

Congress of the United States
Washington, DC 20515

June 2, 2016

The Honorable Lamar Smith
Chairman of the Committee on Science,
Space, and Technology
U.S. House of Representatives
2321 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith:

We write to express our concerns regarding the letter (Letter) you sent on May 18, 2016 to the attorneys general of seventeen U.S. states and territories, including Virginia, Maryland, and the District of Columbia, which we represent, and to other organizations. The stated purpose of the Letter was to request information as part of an effort, ostensibly, to conduct “oversight of a coordinated attempt to deprive companies, nonprofit organization, and scientists of their First Amendment rights and ability to fund and conduct scientific research free from intimidation and threats of prosecution.”

After constructing a narrative of shadowy collusion, and pausing to expressly “question the integrity of [each AG’s] office,” the Letter requests records it hopes will validate its “investigation.” The inquiry amounts to a fishing expedition and is a continuation of the House Science, Space, and Technology Committee’s transparent and baseless attempts to impugn the integrity of individuals who seek to advance climate science over climate denial. It also demonstrates a fundamental misunderstanding of the Committee’s jurisdiction and the role of states’ attorneys general, as outlined below. Indeed, the extraordinary nature of the Letter, and lack of focused oversight, may explain why over 40 percent of the Committee’s Republican Members (9 out of 21) chose not to sign it. Or perhaps Republican Members abstained because the Letter is ideologically inconsistent with conservative positions on states’ rights and federal overreach.

Because it represents a misuse of authority, we, the undersigned, hereby request that the Letter and all corresponding requests be withdrawn. The Science, Space, and Technology Committee should return its focus to science, space, and technology.

The Committee on Science, Space, and Technology Lacks Appropriate Jurisdiction to Conduct the Oversight Sought

Regardless of the merits of the Letter's accusations, which appear extraordinarily weak, the House Committee on Science, Space, and Technology lacks jurisdiction to oversee the matter at issue. The Letter justifies its requests by suggesting the "oversight" would address: "serious concerns about the impartiality and independence of current investigations by the attorneys general;" "abuse of prosecutorial discretion;" and "a coordinated attempt to attack the First Amendment rights of American citizens and their ability to fund and conduct scientific research free from intimidation and prosecution."

The Letter asserts jurisdictional propriety by stating that the Committee "has jurisdiction over environmental and scientific programs and 'shall review and study on a continuing basis laws, programs, and Government activities' as set forth in House Rule X." Remarkably, the Letter fails to include the broader contextual language of the Rule X authority it cites. In reality, House Rule X provides, "The Committee on Science, Space, and Technology shall review and study on a continuing basis laws, programs, and Government activities *relating to nonmilitary research and development.*"¹ (Emphasis added). House Rule X also implies jurisdiction over *federal* R&D, not state criminal investigative authority. Despite the Letter's attempt to shoehorn jurisdiction by referencing scientific research, the Letter squarely represents an attempt to oversee state prosecutorial conduct, not environmental or scientific programs nor nonmilitary research and development. Any connection to climate science is incidental and immaterial to the alleged misconduct. The investigation therefore patently exceeds the jurisdictional scope of the Science, Space, and Technology Committee.

Ultimately, the behavior of state attorneys general vis-à-vis state law is a matter for state courts and state legislatures. States' rights long being a central pillar of conservative philosophy, the Letter's effort to meddle directly in the self-governance and prosecutorial discretion of 17 U.S. states and territories is not lacking for irony.

Role of States' Attorneys General

The Letter asserts that the Committee is "concerned" about cooperation between states' attorneys general and contends that "efforts to silence speech . . . run counter to an attorney general's dut[ies] . . ." As a refresher, states' attorneys general represent the interests of the people of their states and have the duty and power to investigate criminal activities, such as organized criminal enterprises and fraud against taxpayers. They also play an important role in the areas of environmental policy and ensuring consumers are treated fairly. If it is in fact true, as has been alleged, that certain extractive industry corporations knew about the dangerous impact of climate

¹ Rules of the House Of Representatives, 114th Congress, at Rule X(3)(k). Available at <http://clerk.house.gov/legislative/house-rules.pdf>

change since as far back as the 1970s and knowingly misled investors and consumers, the alleged actions amount to fraud committed against the public, and it is well within an AG's scope of jurisdiction to investigate.

Further, communication between AG offices and outside groups or subject matter experts is not evidence of collusion, nor is it uncommon. The free exchange of ideas is one of the foundations of the First Amendment and should be encouraged. The Letter erroneously equates benign communication to collusion, ignoring the fact that AGs "routinely seek input from outside organizations but pursue cases based only on the merits."²

A comparison to Big Tobacco is useful here. The scientific connection between smoking and deadly diseases had been accepted by the scientific community and disputed almost exclusively by industry and the "scientists" on its payroll. It was states' attorneys general who first exposed the withholding of knowledge related to the health effects of smoking by tobacco companies, which ultimately led to the Tobacco Master Settlement Agreement between the four largest U.S. tobacco companies and the attorneys general of 46 states.

Were the tobacco fight to take place today, on which side would the drafters of the Letter find themselves? On the side of unambiguous scientific evidence? Or on the side of those working to manufacture and inject ambiguity into the public's understanding of the science, even though they knew better? On the side of those who cried First-Amendment foul when, at long last, prosecutors asserted that the tobacco industry had no constitutional right to commit fraud against the entire American public? If profit-induced ideology were to have won out over science in that battle, we would still have smoking on planes, kid-friendly cigarette brand ambassadors, and smoking near children, along with all the public health expenses attendant thereto. Thousands of additional lives would have been lost to lung cancer and other tobacco-related health ailments. Fortunately, history played out differently, owing in no small part to the ability of independent attorneys general to try their best legal arguments in the courts.

The Letter claims transparency as its goal. Yet, its true purpose is clear: to keep the public in the dark about whether Exxon lied to its investors and the public. Apparently it is not enough for Republican Members of the House Science Committee to deny the overwhelming weight of climate science. Apparently it is not enough for them to refuse to take action on the harmful human contributions to climate change. Apparently it is not enough to have transformed the House Committee on Science, Space, and Technology into a perpetual witch-hunt mob to drum up false narratives about climate science and climate scientists. Instead, the Letter's authors now see fit to take the unprecedented step of harassing and questioning the integrity of top law

² See <http://www.washingtontimes.com/news/2016/apr/17/democratic-ags-climate-change-groups-colluded-on-p/?page=all>.

enforcement officials from seventeen U.S. states and territories—all to prevent proper investigation into potentially criminally fraudulent activity.

Conclusion

For the reasons stated, we hereby request that the Letter and all corresponding requests be withdrawn. We respectfully request that the drafters of the Letter let the cases at issue play out in the courts. Judges, rather than Members of Congress, have both the jurisdiction and the legal training to determine the merits of legal arguments. We look forward to working with you and other Members of the House Committee on Science, Space, and Technology to reach resolution on this matter.

Sincerely,



Donald S. Beyer Jr.
8th District, Virginia



Donna F. Edwards
4th District, Maryland



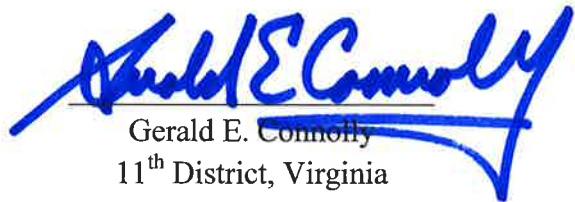
Eleanor Holmes Norton
At-large, District of Columbia



Robert "Bobby" C. Scott
3rd District, Virginia



Chris Van Hollen
8th District, Maryland



Gerald E. Connolly
11th District, Virginia

cc: The Hon. Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology
The Hon. Frank D. Lucas, Vice Chairman, Committee on Science, Space, and Technology
The Hon. Lee Abraham, Member of Congress
The Hon. Brian Babin, Chairman, Subcommittee Space

The Hon. Jim Bridenstine, Chairman, Subcommittee on Environment
The Hon. Mo Brooks, Member of Congress
The Hon. Barry Loudermilk, Chairman, Subcommittee on Oversight
The Hon. John Moolenaar, Member of Congress
The Hon. Randy Neugebauer, Member of Congress
The Hon. Bill Posey, Member of Congress
The Hon. Dana Rohrabacher, Member of Congress
The Hon. F. James Sensenbrenner, Jr., Member of Congress
The Hon. Randy Weber, Chairman, Subcommittee on Energy
The Hon. Ben Cardin, U.S. Senator
The Hon. Barbara Mikulski, U.S. Senator
The Hon. Tim Kaine, U.S. Senator
The Hon. Mark Warner, U.S. Senator
The Hon. Brian Frosh, Attorney General, Maryland
The Hon. Mark Herring, Attorney General, Virginia
The Hon. Karl Racine, Attorney General, Washington, DC