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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 appreciated the opportunity to discuss the Committee's subpoena to Attorney General Healey in a conference call last Wednesday with representatives of both the majority and minority sides of the Committee. The conference call enabled us to explain further the basis and nature of Attorney General Healey's pending investigation into possible violations by ExxonMobil Corporation ("Exxon") of the Massachusetts unfair business practices act and to seek a clearer understanding of the majority's purposes in subpoenaing documents from our office. During the meeting we suggested that we send you a follow-up letter, which your representatives said would be acceptable.

During the conference call, we expressed concerns, based in part on statements by majority members of the Committee at the September 14th hearing on the subpoena issue, that the majority misapprehends the basis and nature of our investigation into Exxon. Your representatives appeared to acknowledge that Attorney General Healey has the authority to conduct investigations in accordance with Massachusetts law. Our present investigation is based on apparent inconsistencies between what Exxon scientists told Exxon management about the expected impact of fossil fuels on climate and what Exxon told (or failed to tell) investors and consumers. Such inconsistencies could constitute unfair and deceptive business practices under Massachusetts General Laws chapter 93A. That statute protects investors and consumers in the case of misrepresentations by businesses or failures to disclose material facts that may have led the investors and/or consumers to make different purchasing choices. If the evidence from the Attorney General's investigation shows that Exxon was not forthcoming in its statements about what it knew about the impact of fossil fuels on climate and the impact of prospective climate change and efforts to deal with it on Exxon's future business and assets, then the Attorney General would evaluate civil claims for violations of the statute as to investors and consumers.

Thus most of the approximately forty (40) document requests in the Civil Investigative Demand ("CID") which our office served upon Exxon (and which the Committee has) deal with such topics as:

- Exxon's scientific research into the impacts of fossil fuels on climate and what the scientists told Exxon management;
- Exxon's public statements;
- Exxon's statements to investors;
- Exxon's marketing research, public relations and advertising;
- Exxon's communications and their trade organization or non-profits;
- Exxon's activities in response to climate risks posed by its operations; and
- Lawsuits and investigations in which Exxon had been engaged.

A number of the majority speakers at the Committee hearing appeared to contend that our investigation is about chilling academic scientific research. That is incorrect. At this point Attorney General Healey has served only one CID – to Exxon. Attorney General Healey has not served any CIDs at this point to any third parties whatsoever, including university scientists or researchers. There is one document request to Exxon (out of nearly 40) which requests Exxon's communications with about a dozen trade organizations or nonprofits. One of the purposes of that request is to determine whether what Exxon told these organizations reflected what Exxon scientists had told company management about the impacts of fossil fuels on climate.

To date, Exxon has not produced any documents to Attorney General Healey in response to the CID. Exxon, rather, has filed two lawsuits – one in federal court in Texas and one in state court in Massachusetts – seeking to prevent the Attorney General from conducting her investigation. Attorney General Healey is defending her investigation in both courts. At the same time, it is public knowledge that Exxon has produced many documents to the New York Attorney General, who is conducting an investigation similar to our own. And in the past week, Exxon has confirmed, as reported in *The Wall Street Journal* and elsewhere, that it is being investigated by the U.S. Securities and Exchange Commission with respect to its disclosures to investors regarding the future actions of its assets in light of efforts to address climate change, and is providing documents to that agency. The Committee should not be seeking to interfere with Attorney General Healey's investigation when two courts are dealing with Exxon's objections and when two comparable governmental investigations are proceeding, with Exxon's cooperation.

Attorney General Healey remains very concerned that the Committee's subpoena seeks to obtain documents about the genesis and basis for her investigation, including documents protected by the attorney-client privilege, the attorney work product protection or other similar state law protections for her investigatory and deliberative materials. Our office's concern about violation or waiver of these protections is particularly acute in view of the two pending lawsuits by Exxon against the Attorney General.

Finally, the testimony at the Committee hearing by witnesses invited by the majority has not altered Attorney General Healey's view that the Committee is not empowered to subpoena a

state Attorney General with respect to an ongoing investigation into possible violations of state law. Attorney General Healey continues to rely on the legal arguments and authorities, outlined in prior letters to you, and adds to them the hearing testimony of former Committee counsel Charles Tiefer, letters to the Committee from many legal scholars, and statements from many Committee members that, in their views, the Committee lacks legal authority to proceed. The Committee not identified in any consistent way, including in our conference call last week, a legitimate basis for seeking documents from our office, even if the Committee possessed subpoena power against a sitting state Attorney General (which it does not).

Although the majority on the Committee and Attorney General Healey appear to have had distinctly different views on the Committee's authority to subpoena her about her investigation, we hope that this letter is helpful to you and the Committee in better understanding our position. We urge that the Committee withdraw the subpoena after reviewing this letter. As we told your representatives in the conference call, we are prepared to continue this dialogue about the subpoena in a constructive fashion.

Sincerely,

Richard A. Johnston
Chief Legal Counsel

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