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May 31, 2016

The Honorable Lamar Smith
Chairman, Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, DC 20515-6301

**RE: Request for Attorney General's Office Communications
Related to Climate Change Investigations**

Dear Chairman Smith:

This letter responds to your May 18, 2016, correspondence requesting information from the Washington State Attorney General's Office. You requested our office's communications with other states, the federal government and third parties related to any investigations or potential prosecutions of various companies, organizations and individuals on the topic of climate change. We respectfully decline to provide the requested information to you. The Attorney General is authorized by the Washington Legislature to conduct investigations into potential violations of state law. Neither Congress, nor the Committee, has authority to interfere with the Attorney General's implementation of such authority. Moreover, the information you seek is privileged.

The Washington State Attorney General has authority granted by the laws of the State of Washington to take all necessary actions to fulfill the duties of the office. Wash. Const. art. III, § 21 (designating the attorney general as the legal adviser of the state officers, and the official who shall perform duties as may be prescribed by law); Wash. Rev. Code § 43.10.030 (2016) (authorizing the attorney general to institute all actions and proceedings necessary to execute the duties of the office). These authorities extend to statutory grants of subpoena power to investigate violations of law related to climate change. *See, e.g.,* Wash. Rev. Code § 19.86.110.

Congress has certain enumerated powers to govern the individual citizens of the United States; however, the Constitution does not authorize Congress to require the States to govern according to Congress' instructions. *New York v. United States*, 505 U.S. 144, 162 (1992) (citing *Coyle v. Smith*, 221 U.S. 559, 565 (1911)). The Constitution divides



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authority between federal and state governments for the protection of individuals in order to secure to citizens the liberties that derive from the diffusion of sovereign power. *New York v. United States*, 505 U.S. at 181 (citing *Coleman v. Thompson*, 501 U.S. 722, 759 (1991) (Blackmun, J., dissenting)).

There is nothing in law that authorizes Congress or the committee to require a state official such as the Attorney General to turn over information about the State of Washington's coordination with other states, or any related investigation of violations of state law related to climate change.

Moreover, the information you request would be privileged and protected from dissemination under common interest, work product, deliberative process, investigative, and attorney-client privileges.

To ensure effective implementation of our authorities under law, the Attorney General's Office does not discuss whether we are or will be investigating any particular matter, nor share information related to the same.

Though we respectfully decline your request for information as tendered, Washington State has a Public Records Act. Wash. Rev. Code 42.56 (2016). We are not construing your request as invoking the Public Record Act, since you are not a typical requester under the Act. However, if you wish us to treat your request under the Public Records Act we will certainly do so, and provide whatever information is not otherwise exempt from disclosure under the Act.

If you have any questions regarding this matter, please contact me at (360) 664-2961.

Sincerely,



ROB COSTELLO
Deputy Attorney General

RC/jlg

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