

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 1, 2022

The Honorable Raúl Grijalva
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chair Grijalva,

We received your August 25, 2022, written consultation submission regarding your intention to serve FTI Consulting a subpoena on September 1, 2022.¹ Your submitted justification for the proposed subpoena raises several concerns. Your justification disregards the jurisdiction of the Committee on Natural Resources (Committee), represents potential abuses of investigative authority, and contradicts your statement on subpoena use when you expanded this authority in the 116th Congress. Therefore, we urge you to quash the proposed subpoena, and consider the precedent your actions will establish.

The justification you submitted rests upon meager arguments and legally questionable bases, seemingly due to the majority's inability to negotiate document production with a private entity who faces no allegations of wrongdoing. The majority's requests for documents spanning almost a decade's worth of information and subsequent failure to negotiate any document production more than two months into its investigation is indicative of an overly broad request and flawed investigative practices. An ineffective investigatory strategy is hardly grounds to warrant use of Congressional subpoena authority. We hope that this consultative process will provide you an opportunity to recognize that pursuing a subpoena unlikely to withstand judicial scrutiny is wasteful of taxpayer and Congressional resources.

The Rules of the House of Representatives (House Rules) delineate unique jurisdictional responsibilities to each standing committee.² Additionally, the House Rules authorize committees to conduct investigations on issues within their jurisdiction.³ To appropriately exercise the Committee's authority, the subpoena should aid an investigation within the Committee's prescribed jurisdiction found in clause 1(m) of House Rule X.⁴

The proposed subpoena, however, seeks information, among other things, related to public relations and marketing efforts for the target entity's clients in the "natural gas, coal,

¹ Memorandum from Rep. Raúl Grijalva, Chair, H. Comm. on Nat. Res., to Rep. Bruce Westerman, Ranking Member, H. Comm. on Nat. Res. (Aug. 25, 2022) (on file with Comm.).

² See generally Rules of the House of Rep., 117th Cong. (2021), Rule X.

³ See *id.* at clause 2 of Rule X.

⁴ See *id.* at clause 1(m) of Rule X.

and/or oil sector(s).”⁵ Authority over advertising or marketing is not within the Committee’s jurisdiction. The jurisdiction of major portions of “the natural gas, coal, and/or oil sector(s),” including all fossil fuels, is assigned to another committee via clause 1(f) of Rule X. Notably, the Committee’s jurisdiction of petroleum conservation is limited to activities on public lands.⁶ Your submitted justification and production schedule, however, are not appropriately tailored to the Committee’s expertise and jurisdiction. As a result, if the subpoena is issued, then the Committee will exceed its investigative authority granted by the House Rules.

Whether issuing the proposed subpoena is an appropriate exercise of the Committee’s investigative authority requires understanding of House Practice⁷ and case law.⁸ In particular, the U.S. Supreme Court has held that the “power of investigation is not unlimited. It may be exercised only in aid of the ‘legislative function.’”⁹ Additionally, “Congress has no general power to inquire into private affairs and that the subject of inquiry must be one ‘on which legislation could be had.’”¹⁰ House Practice also dictates that investigative power “cannot be used to expose merely for the sake of exposure”¹¹ Given the broad scope of your production requests, the legislative goal of this pursuit is unclear. It is also dubious that any legislative product stemming from the requested items would be within the Committee’s jurisdiction. Absent a clear legislative purpose, the seeking of, therefore, legislatively irrelevant documents through the proposed subpoena is improper.

In addition to lacking a clear legislative goal, issuance of the proposed subpoena would disregard your own commitment. When you sought to amend Committee rules in the 116th Congress to expand your subpoena authority, you stated that you “do not intend to surprise or harass anybody.”¹² The unreasonably broad request reflected in your production schedule defies your commitment to not “harass anybody.” While your official statements on subpoena authority seemed to reference would-be government recipients, you also committed that “[n]o subpoena will be issued for any information we have not given the recipient ample time to provide, including extensive efforts to find compromise or address any privilege”¹³ To issue this proposed subpoena would seemingly violate the spirit of your commitments.

Issuing the proposed subpoena without proper foundations degrades the Committee’s oversight and investigative authority. If contested, the proposed subpoena may not survive judicial review, given the jurisdictional overreach, lack of legislative relevance, and flippant use

⁵ *Supra* note 1, Production Schedule.

⁶ *Supra* note 2, clause 1(m)(17) of Rule X.

⁷ Charles W. Johnson, John V. Sullivan, & Thomas J. Wickham, Jr., *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, 115th Cong. (2017), Ch. 11, §10.

⁸ See generally *Kilbourn v. Thompson*, 103 U.S. 168 (1881); *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Trump v. Mazars USA, LLP*, 591 U.S. ____ (2020), Slip Opinion.

⁹ *Supra* note 7 (citing *Kilbourn*, 103 U.S. 168).

¹⁰ *Id.* (citing *McGrain*, 273 U.S. 135).

¹¹ *Id.*

¹² *Full Committee Markup, Before the H. Comm. on Nat. Res.*, 116th Cong. (Feb. 12, 2020) (Statement of Rep. Raúl Grijalva).

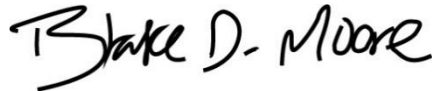
¹³ *Id.*

of investigative authority. Therefore, upon review of your submitted justification and production schedule as part of the consultative process, we urge you to not issue the proposed subpoena.

Sincerely,



Bruce Westerman
Ranking Member
Committee on Natural Resources



Blake Moore
Ranking Member
Subcommittee on Oversight &
Investigations



Russ Fulcher
Ranking Member
Subcommittee on National Parks, Forests,
and Public Lands



Pete Stauber
Ranking Member
Subcommittee on Energy and Mineral
Resources



Jay Obernolte
Ranking Member
Subcommittee for Indigenous Peoples of the
United States



Louie Gohmert
Member of Congress



Doug Lamborn
Member of Congress



Robert J. Wittman
Member of Congress



Tom McClintock
Member of Congress



Paul A. Gosar, D.D.S.
Member of Congress



Garret Graves
Member of Congress



Jody Hice
Member of Congress



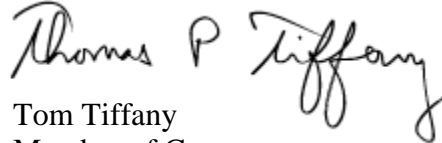
Amata Coleman Radewagon
Member of Congress



Daniel Webster
Member of Congress



Jenniffer González-Colón
Member of Congress



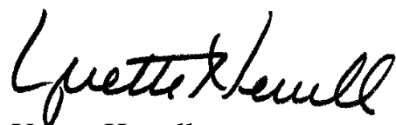
Tom Tiffany
Member of Congress



Jerry Carl
Member of Congress



Matt Rosendale
Member of Congress



Yvette Herrell
Member of Congress



Lauren Boebert
Member of Congress

Chair Grijalva
September 1, 2022
Page 5

A handwritten signature in blue ink that reads "Connie Conway". The signature is written in a cursive style with a long, sweeping tail on the "y" of "Conway".

Connie Conway
Member of Congress