

United States Senate

WASHINGTON, DC 20510

June 12, 2019

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Pompeo:

We write to express our deep concern with the process and intent behind the Department of State's recently announced Commission on Unalienable Rights ("the Commission"), established pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (FACA). With deep reservations about the Commission, we request that you not take any further action regarding its membership or proposed operations without first consulting with congressional oversight and appropriations committees.

According to the Department's public notice, the Commission's purpose is to provide the Secretary of State with "fresh thinking about human rights discourse where such discourse has departed from our nation's founding principles of natural law and natural rights." While both the Federal Register notice and the Commission's charter cite "natural law"—a term sometimes used in association with discrimination against marginalized populations—as the basis for the Commission's work, neither makes reference to the Universal Declaration of Human Rights or any international human rights treaty the United States has signed or ratified.

By law, the Department's Bureau of Democracy, Human Rights, and Labor (DRL) is authorized and required to advise the Secretary of State on matters pertaining to human rights through its Assistant Secretary, or Acting Assistant Secretary. Advisory committees "may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government." 41 C.F.R. § 102-3.30; FACA § 2. It is hard to envision what work the Department's proposed Commission would conduct that DRL could not carry out.

Furthermore, we are alarmed that DRL is entirely absent from the Commission's charter, which refers to the Department's Policy Planning Staff as "supply[ing] all staff and support functions." We are concerned that the Commission was established without DRL's input or awareness, or any consultation with the relevant congressional committees.

More troubling, press reports also indicate that the Department has compiled a list of members that does not reflect the diversity of views required for any body tasked with advising the Secretary on human rights. Some of the would-be members are individuals known to support

discriminatory policies toward LGBTQ people, hold views hostile to women's rights, and/or support positions at odds with U.S. treaty obligations.

As the Department is surely aware, advisory committees "must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed." 41 C.F.R. § 102-3.30. Further, all committee meetings must be open to the public and all records, reports, transcripts, minutes, working papers, and drafts must be made available to the public, and detailed minutes of each meeting, along with a complete and accurate description of matters discussed and conclusions reached, must be maintained. *Id.*; FACA § 10. Should the Department move forward with this Commission, it should expect robust public engagement and oversight by Congress.


As a preliminary matter, and as part of Congress' role in ensuring compliance with FACA, we request the Department provide the following, and consult with Congress, prior to any further action with regard to the proposed Commission:

1. A detailed explanation of the Commission's purpose and how that purpose differs from DRL's mandate or current activities;
2. A copy of the charter and the membership balancing plan, which "will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee." 41 C.F.R. § 102-3.60;
3. A list of proposed Commission members and the criteria the Department is using to select the members;
4. The projected annual operating budget of the Commission; and
5. An explanation of DRL's prior and planned involvement in the Commission.

We believe the extent to which this Administration has undermined American leadership and credibility on promoting fundamental human rights is of historic proportions. The Department's proposed Commission on Unalienable Rights must not serve as a platform to further erode U.S. leadership and undercut U.S. interests. Any such commission must meet the requirements of Federal law and regulations and be composed of members with the appropriate background and diversity of views necessary to recommend wise policy in this critical area. It should further benefit from the knowledge and expertise of the DRL staff, among others within the Department.

Thank you for your prompt attention to this matter.

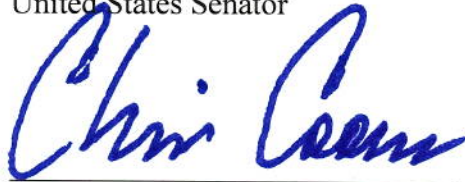
Sincerely,


Robert Menendez
United States Senator


Patrick Leahy
United States Senator



Richard J. Durbin
United States Senator



Christopher A. Coons
United States Senator



Jeanne Shaheen
United States Senator

CC:

Julianne Shinnick
Committee Management Officer
U.S. Department of State