

Congress of the United States
Washington, DC 20515

October 1, 2019

The Honorable John J. Sullivan
Deputy Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20230

Dear Mr. Deputy Secretary:

We are responding to a letter sent earlier today by Secretary of State Michael Pompeo attempting to block testimony from current and former State Department officials sought by our Committees for depositions as part of the House of Representatives' impeachment inquiry.

We are writing to you because Secretary Pompeo now appears to have an obvious conflict of interest. He reportedly participated personally in the July 25, 2019 call, in which President Donald Trump pressed President Volodymyr Zelensky of Ukraine to investigate the son of former Vice President Joseph Biden immediately after the Ukrainian President raised his desire for United States military assistance to counter Russian aggression.¹

If true, Secretary Pompeo is now a fact witness in the impeachment inquiry. He should not be making any decisions regarding witness testimony or document production in order to protect himself or the President. Any effort by the Secretary or the Department to intimidate or prevent witnesses from testifying or withhold documents from the Committees shall constitute evidence of obstruction of the impeachment inquiry.

Given the Secretary's own potential role, and reports of other State Department officials being involved in or knowledgeable of the events under investigation, the Committees may infer that he is trying to cover up illicit activity and misconduct, including by the President. This would be a blatant cover-up and a clear abuse of power.

In his letter, Secretary Pompeo claims that Congress lacks the authority to conduct depositions without agency representatives in the room, despite our clear authority and a long precedent of doing so. He argued that "the five officials subject to your letter may not attend any interview or deposition without counsel from the Executive Branch present."²

Yet, when Secretary Pompeo served previously as a Member of the House of Representatives—and as one of the key Republican Members of the Benghazi Select Committee—he held exactly the opposite view. The House rule that protects witnesses in

¹ *Pompeo Took Part in Ukraine Call, Official Says*, Wall Street Journal (Sept. 30, 2019) (online at www.wsj.com/articles/pompeo-took-part-in-ukraine-call-official-says-11569865002).

² Letter from Secretary of State Michael R. Pompeo, State Department, to Chairman Eliot L. Engel, Committee on Foreign Affairs (Oct. 1, 2019).

depositions was adopted by the House of Representatives in January 2019. The same rule has been in place for more than a decade under both Republican and Democratic Chairmen of the Committee on Oversight and Reform, and it was in place during Secretary Pompeo's tenure on the Benghazi Select Committee.³

The Constitution authorizes Congress to "determine the Rules of its Proceedings."⁴ The regulations that govern House depositions state:

Witnesses may be accompanied at a deposition by personal, nongovernmental counsel to advise them of their rights. Only members, Committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness's counsel are permitted to attend. Observers or counsel for other persons, including counsel for government agencies, may not attend.⁵

This rule is intended for exactly these types of circumstances—to prevent an agency head with an obvious conflict of interest, and who is directly implicated in the abuses we are currently investigating, from trying to prevent his own employees from coming forward to tell the truth to Congress.

Such interference may subject Department officials who engage in this obstruction to liability under several federal statutes:

- It is a criminal violation punishable by fine or up to five years in prison to, "by threats or force, or by any threatening letter or communication," influence, obstruct, or impede or endeavor to do so, "the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House."⁶
- Under the Whistleblower Protection Act, employees who speak to Congress have the right not to have adverse personnel actions taken against them. Any retaliatory actions taken against State Department employees who cooperate with Congress may constitute violations of this law.⁷
- Any Department official who "prohibits or prevents" or "attempts or threatens to prohibit or prevent" any officer or employee of the Federal Government from

³ Deposition Procedures for the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, Congressional Record, H4056 (May 9, 2014) (online at www.congress.gov/113/crec/2014/05/09/CREC-2014-05-09-pt1-PgH4056.pdf); Rules of the Committee on Oversight and Reform for the 116th Congress (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/COR%20Rules%20-%20passed.pdf>).

⁴ U.S. Const., Art. I, sec. 5, cl. 2.

⁵ 116th Congress Regulations for Use of Deposition Authority, Congressional Record, H1216 (Jan. 25, 2019) (online at www.congress.gov/116/crec/2019/01/25/CREC-2019-01-25-pt1-PgH1216-2.pdf).

⁶ 18 U.S.C. §1505.

⁷ Whistleblower Protection Act, 5 U.S.C. § 2302; *See also* 5 U.S.C. §7211.

speaking with the Committee could have his or her salary withheld pursuant to section 713 of the Financial Services and General Government Appropriations Act.⁸

For all of these reasons, the Department must immediately halt all efforts to interfere with the testimony of State Department witnesses before Congress. If you have any questions, please contact the Committee on Foreign Affairs at (202) 225-5021.

Sincerely,



Eliot L. Engel
Chairman
House Committee on Foreign Affairs



Adam B. Schiff
Chairman
House Permanent Select Committee
on Intelligence



Elijah E. Cummings
Chairman
House Committee on Oversight and Reform

cc: The Honorable Michael McCaul, Ranking Member
House Committee on Foreign Affairs

The Honorable Devin Nunes, Ranking Member
House Permanent Select Committee on Intelligence

The Honorable Jim Jordan, Ranking Member
House Committee on Oversight and Reform

⁸ P.L. 116-6, § 713 ("No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who ... prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee.").