



August 4, 2022

The Honorable Gary C. Peters, Chairman
The Honorable Rob Portman, Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Carolyn B. Maloney, Chairwoman
The Honorable James Comer, Ranking Member
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Re: Investigation Request/Prohibited Publicity Expenditures

Dear Chairman Peters, Ranking Member Portman, Chairwoman Maloney, and Ranking Member Comer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, defend due process, and prevent unconstitutional executive overreach. We now write to request that your committees investigate whether the U.S. Department of Health Human Services (the “Department”), through its agency the Centers for Disease Control (“CDC”), violated federal law by accepting a multi-million-dollar gift from Facebook¹ and then spending it to manipulate public opinion.

On July 15, 2021, the White House admitted to working with social media allies to control COVID-19-related public information and speech. The following day, AFL submitted a Freedom of Information Act (FOIA) request to the CDC for records of the government’s activities. The CDC failed to comply with FOIA, and AFL sued for enforcement.

On July 27, 2022, AFL made public² government emails demonstrating, among other things, that on February 21, 2021, Facebook offered the CDC a “gift” of \$15,000,000

¹ Facebook, Inc. later changed its name to Meta Platforms, Inc. See Meta, *Introducing Meta: A Social Technology Company* (Oct. 28, 2021), <https://about.fb.com/news/2021/10/facebook-company-is-now-meta/>.

² Solely as the result of the AFL lawsuit enforcing its July 17, 2021, Freedom of Information Act request, AFL obtained 286 pages of records from the CDC. *AFL v. CDC*, 22-cv-00978 (D.D.C. filed Apr. 8, 2022), available at <https://bit.ly/3JINYML> (“CDC Production 2”); see also *AFL Lawsuit Reveals Damning CDC Documents Proving Government Collusion With Big Tech to Censor Free Speech and*

worth of ad credit coupons “for advertising on Facebook,” and an additional \$15,000 to support the CDC’s “COVID-19 advertising campaigns [by] providing strategic marketing assistance via an expert 3rd party.”³ Subsequent to the CDC’s acceptance of the gift from Facebook in April 2021,⁴ the records reflect that on May 11, 2021, the White House requested⁵ that the CDC reach out to Facebook to promote the CDC’s “Vaccine Finder” product and Vaccines.gov.⁶

Federal law is clear and the rule is unmistakable: “Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.”⁷ In determining whether the CDC’s acceptance of the gift from Facebook was legally appropriate, it must be the case that either 1) gifts are not considered expenditures for purposes of appropriations law; 2) Facebook’s services to the CDC do not constitute the services of a publicity expert; or 3) the CDC had specific statutory justification to accept the gift for publicity services. None of these conditions are met here. Instead, all three have been violated.

First, gifts are expenditures. The U.S. Governmental Accountability Office (GAO) has opined that:

[F]unds available to agencies are considered appropriated, regardless of their source, if they are made available for collection and expenditure pursuant to specific statutory authority. This means that although donated funds may not be subject to all the restrictions applicable to direct appropriations, they are still public funds.⁸

Gift funds must be used only in furtherance of authorized agency purposes.⁹

Second, Facebook’s services were those of a publicity expert. The stated purpose of the CDC’s use of Facebook’s multimillion dollar gift of ad credits was to “support the agency’s messages on Facebook and extend the reach of COVID-19-related Facebook

Promote Biden Administration Propaganda (July 27, 2022), <https://bit.ly/3vtG66i>; Following Disturbing Admission by Biden White House, *AFL FOIAs the Biden Administration About Its Directions to Social Media Companies to Censor Americans* (July 16, 2021), <https://bit.ly/3PXueBI>.

³ CDC Production 2 at 118-119.

⁴ *Id.* at 103.

⁵ *Id.* at 226.

⁶ See CDC, *COVID-19 Vaccination FAQs on Vaccines.gov*, <https://bit.ly/3vEVIUi> (“Vaccines.gov is a free, online service where users can search for pharmacies and providers that offer vaccinations. Information about where COVID-19 vaccines are available is provided directly by pharmacies and providers, in collaboration with states. Vaccines.gov is powered by VaccineFinder, in partnership with Boston Children’s Hospital.”).

⁷ 5 U.S.C. § 3107.

⁸ GAO, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, 3d ed., 2006 rev., ch. 6, § E.3(a) GAO-06-382SP (Washington, D.C.: Feb. 2006) (citing Advisory Comm’n on Intergovernmental Rels.’s Use and Final Disposition of State Gov’t Contributions, B-274855 (Comp. Gen. Jan. 23, 1997)) (internal citations omitted).

⁹ *Id.* (citing B-300218 (Comp. Gen. Mar. 17, 2003); B-195492 (Comp. Gen. Mar. 18, 1980)).

content, including messages on vaccines, social distancing, travel, and other priority communication messages.”¹⁰

Third, the CDC lacks specific statutory authorization to hire publicity experts. The CDC accepted the \$15 million gift from Facebook under the Public Health Act, which authorizes the Secretary to accept gifts for the benefit of the Department or for the carrying out of any of its functions.¹¹ However, this statutory authorization is not specific enough to authorize the CDC to accept gifts for the purpose of paying Facebook for publicity.

Neither are the statutory authorizations specific to the coronavirus. The CARES Act appropriated \$4.3 billion to the CDC “to prevent, prepare for, and respond to coronavirus, domestically or internationally,” but contains no publicity-specific language.¹² The Paycheck Protection Program and Health Care Enhancement Act appropriated \$25 billion to the Public Health and Social Services Emergency Fund, with a required \$1 billion transfer to the CDC, “for surveillance, epidemiology, laboratory capacity expansion, contact tracing, public health data surveillance and analytics infrastructure modernization, disseminating information about testing, and workforce support necessary to expand and improve COVID-19 testing.”¹³ That appropriation similarly contains no authorization to disseminate information on vaccines, social distancing, or travel.

The GAO’s Comptroller General has analyzed Title 5’s prohibition on agencies hiring publicity experts without specific authorization in the same way that it has analyzed “self-aggrandizement” by agencies.¹⁴ 5 U.S.C. § 3107 does not specifically define “publicity expert,” so GAO has relied upon a floor statement of one representative to interpret the term as meaning the use of press agents “to extol or to advertise” the agency.¹⁵ But Congress does not “hide elephants in mouseholes” when writing statutes.¹⁶ The better interpretation of “publicity expert” is the meaning the phrase had in 1913, when the statute became law. At that time, the phrase meant a hired advertising agent.¹⁷ As such, without a specific authorization to hire an advertising firm, the CDC’s engagement of Facebook is clearly prohibited by law.

The CDC’s complicity with social media corporations to push government-approved messages is a deeply disturbing avatar of the Biden Administration’s larger, government-wide program of using allied corporations to control public information and to silence opposing political views, all on the pretext of preventing “disinformation,”

¹⁰ CDC Production 2 at 104.

¹¹ 42 U.S.C. § 238(a).

¹² Pub. L. No. 116-136, div. B, tit. VIII, 134 Stat. at 554 (2020).

¹³ Pub. L. No. 116-139, div. B, tit. I, 134 Stat. 620, 624 (2020).

¹⁴ GAO, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, 4th ed., 2017 rev., ch. 3, § D.1(e), GAO-17-797SP (Washington, D.C.: 2017).

¹⁵ B-302992 (Comp. Gen. Sep. 10, 2004) (citing 50 Cong. Rec. at 4410); B-305349 (Comp. Gen. Dec. 20, 2005).

¹⁶ *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001).

¹⁷ *Publicity expert*, OED ONLINE, <https://bit.ly/3QhcErR> (last visited August 2, 2022).

“misinformation,” or “malinformation.”¹⁸ Here, the violation of federal law is open and obvious.

Chairwoman Maloney lamented in 2020 that, “[f]or years, the Executive Branch has encroached on Congress’ power of the purse.”¹⁹ Now, Congress has an opportunity to push back. Accordingly, AFL calls upon you to exercise your Article I authority, investigate AFL’s findings, sanction the Department and the CDC if your inquiry reveals a violation of law, and “protect against the President abusing his power and reassert Congress’ sole constitutional authority in deciding how federal dollars are spent.”²⁰ This is not a close case.

The Constitution charges Congress with responsibility for preserving the public fisc. It voted \$40 billion for Ukraine in May,²¹ \$52 billion for semiconductors in July,²² and it may soon vote on another \$700 billion deal this August.²³ The appropriations violations described herein - yet another example of the Biden Administration’s mismanagement and abuse of power - raise loud alarms regarding a systemic lack of accountability²⁴ and even fraud.²⁵ It is incumbent upon Congress to conduct responsible oversight.

Thank you in advance for your cooperation.

[Signature page follows]

¹⁸ Nat’l Sec. Council, National Strategy for Countering Domestic Terrorism at 9, 18, 20, 29 (June 2021), <https://bit.ly/3PSdw6G>.

¹⁹ H. Comm. On the Budget, *Chairman Yarmuth Joined by Chairwomen Lowey, Maloney & Senate Vice Chairman Leahy in the Fight to Protect Congress’ Power of the Purse* (Apr. 29, 2020), <https://bit.ly/3Qnl7dj>.

²⁰ *Id.*

²¹ Jennifer Scholtes and Connor O’Brien, *Senate Clears \$40B Ukraine Aid Package*, POLITICO (May 19, 2022), <https://politi.co/3bservF>.

²² Will Knight, *The US Throws \$52 Billion at Chips—but Needs to Spend It Wisely*, WIRED (July 28, 2022), <https://bit.ly/3JrJSCN>.

²³ Burgess Everett and Marianne Levine, *Manchin’s Latest Shocker: A \$700B Deal*, POLITICO (July 27, 2022), <https://politi.co/3ORt4Gs>.

²⁴ *See, e.g.*, Alana Wise, *Biden Wants More COVID Relief Funds. The GOP Wants to Know Where Previous Relief Went*, NPR (Mar. 3, 2022), <https://n.pr/3zTjvCG>.

²⁵ Tony Room, *‘Immense Fraud’ Creates Immense Task for Washington as It Tries to Tighten Scrutiny of \$6 Trillion in Emergency Coronavirus Spending*, WASH. POST (Feb. 17, 2022), <https://wapo.st/3vE9qXv>.

Sincerely,

Reed D. Rubinstein
America First Legal Foundation

Cc: The Hon. Patrick Leahy, Chairman, Senate Committee on Appropriations
The Hon. Richard Shelby, Vice Chairman, Senate Committee on Appropriations
The Hon. Rosa DeLauro, Chair, House Committee on Appropriations
The Hon. Kay Granger, Ranking Member, House Committee on Appropriations
The Hon. Gene Dodaro, Comptroller General of the United States