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August 18, 2016

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

Dear Chairman Smith:

I write on behalf of the New York Office of the Attorney General ("NYOAG") to state our deep concerns about how the staff of the House Committee on Science, Space, and Technology is handling communications with the NYOAG regarding the Subpoena issued to our Office on July 13, 2016.

As you know, by letter dated July 26, 2016, the NYOAG objected on a number of grounds to your Subpoena's requests for documents from an ongoing, confidential state fraud investigation. For the reasons set forth in that letter, the requests violate New York's sovereignty and fundamental principles of federalism. As the U.S. Supreme Court has clearly and repeatedly reaffirmed, "States retain broad autonomy in structuring their governments and pursuing legislative objectives" within a federal system that "preserves the integrity, dignity, and residual sovereignty of the States." *Shelby County v. Holder*, 133 S. Ct. 2612, 2623 (2013) (Roberts, C.J.) (quotation marks omitted). The NYOAG's objections to the Subpoena remain outstanding, as do its requests for more information on the source of the Committee's authority, the investigation's actual subject matter, its legislative object (if any), and the relationship between the Subpoena's requests and that legislative object.

Nonetheless, NYOAG has stated an interest in having a staff-level discussion regarding whether the Committee has any legitimate legislative purpose that could be accommodated without impeding New York's sovereign interests. The NYOAG stated its willingness to have such a conversation both before the Subpoena was issued and in our July 26 letter response to the Subpoena. Majority Staff followed up to schedule such a discussion, but stated that it would not allow Minority Staff to participate in it. According to Majority Staff, the Minority has decided not to join in the oversight in this matter and, under "long-standing" Committee practice, will be excluded from any discussion regarding the Subpoena.

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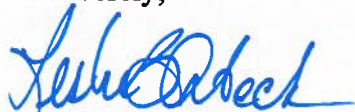
Your staff's explanation is categorically false. Contrary to Majority Staff's recent claims, the Committee's "long-standing practice"—from its creation until January 2015—had been to require a full Committee vote or consent of the Ranking Member prior to the issuance of a subpoena, ensuring bipartisan participation in Committee business. Nor can *any* Congressional committee lay claim to a long-standing practice of subpoenaing the open investigative file of a State Attorney General. "[T]he Congressional Research Service has identified no other example—in over 240 years of United States history"—of a Congressional committee issuing such a subpoena. Aug. 3, 2006 ltr. from the Hon. Elizabeth Warren *et al.* to Chairman Smith.

It is also inaccurate to describe the Committee's Minority Members as not participating in this matter. Before the Chair's unilateral issuance of the Subpoena, the Ranking Member called for a Committee meeting and stated that "Committee Members should not be disenfranchised from voting on [the] matter." July 7, 2106 Statement. Having ignored the Ranking Member's concerns and issued the Subpoena anyway, your staff cannot now rely upon the Minority's alleged non-participation to justify continued exclusion.

Other than invoking a so-called "long-standing" practice, the Majority Staff have not articulated any reason that staff for the Democratic Members of the Committee should be excluded from discussions about a Committee subpoena. The NYOAG can only conclude that the decision to exclude the minority is nothing more than partisan gamesmanship, which the NYOAG will not participate in or condone.

Accordingly, the NYOAG requests that Minority Staff be included on all correspondence from and substantive communication with the Committee and its staff. The NYOAG remains available to speak with Committee Staff, so long as Minority Staff is not excluded from such discussions.¹

Sincerely,



Leslie B. Dubeck
Counsel

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

¹ Although the Chair now has unilateral Subpoena authority, quorum requirements in the Committee's rules prohibit any individual member from conducting all other official Committee business (besides issuing subpoenas). It is, of course, a "reasonable expectation" of the NYOAG that the Committee will "adhere to its own rules." *Yellin v. United States*, 374 U.S. 109, 124 (1963). A conversation with Majority Staff—whether or not the Minority is excluded—is thus insufficient to resolve the NYOAG's outstanding objections.

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cc (cont'd):

Majority Staff, Committee on Science, Space, and Technology
Rayburn House Office Building, Room 2321

Minority Staff, Committee on Science, Space, and Technology
Ford House Office Building, Room 392

Honorable Paul Tonko
Member, Committee on Science, Space, and Technology