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July 26, 2016

VIA U.S. MAIL and E-MAIL

Congressman Lamar Smith, Chairman
U.S. House Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, DC 20515-6301

Dear Chairman Smith:

I am writing on behalf of the Pawa Law Group, P.C. and the Global Warming Legal Action Project to describe our objections to your subpoenas of July 13. My previous letters of June 1, June 24, and July 13 described our many areas of concern regarding your request for this information;¹ they are again summarized below. None has been addressed.

First Amendment Burden. Your subpoenas target communications by environmental protection groups and lawyers whom you accuse of trying to “demonize the fossil fuel industry.” But disagreement with advocacy groups or their tactics is not a legally sufficient reason to subpoena their confidential communications. “Congress to be sure has wide powers to investigate and report in aid of legislation, but where its activities encroach upon constitutionally protected liberties, a subordinating interest of the State must be affirmatively shown.” *See Hentoff v. Ichord*, 318 F. Supp. 1175, 1181-82 (D.D.C. 1970) (congressional investigation improper when real purpose was to “inhibit further speech” by targets of investigation and by “others whose political persuasion is not in accord with that of members of the Committee”).

Jurisdiction and Legislative Purpose. “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). No proper jurisdictional basis or legislative purpose for your subpoena has been identified. For example, the cases you cited as support in footnote 1 of your July 6 letter involved an investigation of a federal government agency or an inquiry regarding an

¹ Our objections incorporate by reference the arguments and case law in my previous letters as well as those in letters you received from the environmental protection groups and State Attorneys General from whom you have sought similar information. *See* correspondence *available at*: <http://democrats.science.house.gov/letter/document-requests-sent-state-attorneys-general-and-environmental-groups>.

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organization's potential effects on the U.S. Armed Forces. Your current inquiry implicates no such federal governmental interest, nor does it fall within the jurisdiction of your Committee.²

Federalism, Division of Powers, and States' Rights. The Attorneys General from whom you requested information wrote compelling letters regarding states' rights and Congress' lack of authority to oversee ongoing investigations and lawful actions of state officers. These rights encompass the provision of legal advice and counsel to States.

Overbreadth and Vagueness. Your subpoenas call for a broad range of information over a long timeframe: four and a half years. Interpreted literally, they demand documents that involve climate change, legal process, and many types of organizations and individuals. For a law firm that specializes in environmental litigation, this request would likely encompass large portions of client files on certain cases.

Privilege and the Duty of Confidentiality. Subpoenaed materials "referring or relating to the investigation, *subpoenas duces tecum* or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change"³ necessarily includes information regarding legal strategies and, potentially, law enforcement information. In other words, documents related to potential, past, or current legal proceedings that my clients are duty-bound to keep privileged or confidential.

Our objections are carefully considered and deeply held; we cannot comply with the July 13 subpoenas. Please let me know if it would be constructive to meet with you or your staff and

² Under the Rule X, subsection(p) of the U.S. House of Representatives, the jurisdiction of the Committee on Science, Space, and Technology is not unlimited; rather, it is: "(1) All energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories. (2) Astronautical research and development, including resources, personnel, equipment, and facilities. (3) Civil aviation research and development. (4) Environmental research and development. (5) Marine research. (6) Commercial application of energy technology. (7) National Institute of Standards and Technology, standardization of weights and measures, and the metric system. (8) National Aeronautics and Space Administration. (9) National Space Council. (10) National Science Foundation. (11) National Weather Service. (12) Outer space, including exploration and control thereof. (13) Science scholarships. 14) Scientific research, development, and demonstration, and projects therefor."

³ See July 13 subpoena and definitions.



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discuss this letter or any of our prior correspondence. It is disappointing that despite repeated offers, made in writing to you and on the phone to your staff, no such conversation occurred before subpoenas were signed and sent.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Duval", with a long horizontal flourish extending to the right.

Catherine S. Duval

cc: Congresswoman Eddie Bernice Johnson, Ranking Member