

# Congress of the United States

## House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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September 30, 2014

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

Dear Chairman Smith,

I am writing to express my deep concern over the direction you have taken the Committee in your dealings with the National Science Foundation (NSF) during the past year-and-a-half. You have been engaged in a puzzling – and troubling – investigation of the merit-review process with respect to 20 NSF grants and have sought all of the confidential, pre-decisional peer-review materials associated with these grants. Your combative August 27, 2014 letter to the Foundation was only the most recent in a string of letters long on assertions of Congressional jurisdiction while remaining disturbingly thin on rationale.

The plain truth is that there are no credible allegations of waste, fraud, or abuse associated with these 20 awards. The only issue with them appears to be that you, personally, think that the grants sound wasteful based on your understanding of their titles and purpose. Seeking to substitute your judgment for the determinations of NSF's merit review process is the antithesis of the successful principles our nation has relied on to make our research investment decisions. The path you are going down risks becoming a textbook example of political judgment trumping expert judgment.

As I stated in my letter on this matter last year, no Chairman in the history of this Committee has ever put himself forward as an expert in the science that underlies specific grant proposals funded by NSF. Of the more than two decades of Committee leadership that I have worked with – Chairmen Brown, Walker, Sensenbrenner, Boehlert, Gordon, and Hall – I have never seen a Chairman decide to go after specific peer-reviewed grants simply because the Chairman personally does not believe them to be of high value. Likewise, my staff contacted multiple agencies (in addition to the cognizant House committees) listed in your August 27 letter, and not a single one reported any precedent for Congress making requests for pre-decisional research grant materials absent an allegation of wrongdoing.

Despite the lack of a clear basis for your investigation, and the sensitivity of the deliberative materials that you wish to review, the National Science Foundation recognizes that Congress has a right to see these materials. NSF came to an accommodation to make the confidential materials in question available, at NSF headquarters, for Committee staff to review. In that way you and your staff have access to everything you might need to satisfy your stated goal of better understanding the merit-review process without undermining the integrity of that process and the future standing of the agency. As a result of this accommodation, your staff and mine have made five visits to date, totaling approximately 25 hours (that averages more than one hour review time per grant per staff member). In that time my staff were able to carefully review all of the 20 grant portfolios. Based on this review of the documents, my staff found no evidence of wrongdoing in any form, and no evidence of any failure in the process. Instead, there was ample evidence of NSF's gold-standard merit-review system working exactly as intended. The fact that the review system produces funding for grants that sound funny to you is not evidence that the NSF process is at fault.

Your August 27 letter articulates the legal case for the broad powers of Congress to compel production of materials from Federal agencies. I have no disagreement with that statement of Congressional rights. However, what your letter fails to articulate is a convincing reason why you so desperately need the actual records in your possession even after your staff have failed to find any evidence of misconduct. I believe that the legal right to these documents must be balanced against the potential harm to NSF's merit-review process from forcing them to be produced.

In NSF's letters to you, they repeatedly stressed the need to protect confidential grant materials. In weighing the Committee's need to have actual copies of documents that staff have already reviewed and found to be harmless against the potential consequences of our receiving, and perhaps mishandling, those documents, I believed that NSF's accommodation was respectful and reasonable. The perception that politicians, angling for some temporary political advantage, might reveal confidential comments and advice could undermine the superb peer review system relied upon by NSF, NIH, and other Federal agencies to guide their research investment decisions.

It has come to my attention that on September 16, Fox News published an article regarding one of the 20 grants reviewed by your staff – an article which contained a quote from you disparaging that grant. Further, I have been informed that this article contained at least two pieces of information that were not publicly available and that were available in the confidential materials reviewed by both your staff and mine. I know that my staff never shared this information. Nor did NSF or the grant recipient. A reasonable person could conclude that the only other party who had access to this material – you or your staff – released the information. I seek your assurance that this did not happen. I could only interpret such a breach as a deliberate effort to embarrass the agency and the grantee. If such a breach occurred, I am convinced even further of NSF's need to protect confidential grant materials.

I am aware that as of September 11, you have requested the confidential, pre-decisional materials for an additional 30 grants. I support you on serious and credible investigative matters that have come to the attention of this Committee, but this campaign against NSF's merit-review system is indefensible absent some compelling explanation of what you are trying to accomplish and why these materials must be in your possession. As it stands, the investigation looks like a fishing expedition, pure and simple.

It is my own view that your actions are sending a chilling message to the entire scientific community that peer-review may, at any time, be trumped by political review. Your efforts threaten to compromise the anonymity that is central to the frank and open exchange of comments and critiques during the review process, thus compromising the integrity of the peer-review process. As I asked you last year, how can future participants in the peer-review process have confidence that their views will remain confidential when the Chairman of the Science, Space, and Technology Committee has shown that investigating awards and even unfunded proposals may become business as usual for the Committee, and especially now in light of the September 16 Fox News article?

As Chairman of the Committee, it is incumbent upon you to take a broad and long view of our work as it impacts the nation's research enterprise and the Committee's own standing. If your ultimate goal is to cut funding for social and behavioral sciences – you have already made several such efforts and I have made my opposition clear – I respect your right to try to make that case as Chairman. But please do not compromise the integrity of NSF's merit review system as part of this campaign. Such an action will do real and lasting harm to our nation. I ask that you please reconsider the Committee's path forward regarding NSF and merit review.

Sincerely,



Eddie Bernice Johnson  
Ranking Member

CC: Members of the Committee on Science, Space, and Technology  
Dr. France Córdova, Director, National Science Foundation  
Dr. Dan Arvizu, Chairman, National Science Board