# U.S. Department of Energy Misconduct
# Related to the Low Dose Radiation Research Program

**December 20, 2016**

**Staff Report**

**Committee on Science, Space, and Technology**

**Chairman Lamar Smith**

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# I. Executive Summary

In the late 1990s, the U.S. Department of Energy ("DOE" or "the Department") established the Low Dose Radiation Research Program ("the LDRRP"), which the Department describes as a unique program to support "experimental radiation biology research that studies the effects of very low dose exposures."[1] According to the Department, low dose radiation research ("LDRR") is an important mechanism to support the DOE's "missions in energy and environment" and increase knowledge and understanding of the health impacts from human exposures which are "mainly from medical diagnostic tests, but exposures might also occur during waste cleanup, environmental isolation of materials associated with nuclear weapons and nuclear power production, catastrophic natural events, or possibly terrorism incidents."[2] The DOE website on the LDRRP also states that "a strong scientific underpinning for our risk regulation is critical to adequately and appropriately protect people while making the most effective use of our national resources."[3]

On September 18, 2014, Rep. Paul Broun (R-GA) introduced H.R. 5544, the Low-Dose Radiation Research Act of 2014.[4] This legislation would have authorized the LDRRP and provided statutory direction "to enhance the scientific understanding of and reduce uncertainties associated with the effects of exposure to low dose radiation in order to inform improved risk management methods."[5] The legislation called for a study by the National Academies to assess the current body of knowledge and scientific challenges with respect to low dose radiation as it relates to human health.[6] Specifically, H.R. 5544 directed the National Academies to formulate a long-term research agenda to overcome identified scientific challenges while considering the cost-benefit effectiveness of the program.[7]

On October 16, 2014, staff of the House Committee on Science, Space, and Technology and the Senate Committee on Energy and Natural Resources attended a briefing on the LDRRP ("the briefing"). The following DOE employees were in attendance at the briefing: Dr. Noelle Metting, Dr. Todd Anderson, Dr. Julie Carruthers, and Dr. Marcos Huerta, as well as staff from the DOE Office of Congressional Affairs. At that time, Dr. Metting was the program manager for the LDRRP and resident DOE subject matter expert on low dose radiation research. Dr. Anderson was Dr. Metting's immediate supervisor as Director of Biological Systems Science within the DOE's Office of Science. Dr. Carruthers and Dr. Huerta are technical advisors within

[1] U.S. Dep't. of Energy, *available at* http://science.energy.gov/ber/research/bssd/low-dose-radiation/ (last visited Dec. 19, 2016).
[2] *Id.*
[3] *Id.*
[4] Low-Dose Radiation Research Act of 2014, H.R. 5544, 113th Cong. (2014). H.R. 5544 was cosponsored by Reps. Lamar Smith (R-TX), Larry Bucshon (R-IN), Bill Johnson (R-OH), Chris Collins (R-NY), Kevin Cramer (R-ND), Randy Hultgren (R-IL), James Sensenbrenner (R-WI), Dana Rohrabacher (R-CA), Randy Weber (R-TX), Bill Posey (R-FL), Daniel Lipinski (D-IL), Steven Palazzo (R-MS), and Bill Foster (D-IL).
[5] *Id.*
[6] *Id.*
[7] *Id.*

the Office of Science. Also at that time, H.R. 5544 was pending in the House of Representatives. The Senate had not yet introduced companion legislation when the briefing occurred.

In October 2015, staff of the Committee on Science, Space, and Technology ("Committee staff") learned that DOE Management ("Management" or "senior officials") removed Dr. Metting from federal service for allegedly providing too much information in response to questions posed by Committee staff during the October 2014 briefing. Eventually, Committee staff learned that Management's actions to remove Dr. Metting were, in part, retaliation against Dr. Metting because she refused to conform to the predetermined remarks and talking points designed by Management to undermine the advancement of H.R. 5544. After learning this disturbing information, the Committee launched a full investigation. As part of its investigation, the Committee received document productions from the DOE, conducted transcribed interviews, and a held a public hearing.

Emails produced to the Committee by the DOE show a sequence of events leading to a premeditated scheme by senior DOE employees "to squash the prospects of Senate support" for H.R. 5544 and the LDRRP.[8] Moreover, the Committee has learned that one of DOE's stated purposes for Dr. Metting's removal from federal service was her failure to confine the discussion at the briefing to pre-approved talking points.[9] The Committee has also established that DOE management, including Dr. Weatherwax, Dr. Anderson, and Dr. Carruthers failed to exercise even a minimal standard of care to avoid chilling other agency scientists as a result of the retaliation against Dr. Metting for her refusal to censor information from Congress. The Committee concludes that the DOE placed its own priorities to further the President's Climate Action Plan before its Constitutional obligations to be candid with Congress. The DOE's actions constitute a reckless and calculated attack on the legislative process itself, which undermines the power of Congress to legislate. The Committee further concludes that DOE's disregard for separation of powers is not limited to a small group of employees, but rather is an institutional problem that must be corrected by overhauling its management practices with respect to its relationship with the Congress.

[8] Email from Julie Carruthers to Sharlene Weatherwax CC Marcos Huerta and Patricia Dehmer (Oct. 4, 2014, 04:45 PM EST).
[9] U.S. Dep't. of Energy, Notice of Proposed Removal to Dr. Noelle Metting, Dec. 4, 2014.

# II. Background on the Committee's Investigation

## *A. Overview of the Low Dose Radiation Research Program and H.R. 5544, the Low Dose Radiation Research Act of 2014*

In the late 1990s, the DOE established the LDRRP, which the Department describes as a unique program to support "experimental radiation biology research that studies the effects of very low dose exposures."[10] According to the Department, low dose radiation research ("LDRR") is an important mechanism to support the DOE's "missions in energy and environment" and increase knowledge and understanding of the health impacts from human exposures which are "mainly from medical diagnostic tests, but exposures might also occur during waste cleanup, environmental isolation of materials associated with nuclear weapons and nuclear power production, catastrophic natural events, or possibly terrorism incidents."[11] The DOE website on the LDRRP also states that "a strong scientific underpinning for our risk regulation is critical to adequately and appropriately protect people while making the most effective use of our national resources."[12]

On September 18, 2014, Rep. Paul Broun (R-GA) introduced H.R. 5544, the Low-Dose Radiation Research Act of 2014.[13] This legislation would have authorized the LDRRP and provided statutory direction "to enhance the scientific understanding of and reduce uncertainties associated with the effects of exposure to low dose radiation in order to inform improved risk management methods."[14] The legislation called for a study by the National Academies to assess the current body of knowledge and scientific challenges with respect to low dose radiation as it relates to human health.[15] Specifically, H.R. 5544 directed the National Academies to formulate a long-term research agenda to overcome identified scientific challenges while considering the cost-benefit effectiveness of the program.[16]

The language of H.R. 5544 originated from similar provisions in two other pieces of legislation: H.R. 4159, America Competes Reauthorization Act of 2014, sponsored by Rep. Eddie Bernice Johnson (D-TX)[17] and H.R. 4869, Department of Energy Research and

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[10] U.S. Dep't. of Energy, *available at* http://science.energy.gov/ber/research/bssd/low-dose-radiation/ (last visited Dec. 19, 2016).
[11] *Id.*
[12] *Id.*
[13] *See supra* note 4.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] America Competes Reauthorization Act of 2014, H.R. 4159, 113th Cong. § 605(b) (2014). H.R. 4159 was introduced on March 6, 2014 and cosponsored by Reps. Ami Bera (D-CA), Suzanne Bonamici (D-OR), Julia Brownley (D-CA), David Cicilline (D-RI), Katherine Clark (D-MA), Donna Edwards (D-MD), Elizabeth Esty (D-CT), Alan Grayson (D-FL), Rush Holt (D-NJ), Michael Honda (D-CA), Steny Hoyer (D-MD), Robin Kelly (D-IL), Joseph Kennedy (D-MA), Derek Kilmer (D-WA), Daniel Lipinski (D-IL), David Loebsack (D-IA), Zoe Lofgren (D-

Development Act of 2014, sponsored by Rep. Cynthia Lummis (R-WY).[18] On November 17, 2014, H.R. 5544 passed the House of Representatives and was referred to the Committee on Energy and Natural Resources of the Senate.[19]

### *B. Allegations: Office of Science management and senior DOE employees deliberately withheld information from Congress during the legislative process and removed an agency scientist from federal service for providing complete answers to Committee staff.*

On October 1, 2014, staff of the House Committee on Science, Space, and Technology and the Senate Committee on Energy and Natural Resources requested a briefing via email from Dr. Noelle Metting, the program manager for the LDRRP, which is housed within the DOE Office of Science.[20] Dr. Metting reported the contact from Committee staff to her superiors Dr. Todd Anderson and Dr. Sharlene Weatherwax within the Office of Science's Biological and Environmental Research Program.[21] After some deliberation with other DOE employees, DOE Congressional Affairs organized a briefing on October 16, 2014, with Committee staff at DOE headquarters in the Forrestal building. During the briefing at Forrestal, the following DOE employees were in attendance: Dr. Noelle Metting, Dr. Todd Anderson, Dr. Julie Carruthers, Dr. Marcos Huerta, and staff within DOE Congressional Affairs. Prior to the briefing, DOE Congressional Affairs ascertained the scope of the briefing, as requested by Committee staff, to include an overview of the LDRRP, its accomplishments, and expectations moving forward.[22] Committee staff did not observe any irregular behavior during the briefing that would be inconsistent with similar meetings between DOE and Committee staff.

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CA), Daniel Maffei (D-NY), George Miller (D-CA), Scott Peters (D-CA), Terri Sewell (D-AL), Eric Swalwell (D-CA), Mark Takano (D-CA), Chris Van Hollen (D-MD), Marc Veasey (D-TX), and Frederica Wilson (D-FL).

[18] Department of Energy Research and Development Act of 2014, H.R. 4869, 113th Cong. § 115(e) (2014). H.R. 4869 was introduced on June 13, 2014 and cosponsored by Reps. Lamar Smith (R-TX), Randy Weber (R-TX), Ralph Hall (R-TX), Kevin Cramer (R-ND), Steve Stockman (R-TX), David Schweikert (R-AZ), and Randy Hultgren (R-IL).

[19] On January 6, 2015, Rep. Randy Hultgren introduced H.R. 35, Low-Dose Radiation Research Act of 2015 which passed the House of Representatives by voice vote on January 7, 2015 and was referred to the Committee on Energy and Natural Resources of the Senate. H.R. 35 is cosponsored by Reps. Daniel Lipinski (D-IL), Lamar Smith (R-TX), James Sensenbrenner (R-WI), Bill Posey (R-FL), Larry Bucshon (R-IN), and Kevin Kramer (R-ND).

[20] Email from Aaron T. Weston, Counsel, H. Comm. on Science, Space, and Technology to Dr. Noelle Metting, Senior Radiation Biologist, U.S. Dept. of Energy, CC Dr. Ron Faibish, Fellow, S. Comm. on Energy and Natural Resources (Oct. 1, 2014, 05:36 PM EST).

[21] Email from Dr. Noelle Metting to Dr. Todd Anderson, Director, Biological Systems Science Division, U.S. Dep't. of Energy (Oct. 2, 2014, 02:17 PM EST).

[22] Email from Dr. Marcos Huerta, Senior Policy Advisor, Office of Science, U.S. Dep't. of Energy, to Dr. Sharlene Weatherwax, Associate Director, Biological and Environmental Research, U.S. Dep't. of Energy, CC Mike Riches, Senior Technical Advisor, Biological and Environmental Research, U.S. Dep't. of Energy, Todd Anderson, Dr. Patricia Dehmer, Deputy Director, Office of Science, U.S. Dep't. of Energy, and Kathleen Klausing, Director, Office of Budget, U.S. Dep't. of Energy (Oct. 3, 2014, 02:05 PM EST).

In October 2015, Committee staff learned that Management removed Dr. Metting from her position for allegedly providing too much information in response to questions from Committee staff during the briefing on October 16, 2014. Later, Committee staff learned that Management may have, in fact, retaliated against Dr. Metting because she gave complete answers to Committee staff that provided supportive evidence to continue the LDRRP.

### *C. Committee Investigation.*

In late 2015, Dr. Metting and her attorneys contacted the Committee providing an account of events that transpired after the October 16, 2014, briefing, including her removal from federal service by the DOE. According to Dr. Metting's counsel, DOE Management removed Dr. Metting from her position for allegedly providing too much information in response to questions posed by Congressional staff during the October 16 briefing. Upon learning this disturbing information, the Committee began an investigation into the alleged misconduct of senior DOE officials, focusing on whether DOE Management instructed technical staff to withhold information from Congress. The Committee also became aware in early 2015 (based on the DOE fiscal year 2016 budget request), that the DOE proposed to shutter the LDRRP in order to increase funding for other programs within the Biological and Environmental Research budget line, including bioenergy research and climate modeling in furtherance of President Obama's Climate Action Plan.

On February 3, 2016, the Chairmen of the Committee on Science, Space, and Technology and the Subcommittees on Oversight and Energy ("the Chairmen") sent a letter to the Secretary of Energy requesting documents and communications between and among Department employees related to the LDRRP.[23] The February 3 letter outlined the Committee's investigation of alleged intimidation and retaliation against scientists at the Department setting a two-week deadline for the production of documents. On February 26, 2016, the Chairmen sent a follow-up letter to the Secretary reiterating the Chairmen's original request for documents and communications since, at that time, the Department had failed to comply.[24] On May 25, 2016, Committee staff conducted a transcribed interview with Dr. Julie Carruthers, a senior technical advisor within the Office of Science, and on July 12, 2016, Committee staff conducted an additional transcribed interview with Dr. Todd Anderson, Director of the Biological Systems Science Division within the Office of Science.

[23] Letter from Lamar Smith, Chairman of the H. Comm. on Science, Space, and Technology, Barry Loudermilk, Chairman of the Subcomm. on Oversight of the H. Comm. on Science, Space, and Technology, and Randy Weber, Chairman of the Subcomm. on Energy of the H. Comm. on Science, Space, and Technology to Dr. Ernest Moniz, U.S. Sec'y of Energy (Feb. 3, 2016).

[24] Letter from Lamar Smith, Chairman of the H. Comm. on Science, Space, and Technology, Barry Loudermilk, Chairman of the Subcomm. on Oversight of the H. Comm. on Science, Space, and Technology, and Randy Weber, Chairman of the Subcomm. on Energy of the H. Comm. on Science, Space, and Technology to Dr. Ernest Moniz, U.S. Sec'y of Energy (Feb. 26, 2016).

On September 21, 2016, the Subcommittees on Oversight and Energy of the Committee on Science, Space, and Technology held a joint hearing titled "Examining Misconduct and Intimidation of Scientists by Senior DOE Officials." The hearing examined actions by senior DOE officials to withhold information from Congress during the legislative process and to intimidate Dr. Metting from disclosing supportive evidence for H.R. 5544. The hearing featured testimony from Dr. Sharlene Weatherwax, Associate Director of Biological and Environmental Research and Dr. Noelle Metting, the previous program manager of the LDRRP who was removed from federal service, at least in part, for providing information to Congress. The DOE declined to provide Dr. Carruthers and Dr. Anderson who the Committee also invited to testify.

# III. Findings

- **DOE Office of Science management and senior employees obstructed the legislative process by withholding supportive evidence from Congress in violation of 18 U.S.C. 1913.**
- **DOE Management and senior employees retaliated against Dr. Metting for providing candid and complete information to Congress and improperly removed her from federal service.**

## *A. DOE Management Developed a Scheme to Withhold Information from Congressional Staff.*

DOE email records produced during the Committee's investigation and testimony during the hearing on September 21, 2016, revealed that Management took active steps to withhold supportive evidence related to H.R. 5544 and intimidated Dr. Metting to prevent her from providing certain types of technical information to Congress. These actions would appear to violate 18 U.S.C. 1913 ("The Anti-Lobbying Act") which prohibits lobbying by executive officials.[25] In her prepared testimony during the hearing on September 21, Dr. Metting stated:

> I suggest it is unacceptable that scientists are put under pressure to espouse views that are not their own, and that federal scientists are persecuted for presenting accurate information and professional opinion to those charged with providing funds for the research, Congress.[26]

[25] 18 U.S.C. 1913 reads in pertinent part:
"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation …"

[26] *Examining Misconduct and Intimidation of Scientists by Senior DOE Officials: Joint Hearing Before the Subcomm. on Oversight and Subcomm. on Energy of the H. Comm. on Science, Space, and Technology,* 114th Cong. (2016) (testimony of Dr. Noelle Metting) *available at*

During the hearing, Rep. Randy Hultgren and Dr. Metting discussed Management's efforts to prevent her from discussing scientific information during the October 16 briefing (emphasis added):

| | |
|---|---|
| Rep. Hultgren: | Dr. Metting, in your scientific opinion could the research developed by the Low Dose Radiation Research Program benefit federal emergency response agencies? |
| Dr. Metting: | Yes, very much so in setting evacuation standards, the levels at which we need to address different types of emergencies, yes. |
| Rep. Hultgren: | … Dr. Metting, last question. **Is this the sort of information that you think DOE management preferred to keep from committee staff during the briefing? And did the DOE management tell you to stick to talking points that excluded this sort of information?** |
| Dr. Metting: | **Yes, it did.** [27] |

Email communications obtained by the Committee affirm these statement and show DOE Management's efforts to suppress this important scientific information and withhold it from Congressional staff.

### *B. Dr. Metting Was Directed to Omit Information from a Presentation to Congressional Staff Given During the Briefing.*

DOE internal emails demonstrate that on the morning of the October 16 briefing, Dr. Anderson instructed Dr. Metting to remove a key slide in her prepared materials. This slide underscored the nexus of LDRR to evacuation planning analysis by the Department of Homeland Security (DHS) and Department of Defense (DOD).[28] This information would clearly support a case to continue LDRR. The LDRRP was the only program within the federal government supporting fundamental research to enable more accurate calculations for evacuation planning zones (EPZs) in the event of a potential terrorism incident such as a radiological dispersal device

https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-114-SY20-SY21-WState-NMetting-20160921.pdf.

[27] *Examining Misconduct and Intimidation of Scientists by Senior DOE Officials: Joint Hearing Before the Subcomm. on Oversight and Subcomm. on Energy of the H. Comm. on Science, Space, and Technology,* 114th Cong. (2016) *available at* https://science.house.gov/legislation/hearings/joint-oversight-subcommittee-and-energy-subcommittee-hearing-examining.

[28] Email from Todd Anderson to Noelle Metting CC Julie Carruthers, Marcos Huerta, and Sharlene Weatherwax (Oct. 16, 2014, 09:04:00 AM EST).

otherwise known as a "dirty bomb." This sort of preventative planning is a well-known priority of the Congress.


Figure 1.0: Dr. Anderson instructed via email that Dr. Metting remove slide 4 (above) from the prepared materials for the October 16 briefing.

To further their goal of halting progress for H.R. 5544, Drs. Carruthers and Weatherwax wanted Dr. Anderson to provide the briefing because "[he] may be better at staying on message." Dr. Carruthers even went so far as to assert that Management should lobby the Senate "to subtly yet firmly let the Senate know that they don't need to pursue a companion bill to the HSST bill…" These communications make it clear that DOE Management did not plan to provide complete and uncensored information to Committee staff at the October 16 briefing, but rather to lobby the Senate against legislative action in defiance of the Anti-Lobbying Act.

Dr. Weatherwax and Dr. Anderson developed a strategy to use the October 16 briefing to undermine progress for the legislation. Dr. Weatherwax in coordination with Dr. Anderson used the October 16 briefing as an opportunity to lobby against H.R. 5544 and they determined it was necessary to muzzle Dr. Metting. Prohibiting federal employees from providing information and communications with Congress is also a violation of the Anti-Lobbying Act.[29]

Dr. Anderson was upset that Dr. Metting deviated from the prepared remarks and provided her candid assessment of the LDRRP in response to questions from Committee staff.

[29] *See supra* note 25.

Specifically, he asserted during a transcribed interview that Dr. Metting's statements about the importance of low dose radiation research and the future of the science were inappropriate and contrary to the Office of Science's stated position.

> Q. And can you elaborate on what you mean when you said [Dr. Metting] advocated for funding?
>
> A. So in her answers – **so some of the slide[s] that she presented were clearly meant to convey not only the importance of the science, but the importance that the science continue. And that is a little – that is contrary to the Office of Science's stated position**, that the program is ending this year.[30]

## *C. DOE Management Avoided Critical Information Pertinent to the Continuance of the LDRRP.*

Statements during a transcribed interview with Committee staff in July 2016, also emphasized Management's purposeful omission of information critical to Congressional priorities at the October 16 briefing. Testimony provided in the interview revealed that Management either suppressed or made no effort to understand Congressional interest in legislating scientific research that could yield technical assistance to federal emergency planning against a potential dirty bomb incident. Dr. Anderson, who took over management of the LDRRP, admitted that he never considered the nexus of the LDRRP to EPZs or emergency response applications. He testified:

> Q. In your scientific opinion, could low-dose radiation research convey a benefit or use to federal agencies involved in setting evacuation planning zones, otherwise known as EPZs, from potential radiological incidents?
>
> A. I couldn't comment on that. I'm not familiar with those procedures.
>
> Q. And as you said before, this science has yet to be resolved as far as the correlation of risk to human systems from lower doses of radiation, that's not fully understood, and there is more work that could be done to further resolve that work?
>
> A. Yes, there is more work that could be done. We have not been able to resolve a threshold level of radiation that does not cause cancer.
>
> Q. And has the Department of Energy consulted with the Department of Homeland Security on the nexus of low-dose radiation research to EPZ planning?

[30] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Todd Anderson, at 18 (July 12, 2016) [emphasis added].

A. Not to my knowledge. I don't have any knowledge of that, no.

Q. And after [Dr. Metting's] dismissal, who took over the low-dose radiation research program?

A. I did.

Q. And in your role of running this program you have not consulted with DHS?

A. I have not, no.

Q. Have you consulted with the Nuclear Regulatory Commission and its processes for determining EPZs?

A. No, for determining EPZs, no, I have not.

Q. Have you consulted with the Department of Defense on the same issue?

A. I have not. No, I have not.

Q. And have you consulted with the EPA on this issue?

A. No.

Q. So, in other words, the EPZ planning issue is one that you did not look into, is not something that you determined to be a priority or relevant to the continuation…

A. Not something that we considered, no.[31]

## *D. DOE Management Worked to Kill the LDRRP Because It Did Not Further the Administration's Goals to Advance Climate Research.*

Instead of working to understand the value of the LDRRP for emergency situations, DOE Management engaged in a campaign to terminate research programs that could divert funds from the President's Climate Action Plan. Management and Senior DOE employees privately discussed Congressional support for the LDRRP and its nexus to regulatory limits yet still maintained their agenda to close the program. An email exchange on October 3, 2014 between Dr. Huerta and Dr. Weatherwax is revealing.

[31] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Todd Anderson, at 86-89 (July 12, 2016).

**Dr. Huerta:** Am I remembering right that this is a program that's not a big priority for [Office of Science/Biological and Environmental Research]? But (parts of) Congress loves?[32]

**Dr. Weatherwax:** Marcos, this is the program that Pete Lyons has always been keeping track of and asking about, because he started the program many years ago and believes its continuation is essential for the future of [the Office of Nuclear Energy]. So whenever there's a public meeting, etc the NE community is reminded of it, and asks about it. Right now there is proposed legislation referring to this that is asking for engagement of the national academy, and development of a plan, etc.

But in terms of our program priorities, we feel we have accumulated sufficient research results to inform EPA's regulatory process. EPA has indicated that they do not require additional research information that would cause them to overturn their current regulatory limits, which are based on the extremely conservative Linear No Threshold (LNT) theory.

So we don't exactly know who in Congress is specifically advocating for this program, but the community is certainly ramping up the pressure by constantly asking about its fate.

**In terms of budget, it's less than 10% of the [Biological and Environmental Research] budget, and it is not directly related to administration priorities of climate or clean energy.** Only two DOE national labs are engaged in any research related to Low Dose.

I'm happy to discuss this with you further. When Julie gets back, she can certainly fill you in as well.[33]

The email exchange between Dr. Huerta and Dr. Weatherwax provides context for the apparent motives of the Office of Science to terminate the LDRRP in favor of the Administration's climate priorities. A follow-up email exchange provides more clarity on the actions of Dr. Carruthers and Dr. Weatherwax. Specifically, they sought to identify a strategy to censor information from the technical discussion on H.R. 5544 with the intent of sabotaging

[32] Email from Marcos Huerta to Sharlene Weatherwax (Oct. 3, 2014, 03:05 PM EST).
[33] Email from Sharlene Weatherwax to Marcos Huerta CC Kathleen Clausing, Director, Office of Budget, U.S. Dep't. of Energy, Patricia Dehmer, Deputy Director for Science Programs, U.S. Dep't. of Energy, Julie Carruthers, and Mike Riches, Senior Technical Advisor for Biological and Environmental Research, U.S. Dep't. of Energy (Oct. 3, 2014, 03:35 PM EST) [emphasis added].

legislative progress in the Senate. The following email exchange reveals Management's plan (emphasis added):

> **Dr. Carruthers:** **I think this is an opportunity to subtly yet firmly let the Senate know that they don't need to pursue a companion bill to the HSST bill…**[34]
>
> **Dr. Weatherwax:** Should we let Todd do the talking rather than Noelle [Metting]? [35]
>
> **Dr. Carruthers:** **If the goal is to squash the prospects of Senate support for the HSST, Todd may be better at staying on message.**[36]
>
> **Dr. Weatherwax:** Ok that's why even though he is out of town he will work hard to participate in a telecom.[37]

As this exchange makes clear, Dr. Carruthers and Dr. Weatherwax conspired to use the briefing as a means to prevent "the prospects of Senate support" for the pending House legislation. In other words, Dr. Carruthers and Dr. Weatherwax, by withholding information from Congressional staff, hoped to frustrate the passage of legislation in contravention of 18 U.S.C. 1913.

Dr. Anderson agreed that DOE prioritized the Climate Action Plan to the extent that it ignored research for the medical community in order to bolster the President's Climate Action Plan.

> Q. So is it fair to say the administration has not prioritized or has demonstrated an interest in research that's relevant to the medical community? In this case, we're talking about research to inform the process to order medical diagnostics for patients undergoing diagnostics to detect cancer and other ailments?
>
> A. So I think the administration's perspective is it wants – the Department of Energy does play a role in the climate action plan and the priorities for the climate action plan communicated by the administration and would like the department to focus at least some of its efforts on those, on that priority. And likewise, I think it wants the NIH, the National Institutes of Health, to focus on medical research. **And so to the extent that DOE has had programs that could be characterized as**

[34] Email from Julie Carruthers to Sharlene Weatherwax, Marcos Huerta, and Dr. Patricia Dehmer, Deputy Director, Office of Science, U.S. Dep't of Energy (Oct. 4, 2014 04:36 PM EST).
[35] Email from Sharlene Weatherwax to Julie Carruthers CC Marcos Huerta and Pat Dehmer (Oct. 4, 2014 04:44 PM EST).
[36] Email from Julie Carruthers to Sharlene Weatherwax CC Marcos Huerta and Patricia Dehmer (Oct. 4, 2014, 04:45 PM EST).
[37] Email from Sharlene Weatherwax to Julie Carruthers CC Marcos Huerta and Patricia Dehmer (Oct. 4, 2014 04:47 PM EST).

**biomedical research, yes, it would like DOE to not emphasize those programs**.[38]

## *E. With Regard to H.R. 5544, DOE Management Sought to Manipulate Congressional Staff – Both Republican and Democratic Staff.*

On October 9, 2014, Dr. Weatherwax instructed Dr. Anderson to use the October 16 briefing to dissuade Senate Republican Staff from advancing companion legislation to H.R. 5544.

**Dr. Anderson:** Hmm, new bill now has sponsors. Note language of within funds support for Low [sic] Dose.[39]

**Dr. Weatherwax:** **That's why you need to brief the Senate folks so they don't develop their own bill.** These are technically different staffers than the ones who introduced the bill. Yes, when it was officially introduced it had sponsors.[40]

While Management was organizing its advocacy efforts against H.R. 5544, Dr. Anderson separately acknowledged his awareness to Dr. Metting that the language from H.R. 5544 was drawn from another piece of pending legislation: H.R. 4159, the America Competes Reauthorization Act of 2014, sponsored by the Ranking Member of the Committee on Science, Space, and Technology, Rep. Eddie Bernice Johnson (D-TX).[41]

Dr. Metting: Hi Todd, Today is the first I have heard of House Bill HR5544, introduced 19 Sep. No wonder the staffers want an update.[42]

Dr. Anderson: Hmm, me too. It looks like it was prepared from a similar bill that was floating around this committee for about a year now. Except now it has sponsors.[43]

During a separate email exchange, Dr. Carruthers explained to Dr. Huerta that Management intentionally concealed their opposition to H.R. 5544 from Democratic Committee staff, but appeared to be willing to communicate Management's position during the October 16 briefing (emphasis added):

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[38] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Todd Anderson, at 85-86 (July 12, 2016) [emphasis added].
[39] Email from Todd Anderson to Sharlene Weatherwax CC Mike Riches (Oct. 9, 2014 02:29 PM EST).
[40] Email from Sharlene Weatherwax to Todd Anderson CC Mike Riches (Oct. 9, 2014, 02:30 PM EST) [emphasis added].
[41] *See* America Competes Reauthorization Act of 2014, H.R. 4159, 113th Cong. § 605(b) (2014).
[42] Email from Noelle Metting to Todd Anderson (Oct. 9, 2014, 02:18 PM EST).
[43] Email from Todd Anderson to Noelle Metting (Oct. 9, 2014, 02:27 PM EST).

Dr. Huerta: I recall we had no comments on this to send back to [Democratic Committee staff] back in Sept/August. Anything about it I should let [Congressional and Intergovernmental Affairs staff] know?[44]

Dr. Carruthers: Yes, [Congressional and Intergovernmental Affairs staff] should probably know our position (for her information).

We had communications to the HSST [House Science, Space, & Technology Committee] on several occasions when this language was part of their broader COMPETES Act reauthorization bill that we were not supportive of this emphasis on the low dose program and that follow-on responsibility for further research really belonged to other agencies (EPA and NIH), and that the Academies, which has dedicated Board on this topic, has a self-interest in getting continued Federal funding for additional studies. They were not responsive to our views, noting that some Members like this stuff.

When [Democratic Committee staff] approached us with his stand alone bill this summer, **we discussed internally, and decided because we were categorically against the entire bill, that we would just have [Congressional and Intergovernmental Affairs staff] communicate back to [Democratic Committee staff] that we have no comments.**

Our hope is that an in-person meeting will allow us the opportunity to explain to the staff in person our concerns with going forward with this bill. Even though we have communicated these view[s] before, it's new staff on both the House and Senate sides so we see this as an opportunity to educate [sic] them.[45]

## *F. DOE Management and Senior Employees Gave Intentionally Misleading Statements to Congress.*

According to information obtained by the Committee, DOE Management asserted that it only intended that the October 16 briefing serve as a mechanism to provide an overview of the LDRRP. On September 21, 2016 Dr. Weatherwax testified (emphasis added):

[44] Email from Marcos Huerta to Julie Carruthers (Oct. 14, 2014 02:45 PM EST).
[45] Email from Julie Carruthers to Marcos Huerta (Oct. 14, 2014 03:03 PM EST).

Chairman Loudermilk: Dr. Weatherwax, was one of your goals for the October 16, 2014, briefing with the Congressional staff to dissuade the Senate from offering a companion bill to the House bill?

Dr. Weatherwax: Chairman Loudermilk, **I had no explicit goals for the briefing** other than to provide information that was requested at the briefing. The briefing – I did not personally attend the briefing.

Chairman Loudermilk: So if the intention would have been to dissuade the Senate from introducing their own bill, then that would – would you consider that a form of lobbying?

Dr. Weatherwax: I am not aware of the official definition of lobbying, but since I had no intention of doing any of that activity, I can't really answer to it.[46]

## *G. Dr. Carruthers and Dr. Weatherwax Both Made Inconsistent Statements at Different Points During the Committee's Investigation.*

Inexplicably, and contradicting her email communications, Dr. Carruthers claimed that the DOE did not have a position on H.R. 5544 during a transcribed interview with the Committee.

Q. But was there any information pursuant to the request from congressional staff to have the briefing that was mentioned as not permitted – not permissible to discuss?

A. There was never anything not permissible to discuss, that I can recall, except that we were advised that **the Department and the administration do not have a position on the bill, therefore, we could not voice or talk about a position on the bill**. We talked about the merits of various provisions, technical comments.[47]

Dr. Weatherwax, Dr. Anderson, and Dr. Carruthers coordinated to put forth their preferred narrative to undermine the future for LDRR and the LDRRP, but were selective in how and with whom they shared their views, including Congress. Dr. Carruthers admitted that

[46] *Examining Misconduct and Intimidation of Scientists by Senior DOE Officials*: Joint Hearing Before the Subcomm. on Oversight and the Subcomm. on Energy of the H. Comm. on Science, Space, and Technology, 114th Cong. (2016), *available at* https://science.house.gov/legislation/hearings/joint-oversight-subcommittee-and-energy-subcommittee-hearing-examining.

[47] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Julie Carruthers, at 33 (May 25, 2016) [emphasis added].

Management actively decided that it would simply state that it had "no comments" to Democratic Committee staff on H.R. 5544 despite the fact that it was "categorically against the entire bill."[48] Dr. Carruthers also acknowledged her hopes that an in-person meeting with Republican Committee staff would provide a better opportunity to advocate against H.R. 5544 because different staff would be in attendance.[49]

Dr. Carruthers' statements do not comport with the testimony of Dr. Anderson. In fact, Dr. Anderson pursued a more direct approach to suppress supportive evidence for H.R. 5544, perhaps because Dr. Weatherwax instructed him to use the briefing to prevent the Senate from introducing companion legislation.[50] Dr. Anderson explained that Management accused Dr. Metting of advocating for funding the LDRRP because she provided slides with evidence supporting the continuance of scientific research and (according to Dr. Anderson) this information contradicted the Office of Science's "stated position."[51]

Much later in the course of the Committee's investigation, when the Oversight Subcommittee Chairman asked for clarification regarding why Dr. Weatherwax instructed Dr. Anderson to use the October 16 briefing to advocate against Senate companion legislation, she declined to accept any responsibility for her actions or admit that Management was overzealous in its efforts to censor information during the briefing. Rather, Dr. Weatherwax defended Management's actions to suppress information and selectively provide its preferred content to Congress without any acknowledgement of a mistake while implying that these actions were consistent with DOE's ordinary course of business when briefing Congress.

| | |
|---|---|
| Chairman Loudermilk: | … Can you explain the purpose of this email if it wasn't to lobby Congress to do something? |
| Dr. Weatherwax: | So in the body of the email the question arises around a House bill, so my understanding is that the briefing was designed to inform the staffers about the Low Dose Radiation Program in general. So my understanding is that scientific issues are presented by the Program Manager, but the responsibilities of the Division Director, who was Dr. Anderson, are to communicate the strategic direction and the portfolio balance that he has developed, so -- |
| Chairman Loudermilk: | Well, I appreciate that but that is not what the text of the email says. The text of the email says, "That's why you need to brief the Senate folks so they don't develop their own bill." |

[48] *See supra* note 45.
[49] *See supra* note 45.
[50] *See supra* note 40.
[51] *See supra* note 30.

Dr. Weatherwax: So since it's Dr. Anderson's responsibility to communicate what is in his portfolio and to convey the program priorities that he has balanced for all of the competing scientific opportunities, his job was to present that to House and Senate so that they can see how he arrived at his conclusions for presenting his particular portfolio.[52]

Dr. Weatherwax's testimony at the September 21 hearing is not consistent with evidence provided by the DOE which conveys that Dr. Weatherwax and other DOE officials had a specific agenda for the October 16 briefing to advocate against the LDRRP and H.R. 5544. At the hearing, Dr. Metting provided testimony describing her experience of being bullied and intimidated by Management because she did not comply with its agenda.[53] Dr. Weatherwax's statements before the Committee constitute an attempt to mislead Congress and obscure Management's agenda to influence legislation. Furthermore, Dr. Weatherwax made no attempt in her prepared testimony or answers to clarify Management's actions to withhold information from Congress, much less the Department's actions to remove Dr. Metting from federal service. Also consistent with the Committee's findings here, the DOE's management practice with respect to communicating with Congress is at best non-transparent or at worst a deliberate practice of misinformation and deception.

The Committee finds that Management's agenda for the October 16 briefing was to advocate against the LDRRP and H.R. 5544. The Committee also finds that Dr. Carruthers, Dr. Anderson, and Dr. Weatherwax gave inconsistent accounts to the Committee about their advocacy efforts, presumably to avoid admissions of guilt for violating of 18 U.S.C. 1913.

**FINDING: DOE Management and senior employees retaliated against Dr. Metting for providing candid and complete information to Congress and improperly removed her from federal service.**

Despite the Management's best efforts to "squash" H.R. 5544, Dr. Metting provided complete answers to Committee staff during the October 16 briefing. Management then took swift action to retaliate against Dr. Metting for undermining their plan to use the briefing to stop Congressional legislation. In her prepared testimony, Dr. Metting testified "*after the briefing ended and the Hill staff had left, Dr. Carruthers accused me of advocating and lobbying for the Program and of being too enthusiastic about the research results. I was shocked."*[54] Following

[52] *Examining Misconduct and Intimidation of Scientists by Senior DOE Officials*: Joint Hearing Before the Subcomm. on Oversight and the Subcomm. on Energy of the H. Comm. on Science, Space, and Technology, 114th Cong. (2016), *available at* https://science.house.gov/legislation/hearings/joint-oversight-subcommittee-and-energy-subcommittee-hearing-examining.
[53] *Id.*
[54] *Id.*

the briefing, Dr. Carruthers reported Dr. Metting's actions to Dr. Patricia Dehmer, the Acting Deputy Director for the Office of Science.

> Dr. Carruthers: [Dr. Metting] did not stick to the discussed scope of the briefing. [Dr. Anderson] is going to write up a summary of the meeting for you and [Dr. Weatherwax], including the discussion that followed after the staffers left, which was highly inflammatory.[55]

## *H. Management Quickly Took Steps to Remove Dr. Metting from Federal Service.*

Shortly after the October 16 briefing, Management took steps to silence Dr. Metting who testified as follows at the September 21 hearing:

> Dr. Metting: Thus began an unjust and painful saga of unrelenting intimidation. In just over one uncomfortable week after the briefing, Dr. Anderson removed me as Manager of the Low Dose Program and detailed me to unclassified duties. My management obviously did not want me answering any more questions about the Low Dose Program.[56]

On December 4, 2014, Dr. Weatherwax and Dr. Anderson officially provided Dr. Metting with a notice of proposed removal which happened to coincide with the office's holiday party.

> Rich Drury: Todd, I have an approved final letter back from OGC. I would suggest we deliver it tomorrow if that works for you logistically. Feasible?[57]
>
> Dr. Weatherwax: Should we do it today? Tomorrow is the holiday party – awkward.[58]

## *I. Dr. Metting Was Removed for Providing Congress with Candid Testimony Without Regard to the Potential Chilling Effect on Other Scientists.*

[55] Email from Julie Carruthers to Patricia Dehmer (October 16, 2014 07:09 PM EST).
[56] *See supra* note 26.
[57] Email from Rich Drury, DOE contractor for human resources, to Sharlene Weatherwax (December 3, 2014, 02:27 PM EST).
[58] Email from Sharlene Weatherwax to Todd Anderson (December 3, 2014 02:43 PM EST).

Dr. Anderson issued the official DOE notice of proposed removal dated December 4, 2014. The notice included two charges against Dr. Metting: (1) Insubordinate Defiance of Authority and (2) Inappropriate Workplace Communication, including the following excerpt from charge one (emphasis added).

> "On October 16, 2014, several members of SC's senior staff met with Hill staffers to discuss H.R. 5544, a House bill which currently conflicts with SC's management prioritization plan… You were cautioned to avoid interjecting contradictory opinions regarding this project. When you gave the presentation, you did not follow instructions or the prepared briefing… **Your failure to adhere to SC's talking points while speaking in your professional capacity on behalf of SC as a DOE official was confusing and undermined the purpose of your presentation… By defying my instructions, you directly undermined SC management priorities**."[59]

These assertions demonstrate that the DOE (after departmental review) remained convinced that Dr. Metting's candid answers to Committee staff justified a cause to remove her from federal service. Clearly, Dr. Metting's refusal to go along with Management's scheme to lobby against H.R. 5544 during the October 16 briefing made her a target. Unfortunately, Management did not realize or did not care that Congress has a Constitutional right to access uncensored information from the Executive as an inherent aspect of the legislative process. Furthermore, the Department's action to terminate Dr. Metting for speaking with Congress was clearly in violation of Article I.

During a transcribed interview with the Committee on July 12, Dr. Anderson acknowledged that he did not consider the potential chilling effect on other agency scientists as result of removing Dr. Metting from her position.

> Q. And did you take into account the chilling effect on other scientists and technical experts within the department when Dr. Metting was removed from her position for providing information to committee staff that may have supported the Low-Dose Radiation Research Act of 2014 [sic]?
>
> A. No, I did not take that into account. I was recommending action against what I thought was inappropriate behavior, something that I couldn't ignore as a manager. So, no, I did not take into account a chilling effect on others.[60]

Dr. Anderson further elaborated that he inappropriately expected Dr. Metting to refrain from providing complete answers to Committee staff about H.R. 5544 despite his

[59] *See supra* note 9.
[60] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Todd Anderson, at 135 (July 12, 2016).

acknowledgment of Congressional authority to access that information inherent to Congress' Constitutional authority to legislate.

Q. In going back, when you provided instruction to Dr. Metting about what she would say, staying on message and staying on task, you think that did give proper consideration to Congress' role and authority to access a wide span of information related to this bill?

A. Yea, I don't think – I don't think anything was – I don't think in terms of information about the program, even personal opinions about the program, I don't think anything was really held back. I would have liked, I would have preferred that briefing to be less about her personal opinions and more about the history of the program and, you know, SC's official position than it was.

Q. But you recognize that Congress has the authority to access that information to legislate?

A. I do.

Q. And that the position of the Office of Science may not be relevant to Congress' interest in legislating?

A. I do understand that.

Q. But you would have preferred that Dr. Metting held back some of the information that she provided?

A. Perhaps a bit more on her personal opinion, yes. I did not want that meeting to be all about her and about her personal opinion.

Q. And that wasn't just your preference that she hold that back, that was the preference and the instruction from DOE management?

A. That was part of the discussion between myself, Dr. Carruthers, Dr. Huerta, and Dr. Metting at the prebriefing before the meeting.[61]

Once again, this evidence clearly demonstrates that Management's plan and expectation was to censor information and put forth its selective narrative while casting aside Congress' authority to conduct authentic diligence when legislating.

[61] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Todd Anderson, at 135-137 (July 12, 2016).

**FINDING: Office of Science management and senior employees retaliated against Dr. Metting and violated the law by prohibiting Dr. Metting from providing candid information to Congress. When asked about these violations, Management and Senior DOE officials provided conflicting accounts of whether the Department intended to make its position clear on pending legislation to certain Committee staff.**

## *J. Dr. Metting Was the DOE's Sole Expert on LDRR and Her Opinion Was Silenced to Further Political Interests.*

While Management preferred that Dr. Metting withhold her personal opinions on LDRR, it appears that Dr. Metting was the only qualified expert willing to provide scientific opinions on the nexus of the LDRRP to practicing physicians, researchers in the medical community, and federal emergency response agencies. Dr. Carruthers acknowledged that she lacked any meaningful understanding of LDRR during a transcribed interview with the Committee on May 25, 2016.

> Q. In your scientific opinion, could low dose radiation research convey a benefit or use to practicing physicians in radiology and related disciplines with respect to risk analysis for ordering diagnostics where a patient receives a low dose or radiation to detect the onset of early stage cancer?
>
> A. I don't know enough of the field to be able to answer that question.
>
> Q. What was your or what is your understanding of the Department's Low Dose Radiation Research Program?
>
> A. I know very little of the actual research that they support and the results of that research.[62]

Dr. Carruthers also acknowledged that she lacked any understanding of the nexus of LDRR to EPZs or emergency response applications from a potential dirty bomb incident.

> Q. In your scientific opinion, could low dose radiation research convey a benefit or use to Federal agencies involved in setting evacuation planning zones, otherwise known as EPZs, from potential radiological incidents?

[62] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Julie Carruthers, at 88 (May 25, 2016).

A. I'm not a subject matter expert. I can't tell you how the research of this program could contribute to that topic specifically.

Q. Okay. To the best of your knowledge, has the Department consulted with the Department of Homeland Security when it comes to EPZ planning and this research?

A. I don't know.

Q. To the best of your knowledge, has the Department consulted with the Nuclear Regulatory Commission when it comes to EPZ planning in this research?

A. I don't know.

Q. To the best of your knowledge, has the Department consulted with the Department of Defense when it comes to EPZ planning in low dose radiation research?

A. I don't know.[63]

Dr. Anderson also acknowledged his lack of understanding of the nexus of LDRR to EPZs or emergency response applications from a potential dirty bomb incident.

Q. In your scientific opinion, could low-dose radiation research convey a benefit or use to federal agencies involved in setting evacuation planning zones, otherwise known as EPZs, from potential radiological incidents?

A. I couldn't comment on that. I'm not familiar with those procedures.[64]

Clearly, Dr. Metting was the only subject matter expert qualified to provide honest answers to questions posed by Congressional staff. The fact that Dr. Metting provided these answers should not have constituted grounds for her removal from federal service. This testimony further demonstrates that DOE Management would have preferred that Dr. Metting provide erroneous and unresponsive answers to questions posed by Congress that would inform legislative action.

[63] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Julie Carruthers, at 90 (May 25, 2016).
[64] H. Comm. on Science, Space, and Technology, Transcribed Interview of Dr. Todd Anderson, at 86-87 (July 12, 2016).

# IV. Conclusions and Recommendations

## *A. The DOE Exhibited a Complete Disregard for the Legislative Process and Constitutional Separation of Powers at an Institutional Level.*

Article I vests all legislative powers in the Congress, which the Supreme Court has interpreted to include far reaching authority to access information within the Executive branch. In this instance, when Committee staff confronted the DOE with an inquiry about scientific research, Management's first instinct was to employ a strategy of deception rather than allow Dr. Metting to provide uncensored and candid information to Congress. Yet under Article I, the Congress has a Constitutional right to that information as a fundamental aspect of legislating.

The Supreme Court affirmed that Congress has an inherent right to investigate and access information pursuant to legislating in *Eastland v. United States Servicemen's Fund* relying on *McGrain v. Daugherty*, stating "the power to investigate is inherent in the power to make laws because '[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change."[65] Here, Committee staff sought technical information that would support or counter the advancement of H.R. 5544 to be considered by the full U.S. House of Representatives. The fact that Management intended to hide or deny this type of information from Congress reveals that senior-level employees within the Department at the least lacked a due respect for the legislative process and separation of powers and clearly failed to acknowledge the Anti-Lobbying Act.

Regrettably, the DOE's misconduct did not end with Management's plans to suppress information and deceive Committee staff. Rather, DOE Management took affirmative steps beyond its initial violation when it decided to retaliate against Dr. Metting for not conforming with its plans. Since one of DOE's stated purposes for Dr. Metting's removal was her failure to confine the discussion to pre-approved talking points, the Committee concludes that Management put its own priorities over all other considerations to achieve its own ends.

The DOE process to remove an employee from federal service is not simple nor expedient, leaving the Department with plenty of opportunities to consider the consequences of Dr. Metting's removal. Clearly, Management failed to exercise even a minimal standard of care to avoid chilling other agency scientists as a result of its retaliation against Dr. Metting for her unwillingness to censor information from Congress. Management's actions constitute a premeditated and calculated attack on the legislative process. The Committee concludes that the

[65] *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 (1975); *See also McGrain v. Daugherty*, 273 U.S. 135, 175 (1927).

DOE's disregard for separation of powers is not limited to a small group of employees, but rather is an institutional problem.

### *B. The DOE Must Overhaul its Management Practices to Ensure that the Department Carries out its Constitutional Responsibilities to be Truthful with Congress and Respects the Legislative Process.*

The actions of Management leading up to the October 16 briefing and subsequent retaliation against Dr. Metting demonstrate the Department's lack of respect for the legislative process as an inherent aspect of separation of powers. In *Watkins v. United States*, the Supreme Court observed "the Power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political systems for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste… it is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action."[66] The Committee concludes that Management's common practice was to obfuscate information about LDRR from the Congress because Management knew that information would inform decisions related to the advancement of legislation. The DOE must acknowledge its responsibility under the Constitution to provide complete and honest answers to Congress and its designees whom have been charged with preparing legislation.

Regrettably, the DOE has failed to acknowledge that it made any mistakes during the course of events subject to this investigation evidencing the Department's unwillingness to recognize the bounds of its authority or the significance of Congressional inquiry. In *Eastland,* the Court recognized that "to conclude that the power of inquiry is other than an integral part of the legislative process would be a miserly reading of the Speech of Debate Clause in derogation of the 'integrity of the legislative process.'"[67] Here, the DOE has attacked the legislative process itself. The DOE has overreached in efforts to protect its own agenda by attempting to distort a process that the Constitution envisions to be more forthcoming and honest.

Rather than adhere to the unremarkable principle that when Congress inquires about federal programs the Executive must provide complete and truthful answers, the DOE has instituted a culture to protect Management's priorities through veiled advocacy, deception, and lies of omission. DOE Management does not have authority to proactively authorize taxpayer funds nor may it obstruct legislation by manipulation, advocacy, or otherwise.
Article I vests legislative power and Article II vests executive power. Neither can operate properly without due respect for the other.

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[66] *Watkins v. United States*, 354 U.S. 178, 187 (1957).
[67] *See Eastland* 421 U.S. at 505.

The Committee concludes that the DOE has attempted to usurp Article I authority by restricting Congress' access to information during the legislative process. Thereafter, the DOE took punitive action against a scientist because she was unwilling to go along with the Department's inappropriate and unlawful advocacy scheme. When the Committee confronted the DOE officials involved in this case, they attempted to mislead the Committee. These actions call into question the integrity of the DOE when communicating with Congress. The DOE must take immediate corrective action to restore trust that the Department will provide accurate and uncensored information to the Congress, free from political or other pressure. Moreover, the DOE must assure Congress that when federal employees provide honest and accurate information, they do so without the fear of retribution.