Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C, 20036-4505

Inspector General
United States Department of State, SA-39
1700 North Moore Street
Arlington, VA 22209

August 26, 2020

To the Office of Special Counsel and Inspector General of the State Department:

We write to request a thorough and prompt investigation of potential violations of the Hatch Act and of State Department policy by the Secretary of State Michael Pompeo in connection with the taped speech he gave from Jerusalem, Israel, on Tuesday, August 25, for the Republican National Convention. We also request that you investigate potential related violations of the Hatch Act by State Department officials, including U.S. diplomatic personnel stationed in Israel, who may have made preparations for the campaign speech and/or held communications regarding this speech with the government of Israel. Finally, we ask that you investigate any attempts by U.S. government officials during the secretary of state's visit to request the assistance of any foreign government in the president's re-election campaign.

The Inspector General for the Department of State should also conduct a parallel internal investigation into the above matters. In addition to the Hatch Act, we draw your attention to the specific policies of both the State Department and the Office of Government Ethics (OGE) on misuse of official position.[i] It is our concern that for the reasons listed above, Secretary of State Pompeo abused his office.

1. The Facts

On August 24, 2020, Secretary of State Pompeo delivered a previously taped speech of approximately four minutes in length defending President Trump's foreign policy. This tape was played at the Republican National Convention and was watched by millions of Americans. To the best of our knowledge. no other sitting secretary of state has ever delivered a speech of this sort at his/her political party's convention, whether inside the United States or from outside the country while on a foreign diplomatic mission.

His opening line in the speech was "I'm speaking to you from beautiful Jerusalem, looking out over the Old City." Later in the speech he said, "The president too moved the U.S. embassy to this very city of God, Jerusalem, the rightful capital of the Jewish homeland, and just two weeks ago, the president brokered a historic peace deal between Israel and the United Arab Emirates. This is a deal that our grandchildren will read about in their history books."[ii]

Secretary Pompeo could easily have taped his RNC speech in the United States before he departed, but he chose to tape it instead while he was on a diplomatic mission in Israel. The background for the taped speech was not a neutral background but rather the Old City of Jerusalem, a place of great cultural, religious, and political significance.

In our view, Secretary Pompeo's choice of location for his speech, reinforced by the content of portions of the speech, made his purpose very clear: his remarks were designed to elicit the support of registered voters who are Jewish, are Evangelical Christian, or who support Israel for Donald Trump's re-election

campaign. While history is rife with examples of political campaigns seeking to elicit the support of different segments of the voting public based on race, ethnicity, or religion, such conduct is unprecedented for a sitting secretary of state who is at the same time on a diplomatic mission overseas.

The State Department said that Secretary Pompeo delivered the speech "in his personal capacity" and that no department resources or staff were involved in the speech even though diplomatic security agents and other staff usually accompany him all of the time when he is overseas. The State Department said that the speech was cleared by four separate groups of lawyers from the White House, the State Department, the RNC, and Secretary Pompeo's personal lawyers.[iii]

We are not aware of any evidence that the RNC or the Trump campaign paid for any portion of the cost of transporting Secretary Pompeo to Jerusalem. Rather, to the best of our knowledge, the entire cost of the trip was paid for by U.S. taxpayers. Transporting a government official to any location to take advantage of a unique setting for a campaign photo or video is itself a misappropriation of government funds and a violation of the Hatch Act. Even when a government official is permitted to engage in personal capacity political activity inside the United States, in the context of mixed political and official travel costs are usually prorated between the government and a political campaign or party. If the secretary's travel expenses were so pro-rated, the State Department should disclose as much to the American people and to Congress.

Moreover, if the above assumptions about the secretary's trip should prove correct, his actions run contrary to the interests of the United States. Using a foreign country as a backdrop for a partisan political speech months before a U.S. election is bound to complicate diplomatic relations with the host country as well as compromise other alliances the United States may have elsewhere in the world. Your office and the Office of the Inspector General should investigate whether U.S. diplomatic personnel informed the government of Israel about the speech prior to its public announcement and whether Israel was supportive of Secretary Pompeo's actions. Which U.S. diplomatic persons were involved in this campaign activity and with which foreign officials did they speak?

On the above assumptions, the speech was directly contrary to State Department policy. In a December 2019 memo, the Legal Advisor for the Department of State told political appointees that they were prohibited from "engag[ing] in political activity in concert with a partisan candidate, political party, or partisan political group," and that "Senate-confirmed presidential appointees … may not even attend a political party convention or convention-related event."[iv]

In July 2020, Secretary Pompeo sent a cable to all U.S. missions overseas pointing specifically to that December memo which states, "It is important that the department's employees do not improperly engage the Department of State in the political process, and that they adhere to the Hatch Act and Department policies in their own political activities."[v]

Previous secretaries of state have avoided partisan politics altogether, going so far as to refuse to answer unsolicited questions about American politics. In May 2016, a student asked Secretary of State John Kerry about then-candidate Donald Trump during a visit to Oxford University. Kerry's response: "I'm not allowed under our law to get into, actually full-throatedly, into the middle of the campaign."[vi]

The role of the secretary of state is such that it is simply not possible for the secretary to separate his official, public, and governmental function from his personal actions, at least with regard to a public speech. Delivering a speech, particularly overseas, is by its very nature a diplomatic and political activity, one that could have profound repercussions on U.S. relations in the region. The secretary cannot remove the governmental imprimatur from his appearance and his words by a mere formalistic declaration that he is speaking in his private capacity. Some roles are simply not optional when one assumes the mantle of a

significant governmental office. The secretary has a duty to carry himself at all times in a manner that reflects respect for the duties and responsibilities of his office and to act in the best interests of the country, particularly when he is representing the United States overseas.

2. Legal Issues

The Hatch Act allows government officials to participate in political campaigns in a personal capacity, which could include planning a prerecorded speech unrelated to official U.S. business. As pointed out above, however, State Department policy has been not to permit presidential appointees, including the secretary of state, undersecretaries, and ambassadors to engage in partisan politics, even in a personal capacity.

The Hatch Act also expressly forbids any federal employee from using official authority to assist a political campaign or political party. A federal employee may not "use his official authority or influence for the purpose of interfering with or affecting the result of an election." [vii]

In our view, Secretary Pompeo is doing precisely that—using his official authority or influence for the purpose of interfering with or affecting the result of an election. He consciously chose to tape the speech in Israel although the speech was almost certainly written before he departed in time to be cleared by the lawyers. Secretary Pompeo—if he was going to violate State Department policy and give the speech—could easily have taped the speech before he departed. He also could have done so using a neutral background. He did precisely the opposite, choosing as his backdrop one of the most religiously, culturally, and political locations in the world. He also referred to the subject matter of his diplomatic missions. In sum, Secretary Pompeo at the same time as he was on a diplomatic mission to Israel gave a partisan political speech for an RNC campaign video in which he referred to the U.S. embassy in Israel, said that a candidate in a partisan election—Donald Trump—should get credit for the relocation of that embassy in Israel as well as credit for specific international agreements that are part of the secretary's diplomatic missions to Israel, and then twice referred to the City of Jerusalem, which he used as a backdrop for his RNC campaign video. This video is an egregious violation of the Hatch Act.

Secretary Pompeo's use of this site in Israel for his appearance at the RNC dovetails with statements made by President Trump himself who last week told a crowd of supporters at a campaign event that he had moved the U.S. embassy to Jerusalem "for the evangelicals." "It's amazing with that," Trump said. "The evangelicals are more excited about that than Jewish people."[viii] Such campaign rhetoric, as distasteful as it is and implying that a U.S. embassy overseas was moved to appeal to a particular religious group inside the United States, is within the First Amendment rights of the president. The president is not personally constrained by the Hatch Act. But it is impermissible for the secretary of state to continue delivering this partisan political message while on a diplomatic mission overseas. That is a violation of the Hatch Act.

We note that military aid for Ukraine in 2019 was conditioned on Ukraine providing assistance to President Trump's political campaign with investigations. Gordon Sondland, U.S. Ambassador to the European Union, testified before Congress that various State Department officials including Secretary Pompeo knew about the proposed quid pro quo.[ix] Based on Secretary Pompeo's involvement in prior requests to foreign countries, including Ukraine, to assist in President Trump's reelection campaign, we would like to know whether a subsidiary purpose of the secretary's visit was to solicit the involvement of the State of Israel or any other country in assisting President Trump with regard to the 2020 election. Such conduct would constitute a serious additional violation of the Hatch Act and even possibly constitute impeachable conduct on the part of the secretary.

We believe there should be an inquiry into whether, in connection with the recent arms sale to the United Arab Emirates (UAE) and the peace arrangement between UAE and Israel, any request was made to any foreign government for assistance with the Trump reelection campaign.
Every executive branch employee other than the president and the vice president is subject to the Hatch Act. Violations of the Hatch Act and of federal ethics rules are not permissible in any circumstances, including an executive branch official acting under pressure from persons such as the president. Hatch Act violations are of even greater concern when the executive branch agencies involved include the Department of State, and the Hatch Act violations include, among other things, actions undertaken overseas in the course of official diplomatic missions of the United States.

We believe that when you investigate Secretary Pompeo's RNC speech from Jerusalem, you will conclude that he violated the Hatch Act in presenting it. The Hatch Act also would have been violated by any U.S. diplomatic personnel who engaged in negotiations to secure implicit or explicit approval from the Israeli government for Secretary Pompeo's plan to give the speech in Jerusalem.

Your offices should take appropriate action without delay.

Sincerely,

Claire O. Finkelstein
Algernon Biddle Professor of Law and Professor of Philosophy
University of Pennsylvania Carey Law School
3401 Sansom Street
Philadelphia, PA 19104

Richard W. Painter
S. Walter Richey Professor of Corporate Law
University of Minnesota Law School
229 19th Avenue S.
Minneapolis, MN 55455

---

[i] 5 CFR 2635.702.
[ii] See Mike Pompeo 2020 Republican National Convention Speech Transcript posted at https://www.rev.com/blog/transcripts/mike-pompeo-2020-Republican National Convention-speech-transcript
[iii] Conor Finnegan, Pompeo defies his own policy by praising Trump in unprecedented convention speech: A top U.S. diplomat has never delivered remarks like this before a convention, ABC News, August 25, 2020. https://abcnews.go.com/Politics/pompeo-breaks-rule-praising-trump-unprecedented-convention-speech/story?id=72605047
[iv] Id.
[v] See Diplomats aghast as Pompeo set to address GOP convention from Jerusalem, "It's all just shredding the Hatch Act," a current State Department official says of Pompeo's speech, NBC News August 24, 2020. https://www.nbcnews.com/politics/2020-election/diplomats-aghast-pompeo-set-address-gop-convention-jerusalem-n1237956
[vi] Id.
[vii] See 5 U.S. Code § 7323, providing that "a) Subject to the provisions of subsection (b), 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."

[viii] See Conor Finnegan, ABC News supra.

[ix] See Michael S. Schmidt, Sondland Updates Impeachment Testimony, Describing Ukraine Quid Pro Quo, The New York Times, November 5, 2019, https://www.nytimes.com/2019/11/05/us/politics/impeachment-trump.html
See also Read: Deposition Given by Gordon Sondland, United States Ambassador the European Union, November 5, 2019, https://www.npr.org/2019/11/05/776170895/read-the-deposition-by-gordon-sondland-u-s-ambassador-to-the-european-union