Congress of the United States
Washington, DC 20515

September 13, 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:

We are writing to express our disappointment in your decision to issue unilateral and unprecedented subpoenas to New York Attorney General Eric Schneiderman and Massachusetts Attorney General Maura Healey. We are deeply concerned that these subpoenas will interfere with the legitimate fraud investigations of ExxonMobil undertaken by these independently elected law enforcement officials.

As the Congressional Research Service recently found, the unilateral subpoenas issued by your office represent the first time that any House Committee has subpoenaed a state attorney general for records related to an ongoing state law enforcement investigation. We are disappointed that instead of using a subpoena as a last resort, it is being used in an effort to plow ahead in haste without first addressing legitimate concerns.

The subpoenas were issued on July 13 to New York Attorney General Eric Schneiderman and Massachusetts Attorney General Maura Healey, and to nine environmental organizations. You have claimed that a number of the state attorneys general are engaged in a "coordinated attempt to deprive companies, nonprofit organizations, and scientists of their First Amendment rights and ability to fund and conduct scientific research free from intimidation and threats of prosecution." This allegation is patently false. It is well established that the First Amendment does not confer a right to commit fraud. On the other hand, demanding the disclosure of routine communications between law enforcement and outside scientific experts, which occurred in the course of an ongoing investigation, could have a chilling effect on the free exchange of ideas between state authorities and the scientific community.

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Investigation by state attorneys general into potential violations of state law, specifically into potential securities, business, and consumer fraud violations by ExxonMobil, is an appropriate exercise of state police power as reserved to the States under the U.S. Constitution, which grants states substantial sovereign authority over matters that are not expressly delegated to the federal government. Nothing could be more obvious or vital to states' rights than preserving the ability of state law enforcement officials to investigate potential violations of state laws. As Attorney General Schneiderman and Attorney General Healey have made clear, they are investigating ExxonMobil for potential violations of state securities, business, and consumer fraud laws, and seeking to expose potentially criminal acts that involved intentionally misleading the public and public officials, and defrauding shareholders. This type of state-wide law enforcement investigation is a quintessential state right. Additionally, the purpose of your inquiry is clearly outside the House Committee on Science, Space, and Technology's purview.

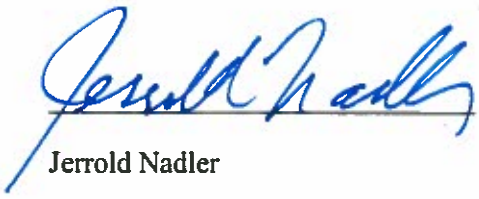
Finally, we have serious concerns about the subpoenas issued by your office to nine environmental advocacy organizations. These subpoenas fly in the face of these organization's First Amendment rights, and in doing so, deeply damage the credibility of both the Committee and Congress.

We urge you to drop these subpoenas immediately and to end this unprecedented interference into these vital fraud investigations by states attorneys general.

Sincerely,

Paul D. Tonko

Brian Higgins



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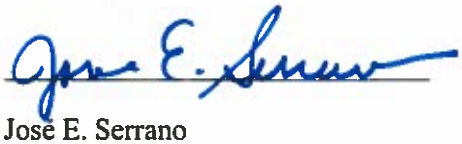

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