



June 8, 2015

The Honorable Gene Dodaro
Comptroller General of the United States
The United States Government Accountability Office
441 G St. NW
Washington, DC 20548

Dear Mr. Dodaro:

The Project On Government Oversight is concerned that a number of Navy officials may have violated the Antideficiency Act and statutory lobbying bans. Specifically, we are concerned that they spent taxpayer funds on publicity or propaganda to engage in grassroots lobbying on the proposed procurement of the Ohio Replacement Program (SSBN(X)) and the creation of a separate sea-based deterrence fund to support the program.

The federal government is the most powerful special interest that exists, which is why Congress has put in place a number of restrictions on the ability of federal agencies to influence the public. These provisions include the Hatch Act, which restrains the political activities of federal government employees; the Anti-Lobbying Act (18 U.S.C. § 1913), which prohibits the use of taxpayer funds by federal agencies to conduct grassroots lobbying efforts to pressure Congress to support “any legislation or appropriation by Congress”; and additional restrictions included in annual appropriations bills against using funds to support or defeat legislation pending before Congress.¹ While the Navy is free to express its opinions on annual appropriations through official communications with Congress, federal courts and the Government Accountability Office have consistently found that this stops short of a “clear appeal by an agency to the public to contact Members of Congress in support of, or in opposition to, pending legislation.”²

I have previously testified that these restrictions are interpreted too narrowly, but even under a narrow interpretation we believe that in these cases there has likely been a violation of law.³

¹ “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.” Sec. 715, H.R. 83 – “Consolidated and Further Continuing Appropriations Act, 2015,” (Public Law 113-235). <https://www.congress.gov/bill/113th-congress/house-bill/83/text>

² Letter from the Government Accountability Office to Committee of Financial Services Subcommittee on Oversight and Investigations Chairman Patrick McHenry, “Department of Housing and Urban Development—Anti-Lobbying Provisions,” September 9, 2014, p.4. <http://www.gao.gov/assets/670/665685.pdf>; Government Accountability Office, “Consumer Product Safety Commission—Prohibitions on Grassroots Lobbying and Publicity of Agenda,” November 8, 2012, p. 4. <http://www.gao.gov/assets/650/649995.pdf>

³ Project On Government Oversight, “Testimony of POGO’s Danielle Brian before the Senate Democratic Policy Committee on Misuse of Federal Funds to Promote a Political Agenda,” January 28, 2005, <http://www.pogo.org/our-work/testimony/2005/gc-pol-20050128.html#sthash.kilPUvr7.dpuf>

Specifically, POGO is concerned by comments made by Admiral John Richardson, Director of Naval Reactors and Rear Admiral Joe Tofalo, Director of Undersea Warfare at the 2014 Annual Symposium Naval Submarine League on October 22, 2014. Each officer spoke about the need to increase congressional support for the program and implicitly or explicitly directed attendees to contact Congress; these remarks were later published in *The Submarine Review*, which is widely available on the Internet.⁴ There are two specific instances in particular to which we would like to draw your attention:

1. Admiral Richardson explicitly directed attendees to lobby for the Ohio Replacement Program in his Commander's Guidance:
“Increase support. Inform those in your sphere of influence: everyone from your Congressmen to your local PTA. Look for ways to make people aware of how vital this is to the nation's security; the stakes are extremely high. Don't assume that somebody else will do this; we all need to do it.”⁵ (Emphasis included in publication)
2. Rear Admiral Tofalo reiterated this message when he told attendees to lobby Congress, and volunteered the services of his office to help in those efforts when he said:
“Admiral Richardson talked about commander's guidance and getting the message out. He challenged all of you to go out and interact with folks, whether it's calling on your own Congressmen, or if you belong to some organization from the Chamber of Commerce to the Rotary Club. I am committed to help you do that. If anybody needs help in strategic messaging, then you call '1-800-N97' and let us know. Commander Martin Sprague, would you stand up? Go slip him your business card on a break, and if you need trifolds, priorities briefs, talking points for your Congressman, we are more than happy to support you.”⁶

It is not necessary to show that grassroots lobbying efforts were effective to prove a violation, but it is clear from the *Submarine Review*'s Editor's letter that their appeals were heard loud and clear by the symposium's membership:

“Admiral Richardson, as could be expected of the Director of Nuclear Propulsion, delivered a no-nonsense, real time, evaluation of the tough technology, industrial and funding problems to be faced, and solved, in getting these new SSBNs into service on time—if at all. He also called for everyone in the submarine community; active duty, retired, civilian and industrial to get the word out into the public. It is vital to inform those voting citizens of what is involved with this submarine effort and how important it is that an informed citizenry be recruited to support the twin goals of a lasting, credible

⁴ *The Submarine Review*, December 2014,

<http://www.navalsubleague.com/assets/tsr%20december2014webfinal3.16rev2.pdf>

⁵ “2014 ANNUAL SYMPOSIUM NAVAL SUBMARINE LEAGUE 22 OCTOBER 2014, ADMIRAL JOHN M. RICHARDSON, U.S. NAVY DIRECTOR, NAVAL REACTORS.” *The Submarine Review*, December 2014, p. 27. <http://www.navalsubleague.com/assets/tsr%20december2014webfinal3.16rev2.pdf>

⁶ “2014 ANNUAL SYMPOSIUM NAVAL SUBMARINE LEAGUE 22 OCTOBER 2014, RADM JOE TOFALO, U.S. NAVY DIRECTOR, UNDERSEA WARFARE,” *The Submarine Review*, December 2014, pp 82-3. <http://www.navalsubleague.com/assets/tsr%20december2014webfinal3.16rev2.pdf>; Sydney J. Freedberg Jr., “Run Silent, Run Scared: ‘A Crucial Year’ For Navy’s New Nuke Sub,” *Breaking Defense*, October 23, 2014. <http://breakingdefense.com/2014/10/run-silent-run-scared-a-crucial-year-for-navys-new-uke-sub/>

Sea Based Nuclear Deterrence and an Attack Submarine Force which can provide reactive, enduring *Forward Presence*.”⁷ (Emphasis included in original)

Taken together, these remarks seem to indicate a troubling coordinated campaign by Navy leadership to engage in grassroots lobbying to secure support for the Ohio Replacement Program. If your office chooses to investigate these potential violations, POGO urges you to also consider any role of higher level commanders in this campaign, including orders Admiral Richardson and Rear Admiral Tofalo may have received from their commanders.

Using appropriated funds for prohibited lobbying is a violation of the public trust. My organization has previously exposed illegal efforts by the Department of Defense and defense contractors to influence Members of Congress on funding for the C-5B cargo plane.⁸ In that case the GAO recommended the Justice Department investigate the director of the Air Force Office of Legislative Liaison, Major General Guy Hecker; Assistant Secretary of Defense for Legislative Affairs Russell Rourke; Deputy Secretary of Defense Frank Carlucci, and Secretary of the Air Force Verne Orr for possible violations of 18 U.S.C. § 1913.⁹

The Congressional Budget Office estimates that the overall costs of the Ohio Replacement Program will be almost \$92 billion. Congress and taxpayers must be able to evaluate whether this is a proper appropriation of their money free from federal agencies’ improper manipulation and influence of the public.

Thank you for your consideration of this request, and please contact POGO’s Director of the Straus Military Reform Project, Mandy Smithberger, if you have any questions.

Sincerely,



Danielle Brian
Executive Director

⁷ Jim Hay, “Editor’s Comments,” *The Submarine Review*, December 2014, pp. 1-2. <http://www.navalsubleague.com/assets/tsr%20december2014webfinal3.16rev2.pdf>

⁸ Dina Rasor, *The Pentagon Underground*, New York: Times Books, 1985, pp. 241-259. (Hereinafter *The Pentagon Underground*)

⁹ Government Accounting Office, “Improper Lobbying Activities by the Department of Defense on the Proposed Procurement of the C-5B Aircraft,” September 29, 1982. <http://www.gao.gov/assets/210/205747.pdf>; *The Pentagon Underground*, p. 257.