

109TH CONGRESS  
1ST SESSION

# S. 266

To stop taxpayer funded Government propaganda.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2005

Mr. LAUTENBERG (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. CORZINE, Mrs. CLINTON, Mr. DORGAN, Mrs. MURRAY, Mr. JOHNSON, Mr. REED, Mr. LIEBERMAN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To stop taxpayer funded Government propaganda.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Stop Government  
5       Propaganda Act”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) Since 1951, the following prohibition on the  
9       use of appropriated funds for propaganda purposes  
10      has been enacted annually: “No part of any appro-  
11      priation contained in this or any other Act shall be

1 used for publicity or propaganda purposes within the  
2 United States not heretofore authorized by Con-  
3 gress.”.

4 (2) On May 19, 2004, the Government Ac-  
5 countability Office (GAO) ruled that the Department  
6 of Health and Human Services violated the publicity  
7 and propaganda prohibitions by creating fake tele-  
8 vision new stories for distribution to broadcast sta-  
9 tions across the country.

10 (3) On January 4, 2005, the GAO ruled that  
11 the Office of National drug Control Policy violated  
12 the publicity and propaganda prohibitions by distrib-  
13 uting fake television news stories to broadcast sta-  
14 tions from 2002 to 2004.

15 (4) In 2003, the Department of Education vio-  
16 lated publicity and propaganda prohibitions by using  
17 of taxpayer funds to create fake television news sto-  
18 ries promoting the “No Child Left Behind” program  
19 violated the propaganda prohibition.

20 (5) An analysis of individual journalists, paid  
21 for by the Department of Education in 2003, which  
22 ranked reporters on how positive their articles por-  
23 trayed the Administration and the Republican Party,  
24 constituted a gross violation of the law prohibiting

1 propaganda and the use of taxpayer funds for par-  
2 tisan purposes.

3 (6) The payment of taxpayer funds to journalist  
4 Armstrong Williams in 2003 to promote Administra-  
5 tion education policies violated the ban on covert  
6 propaganda.

7 (7) The payment of taxpayer funds to journalist  
8 Maggie Gallagher in 2002 to promote Administra-  
9 tion welfare and family policies violated the ban on  
10 covert propaganda.

11 (8) Payment for and construction of 8 little red  
12 schoolhouse facades at the entranceways to the De-  
13 partment of Education headquarters in Washington,  
14 DC to boost the image of the “No Child Left Be-  
15 hind” program was an inappropriate use of taxpayer  
16 dollars.

17 (9) Messages inserted into Social Security Ad-  
18 ministration materials in 2004 and 2005 intended to  
19 further grassroots lobbying efforts in favor of Presi-  
20 dent Bush’s Social Security privatization plan is an  
21 inappropriate use of taxpayer funds.

22 (10) The Department of Health and Human  
23 Services ignored the Government Accountability Of-  
24 fice’s legal decision of May 19, 2004, and failed to  
25 follow the GAO’s directive to report its Anti-Defi-

1       ciency Act violation to Congress and the President,  
2       as provided by section 1351 of title 31, United  
3       States Code.

4           (11) Despite numerous violations of the propa-  
5       ganda law, the Department of Justice has not acted  
6       to enforce the law or follow the requirements of the  
7       Anti-Deficiency Act.

8           (12) In order to protect taxpayer funds, strong-  
9       er measures must be enacted into law to require ac-  
10      tual enforcement of the ban on the use of taxpayer  
11      funds for propaganda purposes.

12   **SEC. 3. DEFINITION.**

13       In this Act, the term “publicity” or “propaganda”  
14      includes—

15           (1) a news release or other publication that  
16       does not clearly identify the Government agency di-  
17       rectly or indirectly (through a contractor) financially  
18       responsible for the message;

19           (2) any audio or visual presentation that does  
20       not continuously and clearly identify the Government  
21       agency directly or indirectly financially responsible  
22       for the message;

23           (3) an Internet message that does not continu-  
24       ously and clearly identify the Government agency di-

1 rectly or indirectly financially responsible for the  
2 message;

3 (4) any attempt to manipulate the news media  
4 by payment to any journalist, reporter, columnist,  
5 commentator, editor, or news organization;

6 (5) any message designed to aid a political  
7 party or candidate;

8 (6) any message with the purpose of self-ag-  
9 grandizement or puffery of the Administration,  
10 agency, Executive branch programs or policies, or  
11 pending congressional legislation;

12 (7) a message of a nature tending to emphasize  
13 the importance of the agency or its activities;

14 (8) a message that is so misleading or inac-  
15 curate that it constitutes propaganda; and

16 (9) the preparation, distribution, or use of any  
17 kit, pamphlet, booklet, publication, radio, television,  
18 or video presentation designed to support or defeat  
19 legislation pending before Congress or any State leg-  
20 islature, except in presentation to Congress or any  
21 State legislature itself.

22 **SEC. 4. PROHIBITION ON PUBLICITY OR PROPAGANDA AND**  
23 **ENFORCEMENT.**

24 (a) IN GENERAL.—The senior official of an Executive  
25 branch agency who authorizes or directs funds appro-

1 priated to such Executive branch agency for publicity or  
 2 propaganda purposes within the United States, unless au-  
 3 thorized by law, is liable to the United States Government  
 4 for a civil penalty of not less than \$5,000 and not more  
 5 than \$10,000, plus 3 times the amount of funds appro-  
 6 priated.

7 (b) RESPONSIBILITIES OF THE ATTORNEY GEN-  
 8 ERAL.—The Attorney General diligently shall investigate  
 9 a violation of subsection (a). If the Attorney General finds  
 10 that a person has violated or is violating subsection (a),  
 11 the Attorney General may bring a civil action under this  
 12 section against the person.

13 (c) ACTIONS BY PRIVATE PERSONS.—

14 (1) IN GENERAL.—A person may bring a civil  
 15 action for a violation of subsection (a) for the person  
 16 and for the United States Government. The action  
 17 shall be brought in the name of the Government.  
 18 The action may be dismissed only if the court and  
 19 the Attorney General give written consent to the dis-  
 20 missal and their reasons for consenting.

21 (2) NOTICE.—A copy of the complaint and  
 22 written disclosure of substantially all material evi-  
 23 dence and information the person possesses shall be  
 24 served on the Government pursuant to Rule 4(d)(4)  
 25 of the Federal Rules of Civil Procedure. The com-

1       plaint shall be filed in camera, shall remain under  
 2       seal for at least 60 days, and shall not be served on  
 3       the defendant until the court so orders. The Govern-  
 4       ment may elect to intervene and proceed with the ac-  
 5       tion within 60 days after it receives both the com-  
 6       plaint and the material evidence and information.

7               (3) DELAY OF NOTICE.—The Government may,  
 8       for good cause shown, move the court for extensions  
 9       of the time during which the complaint remains  
 10      under seal under paragraph (2). Any such motions  
 11      may be supported by affidavits or other submissions  
 12      in camera. The defendant shall not be required to  
 13      respond to any complaint filed under this section  
 14      until 20 days after the complaint is unsealed and  
 15      served upon the defendant pursuant to Rule 4 of the  
 16      Federal Rules of Civil Procedure.

17              (4) GOVERNMENT ACTION.—Before the expira-  
 18      tion of the 60-day period or any extensions obtained  
 19      under paragraph (3), the Government shall—

20                   (A) proceed with the action, in which case  
 21                   the action shall be conducted by the Govern-  
 22                   ment; or

23                   (B) notify the court that it declines to take  
 24                   over the action, in which case the person bring-

1           ing the action shall have the right to conduct  
2           the action.

3           (5) LIMITED INTERVENTION.—When a person  
4           brings an action under this subsection, no person  
5           other than the Government may intervene or bring  
6           a related action based on the facts underlying the  
7           pending action.

8           (d) RIGHTS OF THE PARTIES.—

9           (1) GOVERNMENT ACTION.—If the Government  
10          proceeds with the action, it shall have the primary  
11          responsibility for prosecuting the action, and shall  
12          not be bound by an act of the person bringing the  
13          action. Such person shall have the right to continue  
14          as a party to the action, subject to the limitations  
15          set forth in paragraph (2).

16          (2) LIMITATIONS.—

17                (A) DISMISSAL.—The Government may  
18                dismiss the action notwithstanding the objec-  
19                tions of the person initiating the action if the  
20                person has been notified by the Government of  
21                the filing of the motion and the court has pro-  
22                vided the person with an opportunity for a  
23                hearing on the motion.

24                (B) SETTLEMENT.—The Government may  
25                settle the action with the defendant notwith-



standing the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) PROCEEDINGS.—Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government’s prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person’s participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person’s cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) LIMIT PARTICIPATION.—Upon a showing by the defendant that unrestricted partici-

1           pation during the course of the litigation by the  
2           person initiating the action would be for pur-  
3           poses of harassment or would cause the defend-  
4           ant undue burden or unnecessary expense, the  
5           court may limit the participation by the person  
6           in the litigation.

7           (3) ACTION BY PERSON.—If the Government  
8           elects not to proceed with the action, the person who  
9           initiated the action shall have the right to conduct  
10          the action. If the Government so requests, it shall be  
11          served with copies of all pleadings filed in the action  
12          and shall be supplied with copies of all deposition  
13          transcripts (at the Government's expense). When a  
14          person proceeds with the action, the court, without  
15          limiting the status and rights of the person initiating  
16          the action, may nevertheless permit the Government  
17          to intervene at a later date upon a showing of good  
18          cause.

19          (4) INTERFERENCE.—Whether or not the Gov-  
20          ernment proceeds with the action, upon a showing  
21          by the Government that certain actions of discovery  
22          by the person initiating the action would interfere  
23          with the Government's investigation or prosecution  
24          of a criminal or civil matter arising out of the same  
25          facts, the court may stay such discovery for a period

1 of not more than 60 days. Such a showing shall be  
2 conducted in camera. The court may extend the 60-  
3 day period upon a further showing in camera that  
4 the Government has pursued the criminal or civil in-  
5 vestigation or proceedings with reasonable diligence  
6 and any proposed discovery in the civil action will  
7 interfere with the ongoing criminal or civil investiga-  
8 tion or proceedings.

9 (5) GOVERNMENT ACTION.—Notwithstanding  
10 subsection (b), the Government may elect to pursue  
11 its claim through any alternate remedy available to  
12 the Government, including any administrative pro-  
13 ceeding to determine a civil money penalty. If any  
14 such alternate remedy is pursued in another pro-  
15 ceeding, the person initiating the action shall have  
16 the same rights in such proceeding as such person  
17 would have had if the action had continued under  
18 this section. Any finding of fact or conclusion of law  
19 made in such other proceeding that has become final  
20 shall be conclusive on all parties to an action under  
21 this section. For purposes of the preceding sentence,  
22 a finding or conclusion is final if it has been finally  
23 determined on appeal to the appropriate court of the  
24 United States, if all time for filing such an appeal  
25 with respect to the finding or conclusion has expired,

1 or if the finding or conclusion is not subject to judi-  
2 cial review.

3 (e) AWARD TO PRIVATE PLAINTIFF.—

4 (1) GOVERNMENT ACTION.—If the Government  
5 proceeds with an action brought by a person under  
6 subsection (c), such person shall, subject to the sec-  
7 ond sentence of this paragraph, receive at least 15  
8 percent but not more than 25 percent of the pro-  
9 ceeds of the action or settlement of the claim, de-  
10 pending upon the extent to which the person sub-  
11 stantially contributed to the prosecution of the ac-  
12 tion.

13 (2) NO GOVERNMENT ACTION.—If the Govern-  
14 ment does not proceed with an action under this sec-  
15 tion, the person bringing the action or settling the  
16 claim shall receive an amount which the court de-  
17 cides is reasonable for collecting the civil penalty and  
18 damages. The amount shall be not less than 25 per-  
19 cent and not more than 30 percent of the proceeds  
20 of the action or settlement and shall be paid out of  
21 such proceeds. Such person shall also receive an  
22 amount for reasonable expenses which the court  
23 finds to have been necessarily incurred, plus reason-  
24 able attorneys' fees and costs. All such expenses,

1 fees, and costs shall be awarded against the defend-  
 2 ant.

3 (3) FRIVOLOUS CLAIM.—If the Government  
 4 does not proceed with the action and the person  
 5 bringing the action conducts the action, the court  
 6 may award to the defendant its reasonable attor-  
 7 neys' fees and expenses if the defendant prevails in  
 8 the action and the court finds that the claim of the  
 9 person bringing the action was clearly frivolous,  
 10 clearly vexatious, or brought primarily for purposes  
 11 of harassment.

12 (f) GOVERNMENT NOT LIABLE FOR CERTAIN EX-  
 13 PENSES.—The Government is not liable for expenses  
 14 which a person incurs in bringing an action under this  
 15 section.

16 (g) FEES AND EXPENSES TO PREVAILING DEFEND-  
 17 ANT.—In civil actions brought under this section by the  
 18 United States, the provisions of section 2412(d) of title  
 19 28 shall apply.

20 (h) WHISTLEBLOWER PROTECTION.—

21 (1) IN GENERAL.—Any employee who is dis-  
 22 charged, demoted, suspended, threatened, harassed,  
 23 or in any other manner discriminated against in the  
 24 terms and conditions of employment by his or her  
 25 employer because of lawful acts done by the em-

1        ployee on behalf of the employee or others in fur-  
2        therance of an action under this section, including  
3        investigation for, initiation of, testimony for, or as-  
4        sistance in an action filed or to be filed under this  
5        section, shall be entitled to all relief necessary to  
6        make the employee whole.

7            (2) RELIEF.—Relief under this subsection shall  
8        include reinstatement with the same seniority status  
9        such employee would have had but for the discrimi-  
10       nation, 2 times the amount of back pay, interest on  
11       the back pay, and compensation for any special dam-  
12       ages sustained as a result of the discrimination, in-  
13       cluding litigation costs and reasonable attorneys’  
14       fees. An employee may bring an action in the appro-  
15       priate district court of the United States for the re-  
16       lief provided in this subsection.

17 **SEC. 5. JUDICIAL NOTICE.**

18        The courts of the United States shall take cognizance  
19       and notice of any legal decision of the Government Ac-  
20       countability Office interpreting the application of this Act.

21 **SEC. 6. POINT OF ORDER.**

22        (a) IN GENERAL.—

23            (1) REDUCTION OF SALARY.—It shall not be in  
24       order in the House of Representatives or the Senate  
25       to consider a bill, amendment, or resolution pro-

1       viding an appropriation for an agency that the Gov-  
 2       ernment Accountability Office has found in violation  
 3       of this Act unless the appropriations for salary and  
 4       expenses for the head of the relevant agency con-  
 5       tains a provision reducing the salary of the head by  
 6       an amount equal to the illegal expenditure identified  
 7       by the Government Accountability Office. If the ille-  
 8       gal expenditure exceeds the annual salary of the  
 9       agency head, then the point of order shall continue  
 10      until the remaining amount is subtracted from the  
 11      salary of the agency head.

12           (2) COMPLIANCE.—Paragraph (1) shall not  
 13      apply if the agency is complying with the decision of  
 14      the Government Accountability Office.

15      (b) SUPERMAJORITY WAIVER AND APPEAL.—This  
 16      section may be waived or suspended in the Senate only  
 17      by an affirmative vote of  $\frac{3}{5}$  of the Members, duly chosen  
 18      and sworn. An affirmative vote of  $\frac{3}{5}$  of the Members of  
 19      the Senate, duly chosen and sworn, shall be required in  
 20      the Senate to sustain an appeal of the ruling of the Chair  
 21      on a point of order raised under this section.

○