

MARCO RUBIO, FLORIDA
RON JOHNSON, WISCONSIN
CORY GARDNER, COLORADO
MITT ROMNEY, UTAH
LINDSEY GRAHAM, SOUTH CAROLINA
JOHNNY ISAKSON, GEORGIA
JOHN BARRASSO, WYOMING
ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
TODD YOUNG, INDIANA
TED CRUZ, TEXAS

ROBERT MENENDEZ, NEW JERSEY
BENJAMIN L. CARDIN, MARYLAND
JEANNE SHAHEEN, NEW HAMPSHIRE
CHRISTOPHER A. COONS, DELAWARE
TOM UDALL, NEW MEXICO
CHRISTOPHER MURPHY, CONNECTICUT
TIM Kaine, VIRGINIA
EDWARD J. MARKEY, MASSACHUSETTS
JEFF MERKLEY, OREGON
CORY A. BOOKER, NEW JERSEY

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

December 9, 2019

The Honorable Henry Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington, DC 20036

Dear Special Counsel Kerner:

I write to follow up on my prior October 29, 2019 letter requesting a review and assessment of Secretary of State Mike Pompeo's compliance with the Hatch Act, 5 U.S.C. §§ 7321-7326.

Since my prior letter, the Secretary has reportedly "reached out" to a major Republican donor to "gauge interest" in a potential Senate run and met with a number of individuals, including a group of Republican donors, while on official travel in London.¹ The Hatch Act provides clear prohibitions on campaign activity by federal officials, including soliciting or accepting contributions for partisan political purposes.² Further, federal employees and officials may not engage in political activity while on duty, in uniform, or in a government building or vehicle.³

As the OSC has previously—and unambiguously—stated: "The Hatch Act's prohibition against candidacy 'extends not merely to the formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy.'"⁴ Thus, "any action that can reasonably be construed as evidence that an individual is seeking support for or undertaking an initial 'campaign' to secure a nomination or election to office would be viewed as candidacy for purposes of the Hatch Act."⁵

Given the ongoing nature of these activities, as well as increasing speculation that the Secretary is using his federal office and official role to simultaneously garner partisan political support for

¹ Michael Wilner & Bryan Lowry, "Quietly recruiting megadonors, Pompeo eyes a massive Senate campaign war chest," *McClatchy*, Dec. 3, 2019; Shimon Prokupez & Kylie Atwood, "Pompeo had off-the-books meeting with Republican donors in London this week," *CNN*, Dec. 5, 2019.

² 5 U.S.C. § 7323(a)(1)-(2).

³ *Id.* § 7324(a).

⁴ Advisory Opinion, Office of the Special Counsel, OSC File No. AD-09-xxxx, June 17, 2009, at 1-2, available at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/When%20Candidacy%20Begins.pdf> (citing Congressional debates, 86 Cong. Rec. 2938-2940 (September 1939)).

⁵ *Id.* at 2.

a potential candidacy,⁶ I ask that you review this matter with increased urgency and promptly report back to my office.

Sincerely,

A handwritten signature in blue ink that reads "Robert Menendez". The signature is written in a cursive, flowing style.

Robert Menendez
Ranking Member

⁶ See, e.g., Bryan Lowry, "Mitch McConnell wants Pompeo to run for Senate. They'll share a stage next week," *McClatchy*, Nov. 26, 2019; Madeleine Carlisle, "President Trump Says Pompeo Discussed Leaving Administration to Run for Senate," *TIME*, Nov. 22, 2019; John Walcott & W.J. Hennigan, "Mike Pompeo Is Searching for a Safe Exit From State Ahead of Senate Run, GOP Sources Say," *TIME*, Nov. 16, 2019.