



January 22, 2019

**VIA ELECTRONIC DELIVERY**

Pat A. Cipollone  
White House Counsel  
Executive Office of the President  
The White House  
1600 Pennsylvania Avenue Northwest,  
Washington, D.C. 20500

Dear Mr. Cipollone,

On behalf of Democracy Forward Foundation, a nonpartisan, nonprofit organization, we write to respectfully request that your office review whether White House staff engaged in lobbying and covert propaganda in violation of federal law.

On December 6, 2018, *The New York Times* reported that, “after White House officials urged senior executives at the parent company of Fox News to issue an endorsement [of the First Step Act], it released [...] an unusual statement formally backing the bill[.]” *See* *The New York Times, 11th -Hour Effort to Press McConnell to Allow a Criminal Justice Vote*, (Dec. 6, 2018) <https://www.nytimes.com/2018/12/06/us/politics/mcconnell-criminal-justice-bill.html>.

This coordination between the White House and Fox executives to issue a public statement endorsing specific legislation pending before Congress -- reportedly in an effort to “provide cover for Republicans concerned about looking soft on crime,” *id.* -- likely violates federal law prohibitions on lobbying and may have gone so far as to create covert propaganda. We therefore respectfully request that your office examine the matter and undertake other appropriate steps.

## I. Federal Law Prohibitions on Lobbying and Propaganda

A federal law first enacted in 1919 provides:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress.

18 U.S.C. § 1913. This law, commonly known as the Anti-Lobbying Act, prohibits government officials and employees from communicating with private citizens to encourage them to lobby Congress. *See, e.g.*, U.S. Dep't of Justice, Office of Legal Counsel, *Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts*, 13 Op. O.L.C. 300 (1999) (“*Anti-Lobbying Act Opinion*”). Accordingly, as relevant here, the Anti-Lobbying Act is violated when government officials appeal to entities outside government to use their influence to persuade members of Congress to support or defeat legislation.<sup>1</sup>

In addition, federal appropriations language explicitly prohibits the White House from covertly engaging in propaganda without Congressional authorization. This language, which covers the appropriations that fund the White House and Executive Office of the President, and exists in previous iterations of appropriations language, reads

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.<sup>2</sup>

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<sup>1</sup> Although the Department of Justice has typically interpreted the Anti-Lobbying Act not to apply to “presidential aides, appointees, and their delegates in areas within their official responsibilities,” *Anti-Lobbying Act Opinion*, 13 Op. O.L.C. at 303, we note that such a limitation is not found anywhere within the text of the statute. Moreover, the Office of Legal Counsel has itself cautioned such officials not to engage in the types of activities Congress sought to prohibit in enacting the statute, irrespective of whether the Department would deem a violation to have occurred or initiate a criminal inquiry. *Id.* at 303 n.5.

<sup>2</sup> Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, div. E § 715 <https://www.congress.gov/115/bills/hr1625/BILLS-115hr1625enr.pdf>.

The Government Accountability Office (GAO) has interpreted this language to prevent government resources from being expended for the creation of “covert propaganda,” or “communications that fail to disclose the agency’s role as the source of information.” 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”).

In identifying “covert propaganda,” the GAO has found the “critical element” to be “the agency’s concealment from the target audience of its role in creating the material.” *Id.* at 12. Under the Obama Administration, GAO determined the EPA violated Congress’ ban on propaganda through its creation of a social media platform that encouraged individuals to read and share supportive messages, but failed to indicate EPA involvement. *Id.*

GAO found the Small Business Administration’s coordination of editorials with newspapers was similarly “covert propaganda” for their failure to disclose the agency as the source of these opinions. GAO, *Small Business Administration--Public Information Activities*, B-223098, (Oct. 10, 1986), <https://www.gao.gov/products/406903#mt=e-report>.

## **II. The Fox Statement**

As the Times article states, in the midst of their campaign to provide political cover for Republicans regarding the First Step Act, the White House urged Fox to endorse the bill in order to reassure those Republicans that Fox News would not attack them for supporting it. Fox obliged, issuing what the Times called an “unusual statement”:

“FOX supports the bipartisan First Step Act to limit mandatory minimum sentences, prevent recidivism and expand rehabilitation. FOX looks forward to providing corporate support to programs implementing these objectives and to telling the compelling stories of redemption that result from common sense criminal justice reform.”

21st Century Fox, *Statement From Fox Supporting ‘First Step Act’* (Dec. 6, 2018) <https://www.21cf.com/news/21st-century-fox/2018/statement-from-fox-supporting-first-step-act>.

Published reports have demonstrated the closeness between the White House and Fox, and their degree of coordination on policy and communications matters. Concerns about the nature and legality of these interactions are underscored by the fact that the former White House

Communications Director, Hope Hicks, now serves as Executive Vice President and Chief Communications Officer of Fox. Indeed, Hicks is listed as a press contact on the statement.

The White House's apparent efforts to indirectly lobby Congress through Fox, and its failure to disclose the White House's involvement in the Fox statement, raise serious questions regarding whether the Administration has complied with the Anti-Lobbying Act and the propaganda ban. The public is entitled to know when the Administration is indirectly lobbying Congress and passing off its own policy views as those of an influential media outlet. Further, effective functioning of our representative democracy requires that Members of Congress -- many of whom closely follow Fox's reporting and opinions -- receive similar transparency, particularly as they make decisions regarding whether to support consequential legislation.

### **III. Request for Inquiry into Potential Violations**

Efforts by White House officials to persuade Fox to provide cover for Congressional Republicans on the First Step Act, would violate Congress's prohibition on lobbying, while White House efforts to coordinate Fox's messaging without acknowledging the government's involvement raise concerns about compliance with the prohibition on use of government resources for covert propaganda. These actions raise serious questions surrounding the relationship between White House officials and Fox. We therefore respectfully request that you examine the following matters and take appropriate steps as warranted by your review to discipline the individuals involved and educate the staff to ensure compliance with the laws going forward:

- The extent of the coordination between White House officials and Fox employees to issue statements in support of pending legislation;
- The role of White House officials in creating content favorable to the Administration, or attempting to mask favorable content created by White House's officials, to air on programs under the Fox umbrella;
- A review of White House policies to ensure compliance with the Anti-Lobbying Act, the propaganda ban, and other applicable legal provisions;
- A review of the White House Office of Communications' policy addressing coordination with media outlets, safeguards against propaganda, and remedial actions when violations occurs.

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We hope that you share our concerns about this troubling report of potentially unlawful lobbying and propaganda emanating from the White House.

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

Sincerely,

/s/ Anne Harkavy

Anne Harkavy

Executive Director

Democracy Forward Foundation