



**Bill of Rights Defense Committee/
Defending Dissent Foundation**

1100 G Street NW, Suite 500
Washington, DC 20005
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The Honorable Lamar Smith, Chairman
The Honorable Frank D. Lucas, Vice Chairman
The Honorable F. James Sensenbrenner, Jr, Member
The Honorable Dana Rohrabacher, Member
The Honorable Randy Neugebauer, Member
The Honorable Mo Brooks, Member
The Honorable Bill Posey, Member
The Honorable Jim Bridenstine, Chairman, Subcommittee on Environment
The Honorable Randy Weber, Chairman, Subcommittee on Energy
The Honorable John Moolenaar, Member
The Honorable Brian Babin, Chairman, Subcommittee on Space
The Honorable Barry Loudermilk, Chairman, Subcommittee on Oversight
The Honorable Ralph Lee Abraham, Member
House Committee on Science, Space and Technology

June 13, 2016

Dear Chairman Smith et al,

The Bill of Rights Defense Committee/Defending Dissent Foundation (BORDC/DDF) is a national organization that protects the right of political expression to strengthen participatory democracy, and works to fulfill the promise of the Bill of Rights for everyone. We trace our roots back to the National Coalition to Abolish the House Un-American Activities Committee (HUAC), which was founded in 1960. We have a 56 year tradition of standing up for the First Amendment rights of all Americans, regardless of their point of view, and making sure that all Americans can express themselves freely without fear of government reprisal, harassment, or intimidation.

It is for these reasons that we read your letters on attempts to violate the First Amendment rights of scientific researchers, nonprofits, and companies with great interest. We agree that it would be wrong to threaten scientific researchers with prosecutions, because of their research. However, upon reading the letters you sent to a number of civil society groups we discovered that the committee members who sent these letters were confused as to the current state of First Amendment jurisprudence and the point of the First Amendment more generally. In fact, we were amazed to discover that not only are the organizations you accuse of violating the First Amendment not in fact doing so, but what you are accusing them of is engaging in First

Amendment protected activity. As a result, your letters could be deemed government harassment in retaliation for exercise of First Amendment protected freedoms.

As we believe your desire to help individuals to not face government retaliation for exercise of First Amendment protected speech is earnest, we can only assume these letters were the result of a misunderstanding. Since we have dedicated 56 years to defending the First Amendment, we consider it a vital part of our mission to educate our fellow Americans about it.

Your letters appear to be motivated by the announcement of 20 state attorneys general that they will look into pursuing fraud prosecutions against Exxon Mobil. Fraud is not protected by the First Amendment, even though in many cases it does involve speech. While our interest is in the First Amendment, it is worth noting the underlying theories behind the idea that Exxon Mobil perpetuated fraud, as the factual realities of what state attorneys general are doing and what the letter purports to denounce, bear little to no relationship to one another. This could be the source of the confusion about the First Amendment's applicability to the situation.

As early as the 1960s, scientists at Exxon Mobil reached the conclusions that climate change was real, that it was man made, and that the burning of fossil fuels contributed to climate change. While this view is accepted by the overwhelming majority of scientists today, it would appear that Exxon Mobil's own scientist were a little bit ahead of the curve when it came to research on manmade climate change and their company's own role in it.

Instead of sharing this important and groundbreaking scientific discovery, Exxon Mobil elected to both cover it up and deceive the public. They also withheld this information from their investors, even though it concerned risks to their business models. The attempts to prosecute Exxon Mobil are not because they engaged in scientific research that reached conclusions at odds with the overwhelming majority of the scientific community. The attempts to prosecute Exxon Mobil are premised on the fact that they believed, unlike some members of the House Science Committee, that the burning of fossil fuels contributed to man-made climate change and deliberately attempted to deceive the public as to what they knew and lied to their investors about risks to their business model. Generally speaking, intentionally making false statements with the purposes of enriching oneself constitutes fraud.

Your letters also document a variety of statements made by civil society groups about Exxon Mobil. The First Amendment prevents the government from suppressing speech, it does not immunize individuals from the criticism of other private individuals. Even if members of the Committee or Exxon Mobil were to find the things said about them to be very mean spirited, this would still not constitute a deprivation of Constitutional liberty. Further, many of the the Committee's letters focus on comments that the civil society groups made about how they would like to raise public criticism or scrutiny of Exxon Mobil or make them an issue in the upcoming elections. Not not only is such speech not a deprivation of Exxon Mobil's First Amendment rights, they are exactly the type of political speech the First Amendment was designed to protect.

In your attempt to defend the First Amendment rights of Exxon Mobil, based on a misunderstanding of both the facts at hand and the First Amendment, you engaged in conduct

that is itself chilling of speech. Your letter goes to great lengths to document gatherings and statements by civil society groups that are protected by the First Amendment. While such actions may not be unconstitutional per se, for a government body to gather information on political gatherings and political speech and then send a letter to those who engaged in said speech about it could be perceived as harassment and an attempt to chill speech.

Finally, your letters express great umbrage that groups and individuals concerned with the environment may use the legal system to reveal internal documents through such processes as discovery during a civil trial or subpoenas as part of criminal investigation. Yet, the entire point of your letter is to request internal communications between civil society groups, as well as between civil society groups and public officials about potential investigations and prosecutions. The First Amendment guarantees the right of free speech and thus civil society groups are allowed to communicate with each other their thoughts or feelings on the fossil fuels industry. The First Amendment also includes the right to petition the government for a redress of grievances. This would include civil society groups sharing information with public officials about potential wrongdoing on the behalf of corporations.

BORDC/DDF was initially formed to combat the House Unamerican Activities Committee. HUAC's shameful conduct of calling individuals to testify about their personal political beliefs and associations, as well as their demanding that civil society groups turn over information about their membership and political activities, cast a chill over free speech that was felt widely in this country. HUAC's goal was intimidate individuals into silence, and punish those who continued to use their First Amendment rights. The conduct demonstrated by this Committee's letters to civil society groups has far more in common with HUAC than what one would expect from a committee on science, space, and technology.

If the members of this committee are still confused about the First Amendment after reading this letter or would just like to learn more about the Bill of Rights, BORDC/DDF is happy to provide them with Constitutional literacy training and/or a history of HUAC. Please contact me at chip@defendingdissent.org or 202-529-4225 to schedule a training, or with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Chip Gibbons", with a stylized flourish at the end.

Chip Gibbons
Legal Fellow

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