

July 13, 2016

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

Dear Chairman Smith:

I write on behalf of the Union of Concerned Scientists (UCS), in response to your letter of July 6, 2016, the third received from you since May 18, 2016.

You assert that you are investigating “attempts to deprive companies, nonprofit organizations, and scientists of their First Amendment rights and ability to fund and conduct scientific research free from intimidation and threats of prosecution.”¹ UCS’s activities are completely consistent with these purposes. In our previous letters to the House Committee on Science, Space, and Technology, we have spoken extensively of the need to vindicate our First Amendment rights, and not to deprive anyone else of theirs. And as we have previously detailed in our letters,² UCS’s concern is not with the conduct of research—either inside fossil companies or outside—but rather with how fossil fuel companies have misrepresented and cast doubt upon such research with the public and their own shareholders.

UCS contends that extensive evidence suggests that ExxonMobil, for example, has long misrepresented the risks posed to its shareholders and to the public by climate change.³ As you

¹ Letters to UCS from the House Committee on Science, Space, and Technology ([May 18, 2016](#), [June 17, 2016](#), [July 6, 2016](#)).

² Response Letters from UCS to the House Committee on Science, Space, and Technology ([June 1, 2016](#) and [June 27, 2016](#)).

³ See, for example: “Climate Deception Dossiers.” Union of Concerned Scientists, 2015 Online at <http://www.ucsusa.org/global-warming/fight-misinformation/climate-deception-dossiers-fossil-fuel-industry-memos#.V4UePfrKUL>; Banerjee, N., J.H. Cushman Jr., D. Hasemyer, and L. Song, “Exxon: The Road Not Taken.” *InsideClimate News*, September 16 – December 22, 2015. Online at <https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken>, accessed July 12, 2016; Jerving, S., K. Jennings, M. M. Hirsch, and S. Rust. “What Exxon Knew about the Earth’s melting Arctic,” *Los Angeles Times*, October 9, 2015. Online at <http://graphics.latimes.com/exxon-arctic/>, accessed July 12, 2016; Jennings, K., D. Grandoni, and S. Rust. “How Exxon Went from Leader to Skeptic on Climate Change Research,” *Los Angeles Times*, October 23, 2015. Online at <http://graphics.latimes.com/exxon-research/>, accessed July 12, 2016; and Lieberman, A. and S. Rust. “Big Oil Braced for Global Warming while It Fought Regulations,” *Los Angeles Times*, December 31, 2015. Online <http://graphics.latimes.com/oil-operations/>, accessed July 12, 2016.

know, the state attorneys general are investigating whether any of these activities constitutes fraud.

In your most recent letter, you also suggest that UCS has “cast aside any First Amendment concerns” that we raised in previous correspondence by participating in a forum hosted by the Congressional Progressive Caucus. However, this is a false equivalency: the information exchanged during the forum and the information you are seeking is significantly different.

During this forum – which was held in public --, Rep. Paul D. Tonko of New York expressed an interest in the attorneys’ general investigation into whether the fossil fuel industry “moved along with a misinformation campaign.” He then asks: “Have any of you had any interactions with any of the AGs?” Speaking on behalf of UCS, Kathy Mulvey responded:

Yes, UCS has also been involved in providing information to attorneys general about whether these companies violated any state laws in providing this information to shareholders and the public, so our interest is really ensuring that they have access to the best science on which to base any actions and also documenting the responsibilities of these companies in terms of their emissions and their role in providing deceptive information. So, our chief scientist, Peter Frumhoff, who is actually here with me as well, has briefed a number of AGs, and we co-convened a session with the Harvard Law School back in April that was attended by senior staff who many of the AGs who have also participated in dialogues.⁴

Rep. Tonko simply asked about what has long been a matter of public record: that UCS staff had met with several state attorneys general and their staff and provided them with climate science relevant to their work. At no point was Ms. Mulvey asked for, nor did she disclose, the content of communications between UCS and other non-profit groups and between UCS and attorneys general, which is what you have demanded.

Moreover, the Supreme Court has held that any waiver of First Amendment rights must be knowing, voluntary and intelligent, (*see D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185, 187, 92 S.Ct. 775, 782, 783, 31 L.Ed.2d 124 (1972)), and courts will “indulge every reasonable presumption against a waiver.” *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 57 S. Ct. 809, 81 L. Ed. 1177 (1937). UCS has not waived its First Amendment rights.

For the reasons set forth in our previous letters, these communications are clearly protected under the First Amendment.

However, we note that with this third letter you have-- for the first time-- requested a dialogue with UCS. Consistent with UCS’s longstanding transparent and open approach to their work, they are happy to share information on the issue of climate science and fossil fuel company

⁴ K. Mulvey testimony, Congressional Progressive Caucus and Sustainable Energy and Environment Coalition Forum, "Oil is the New Tobacco," June 22, 2016. Video online at <https://www.youtube.com/watch?v=sGzpNmKuw30>, accessed July 13, 2016.

accountability with your Committee. UCS has made public a number of reports and other documents that should help you understand the intent and content of their work. UCS recently posted on their website a [timeline](#) of UCS's major activities with respect to climate science deception.⁵

This timeline provides detailed information about UCS's work to expose what ExxonMobil and other leading fossil fuel companies knew about climate change and when, as well as inconsistencies between fossil fuel companies and the trade groups that represent them with regard to how each represents climate science. It also notes UCS's interactions with state attorneys general and many other organizations. Taken together, this content provides a solid overview of the current evidence showing that a number of leading fossil fuel companies devised and executed a plan to deceive the public about the severity of climate change and the risk of their products.

This publicly available material should satisfy any reasonable desire on your part for information about UCS's activities with respect to climate science deception.

Notwithstanding our continued concern that you lack jurisdiction over these issues, we are amenable to discussing any follow up questions you and your committee may have about UCS's work in an informal setting with members of the minority present. Such a discussion could also inform our understanding of the relationship between your Committee, ExxonMobil, and groups such as the Energy and Environment Legal Institute.

We must insist that in engaging in a voluntary exchange of information, you respect UCS's First Amendment rights by not further seeking to compel disclosure of communications with other groups or state attorneys general. All citizens should take their First Amendment rights extremely seriously and should expect elected officials to protect and defend them. UCS is no exception.

I will follow up with your staff in the next few days to discuss whether the extensive publicly available information is sufficient to meet your needs and, if not, what steps you would like to take with regard to an informal discussion under the terms described above.

Sincerely,



Neil F. Quinter

⁵ [Union of Concerned Scientists Campaign on Fossil Fuel Climate Deception and Accountability: A Timeline.](http://www.ucsusa.org/global-warming/fight-misinformation/campaign-timeline-fossil-fuel-climate-deception-accountability#.V4U31_krKUu)
Online at: http://www.ucsusa.org/global-warming/fight-misinformation/campaign-timeline-fossil-fuel-climate-deception-accountability#.V4U31_krKUu