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

Re: Response to Committee's May 18, 2016 Letter

Dear Mr. Chairman:

I write on behalf of the Union of Concerned Scientists (UCS) in response to your May 18, 2016 letter signed by you and 12 other Republican members of the House Committee on Science, Space and Technology, seeking documents relating to the Committee's "oversight of a coordinated attempt 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." The Committee requests documents that fall into two categories: communications between UCS employees and state Attorneys General and communications between UCS employees and other groups or individuals "related to the issue of climate change." We respectfully decline your request for documents because the request infringes directly the First Amendment rights of UCS to discuss "the issue of climate change" and because the House Science Committee lacks jurisdiction over this matter.

It is without doubt that the UCS's communications with other groups about issues of important national -- indeed, global -- public policy is the type of speech fundamental to the protections afforded by the First Amendment. Furthermore, that those groups having assembled may have petitioned government officials should not be surprising or discouraged. The ability to communicate to government officials is the very activity intended for First Amendment protection. You highlight that you are concerned about the "strategy developed by political activist organizations such as the [UCS]." Taking this stated concern at face value, activities conducted by "political activist organizations," such as peacefully assembling and associating with like-minded groups to petition the government, and speaking about vital issues of national concern, are the very type of activities that are protected by the First Amendment.[1] Regarding this, there is no unsettled law or debate.

Every day across America, groups of individuals assemble to discuss issues of common interests and to collectively pursue those interests in numerous ways, including by petitioning their government to take actions believed to be in the public interest. Unlike other parts of the world, such activity is protected and encouraged in America because "[t]he right of the people peaceably to assemble . . . is an attribute of

[1] It is also black letter law that the right to petition the government does not guarantee a result or even a response. "Nothing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals' communications on public issues." *Minnesota Board for Community Colleges v. Knight*, 465 U.S. 271, 285 (1984).

national citizenship. . . . The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for redress of grievances."[2] Furthermore, the Supreme Court has stated that protecting the right to peacefully assemble is critical "to maintain the opportunity for free political discussion" and that "[t]he holding of meetings for peaceable political action cannot be proscribed."[3] If the government had the authority to review those activities at will -- particularly because it did not agree with the views expressed in such an assembly -- such First Amendment activity would be, at a minimum, chilled and discouraged. It is a long-held American value to permit political speech with which one may vehemently disagree in order to protect the speech rights of all Americans.

We respectfully must point out the irony of investigating alleged violations of First Amendment-protected activity by utilizing means that infringe First Amendment rights. Significantly, we note that your letter makes no allegation that UCS violated any law or regulation. Instead, it is directly focused on what its employees said to whom about "the issue of climate change." Although your investigation is not bound by rules adopted by another branch of government, we think it instructive that the institution charged with investigating serious crime and terrorism – the Federal Bureau of Investigation – is barred from "investigating or collecting or maintaining information on United States persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States."[4] We suggest that government authorities in all branches of government hew to this standard based in the Constitution and informed by previous abuse. Furthermore, the Supreme Court has recognized the First Amendment as a bar to a legislative inquiry, holding that "groups which themselves are neither engaged in subversive or other illegal or improper activities nor demonstrated to have any substantial connections with such activities are to be protected in their rights of free and private association. . . . To permit legislative inquiry to proceed on less than an adequate foundation would be to sanction unjustified and unwarranted intrusions into the very heart of the constitutional privilege to be secure in associations in legitimate organizations engaged in the exercise of First and Fourteenth Amendment rights . . ."[5]

We also object to the Committee's request on jurisdictional grounds.[6] You note that "[t]he Committee on Science, Space and Technology has jurisdiction over environmental and scientific programs." However, Rule X of the Rules of the House of Representatives does not confer on the Committee jurisdiction to institute "oversight of a coordinated attempt 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."[7] To the extent Congress even has jurisdiction over these matters – deprivation of First Amendment rights, intimidation, and threat of prosecution – they would fall within the jurisdiction of other committees of the House.

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[2] *United States v. Cruikshank*, 92 U.S. 542, 552-553 (1876).
[3] *De Jonge v. State of Oregon*, 299 U.S. 353, 365 (1937).
[4] The Attorney General's Guidelines For Domestic FBI Operations (Sept. 29, 2008).
[5] *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 558 (1963) (reversing contempt judgment against president of the Miami Branch of the National Association for the Advancement of Colored People for refusing to divulge membership records to Florida legislative committee).
[6] Congressional oversight authority is delegated by the full House or Senate and any committee inquiry must be within the scope of that delegated authority. *United States v. Rumely*, 345 U.S. 41, 42, 44 (1953); *Watkins v. United States*, 354 U.S. 178, 198 (1957).
[7] Letter from Representative Lamar Smith, Chairman, Committee on Science, Space and Technology, United States House of Representatives, to Kenneth Kimmell, President, Union of Concerned Scientists, May 18, 2016 (hereinafter "Smith letter"), p.1.

We recognize that the oversight power of Congress is broad; however, it is not unlimited. It must be exercised "in aid of the legislative function,"[8] which includes "proposed or possibly needed statutes."[9] However, it cannot be used for the sake of exposure alone.[10] Your request for information comes under a heading in your letter styled "**The Committee's Request for Transparency**".[11] The Supreme Court has noted that "[t]here is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress . . . [n]or is the Congress a law enforcement or trial agency. . . . [An] inquiry . . . must be related to, and in furtherance of, a legitimate task of Congress."[12] It is clear that your oversight request does not encompass a review of current federal statutes within the Science Committee's jurisdiction, and we are having significant difficulty comprehending what "proposed or possibly needed statutes" could possibly be enacted to address the Committee's concerns and that also fall within the Science Committee's Rule X jurisdiction.

Because the Committee's request infringes UCS's rights under the First Amendment of the U.S. Constitution, and because the House Science Committee lacks jurisdiction over this matter, the Union of Concerned Scientists respectfully declines the invitation to provide the requested documents.

Sincerely,

Neil Quinter

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

Signatories of Smith Letter

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[8] *Kilbourn v. Thompson*, 103 U.S. 168, 189 (1880).
[9] *Watkins v. United States*, 354 U.S. 178, 187 (1961).
[10] "There is no congressional power to expose for the sake of exposure . . ." *Watkins*, 354 U.S. at 200.
[11] Smith letter, p.3.
[12] *Watkins*, 354 U.S. at 187.