

August 6, 2020

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

Re: Violations of the Hatch Act by Ambassador Todd Chapman

Dear Mr. Kerner:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Special Counsel (“OSC”) investigate whether United States Ambassador to Brazil Todd Chapman violated the Hatch Act by advocating to Brazilian government officials in his official capacity that reaching an agreement on ethanol tariffs with the United States would benefit the re-election effort of President Donald Trump. By mixing official government business with political views about a candidate for partisan political office in his capacity as US Ambassador to Brazil, Chapman appears to have used his official authority or influence for the purpose of interfering with or affecting the result of an election. His conduct related to advocacy for an agreement on tariffs appears to constitute political activity prohibited by law.

Factual Background

Todd C. Chapman is the U.S. Ambassador to Brazil.¹ He was nominated to this post by President Trump on October 30, 2019, and confirmed by the U.S. Senate on February 20, 2020, arriving in Brazil on March 29, 2020.² Ambassador Chapman previously served as a career member of the Senior Foreign Service and then as U.S. Ambassador to Ecuador from 2016 to 2019.³

Use of Official Government Office for Partisan Political Purposes

Multiple public reports from Brazilian and U.S. media allege that in meetings with Brazilian government officials, Ambassador Chapman lobbied for a reduction on the country’s import tariffs on American ethanol by claiming that this policy change would benefit the government of Brazilian President Jair Bolsonaro by assisting President Trump’s re-election effort in America. On July 30, 2020, Brazilian newspaper *O Globo* reported:

Commanded by Ambassador Todd Chapman, the United States is promoting a heavy lobby within the government so that import tariffs on American ethanol are

¹ U.S. Embassy & Consulates in Brazil, Todd Chapman, U.S. Ambassador to Brazil, available at <https://br.usembassy.gov/our-relationship/our-ambassador>.

² *Id.*

³ *Id.*

reduced to zero. ... Among the arguments used by Chapman is the importance for the Bolsonaro government of maintaining Donald Trump in the U.S. presidency. And what does the American election have to do with it? Iowa is the largest ethanol producer in the U.S. (4% of the state's GDP is a result of ethanol) and the state could be a key player in Trump's re-election.⁴

The article notes that Ambassador Chapman has discussed the matter with Brazil's ministries of finance and foreign affairs.⁵ Ambassador Chapman also reportedly spoke with Brazilian Congressman Eduardo Bolsonaro – the son of President Bolsonaro – and, according to *O Globo*, “wants the tariff exemption to be approved by August.”⁶

A second Brazilian newspaper reported that Ambassador Chapman made partisan arguments while lobbying the Brazilian government on tariffs. According to reporting by *Estadão*:

Concerned about the presidential elections in the United States, Ambassador Todd Chapman asked members of the Brazilian government to reduce import tariffs on American ethanol to zero. ... Among the arguments used by Chapman is the importance for the Bolsonaro government of maintaining Donald Trump in the U.S. presidency. According to government sources, the matter was discussed yesterday during a meeting between ministers Paulo Guedes (Economy), Tereza Cristina (Agriculture), Bento Albuquerque (Mines and Energy), Ricardo Salles (Environment) and Ernesto Araújo (Foreign Affairs).⁷

According to a participant in the meeting, *Estadão* reported, Ambassador Chapman's request “is not valid” and deemed “impossible” by the Brazilian government.⁸ The article notes that “[t]he same source affirmed that the government must defend the interest of Brazilians, and not attend to [an] election that benefits another country.”⁹

Following these reports from Brazilian media and government officials, Ambassador Chapman's conduct garnered attention from American media and government officials. On July 31, 2020, House Foreign Affairs Committee Chairman Eliot Engel and House Subcommittee on the Western Hemisphere, Civilian Security, and Trade Chairman Albio Sires wrote to Ambassador Chapman requesting information regarding the Ambassador's conduct, noting that his alleged “statements are completely inappropriate for a U.S. ambassador to make, and if true,

⁴ Lauro Jardim, *Embaixador dos EUA faz lobby no governo por etanol americano*, *O Globo*, July 30, 2020, available at <https://blogs.oglobo.globo.com/lauro-jardim/post/embaixador-dos-eua-faz-lobby-no-governo-por-etanol-americano.html> (Google Translation into English, hereinafter Exhibit 1).

⁵ *Id.*

⁶ *Id.*

⁷ Julia Lindner and Anne Warth, *Embaixador dos EUA pede isenção para etanol americano, mas governo diz que 'não tem cabimento'*, *Estadão*, July 30, 2020, available at <https://economia.estadao.com.br/noticias/geral,embaixador-dos-eua-pede-isencao-para-etanol-americano-mas-governo-diz-que-nao-tem-cabimento,70003381539> (Google Translation into English, hereinafter Exhibit 2).

⁸ *Id.*

⁹ *Id.*

would be a potential violation of the Hatch Act of 1939.”¹⁰ The article cited *O Globo*’s reporting that “Iowa is the largest ethanol producer in the United States...and could be a key player in Trump’s election. Hence the importance – according to Chapman – for the Bolsonaro government to do the U.S. a favor.”¹¹ That same day, the *New York Times* reported that Ambassador Chapman “made it clear to Brazilian officials they could bolster Mr. Trump’s electoral chances in Iowa if Brazil lifted its ethanol tariffs.”¹² The article noted that “[e]liminating tariffs would give the Trump administration a welcome trade victory to present to struggling ethanol producers in Iowa, where the president is in a close race with his Democratic rival, Joseph R. Biden Jr.”¹³ Although the State Department claimed that “allegations suggesting that Ambassador Chapman has asked Brazilians to support a specific U.S. candidate are false” the *New York Times* reported that:

Alceu Moreira, a Brazilian congressman who heads the agricultural caucus, told *The New York Times* in an interview that Mr. Chapman had made repeated references to the electoral calendar during a recent meeting the two had about ethanol. He said that Mr. Chapman did not explicitly urge him to help the Trump campaign or bring up the contest in Iowa — but that the American ambassador did tie the ethanol issue to the election. “He said, ‘You know, we have elections in the United States, and that this is very important,’” Mr. Moreira said, recounting their conversation. “He said this four or five times.”¹⁴

In a statement issued on August 3, 2020 by Ambassador Chapman, he explained:

In recent days, a few press reports have mischaracterized meetings that I had with Brazilian officials. Allegations were made that I suggested a particular outcome on an issue that would favor the election chances of one presidential candidate over another. Any interpretation of my defense of long-standing commercial interests during an election year as an attempt to benefit a particular presidential candidate is simply not correct. What I have done in those meetings was to continue to advocate for open trade and cooperation on commercial issues as well as pursue other areas of mutual interest for both the United States and Brazil. At no time did I ask that Brazilians take any actions in support of any U.S. candidate.¹⁵

¹⁰ See Letter from The Honorable Eliot Engel, Chairman, House Committee on Foreign Affairs, *et. al* to The Honorable Todd Chapman, US Ambassador to Brazil, available at <https://bit.ly/3ft5k9H>.

¹¹ *Id.* (citing Jardim, *O Globo*, July 30, 2020) (the Committee’s translation of the article appears to be slightly different than the Google Translation into English).

¹² Ernesto Londoño, Manuela Andreoni, and Letícia Casad, Lawmakers ‘Alarmed’ by Reports U.S. Envoy Told Brazil It Could Help Re-elect Trump, *New York Times*, July 31, 2020, available at <https://nyti.ms/2EFXsoF>.

¹³ *Id.*; see also Karoun Demirjian, Democrats demand answers from U.S. Ambassador after reports he asked Brazil for favor to help Trump in 2020, *Washington Post*, Aug. 1, 2020, <https://wapo.st/3fsMnUK>.

¹⁴ Londoño, Andreoni, and Casad, *New York Times*, July 31, 2020.

¹⁵ U.S. Embassy & Consulates in Brazil, Statement by Ambassador Todd Chapman Regarding Recent Allegations in the Press, Aug. 3, 2020 (“Chapman Statement”), available at <https://bit.ly/2PIHqm4>.

Potential Violations

The Hatch Act - 5 U.S.C. §§ 7321-26

The Hatch Act prohibits any executive branch employee from “us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election.”¹⁶ Activities covered by this prohibition include a federal employee’s use of their official authority or position while participating in political activity.¹⁷ “Political activity” is defined as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”¹⁸ Penalties under the Hatch Act are generally administrative in nature, but can include removal from government service, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a civil fine.¹⁹

In its March 2018 report regarding Hatch Act violations by Counselor to the President, Kellyanne Conway, OSC acknowledged that the Hatch Act does not provide an exemption for executive branch employees speaking on behalf of a principal who is in fact exempt from the Hatch Act’s restrictions.²⁰ OSC stated:

While the President is exempt from the Hatch Act, his exemption does not extend to any other employee, including those employed in the White House Office. OSC understands that [an employee’s] job duties may include publicly reinforcing the Administration’s positions on a host of policy issues. And the Hatch Act does not prohibit [an employee] from doing so, provided she carries out her job duties in a manner that complies with the law.²¹

OSC has also made clear that “there are no ‘magic words’ of express advocacy necessary in order for statements to be considered political activity under the Hatch Act.”²² This guidance, provided as a clarification related to the use of terms like “resist” in the federal workforce, explains that context matters in determining whether an employee’s conduct is prohibited political activity.²³ For example, OSC noted:

Consider, for example, the administration’s recent decision to move the U.S. embassy in Israel to Jerusalem. An employee who strongly criticizes or praises that decision during a workplace discussion with a colleague in the days immediately following the decision is less likely to be engaging in political

¹⁶ 5 U.S.C. § 7323(a)(1).

¹⁷ 5 C.F.R. § 734.302(b)(1).

¹⁸ 5 C.F.R. § 734.101.

¹⁹ 5 U.S.C. § 7326.

²⁰ Office of Special Counsel, Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway), Mar. 6, 2018, available at <https://bit.ly/33fDagi>.

²¹ *Id.*

²² Office of Special Counsel, Clarification of November 27, 2018 Email, Nov. 30, 2018, available at <https://bit.ly/3gC3KUJ>.

²³ *Id.*

activity than one making those same statements in the run-up to the next presidential election—when the decision will likely have been out of the news for several years—to a colleague that the employee knows has strong feelings about the subject.²⁴

Generally, federal employees covered by the Hatch Act may not engage in political activity while on duty.²⁵ OSC has advised that “[a]lthough non-exempt political appointees are generally free to actively participate in partisan political management and campaigns, doing so is not part of their official duties.”²⁶ Therefore, to avoid violating the Hatch Act, these officials “must take care to segregate their political activities from their official agency duties.”²⁷ For example, OSC has advised political appointees not to attend meetings, “while on duty or in the federal workplace, at which presenters discuss topics such as their party’s electoral strategies in congressional and gubernatorial elections ... or campaign tactics.”²⁸

Ambassador Chapman’s Alleged Conduct Violated the Hatch Act

If the allegations regarding Ambassador Chapman’s statements are accurate, then he likely violated the Hatch Act by impermissibly mixing official government business with advocacy for President Trump’s re-election. There is no doubt that Ambassador Chapman was acting in his official capacity. The comments at issue allegedly were made by the Ambassador to Brazilian government officials in the course of his representation of the United States in discussions about Brazil’s tariffs on American ethanol. In responding to the allegations, the State Department did not dispute that Ambassador Chapman was operating on behalf of the American government. In fact, a spokesman noted that “[t]he United States has long been focused on reducing tariff barriers and will continue do so,” and instead claimed that Ambassador Chapman did not ask Brazilians to support a specific candidate.²⁹

There is also little doubt that Ambassador Chapman’s statements, if true, were directed at the success or failure of President Trump, a candidate for partisan political office. According to Brazilian newspapers, Ambassador Chapman stressed the importance for the Bolsonaro government of keeping Donald Trump as President – clearly an attempt to influence Brazilian policy in a way that he believed would help Trump’s candidacy. Brazilian officials reportedly interpreted Ambassador Chapman’s statements that way. As noted above, one participant in the meeting believed that Ambassador Chapman’s request was “not valid” and “impossible” by the Brazilian government because the participant did not want to get involved in the American election.³⁰ Similarly, the *New York Times* quoted a Brazilian congressman who said Ambassador Chapman repeatedly invoked the election in a meeting about ethanol. While the Brazilian official said Ambassador Chapman did not “explicitly urge him to help the Trump campaign or bring up

²⁴ *Id.*

²⁵ 5 U.S.C. § 7324(a).

²⁶ Office of Special Counsel, OSC Advisory Regarding Political Briefings in the Federal Workplace, Oct. 6, 2011, available at <https://bit.ly/3fr4avz>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Londoño, Andreoni, and Casad, *New York Times*, July 31, 2020.

³⁰ Lindner and Warth, July 30, 2020.

the contest in Iowa” he unambiguously tied “the ethanol issue to the election” several times.³¹ The implication from these accounts is clear that Brazilian officials believed that Ambassador Chapman’s statements were aimed at the success or failure of President Trump’s re-election bid.

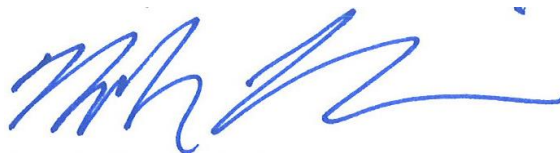
Ambassador Chapman has denied suggesting that “a particular outcome on an issue that would favor the election chances of one presidential candidate over another” or “ask[ing] that Brazilians take any actions in support of any U.S. candidate.”³² However, even if Ambassador Chapman did not directly ask Brazilian officials to support President Trump’s re-election, OSC’s guidance makes clear that a federal employee need not explicitly invoke a candidate’s name to engage in prohibited political activity. Ambassador Chapman’s alleged discussion of the President’s potential strategy or the electoral impact relative to ethanol or Iowa in the course of conducting official government business would constitute prohibited political activity under the law. As reported by the *New York Times*, Ambassador Chapman’s alleged invocation of the election in his negotiations with foreign officials mere months before the President faces re-election on November 3, 2020 is consistent with examples of prohibited political activity in OSC guidance.

Conclusion

The Hatch Act is intended to prevent federal employees from engaging in partisan political activity in their official capacity. The statute prohibits an employee from undertaking any activity directed toward the success or failure of a political candidate or a political party while using her official title or position.

If, as alleged, Ambassador Chapman used his official position, authority, and title to express political views about a candidate in a partisan election amid the conduct of official government business, he ran afoul of the statute. OSC should commence an immediate investigation into the conduct described in this letter and take any appropriate disciplinary action against Ambassador Chapman, up to and including recommending disciplinary action against him.

Sincerely,



Noah Bookbinder
Executive Director

³¹ Londoño, Andreoni, and Casad, *New York Times*, July 31, 2020.

³² Chapman Statement.