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Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6301

(202) 225–6371
www.science.house.gov

June 26, 2017

The Honorable Arthur A. Elkins, Jr.
Inspector General (IG)
Office of Inspector General (OIG)
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear IG Elkins:

We are writing to you out of deep concern that senior EPA officials, particularly the EPA Chief of Staff Ryan T. Jackson, may have sought to interfere with the testimony of a Democratic witness at a hearing before the House Committee on Science, Space & Technology on Tuesday, May 23, 2017.[1] We contend that Mr. Jackson's actions were inappropriate and may have violated federal regulations. The right to communicate with Congress is guaranteed, and intentionally interfering with these rights may constitute a violation of federal law. Several federal laws may be germane to this issue, including 5 U.S. Code § 2302 (Prohibited personnel practices), 5 U.S. Code § 7211 (Employees' right to petition Congress), 18 U.S. Code § 1512 (Tampering with a witness, victim, or an informant), and 18 U.S. Code § 1505 (Obstruction of proceedings before departments, agencies, and committees). Attempting to interfere with or obstruct the testimony of any individual to the U.S. Congress is a matter that should be taken extremely seriously and we trust that you will conduct a thorough investigation of the matter outlined below.

On May 23, 2017, Dr. Deborah L. Swackhamer, the current Chair of the EPA's Board of Scientific Counselors (BOSC) and a Professor Emerita of Science, Technology, and Public Policy in the School of Public Affairs and a Professor Emerita of Environmental Health Sciences in the School of Public Health at the University of Minnesota testified as a Democratic witness before the House Committee on Science, Space & Technology. Dr. Swackhamer is also the Co-Director of the University's Water Resources Center and the former Chair of the EPA's Science Advisory Board (SAB).[2] She testified before the Science Committee's Subcommittee on Environment at a hearing titled, *"Expanding the Role of States in EPA Rulemaking."* She

[1] Subcommittee on Environment hearing, "Expanding the Role of States in EPA Rulemaking," House Committee on Science, Space & Technology, Tuesday, May 23, 2017, available here: http://democrats.science.house.gov/hearing/expanding-role-states-epa-rulemaking

[2] Biography, Dr. Deborah Swackhamer, Humphrey School of Public Affairs, University of Minnesota, available here: https://www.hhh.umn.edu/directory/deborah-swackhamer

appeared before the Committee as an independent environmental scientist and was not representing EPA, BOSC or any other EPA advisory committee.[3] Dr. Swackhamer made this point very clear in her written and oral testimony to the Committee. "I speak to you today as an environmental sciences and policy expert, and not on behalf of the U.S. EPA or the State of Minnesota," she said in her statement.[4]

Both private citizens and federal employees have the right to freely communicate with Congress. However, Mr. Jackson appears to have attempted to shape Dr. Swackhamer's testimony to the Committee even after he was informed by both Dr. Swackhamer and the Acting Assistant Administrator for the Office of Research and Development (ORD), Dr. Robert Kavlock, that she was testifying in her personal capacity as an independent environmental scientist. Mr. Jackson, for instance, provided Dr. Swackhamer with a list of EPA's internal talking points on EPA Administrator Scott Pruitt's decision not to renew the terms of nine BOSC members. It seems clear that Mr. Jackson was seeking to influence Dr. Swackhamer's testimony to Congress.

Mr. Jackson also sent Dr. Swackhamer a copy of her embargoed testimony to the Science Committee the day before the hearing and specifically referenced a portion of her testimony he claimed was not accurate. He asked Dr. Swackhamer to state in her testimony that the decision not to renew the nine BOSC members' positions had "not yet been made." However, in reality, the Assistant Administrator of ORD had been informed two weeks earlier, apparently by EPA Administrator Pruitt's office, that a decision had been made and that the appointments of these nine BOSC members were "not being renewed." It seems Mr. Jackson wanted Dr. Swackhamer to reiterate a public relations message that was not factually accurate.

It is unclear whether Mr. Jackson took these actions knowingly. Regardless, his actions were inappropriate. We are also deeply troubled by the fact that Mr. Jackson somehow obtained the embargoed testimony of a Democratic witness prior to that testimony being officially released by the Science Committee. It is especially disturbing that Mr. Jackson then used that testimony in an attempt to intimidate and interfere with this witness's testimony before the Science Committee.

We have written to Administrator Pruitt about these concerns and informed him that we would be asking your office to investigate these matters. A copy of that letter is attached for your review. Among the questions we suggest that your office address in reviewing this matter:

- Did EPA Chief of Staff Ryan Jackson or any other EPA officials attempt to interfere with the testimony of Dr. Deborah Swackhamer to the Science Committee and were they in violation of any federal regulations or laws as a result?

- How did Mr. Jackson obtain an embargoed copy of Dr. Swackhamer's testimony to the Science Committee?

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[3] Subcommittee on Environment hearing, "Expanding the Role of States in EPA Rulemaking," House Committee on Science, Space & Technology, Tuesday, May 23, 2017, available here: http://democrats.science.house.gov/hearing/expanding-role-states-epa-rulemaking

[4] Written Testimony submitted by Deborah L. Swackhamer, Ph.D. Professor Emerita, University of Minnesota, Subcommittee on Environment hearing titled: "Expanding the Role of States in EPA Rulemaking," House Committee on Science, Space & Technology, May 23, 2017, available here: http://democrats.science.house.gov/sites/democrats.science.house.gov/files/documents/Swackhamer.pdf

- Has the staff in the EPA's Office of the Administrator received whistleblower rights or other training to ensure they are well aware of federal prohibitions on interfering with or seeking to intimidate individuals who seek to communicate with or testify before Congress? If not, is any such training planned for the future?

- Does the OIG have any recommendations regarding the findings in this investigation?

The ability of both federal officials and private citizens to freely communicate with Congress without fear of intimidation, interference, or reprisal is a bipartisan issue that is critical to ensuring good governance and uncovering issues of potential waste, fraud, abuse, or mismanagement. Ensuring that both private and federally-funded scientists are able to speak freely about the scientific merits of their research, as well as management issues within their agencies, programs, or organizations, is also critical to Congress's ability to carry out our oversight responsibilities. We appreciate your role as the EPA's watchdog to ensure that federal scientists are not silenced, and we trust that you will keep a close eye on these issues.

If your staff has any questions regarding this request they may contact Doug Pasternak on the Minority staff at (202) 226-8892. Thank you very much for your prompt attention to this important matter.

Sincerely,

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

Suzanne Bonamici
Ranking Member
Subcommittee on Environment

Donald S. Beyer Jr.
Ranking Member
Subcommittee on Oversight