

## **Senate Democratic Policy Committee Hearing**

### **“An Oversight Hearing on the Bush Administration’s Plans to Privatize Social Security”**

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I would like to thank Chairman Dorgan and all the Members of the Senate Democratic Policy Committee for this opportunity to appear before you today. I commend the Committee for its continued oversight of the federal government and applaud the Committee for conducting some of the most critical oversight hearings that have been held by Congress in recent years.

I am the Executive Director of the Project On Government Oversight (POGO) which investigates, exposes, and seeks to remedy systemic abuses of power, mismanagement, and subservience by the federal government to powerful special interests. Founded in 1981, POGO is a politically independent nonprofit watchdog that strives to promote a government that is accountable to the citizenry.

I am here today not as an expert on the future of Social Security, I leave that to economists but as an advocate for good government. My organization’s primary goal is to protect the operations of the federal government from being corrupted by powerful special interests. One of the main ways that these powerful interests promote their agendas is through lobbying the public through advertising. We see it in full-paged ads extolling the virtues of weapons systems, as well as through television spots defending companies who have been caught padding their pockets at the taxpayers’ expense, or even a political candidate running for office asking for your vote. When a reader or TV viewer sees these ads, they can view them with a grain of salt, seeing who is behind the ads and has paid for them.

When the federal government uses the same methods of persuasion, however, it is taking advantage of the public’s trust. Indeed, federal laws have recognized for years the need to prevent the government from doing so.<sup>1</sup> The first anti-lobby statute (enacted by Congress in 1919) is criminal in nature and falls under the jurisdiction of the Department of Justice.<sup>2</sup> The law prohibits the use of appropriated funds for some forms of lobbying.

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<sup>1</sup> The Hatch Act (5 U.S.C. §§ 7321-7326) prohibits federal executive employees from engaging in political activity while on duty. Government employees in violation of the Hatch Act can be removed or suspended from federal employment.

<sup>2</sup> 18 U.S.C. § 1913 states:

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

That law prohibits grass-roots lobbying efforts to pressure Congress to support “any legislation or appropriation by Congress.”

The second anti-lobbying law is included in annual appropriations acts,<sup>3</sup> most recently P.L. 108-447, Div. F, Title V., § 503 (2005),<sup>4</sup> which has been interpreted to prohibit indirect or grass-roots lobbying activities through appeals to the public to contact their elected representatives.

There is an important distinction between the executive branch informing the citizenry of government policies or defending its policies, which is permitted by law, and the *illegal* use of taxpayer funds to persuade the public to ask Congress to adopt the Executive Branch’s political agenda — also known as grass-roots lobbying. Simply stated, this is a case of illegal propaganda versus education.

This hearing concerns the Social Security Administration’s (SSA) use of appropriated taxpayer funds to lobby for President Bush’s proposals to reform Social Security. In the very recent past, we have seen other high profile examples of the government crossing

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service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

<sup>3</sup> According to the GAO, “congress has imposed [an anti-lobbying] prohibition, using identical language, on the use of all appropriations for publicity or propaganda purposes annually since 1951.” GAO, B-303945, Letter to The Honorable Henry Waxman, Office of National Drug Control Policy — Video News Release, January 5, 2005, p. 6.

<sup>4</sup> Section 503 states:

(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

the line between educating and illegally lobbying the public. For example, the Department of Education paid commentator Armstrong Williams nearly \$250,000 to help promote the Bush Administration's "No Child Left Behind" law. This case will undoubtedly require Department of Justice and the Government Accountability Office review. Another example was the GAO's January 4, 2005, report (B-303495) finding that Office of National Drug Policy's prepackaged news stories constituted "covert propaganda in violation of the law." GAO found the same when it reviewed Health and Human Services' campaign to promote changes in Medicare during last year's prescription drug debate.

I urge Congress to step in and draw a clearer line between education and illegal propaganda. The two agencies that investigate lobbying cases (DOJ and GAO) are both lenient in their interpretation of the anti-lobbying laws, leaving wide gaps for the executive branch to plod through. Moreover, GAO affords agencies wide discretion in their informational activities because, "[g]iven the absence of definitional guidance in the statute and its legislative history, we have struggled over the years to balance the need to give meaning to this prohibition with an agency's right or duty to inform the public regarding its activities and programs."<sup>5</sup> For example, GAO historically has looked for the specific words "contact your Representative and/or Senator." In the past, DOJ has interpreted section 1913 to allow lobbying activities by the President and agency communications with the public through public speeches, appearances, and published writing. The courts have held, however, that anti-lobbying violations occur when the message is likely to influence the public to contact Congress.<sup>6</sup> Indeed, the conduct is of particular concern when the publication is "authoritative in appearance."<sup>7</sup> I can think of no document that better fits this description than the annual Social Security mailing.

In the present case, POGO concludes that, even strictly interpreting the laws, some of the SSA's current actions violate the anti-lobbying laws. First, SSA's new "Social Security Statement," which will be sent to approximately 140 million people includes the statement: "But now, the Social Security system is facing serious future financial problems, and action is needed soon to make sure that the system is sound when today's younger workers are ready for retirement." The SSA Statement also reads, "Your estimated benefits are based on current law. Congress has made changes to the law in the past and can do so at any time." This urgent call for action along with references to Congress and their capacity to change this law are highly unusual and come at a time when the Bush Administration is aggressively pushing its Social Security reforms. Taken together these statements represent a clear effort to persuade the public to push Congress to adopt the President's agenda.

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<sup>5</sup> GAO, B-302504, Letter to The Honorable Frank R. Lautenberg et al., Medicare Prescription Drug, Improvement, and Modernization Act of 2003 — Use of appropriated funds for flyer and print and television advertisements, March 10, 2004, p. 6.

<sup>6</sup> *American Public Gas Association v. Federal Energy Administration*, 408 F. Supp. 640, 641 (Dist. DC 1976).

<sup>7</sup> *Id.* at 642.

Additionally, the SSA's Fiscal Year 2005 National Strategic Communications Plan stated as an objective that the department should "Educate all audiences on the current Social Security system in order to increase understanding of solvency issues and challenges ... Message: Social Security's long-term financing problems are serious and need to be addressed soon." Another attempt to engage in illegal grass-roots lobbying.

It seems these days that the very underpinnings of government are quickly being eroded. Excessive secrecy, weak conflict of interest and ethics laws, and outsourcing of what are truly "inherently governmental functions" such as auditing contracts, intelligence gathering, and even performing some military functions are jeopardizing fundamental public interests. I cannot escape concluding that all of these efforts are ultimately generated by an entity placing private interests above public interests.

In the end, I would like to note that we are witnessing today, in addition to some of the worst practices in government, some of the best as well. I am proud to sit at this table with two people who represent the fundamental strength of our government. Federal employees are the public's eyes and ears, letting us know how the government is spending our money. Fortunately, we have people like those on this panel in our government looking out for us.

Again, I thank the Committee for its continued oversight of the government and I would be happy to answer any questions at this time.