, surrogates for the Donald Trump campaign began publicly hinting that these leaks were forthcoming even before the FBI leaks began. For example, during an interview with Fox, Rudy Giuliani explained that the Trump campaign had “a surprise or two that you’re going to hear about in the next few days. I mean, I’m talking about some pretty big surprises....We’ve got a couple of things up our sleeve that should turn this thing around.”⁶ Then, Mr. Giuliani promptly and publicly attributed Comey’s recent decision to renew the probe into Hillary Clinton to “the pressure of a group of FBI agents,” alleging “there’s a kind of revolution going on inside the FBI about the original conclusion [not to charge Clinton] being completely unjustified and almost a slap in the face to the FBI’s integrity.”⁷ Mr. Giuliani continued: “I know that from former agents. I know that even from a few active agents.”⁸

According to news reports, Mr. Giuliani’s security firm employs at least two FBI agents who were previously employed in the New York office - the same office responsible for discovering the most recent set of emails.⁹ “Along with Giuliani’s other connections to New York FBI agents, his former law firm, then called Bracewell Giuliani, has long been general counsel to the FBI Agents Association (FBIAA), which represents 13,000 former and current agents.”¹⁰ Mr. Giuliani’s own public statements confirm he has personal relationships with current and former FBI agents.¹¹

Under the Hatch Act, public officials are prohibited from using their “official authority or influence for the purpose of interfering with or affecting the result of an election.”¹² According to testimony from a former Special Counsel, “the Hatch Act [is intended to] keep[] partisan politics out of the public workplace and prevents those in political power from abusing their authority to advance partisan political causes.”¹³ The Department of Justice (“DOJ”) also issued further guidance on the Hatch Act in March of 2016, specifically noting that “[w]hile always important, [DOJ employees] should be particularly mindful of these [Hatch Act] rules in an election year.”¹⁴

However, in direct violation of federal law, FBI agents chose to leak information to individuals like Mr. Giuliani, in order to interfere with the result of the presidential election. This is a clear

⁴ *Id.*

⁵ *Id.*

⁶ Jeff Poor, *Rudy Giuliani: Trump Campaign Has ‘a Couple of Surprises Left,’* Breitbart News (Oct. 25, 2016), available at <http://www.breitbart.com/video/2016/10/25/rudy-giuliani-trump-campaign-couple-surprises-left/>.

⁷ Barrett, *supra* note 1.

⁸ Barrett, *supra* note 1; Charles P. Pierce, *The FBI. Giuliani. Of Course.*, Esquire (Nov. 3, 2016), available at <http://www.esquire.com/news-politics/politics/news/a50306/fbi-email-giuliani/>.

⁹ Hosenball, *supra* note 1.

¹⁰ Barrett, *supra* note 1.

¹¹ Barrett, *supra* note 1.

¹² 5 U.S.C. § 7323(a)(1).

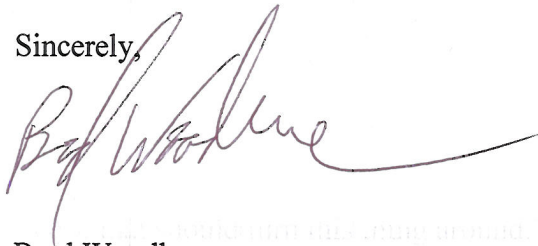
¹³ Testimony of Special Counsel Carolyn N. Lerner, U.S. Office of Special Counsel (May 16, 2012), available at <https://osc.gov/Resources/2012.05.16%20TESTIMONY%20HOG%20Subcommittee%20-%20Hatch%20Act.pdf#search=abuse%20of%20official%20power>.

¹⁴ Department of Justice Memorandum, *Restrictions on Political Activities/Election Year Reminders* (Mar. 10, 2016), available at <https://www.justice.gov/jmd/file/834496/download>.

violation of the Hatch Act. FBI sources confirm that large factions of the Bureau are outwardly hostile to Hillary Clinton.¹⁵ FBI agents were privy to information related to the Clinton investigation because of their official positions as FBI agents. Accordingly, these agents abused that position by sharing related information with surrogates for the Trump campaign, like Mr. Giuliani, who then announced on cable television that the Trump campaign had “things up our sleeve that should turn this thing around.”¹⁶ News reports suggest this information was obtained in direct violation of federal law.

These facts confirm that at least some FBI agents have violated the Hatch Act by abusing their positions and leaking information to influence the outcome of the presidential election. We respectfully request that the Office of Special Counsel investigate these violations immediately and that appropriate action be taken to enjoin FBI agents from further violations, including imposing the maximum penalties permitted by law.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brad Woodhouse", with a long horizontal flourish extending to the right.

Brad Woodhouse
American Democracy Legal Fund
455 Massachusetts Avenue, NW
Washington, DC 20001

¹⁵ Ackerman, *supra* note 2.

¹⁶ Jeff Poor, *Rudy Giuliani: Trump Campaign Has 'a Couple of Surprises Left,'* Breitbart News (Oct. 25, 2016), available at <http://www.breitbart.com/video/2016/10/25/rudy-giuliani-trump-campaign-couple-surprises-left/>.