Hon. Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller General Dodaro,

I write to request an investigation into Scott Pruitt, in his official capacity as Administrator of the U.S. Environmental Protection Agency ("EPA"), for violating the Antideficiency Act by misusing appropriated funds.

In his official capacity, EPA Administrator Scott Pruitt has publicly denounced the Paris climate accord and encouraged lawmakers to defeat bills and resolutions before Congress that would have affirmed the United States’s support for the agreement.\(^1\) His public statements constitute unlawful communication for grassroots lobbying and publicity or propaganda purposes—in violation of sections 401, 715, and 718 of the Consolidated Appropriations Act of 2017—and thus establish a misuse of funds appropriated to the EPA.

The Antideficiency Act, codified at 31 U.S.C. § 1341(a)(1)(A), provides that

> An officer or employee of the United States Government or of the District of Columbia government may not . . . make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.\(^2\)

Section 715 of the Consolidated Appropriations Act of 2017 prohibits executive branch agencies from using appropriated funds “for publicity and 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 before the Congress,” outside of the executive branch’s normal and recognized relationships.\(^3\) Section 718 provides that “[n]o part of

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\(^1\) This letter uses the terms "Paris climate accord," "Paris Agreement," and "agreement" interchangeably.

\(^2\) 31 U.S.C. § 1341(a)(1)(A). Section 1341 of the Antideficiency Act seeks to, inter alia, “prevent agencies which do not have funds on hand for a particular purpose from committing the [federal] Government to make payments at some future time and thereby, in effect, coercing the Congress into making an appropriation to cover the commitment.” 63 Comp. Gen. 129, 130-31 (1983).

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 the Congress.” Section 401 prohibits the EPA from making appropriations available for “any activity . . . that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete . . . .”

First, this letter provides background information about the factual circumstances surrounding EPA Administrator Scott Pruitt’s violations. Second, this letter discusses Pruitt’s use of grassroots lobbying, in violation of sections 715 and 401 of the Consolidated Appropriations Act of 2017. Third, this letter discusses Pruitt’s communication for propaganda purposes, in violation of section 718. Fourth and finally, this letter recommends that the Comptroller General employs procedures under the Antideficiency Act to hold EPA Administrator Pruitt accountable for these violations.

I. Background

On April 22, 2016, 175 member states of the United Nations Framework Convention on Climate Change (“UNFCCC”)—including the United States—signed the Paris climate accord and agreed to reduce greenhouse gas emissions to combat climate change.6 On August 29, 2016, then-President Barack Obama signed an order accepting and agreeing to the terms of the Paris climate accord.7 Prior to President Donald J. Trump’s June 1, 2017 decision to exit the Paris climate accord, Trump publicly announced that his administration was considering ways to exit the agreement.8

Scott Pruitt assumed office as Administrator of the U.S. Environmental Protection Agency (“EPA”) on February 17, 2017.9 The EPA Administrator carries out the agency’s duties to protect the environment by enforcing related laws and establishing regulations to enforce those laws. The EPA’s roles and functions include “establish[ing] and enforc[ing] [] environmental protection standards consistent with national environmental goals,” “conduct[ing] [] research on the adverse effects of pollution and on methods and equipment for controlling it,” “[a]ssisting others, through grants, technical assistance[,] and other means in arresting pollution of the

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environment,” and “[a]ssisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.”

Since assuming office, Administrator Pruitt has repeatedly expressed his opposition to the Paris climate accord. In one interview, Pruitt stated that the Paris climate accord is “something we [the United States] need to exit in my opinion.” It’s a bad deal for America,” Pruitt continued. In another interview, Pruitt said that the Paris climate accord “represents [] a frontloading of costs for this country” and “a contraction of our own economy.”

On June 1, 2017, Politico and other major news outlets reported that EPA Administrator Pruitt had “urged lawmakers and conservative groups to publicly criticize the [Paris climate accord],” which “increased public pressure” on the Trump Administration to exit the agreement. Administrator Pruitt reportedly “bashed” the Paris climate accord during a closed-door meeting with executives at the National Mining Association (“NMA”), one of the United States’s most prominent advocacy and lobbying organizations for the mining community. Pruitt told NMA executives that the United States’s continued membership in the agreement would “hurt the economy.” Following Pruitt’s speech, in May 2017, NMA executives voted to support the United States’s withdrawal from the Paris climate accord and urged President Trump to exit the agreement.

II. Grassroots Lobbying Violations

Section 715 of the Consolidated Appropriations Act of 2017 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

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12 Id.
15 Id. The National Mining Association advertises itself as the United States's “mining advocate in Washington, D.C. and beyond,” serving as “the only national trade organization that represents the interests of mining before Congress, the administration, federal agencies, the judiciary, and the media—providing a clear voice for U.S. mining.” The Association’s mission is “to build support for public services that will help America fully and responsibly utilize its coal and mineral resources.” See Nat’l Mining Assoc., About NMA, http://nma.org/about-nma/ (last visited June 28, 2017).
16 Restuccia & Dawsey, supra note 14.
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.  

Additionally, section 401 of the Consolidated Appropriations Act of 2017 provides that

No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete other than to communicate with Members of Congress as described in 18 U.S.C. §§ 1913.  

A violation of the prohibitions on grassroots lobbying follows from (1) the existence of pending legislation before Congress and (2) a “clear appeal by an agency to the public to contact Members of Congress.”

a. Pending Legislation Before Congress

To establish a violation of the prohibitions on grassroots lobbying, one need only provide evidence that an agency’s communications encouraged the passage or defeat of related legislation. Evidence that an agency “specified a particular piece of legislation” in its unlawful communications is unnecessary.

As the Trump Administration contemplated withdrawing from the Paris climate accord, any reasonable actor should have expected that Congress would consider legislative action on the matter. Indeed, Members of Congress have introduced and supported measures to commit both the House of Representatives and the Senate to varying stances on the Paris climate accord, from binding the U.S. government to its terms to encouraging the Trump Administration to exit the agreement. These measures include:

- A Resolution Expressing the Sense of the Senate that the United States Should Work in Cooperation With the International Community and Continue to Exercise Global Leadership to Address the Causes and Effects of Climate Change, and for Other Purposes, S. Res. 155, 115th Cong. (2017) (introduced May 4, 2017).

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Thus, as EPA Administrator Pruitt encouraged lawmakers and political groups to support the United States’s withdrawal from the Paris climate accord, nearly a dozen bills and resolutions on the matter stood before Congress. For example, Rep. Raj Krishnamoorthi of Illinois proposed House Resolution 85, seeking to commit the House of Representatives to working with “allies that signed the Paris Agreement” and “take[ing] meaningful action to ensure that the President of the United States does not issue an [e]xecutive order to withdraw from the Paris Agreement.” Rep. Ted Lieu of California proposed the Climate Solutions Act of 2017, which provides in part that the United States “should participate in negotiations under the 1992 United Nations Framework Convention on Climate Change and honor its commitments therefrom . . . including the Paris Agreement . . . .” And Sen. Rand Paul of Kentucky proposed Senate Concurrent Resolution 17, seeking to commit the Senate to supporting the United States’s withdrawal from the Paris climate accord.

b. Clear Appeals

Administrator Pruitt’s communications demonstrate a clear appeal encouraging lawmakers in Congress to publicly support the United States’s withdrawal from the Paris climate accord and thereby oppose pending legislation reaffirming the United States’s commitment to the agreement.

Grassroots lobbying violations include agency communications with persons and/or organizations who can themselves design and promote materials to encourage the passage or defeat of pending legislation before Congress. In 2015, the Comptroller General determined that an EPA social media campaign—promoting new “Waters of the United States” rulemaking—violated section 715’s prohibition on grassroots lobbying. The EPA had endorsed a rule change in a blog post that influenced organizations like the National Resources Defense

23 Climate Solutions Act of 2017, H.R. 2958, 115th Cong. (2017) (introduced June 20, 2017). Among other things, the Climate Solutions Act of 2017 seeks to require the EPA Administrator to set and increase targets that the United States should meet, in terms of the percentage of energy that comes from renewable sources.
25 GAO EPA Social Media Report, supra note 20, at *12.
Council to mobilize their memberships and resources to “encourage[ ]” the defeat of “pending legislation that would prevent implementation of the rule” change.\textsuperscript{26}

Moreover, in 1979, a Comptroller General report concluded that the U.S. Maritime Administration violated section 715 when the agency initiated an advertising campaign encouraging people to contact Members of Congress and seek support for pending legislation that would “directly impact the strength of the merchant marine.”\textsuperscript{27} According to the report, “A congressman receiving mail from constituents supporting a strong merchant marine could reasonably consider such comments as favoring the pending legislation.”\textsuperscript{28}

Similarly, here, Administrator Pruitt encouraged the defeat of pending legislation before Congress when Pruitt expressed his opposition to the Paris climate accord during a closed-door meeting with NMA executives. By encouraging an influential voice in the mining industry to support withdrawal, Pruitt undermined the passage of proposed bills and resolutions before Congress, which would have affirmed the United States’s commitment to the agreement. No reasonable Member of Congress could construe Pruitt’s remarks before NMA executives as anything but an effort to mobilize an influential advocacy and lobbying organization against the Paris climate accord and related legislation.

It is likely that Pruitt’s attempts to encourage the defeat of the Paris climate accord and related legislation are not limited to his closed-door meeting with NMA executives. News outlets, including Politico, have reported that Pruitt “used his new post as EPA administrator to orchestrate an aggressive campaign to marshal conservative opposition to the Paris agreement.”\textsuperscript{29}

Even if the Comptroller General finds no violation from Administrator Pruitt’s statements before NMA executives, a violation also follows from Pruitt’s statements supporting an exit from the agreement. While appearing in his official capacity on Fox News Channel and other media outlets, Administrator Pruitt identified the Paris climate accord as “something we [the United States] need to exit in my opinion.”\textsuperscript{30} In so doing, Pruitt undermined bills and resolutions before Congress on the subject by appealing to individuals and organizations, who themselves could put pressure on legislators not to support any bill or resolution affirming continued support for the United States’s involvement in the Paris climate accord.

EPA Administrator Pruitt made clear appeals to the public to encourage the defeat of pending legislation before Congress, in violation of prohibitions on grassroots lobbying by federal agencies. In the process, Pruitt has also misused appropriated funds in violation of the Antideficiency Act.

III. Publicity or Propaganda Violations

\textsuperscript{26} Id. at *14 (citing GAO Maritime Report, supra note 21).
\textsuperscript{27} Id. (citing GAO Maritime Report, supra note 21).
\textsuperscript{28} Id. (citing GAO Maritime Report, supra note 21).
\textsuperscript{29} Restuccia & Dawsey, supra note 14.
\textsuperscript{30} Mooney & Dennis, supra note 11.
Section 718 of the Consolidated Appropriations Act of 2017 provides that “[n]o part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by a private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress.”  

One form of communication restricted under section 718—covert propaganda—is at issue here.

Covert propaganda refers to communications or “materials . . . prepared by an agency or its contractors at the behest of the agency and circulated as the ostensible position of parties outside the agency[.]” A “critical element” of covert propaganda is “concealment of the [federal] agency’s role in sponsoring such material.” And “findings of propaganda are predicated upon the fact that the target audience could not ascertain the information source.”

Federal agencies have avoided violating section 718’s prohibition on covert propaganda by clearly identifying themselves in communication and materials disseminated to the public. In 2010, the Comptroller General determined that the U.S. Department of Health and Human Services’ (“HHS’s” HealthReform.gov website did not constitute covert propaganda, because it “clearly state[d] that [HHS] operate[d] the [w]eb site and [was] the source of the information provided within.” Similarly, in 1988, the Comptroller General found that the U.S. Federal Trade Commission (“FTC”) had not violated section 718 when the FTC disseminated materials that promoted deregulation of the U.S. Postal Service, because the materials clearly identified the FTC as the source of information.

Here, however, EPA Administrator Pruitt did not take the same steps that both the FTC and HHS took to clearly identify themselves in communicating with and disseminating information to the public. No reasonable person attending either the NMA’s closed-door meeting with Pruitt this past April, or listening to Pruitt announce his opposition to the Paris climate accord on live television, could ascertain whether Pruitt spoke on behalf of the EPA or himself.

During several interviews, Administrator Pruitt made representations about the Paris climate accord without clearly identifying the EPA as the source of those representations. Pruitt labeled the Paris climate accord a “bad deal” for the United States, stated that the agreement

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32 A second restricted communication form—self-aggrandizement—is not at issue here. Self-agrandizement refers to “[c]ommunications tending to emphasize the importance of the agency, its officials, or the activity in question . . . .” GAO EPA Social Media Report, supra note 20, at *7 (citing 31 Comp. Gen. 311 (1952)).
34 GAO FTC Report, supra note 33, at *5.
35 GAO EPA Social Media Report, supra note 20, at *7.
37 GAO FTC Report, supra note 33, at *5.
38 EPA’s Pruitt: Paris Agreement was a Bad Business Deal for America, Fox Business (May 3, 2017), http://www.foxbusiness.com/politics/2017/05/03/epas-pruitt-paris-agreement-was-bad-business-deal-for-america.html.
“represents [] a frontloading of costs for this country,”39 and predicted that the agreement would “contract[] . . . our own economy.”40 No reasonable person could ascertain from these representations whether Pruitt had stated the EPA’s official and professional opinion, or if he merely stated his own.

Thus, by encouraging lawmakers and political groups to publicly criticize the Paris climate accord, EPA Administrator Scott Pruitt violated section 718’s prohibition on the use of appropriated funds for publicity or propaganda purposes.

IV. Conclusion

In his official capacity as EPA Administrator, Scott Pruitt publicly denounced the Paris climate accord and sought to defeat pending bills and resolutions before Congress that would have affirmed legislative support for the Paris climate accord. His public and closed-door comments represent a misuse of appropriated funds in violation of the Antideficiency Act.

Therefore, I respectfully request that the Comptroller General employs procedures under the Antideficiency Act to hold EPA Administrator Scott Pruitt accountable for his misuse of appropriated funds. Thank you for your attention to this matter.

Sincerely,

Brad Woodhouse,
American Democracy Legal Fund

39 Fox Insider Report, supra note 13.
40 Id.