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RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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June 26, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

As the Administrator of the Environmental Protection Agency (EPA), a federal agency, and as an attorney and the former Oklahoma Attorney General, you should be aware that both private citizens and federal employees have the right to share information with Congress unimpeded. These rights are solidified in the U.S. Constitution and federal law. Several federal laws are particularly germane here, including 5 U.S. Code § 2302 (Prohibited personnel practices), 5 U.S. Code § 7211 (Employees' right to petition Congress), 18 U.S. Code § 1512 (Tampering with a witness, victim, or an informant), and 18 U.S. Code § 1505 (Obstruction of proceedings before departments, agencies, and committees). The right to communicate with Congress is guaranteed, and any efforts to interfere with these rights is a violation of federal law.

We are concerned that your Chief of Staff, Ryan T. Jackson, may have sought to interfere with the testimony of a Democratic witness at a hearing before the House Committee on Science, Space & Technology last month, on Tuesday, May 23, 2017.[1] Dr. Deborah L. Swackhamer agreed to testify at this hearing as a Democratic witness in her private capacity as an environmental scientist. Dr. Swackhamer is a Professor Emerita of Science, Technology, and Public Policy in the School of Public Affairs and a Professor Emerita of Environmental Health Sciences in the School of Public Health at the University of Minnesota. She is also Co-Director of the University's Water Resources Center, the former Chair of the EPA's Science Advisory Board (SAB), and the current Chair of the EPA's Board of Scientific Counselors (BOSC).[2]

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[1] Subcommittee on Environment hearing, "Expanding the Role of States in EPA Rulemaking," House Committee on Science, Space & Technology, Tuesday, May 23, 2017, available here: http://democrats.science.house.gov/hearing/expanding-role-states-epa-rulemaking

[2] Biography, Dr. Deborah Swackhamer, Humphrey School of Public Affairs, University of Minnesota, available here: https://www.hhh.umn.edu/directory/deborah-swackhamer

Although she is not a federal employee, as the Chair of the BOSC she is a Special Government Employee (SGE), as are all BOSC members.[3] One week prior to her testimony to the Science Committee, Dr. Swackhamer informed the EPA's Office of Research and Development (ORD) that she had been asked to testify before Congress in her personal capacity as an environmental scientist and she asked ORD about any restrictions that may apply to her testimony. She was informed by ORD that she could not speak for EPA or share nonpublic information, and she fully complied with those parameters surrounding her testimony.

Dr. Swackhamer made it exceptionally clear in her written and oral testimony that she was not representing EPA and was speaking only as a scientific expert. "I speak to you today as an environmental sciences and policy expert, and not on behalf of the U.S. EPA or the State of Minnesota," Dr. Swackhamer wrote in her written statement. "My perspectives and statements are mine alone," she added.[4] Ranking Member Eddie Bernice Johnson also made clear at the hearing that Dr. Swackhamer was testifying "in her personal capacity as a scientific expert and not representing any of the EPA's science advisory boards."[5]

Dr. Swackhamer received guidance from ORD about the constraints on her testimony regarding EPA and BOSC. One week prior to the hearing, Dr. Swackhamer repeatedly told EPA that she was fully aware of these restraints and would fully abide by them. However, on Monday, May 22, 2017, the day before the hearing, your Chief of Staff, Ryan Jackson began inquiring about her testimony with both ORD staff and in direct e-mails to Dr. Swackhamer. Mr. Jackson's inquiries about Dr. Swackhamer's testimony to the Science Committee before she testified may simply display a lack of effective management coordination at the EPA and not an intentional effort to attempt to silence Dr. Swackhamer or encroach on her legal rights to provide expert testimony to the Committee. Because he is an attorney and the former Chief of Staff for Senator James Inhofe (R-OK), however, we assume that Mr. Jackson is well aware of the statutes that bar him from interfering with an individual's communications with Congress.

We are deeply troubled about the possible attempts to interfere with Dr. Swackhamer's testimony to Congress. Dr. Swackhamer's key message in her testimony was that politics should not be used to undermine science, and she delivered this message while EPA faced accusations of doing exactly that—particularly after your decision not to renew the terms of nine qualified scientists to the BOSC.[6]

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[3] Charter, EPA Board of Scientific Counselors (BOSC), April 22, 2016 (date of EPA approval), available here: https://facadatabase.gov/download.aspx?fn=Charters/5132_2016.05.18_EPA%20BOSC%202016%20Charter%205-9-16_(2016-05-18-01-38-35).pdf

[4] Written Testimony submitted by Deborah L. Swackhamer, Ph.D. Professor Emerita, University of Minnesota, Subcommittee on Environment hearing titled: "Expanding the Role of States in EPA Rulemaking," House Committee on Science, Space & Technology, May 23, 2017, available here: http://democrats.science.house.gov/sites/democrats.science.house.gov/files/documents/Swackhamer.pdf

[5] OPENING STATEMENT, Ranking Member Eddie Bernice Johnson (D-TX), Committee on Science, Space, and Technology, Subcommittee on Environment hearing titled, "Expanding the Role of States in EPA Rulemaking," May 23, 2017, available here: http://democrats.science.house.gov/sites/democrats.science.house.gov/files/documents/Small%20Font%20Ms.%20Johnson%20Statement%20-%20Enviro%20Sub%20Hearing%20-%20EPA%20BOSC%20-%205.23.2017.pdf

[6] See: Asher Price, "Rep. Lamar Smith laid groundwork for Trump EPA science advisers ouster," *American Statesman*, May 8, 2017, available here: http://www.statesman.com/news/rep-lamar-smith-laid-groundwork-for-trump-epa-science-advisers-ouster/epN45yLOW4yWYyuuQsEAfJ/; Coral Davenport, "E.P.A. Dismisses Members

We strongly support the ability of both private citizens and federal workers to have the ability to communicate with Congress without being intimidated or fearing retaliation. The Science Committee has investigated these issues in the past.[7] However, even after being informed that Dr. Swackhamer was testifying in her "personal capacity" as a scientist by both Dr. Swackhamer and Dr. Robert Kavlock, the Acting Assistant Administrator for the Office of Research and Development (ORD) and Deputy Assistant Administrator for Science at EPA, Mr. Jackson continued to e-mail Dr. Swackhamer about her testimony. At one point he attached the EPA's internal "talking points" about Administrator Pruitt's decision not to reappoint nine of the members of the Board of Scientific Counselors and at another point he included a copy of Dr. Swackhamer's written testimony to the Science Committee that she had provided to the Committee and that was embargoed for release until the hearing. It is unclear how EPA officials obtained her embargoed written testimony prior to the hearing, but it is disturbing.

Mr. Jackson wrote to Dr. Swackhamer saying he was "glad you have the opportunity to testify" and then proceeded to attempt to shape her testimony to the Science Committee. He made it clear that he disagreed with portions of her testimony to Congress. "In your testimony on page four, you reference that the Administrator has not renewed half of the [BOSC] committee for a second term when that ***decision has not yet been made,***" wrote Jackson. He continued, ***"I believe it is important to clarify this point in your testimony."*** Mr. Jackson's assertion that a "decision has not yet been made" regarding the re-appointment of the nine BOSC members does not mesh with the facts. On May 5, 2017, Dr. Kavlock, Acting Assistant Administrator of ORD, wrote identical e-mails to the nine BOSC members whose terms had just expired writing, "we had submitted a request for your appointment to be renewed for another three-year term. ***We have been informed that your appointments are not being renewed*** and that the Agency will carry out a competitive nomination process to solicit new members rather than reappointing individuals who have already served a three-year term." [The emphasis in all of these cases is ours.]

It is clear that, two weeks prior to Mr. Jackson's e-mail to Dr. Swackhamer, ORD officials at EPA understood from your office that the nine BOSC members whose terms expired on April 27, 2017 would not have their terms renewed. However, it seems that Mr. Jackson attempted to persuade Dr. Swackhamer to provide inaccurate testimony to the Science Committee. Mr.

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of Major Scientific Review Board," *New York Times*, May 7, 2017, available here: https://www.nytimes.com/2017/05/07/us/politics/epa-dismisses-members-of-major-scientific-review-board.html?_r=0; Scott Waldmann, "EPA fires members of science advisory board," *E&E News*, May 6, 2017, available here: http://www.sciencemag.org/news/2017/05/epa-fires-members-science-advisory-board; Aggie Mika, "EPA and Interior Department Overhaul Scientific Advisory Boards," *The Scientist*, May 9, 2017, available here: http://www.the-scientist.com/?articles.view/articleNo/49378/title/EPA-and-Interior-Department-Overhaul-Scientific-Advisory-Boards/

[7] See Joint Subcommittees on Energy and Oversight hearing, "Examining Misconduct and Intimidation of Scientists by Senior DOE Officials." House Committee on Science, Space & Technology, September 21, 2016, available here: http://democrats.science.house.gov/hearing/examining-misconduct-and-intimidation-scientists-senior-doe-officials; and here: https://science.house.gov/legislation/hearings/joint-oversight-subcommittee-and-energy-subcommittee-hearing-examining. Also see bipartisan letter from the House Science Committee to former Department of Commerce Inspector General Todd Zinser, July 16, 2014, regarding his "gag orders" on speaking to Congress imposed on his senior law enforcement staff, available here: http://democrats.science.house.gov/sites/democrats.science.house.gov/files/07.16.2014%20-%20Letter%20to%20Zinser%20from%20Overisght%20Subcmte%20Dems%20%26%20Repubs%20-%20re%20Demanding%20Documents.pdf

Jackson appears to have been attempting to coach Dr. Swackhamer to stick to EPA's internal talking points regarding BOSC, even though those talking points appear to have been based on an inaccurate description of the facts surrounding this issue. It is and was at the time of Ryan Jackson's e-mail very clear that a decision had already been made not to renew the membership of these nine BOSC members. Mr. Jackson's suggestion that a "decision has not yet been made" appears to be a public relations strategy rather than a statement of fact based on what the highest ranking official in the EPA's Office of Research and Development (ORD) had been told.

We contend that Mr. Jackson, and perhaps other senior EPA employees, attempted to interfere with the testimony of an independent scientist to the Science Committee and may have sought to mislead Congress. The U.S. Congress and the U.S. public are entitled to the unfiltered opinions of scientists that have not had their communications or testimony subdued or silenced by bureaucrats or politicians. Mr. Jackson's actions in the above instance are deeply troubling and we trust that they will not occur again.

This is a serious matter and we have therefore asked the EPA's Inspector General (IG) to thoroughly investigate Mr. Jackson's actions, determine if Mr. Jackson or other EPA officials engaged in prohibited or illegal conduct, and make appropriate recommendations. We hope that you take these issues seriously, and we expect that you will ensure that none of your senior staff attempts to interfere with the personal communications or testimony of environmental experts in their private capacity as scientists to Congress in the future. We also hope your staff is fully aware of federal whistleblower protection laws regarding interference with federal workers' ability to freely communicate with Congress.

Your attention to this matter is greatly appreciated.

Sincerely,

Eddie Bernice Johnson
Ranking Member
Committee on Science, Space & Technology

Suzanne Bonamici
Ranking Member
Subcommittee on Environment

Donald S. Beyer Jr.
Ranking Member
Subcommittee on Oversight