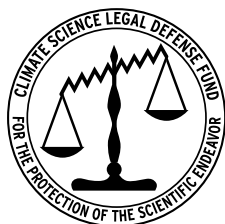




# How the Abuse of Congressional Oversight Powers Harms Science



Brought to you by  
the Climate Science  
Legal Defense Fund

# Table of Contents

---

Introduction	1
Misuse of the Unilateral Subpoena Power	2
Committee Investigations of Individual Scientists	5
Select Investigative Panel Investigations of Individual Scientists	8
Unbalanced Congressional Committee Hearings	9
Conclusions & Recommendations	10

---

If you're a scientist and would like a free, confidential consultation with one of our attorneys, please reach out.

Contact CSLDF at  
**(646) 801-0853**

Or send an email to  
[lawyer@csldf.org](mailto:lawyer@csldf.org)

# INTRODUCTION

The Trump administration has consistently taken actions that silence or undermine science.<sup>1</sup> But government disregard for science is not new. Other branches of government—particularly Congress—have harmed the scientific endeavor in recent years.

Congress plays a critical role in how science is funded, conducted, and viewed by the public—something it has not always handled well. While Congress has done vital work towards protecting and furthering scientific research,<sup>2</sup> it can also wield its authority in ways that threaten free scientific inquiry and research.

In numerous instances, Congressional committees have overstepped their boundaries, abused their powers, and wasted taxpayer dollars attacking science and scientists. Instead of using investigative powers to resolve problems, the oversight powers have been used as a political tool to further the agenda of oil, gas, and mining interests.

Once a limited tool, the committee subpoena power has been overused, diluting its impact. Investigations based on unfounded or fabricated claims have turned into harassment of scientific agencies and individual scientists. Committee hearings, especially those that relate to climate science, have not always addressed their stated purpose. Instead, they have served as platforms for scientists representing a minority opinion to present a false narrative of the scientific consensus on climate change.<sup>3</sup>

These actions undermine committees' essential oversight authority, distract from Congress's valuable pro-science work, contribute to false narratives on the science surrounding climate change, abortion, and other contentious issues, and endanger scientists. Such activities also have a chilling effect on research in these fields and cast doubt on research findings that may potentially save lives.<sup>4</sup> These actions span political lines, with both Democrats and Republicans guilty of some of the same behaviors.

Our research reveals that the 116th Congress, in session from January 3, 2019 to January 3, 2021, has been less destructive and more pro-science than other terms. Yet the structural issues in Congress remain, and these issues must be resolved to protect the integrity of the scientific endeavor.

---

<sup>1</sup> Sabin Center for Climate Change Law and the Climate Science Legal Defense Fund, *Silencing Science Tracker*, <https://climate.law.columbia.edu/Silencing-Science-Tracker>

<sup>2</sup> Climate Science Legal Defense Fund et al., *Protecting Science at Federal Agencies*, Nov. 15, 2018, <https://www.csldef.org/2018/11/15/protecting-science-at-federal-agencies/>

<sup>3</sup> Marshall Shepherd, *A Day in the Life of a Scientist Testifying to Congress About Weather*, FORBES, Sep. 27, 2019, <https://www.forbes.com/sites/marshallshepherd/2019/09/27/a-day-in-the-life-of-a-scientist-testifying-to-congress-about-weather/#672862d5780d> [<https://perma.cc/KAT3-YPHG>]

<sup>4</sup> Neela Banerjee and David Hasemyer, *Decades of Science Denial Related to Climate Change has led to Denial of the Coronavirus Pandemic*, INSIDECLIMATE NEWS, Apr. 8 2020, <https://insideclimateneews.org/news/08042020/science-denial-coronavirus-covid-climate-change> [<https://perma.cc/6Z7F-ATMW>]

## Misuse of the Unilateral Subpoena Power

---

While there has been a long history of congressional committees showing disregard for scientific findings, changes in 2015 made it far easier for bad actors to act unconstrained in this regard. At the beginning of the 114th Congress, several House committees adopted new rules giving their chairs the authority to issue subpoenas without a vote. Prior to this, only limited congressional committees possessed a unilateral subpoena power,<sup>5</sup> with most requiring a full committee vote to issue a subpoena. Among the committees that adopted this expanded power for the 114th Congress were the Energy and Commerce, Judiciary, Financial Services, and Science, Space, and Technology Committees. Democrats were critical of the decision,<sup>6</sup> fearing it would lead to widespread abuses of power, but Republican committee leaders saw it as a valuable tool for the pursuit of their political agendas.<sup>7</sup>

The new powers were in fact misused, most notably by Lamar Smith (R-TX), then-chair of the House Committee on Science, Space and Technology (Science Committee). Rep. Smith issued 25 subpoenas during the 114th Congress—the period of time between January 2015 and January 2017—more subpoenas than that committee had previously issued in its entire 54-year history.<sup>8</sup>

### Investigation into NOAA

Among the targets of Smith's subpoenas was the National Oceanic and Atmospheric Administration (NOAA), which endured a years-long attack over false claims that it had manipulated climate data for an article published in *Science* magazine. Rep. Smith subpoenaed NOAA for all of the records related to this article, but NOAA refused to comply with most of the requests, claiming compliance would chill free communication among scientists.<sup>9</sup> The subpoenas enraged the Science Committee's Democratic members and also drew significant media attention; major scientific societies also argued these requests would impair open scientific discussion and would discourage scientists from researching issues with policy implications.<sup>10</sup>

---

<sup>5</sup> Of the six committees that had the unilateral power prior to the 114th Congress, only the House Oversight and Reform Committee actually used it; the remaining five (Ways and Means, Foreign Affairs, Intelligence, Transportation and Infrastructure, and Education and the Workforce) never used the power.

<sup>6</sup> *Waters Condemns Consolidation of Subpoena Power with Financial Services Chair*, U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES, Jan. 13, 2015, <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=398776> [<https://perma.cc/B9XC-5G7C>]

<sup>7</sup> Lauren French, *Dems Blast House GOP Subpoena Rules Change*, POLITICO, Feb. 10, 2015, <https://www.politico.com/story/2015/02/democrats-criticize-house-gop-subpoena-rules-115068> [<https://perma.cc/7GEJ-4YK4>]

<sup>8</sup> *Subpoenas Issued Unilaterally by Chairman Smith in the 114th Congress*, U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON SCIENCE, SPACE, & TECHNOLOGY, Oct. 17, 2016, <https://science.house.gov/news/letters/subpoenas-issued-unilaterally-by-chairman-smith-in-the-114th-congress?1> [<https://perma.cc/OD8E-MGLX>]

<sup>9</sup> NOAA did respond to some of Smith's requests and turned over documents that they deemed relevant and responsive as well as providing access to the documents and data used in reaching the study's conclusions.

<sup>10</sup> Ginger Pinholster, *AAAS Leads Coalition to Protest Climate Science Inquiry*, AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE, Nov. 24, 2015, <https://www.aaas.org/news/aaas-leads-coalition-protest-climate-science-inquiry> [<https://perma.cc/PEZ6-7F7M>]

The initial subpoena effort lost steam in spring 2016,<sup>11</sup> but in 2017, the NOAA paper once again drew the interest of the committee following later-discredited claims by a former NOAA scientist that the study had violated scientific integrity guidelines and publishing standards.<sup>12</sup> These claims prompted Rep. Smith to issue new subpoenas to NOAA. NOAA did disclose some records in response to Smith's request, but with no factual basis for the committee's allegations, the inquiry went nowhere.<sup>13</sup>

Even though Smith's efforts were unsuccessful, the damage to NOAA was still significant. In addition to being forced to litigate a related Freedom of Information Act (FOIA) case—which NOAA ultimately won<sup>14</sup>—the investigations wasted countless hours of NOAA employee time that should have been spent on the agency's actual scientific work. The widespread publication of false allegations that NOAA manipulated data may have also harmed the public's trust and faith in the agency's research and in climate science more broadly.<sup>15</sup>

## Investigation into State Actions

In 2015, the Attorneys General (the AGs) of New York and Massachusetts began investigating whether Exxon Mobil had downplayed climate change risks in communications with investors, in ways that were contradictory to the results of their internal scientific research and were in violation of state laws.<sup>16</sup> The AGs subpoenaed Exxon for records related to their internal research, as well as records detailing their funding of external groups working to dispute the scientific evidence of climate change. The AGs' efforts angered members of the Science Committee who claimed they were concerned about the First Amendment rights of the Exxon Mobil corporation. (It is worth noting that Exxon and other fossil fuel companies were generous donors to these committee members, including Rep. Smith.<sup>17</sup>)

To address these concerns, the committee launched an investigation into the investigations and issued subpoenas to seventeen attorneys general and eight non-governmental organizations (together with several other groups known as the Green 20), seeking all communications related to the Exxon investigations.<sup>18</sup>

---

<sup>11</sup> As the congressional investigation lost steam, the conservative group Judicial Watch picked up the matter and issued FOIA requests for documents related to the publication of the paper. NOAA refused to turn over the documents, claiming they were protected by the deliberative process exemption to FOIA. Following a legal battle, NOAA ultimately prevailed in the D.C. District Court in August 2017.

<sup>12</sup> Warren Cornwall, Paul Voosen, *How a Culture Clash at NOAA Led to a Flap Over a High-Profile Warming Pause Study*, SCIENCE, Feb. 8, 2017, <https://www.sciencemag.org/news/2017/02/how-culture-clash-noaa-led-flap-over-high-profile-warming-pause-study> [<https://perma.cc/98FP-N5GT>]

<sup>13</sup> United States Congress, House, Committee on Science, Space, & Technology, *Facts Contradict Science Committee Majority's Attack on NOAA's Climate Scientists*, GOVERNMENT PUBLISHING OFFICE, Sep. 18, 2017, <https://science.house.gov/news/press-releases/facts-contradict-science-committee-majoritys-attack-on-noaas-climate-scientists> [<https://perma.cc/4ROT-2CKE>]

<sup>14</sup> United States District Court, District of Columbia, *Judicial Watch v. U.S. Dep't of Commerce*, CLIMATE CHANGE LITIGATION DATABASES, 15-CV-2088, DECISION AND ORDER, Aug. 21, 2017, <http://climatecasechart.com/case/judicial-watch-inc-v-united-states-department-of-commerce/?cn-reloaded=1> [<https://perma.cc/KMV4-Y83E>]

<sup>15</sup> John Schwartz, *Chief of House Science Panel Picks Battle Over Climate Paper*, THE NEW YORK TIMES, Dec. 4, 2015, <https://www.nytimes.com/2015/12/05/science/chief-of-house-science-panel-picks-battle-over-climate-paper.html> [<https://perma.cc/W3PD-98DE>]

<sup>16</sup> This initial group also included the U.S. Virgin Islands, but they later withdrew their subpoena.

<sup>17</sup> Steve Horn, *Exxon, Koch Ties May Help Explain Rep. Lamar Smith's Probing Request of "Exxon Knew" Environmental Groups*, DESMOG, June 21, 2016, <https://www.desmogblog.com/2016/06/21/exxon-koch-lamar-smith-exxon-knew> [<https://perma.cc/8EZY-YBBU>]

<sup>18</sup> United States Congress, House, Committee on Science, Space, and Technology, *Smith Statement on Green 20 Attorney General's Withdrawal of Climate Change Subpoena*, GOVERNMENT PUBLISHING OFFICE, June 30, 2016, <https://republicans-science.house.gov/news/press-releases/smith-statement-green-20-attorney-general-s-withdrawal-climate-change-subpoena> [<https://perma.cc/23QR-6Z78>]

There was no legal precedent for this action; the subpoenas represented the first time congressional committee subpoenas were issued to state attorneys general in their official capacity.<sup>19</sup> Rep. Smith's position was that the AGs' investigations violated the company's First Amendment right to fund and conduct scientific research free from intimidation and threats of prosecution. However, the AGs maintained that their investigations were based on a question of fraud under state law—which falls firmly under a state AG's jurisdiction—since the issue was whether Exxon deliberately misrepresented the results of their research to shareholders. The Science Committee served several rounds of subpoenas on the group, and in each case the parties refused to comply, claiming that the committee lacked the jurisdiction to conduct such an investigation into state actions.<sup>20</sup> Faced with the refusal to cooperate and the backlash due to the lack of legal precedent, Smith and the other committee Republicans held a committee hearing in September 2016, "Affirming Congress' Constitutional Oversight Responsibilities: Subpoena Authority and Recourse for Failure to Comply with Lawfully Issued Subpoenas." The hearing did little to further their argument and focused on the First Amendment claims. Smith and the committee even attempted, unsuccessfully, to expand the investigation by subpoenaing the Securities and Exchange Commission for documents related to its own investigation of Exxon's climate disclosures.<sup>21</sup>

Ultimately the Science Committee was never able to obtain the records it sought via these subpoenas and was forced to drop the matter. However, this level of committee overreach set a dangerous precedent. Congress cannot exercise oversight over state actions. State attorneys general are elected officials of state governments and are not subject to federal oversight or control. Congress has oversight power that goes hand-in-hand with its power to legislate, but it does not have oversight authority over actions that fall outside its legislative authority.<sup>22</sup>

Of course, while Rep. Smith and the Science Committee have provided numerous examples of misuse of the unilateral subpoena power, especially in the science context, they are not the only instances where unilateral subpoena power was abused. The McCarthy hearings of the 1940s and 1950s are another famous example where a single Congressperson, Joe McCarthy (R-WI) used unilateral subpoenas to engage in partisan witch hunts; more recently, Darrell Issa (R-CA), was accused of using over 100 unilateral subpoenas in an "endless pursuit of scandal."<sup>23</sup>

---

<sup>19</sup> United States Congress, House, Committee on Science, Space, and Technology, *Affirming Congress' Constitutional Oversight Responsibilities: Subpoena Authority and Recourse for Failure to Comply with Lawfully Issued Subpoenas*, GOVERNMENT PUBLISHING OFFICE, Sep. 14, 2016, <https://www.govinfo.gov/content/pkg/CHRG-114hhrg22561/html/CHRG-114hhrg22561.htm> [<https://perma.cc/PY8U-723J>]

<sup>20</sup> David Hasemyer, *State AGs and Groups Defy Lamar Smith's Subpoena Over Exxon Climate Probes*, INSIDE CLIMATE NEWS, July 27, 2016, <https://insideclimatenews.org/news/27072016/new-york-massachusetts-eric-schneiderman-maura-healey-defy-lamar-smith-subpoena-exxon-climate> [<https://perma.cc/M2BZ-ZNP2>]

<sup>21</sup> The SEC refused to respond, stating that it does not acknowledge the existence or non-existence of an investigation and that investigations don't become public unless charges are filed and that, as a result the agency could not comment on the matters raised in the request. David Hasemyer, *SEC Sidesteps Lamar Smith's Document Request, Declines to Confirm Exxon Probe*, INSIDE CLIMATE NEWS, Oct. 14, 2016, <https://insideclimatenews.org/news/14102016/sec-refuses-comply-lamar-smith-subpoena-over-exxon-probe-mary-jo-white> [<https://perma.cc/LZ4J-L2B5>]

<sup>22</sup> David Hasemyer, *Constitutional Scholars Object to Lamar Smith's Exxon Subpoenas*, INSIDE CLIMATE NEWS, Sep. 12, 2016, <https://insideclimatenews.org/news/12092016/exxonmobil-climate-change-research-denial-lamar-smith-subpoenas-house-science-committee-global-warming> [<https://perma.cc/6U32-3MYQ>]

<sup>23</sup> Henry A. Waxman, *Congressional Chairmen Shouldn't be Given Free Rein Over Subpoenas*, THE WASHINGTON POST, Feb. 5, 2015, [https://www.washingtonpost.com/opinions/a-congressional-subpoena-is-too-powerful-to-be-issued-unilaterally/2015/02/05/a9d75160-aca8-11e4-9c91-e9d2f9fde644\\_story.html](https://www.washingtonpost.com/opinions/a-congressional-subpoena-is-too-powerful-to-be-issued-unilaterally/2015/02/05/a9d75160-aca8-11e4-9c91-e9d2f9fde644_story.html) [<https://perma.cc/9LE6-L6S4>]

While these examples highlight how the unilateral subpoena power has been abused, there are also situations where this power may be helpful. Perhaps not surprisingly, Democrats on the Science Committee chose to retain it in the 116th Congress convened in January 2019. The Science Committee did slightly modify the power by adding a requirement that the committee chair notify the ranking member of the intent to issue a subpoena, ideally at least 24 hours prior to the issuance. In fact, Democrats on all committees chose to keep the unilateral subpoena power, despite their initial opposition to expanding it in 2015, and they were commended for using it less frequently.<sup>24</sup>

Both parties need to remain cognizant that it is a tool of last resort and that repeated, excessive, and potentially unconstitutional use of the subpoena power greatly lessens its impact and effectiveness.<sup>25</sup> This is due in part to the very nature of Congressional subpoenas themselves—enforcement of Congressional subpoenas is lengthy and time-consuming process, each step of which requires a greater level of political commitment. Wasting a critical and powerful tool on fishing expeditions sets a poor precedent, makes enforcement more difficult, and lessens the incentives for responding to a subpoena during a valid committee investigation.

## Committee Investigations of Individual Scientists

---

The abuse of the subpoena power illustrates that committees can be willing to overstep their authority in an attempt to further their investigations. But it is not just corporations or federal agencies that can become the targets of these abuses of power. Committees have also been guilty of using congressional investigations to target individuals, such as scientists working in fields like climate science where their research findings are the subject of political disagreement (and may also be contrary to the interest of powerful donors from industries such as oil and coal).

An early example of these committee witch hunts came in 2005 with the House Energy and Commerce Committee (the Energy Committee), chaired by Joe Barton (R-TX). Rep. Barton began investigating climate scientists Raymond Bradley, Michael Mann, and Malcolm Hughes, authors of 1998 and 1999 studies that showed Earth's temperature was dramatically increasing in light of fossil fuel use. A plot of their data—known as the “hockey stick” because it shows how Earth's temperature remained nearly consistent before shooting up dramatically in the 20th century—was published in the IPCC Third Assessment Report, *Climate Change 2001*. Some other researchers<sup>26</sup> claimed the findings were flawed which prompted *The Wall Street Journal* to publish a February 2005 front page article about claims of methodological flaws and data errors in the Mann et al. study.

---

<sup>24</sup> Katherine Tully-McManus, *House Republicans Praise Democrats' Subpoena Restraint (So Far)*, ROLL CALL, Jan. 29, 2019, <https://www.rollcall.com/2019/01/29/house-republicans-praise-democrats-subpoena-restraint-so-far/> [<https://perma.cc/VVW2-L5J3>]

<sup>25</sup> As noted above, Rep. Darrell Issa (R-CA) had become notorious for his overuse of the unilateral subpoena power while chair of the House Oversight and Reform Committee. His use of the subpoena (or, as the *Washington Post* called it, his “Subpoena-palooza”) became somewhat of a running joke in Washington and his ability to gain cooperation with his requests was totally undermined. Sebastian Payne, *Darrell Issa's Record-Breaking Subpoena-Palooza*, THE WASHINGTON POST, Jul. 15, 2014, <https://www.washingtonpost.com/news/post-politics/wp/2014/07/15/darrell-issas-record-breaking-subpoena-palooza/> [<https://perma.cc/7NEK-6XEB>]

<sup>26</sup> The two most outspoken critics were self-appointed climate researchers, Stephen McIntyre (a retired mining promoter) and Ross McKittrick (an economist). Coby Beck, *The Hockey Stick is Broken – Well, No... But Who's Playing Hockey Anyway?*, GRIST, Dec. 17, 2006, <https://grist.org/article/the-hockey-stick-is-broken/> [<https://perma.cc/J7EZ-H4BR>]

That article in turn drew the attention of Rep. Barton and his fellow committee member Ed Whitfield (R-KY). They called for an investigation, which was met with a negative reaction from the press, the scientific community, and even other House Republicans. Despite the backlash, Barton moved ahead and commissioned a team led by Edward Wegman, a statistician from George Mason University, to conduct an analysis of the data used by Mann. Wegman's report was released in July 2006 and claimed that Mann's findings were flawed; Wegman's report itself was later discredited.<sup>27</sup> At the same time, the Republican-led Science Committee convened an independent panel to prepare its own report.<sup>28</sup> This peer-reviewed Science Committee report was published in July 2006 and supported the findings of Mann et. al. Following the report's publication, Science Committee Chair Sherwood Boehlert (R-NY) spoke out about the need for Congress to handle scientific disputes by turning to scientists who will use the proper scientific methods to inform them.

Barton's investigation also paved the way for a later investigation by the Virginia Attorney General and, after that failed, a Virginia Freedom of Information Act brought by the American Tradition Institute (ATI), a conservative think tank, seeking almost all of Mann's emails from his time working at the University of Virginia. While a court ultimately found that the University of Virginia could protect the records, it was a lengthy and costly legal battle. As a result of all of these investigations, which were ultimately shown to be baseless, Mann was the victim of slurs against his work and even threats of violence in addition to the legal costs incurred. The level of scrutiny Mann faced was unprecedented and impacted both his ability to work on his own research and also had a chilling effect on other scientists studying climate change.<sup>29</sup>

The Senate has also been home to overreaching committee investigations of scientists. Following the manufactured scandal termed "Climategate"—where thousands of emails and documents belonging to leading climate researchers were hacked, stolen, and misrepresented online—the Senate Environmental and Public Works minority published a report in February 2010, listing the names of scientists involved and accusing them of manipulating data to reach preconceived conclusions, threatening journal editors, and even committing criminal acts.<sup>30</sup> Despite the fact that multiple other investigations found no evidence of misconduct by these scientists,<sup>31</sup> the publication of even one damning congressional report can have a chilling effect on scientific research. Scientists' professional reputations can be damaged by these misinformation campaigns and responding to inquiries takes them away

---

<sup>27</sup> It later turned out much of Wegman's report was plagiarized and Barton's team may have fed the researchers the information they wanted in the report. John R. Mashey, *Strange Scholarship in the Wegman Report*, DEEPCIMATE, Sep. 26, 2010, <https://deepclimate.files.wordpress.com/2010/09/strange-scholarship-v1-02.pdf> [<https://perma.cc/QJ9J-RDAC>]

<sup>28</sup> This panel, the Committee on Surface Temperature Reconstructions for the Past 2,000 Years, was assembled by the National Research Council. See Natural Research Council, *Surface Temperature Reconstructions for the Last 2,000 Years*, THE NATIONAL ACADEMIES PRESS, 2006, <https://www.nap.edu/catalog/11676/surface-temperature-reconstructions-for-the-last-2000-years> [<https://perma.cc/VA9V-YYEE>]

<sup>29</sup> Tom Jackman, *U.Va. Wins Key Ruling in Prince William Global Warming-FOIA Case Involving Michael Mann*, THE WASHINGTON POST, Sep. 18, 2012, [https://www.washingtonpost.com/blogs/the-state-of-nova/post/uva-wins-key-ruling-in-prince-william-global-warming-foia-case-involving-michael-mann/2012/09/18/6c422d98-0133-11e2-b257-e1c2b3548a4a\\_blog.html](https://www.washingtonpost.com/blogs/the-state-of-nova/post/uva-wins-key-ruling-in-prince-william-global-warming-foia-case-involving-michael-mann/2012/09/18/6c422d98-0133-11e2-b257-e1c2b3548a4a_blog.html) [<https://perma.cc/P3P8-KVSO>]; see also Michael Mann's book, *The Hockey Stick and the Climate Wars* (2012).

<sup>30</sup> United States, Senate, Committee on Environment and Public Works, *'Consensus' Exposed: The CRU Controversy*, GOVERNMENT PRINTING OFFICE, 2010, <https://www.inhofe.senate.gov/imo/media/doc/Consensus%20Exposed%20The%20CRU%20Controversy.pdf> [<https://perma.cc/VXB6-DP88>]

<sup>31</sup> Dan Berman, IG: 'Climategate' Emails are Cool, POLITICO, Feb. 24, 2011, <https://www.politico.com/story/2011/02/ig-climategate-emails-are-cool-050102> [<https://perma.cc/RK39-W4VG>]



from their research. Some may even become reluctant to work in certain fields of study or on topics that could attract political attention for fear of similar repercussions. The Climategate investigations were also blamed for fueling a spike in hate mail and a large increase in the number of politically motivated Freedom of Information Act made to the scientists named in the report. Some even received threats of violence against themselves and their families.<sup>32</sup>

While Climategate and the resulting investigations may have attracted the most press attention, they are not the only personal attacks on scientists. Some scientists have even found themselves in the unfortunate position of being the target of congressional committee inquiries on more than one occasion. Linda Birnbaum, the former director of the National Institutes of Health's National Institute of Environmental Health Sciences (NIEHS), found herself targeted by the Science Committee on two separate occasions. The first investigation in March 2017 concerned grants and contracts made between NIEHS and the Ramazzini Institute, an independent international science academy that conducts cancer research,<sup>33</sup> which Smith alleged had inappropriately been awarded as much as \$92 million of NIEHS grant money and "funneled" as much as \$315 million in grant money to Ramazzini Fellows. This investigation went nowhere but gained significant media attention, especially in the conservative press.

Despite (or perhaps because) of his inability to pin any wrongdoing on Birnbaum, Smith targeted her again in January 2018, calling for a congressional investigation into whether she had violated anti-lobbying laws by co-authoring an article for the journal *PLoS Biology* about federal regulation of toxic chemicals. Birnbaum and her co-author concluded the article by writing, "Closing the gap between evidence and policy will require that engaged citizens, both scientists and nonscientists, work to ensure our government officials pass health-protective policies based on the best available scientific evidence."<sup>34</sup> Smith claimed this sentence was a deliberate attempt to influence people to act for policy change. In a letter to the Inspector General of Health and Human Services, Smith alleged that urging people to work with government officials for policy change violated anti-lobbying laws that prohibit the use of federal funds to engage in grassroots lobbying.<sup>35</sup> Despite initial publicity, it does not appear that the investigation ever actually moved forward and the legal consensus was that Birnbaum's statement was too general to rise to the level of grassroots lobbying.<sup>36</sup> Yet due to

---

<sup>32</sup> *Debunking Misinformation About Stolen Climate Emails in the "Climategate" Manufactured Controversy*, UNION OF CONCERNED SCIENTISTS, Dec. 8, 2009, <https://www.ucsusa.org/resources/debunking-misinformation-about-stolen-climate-emails> [<https://perma.cc/V5WA-NZYV>]

<sup>33</sup> There are currently around 180 members of the Collegium Ramazzini, representing thirty different countries. Kate Kelland, *Italian Institute Criticized by U.S. Congress Defends its Work*, REUTERS, Apr. 11, 2017, <https://www.investing.com/news/world-news/italian-institute-criticized-by-u.s.-congress-defends-its-work-473479> [<https://perma.cc/WHY4-VAPS>]

<sup>34</sup> Liza Gross and Linda S. Birnbaum, *Regulating Toxic Chemicals For Public And Environmental Health*, PLoS BIOLOGY, December 18, 2017, <https://journals.plos.org/plosbiology/article/file?id=10.1371/journal.pbio.1002619.s002&type=supplementary> [<https://perma.cc/TDU8-KNY7>]

<sup>35</sup> Defined as all "communications by executive officers directed to members of the public at large or particular segments of the general public, intended to persuade them in turn to communicate with their elected representatives on some issue of concern to the executive." William P. Barr, *Constraints Imposed by 18 U.S.C. § 1913 on Lobbying Efforts*, MEMORANDUM OPINION FOR THE ATTORNEY GENERAL, Sep. 28, 1989, <https://www.justice.gov/file/24326/download> [<https://perma.cc/KT7L-G2MM>]

<sup>36</sup> Jocelyn Kaiser, *Republicans on House Science Panel Suggest Top Environmental Health Scientist Broke Antilobbying Law*, SCIENCE, Jan. 23, 2018, <https://www.sciencemag.org/news/2018/01/republicans-house-science-panel-suggest-top-environmental-health-scientist-broke> [<https://perma.cc/3D4Y-NMAG>]

Birnbaum's high-profile position, the investigation received significant media coverage. She later shared that, following Rep. Smith's investigations, there was an (unsuccessful) attempt to fire her, she was denied salary increases, and her science communications work was heavily scrutinized.<sup>37</sup>

While these instances of targeting individuals have come from Republicans, the Democrats are also guilty of using committee investigations to unfairly target individuals. The best known example came in 2015 when Raul Grijalva (D-AZ), then the House Natural Resources Committee minority chair, attempted to gain access to funding sources and correspondence for climate researchers who had testified before the committee. Following a February 2015 article in *The New York Times* that exposed financial links between the fossil fuel industry and one of those scientists, Wei-Hock Soon, Grijalva sent letters to seven universities demanding information about funding sources as well as communications related to the preparation of public testimony for several outspoken "climate skeptics." Public reaction criticized the request for records related to preparation of public testimony, as these records could consist of frank debate and candid discussion which could be taken out of context were they to be made public, and would potentially have a chilling effect on other scientific debate. Unfortunately, these actions detract from legitimate questioning into the extent of the fossil fuel industry's funding of climate science research.<sup>38</sup> Grijalva later retracted the request for communication records.<sup>39</sup>

## Select Investigative Panel Investigations of Individual Scientists

---

In some instances, issues fail to garner enough support for a committee to launch an investigation. But that doesn't always mean one won't happen anyway. The rules of the House of Representatives allow for members to form select investigative panels to explore matters they deem worthy of further examination.<sup>40</sup> A good example of this came in the summer of 2015, following the release of videos that alleged to show Planned Parenthood staff speaking to biotechnology company officials about the provision of fetal tissue from legal abortions for research purposes. It is legal under federal law for Planned Parenthood to donate fetal tissue to research and be reimbursed for the costs associated with these donations but the videos, which were later proved to be doctored, gave the impression that the officials were selling the fetal tissue for a profit. Not surprisingly given the politically sensitive nature of such claims, the videos received significant attention from the press as well as from congressional committees.<sup>41</sup>

---

<sup>37</sup> Warren Cornwall, *Now Retired, Top U.S. Environmental Scientist Feels Free to Speak Her Mind*, SCIENCE, Oct. 17, 2019, <https://www.science-mag.org/news/2019/10/now-retired-top-us-environmental-scientist-feels-free-speak-her-mind> [<https://perma.cc/K798-SS5K>]

<sup>38</sup> Ben Geman and National Journal, *Democratic Congressman Draws Backlash Over Climate Funding Probe*, THE ATLANTIC, Feb. 25, 2015, <https://www.theatlantic.com/politics/archive/2015/02/democratic-congressman-draws-backlash-over-climate-funding-probe/446787/> [<https://perma.cc/H5UQ-M43N>]

<sup>39</sup> Ben Geman and National Journal, *Grijalva: Climate Letters Went Too Far in Seeking Correspondence*, THE ATLANTIC, Mar. 2, 2015, <https://www.theatlantic.com/politics/archive/2015/03/grijalva-climate-letters-went-too-far-in-seeking-correspondence/446778/> [<https://perma.cc/TFF9-EPY9>]

<sup>40</sup> United States Congress, *House Practice: A Guide to the Rules, Precedents and Procedures of the House. Chapter 11: Committees*, U.S. GOVERNMENT PUBLISHING OFFICE, <https://www.govinfo.gov/content/pkg/GPO-HPRACTICE-112/html/GPO-HPRACTICE-112-12.htm> [<https://perma.cc/8HFH-H9BJ>]

<sup>41</sup> Jackie Calmes and Nicholas St. Fleur, *House Republicans to Investigate Planned Parenthood Over Fetal Tissue*, THE NEW YORK TIMES, July 15, 2015, <https://www.nytimes.com/2015/07/16/us/house-republicans-to-investigate-planned-parenthood-over-fetal-tissue.html> [<https://perma.cc/L2D6-4LSB>]

The House Energy and Commerce, Judiciary, and Oversight Committees all considered investigating the issue but chose not to proceed. However, Marsha Blackburn, an anti-abortion Republican congresswoman from Tennessee, was so outraged by the videos that she and others formed the House Select Investigative Panel on Planned Parenthood to further investigate the issue. The panel subpoenaed scientists, graduate students, doctors, and biotech company executives in an attempt to gain information about the alleged sale of tissue. After 15 months, and an alleged cost of \$1.59 million, the panel published a 435-page report which recommended that the National Institutes of Health be required to stop funding fetal tissue research and that Planned Parenthood be stripped of all federal funding. A January 2017 article in *Science* examined the report's findings and concluded that many were false.<sup>42</sup> The report was heavily criticized by Democrats and media outlets.<sup>43</sup>

Adding to the injury, a June 2016 open letter from the panel to the U.S. Department of Health and Human Services included the names, mailing addresses, email addresses, and telephone numbers of many of the medical researchers subpoenaed or being investigated by the panel, opening them up to harassment and threats. One researcher, Dr. Eugene Gu, said that after this information became public, he was harassed by anti-abortion activists. He also faced hostility from colleagues and his employer and was forced to suspend his research as a result. He claimed he was not the only researcher forced to put their research on the backburner or even abandon it completely as a result of the panel's inquiry.<sup>44</sup>

## Unbalanced Congressional Committee Hearings

---

Even hearings that are part of the normal course of congressional business can be heavily politicized and used to promote a false scientific narrative. The goal of hearings is supposed to be to gather information and give a broad understanding of the topic at hand to enable the committee to draft pertinent legislation. In order to do so, the witnesses selected to appear are supposed to provide a variety of perspectives and typically consist of a cross section of experts from industry, academia, non-profit organizations, and the government. However, hearing panels do not always present a balanced perspective on the issue at hand—for example, during the 115th Congress, Science Committee hearings related to climate change repeatedly featured panels on which three out of four witnesses disputed the scientific consensus on anthropogenic climate change.<sup>45</sup>

---

<sup>42</sup> Meredith Wadman, *Fact-Checking Congress's Fetal Tissue Report*, SCIENCE, Jan. 5, 2017, <https://www.sciencemag.org/news/2017/01/fact-checking-congress-s-fetal-tissue-report> [<https://perma.cc/GHX2-VJGW>]

<sup>43</sup> Editorial Board, *The Planned Parenthood Witch Hunt*, THE WASHINGTON POST, Feb. 20, 2016, [https://www.washingtonpost.com/opinions/the-planned-parenthood-witch-hunt/2016/02/20/a6cb0e5c-d660-11e5-b195-2e29a4e13425\\_story.html](https://www.washingtonpost.com/opinions/the-planned-parenthood-witch-hunt/2016/02/20/a6cb0e5c-d660-11e5-b195-2e29a4e13425_story.html) [<https://perma.cc/YTV6-Z8AJ>]

<sup>44</sup> Laura Bassett, *How House Republicans Derailed a Scientists Whose Research Could Save Lives*, HUFFINGTON POST, Nov. 3, 2016, [https://www.huffpost.com/entry/eugene-gu-research-congress\\_n\\_581a3d79e4b01a82df6460de](https://www.huffpost.com/entry/eugene-gu-research-congress_n_581a3d79e4b01a82df6460de) [<https://perma.cc/4LL4-ADG5>]

<sup>45</sup> Ben Jervey, *House Science Committee Hearing Pits Three Fringe Climate Deniers Against Mainstream Climate Scientist Michael Mann*, DESMOG, Mar. 29, 2017, <https://www.desmogblog.com/2017/03/29/house-science-committee-hearing-lamar-smith-michael-mann-climate-consensus-deniers> [<https://perma.cc/9NC7-2KUK>]; Carly Cassella, *A Congressional Hearing on Climate Change Turned Into a Circus of Absurdist Climate Denial*, SCIENCE ALERT, May 18, 2018, <https://www.sciencealert.com/congressional-hearing-climate-change-technology-turned-circus-denial> [<https://perma.cc/4V62-8GYP>]

On the House Natural Resources Committee, the Democrats released a report that found that of the 310 non-federal witnesses called to testify before that committee during the 115th Congress, nearly one-third were industry representatives with witnesses from the energy development industry, the largest group represented.<sup>46</sup> Of those witnesses, more than two-thirds represented the coal, oil, and gas industries; only one witness was called from the renewable energy development industry. The committee also relied heavily on witnesses from think tanks rather than universities—62 percent to 38 percent—as sources of natural resources knowledge. This is illustrated by the fact that witnesses from the Heritage Foundation, a conservative think tank that disputes the scientific consensus on climate change, were disproportionately represented and testified more frequently than representatives from any other organization.<sup>47</sup>

The report concluded that while industry representatives do have a role in testifying at hearings regarding U.S. public lands, they cannot be the predominant voice. “Academic researchers, policy and legal experts, conservation and cultural resources experts, climate change scientists, sportspersons’ groups, and individuals whose lives are affected by public lands decisions must have an equally large seat at the witness table,” they wrote. Furthermore, representatives from industry, most notably the energy development industry, should represent clean energy and other industry innovators, as well “dirty energy” representatives—a principle that should also apply to other congressional committees.<sup>48</sup>

Unfortunately, ensuring balanced panels requires buy-in from everyone. In the current 116th Congress, Republican committee members have continued to call an inordinate number of industry executives and think tank “experts” as minority witnesses. While it is to be expected that each party will call witnesses that align with their political goals, groups with extreme views like the CO<sub>2</sub> Coalition (who that claim that higher levels of CO<sub>2</sub> are beneficial) continue to have disproportionate presence on hearing panels.<sup>49</sup>

## Conclusions & Recommendations

---

The consequences of the overuse of Congressional investigatory powers, particularly the subpoena power, have been illustrated by recent events. During the 2019-20 impeachment proceedings, the Trump administration ignored many subpoenas, at one point even going as far as to tell federal employees to ignore all congressional subpoenas.<sup>50</sup> And while other actions under the Trump administration, such as the NOAA “Sharpigate”

---

<sup>46</sup> Raúl M. Grijalva, *Unmasked: How Republicans Trick Taxpayers and Treat Industry*, NATURAL RESOURCES COMMITTEE DEMOCRATIC STAFF, Oct. 31, 2018, <https://naturalresources.house.gov/imo/media/doc/Unmasked.pdf> [<https://perma.cc/4UKD-5JBL>]

<sup>47</sup> The Heritage Foundation has been funded by foundations linked established by Koch Industries, a company with strong interests in oil and other fossil fuels. See Dave Levinthal, *The Koch Brothers’ Foundation Network Explained*, THE CENTER FOR PUBLIC INTEGRITY, Oct. 30, 2015, <https://publicintegrity.org/federal-politics/the-koch-brothers-foundation-network-explained/> [<https://perma.cc/MUU2-D7FZ>]

<sup>48</sup> See footnote 45

<sup>49</sup> The CO<sub>2</sub> Coalition has also been invited to hold briefings on the Hill in an attempt to gain support among more junior members of the House who have yet to take a strong position on climate related issues. Scott Waldman, *Defenders of CO<sub>2</sub> Expand Presence in Congress*, E&E NEWS, May 2, 2019, <https://www.eenews.net/stories/1060254739> [<https://perma.cc/8577-REBX>]

<sup>50</sup> Charlie Savage, *Trump Vows Stonewall of ‘All’ House Subpoenas, Setting up Fight Over Powers*, THE NEW YORK TIMES, Apr. 24, 2019, <https://www.nytimes.com/2019/04/24/us/politics/donald-trump-subpoenas.html> [<https://perma.cc/85Y2-C7E8>]

incident, have provided perfect examples of how congressional committees should oversee scientific activity and investigate instances where scientific integrity has been threatened, such oversight efforts have instead been met with blatant refusal to cooperate.

In that investigation, the Department of Commerce and the Commerce Secretary Wilbur Ross refused to respond to multiple requests from the Science Committee for documents relating to the alleged threat made to NOAA and the National Weather Service to disavow their statements regarding the impact of Hurricane Dorian.<sup>51</sup> This refusal to cooperate has so far hampered the committee's ability to find out what happened and ensure that any violations of scientific integrity that took place are addressed. And while it's certainly true that there are many reasons behind this increased refusal to cooperate, the precedents caused by witch hunts do erode Congress's valid investigatory role.<sup>52</sup>

The COVID-19 pandemic also illustrates how some congressional members attempt to question science and undermine vital research. On April 4, 2020, four members of the House Oversight Committee wrote to the committee chair seeking a hearing to investigate the models used to predict the pandemic.<sup>53</sup> The representatives expressed concerns with the models used and the fact that these models underwent multiple varying revisions, even though public health experts have noted that model results are expected to change over time as the underlying assumptions evolve and more data is available to generate the models. It seems likely that there will be more attempts to investigate the science behind the nation's response to the pandemic, and it is critical to ensure that research into all aspects of the pandemic is not hampered or politicized.

Congress must have the power to oversee scientific activities while also protecting these oversight activities from abuse. As an initial matter, the unilateral subpoena power does not seem to be an effective tool, either to oversee science or for other congressional activities. The subpoena has clearly lost a great deal of its effectiveness as a result of abuses and it now seems to be almost impossible to get cooperation even for a subpoena issued for a narrow, specific purpose. The current administration's attitude towards science (as well as other issues) does not help the situation, so it is hard to quantify just how much the subpoena's power has been eroded, but it is a concerning situation. Recent patterns seem to indicate that a return to a stricter set of requirements governing congressional subpoenas may be warranted in order to both help protect against abuses as well as ensure that properly issued subpoenas are complied with.

In terms of preventing baseless investigations, there should also be some guidelines in place to prevent investigations that fall more along the lines of harassment or personal attacks. For one, many of the sorts of investigations discussed above, if warranted, would likely be better conducted by an Inspector General, federal agency, or other entity operating with fewer opportunities for political grandstanding. A second preventative

---

<sup>51</sup> Christopher Flavelle, *Dorian Claim is Being Blocked, Investigator Says*, THE NEW YORK TIMES, July 23, 2020, <https://www.nytimes.com/2020/07/01/climate/trump-dorian-noaa-investigation.html> [<https://perma.cc/MRG3-88RZ>]

<sup>52</sup> See footnote 23

<sup>53</sup> The authors of this letter were Chip Roy (R-TX), Thomas Massie (R-KY), Paul Gosar (R-AZ), and Glenn Grothman (R-WI). For more about this letter, see <https://climate.law.columbia.edu/content/accuracy-scientific-models-questioned-house-members>

measure would be to have investigations into scientific research to avoid seeking research communications and internal drafts unless absolutely necessary. Requesting these types of preliminary materials tends to chill free scientific inquiry and debate and dissuade others from conducting research into politically controversial topics, without providing insight into the sorts of issues that Congressional investigations are intended to uncover.

Tighter oversight of congressional panels would also be beneficial. Better conflict of interest disclosures could help prevent panels being stacked with multiple experts representing one particular company or industry standpoint. It may also be beneficial to limit the number of experts called from politically-funded think tanks (both those from the left and the right), especially when it comes to scientific issues, as such “experts” often don’t have the scientific background to truly support their arguments.

Finally, universities and other research institutions should take action to provide greater support and protection for their employees who are subject to congressional inquiries. No researcher should be left out to dry as the result of politically motivated questioning, and institutions need to ensure their researchers are able to freely research topics that may end being controversial on either side of the aisle. Especially as the partisan divide threatens to deepen even further, protecting scientists from politically motivated attacks is more important than ever.

**If you're a scientist and would like a free, confidential consultation with one of our attorneys, please reach out.**

---

**Contact CSLDF at  
(646) 801-0853**

**Or send an email to  
[lawyer@csldf.org](mailto:lawyer@csldf.org)**

---

CSLDF provides free counsel to scientists with legal questions pertaining to their work. Contact us at **(646) 801-0853** or email **lawyer@csldf.org** to arrange a free and confidential consultation with an attorney.



**The Climate Science Legal Defense Fund (CSLDF)** works to protect the scientific endeavor by helping defend climate scientists against politically and ideologically motivated attacks. CSLDF is a non-profit organization under section 501(c)(3) of the Internal Revenue Code.

The Climate Science Legal Defense Fund recognizes with gratitude the David and Lucile Packard Foundation for their leadership support of this project. We also thank the Common Sense Fund, the Energy Foundation, the Grantham Foundation for the Protection of the Environment, and our individual donors for making this work possible. We would also like to thank Meredith Boginski for designing the report.

Any conclusions or opinions expressed in this report do not necessarily reflect those of the organizations that funded the work or the individuals who reviewed it. CSLDF bears sole responsibility for the report contents.

#### **Mailing Address**

475 Riverside Drive  
Suite 244  
New York, NY 10115

#### **Website**

[csldf.org](http://csldf.org)

#### **Twitter**

[@ClimSciDefense](https://twitter.com/ClimSciDefense)

© December 2020

Climate Science Legal Defense Fund

Find this guide online at:

[csldf.org/resources/congressional-abuse](http://csldf.org/resources/congressional-abuse)