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July 13, 2016

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

Dear Chairman Smith:

We have received your July 6, 2016 letter, which reiterates the requests made in prior letters that the Office of the Attorney General of New York (NYOAG) provide certain materials to the House Committee on Science, Space and Technology. We respectfully continue to decline these requests.

Your latest letter (at p. 1) accuses NYOAG of “attempt[ing] to mask the true purpose of [the NYOAG] investigation and mischaracterize the Committee’s oversight.” This accusation is demonstrably false.

As we have explained previously, NYOAG is investigating ExxonMobil for false or misleading statements to investors and consumers in violation of New York’s laws—to wit, New York State General Business Law, Article 22-A § 349 & Article 23-A § 352, and New York State Executive Law § 63(12). Notwithstanding any speculation to the contrary, this is our investigation’s true—and only—purpose.

Furthermore, for the reasons set forth in my previous letters, it is clear that your Committee does not have the authority that it has claimed—i.e., to conduct oversight to address the Committee’s concern that a duly elected, constitutional officer of a separate sovereign government may be taking actions that “run counter” to his duties under State law (May 18, 2016 Letter at 1 & 3 (claiming jurisdiction based on oversight authority over “Government activities”)). Your current explanation that the Committee has jurisdiction based on a concern for federally-funded scientists is inconsistent with your initial letter and equally unpersuasive, as it too turns on the false premise that the NYOAG is somehow investigating scientists’ research or views.

Your July 6 letter suggests that we engage with the Committee staff to discuss your requests. As I conveyed to Mr. Brazauskas earlier, NYOAG staff are available to speak to

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Committee staff, but request that minority staff be included in the conversation. Ranking Member Johnson, in her letter to you dated June 23, 2016, has expressed serious concerns as to the unprecedented nature of the oversight you are attempting to exercise. We sincerely hope that a conversation with majority and minority staff will lead to a better understanding of the NYOAG's constitutional role and the need to insulate its investigations from unconstitutional interference by a House committee.

Finally, we urge you to heed Ranking Member Johnson's request and provide an opportunity for all Committee members to express their views before issuing a subpoena and courting constitutional conflict. Certainly a due respect for federalism would at least demand that a representative from Texas, acting on his own, not be allowed to compel action from a constitutional officer of a sovereign state.

Sincerely,



Leslie B. Dubeck

Counsel

cc: Honorable Eddie Bernice Johnson
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