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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Department of Health and Human Services—Contract with Maggie Gallagher

File: B-304716

Date: September 30, 2005

DIGEST

The Department of Health and Human Services, Administration for Children and Families' (ACF) use of appropriated funds to pay for the services of an expert consultant did not violate the applicable publicity or propaganda prohibition. Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, § 626, 115 Stat. 514, 552 (Nov. 12, 2001). The services provided included the drafting of several brochures, a presentation to ACF managers, and the production and dissemination of an article signed by the Assistant Secretary. The contract did not violate the publicity or propaganda prohibition because the services provided were not covert, self-aggrandizing, or purely partisan.

DECISION

In January 2005, newspapers reported on a contract between the Department of Health and Human Services, Administration for Children and Families (ACF) and syndicated columnist Maggie Gallagher.[1] The articles stated that ACF hired Ms. Gallagher to serve as an expert consultant on marriage-related issues and paid her over $20,000 for her services over a 9 month period. The reports also stated that after signing a contract with ACF, Ms. Gallagher publicly praised President Bush's Healthy Marriage Initiative on many occasions.

[1] *See, e.g.,* Howard Kurtz, "Writer Backing Bush Plan Had Gotten Federal Contract," *Wash. Post,* Jan. 26, 2005, at C01; Anne E. Kornblut, "Bush Prohibits Paying of Commentators," *N.Y. Times,* Jan. 27, 2005, at A20.

Because we received numerous inquiries, and in light of the widespread congressional interest surrounding publicity or propaganda issues,[2] the Comptroller General decided to examine the ACF/Gallagher contract pursuant to his authority to investigate the use of public money, 31 U.S.C. § 712(1), and to settle the accounts of the government, 31 U.S.C. § 3526.

As is our usual practice, we contacted the Department of Health and Human Services (HHS) to request factual information and its legal justification for using its appropriation to obtain the services provided by Ms. Gallagher. Letter from Gary L. Kepplinger, Deputy General Counsel, GAO, to Alex M. Azar, General Counsel, HHS, Mar. 24, 2005. HHS responded by letter dated July 6, 2005 (ACF Letter). We have reviewed the information sent to us by HHS and its justification for its contract with Ms. Gallagher, and we conclude that ACF did not violate the applicable publicity or propaganda prohibition.[3]

BACKGROUND

The Healthy Marriage Initiative

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which, among other things, amended the Social Security Act by authorizing funding for block grants to states for temporary assistance for needy families (TANF). Pub. L. No. 104-193, title I, 110 Stat. 2105 (Aug. 22, 1996) (codified at 42 U.S.C. §§ 601-619). In creating the TANF grant program, Congress made the following findings: (1) marriage is the foundation of a successful society; and (2) marriage is an essential institution of a successful society which promotes the interests of children. Pub. L. No. 104-193, § 101 (some findings omitted). Under this section of the Social Security Act, Congress listed several marriage-related purposes of the TANF program. 42 U.S.C. § 601(a). These purposes are to: "(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families." *Id.*

In 2001, President Bush announced the Healthy Marriage Initiative, the purpose of which was to help low-income couples who choose marriage to develop the skills

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[2] The publicity or propaganda prohibition is a governmentwide prohibition in appropriations acts restricting the use of appropriated funds for publicity and propaganda purposes without the consent of Congress. *See, e.g.,* Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, § 626, 115 Stat. 514, 552 (Nov. 12, 2001). *See also* B-304272, Feb. 17, 2005 (circular letter).

[3] Pub. L. No. 107-67, § 626.

and knowledge to form and sustain healthy marriages.[4] To support this Initiative, and in coordination with many marriage-supporting public, faith-based, and community-based organizations, ACF sponsors marriage education programs, conducts research on the benefits of healthy marriages, and relays to the public the goals of the Healthy Marriage Initiative. From fiscal year 2002 to fiscal year 2004, ACF awarded over 100 grants, totaling over $25 million, for the development and implementation of marriage-related services, and, during this same period, committed over $17 million for contracts to conduct research on healthy marriage issues. U.S. Department of Health and Human Services, Administration for Children and Families, *Healthy Marriage Initiative Activities and Accomplishments 2002—2004, available at* http://www.acf.hhs.gov/healthymarriage/index.html.

ACF/Maggie Gallagher Contract

ACF entered into a 9 month contract with syndicated columnist Maggie Gallagher on January 4, 2002.[5] ACF Letter, Tab A. Ms. Gallagher is the president of the Institute for Marriage and Public Policy, a columnist specializing in marriage-related issues, and an author of several books on marriage.[6] ACF contracted with Ms. Gallagher to provide ACF with expert advice and support for the development of several marriage-related research initiatives. ACF Letter.

As stated in the contract, ACF was pursuing research on the dynamics of marriages among low-income populations, as well as potential strategies for states to use in strengthening marriage. ACF Letter, Tab A. ACF explained in its letter that the contract with Ms. Gallagher would help ACF achieve three of the four goals under the TANF program. ACF Letter. ACF stated in the contract that it needed additional expertise to accomplish the goals listed above and told us that it contracted with

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[4] For detailed information about the Healthy Marriage Initiative, see the Administration for Children & Families' website at http://www.acf.dhhs.gov/healthymarriage/ (last visited Sept. 6, 2005).

[5] ACF modified the contract with Ms. Gallagher to extend the performance date from October 31, 2002, to October 31, 2003. ACF Letter, Tab A. However, Ms. Gallagher only sent one invoice, dated September 31, 2002, to ACF for payment. ACF Letter, Tab B. There is no evidence suggesting that Ms. Gallagher performed any work for ACF after October 31, 2002.

[6] *See* Institute for Marriage and Public Policy *at* http://www.marriagedebate.com (last visited Sept. 6, 2005).

Ms. Gallagher because she is "a nationally recognized expert of long standing on research related to the benefits of marriage for children and families."[7] *Id.*

The Statement of Work in the contract directed Ms. Gallagher to "consult with and assist ACF in ongoing work related to strengthening marriage, and provide assistance advice on development of new research activities in this area." ACF Letter, Tab A. Also, Ms. Gallagher was to provide ACF with information on programs to strengthen marriage, advise on dissemination of materials, and participate in meetings and workshops. *Id.* Ms. Gallagher was required under the terms of the contract to submit to ACF quarterly reports detailing work and accomplishments. *Id.* ACF said that the above Statement of Work included the research and drafting of various documents. ACF Letter. Specifically, Ms. Gallagher's work under the contract consisted of preparing a presentation for regional ACF managers on the benefits of marriage, helping to research, draft, and edit brochures on marriage, and working with ACF staff in preparing a draft of an article published under ACF Assistant Secretary Wade Horn's signature. *Id.*

ACF told us that this contract was awarded pursuant to section 1110 of the Social Security Act. *Id.* Section 1110 authorizes ACF to enter into contracts for the purpose of conducting research or demonstration projects relating to the prevention and reduction of dependency on the government, or which will improve the administration and effectiveness of programs carried on or assisted under the Social Security Act. 42 U.S.C. § 1310(a)(1)(B).[8] In its letter, ACF explained that the services provided by Ms. Gallagher contributed materially to the effective accomplishment of the marriage-related goals and functions described in the Social Security Act. ACF Letter.

In total, ACF paid Ms. Gallagher $21,500 under the contract for the work she performed. *Id.* In her invoice, dated September 30, 2002, Ms. Gallagher requested payment for six activities under the contract, specifically, drafting four brochures, drafting an article on marriage-related issues, and giving a presentation to regional ACF managers on the available literature on the benefits of marriage. ACF Letter, Tab B. This was the only invoice ACF received from Ms. Gallagher under the contract, and payment was made in full by ACF on October 30, 2002. ACF Letter.

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[7] In this decision, we take no position on Maggie Gallagher's credentials as an expert in marriage nor do we examine the overall economy of ACF's contract with Ms. Gallagher to provide marriage-related research.

[8] ACF told us that funding for the contract came from HHS's fiscal year 2002 appropriation. ACF Letter. Specifically, under a section titled "Children and Families Services Programs," Congress appropriated money to HHS for, among other things, carrying out section 1110 of the Social Security Act. Pub. L. No. 107-116, 115 Stat. 2177, 2196 (Jan. 10, 2002).

Of the six activities listed in the invoice, one—the article drafted by Ms. Gallagher and ACF staff—was published in *Crisis Magazine* under the signature of Assistant Secretary Wade Horn. ACF Letter, Tab D. ACF has not disseminated any of the brochures drafted by Ms. Gallagher. ACF Letter. The presentation Ms. Gallagher prepared was made to HHS managers in February 2002. *Id.*

While under contract with ACF, Ms. Gallagher wrote several articles praising President Bush's Healthy Marriage Initiative and other government programs which encourage traditional marriage values.[9] ACF states that it did not pay Ms. Gallagher to promote the Healthy Marriage Initiative in any media forum. ACF Letter. ACF notes that the contract with Ms. Gallagher was for consulting, research, and drafting services only, and told us that the contract never called for Ms. Gallagher to write additional articles published under her name. *Id.*

DISCUSSION

At issue here is whether ACF's use of appropriated funds to contract with Maggie Gallagher violated the applicable publicity or propaganda prohibition. The language of this prohibition states that "[n]o part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress."[10]

In the past, we have generally found violations of the publicity or propaganda prohibition when disseminated materials are self-aggrandizing, covert as to their source, or purely partisan in nature. *E.g.,* B-302992, Sept. 10, 2004; B-302710, May 19, 2004; B-302504, Mar. 10, 2004. Materials are prohibited as self-aggrandizing if the materials are "publicity of a nature tending to emphasize the importance of the agency or activity in question." B-212069, Oct. 6, 1983 (quoting 31 Comp. Gen. 311 (1952)). Materials are considered covert propaganda if the materials are "misleading as to their origin," B-302504, Mar. 10, 2004; B-223098, B-223098.2, Oct. 10, 1986, or if an agency actively conceals its role in sponsoring the materials. B-302710, May 19, 2004; B-229257, June 10, 1988. Materials also violate the prohibition if the materials are purely partisan in nature, that is, designed to aid a political party or candidates. B-302504, Mar. 10, 2004; B-147578, Nov. 8, 1962.

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[9] *See, e.g.,* Maggie Gallagher, *Marriage: what can government do?*, TownHall.com, *at* www.townhall.com/columnists/maggiegallagher/mg20020416.shtml (Apr. 16, 2002); Maggie Gallagher, *Marriage Matters: Even if conservatives don't realize it,* National Review Online, *at* http://www.nationalreview.com/comment/comment-gallagher 050302.asp (May 3, 2002).

[10] Pub. L. No. 107-67, § 626.

The Statement of Work under the ACF/Gallagher contract directed Ms. Gallagher to consult and assist with ongoing marriage-related work, provide advice on the development of research activities in this area, provide information on the programs to strengthen marriage, advise on the dissemination of materials, participate in meetings and workshops, and perform a variety of other activities as needed. ACF Letter, Tab A. Nothing within the Statement of Work suggested that ACF and Ms. Gallagher considered her work for ACF to include the promotion of President Bush's Healthy Marriage Initiative. All of the requirements under the contract were for internal consultation and research. Therefore, the ACF/Gallagher contract does not violate the publicity or propaganda prohibition.

We also examined the six activities for which Ms. Gallagher billed ACF. The article that was published in *Crisis Magazine* and the draft brochures are informational products which mention ACF as a resource of additional marriage-related information but do not emphasize the importance of ACF as an agency and therefore are not self-aggrandizing. *See* ACF Letter, Tabs C and D. Also, these products are not covert propaganda. In order for us to find that materials constitute covert propaganda, the source of the materials must be concealed from the target audience. *See* B-302710, May 19, 2004. The article drafted by Ms. Gallagher under the contract was signed by Assistant Secretary Wade Horn and published in *Crisis Magazine*. ACF Letter. That article clearly identifies Wade Horn as the author and ACF as the source of the information. ACF Letter, Tab D. Although the brochures have not been disseminated, there is no indication that ACF intended to distribute any of the other materials, which were still in a draft stage, without identifying ACF as the source of the materials.

Also, none of these products constitute partisan materials in violation of the publicity or propaganda prohibition. While it may be difficult at times to identify "the lines separating the nonpolitical from the political," B-302992, Sept. 10, 2004 (quoting B-147578, Nov. 8, 1962), the context of the materials at issue here does not offend the publicity or propaganda prohibition. While it is clear that the materials express ACF's point of view concerning the promotion of marriage, the fact that the materials express a point of view does not make them purely partisan in violation of the prohibition. *See* B-302504, Mar. 10, 2004 (noting that the publicity or propaganda prohibition does not bar materials that express some opinion or have some political content). Explaining administration policies and justifying those policies to the public, especially policies that are rooted in statute, are legitimate agency activities. *See* B-223098, B-223098.2, Oct. 10, 1986. The materials at issue here, although containing ACF's point of view, do not constitute a violation of the prohibition.

Finally, as stated above, while Ms. Gallagher was under contract with ACF, she wrote articles, published under her own name, praising the President's Healthy Marriage Initiative. In a companion decision of today's date, B-305368, we determined that the Department of Education violated the publicity or propaganda prohibition when Armstrong Williams favorably commented to the public on the No Child Left Behind Act while under contract with the Department of Education.

However, in that situation, the Department of Education contracted with Mr. Williams to publicly promote the No Child Left Behind Act without requiring Mr. Williams to disclose to the viewing public that he was acting on behalf of the Department and in return for payment of public funds. We determined that commentary obtained as a result of the Education/Williams contract was covert propaganda. In the case currently before us, ACF did not contract with Ms. Gallagher to publish favorable articles about President Bush's Healthy Marriage Initiative. *See* ACF Letter. Ms. Gallagher chose, on her own, to perform these activities. Accordingly, none of the activities performed by Ms. Gallagher under the contract with ACF violate the publicity or propaganda prohibition.

CONCLUSION

The drafting of brochures, the presentation of marriage-related issues to ACF managers, and the production and dissemination of an article signed by Assistant Secretary Wade Horn did not violate the publicity or propaganda prohibition of the Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, § 626, 115 Stat. 514, 552 (Nov. 12, 2001). These activities, performed by Maggie Gallagher under the terms of the ACF/Gallagher contract, did not constitute self-aggrandizement, covert propaganda, or purely partisan materials in violation of the publicity or propaganda prohibition.



Anthony H. Gamboa
General Counsel