

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<https://oversight.house.gov>

September 28, 2021

The Honorable Carolyn Maloney
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Maloney:

Since Democrats assumed control of the U.S. House of Representatives in 2019, you have requested a litany of information from private entities that is protected under the First Amendment of the U.S. Constitution. Most recently, on September 16, 2021, you sent letters to Shell, ExxonMobil, Chevron, BP, the U.S. Chamber of Commerce and the American Petroleum Institute requesting a broad range of information including communications protected by the First Amendment.¹ Due to the protected nature of these communications, Republicans respectfully object to your requests.

Your September 16, 2021, request calls for, “[a]ll internal and external policy memos, data, talking points, communications, leave-behind materials, and other documents provided to Members of Congress, their staff members, or executive branch officials related to climate policy and legislation.”² Republican Members of this Committee are concerned about the chilling effect such a precedent would have on the ability of entities to petition the U.S. government. Democrats repeated attempts to obtain protected communications ignores well-established constitutional prerogatives and has a chilling effect on citizens who wish to exercise their right to petition the government and freely associate.³

¹ See Press Release, H. Comm. On Oversight & Gov’t Reform, *Oversight Committee Launches Investigation of Fossil Fuel Industry Disinformation on Climate Crisis*, Sept. 16, 2021, available at <https://oversight.house.gov/news/press-releases/oversight-committee-launches-investigation-of-fossil-fuel-industry>.

² Letter from Carolyn B. Maloney, Chairwoman, H. Comm on Oversight & Gov’t Reform, et al., to Darren Woods, ExxonMobil Corp. CEO (Sept. 16, 2021), *on file with committee staff*.

³ See Letter from Carolyn B. Maloney, Chairwoman, H. Comm. on Oversight & Gov’t Reform, et al., to Douglas Logan, CEO & Principal Consultant, Cyber Ninjas Inc. (July 14, 2020); Letter from James E. Clyburn, Chairman, Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Gov’t Reform, to Richard Hunt, President & Chief Executive Officer, Consumer Bankers Association (Sept. 10, 2020); Letter from James E. Clyburn, Chairman, Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Gov’t Reform, to Greg Baer, President & Chief Executive Officer, The Bank Policy Institute (Sept. 10, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Steve Miller, CEO, Association of Organ Procurement Organizations (December 23, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Christopher B. Meeks, Exec. Dir., Legacy of Hope (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Dr. Sam Salama, Exec. Dir., Life Alliance Organ Recovery Agency (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman,

The objective of the Democrats' investigation appears to be preventing certain entities from petitioning Congress, and freely associating with like-minded individuals. In a recent news article, Subcommittee on the Environment Chairman Ro Khanna provided the rationale for the Democrats' investigation of the oil and gas industry, stating “[p]art of the timing of this is to make sure that they know they’re under a magnifying glass when it comes to any engagement, and running interference, with the climate agenda of Congress and the Senate.”⁴ This statement is troubling because engaging with Congress is a constitutional right.

The First Amendment of the Constitution guarantees the right to petition the federal government.⁵ The Supreme Court has held: “[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”⁶ Therefore, any such communications regarding the right to petition the government or freely associate are protected by the First Amendment. Seeking such communications would—at the very least—have a chilling effect on the constitutional prerogatives of the targeted nonprofits and associations.

Requesting that entities provide you their communications with the federal government is particularly problematic because the Supreme Court recognizes the “right to petition [the government is] one of the most precious of the liberties safeguarded by the Bill of Rights” because “the right is implied by ‘the very idea of government, republican in form.’”⁷ The

Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Jean A. Davis, President & CEO, Lifelink Foundation (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Rony Thomas, President & CEO, LifeNet Health (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Susan Gunderson, CEO, LifeSource (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Alexandria K. Glazier, President & CEO, New England Donor Services (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Thomas Mone, CEO, OneLegacy (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to David DeStefano, President & CEO, We Are Sharing Hope SC (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Jill Grandas, Exec. Dir., DCI Donor Services, Inc. (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Kellie Hanner, President & CEO, Indiana Donor Network (Dec. 18, 2020); Letter from Raja Krishnamoorthi, Chairman, Subcomm. on Economic and Consumer Policy, H. Comm. on Oversight & Gov’t Reform, et al., to Julie Bergin, President & CEO, Kentucky Organ Donor Affiliates (Dec. 18, 2020); Letter from James E. Clyburn, Chairman, Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Gov’t Reform, to Mike Brown, President, National Chicken Council (July 12, 2021); Letter from James E. Clyburn, Chairman, Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Gov’t Reform, to Julie Anna Potts, President & CEO, North American Meat Institute (July 12, 2021); Letter from James E. Clyburn, Chairman, Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Gov’t Reform, to Tim Klein, President & CEO, National Beef Packing Company (September 15, 2021).

⁴ Hiroko Tabuchi, *House Panel Expands Its Probe of Climate Disinformation by Oil Giants*, NYT, Sept. 16, 2021, available at <https://www.nytimes.com/2021/09/16/climate/exxon-oil-disinformation-house-probe.html>.

⁵ U.S. Const. amend. 1.

⁶ *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (internal quotation marks omitted).

⁷ *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524-25 (2002).

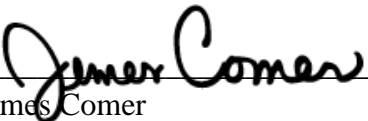
Democrat's willingness to infringe on the most basic rights protected by the First Amendment is an affront to the Constitution. These investigations patently target certain industries that Democrats dislike and contravene the long-established principals of Congressional oversight.

Additionally, the Court has held that the First Amendment affords special protections for the freedom of association. In your fossil fuels investigation, you have specifically requested internal deliberations and communications with elected officials from two trade associations. The Court has found that "the ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed."⁸ Your request strikes at the very heart of the liberties protected by the Constitution with regard to association and would impinge on the ability of these groups to continue to associate.

Many congressional oversight experts have cautioned Congress against the types of inquiries that the Majority is currently engaged in. For instance, in his seminal handbook for congressional investigators, constitutional law expert Mort Rosenberg advises that "committees often tread lightly when First Amendment Rights are implicated."⁹ Instead, Committee Democrats are ignoring this clear and long-standing precedent and deliberately targeting protected communications to pursue a political agenda. Democrats have made similar demands, not once but approximately 18 times (see footnote four).

We urge Committee Democrats not to pursue records and communications that are clearly protected by the First Amendment.

Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



Jody Hice
Ranking Member
Subcommittee on Government
Operations



Glenn S. Grothman
Ranking Member
Subcommittee on National Security



Michael Cloud
Ranking Member
Subcommittee on Economic and
Consumer Policy

⁸ Knox. v. Serv. Employees Int'l Union, Local 1000, 132 S. Ct. 2277, 2288 (2012).

⁹ Morton Rosenberg, WHEN CONGRESS COMES CALLING: A PRIMER ON THE PRINCIPLES, PRACTICES, & PRAGMATICS OF LEGISLATIVE INQUIRY, THE CONSTITUTION PROJECT (2017), available at <https://archive.constitutionproject.org/wp-content/uploads/2017/05/WhenCongressComesCalling.pdf>.

The Honorable Carolyn Maloney

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Ralph Norman

Ranking Member

Subcommittee on Environment



Nancy Mace

Ranking Member

Subcommittee on Civil Rights and
Civil Liberties

Cc: The Honorable Gerald E. Connolly, Chairman
Subcommittee on Government Operations

The Honorable Stephen F. Lynch, Chairman
Subcommittee on National Security

The Honorable Raja Krishnamoorthi, Chairman
Subcommittee on Economic and Consumer Policy

The Honorable Ro Khanna, Chairman
Subcommittee on Environment

The Honorable Jamie Raskin, Chairman
Subcommittee on Civil Rights and Civil Liberties