



B-329504

August 22, 2018

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

The Honorable Peter DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

The Honorable Betty McCollum
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
House of Representatives

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *U.S. Environmental Protection Agency—Application of Publicity or Propaganda and Anti-Lobbying Provisions to Then-Administrator's Appearance in a Trade Association's Video*

This responds to your request for our opinion concerning whether the appearance of the then-Administrator of the U.S. Environmental Protection Agency (EPA) in a National Cattlemen's Beef Association (NCBA) video violated the publicity or propaganda and anti-lobbying provisions contained in applicable appropriations acts.¹

¹ Letter from Representative Elijah E. Cummings, Ranking Member of the House Committee on Oversight and Government Reform; Representative Peter DeFazio, Ranking Member of the House Committee on Transportation and Infrastructure; Representative Betty McCollum, Ranking Member of the House Committee on

(continued...)

Section 718 of the Financial Services and General Government Appropriations Act, 2017, prohibited the use of EPA's appropriations for unauthorized publicity or propaganda purposes.² Section 715 of the act prohibited the use of EPA's appropriations for indirect or grassroots lobbying in support of, or in opposition to, pending legislation.³ These same prohibitions applied to EPA's FY 2016 appropriations.⁴ The Department of the Interior, Environment, and Related Agencies Appropriations Act, which provides EPA's appropriations,⁵ also prohibited the use of EPA's appropriations for lobbying tending to promote support for, or opposition to, a legislative proposal.⁶

In accordance with our regular practice, we contacted EPA to seek factual information and its legal views on this matter.⁷ GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP. In response, EPA provided its legal analysis and additional factual information.⁸

As explained below, we conclude that EPA did not violate either the publicity or propaganda or anti-lobbying provisions when the then-Administrator appeared in an NCBA video.

(...continued)

Appropriations, Subcommittee on Interior, Environment, and Related Agencies; and Representative Frank Pallone, Jr., Ranking Member of the House Committee on Energy and Commerce, to Comptroller General (Oct. 12, 2017).

² Pub. L. No. 115-31, div. E, title VII, § 718, 131 Stat. 135, 381 (May 5, 2017).

³ *Id.* § 715, 131 Stat. at 380.

⁴ Pub. L. No. 114-113, div. E, title VII, §§ 715, 718, 129 Stat. 2242, 2476–77 (Dec. 18, 2015).

⁵ Pub. L. No. 115-31, div. G, title II, 131 Stat. at 468; Pub. L. No. 114-113, div. G, title II, 129 Stat. at 2552.

⁶ Pub. L. No. 115-31, div. G, title IV, § 401, 131 Stat. at 493; Pub. L. No. 114-113, div. G, title IV, § 401, 129 Stat. at 2574.

⁷ Letter from Managing Associate General Counsel, GAO, to Acting General Counsel, EPA (Nov. 2, 2017).

⁸ Letter from Principal Deputy General Counsel, EPA, to Managing Associate General Counsel, GAO (Mar. 1, 2018) (EPA Letter).

BACKGROUND

As part of a national tour, in 2017 the then-Administrator of the EPA visited several states to meet with state and local officials and external stakeholders concerning various EPA regulations.⁹ During the tour, EPA sought to inform states of the agency's proposed rule to rescind the June 29, 2015 Waters of the United States (WOTUS) rule and to receive feedback on the WOTUS rule's impact.¹⁰

On August 1, 2017, NCBA contacted EPA to request a five-minute interview with the then-Administrator concerning WOTUS.¹¹ NCBA informed EPA that the interview, which would take place during a previously scheduled stop on the then-Administrator's national tour, would be videotaped and that it might be posted on NCBA's social media platforms.¹² EPA agreed to permit NCBA to conduct the interview, which took place on August 3.¹³

According to EPA, EPA agreed to make the then-Administrator available for the interview, but did not have "any role in designing, coordinating, producing, or distributing" the videotaped interview.¹⁴ EPA explained that it reviewed a draft video of the interview prior to its release on NCBA's Web site, but it did not place any limitations on the then-Administrator's appearance in the video, nor did it seek to control the intended use of the video.¹⁵

⁹ *Id.*, at 2.

¹⁰ *Id.* The WOTUS rule that EPA proposed to rescind, promulgated by the Army Corps of Engineers (Corps) and EPA, was published in the Federal Register as a final rule on June 29, 2015. *Clean Water Rule: Definition of "Waters of the United States,"* 80 Fed. Reg. 37053 (June 29, 2015) (*codified at* 33 C.F.R. part 328; 40 C.F.R. parts 110, 112, 116, 117, 122, 230, 232, 300, 302, 401). According to the Corps and EPA, the WOTUS rule "defines the scope of waters protected under the Clean Water Act (CWA) in light of the statute, science, Supreme Court decisions, and the [Corps and EPA's] experience and technical expertise." B-327123, July 16, 2015.

¹¹ EPA Letter, at 2. NCBA is a "marketing organization and trade association for America's one million cattle farmers and ranchers." NCBA, *Association History*, available at www.beefusa.org/theassociation.aspx (last visited Aug. 15, 2018).

¹² EPA Letter, at 2–3.

¹³ *Id.*, at 3.

¹⁴ *Id.*, at 2.

¹⁵ *Id.*, at 2–3.

Appearing with the first image of the then-Administrator in the video is a graphic overlay that identifies him as the “Administrator” of the “Environmental Protection Agency.”¹⁶ During the interview, the then-Administrator discusses EPA’s proposed WOTUS rule and the public comment process.¹⁷ Specifically, he states the following:

“This is part of our state action tour, where we’ve gone out across the country, visiting with farmers and ranchers, stakeholders with respect to our redefining of what a Water of the United States is under the Clean Water Act. And we’re trying to fix the challenges from [the] 2015 rule, where the Obama Administration re-imagined their [sic] authority under the Clean Water Act and defined a Water of the United States as being a puddle, a dry creek bed, and ephemeral drainage ditches across this country, which created great uncertainty, as you might imagine, and we are fixing that, and then we’re hearing from stakeholders about how to get it right as we go forward. When comments are made as part of a record – as rulemaking – we have an obligation to review them. It helps inform our decision-making process; it helps us make better decisions. And so we want farmers and ranchers across this country to provide comments. This record being made is so important because it helps us make informed decisions.”¹⁸

The video closes with a graphic overlay that displays a hyperlink to the NCBA homepage, BeefUSA.org.¹⁹ At the time NCBA published the video, the NCBA Web site included hyperlinks to a “Call to Action” page and a “Contact your Elected Officials” page.²⁰ It also contained a hyperlink to a page that prominently featured the NCBA name and logo. This page, entitled “Waters of the United States Regulation,” included language such as “Urge Congress to Stop EPA's Unlawful

¹⁶ NCBA, *EPA Administrator Scott Pruitt Urges Ranchers to File WOTUS Comments*, available at www.youtube.com/watch?v=vTVd54WYhDQ&hd=I (last visited Aug. 15, 2018) (NCBA Video).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, e.g., NCBA, *Call to Action*, available at <https://web.archive.org/web/20170705231452/http://www.beefusa.org:80/calltoaction1.aspx> (archived by Internet Archive on July 5, 2017).

Expansion” and “Let your Congressional representatives know that they should not allow EPA and the Corps [of Engineers] to trample on your Constitutional rights.”²¹

DISCUSSION

When the then-Administrator appeared in the NCBA video, EPA obligated appropriations for associated costs, such as salaries for the time the then-Administrator spent participating in the interview and for the time EPA staff spent coordinating with NCBA.²² As a threshold matter, we note that the purpose statute, 31 U.S.C. § 1301(a), provides that appropriated funds are available only for the purpose or purposes for which Congress has provided. See B-329373, July 26, 2018. As relevant here, an agency’s appropriations generally are available for communicating with the public about both agency activities and the policy views that underlie those activities, unless another provision of law prohibits the use of appropriations for such expenses. See *id.*; B-319834, Sept. 9, 2010; B-319075, Apr. 23, 2010; B-303170, Apr. 22, 2005; B-284226.2, Aug. 17, 2000; B-194776, June 4, 1979. In the NCBA interview, the then-Administrator discussed EPA activities as well as his policy views on matters within EPA’s purview. Accordingly, EPA’s appropriations were available for expenses associated with the interview, unless another provision of law prohibited the use of appropriations for these particular expenses.

There are three statutory prohibitions relevant here: those against the use of appropriations for (1) publicity or propaganda, (2) grassroots lobbying, or

²¹ Though the hyperlinked page prominently featured the NCBA name and logo, the page itself was hosted by a third party known as “CQ Engage.” *Waters of the United States Regulation*, available at <https://web.archive.org/web/20170608144335/http://cqrcengage.com/beefusa/water> (archived by Internet Archive on June 8, 2017). According to CQ Engage, the service provides “online advocacy software” used to “[e]ducate and rally . . . supporters with legislative resources and multiple grassroots calls-to-action.” CQ Engage, *Powerful online advocacy software*, available at <https://info.cq.com/advocacy-software/cq-engage/> (last visited Aug. 20, 2018).

²² In its response, EPA states that “no EPA employee traveled to the location *specifically* for this video” and concludes that “appropriated funds were not used to appear in or develop the video.” EPA Letter, at 1, 5 (emphasis added). We disagree with this view. The then-Administrator and EPA staff used official time to arrange and sit for the interview and, when EPA paid salaries associated with this official time, it obligated appropriated amounts. Even if these amounts were relatively small, EPA may permissibly obligate them only as allowed by law. See B-329368, Dec. 13, 2017 (agency violated anti-lobbying provision and the Antideficiency Act where it posted an improper tweet, even though this action “possibly cost very little”).

(3) promotion of public support for, or opposition to, a legislative proposal. At issue is whether EPA violated any of these three prohibitions. We address each of these in turn below.

Publicity or Propaganda Prohibition

Section 718 of the Financial Services and General Government Appropriations Act, 2017, provides: “No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress.” Pub. L. No. 115-31, div. E, title VII, § 718, 131 Stat. at 381. This same provision appears in section 718 of the Financial Services and General Government Appropriations Act, 2016. Pub. L. No. 114-113, div. E, title VII, § 718, 129 Stat. at 2477. This prohibition restricts three categories of agency communications: (1) self-aggrandizement, (2) purely partisan activities, and (3) covert communications or propaganda. B-319834. During the then-Administrator’s published interview with NCBA, the then-Administrator expressed a position on the WOTUS rule, communicated EPA’s role in changing the rule, and encouraged public comment on the rule. In our view, these remarks do not constitute self-aggrandizement because, although the then-Administrator presented information about EPA’s role and encouraged public participation in the rulemaking process, he did not attempt to persuade the public of his own importance or of EPA’s importance as a government agency. See B-302504, Mar. 10, 2004, at 7–8; B-212069, Oct. 6, 1983. Further, the then-Administrator’s remarks do not constitute purely partisan activity because they provided information in connection with his official duties. B-322882, Nov. 8, 2012 (“Communications are considered purely partisan in nature if they are completely devoid of any connection with official functions and completely political in nature.”); B-147578, Nov. 8, 1962. Accordingly, at issue here is whether the then-Administrator’s statements constitute covert propaganda.

Covert propaganda refers to communications that fail to disclose an agency’s role as the source of information. B-320482, Oct. 19, 2010. More specifically, covert propaganda includes materials—such as editorials, articles, prepackaged news segments, or social media information—prepared by an agency, or its contractors at the behest of the agency, and circulated as the ostensible position of parties outside the agency. See B-229257, June 10, 1988; see *also* B-302710, May 19, 2004. An essential component of a violation is concealment of the agency’s role in sponsoring or preparing the material. See B-326944, Dec. 14, 2015; B-229257.

Here, the communications at issue disclose EPA’s role as the source of the then-Administrator’s remarks. The graphic overlay in the video identifies the then-Administrator by his title as “Administrator” of the “Environmental Protection Agency,” and the then-Administrator openly discusses the agency’s desire to revise the WOTUS rule and receive public comments concerning such revision. Although the NCBA logo simultaneously appears on the opposite side of the screen, we

believe that, based on the content of the then-Administrator's statements and the graphic identifying him as Administrator of the EPA, a reasonable viewer would conclude that the then-Administrator is the source of the interview remarks. Because EPA did not attempt to conceal that it was the source of the information in the video, we conclude that the then-Administrator's appearance in the video does not constitute covert propaganda.

Grassroots Lobbying Prohibition

The governmentwide anti-lobbying provision provides:

“No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.”

Pub. L. No. 115-31, div. E, title VII, § 715, 131 Stat. at 380; Pub. L. No. 114-113, div. E, title VII, § 715, 129 Stat. at 2476. This provision prohibits indirect or “grassroots” lobbying in support of, or in opposition to, pending legislation. B-325248, Sept. 9, 2014. We will find a violation of this prohibition where there is evidence of a clear appeal by an agency to the public to contact Members of Congress in support of, or in opposition to, pending legislation. *Id.*; B-322882. The appeal need not specify a particular piece of legislation. B-192746-O.M., Mar. 7, 1979. Our interpretation of this prohibition derives from the statutory language of the prohibition, as well as the legislative history of grassroots lobbying prohibitions, and reflects an understanding of an agency's legitimate interest in communicating with the public and Congress about its policies and activities. B-325248; 59 Comp. Gen. 115 (1979) (noting that “strictly prohibit[ing] expenditures of public funds for dissemination of views on pending legislation would consequently preclude virtually any comment by officials on administration or agency policy”). *See also* B-304715, Apr. 27, 2005; B-270875, July 5, 1996; B-192658, Sept. 1, 1978.

1. The Then-Administrator's Remarks Do Not Contain a Clear Appeal to the Public

To find a violation of the grassroots lobbying prohibition, there must be a clear appeal by an agency to the public to contact Members of Congress. A “clear appeal” must be overt or explicit. B-329373; B-329368, Dec. 13, 2017; B-304715; B-270875. For example, we found that the Department of Transportation (DOT) made a clear appeal to the public and, thus, violated the grassroots lobbying prohibition when it retweeted and liked a tweet that “clearly directed the reader to contact Members of Congress.” B-329368. Not only did the tweet itself urge readers to “[t]ell Congress to pass the AIRR Act,” but it also linked to a page that

included a form individuals could use to send an auto-generated message to their legislators and language directing readers to “[t]ell Congress to support air traffic control reform.” *Id.*

In contrast, we found that the Department of Energy (Energy) did not make a clear appeal to the public and, thus, did not violate the grassroots lobbying prohibition when it issued a tweet that included a link to the Secretary of Energy’s column on health care. B-329373. In that case, even though Energy’s tweet and the linked column both referred to pending legislation, neither directly urged the public to contact Members of Congress. *Id.*

Here, the then-Administrator’s comments do not constitute a clear appeal. In the published video, the then-Administrator expresses a position on the WOTUS rule from June 29, 2015, communicates EPA’s role in changing the rule, and encourages public comment on the rule. However, he makes no overt or explicit appeal to viewers urging them to contact Members of Congress. Indeed, the then-Administrator makes no reference to Congress or its members at all. Therefore, the then-Administrator’s remarks do not violate the grassroots lobbying prohibition.

2. EPA Did Not Adopt the Material on the NCBA Web site

Even where an agency’s communication, in and of itself, does not constitute a clear appeal, we will find such a clear appeal to exist where a third party makes the actual appeal to the public to contact Members of Congress and the agency endorses or facilitates access to that third party’s message. B-329368; B-326944. For example, in 2015, we found that EPA’s use of certain social media platforms in association with its WOTUS rulemaking violated anti-lobbying provisions contained in appropriations acts. B-326944. There, an EPA blog post included hyperlinks to an environmental advocacy group’s Web page that made clear appeals to the public to contact Congress in support of the proposed WOTUS rule. *Id.* We concluded that, by including hyperlinks to this Web page in EPA’s own materials, EPA facilitated access to the advocacy group’s Web sites and associated itself with the messages the group conveyed. *Id.* As such, when combined with the clear appeal actually contained on the group’s Web pages, we concluded that EPA’s actions violated the grassroots lobbying prohibition. *Id.*

As noted earlier, we came to a similar conclusion in 2017 when the Department of Transportation (DOT) “retweeted” and “liked” a tweet urging followers to “[t]ell Congress to pass” pending legislation. B-329368. We concluded that, although DOT was not the author of the tweet, DOT, by retweeting and liking the tweet, not only endorsed the message, but also created agency content in violation of the grassroots lobbying prohibition. *Id.*

As these two prior decisions illustrate, an agency may adopt a third party’s message where the agency uses its own communication channels to endorse or facilitate access to a third party’s materials. At the end of the video at issue here, NCBA

included a hyperlink to material that, in turn, contained hyperlinks to materials that encouraged readers to contact their elected representatives. However, neither EPA nor the then-Administrator made reference to these hyperlinks or to the materials to which they linked. While the then-Administrator controlled a key communication channel—his words in the interview—EPA exercised no control over the ultimate manner in which NCBA edited the video or over the inclusion of the hyperlink at the end of the video.

Because only NCBA was responsible for the hyperlinks and the materials to which they linked, and neither EPA nor the then-Administrator endorsed or facilitated access to such materials, we conclude that EPA did not violate the grassroots lobbying prohibition.

Interior Anti-Lobbying Provision

Since 1977, each Department of the Interior, Environment, and Related Agencies appropriations act has included the following provision:

“No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete other than to communicate to Members of Congress as described in 18 U.S.C. [§] 1913.”

Pub. L. No. 115-31, div. G, title IV, § 401, 131 Stat. at 493; Pub. L. No. 114-113, div. G, title IV, § 401, 129 Stat. at 2574. Because the Interior anti-lobbying provision prohibits any activity that “*in any way tends to promote*” public support for, or opposition to, a legislative proposal, it necessarily encompasses a broader range of activities than the governmentwide anti-lobbying provision. *Id.* (emphasis added); 59 Comp. Gen. 115. Specifically, this prohibition applies to both explicit and implicit appeals to the public that are designed to promote public support for, or opposition to, a legislative proposal. B-262234, Dec. 21, 1995. That is, it is intended to cover particularly egregious instances of agency lobbying, even where such lobbying falls short of actually soliciting the public to contact Members of Congress. B-239856, Apr. 29, 1991. See GAO, *H.R. 3078, The Federal Agency Anti-Lobbying Act*, GAO/T-OGC-96-18 (May 15, 1996).

In determining whether a violation of this prohibition has occurred, we evaluate a variety of factors, including the timing, setting, audience, content, and reasonably anticipated effect of the activity at issue, as well as whether the communication was intended to promote support for, or opposition to, a legislative proposal. B-281637, May 14, 1999. See GAO/T-OGC-96-18. Generally, where an agency makes a good faith effort to respond to a public inquiry and does not offer the agency’s views on a legislative proposal, the agency’s action does not violate this prohibition even if its

response inadvertently or incidentally influences public opinion about a proposal. B-239856; 59 Comp. Gen. 115.

For example, we found that the National Endowment for the Arts (NEA) violated this prohibition when it sent a mass mailing of information packets to promote public support for funding for a particular program. 59 Comp. Gen. 115. The packets contained a newspaper account of the funding debate and a cover letter stating that “the only obstacle that remained in the way of program implementation was a favorable House vote on program funding.” *Id.* NEA timed its mailing to coincide with reconsideration of the program’s appropriations after the conference committee failed to agree on funding. *Id.* Even though NEA sent the packets to individuals who had expressed an interest in the program during the previous year, we found that it was “improbable that all of the hundreds of inquiries had in fact requested a later ‘update’.” *Id.* Accordingly, we rejected NEA’s argument that it was simply responding to public concern about the level of program funding and concluded that NEA’s packet tended to promote public support for congressional approval of funding for that program. *Id.*

In another case, we held that a Department of the Interior (Interior) employee violated the Interior anti-lobbying provision when he spoke at a press conference sponsored by a private environmental group and, in his remarks, outlined what Interior perceived to be the negative consequences of a particular bill. B-262234. There, the purpose of the conference was to criticize the bill, and the sponsor timed the conference to coincide with a congressional committee’s active consideration of the bill. *Id.* Even though we did not find any evidence showing that the employee’s speech was part of a concerted effort by Interior to generate opposition to the legislation, we concluded that, given the context of the press conference itself and the content of the employee’s remarks, the action violated the Interior anti-lobbying provision because it tended to promote public opposition to a legislative proposal. *Id.*

In a third case, we concluded that the Forest Service violated this prohibition when it launched a widespread campaign to promote public support for certain initiatives in the President’s budget proposal.²³ B-281637. In accordance with the Forest Service’s goal for the campaign—to promote public support for the initiatives at issue—the Forest Service produced a briefing packet, used by its officials in talking to local public officials likely to be concerned about funding, that was “highly supportive” of the budget proposal. *Id.* Using these briefing packets, employees made hundreds of contacts with groups and individuals. *Id.* We found that this

²³ In concluding that the phrase “legislative proposal” included a proposed Presidential budget, we considered the legislative history of the provision and the fact that a President’s budget proposal “ha[s] a special constitutional, statutory and procedural role of setting forth for consideration by Congress the President’s legislative goals for how money should be spent in the next fiscal year.” B-281637.

campaign, at least in part, achieved the intended effect of encouraging members of the public to contact their representatives. *Id.* Because the briefing packet extolled the benefits of the proposal and because the campaign had the intended and actual effect of encouraging individuals to contact their representatives, we concluded that the Forest Service violated this provision.²⁴ *Id.*

In each of the cases in which we found a violation of the Interior anti-lobbying provision, the agency's communication—whether part of a mass mailing, briefing packet, or employee's written remarks—explicitly mentioned at least one legislative proposal and asserted certain benefits or disadvantages of that proposal. In contrast, in this case, the then-Administrator did not mention in his remarks any proposal pending before Congress. Rather, he focused solely on EPA's own rulemaking and the public's role in the rulemaking process. See, e.g., NCBA Video ("When comments are made as part of a record – as rulemaking – we have an obligation to review them And so, we want farmers and ranchers across this country to provide comments. This record being made is so important because it helps us make informed decisions."). In other cases in which we found a violation of the Interior anti-lobbying provision, the actual impact of the agency's communication was to encourage the public to promote a certain outcome by contacting their representatives. In contrast, here the then-Administrator's remarks would not have such an effect. Rather, because his remarks relate primarily to EPA's rulemaking efforts and public participation therein, the reasonably anticipated effect of his remarks would be for the public to submit comments on EPA's proposed rule.

Further, the facts do not show that either EPA or NCBA scheduled the interview based on the timing of Congress's consideration of a legislative proposal. Unlike in 59 Comp. Gen. 115, where NEA arranged the distribution of the materials to coincide with the House of Representatives's reconsideration of program funding, and B-262234, where the employee spoke at a conference that was timed to coincide with a particular bill's active consideration in committee, neither EPA nor NCBA timed the interview to coincide with Congress's consideration of any particular piece of legislation. Rather, NCBA requested the interview regarding WOTUS as part of the then-Administrator's national tour to discuss various EPA regulations, and the then-Administrator sat for the interview while he was on a previously scheduled stop for the tour.²⁵

Though the Interior anti-lobbying provision has broad reach, we recognize that Congress did not intend for this prohibition to prevent all communications from an

²⁴ In this case, we also held that the Forest Service violated this prohibition when, during a public meeting, a Forest Service official urged attendees to contact Congress in support of certain initiatives included in legislation and in the President's budget proposal. B-281637.

²⁵ EPA Letter, at 2–3.

agency to the public. 59 Comp. Gen. 115; see *also* B-239856. In that regard, we acknowledge an agency's interest in providing the public with legitimate information regarding its policies and activities, even if such communications incidentally influence public opinion regarding a legislative proposal. 59 Comp. Gen. 115. Here, the then-Administrator discussed EPA's activities and provided his policy views on matters within the agency's purview without offering views on any legislative proposals that may have been pending in Congress at that time. Thus, given the context and content of his remarks and the lack of demonstrable intent to influence public opinion regarding any legislative proposals, we conclude that EPA did not violate the Interior anti-lobbying provision.

CONCLUSION

EPA's use of its appropriations for the then-Administrator's interview and appearance in an NCBA video did not violate the publicity or propaganda, grassroots lobbying, or Interior anti-lobbying provisions. Because the then-Administrator's appearance in the video did not constitute a communication that was self-aggrandizing, purely partisan, or covert, EPA did not violate the publicity or propaganda prohibition. Further, EPA did not violate the grassroots lobbying prohibition because the then-Administrator did not make a clear appeal to the public to contact Members of Congress in support of, or in opposition to, pending legislation, nor did EPA adopt NCBA's materials as its own. Lastly, EPA did not violate the Interior anti-lobbying provision because the then-Administrator's remarks did not tend to promote support for, or opposition to, a legislative proposal.

If you have any questions, please contact Julia Matta, Managing Associate General Counsel, at (202) 512-4023, or Omari Norman, Assistant General Counsel for Appropriations Law, at (202) 512-8272.

Sincerely,

A handwritten signature in black ink that reads "Thomas H. Armstrong". The signature is written in a cursive style with a long horizontal line extending from the top of the "y" in "Armstrong".

Thomas H. Armstrong
General Counsel