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Practice Notes

Calling on Congress

Understanding the Limitations of Anti-Lobbying Provisions

By Mr. Michael D. Jones

Lobbyists have more offices in Washington than the President. You see, the President only tells Congress what they should do. Lobbyists tell'em what they will do. — Will Rogers¹

It is another sweltering day in July at Fort Swampy. The chief of public affairs trudges across the baking asphalt parking lot to the entrance of the headquarters building. She attempts to unlock the door using her access card. Instead of a click of the lock, she is met with a flashing red light . . . access denied. Aggravated, she wades through the humid air to the other side of the building to gain entry

at another door. As she moves down the hallway toward the elevator, she is greeted with a hastily constructed “out of order” sign. Six flights of stairs later, she finally reaches her office, only to discover that the air conditioning has decided to take the day off. In a fit of anger, she grabs her Government laptop, logs in to the Fort Swampy Public Affairs social media account, and posts to the 25,000 followers:

Conditions at Fort Swampy are abysmal!!! Contact your members of Congress and tell them to support the military and fund installations by passing the Fix Fort Swampy Act.

Despite her lack of proximity to Washington, D.C., the Fort Swampy public affairs officer may have just engaged in improper lobbying.

Within Government agencies, confusion often arises over the distinction between lobbying activities and routine communications about Government activities and programs, especially when such communications relate to pending legislation or other congressional actions. Legal advisors need to understand when communications or messaging efforts can violate anti-lobbying restrictions so that they can properly advise their clients, thereby avoiding potential violations without unduly restricting proper messaging and communications.

There are two basic provisions of law that legal advisors should be familiar with when advising clients on communications that could be construed as lobbying activities. The first provision is 18 U.S.C. § 1913, commonly referred to as the Anti-Lobbying Act.² The Anti-Lobbying Act imposes restrictions and limitations on Government officials lobbying Congress, especially with respect to grassroots activities designed to influence pending legislation.³ Section 1913 was codified initially as a criminal statute, but it was later amended to remove the criminal penalties.⁴ However, despite the removal of criminal penalties, violations of the act still carry civil penalties, including fines ranging from \$10,000 to \$100,000 per individual violation.⁵ The text of section 1913 is as follows:

Lobbying with appropriated moneys

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,

a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counterintelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.⁶

The second anti-lobbying provision is the rider typically included in annual appropriations bills.⁷ This rider also prohibits Government officials from engaging in certain types of lobbying activities with Federal funds.⁸ For example, in the Further Consolidated Appropriations Act of 2024, section 715 provides that:

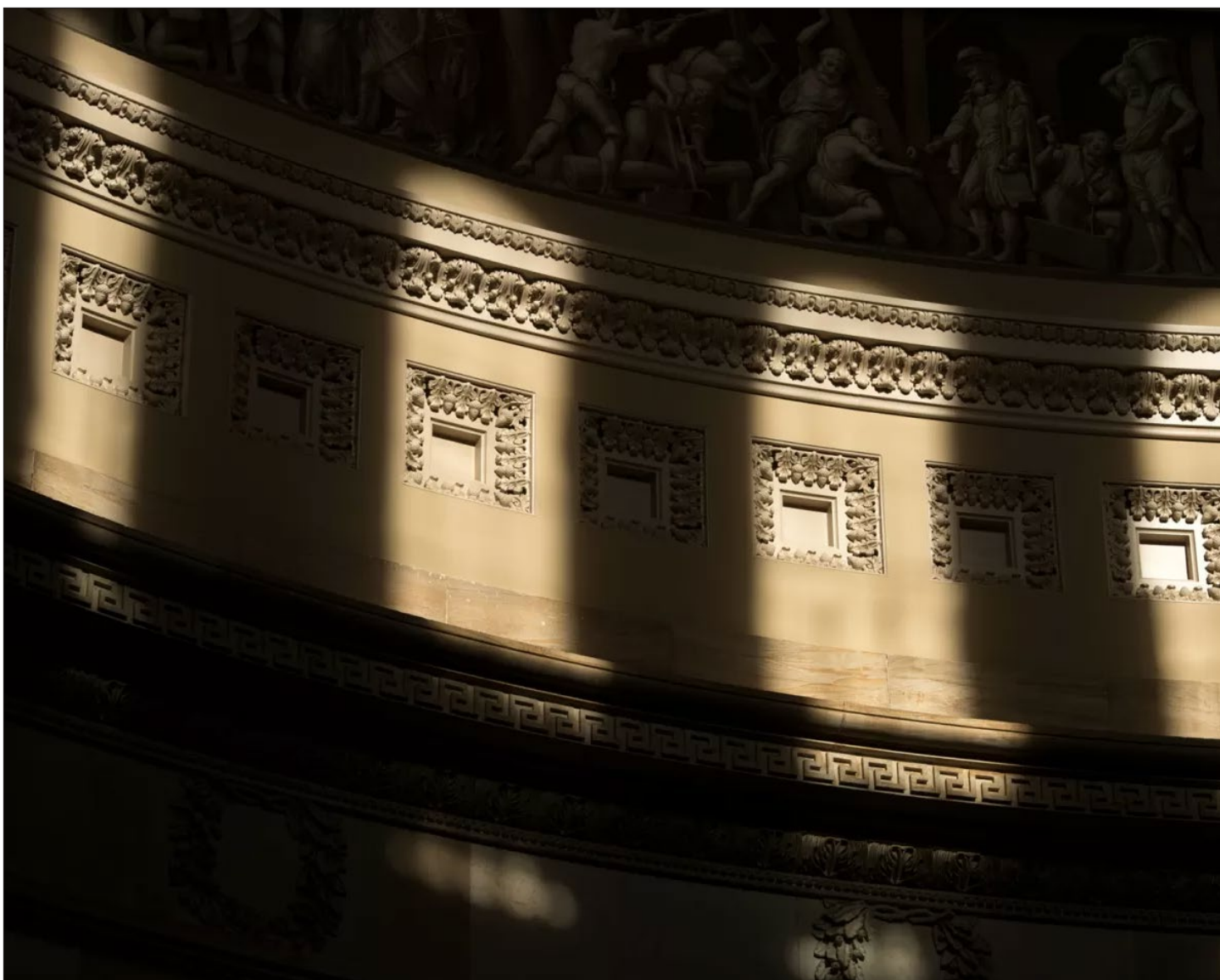
No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.⁹

These two provisions combine to form the primary restrictions on lobbying activities for Government officials.¹⁰ Violations of 18 U.S.C. § 1913 typically fall under the purview of the Department of Justice for enforcement, while violations of the anti-lobbying riders in the appropriations bills, such as section 715 above, may be referred to the Government Accountability Office (GAO) to determine if a violation has occurred.¹¹

On their face, both of these provisions are very expansive with respect to the scope of restricted conduct. However, the Office of Legal Counsel (OLC) in the Department of Justice has consistently construed the Anti-Lobbying Act narrowly, doing so across administrations of both parties.¹² This is because of concerns that a literal or broad reading of the restrictions could interfere with the President's performance of constitutionally assigned functions.¹³ The OLC views the law as primarily focused on "grassroots" lobbying campaigns by executive branch officials that would involve spending a large amount of taxpayer money.¹⁴ Grassroots lobbying typically involves the mass mobilization of the public around a legislative issue.¹⁵ Grassroots lobbyists ask the general public to contact their legislators and other officials regarding an issue.¹⁶

The OLC has also stressed the following:

The Anti-Lobbying Act does not prohibit (1) direct communications between Department of Justice officials and Members of Congress and their staffs; (2) public speeches, appearances, and writings; (3) private communications designed to inform the public about Administration positions or to promote those positions, as long as there is no significant expenditure of appropriated funds; (4) the traditional activities of Department components whose duties historically have included communicating the Department's views to Congress, the media, or the public; or (5) communications or activities unrelated to legislation or appropriations, such as lobbying Congress or the public to support Administration nominees.¹⁷



Shadowed portions of the Capitol Rotunda. (Source: Architect of the Capitol)

The GAO has taken a similar approach with respect to their analysis of the annual appropriations rider by expressing an interpretation that the restriction prohibits the use of appropriated funds for “indirect or grassroots lobbying, that involves a clear appeal to the public to contact Members of Congress in support of or in opposition to pending legislation.”¹⁸ In other words, to violate the anti-lobbying provision, “there must be a clear appeal by an agency to the public to contact Members of Congress, and that appeal must be in support of or in opposition to pending legislation.”¹⁹

Language or communications that merely consist of statements that are likely

to influence members of the public to contact their congressional representatives are unlikely to rise to the level of a violation.²⁰ For example, GAO reviewed a case in which the Social Security Administration sent an annual letter to provide American workers with a report of their employment history and an estimate of their benefits.²¹ The letter included language stating that benefits were based on current law and that Congress may change the law because payroll taxes collected were insufficient to fully cover benefits.²² GAO determined that the inclusion of the language relating to possible changes to the law impacting benefits did not amount to a clear appeal to

the public to contact congressional members in support of an agency position.²³

Looking back to the Fort Swampy hypothetical at the beginning of this article, we should now be able to discern certain facts that, when taken together, may constitute a violation of the two anti-lobbying restrictions discussed above. Critical to our analysis are the following: (1) the public affairs officer used a Government computer in a Government facility and an official Government social media account for her post; (2) the social media account had a significant number of followers; (3) she made a direct appeal to the public to contact members of Congress; and (4) the appeal was to support a specific

piece of legislation (in this hypothetical, the Fix Fort Swampy Act).

Taken together, one might conclude that the public affairs officer violated the Anti-Lobbying Act. However, the small monetary cost associated with the social media post works in her favor. Although appropriated funds were likely used to pay the employee for her time and fund the computer, office, and internet connection she used for the social media post, the relative cost of making a single post is minuscule. Accordingly, the Department of Justice would likely conclude that a single post at essentially no cost to the taxpayers does not rise to the level of an Anti-Lobbying Act violation.²⁴ Even if no violation is found, such actions could still result in an investigation.

In contrast, this hypothetical is very similar to the facts in a GAO opinion concerning a founded violation by a Department of Transportation (DOT) official.²⁵ In that case, a DOT official “retweeted” and “liked” a tweet urging followers to “[t]ell Congress to pass” pending legislation using an official DOT social media account.²⁶ The GAO concluded that the DOT official violated the anti-lobbying provision of the applicable appropriations rider as a result of a retweet and a like of a tweet that urged the public to contact Congress in support of pending legislation using an official social media account.²⁷

The GAO further determined that because the DOT “obligated and expended appropriated funds in violation of a statutory prohibition, the agency also violated the Antideficiency Act.”²⁸ Accordingly, we can likely conclude that the actions of the public affairs officer would constitute a violation of the rider to the annual appropriations bills even if it does not rise to the level of a violation of the Anti-Lobbying Act.

It is important to note that “individual departments and agencies all maintain their own rules and restrictions on lobbying activities, as well as guidance on what is permitted.”²⁹ It is the personal responsibility of every individual to be aware of and comprehend the particular rules and guidelines of their agency, which can be more stringent than current laws and regulations.³⁰ Additional restrictions may also apply to Government officials after they leave public

service.³¹ Such restrictions may limit or prohibit certain types of lobbying activity.³²

Legal advisors will often be asked to review communications or engagement plans that include discussions of pending legislation or involve direct communications with congressional members and staff on official matters. Strategic-level communication about pending laws and policies is an important part of our professional discourse. Understanding the nuances of the relevant anti-lobbying provisions will ensure that our clients do not run afoul of the restrictions while also providing clear and consistent avenues of permissible communication on critical matters, such as legislative programs. **TAL**

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Notes

1. BRYAN B. STERLING & FRANCES N. STERLING, WILL ROGERS SPEAKS: OVER 1,000 TIMELESS QUOTATIONS FOR PUBLIC SPEAKERS (AND WRITERS, POLITICIANS, COMEDIANS, BROWERS . . .) 186 (1995).

2. 18 U.S.C. § 1913; Kenneth Gold, *Changes to Both Hatch Act and Anti-Lobbying Act You Should Be Aware Of*, GOV’T AFFS. INST. AT GEORGETOWN UNIV. (May 31, 2012), <https://gai.georgetown.edu/changes-to-both-hatch-act-and-anti-lobbying-act-you-should-be-aware-of> [<https://perma.cc/VEN8-4J69>].

3. Gold, *supra* note 2.

4. *Id.*

5. *Id.*

6. 18 U.S.C. § 1913.

7. In the context of an appropriations bill, a rider is a provision that does not specifically provide for an appropriation but is often closely linked to an appropriation provision as a means to limit applicability or impose certain restrictions. *Appropriation Rider*, BUDGET COUNSEL REFERENCE, <https://budgetcounsel.com/cyclopedia-budgetica/cb-appropriation-rider> [<https://perma.cc/AZ6Z-JDVP>] (last visited Oct. 23, 2025).

8. *See, e.g.*, Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, sec. 504, 123 Stat. 3034, 3310 (“No . . . part of any funds appropriated in this 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 Congress, except in presentation to Congress itself.”).

9. Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, sec. 715, 138 Stat. 460, 576.

10. 31 U.S.C. § 1352 also includes lobbying restrictions concerning the use of Federal funds for recipients of Federal contracts, grants, loans, or cooperative agreements. These additional restrictions are beyond the scope of this article.

11. *See* The Honorable William F. Clinger, B-270875, 1996 WL 559651, at *2 (Comp. Gen. July 5, 1996) (referring to the Government Accountability Office by its previously held name, the General Accounting Office).

12. *Analysis: Anti-Lobbying Act & Dan Scavino*, AM. OVERSIGHT (Mar. 30, 2017), <https://americanoversight.org/analysis-anti-lobbying-act-dan-scavino/#fn2> [<https://perma.cc/R8F5-K43F>].

13. Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts, 13 Op. O.L.C. 300, 306 n.12 (1989).

14. *Id.* at 304.

15. *Direct vs. Grassroots Lobbying*, LOBBYIT.COM, <https://lobbyit.com/direct-vs-grassroots-lobbying/> [<https://perma.cc/VH6C-ZNPX>] (last visited Oct. 23, 2025).

16. *Id.*

17. 13 Op. O.L.C. at 300.

18. U.S. Department of Transportation-Violation of Governmentwide Anti-Lobbying Provision., B-329368, 2017 WL 6350825, at *3 (Comp. Gen. Dec. 13, 2017).

19. *Id.*

20. *See* Social Security Administration-Grassroots Lobbying Allegation, B-304715, 2005 WL 991729 (Comp. Gen. Apr. 27, 2005).

21. *See id.*

22. *Id.*

23. *Id.*

24. *See Analysis: Anti-Lobbying Act & Dan Scavino*, *supra* note 12.

25. U.S. Department of Transportation-Violation of Governmentwide Anti-Lobbying Provision., B-329368, 2017 WL 6350825 (Comp. Gen. Dec. 13, 2017).

26. *Id.* at *1.

27. *Id.* at *5.

28. *Id.* Use of obligated and expended appropriated funds in violation of a specific prohibition contained in an appropriations act likely constitutes a violation of the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A), as the appropriations are not available for such prohibited purposes. *See* Environmental Protection Agency-Application of Publicity or Propaganda and Anti-Lobbying Provisions, B-326944, 2015 WL 8618591 (Comp. Gen. Dec. 14, 2015).

29. Gold, *supra* note 2.

30. *Id.*

31. *See, e.g.*, U.S. DEP’T OF DEF., INSTR. 1000.32, PROHIBITION OF LOBBYING ACTIVITY BY FORMER DoD SENIOR OFFICIALS (Mar. 26, 2020).

32. *See id.*

Illustration of a shadowed bugbear.
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