

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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July 6, 2016

The Honorable Maura Healey
Attorney General of Massachusetts
One Ashburton Place
Boston, MA 02108-1518

Dear Attorney General Healey,

The Committee on Science, Space, and Technology is in receipt of your June 24, 2016, response to its request for information related to ongoing oversight of coordinated attempts to deprive companies, nonprofit organizations, and scientists of their First Amendment rights and ability to fund and conduct scientific research free from intimidation and threats of prosecution. This response marks the second time your office has refused to produce documents in response to oversight letters signed by 17 Members of the Committee. Further, your office has not attempted to engage the Committee in a dialogue related to our requests. This is disappointing. I urge you or your staff to engage with the Committee as soon as possible to discuss the Committee's requests.

Your office's written responses to the Committee's request thus far, as well as those of your fellow "Green 20" attorneys general, are a deliberate attempt to mask the true purpose of your investigation and mischaracterize the Committee's oversight. Characterizing your investigation as solely focused on Exxon and its statements is a misrepresentation. The publicly available subpoenas issued by members of the "Green 20" are overbroad and would, in fact, capture communications between and among scientists at universities conducting federally funded scientific research, as well as between and among numerous non-profit organizations. For example, the subpoena issued to Exxon by the Attorney General of the U.S. Virgin Islands demands:

6. All Documents or Communications concerning research, advocacy, strategy, reports, studies, reviews of public opinions regarding Climate Change sent or received from: [150 think tanks, non-profit groups, individual citizens, and University research groups].

Furthermore, the subpoena issued to Exxon by your office contains similar language, demanding:

5. Documents and Communications with any of [12 think tanks, non-profit groups, and University research groups] concerning Climate Change and/or Global Warming, Climate Risk, Climate Science, and/or communications regarding Climate Science by fossil fuel

companies to the media and/or to investors or consumers, including Documents and Communications relating the funding by Exxon of any of those organizations.¹

In fact, the Attorney General of the U.S. Virgin Islands went so far as to issue a subpoena directly to the Competitive Enterprise Institute. This subpoena demanded:

3. Documents and Communications reflecting or concerning studies, research, reviews, events, or publications funded by ExxonMobil (in whole or in part, directly or indirectly, including through Donors Trust or Donors Capital Fund or other third parties acting on behalf of ExxonMobil) concerning carbon dioxide or concerning the likelihood, certainty, uncertainty, scope, causes, or impacts of Climate Change.²

Demands like these will undoubtedly require the production of scientific studies conducted by researchers at universities across the country. Protecting the ability of these scientists – and all scientists – to conduct research uninhibited by the potential adverse effects of investigations by law enforcement is a goal of this Committee. As previously stated in the Committee’s June 17, letter, a specific legislative outcome is not required for Congress to conduct valid oversight; however, Congress could indeed legislate on a broad range of topics related to the funding of and transparency surrounding this scientific research, including, but not limited to, issues associated with those conducting this research. The Committee’s authority to conduct this oversight is derived from Article I of the Constitution.

Additionally, the Committee disputes your assertion that state sovereignty and the Tenth Amendment somehow prohibits Congress from conducting oversight of your activities. The Committee is unaware of any judicial precedent insulating state entities from legitimate demands for information from a congressional committee based on state sovereignty or the scope of the Tenth Amendment. In fact, similar arguments have been rejected by several federal courts.³

Accordingly, the Committee reiterates its May 18, 2016, requests, and asks that your office produce responsive documents and communications to the Committee on or before July

¹ *Massachusetts Office of the Attorney General Civil Investigative Demand to Exxon Mobil Corp.*, Apr. 19, 2016, available at <https://www.documentcloud.org/documents/2862196-Exxon-Subpoena-Massachusetts.html> (last visited June 29, 2016).

² *Pl.’s Subpoena to Competitive Enterprise Institute*, Super. Ct. of the D.C., Apr. 4, 2016 available at <https://assets.documentcloud.org/documents/2801453/CEI-Subpoena-From-USVI-AG-Claude-Walker-April-7.pdf> (last visited June 29, 2016) (This subpoena was withdrawn on or about May 23, 2016).

³ *See, e.g., In re Special April 1977 Grand Jury*, 581 F.2d 589, 592 (7th Cir. 1978) (“Appellant’s first attack on the [grand jury] subpoenas is that they represent an unconstitutional federal ‘excursion’ into the territory of exclusive state sovereignty, apparently on the grounds that certain state functions are immune from subpoena and certain state records are privileged from subpoena. We disagree.”); *United States v. Mich. Dep’t of Cmty. Health*, 2011 U.S. Dist. LEXIS 59445 (2011) (finding that a confidentiality provision of the Michigan Medical Marijuana Act was preempted by a federal law giving a federal agency subpoena authority to obtain records involving a controlled substance); *Freilich v. Bd. of Dirs. of Upper Chesapeake Health, Inc.*, 142 F. Supp. 2d 679, 697 (D. Md. 2001) (finding a challenge to a federal law requiring state medical board to provide certain information to the federal National Practitioner Data Bank, based on Tenth Amendment grounds, to be “completely meritless”) *aff’d sub nom. Freilich v. Upper Chesapeake Health, Inc.*, 313 F.3d 205 (4th Cir. 2002).

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13, 2016, at 12:00 p.m. As explained in detail in the Committee's June 17, 2016, letter, this request is a legitimate exercise of the Committee's oversight duties under the Constitution and the Rules of the House.

If you continue to refuse to provide information responsive to the Committee's requests on a voluntary basis, I will be left with no alternative but to utilize the tools delegated to the Committee by the Rules of the House of Representatives. Specifically, the Committee will consider use of compulsory process to obtain responsive documents in the possession, custody, or control of your office.

At any point, I welcome the opportunity to discuss the Committee's request with you or your staff. To arrange a meeting or discuss matters over the phone prior to July 13, 2016, please contact the Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Rep. Lamar Smith
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology

Enclosure