



Decision

Matter of: Executive Agencies—Communications about the 2019 Fourth of July Events on the National Mall

File: B-331262

Date: June 17, 2020

DIGEST

Executive agencies' communications to the public about the 2019 Fourth of July events on the National Mall did not violate the prohibitions against grassroots lobbying or publicity or propaganda. The communications did not constitute grassroots lobbying because they did not appeal to the public to contact Members of Congress in support of or in opposition to pending legislation. The communications were not covert propaganda because they all clearly identified the authoring agency, nor were they purely partisan or self-aggrandizing. The communications were not purely partisan because they were not devoid of any connection to an official function. Finally, the communications were not self-aggrandizing because they did not engender praise for the agency itself but rather were an exercise of the agencies' legitimate informational function.

DECISION

This responds to your request for our decision on federal agencies' communications to the public regarding the fiscal year 2019 Fourth of July events on the National Mall (hereinafter Fourth of July events).¹ You asked whether such agency communications complied with sections 715 and 718 of the Financial Services and General Government Appropriations Act, 2019. Request Letter, at 2; Pub. L. No. 116-6, div. D, title VII, §§ 715, 718, 133 Stat. 13, 190–191 (Feb. 15, 2019).

¹ Letter from Patrick Leahy, Vice Chairman, Committee on Appropriations, United States Senate; Tom Udall, Ranking Member, Subcommittee on the Interior, Environment, and Related Agencies, United States Senate; and Chris Van Hollen, Member, Subcommittee on the Interior, Environment, and Related Agencies, United States Senate, to the Comptroller General (July 5, 2019) (Request Letter).

Our review of agency communications that were publicly available online, along with factual information we received during the course of GAO's related audit, gave us sufficient information to render a decision in this matter. GAO, *Independence Day Celebrations: Estimated Costs for Fourth of July Events on the National Mall for 2016 through 2019*, GAO-20-470 (Washington, D.C.: June 17, 2020).² Accordingly, we did not solicit additional legal views from the executive agencies involved. As discussed below, we conclude that executive agencies participating in the Fourth of July events did not violate sections 715 and 718 when they published communications to the public about the events.

You also asked that GAO investigate the costs and impacts associated with the Fourth of July celebration. In a separate product, GAO reported the following information for the Fourth of July events for fiscal years 2016 through 2019: (1) the total costs that federal agencies and state and local jurisdictions are estimated to have incurred; and (2) the extent, if any, to which the federal government has reimbursed costs incurred by state and local jurisdictions; and the extent, if any, to which federal agencies delayed, deferred, or canceled other programs or activities as a result of resources being used for Fourth of July events. GAO-20-470.

BACKGROUND

Each year the federal government hosts Fourth of July events on the National Mall in the District of Columbia. See GAO-20-470 (describing federal activities for the Fourth of July events from fiscal years 2016 through 2019). The events for fiscal years 2016 through 2019 featured three events: the National Independence Day Parade, *A Capitol Fourth* concert, and a fireworks display. *Id.* In 2019, the government sponsored an additional event, *Salute to America*, and expanded its fireworks display. *Id.*

A wide array of agencies worked together to execute the Fourth of July events, with the Department of Interior's (Interior) National Park Service taking a lead role in event planning. On June 19, 2019, Interior announced the schedule of Fourth of July events, including the *Salute to America* event. Press Release, David Bernhardt, Secretary, Interior, *Secretary Bernhardt Announces Events for 2019 Independence Day Celebration in the Nation's Capital* (June 19, 2019), available at <https://www.doi.gov/pressreleases/secretary-bernhardt-announces-events-2019-independence-day-celebration-nations-capital> (last visited June 10, 2020). Nine days later, Interior announced that the *Salute to America* event would include a military flyover and additional fireworks. Press Release, Interior, *Interior Announces Additional Details about Salute to America, Annual Fourth of July Celebration* (June 28, 2019), available at <https://www.doi.gov/pressreleases/interior-announces-additional-details-about-salute-america-annual-fourth-july> (last visited June 10,

² This GAO report, GAO-20-470, was published on June 17, 2020 to Members of Congress. Its public release is forthcoming.

2020). The Secretary of the Interior stated that this will be a “fantastic Fourth of July with . . . a spectacular fireworks display” and that “the Department of Defense will be providing a one-of-a-kind music and air power experience.” *Id.*

Most agency communications involved logistics and safety information for visitors. For example, the National Park Service and Park Police published the schedule of Fourth of July events and the Department of Health and Human Services issued statements about the dangers of fireworks.³ Some communications merely described the agency’s role in the Fourth of July events. See, e.g., Department of Energy, National Nuclear Security Administration, *NNSA helps keep July Fourth celebrations safe across the land of the free* (July 5, 2019), available at <https://www.energy.gov/nnsa/articles/nnsa-helps-keep-july-fourth-celebrations-safe-across-land-free> (last visited June 10, 2020). Many agencies published statements wishing the public a happy Independence Day, and some expressed gratitude to those who participated in the day’s events as well as to the armed forces. For instance, the 3d U.S. Infantry Regiment, also known as the Old Guard, posted online a video of the military flyovers and stated, “Checkout this epic flyover during yesterday’s Salute to America! We hope everyone had a safe and happy Independence Day!!!” 3d Infantry Regiment (Old Guard), *Checkout this epic flyover during yesterday’s Salute to America!*, Facebook (July 5, 2019), available at https://www.facebook.com/usarmyoldguard/posts/2542890122401748?comment_id=2543650075659086 (last visited June 10, 2020).

This decision addresses the activities of executive agencies that fall within the definition of “agency” under section 105 of title 5 of the United States Code. 5 U.S.C. § 105 (referring to the executive departments listed under section 101 of the same title). For a full list of the agencies within the scope of this decision, see the attached enclosure. To determine whether an agency violated sections 715 and 718 of the Financial Services and General Government Appropriations Act, 2019, we reviewed publicly available agency communications about the Fourth of July events. Specifically, we reviewed footage of the 2019 Fourth of July events as well as agency press statements and agency social media postings published on or around July 4, 2019 and around when the 2019 Fourth of July celebration was originally announced by Interior. To supplement this information, during the course of the related GAO audit, GAO-20-470, we asked agency officials whether they were

³ Press Release, National Park Service, *Interior Announces Additional Details about Salute to America, Annual Fourth of July Celebration* (June 28, 2019), available at <https://www.nps.gov/nama/learn/news/interior-announces-additional-details-about-salute-to-america-annual-fourth-of-july-celebration.htm> (last visited June 5, 2020); @USParkPolicePIO, #DCJuly4Tips, Twitter (June 24, 2019), available at <https://twitter.com/usparkpolicepio/status/1143179914792906754> (last visited June 10, 2020); @HHSGov, *Leave the pyrotechnics to the professionals on #IndependenceDay*, Twitter (July 4, 2019), available at <https://twitter.com/HHSGov/status/1146879105591402503> (last visited June 10, 2020).

aware of any communications suggesting activities prohibited by sections 715 and 718.

DISCUSSION

The issue before us is whether federal agency communications to the public regarding the 2019 Fourth of July events violated sections 715 and 718 of the Financial Services and General Government Appropriations Act, 2019. Pub. L. No. 116-6, §§ 715, 718.

Section 715: grassroots lobbying

Section 715 of the act prohibits agencies from using their appropriations for grassroots lobbying activities. Pub. L. No. 116-6, § 715. Our case law defines grassroots lobbying as an agency making an overt appeal to the public to contact Members of Congress in support of or in opposition to pending legislation. See, e.g., B-329199, Sept. 25, 2018; B-326944, Dec. 14, 2015.

None of the agency communications we reviewed related to any pending legislation before Congress or appealed to the public to contact their representatives on such legislation. Therefore, agencies' communications about the Fourth of July events did not violate the prohibition against grassroots lobbying.

Section 718: publicity or propaganda

Section 718 of the act prohibits agencies from using their appropriations for publicity or propaganda purposes. Pub. L. No. 116-6, § 718. The prohibition against publicity or propaganda does not require agencies to provide a balanced view of a particular activity. B-330107, Oct. 3, 2019; B-322882, Nov. 8, 2012. To violate the publicity or propaganda prohibition, the agency's justification for the communication must be "so palpably erroneous as to be unreasonable." B-302504, Mar. 10, 2004, at 7 (citing to B-178528, July 27, 1973). The prohibition bars three categories of communications with the public: covert propaganda, purely partisan material, and self-aggrandizement. See B-329199, Sept. 25, 2018; B-304228, Sept. 30, 2005; B-302710, May 19, 2004. We consider each of these categories in turn.

Covert propaganda is a communication that fails to disclose the agency's role as the source of the information, or that is misleading as to its origin. B-326944. The communications we reviewed all clearly identified the authoring agency. Statements issued as press releases appeared on the authoring agency's own website, and each social media posting displayed the agency's name and username as the author of the post. Therefore, no agency communications about the Fourth of July events constituted covert propaganda.

Communications are purely partisan in nature if they are entirely political and are completely devoid of any connection to the official business of the agency. B-330107, Oct. 3, 2019. The prohibition does not bar materials that may have some

political content, nor does it require agencies to provide a balanced view of a particular activity or policy. *Id.* In order to balance the legitimate informational needs of agencies with the protection of public funds, the publicity or propaganda prohibition bars only those communications that are completely political in nature and lack a connection to the agency's official business. *Id.*

Here, the agency communications maintained a connection to the official business of the agencies. For example, some agencies like the Departments of Defense and Energy released statements describing their participation in the events, and these descriptive statements were meant to inform the public of governmental activity. As another example, many of the agencies wished the public a happy Independence Day, and these well wishes reasonably related to the government's show of patriotism and support for a federal holiday. Accordingly, the communications were not purely partisan.

Self-aggrandizement is publicity of a nature tending to emphasize the importance of the agency or activity in question. B-326944. Because agencies have authority to disseminate information regarding their views and policies, we have traditionally afforded agencies wide discretion in their informational activities. *Id.* Agencies may permissibly communicate the benefits of agency activities where the communication does not engender praise for the agency itself. *Id.* (agency communication about benefits of an agency rule was permissible where it did not attempt to laud or credit the agency for the stated benefits); B-302504, Mar. 10, 2004 (agency cover letter touting the benefits of a new law was permissible where the letter did not attribute to the agency the enactment of the new benefits).

Many communications reflected the agencies' optimistic view of the Fourth of July events. For example, Interior described its fireworks display as "spectacular" and the Department of Defense's musical performances and flyovers as "one-of-a-kind." The Department of Defense also referred to its flyovers as "epic." Although these communications undoubtedly took a positive view of the planned activities, they did not emphasize the importance of the agencies involved, nor did they engender praise for the agencies themselves. Rather, the agencies conveyed information on their involvement in the activities while communicating the benefits that would accrue to spectators. Therefore, agency communications about the Fourth of July events did not constitute self-aggrandizement.

CONCLUSION

Executive agencies' communications to the public about the Fourth of July events did not violate the prohibitions against grassroots lobbying or publicity or propaganda.

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is written in a cursive style with a prominent horizontal line above the first few letters.

Thomas H. Armstrong
General Counsel

List of Requesters

The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Tom Udall
Ranking Member
Subcommittee on the Interior, Environment, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Chris Van Hollen
Member
Subcommittee on the Interior, Environment, and Related Agencies
Committee on Appropriations
United States Senate

ENCLOSURE

List of Federal Agencies Included in the Scope of this Legal Decision

We reviewed federal agency communications to the public about the 2019 Fourth of July events for their consistency with sections 715 and 718 of the Financial Services and General Government Appropriations Act, 2019. Pub. L. No. 116-6, div. D, title VII, §§ 715, 718, 133 Stat. 13, 190–191 (Feb. 15, 2019). For the purposes of this decision, a federal agency is defined as an executive agency under section 105 of title 5 of the United States Code. 5 U.S.C. § 105 (defining an executive agency as “an Executive department, a Government corporation, and an independent establishment”); see 5 U.S.C. § 101 (defining “executive departments”). For more information about the roles of each agency, as well as legislative branch agencies involved in the events, see GAO, *Independence Day Celebrations: Estimated Costs for Fourth of July Events on the National Mall for 2016 through 2019*, GAO-20-470 (Washington, D.C.: June 17, 2020).

Department of Defense

- Department of the Army
- Department of the Air Force
- Department of the Navy
- District of Columbia National Guard

Department of Energy

Department of Health and Human Services

Department of Homeland Security

- Customs and Border Patrol
- Federal Emergency Management Agency
- Federal Protective Service
- Transportation Security Administration
- United States Coast Guard
- United States Secret Service

Department of the Interior

- National Park Service
- United States Park Police

Department of Justice

- Bureau of Alcohol, Tobacco, Firearms and Explosives
- Federal Bureau of Investigation

Department of Transportation

Smithsonian Institution