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July 27, 2016

**VIA HAND DELIVERY**

The Hon. Lamar S. Smith  
Chairman  
Committee on Science, Space, and Technology  
U.S. House of Representatives  
2321 Rayburn House Office Building  
Washington, D.C. 20515-6301

**Re: Formal Objections to Subpoena**

Dear Chairman Smith:

On July 13, 2016, we wrote to you on behalf of Greenpeace USA and 350.org to reiterate our concerns regarding the unconstitutional requests made by the Committee and to offer, once again, to discuss those concerns with the Committee and its staff.

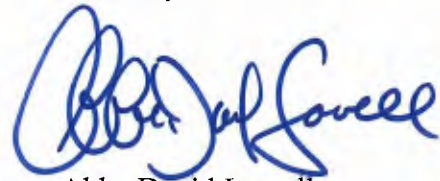
Within hours of the delivery of our letter (and without any further "dialogue" from the Committee that your last letter said should occur), you issued subpoenas to the Executive Directors of Greenpeace USA and 350.org demanding the production of broad categories of constitutionally-protected, private communications. No effort was made to narrow the Committee's requests, or to address the First Amendment concerns raised by Greenpeace and 350.org. Instead, during a hastily-arranged press conference, Committee Members repeated many of the same misstatements and mischaracterizations identified and addressed in our July 13 letter, without correction.

For the reasons explained in our prior letters of June 1, June 24, and July 13, which are attached and incorporated herein, we now formally object to the requests made in the Committee's subpoena because, *inter alia*, (1) the Committee's requests violate the First Amendment; (2) the Committee lacks jurisdiction over ongoing criminal investigations conducted by state law enforcement authorities; and (3) the Committee's requests are vague, overbroad, and unreasonably burdensome. Each of these objections was first raised with the Committee on June 1, 2016, and the Committee has not taken any action since that time to address these concerns or to engage in a meaningful dialogue regarding climate change.

July 27, 2016

Accordingly, for the reasons set forth above and described in our prior letters, Ms. Leonard and Ms. Boeve, as representatives of their organizations, decline to comply with the vague, overbroad, and unconstitutional demands made in the subpoena issued by the Committee.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abbe David Lowell". The signature is fluid and cursive, with the first name "Abbe" being particularly prominent.

Abbe David Lowell

cc: Ranking Member Eddie Bernice Johnson

Enclosures:

A. D. Lowell 6/1/16 Letter to Chairman Smith

F. Gay 6/1/16 Letter to Chairman Smith

A. D. Lowell 6/24/16 Letter to Chairman Smith

A. D. Lowell 7/13/16 Letter to Chairman Smith

# **ENCLOSURES**

Abbe David Lowell  
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June 1, 2016

**VIA HAND DELIVERY**The Hon. Lamar S. Smith  
Chairman  
Committee of Science, Space and Technology  
U.S. House of Representatives  
2321 Rayburn House Office Building  
Washington, D.C. 20515-6301**Re: May 18, 2016 Letter**

Dear Chairman Smith:

We represent Greenpeace USA and respond to the Committee's May 18, 2016 letter. Greenpeace received your letter and has a number of preliminary questions and concerns. For one, just the sheer breadth of the requests would require more time than the June 1, 2016 date proposed in your letter for a full response. In addition, your letter raises a number of troubling legal issues. Greenpeace is proud of its work and has nothing to hide in its efforts to address climate change. Nevertheless, we have to ensure that the Committee (as any entity) is operating properly before undertaking to respond to any request for information.

As you know, Greenpeace is an organization that welcomes any public airing of the issues on which it is committed, including the now certain evidence of climate change. To the extent the Committee is engaging in serious review of the need to address this critical issue, Greenpeace could not be more willing to participate. Let me start with some background on Greenpeace's commitment to the environment and its work on the subject of climate change.

For more than a decade, Greenpeace has worked to reduce the emissions that cause climate change, advocated for corporate and government policies that address climate change, and exposed the corporations, lobbyists, and front groups that deny the existence of climate change and its causes. This work has always been and will always be informed by the underlying science that confirms that climate change is real, and is caused by man-made emissions (<http://www.theguardian.com/environment/climate-consensus-97-percent/2016/apr/19/study-humans-have-caused-all-the-global-warming-since-1950>). Greenpeace's activism on climate change ranges from opposing drilling in the Arctic, to helping technology giants power their data centers with renewable energy, to exposing the funding from the fossil fuel industry to politicians, scientists, and lobby groups who deny climate change and block necessary action to address it. Greenpeace's long-running commitment to finding solutions for climate change is based on the scientific consensus that action cannot be delayed by politics or false debate.

As I understand it, the Committee is looking to determine whether state attorneys general and non-profit, non-governmental, or other groups committed to protecting the earth and its environment have somehow colluded to stifle first amendment protected speech of one or more of the most powerful and wealthiest companies in the world. I am sure that you, your colleagues, and your staff could not help but notice the irony in your inquiry. In the name of protecting the free speech of these companies, you are looking to examine the very free speech activity of groups actively trying to advance public discussion on such a vital topic. In doing so, your inquiry attacks some of the most basic rights upon which this country was founded – “speech on public issues,” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011); “the ability of like-minded individuals to associate” to express commonly held views, *Knox v. Serv. Employees Int’l Union Local 1000*, 132 S. Ct. 2277, 2288 (2012); and the right to petition the government. *United Mine Workers v. Ill. State Bar Ass’n*, 389 U.S. 217, 222 (1967) (holding the right to petition government is “among the most precious of the liberties safeguarded by the Bill of Rights”). Congress is not outside the protections afforded to Greenpeace and others to enjoy these constitutional rights. *Watkins v. United States*, 354 U.S. 178 (1957).

In addition, the articles written about the efforts of state attorneys general indicate that their activity is directed at determining whether at least one fossil fuel company – ExxonMobil – broke securities and consumer fraud laws by making false statements about their activities and the known scientific and market risks of those activities with regard to climate change. These alleged false statements occurred in public and were made to affect the behavior of consumers and investors. In other words, while Greenpeace’s work on climate change has been to follow the science, the fossil fuel industry is being investigated for trying to cover up that science. As you surely know, the law does not protect the dissemination of false statements, especially if they are part of fraudulently misleading consumers and investors. See *United States v. Phillip Morris USA Inc.*, 566 F. 3d 1095, 1123 (D.C. Cir. 2009) (holding tobacco industry’s public statements were not protected speech because “it is well settled that the First Amendment does not protect fraud”). Is the Committee investigating these possible false statements or those trying to determine whether false statements were made?

Also, if the Committee is truly engaged in oversight activity, it appears it already has reached its conclusions. For example, just seven lines into your letter you conclude that the activities of the state attorneys general “were efforts to silence speech.” The letter then goes on for three full pages filled with similar conclusions (e.g., “The strategy decided upon by workshop participants appears clear: to act under the color of law to persuade attorneys general to use their prosecutorial power to stifle scientific discourse, intimidate private entities and individuals, and deprive them of their First Amendment rights and freedoms.”). If the Committee has already reached these conclusions, then what is the real purpose of the inquiry? I also noticed that the letter is signed only by some Republican members of the Committee. That fact alone would cause many observers to question whether this is merely a partisan effort to protect fossil fuel companies.

We recognize that Congress and your Committee have broad authority to conduct legislative research and various oversight activities. Even still, as you know, this authority is not unlimited. The Committee must operate under the House and its own rules, must have jurisdiction to inquire into specific areas, must have authority to conduct its activity, and must comply with legal requirements for seeking information. Your letter cites some of the rules, but a number of questions are raised by your letter:

1. House Rule X defines the power of the committees, including yours. While the Committee surely could investigate the fossil fuel companies at the heart of the issue of climate change, how does Rule X(p) extend to review the work and especially the law enforcement activities of state attorneys general? Putting aside issues of federalism, states' rights, and the Tenth Amendment to the Constitution, it would appear this type of oversight is assigned to the Committee on the Judiciary under House Rule X(l).
2. The Committee's rules, for example Rule II, define the Committee's requirements on meetings and quorums and other procedures. Can you provide us any indication that the underlying actions behind this letter and the letter requests themselves were taken in compliance with these rules? We think you would agree that ensuring regularity and compliance are things we have to confirm on our client's behalf.
3. Committee Rule VIII defines the Committee's oversight authority. That rule and all of its related provisions seem to suggest that the Committee looks to determine if federal laws are being followed or need adjustment by reviewing the actions or inactions of federal agencies over which Congress has jurisdiction. How does the general thrust of oversight apply to this attempt to regulate the activity of state agencies?
4. The two actual requests in the letter are vague and overbroad and likely would be declared so if issued by an executive branch agency or private litigant. For example, the word "all" qualifying documents and communications can be sweeping if left undefined. Similarly, the phrase "relating to" leaves so much to interpretation (as opposed to the phrase "referring to") that it is impossible to understand how to apply it.
5. Depending on whether any communications of any kind actually exist, they might also implicate privileges (e.g., attorney-client, common interest) that are recognized in every forum in the United States. We assume the Committee does not intend any recipient of a request (let alone a letter request) to disobey such privileges.
6. Finally, the period of time included – four and a half years – is a very long one. This in itself requires time to consider where any information might be located.

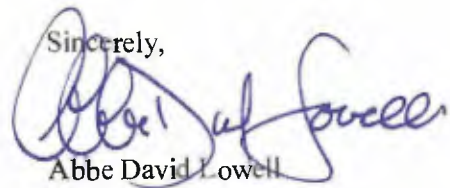
The Hon. Lamar S. Smith

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June 1, 2016

To be clear, Greenpeace will always cooperate with any authorized and legitimate inquiry of Congress or anyone else into one of the most pressing issues of our time – one that will affect our children and their children for generations to come. At this point, the issues raised by your letter, outlined above, prevent Greenpeace from providing the information requested. We are willing to meet with you and/or Committee staff to further discuss our questions and concerns. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abbe David Lowell". The signature is stylized and cursive, with the first name "Abbe" being particularly prominent.

Abbe David Lowell

cc: Ranking Member Eddie Bernice Johnson

WRITER'S DIRECT DIAL NO.  
**(212) 849-7220**

WRITER'S EMAIL ADDRESS  
**faithgay@quinnemanuel.com**

June 1, 2016

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

Dear Chairman Smith:

We write on behalf of 350.org in response to your letter of May 18, 2016, signed by certain members of the House Committee on Science, Space and Technology (“HCSST”). The letter selectively describes some of the background relating to investigations by a number of states, through their Attorneys General, into potential securities violations and fraud (the “State Investigations”) by companies that may have intentionally misled the markets, the public, and state governments regarding the causes of climate change and the risks upon business. The letter requests that 350.org provide to HCSST “[a]ll documents and communications” referring or relating to the State Investigations (1) between its employees and any office of a state attorney general, and (2) between its employees and listed non-profit organizations.

350.org is a non-profit organization founded in 2008 with the express purpose of building awareness about the urgency of climate change, based on sound science and principles of equity. Since that time, it has been engaged in efforts to educate, mobilize, and connect people all over the world who are concerned about the issue. This outreach and advocacy includes engaging with government to encourage the enforcement of laws and working with other advocacy groups when that will increase the effectiveness of its advocacy.

Your request that 350.org disclose all communications with the highest state law enforcement officials and with other individuals and organizations about its advocacy on climate change strikes at the heart of the protections of the First Amendment of the U.S. Constitution. 350.org has a constitutional right to speak out on issues, to associate with others in order to advocate more effectively, and to petition federal and state government. We appreciate that the views and positions of 350.org on climate change, informed by the overwhelming consensus of scientists, may differ from that of the members of the HCSST who signed the letter. Yet the right to petition government and to disagree with certain government officials is a core value protected by the First Amendment. Because your letter does not and cannot provide any legitimate justification for this infringement upon First Amendment rights, our client respectfully



declines to provide documents in response.

350.org has nothing to hide from the HCSST or any congressional committee. In many ways, it would be easier simply to produce documents than to object. But in a democracy built on principles and the rule of law, 350.org cannot in good faith comply with an illegitimate government request that encroaches so fundamentally on its and its colleagues' protected constitutional rights. Committee staff were gracious enough to meet with us briefly as an introduction, and we would appreciate the opportunity to discuss more fully the basis of our good-faith position that your request falls outside the scope of permissible inquiry. To facilitate such a discussion, we outline below the legal grounds of our response.

*First*, freedom of speech, freedom of association, and the right to petition the government constitute the very foundations of our democracy. As the Supreme Court of the United States has held: “[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (internal quotation marks omitted). The same is true for freedom of association: “the ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed.” *Knox v. Serv. Employees Int’l Union, Local 1000*, 132 S. Ct. 2277, 2288 (2012). Moreover, the “right to petition [the government is] one of the most precious of the liberties safeguarded by the Bill of Rights” because “the right is implied by the very idea of a government, republican in form.” *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524-25 (2002) (internal quotation marks omitted).

As you are aware, there is a long and well-established history of courts protecting First Amendment rights against unjustified congressional inquiry. “[T]he constitutional rights of witnesses will be respected by the Congress as they are in a court of justice. . . . Nor can the First Amendment freedoms of speech, press, religion or political belief and association be abridged.” *Watkins v. United States*, 354 U.S. 178, 188 (1957); *see also United States v. Rumely*, 345 U.S. 41, 46 (1953). Courts have balanced First Amendment rights with the needs of discovery by holding that the First Amendment creates a qualified privilege from disclosure of certain information. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462-63 (1958). If there is a reasonable probability that the disclosure will chill First Amendment rights, then it can be justified only by a compelling need for the requested information. *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1161 (9th Cir. 2010).

In applying this balancing test, the Supreme Court has held that required disclosure of membership lists infringes the First Amendment freedom of association. *See NAACP*, 357 U.S. at 466. Courts have consistently applied the same principle to disclosure of the communications of advocacy groups. “Implicit in the right to associate with others to advance one’s shared political beliefs is the right to exchange ideas and formulate strategy and messages, and to do so in private. Compelling disclosure of internal campaign communications can chill the exercise of these rights.” *Perry*, 591 F.3d at 1162-63 (footnote omitted). Where the government “compels public disclosure of an association’s confidential internal materials, it intrudes on the privacy of association and belief guaranteed by the First Amendment, as well as seriously interferes with internal group operations and effectiveness.” *AFL-CIO v. FEC*, 333 F.3d 168, 177-78 (D.C. Cir. 2003) (internal quotation marks and citation omitted).

These fundamental rights, central to the Bill of Rights and repeatedly affirmed by the Supreme Court, are squarely implicated by your letter, which self-evidently seeks to chill and suppress the expression of views on climate change and corporate action, and related petitions for government action, that are inconsistent with those of the signatories of the letter. There is also no question of the public importance of the issues at stake, which implicate national security, public health, poverty, pollution, extreme weather events, and rising sea levels, among others. Further, the chilling effect on First Amendment rights extends beyond 350.org to that of other associations and individuals who are less able to resist similar demands.

*Second*, the letter does not and cannot express a legitimate basis for the requested information, let alone the compelling need that would be required to justify the infringement of First Amendment rights. As the Supreme Court has stated, “[t]here is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. . . . No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress.” *Watkins*, 354 U.S. at 187.

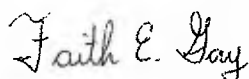
The principal rationale that your letter puts forward is that the speech and petitions of 350.org somehow threaten the First Amendment rights of unnamed “companies, nonprofit organizations, and scientists” who hold contrary views. But communications made by employees of a *private* organization cannot violate anyone’s First Amendment rights under the well-established “state action” doctrine. *See, e.g., Hudgens v. NLRB*, 424 U.S. 507, 513 (1976) (“It is, of course, a commonplace that the constitutional guarantee of free speech is a guarantee only against abridgment by government, federal or state.”). The exercise of freedom of speech, freedom of association, and the right to petition states’ attorneys general is an affirmation of First Amendment rights, not an abridgment. 350.org exercises core First Amendment rights when it expresses its positions and opinions about climate change and corporate conduct to public officials and other individuals and organizations, including views as to the securities fraud or other misconduct by corporate actors.

The request also constitutes a legally impermissible interference with state autonomy. According to your letter, the rationale behind the request is a disagreement with state investigations and prosecutions by sovereign states, through their Attorneys General. Here we agree with the Office of the Attorney General of the State of New York, for the reasons stated in its letter dated May 26, 2016, that your committee cannot interfere with state investigations and prosecutions. As the Supreme Court has long recognized, “[f]ederal interference with a State’s good-faith administration of its criminal laws is peculiarly inconsistent with our federal framework.” *Cameron v. Johnson*, 390 U.S. 611, 618 (1968) (internal quotation marks omitted); *see also Younger v. Harris*, 401 U.S. 37 (1971) (creating abstention rule for federal courts where state criminal prosecution is ongoing); *Printz v. United States*, 521 U.S. 898, 924 (1997) (“[E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts . . . .”) (internal quotation marks and citation omitted). Because you cannot interfere directly with state investigations and prosecutions, you cannot do so indirectly by requesting communications from private organizations with state attorneys general or others about state investigations and prosecutions.

*Finally*, the request is unreasonably onerous, as it concerns “[a]ll documents and communications” over a period of many years, regardless as to form. Given the enormous scope of the request, it would essentially function as a punishment for 350.org’s exercise of its First Amendment rights, without any legitimate governmental interest to justify it.

In light of the extraordinary scope of your request and the vital constitutional rights that would be imperiled by compliance, 350.org respectfully refuses to comply with the request. We would appreciate the opportunity to discuss these legal issues with you at your convenience.

Very truly yours,



Faith E. Gay  
Philippe Z. Selendy  
Jennifer M. Selendy  
David M. Cooper

51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, New York 10010

Jenny A. Durkan

776 6<sup>th</sup> Street NW, 11<sup>th</sup> Floor  
Washington D.C. 20001

Quinn Emanuel Urquhart & Sullivan, LLP

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

Majority Staff, Committee on Science, Space, and Technology  
Rayburn House Office Building, Room 2321

Minority Staff, Committee on Science, Space, and Technology  
Ford House Office Building, Room 394

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June 24, 2016

**VIA HAND DELIVERY**

The Hon. Lamar S. Smith  
Chairman  
Committee on Science, Space, and Technology  
U.S. House of Representatives  
2321 Rayburn House Office Building  
Washington, D.C. 20515-6301

**Re: June 17, 2016 Letter**

Dear Chairman Smith:

On behalf of Greenpeace USA and 350.org, we write in response to the Committee's June 17, 2016 letter. As the Committee appears to have written the same letter to each of the recipients of its document requests, a joint response to the Committee's latest letter is in order.

As you know, Greenpeace and 350.org are private organizations committed to addressing climate change. Although the Committee's letter describes the science underlying climate changes as "debatable," 6/17/16 Letter at 3, scientists from around the world are now more certain than at any other point in history that climate change exists, and that it is caused by humans. Since 1901, the planet has warmed, on average, at least 1.6 degrees Celsius. We have already seen the damage and loss that warming has caused. Those same scientists tell us that without the necessary shift away from fossil fuels, warming will continue and the future damage we are facing is unprecedented. The science is certain; remedial policy must follow it.

Despite the fact that Greenpeace USA and 350.org are private organizations engaged in education and advocacy regarding the public issue of climate change, the Committee's letter persists in requesting that these private organizations turn over their constitutionally-protected communications regarding climate change to the Committee. For the reasons set forth below, we respectfully object to the Committee's requests and decline to provide the requested materials.

**I. The Committee Lacks Jurisdiction Over the Requested Materials**

As the Committee itself acknowledges, the investigatory power of Congress is broad but not unlimited. *See* 6/17/16 Letter at 1. "There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.... No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of

the Congress.” *Watkins v. United States*, 354 U.S. 178, 187 (1957). “Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government.” *Barenblatt v. United States*, 360 U.S. 109, 111-12 (1959). “Investigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.” *Watkins*, 354 U.S. at 187.

As Greenpeace and 350.org explained in their June 1 letters, the Committee lacks jurisdiction over the subject matter of the present inquiry—namely, ongoing investigations by state attorneys general regarding whether one fossil fuel company (ExxonMobil) broke securities and consumer fraud laws by misrepresenting to the public what it knew about climate change. Contrary to the assertions in the Committee’s June 17 letter, neither the state attorneys general leading these investigation nor the private environmental organizations singled out in the Committee’s letter “will be deciding what science is valid and what science is invalid,” or opining on the validity of scientific research conducted with taxpayer dollars. Rather, based on the statements of Attorney General Schneiderman quoted in the Committee’s own letter, *see* 6/17/16 Letter at 3, the investigations are focused on whether ExxonMobil told the public, regulators, and shareholders one thing about climate change when it knew, based upon its own research, that the opposite was true. We are not aware of any House Rule conferring jurisdiction upon the House Committee on Science, Space, and Technology to investigate these types of state criminal or law enforcement proceedings, and the Committee’s letter does not identify any such provision.

Rather, the Committee asserts that it has jurisdiction to investigate the state attorneys general investigations due to the speculative, indirect “effects” of the ongoing state investigations on scientific research. *See* 6/17/16 Letter at 3 (“Congress has a responsibility to investigate whether such investigations are having a chilling effect on the free flow of scientific inquiry and debate regarding climate change.”). The Committee’s requests, however, do not seek information regarding this purported “chilling effect,” but rather appear designed to chill the very speech of those organizations advocating meaningful governmental action on climate change. Similarly, the Committee asserts that it is conducting an investigation “relating to scientific research . . . with the intent of providing a legislative remedy, if warranted.” 6/17/16 Letter at 4. The Committee’s earlier letter (and the accompanying document requests) belie any such suggestion, as those materials make clear that the focus of the Committee’s investigation is not “scientific research,” but rather certain state attorneys general and environmental organizations who have questioned public statements made by the fossil fuel industry. Any “legislative remedy” to the problem of state attorneys general investigating ExxonMobil for securities and consumer fraud would plainly violate the Constitution. *See Cameron v. Johnson*, 390 U.S. 611, 618 (1968) (“Federal interference with a State’s good-faith administration of its criminal laws is peculiarly inconsistent with our federal framework.” (internal quotation marks omitted)).

## II. The Committee's Requests Violate the First Amendment

As the Committee also acknowledges, *see* 6/17/16 Letter at 4, Congress' investigatory power is further limited by the freedoms afforded private citizens under the First Amendment. "Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly." *Watkins*, 354 U.S. at 197. Because "speech on public issues occupies the highest rung of the hierarchy of First Amendment values," the right of Greenpeace, 350.org, and similar organizations to advocate in favor of meaningful action to address climate change is entitled to "special protection." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011). Thus, contrary to the broad assertions in the Committee's letter, the mere fact that Congress "frequently and rigorously has investigated private citizens and advocacy groups" in the past does not mean that the present investigation is constitutional. 6/17/16 Letter at 4. "[T]here is no congressional power to expose for the sake of exposure." *Watkins*, 354 U.S. at 200.

"Where First Amendment rights are asserted to bar governmental interrogation, resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown." *Barenblatt*, 360 U.S. at 126. In any such balancing, "[t]he first question is whether [the] investigation was related to a valid legislative purpose." *Id.* at 127; *see also* *Watkins*, 354 U.S. at 198-99 ("[W]hen First Amendment rights are threatened, the delegation of power to the committee must be clearly revealed in its charter."). "We cannot simply assume ... that every congressional investigation is justified by a public need that overbalances any private rights affected." *Watkins*, 354 U.S. at 199. Rather, the specific interests of the parties must be "judged in the concrete, not on the basis of abstractions." *Barenblatt*, 360 U.S. at 112.

As Greenpeace and 350.org explained in their prior letters, the Committee's requests violate the First Amendment for at least two reasons. First, as noted above, the Committee lacks jurisdiction over the subject matter identified in the requests. The requests thus fail at the first step of the balancing inquiry because they are not related to a valid legislative purpose. *See* *Watkins*, 354 U.S. at 206 ("[Congressional committees] are restricted to the missions delegated to them, i.e., to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere. No witness can be compelled to make disclosures on matters outside that area.").

Second, the "public interests" in disclosure asserted by the Committee are far too speculative and attenuated to outweigh the private interests of Greenpeace and 350.org to speak freely, to assemble, and to petition the government on climate change. Although the Committee theorizes ("the possibility exist[s]") that the state attorney general investigations of ExxonMobil "could have a chilling effect on scientists performing federally funded research" and "could infringe on the civil rights of scientists who become targets of these inquiries," 6/17/16 Letter at 3 (emphasis added), such speculative "abstractions" are insufficient to justify disclosure under the First Amendment. *Barenblatt*, 360 U.S. at 112. Moreover, if the Committee is truly interested in investigating this potential "chilling effect,"

the Committee has far less intrusive means of inquiry at its disposal—it can simply request information from those scientists whose speech could possibly be chilled. The Committee’s letter, however, contains no evidence of any such chilling effect, nor does it explain how the speech of scientists performing federally funded research might be chilled by private communications between an environmental organization and a state law enforcement authority, or between two private environmental organizations.<sup>1</sup> In the absence of any “concrete” public interest, the constitutional balance plainly weighs in favor of the private interests of Greenpeace and 350.org to resist disclosure.

### **III. The Committee’s Requests Are Impermissibly Vague, Overbroad, and Burdensome**

Finally, the Committee’s June 17 letter does not address several of our objections to the form and overbreadth of the Committee’s requests. As both Greenpeace and 350.org explained in their June 1 letters, the Committee’s requests for “all” documents and communications over a four-and-a-half year period “relating to” possible prosecutions “related to” the issue of climate change are vague, overbroad, and unreasonably onerous. *See* A. D. Lowell 6/1/16 Letter at 3; F. Gay 6/1/16 Letter at 4. The Committee has not made any effort to clarify or narrow its requests.

Similarly, Greenpeace requested clarification from the Committee that the signatories of the letter complied with the Committee’s Rules regarding meetings, quorums, and other matters of procedure, and that the Committee did not intend for recipients of its requests to disobey any applicable privilege. *See* A. D. Lowell 6/1/16 Letter at 3. The Committee’s response is silent on these matters as well. We therefore renew our objections to the content and form of the Committee’s requests, which are not tailored to any legitimate congressional purpose but rather indiscriminately seek broad categories of private, First Amendment-protected material.

\* \* \*

Greenpeace and 350.org remain committed to cooperating with any authorized and legitimate inquiry of Congress into climate change, one of the most pressing issues of our time. The Committee’s requests, however, violate the First Amendment, fall outside the

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<sup>1</sup> The Committee’s request for all documents and communications between employees of several private organizations is particularly offensive to the First Amendment, as such communications are wholly private and unrelated to state action.

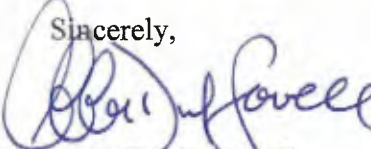
The Hon. Lamar S. Smith

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June 24, 2016

proper jurisdiction of the Committee, and are impermissibly vague, overbroad, and burdensome. For these reasons, Greenpeace and 350.org respectfully refuse to comply with the Committee's requests.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abbe David Lowell". The signature is written in a cursive style with a large initial "A".

Abbe David Lowell

cc: Ranking Member Eddie Bernice Johnson



Abbe David Lowell  
direct tel +1 202 974 5605  
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July 13, 2016

**VIA HAND DELIVERY**

The Hon. Lamar S. Smith  
Chairman  
Committee on Science, Space, and Technology  
U.S. House of Representatives  
2321 Rayburn House Office Building  
Washington, D.C. 20515-6301

**Re: July 6, 2016 Letter**

Dear Chairman Smith:

On behalf of Greenpeace USA and 350.org, we write in response to your July 6, 2016 letter. The July 6th letter misstates and mischaracterizes the grounds upon which Greenpeace and 350.org have declined to provide the constitutionally-protected communications requested by the Committee, and altogether fails to address several of the objections raised in our prior letters. We therefore write this letter to correct your mischaracterizations and to reiterate our objections to the Committee's requests.

First, the July 6th letter asserts that Greenpeace and 350.org “[have] not attempted to engage the Committee in a dialogue related to [the Committee’s] requests.” 7/6/16 Letter at 1. That is false. In our very first response, on June 1, we offered to meet with the Committee and its staff to further discuss these issues. *See* A.D. Lowell 6/1/16 Letter at 4; F. Gay 6/1/16 Letter at 2, 4. More than six weeks later, the Committee has yet to take us up on this offer. Moreover, this is the third letter in which we have engaged in “dialogue” with the Committee regarding its requests. To date, the Committee has yet to provide a meaningful response to many of the specific objections that we have raised.

Second, the July 6th letter asserts—without citation or explanation—that Greenpeace’s and 350.org’s objections to the Committee’s requests “appear to selectively apply the law based solely upon the political party to which [Greenpeace and 350.org] and affiliated groups supply information.” This, again, is incorrect. The First Amendment guarantees the rights of all private citizens to speak or not to speak, to petition or not to petition, and to associate or not to associate with, whomever they choose. The fact that who or what you call an “affiliate” of Greenpeace or 350.org decides to speak with, petition, or associate with some elected officials (*e.g.*, Members of the House Progressive Caucus) and

not others (e.g., Republican House Members accepting thousands of dollars in campaign contributions from ExxonMobil)<sup>1</sup> does not mean that First Amendment law is being “selectively applied.” To the contrary, the freedom to choose with whom one speaks, petitions, or associates, regardless of political affiliation, lies at the very heart of the First Amendment.

Third, the July 6th letter asserts that “Members on both sides of the aisle have legitimate questions” regarding Greenpeace’s and 350.org’s work on climate change (although, to our knowledge, all of your prior letters and requests have been signed only by Republican Members). As we have stated in both of our prior letters, Greenpeace and 350.org remain committed to cooperating with any authorized and legitimate inquiry of Congress into climate change, one of the most pressing issues of our time.

Your continued insistence, however, that Greenpeace and 350.org should cast aside their First Amendment protections and voluntarily provide broad categories of private, constitutionally-protected communications to the Committee raises several questions regarding with whom some Members of the Committee may, to use your term, be “affiliated.” Based on the partisan tone of the July 6th letter, we are concerned that the true purpose of the Committee’s requests is not to examine the science of climate change, but rather to silence those who would shine a spotlight on the role of the fossil fuel industry, and ExxonMobil in particular, in undermining climate science and blocking and delaying meaningful action on climate change.

If we are able to agree upon an appropriate, bipartisan meeting with the Committee, we can discuss the issues we have raised in our letters and would also have some questions of our own: Have Committee Members or staff had private meetings with ExxonMobil or fossil fuel industry lobbyists to discuss the state and territorial attorneys general investigations? Is the Committee consulting with any outside counsel that also have ties to ExxonMobil or the fossil fuel industry? Has ExxonMobil or any other implicated entity provided information to the Committee regarding the state attorneys general investigations, or been asked to do so? Have Committee Members or staff discussed this investigation with other fossil fuel companies, industry front groups, trade associations, foundations, public relations firms, nonprofits, think tanks, or other allied organizations, such as the American Petroleum Institute, the Competitive Enterprise Institute, the American Legislative Exchange Council, or the Energy and Environment Legal Institute? In addition to any direct contributions, how

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<sup>1</sup> See Andrew Seifter, *What Media Should Know About the House Science Committee Members Defending Exxon*, Media Matters for America, June 21, 2016, available at <http://mediamatters.org/research/2016/06/21/what-media-should-know-about-house-science-committee-members-defending-exxon/210539>.

much money or other support have Committee Members received from ExxonMobil, the fossil fuel industry, related PACs, and industry front groups, such as those named above? If Committee Members are truly concerned about the right of scientists to conduct scientific research “free from intimidation and threats of prosecution,” 7/6/16 Letter at 1, why did the Chair of the Committee previously subpoena the chief of NOAA, a scientist herself, demanding that her agency turn over thousands of pages of emails and communications? How is this not chilling speech?

The requests served upon Greenpeace and 350.org simply cannot be squared with the Committee’s stated concerns regarding freedom of speech and scientific inquiry. As we have explained in detail in our prior letters to the Committee, the Committee’s requests violate basic First Amendment protections, fall outside the proper jurisdiction of the Committee, and are impermissibly vague, overbroad, and burdensome. For these reasons, Greenpeace and 350.org respectfully refuse to comply with the Committee’s requests.

If the Committee is serious about having a further “dialogue,” please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Abbe D Lowell /sue". The signature is written in a cursive, flowing style.

Abbe David Lowell

cc: Ranking Member Eddie Bernice Johnson