



DEPARTMENT OF JUSTICE

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June 1, 2016

Via USPS and email to curtis.philp@mail.house.gov

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

Dear Chairman Smith:

I write in response to the May 18, 2016, letter signed by you and several other Republican members of the House Committee on Science, Space, and Technology requesting various documents and communications related to this office's purported "investigation or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change." Your letter not only requests these records, but also attacks this office's integrity and conduct without basis to do so. For the reasons set forth below, this office respectfully declines to provide the requested records.

Congress does not have jurisdiction to demand records from a state law enforcement official such as the Oregon Attorney General. Congress' investigative jurisdiction tracks its power to legislate and appropriate concerning federal matters, and does not extend any further. *See, e.g., Barenblatt v. United States*, 360 U.S. 109, 111–12 (1959) ("Congress may only investigate into those areas in which it may potentially legislate or appropriate."). Investigations and other law enforcement actions by a state attorney general are not federal matters. Rather, they involve the exercise of police powers reserved to the States under the Tenth Amendment, and are not the appropriate subject of federal legislation, oversight, or interference. *See, e.g., New York v. United States*, 505 U.S. 144, 162 (1992) ("[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions.").

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Apart from erroneously attempting to assert authority over a purely state matter, your letter also incorrectly accuses this office of investigating entities based on their speech or beliefs concerning climate change. Please be advised this office will not be dissuaded from considering whether state laws, including consumer protections laws, may provide redress against knowingly false commercial speech concerning global warming. The First Amendment simply does not protect fraudulent speech. *Illinois v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003); *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948) (“This governmental power [to protect people against fraud] has always been recognized in this country and is firmly established.”).

In sum, the Oregon Attorney General intends to continue to look into possible violations of state law, and she will continue to work, when appropriate, with other states’ law enforcement officials. We trust that you appreciate the importance of maintaining the independence of these state law enforcement activities from federal interference.

Thank you for your courtesies.

Sincerely,



Frederick M. Boss
Deputy Attorney General

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

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

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