

Congress of the United States
Washington, DC 20515

August 3, 2016

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Smith:

We are writing to express our extreme disappointment in your decision to use the subpoena authority of the Committee on Science, Space, and Technology (the “Science Committee”) as a political tool in an ongoing effort to ignore or deny the causes of global climate change.

On July 13, you issued subpoenas to Massachusetts Attorney General Maura Healey, New York Attorney General Eric Schneiderman, and eight environmental organizations, claiming the existence of a coordinated environmentalist plot to deprive companies and organizations of their First Amendment rights. These subpoenas and the accompanying demand letters are an unprecedented, invalid exercise of Congressional authority, they exceed the bounds of the Science Committee’s jurisdiction, they materially mischaracterize the actions of the Massachusetts and New York Attorneys General, and the claims they make are patently false.

The subpoenas violate the principle of state sovereignty. The Constitution grants states “substantial sovereign authority” over matters not expressly delegated to the federal government.¹ Moreover, Congress’ oversight powers are attached to its power to legislate. It has been well-established by the courts that Congress may not investigate matters over which it has no legislative authority.² The official actions of state government law enforcement officials—including state attorneys general—performing state duties, are not within Congressional legislative control, and thus are not within its investigatory scope.

The Massachusetts and New York Attorneys General are investigating whether the Exxon Mobil Corporation violated state fraud laws by intentionally misleading the public—including investors—with respect to the impacts of climate change in order to avoid government intervention. Your intrusion into state attorneys general investigations of potential state law violations plainly infringes upon state law functions and oversteps the jurisdiction granted to Congress in the Constitution.

Furthermore, the decision to send these subpoenas is unprecedented. Our research and the research of the Congressional Research Service has identified no other example— in

¹ *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991).

² *Barenblatt v. U.S.*, 360 U.S. 109, 111(1959).

over 240 years of United States history – of a Congressional committee subpoenaing a state attorney general working in their official capacity to investigate potential state law violations. Even in those circumstances where Congress appropriately could exercise subpoena power, past Committee Chairs have used subpoenas only as a last resort – avoiding invoking them in the middle of ongoing cases and rulemakings, and working to compromise to address legal concerns raised by the targets of subpoenas. By contrast, you appear to have acted with haste and with little effort to address legitimate concerns.

Aside from the matter of state sovereignty, this investigation is outside of the Science Committee’s purview. The Science Committee lacks jurisdiction over any of the relevant issues raised in this case, including state securities laws and your purported concerns about the “First Amendment rights of companies.”³ The dispute in question is not a scientific one; it is a legal question about whether Exxon misled its investors and consumers. This dispute has no relevance to the Science Committee or its legislative or oversight jurisdiction.

Finally, your letters inaccurately represent the attorneys’ general investigations. It has long been settled by the courts that fraudulent speech is not protected by the First Amendment.⁴ Companies may not deceive the public into believing that something dangerous is safe, and then hide behind the Constitution when the deception becomes apparent. That behavior should offend anyone concerned with public health and safety, regardless of political affiliation.

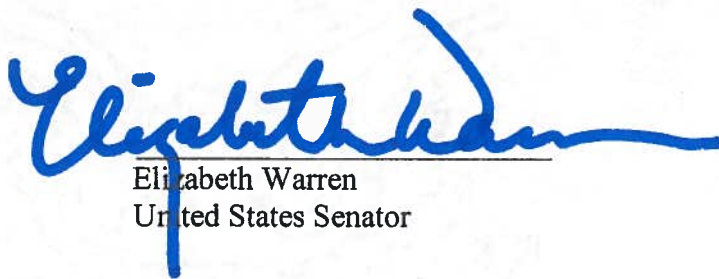
The Science Committee should function as a forum for crafting policies that will make the United States healthier and safer, and ensure that we remain the world leader in scientific research and innovation. State and federal courts – not the Science Committee – are the proper arbiters of legal disputes between state attorneys general and private corporations. Congressional subpoenas should not be used as a vehicle for misguided and unconstitutional political tactics that could permanently harm the reputation of this body and undermine states’ abilities to carry out necessary functions.

We urge you to drop this damaging and pointless exercise in Congressional overreach.

Sincerely,



Katherine Clark
Member of Congress



Elizabeth Warren
United States Senator

³ Press Release, Committee on Science, Space & Technology, *Smith Subpoenas MA, NY Attorneys General, Environmental Groups* (Jul 13, 2016), available at: <https://science.house.gov/news/press-releases/smith-subpoenas-ma-ny-attorneys-general-environmental-groups>.

⁴ *Illinois v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003).

Edward J. Markey

Edward Markey
United States Senator

Richard E. Neal

Richard E. Neal
Member of Congress

Jim P. McGovern

Jim P. McGovern
Member of Congress

Michael E. Capuano

Michael E. Capuano
Member of Congress

Stephen F. Lynch

Stephen F. Lynch
Member of Congress

Niki Tsongas

Niki Tsongas
Member of Congress

William Keating

William Keating
Member of Congress

Joseph Kennedy III

Joseph Kennedy III
Member of Congress

Seth Moulton

Seth Moulton
Member of Congress