

# Congress of the United States

## House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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September 29, 2016

The Honorable Mary Jo White  
Chair  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chair White:

The House Committee on Science, Space, and Technology (the Committee) is troubled by the Security and Exchange Commission's (SEC) recently announced investigation of Exxon Mobil Corporation (Exxon). It appears from press accounts that the SEC's investigative actions, which date back to at least August of this year, are couched in concerns related to the science of climate change.<sup>1</sup> More disturbingly, media coverage has directly linked the Commission's "far-reaching" inquiry to New York Attorney General (AG) Eric Schneiderman's ongoing investigation into Exxon under state securities fraud law.<sup>2</sup> The Committee is currently investigating the New York AG's Exxon probe in order to assess the adverse effects his investigation might pose to the scientific research and development (R&D) enterprise.<sup>3</sup> Although the Committee is not interested in the merits of the New York AG's nearly year-long

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<sup>1</sup> See, e.g., Clifford Krauss, *SEC Is Latest to Look Into Exxon Mobil's Workings*, N.Y. TIMES (Sept. 20, 2016), available at [http://www.nytimes.com/2016/09/21/business/energy-environment/exxon-climate-change.html?\\_r=0](http://www.nytimes.com/2016/09/21/business/energy-environment/exxon-climate-change.html?_r=0); Matt Robinson & Joe Carroll, *Exxon's Accounting Said to Prompt SEC Review After Crude Slump*, BLOOMBERG MKTS., <http://www.bloomberg.com/news/articles/2016-09-20/exxon-s-accounting-said-to-prompt-sec-review-after-oil-slump> (Sept. 20, 2016).

<sup>2</sup> Bradley Olson & Aruna Viswanatha, *SEC Probes Exxon Over Accounting for Climate Change*, WALL ST. J. <http://www.wsj.com/articles/sec-investigating-exxon-on-valuing-of-assets-accounting-practices-1474393593> (last accessed Sept. 20, 2016) ("The SEC made a far-reaching request in August that mirrors many of the areas Mr. Schneiderman is known to be investigating. The agency asked Exxon to produce information about its analysis of climate data and research, how it values assets and how a more serious global response to climate change would impact its business, according to a person familiar with the matter.").

<sup>3</sup> See letter from Hon. Lamar Smith to Eric Schneiderman (Aug. 23, 2016); letter from Hon. Lamar Smith to Eric Schneiderman (July 6, 2016); letter from Hon. Lamar Smith to Eric Schneiderman (June 17, 2016); letter from Hon. Lamar Smith to Eric Schneiderman (May 18, 2016).

probe, the AG's efforts, characterized variously as a "witch hunt" and "fool's errand,"<sup>4</sup> an "abuse of powers,"<sup>5</sup> "pathetic,"<sup>6</sup> a "schtick,"<sup>7</sup> and an "uphill battle,"<sup>8</sup> have failed to uncover any indicia of wrongdoing by Exxon. This raises questions as to why the SEC would assume the mantle of the New York AG's fruitless investigation.<sup>9</sup>

The Committee's jurisdiction over energy and environmental research<sup>10</sup> includes an obligation to ensure that such research advances the American scientific enterprise to the fullest extent possible, free from threat of intimidation or prosecution. The Committee is concerned that the SEC, by wielding its enforcement authority against companies like Exxon for its collection of and reliance on what is perhaps in the SEC's view inadequate climate data used to value its assets, advances a prescriptive climate change orthodoxy that may chill further climate change research throughout the public and private scientific R&D sector. Specifically, the Committee is concerned that an investigation into whether Exxon failed to comply with climate change-related disclosure regulations for its oil reserves and other assets may be a disincentive to conducting scientific research that underlies and informs those asset valuations. Additionally, to the extent that the SEC initiated its investigation based on information received from the New York AG, the SEC's probe may also serve to illustrate the very effects on free scientific inquiry that the Committee is currently investigating. Accordingly, the Committee requests information about the purpose, scope, and origin of the SEC's investigation into Exxon.

To aid the Committee in better understanding the purpose, scope, and origin of the SEC's investigation, please provide the following for the time period January 1, 2015 to present:

1. All documents and communications between or among officers or employees at the SEC referring or relating to the SEC's decision to investigate Exxon regarding any of its climate change-related financial disclosures.
2. All documents and communications between SEC officers or employees and any officer or employee of the Department of Justice or the White House, including but not limited

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<sup>4</sup> C. Boyden Gray, "Green 20" AGs: What Is It REALLY About?, FED. SOC'Y (May 13, 2016), <http://www.fed-soc.org/blog/detail/green-20-ags-what-is-it-really-about>.

<sup>5</sup> Merritt B. Fox, *Exxon Mobil Is Being Investigated, But Here's the Real Problem*, NAT'L L. J. (Aug. 15, 2016), <http://www.nationallawjournal.com/id=1202765027711/Exxon-Mobil-is-Being-Investigated-But-Heres-the-Real-Problem> (last accessed Sept. 27, 2016).

<sup>6</sup> Editorial Bd., *Eric Schneiderman's Pathetic New Pretext for Probing Exxon*, NY Post (Aug. 21, 2016), <http://nypost.com/2016/08/21/eric-schneidermans-pathetic-new-pretext-for-probing-exxon/> (last accessed Sept. 27, 2016).

<sup>7</sup> *Squawk Box* (CNBC broadcast Aug. 31, 2016), available at <http://video.cnbc.com/gallery/?video=3000547352> (interview of Holman W. Jenkins, Jr.).

<sup>8</sup> *SEC Probes Exxon's Climate, Reserves Accounting: Report*, REUTERS (Sept. 20, 2016), <http://finance.yahoo.com/news/sec-investigating-exxon-over-accounting-173805395.html> (last accessed Sept. 27, 2016).

<sup>9</sup> See Holman W. Jenkins, Jr., *How the Exxon Case Unraveled*, WALL ST. J. (Aug. 20, 2016), available at <http://www.wsj.com/articles/how-the-exxon-case-unraveled-1472598472> (last accessed Sept. 28, 2016).

<sup>10</sup> House of Representatives Rule X (114th Cong.).

to the Executive Office of the President, referring or relating to a potential investigation of Exxon.

3. All documents and communications between SEC officers or employees and the Office of the Attorney General of New York or the Office of the Attorney General of Massachusetts referring or relating to a potential investigation of Exxon.
4. All documents and communications between SEC officers or employees and any officer or employee of the Climate Accountability Institute, the Union of Concerned Scientists, Greenpeace, 350.org, the Rockefeller Brothers Fund, the Rockefeller Family Fund, the Global Warming Legal Action Project, the Pawa Law Group, or the Climate Reality Project, referring or relating a potential investigation of Exxon.

Please provide documents responsive to this request on or before close of business on October 13, 2016. Instructions for responding to the Committee are enclosed. If you have any questions about this request, please contact Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Rep. Lamar Smith  
Chairman  
Committee on Science, Space,  
and Technology

cc: Rep. Eddie Bernice Johnson, Ranking Minority Member, Committee on Science, Space, and Technology

## Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents, in unredacted form, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), or PDF files.
  - (b) Document numbers in the load file should match document Bates numbers and TIF or PDF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. In complying with this request, be apprised that the U.S. House of Representatives and the Committee on Science, Space, and Technology do not recognize: any of the purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
14. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
15. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
16. Unless otherwise specified, the time period covered by this request is from January 1, 2015 to the present.
17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
18. All documents shall be Bates-stamped sequentially and produced sequentially.
19. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 324 of the Ford House Office Building.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive

documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Schedule Definitions**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.