



December 13, 2018

VIA CERTIFIED MAIL

The Honorable Charles J. Sheehan
Acting Inspector General
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2410T)
Washington, D.C. 20460

Dear Mr. Sheehan,

On behalf of Democracy Forward Foundation and Restore Public Trust, nonpartisan, nonprofit organizations, we write to respectfully request that your office open an investigation into whether individuals in EPA's Office of Public Affairs (OPA) violated federal law by engaging in prohibited covert propaganda.

On November 27, 2018, relying on documents obtained through the Freedom of Information Act (FOIA), The Daily Beast reported that then-EPA press secretary Amy Graham approved the script that would be used for the lead-in to an interview with then-Administrator Pruitt on Fox News, provided Fox News with talking points, and scripted questions for the interview. See The Daily Beast, "*Fox & Friends*" Fed Interview Script to Trump's EPA Chief, Emails Show, <https://www.thedailybeast.com/fox-and-friends-fed-interview-script-to-trumps-epa-chief-emails-show> (Nov. 27, 2018) ("Daily Beast Article"), Ex. A (attached).

The facts as reported in the Daily Beast Article, and as documented by records obtained through FOIA, raise deeply troubling questions regarding whether EPA officials have violated federal laws that prohibit government funds from being expended to engage in covert propaganda, thereby misleading the American people.

I. Federal Law Prohibition on Covert Propaganda

A government-wide appropriations provision in effect during the time of the events in question provides that—

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.¹

The Government Accountability Office (GAO) has interpreted this provision to prohibit the government from engaging in “covert propaganda.” The “critical element” of covert propaganda, the GAO has explained, “is the agency’s concealment from the target audience of its role in creating the material.” GAO, *Environmental Protection Agency—Application of Publicity or Propaganda and Anti-Lobbying Provisions*, B-326944, at 12 (Dec. 14, 2015), <https://www.gao.gov/assets/680/674163.pdf> (“GAO Thunderclap Opinion”). Accordingly, the GAO determined in an earlier ruling that the EPA violated the propaganda bar when it created an online page using a social media application called “Thunderclap” that encouraged supporters to disseminate EPA’s message without attributing the material to EPA. It was of no moment that the supporters doing the disseminating endorsed and adopted the message as their own. “A supporter’s adoption or acceptance of EPA’s message does not alter the fact that EPA used supporters as conduits of an EPA message campaign intended to reach a much broader audience than just these conduits, and EPA failed to disclose to that broader audience that the message was prepared and disseminated by EPA.” *Id.* at 13.

Similarly, the GAO has found that the Department of Health and Human Services (HHS) violated the covert propaganda prohibition when it used appropriated funds to produce and distribute video news releases that were packaged so as to allow the recipient television stations to understand that HHS was the source—but that were redistributed in a manner that concealed from the viewing public HHS’s role in creating the material. *See* GAO, *Department of Health and Human Services, Centers for Medicare & Medicaid Services—Video News Releases*, B-302710 (May 19, 2004), <https://www.gao.gov/decisions/appro/302710.pdf>.

The GAO determined that the Department of Education (ED) violated the propaganda ban when it contracted with a political commentator’s employer for him to provide views supporting the No Child Left Behind Act without disclosing his relationship with ED. GAO, *Department of Education—Contract to Obtain Services of Armstrong Williams*, B-305368 (Sept. 30, 2005), <https://www.gao.gov/decisions/appro/305368.pdf>. And the Small Business Administration’s transmittal of “suggested editorials” to newspapers violated the prohibition because the editorials were “misleading as to their origin.” GAO, *Small Business Administration—Public Information Activities*, B-223098 (Oct. 10, 1986), <https://www.gao.gov/products/475182#mt=e-report>.

The propaganda ban exists for good reason. The public has a right to know when their government is speaking to them in an attempt at political persuasion. When an agency “conceal[s] from the target audience . . . its role in creating the material,” GAO Thunderclap Opinion at 12, it misleads the American people and undermines the integrity of our public discourse. Thus, the propaganda ban has been rigorously applied by GAO across administrations

¹ 2016 Consolidated Appropriations Act, Pub. L. No. 114-113, § 718, 129 Stat. 2477 (2015); 2017 Consolidated Appropriations Act, Pub. L. No. 115-31, § 718, 131 Stat. 381 (2017).#

of both parties, to prevent attempts to improperly and covertly influence discussion and debate on significant issues of national importance.

II. The “Fox & Friends” E-Mails

According to the Daily Beast Article, and the federal records upon which the article is based, Amy Graham, then the EPA press secretary, sent talking points to Fox News Producer Diana Aloï in advance of an April 13, 2017 interview of then-Administrator Pruitt on the *Fox & Friends* morning news show. Aloï then sent Graham a draft script for the lead-in to the Pruitt segment, which read:

THERE’S A NEW DIRECTION AT THE ENVIRONMENTAL PROTECTION AGENCY UNDER PRESIDENT TRUMP – AND IT INCLUDES A BACK-TO-BASICS APPROACH.

THIS AFTER THE OBAMA ADMINISTRATION LEFT BEHIND A HUGE TOXIC MESS.

MORE THAN 13-HUNDRED SUPER-FUND SITES, WHICH ARE HEAVILY CONTAMINATED—STILL REQUIRE CLEAN-UPS.

SO WHY WAS PRESIDENT OBAMA TOUTED AS AN ENVIRONMENTAL SAVIOR IF ALL THESE PROBLEMS STILL EXIST?

In her email, Aloï asked Graham, “Would this be okay as the setup to his segment?” Graham responded “Yes – perfect,” to which Aloï replied, “Great thank you.” *See Ex. B (attached).*

This EPA-approved script was then read verbatim on the air by a Fox News host, Ainsley Earhardt, without any disclaimer that Fox News had explicitly sought--and had explicitly obtained--government approval of the precise language she was reading. In addition, all but one of the questions asked of Pruitt concerned topics that were pre-approved by EPA.

Journalism ethics experts quoted in the Daily Beast Article characterized EPA’s script approval as extremely unusual and a “cardinal sin” of journalism. Fox News itself characterized the events as “not standard practice” and stated that the matter was being addressed internally.

Not only was this correspondence unethical--it also appears to be illegal. A Fox News producer explicitly sought, and an EPA official, serving in her official government capacity, explicitly approved, a specific editorial text reflecting the Administration’s communications agenda to be read by a Fox News host purporting to speak in her own voice, without any attribution or acknowledgment that the federal government had approved the script. The government official in question plainly understood that the script would be aired to the public precisely as approved by government officials, and yet made no effort to ensure that the public would understand the government’s “role in creating the material.” GAO Thunderclap Opinion at 12. The propaganda prohibition applies even though this particular script may have been drafted in the first instance by a Fox News employee: by exercising an effective veto power over

its content, the government played a substantial role in creating the substantive editorial material masquerading as the media's own view, and public disclosure of this role was required.

III. Request for Investigation

It appears that EPA violated the propaganda prohibition by allowing a government-approved script to be read, verbatim, on air by a news host without any acknowledgment of EPA's role in approving the material. This occurrence is deeply troubling and raises serious questions about EPA's covert role in producing or approving this and other editorial segments on issues that touch on the Agency's work. Moreover, this occurrence begs the questions of the extent to which this apparent violation was unusual or aberrant, or more commonplace, and of what corrective measures are warranted to address the problem. Accordingly, we respectfully request that your office open an investigation that addresses the following issues:

- The extent of Amy Graham's and other EPA officials' role in producing and/or approving the content of the April 13, 2017 *Fox & Friends* interview with then-Administrator Pruitt;
- The extent of EPA officials' role in producing and/or approving the content of other Fox News segments containing interviews with then-Administrator Pruitt, and whether these efforts were coordinated with the White House or other Executive Branch agencies;
- The extent of EPA officials' role in producing and/or approving the content of other Fox News segments involving issues related to EPA's work, and whether these efforts were coordinated with the White House or other Executive Branch agencies;
- A review of processes and procedures within EPA's Office of Public Affairs and Office of the Secretary to determine how these apparent violations occurred, and describing remedial actions to be taken to address the harm caused to the American public and to prevent a recurrence in the future.

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We trust that you share our concern regarding these troubling revelations. A free press is vital to the proper functioning of American democracy, and the American people must be able to rest assured that the information they receive through the news media has not been tainted by the government's covert influence. Safeguarding this vital norm is consistent with our country's best traditions, and is legally required by Congress's bipartisan enactment of the propaganda ban.

Please do not hesitate to contact us if we may provide anything further. Thank you for your time and consideration.

Sincerely,

/s/ Anne Harkavy

Anne Harkavy
Executive Director
Democracy Forward Foundation

/s/ Caroline Ciccone

Caroline Ciccone
Executive Director
Restore Public Trust