

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

April 29, 2019

Mr. David Whitley
Acting Secretary of State
State of Texas
James E. Rudder Building
1019 Brazos Street
Austin, TX 78701

Dear Acting Secretary Whitley:

This letter follows up on the Committee's March 28, 2019, letter seeking documents regarding your office's recent efforts to purge voter rolls in Texas.¹

The requested documents were due on April 11, 2019, but the production we received from your office on that date was incomplete. You withheld documents based on the assertion that they are "confidential under federal or state law."² In an enclosed letter to the Open Records Division of the Texas Office of the Attorney General, your office further asserted that certain information responsive to the Committee's request "is excepted from disclosure" under a state public records law.³ These assertions are plainly erroneous, and the Committee expects full compliance with the March 28 request.

The right to vote is guaranteed by the U.S. Constitution, and Congress has clear authority under the Constitution to investigate any conduct at any level of government that may infringe on this fundamental right.⁴ The House of Representative has granted broad investigative

¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to David Whitley, Acting Secretary of State, State of Texas (Mar. 28, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-28.EEC%20Raskin%20to%20Whitley-TX%20SoS%20re%20Voter%20Rolls.pdf>).

² Letter from Adam Bitter, General Counsel, Office of the Texas Secretary of State, to Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties (Apr. 11, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/4-11-2019%20Letter%20from%20Texas%20SOS%20to%20Requestors%20%28with%20enclosures%29.pdf).

³ Letter from Adam Bitter, General Counsel, Office of the Texas Secretary of State, to the Office of the Texas Attorney General, Open Records Division (Apr. 11, 2019) (online at oversight.house.gov/sites/democrats.oversight.house.gov/files/4-11-2019%20Letter%20from%20Texas%20SOS%20to%20Requestors%20%28with%20enclosures%29.pdf).

⁴ The Fifteenth Amendment sets forth the right to vote and grants Congress the authority to legislate to protect this right. U.S. Const., amend. XV ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The

authority to the Oversight Committee, and the House Rules authorize the Committee to investigate “any matter” at “any time.”⁵

The Committee has a bipartisan history of investigating issues affecting Americans’ right to vote, including the administration of elections by state governments.⁶ The Committee also has a long history—under both Republican and Democratic Chairmen—of obtaining documents from state governments as part of its investigations.⁷

Because the Committee’s authority derives from the Constitution, it is not limited by state public records laws, including Texas’s Public Information Act.

Similarly, since Congress is an independent branch of government, its authority is not limited by separate, ongoing litigation. Both Republican and Democratic Chairmen have frequently conducted investigations and obtained documents on topics that were also the subject of ongoing litigation.⁸ As the Supreme Court explained in *Hutcheson v. United States*:

Congress shall have power to enforce this article by appropriate legislation.”). Moreover, Article I of the Constitution grants Congress the right to regulate the time, place, and manner of federal elections. U.S. Const., art. I, sec. 4 (“The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations.”). The Supreme Court has held that Congress’ oversight authority is as broad as its legislative reach. *See, e.g., Eastland v. United States Servicemen’s Fund*, 421 U.S. 491 (1975) (holding that Congress’ power to investigate “is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution”).

⁵ House Rule X cl. 4(c)(2). Your office’s letter erroneously cites to the Committee’s legislative jurisdiction, found in House Rule X cl. 1(n), which is distinct from the Committee’s broad oversight jurisdiction.

⁶ *See, e.g.,* Committee on Oversight and Government Reform, *Hearing on Cyber-securing the Vote: Ensuring the Integrity of the U.S. Election Systems*, 115th Cong. (July 24, 2018) (witnesses included state and local election officials and others); Committee on Oversight and Government Reform, Subcommittee on Information Technology and Subcommittee on Intergovernmental Affairs, *Joint Hearing on Cybersecurity of Voting Machines*, 115th Cong. (Nov. 29, 2017) (witnesses included state election officials and others); Committee on Oversight and Government Reform, Subcommittee on Information Technology, *Hearing on Election Cybersecurity* (Sept. 28, 2016) (witnesses included a state election official and others).

⁷ *See, e.g.,* Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Governor Rick Snyder, State of Michigan (requesting documents on the Flint water crisis) (Feb. 26, 2016) (online at republicans-oversight.house.gov/wp-content/uploads/2016/02/2016-02-26-JC-BEC-to-Snyder-Michigan-Gov.-doc-req.-due-3-11.pdf). *See also* Letters from Chairman Darrell Issa, Committee on Oversight and Government Reform, Chairman Jim Jordan, Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, and Chairman James Lankford, Subcommittee on Energy Policy, Health Care and Entitlements, to ten governors and the Mayor of the District of Columbia (requesting documents on Affordable Care Act exchanges) (Mar. 25, 2014) (online at raskin.house.gov/sites/raskin.house.gov/files/2014-03-25.Issa%20Jordan%20Lankford%20to%2011%20Governors%20re%20state%20exchanges%20%28003%29.pdf).

⁸ *See, e.g.,* Letter from Chairman Jason Chaffetz, Committee on Oversight and Government Reform, to Governor John Kitzhaber, State of Oregon (requesting documents on Oregon’s healthcare exchange with continued investigation during concurrent litigation) (Feb. 13, 2015) (online at republicans-oversight.house.gov/wp-content/uploads/2015/05/2015-02-13-JEC-JJ-MM-WH-to-Kitzhaber-GovOR-PPACA-due-Feb.-27.pdf); Letter from Chairman Jason Chaffetz, Committee on Oversight and Government Reform, to John Kerry, Secretary of State (requesting documents on the Keystone XL Pipeline with continued investigation during concurrent litigation) (Feb. 24, 2016) (online at republicans-oversight.house.gov/wp-content/uploads/2016/06/2016-02-24-JEC-to-Kerry-DOS-Keystone-XL-due-3-9.pdf).

Mr. David Whitley

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But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, supra, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.⁹

In addition, the common-law privileges described in your April 11 letter do not apply to the Committee.¹⁰

Please confirm by May 3, 2019, that you will comply with the Committee's request or whether the Committee should consider alternative means to obtain compliance. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Elijah E. Cummings
Chairman



Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil
Liberties

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

⁹ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

¹⁰ See Letter from Chairman Jason Chaffetz and Ranking Member Cummings, et al., Committee on Oversight and Government Reform, to Huban Gowadia, Acting Administrator, Transportation Security Administration (May 2, 2017) ("The House of Representatives derives its authority from the United States Constitution and is bound only by the privileges derived therefrom. ... [N]either the Committee nor the United States House of Representatives recognizes purported non-disclosure privileges associated with the common law.") (online at [republicans-oversight.house.gov/wp-content/uploads/2017/05/2017-05-02-JEC-EEC-to-Gowadia-TSA.pdf](https://www.republicans-oversight.house.gov/wp-content/uploads/2017/05/2017-05-02-JEC-EEC-to-Gowadia-TSA.pdf)).