

Abbe David Lowell
direct tel +1 202 974 5605
adlowell@chadbourne.com

July 13, 2016

VIA HAND DELIVERYThe Hon. Lamar S. Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
2321 Rayburn House Office Building
Washington, D.C. 20515-6301**Re: July 6, 2016 Letter**

Dear Chairman Smith:

On behalf of Greenpeace USA and 350.org, we write in response to your July 6, 2016 letter. The July 6th letter misstates and mischaracterizes the grounds upon which Greenpeace and 350.org have declined to provide the constitutionally-protected communications requested by the Committee, and altogether fails to address several of the objections raised in our prior letters. We therefore write this letter to correct your mischaracterizations and to reiterate our objections to the Committee's requests.

First, the July 6th letter asserts that Greenpeace and 350.org "[have] not attempted to engage the Committee in a dialogue related to [the Committee's] requests." 7/6/16 Letter at 1. That is false. In our very first response, on June 1, we offered to meet with the Committee and its staff to further discuss these issues. *See* A.D. Lowell 6/1/16 Letter at 4; F. Gay 6/1/16 Letter at 2, 4. More than six weeks later, the Committee has yet to take us up on this offer. Moreover, this is the third letter in which we have engaged in "dialogue" with the Committee regarding its requests. To date, the Committee has yet to provide a meaningful response to many of the specific objections that we have raised.

Second, the July 6th letter asserts—without citation or explanation—that Greenpeace's and 350.org's objections to the Committee's requests "appear to selectively apply the law based solely upon the political party to which [Greenpeace and 350.org] and affiliated groups supply information." This, again, is incorrect. The First Amendment guarantees the rights of all private citizens to speak or not to speak, to petition or not to petition, and to associate or not to associate with, whomever they choose. The fact that who or what you call an "affiliate" of Greenpeace or 350.org decides to speak with, petition, or associate with some elected officials (*e.g.*, Members of the House Progressive Caucus) and

not others (e.g., Republican House Members accepting thousands of dollars in campaign contributions from ExxonMobil)¹ does not mean that First Amendment law is being “selectively applied.” To the contrary, the freedom to choose with whom one speaks, petitions, or associates, regardless of political affiliation, lies at the very heart of the First Amendment.

Third, the July 6th letter asserts that “Members on both sides of the aisle have legitimate questions” regarding Greenpeace’s and 350.org’s work on climate change (although, to our knowledge, all of your prior letters and requests have been signed only by Republican Members). As we have stated in both of our prior letters, Greenpeace and 350.org remain committed to cooperating with any authorized and legitimate inquiry of Congress into climate change, one of the most pressing issues of our time.

Your continued insistence, however, that Greenpeace and 350.org should cast aside their First Amendment protections and voluntarily provide broad categories of private, constitutionally-protected communications to the Committee raises several questions regarding with whom some Members of the Committee may, to use your term, be “affiliated.” Based on the partisan tone of the July 6th letter, we are concerned that the true purpose of the Committee’s requests is not to examine the science of climate change, but rather to silence those who would shine a spotlight on the role of the fossil fuel industry, and ExxonMobil in particular, in undermining climate science and blocking and delaying meaningful action on climate change.

If we are able to agree upon an appropriate, bipartisan meeting with the Committee, we can discuss the issues we have raised in our letters and would also have some questions of our own: Have Committee Members or staff had private meetings with ExxonMobil or fossil fuel industry lobbyists to discuss the state and territorial attorneys general investigations? Is the Committee consulting with any outside counsel that also have ties to ExxonMobil or the fossil fuel industry? Has ExxonMobil or any other implicated entity provided information to the Committee regarding the state attorneys general investigations, or been asked to do so? Have Committee Members or staff discussed this investigation with other fossil fuel companies, industry front groups, trade associations, foundations, public relations firms, nonprofits, think tanks, or other allied organizations, such as the American Petroleum Institute, the Competitive Enterprise Institute, the American Legislative Exchange Council, or the Energy and Environment Legal Institute? In addition to any direct contributions, how

¹ See Andrew Seifter, *What Media Should Know About the House Science Committee Members Defending Exxon*, Media Matters for America, June 21, 2016, available at <http://mediamatters.org/research/2016/06/21/what-media-should-know-about-house-science-committee-members-defending-exxon/210539>.

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much money or other support have Committee Members received from ExxonMobil, the fossil fuel industry, related PACs, and industry front groups, such as those named above? If Committee Members are truly concerned about the right of scientists to conduct scientific research "free from intimidation and threats of prosecution," 7/6/16 Letter at 1, why did the Chair of the Committee previously subpoena the chief of NOAA, a scientist herself, demanding that her agency turn over thousands of pages of emails and communications? How is this not chilling speech?

The requests served upon Greenpeace and 350.org simply cannot be squared with the Committee's stated concerns regarding freedom of speech and scientific inquiry. As we have explained in detail in our prior letters to the Committee, the Committee's requests violate basic First Amendment protections, fall outside the proper jurisdiction of the Committee, and are impermissibly vague, overbroad, and burdensome. For these reasons, Greenpeace and 350.org respectfully refuse to comply with the Committee's requests.

If the Committee is serious about having a further "dialogue," please let me know.

Sincerely,

A handwritten signature in cursive script, reading "Abbe D Lowell / sue".

Abbe David Lowell

cc: Ranking Member Eddie Bernice Johnson