

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<http://oversight.house.gov>

April 29, 2019

The Honorable Ken Paxton
Attorney General
State of Texas
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Dear Attorney General Paxton:

This letter follows up on the Committee's March 28, 2019, letter seeking documents regarding the Texas Secretary of State's recent efforts to purge voter rolls in Texas.

The requested documents were due on April 11, 2019, but your disappointing response letter on that date provided none. Instead, your letter asserted that the Committee lacks jurisdiction over this issue and that the requested documents are exempt from disclosure under a state public records law. On April 24, the Committee received an incomplete production from your office, along with additional letters asserting that state public records law bars production of further responsive documents. These assertions are plainly erroneous, and the Committee expects full compliance with the March 28 request.

The right to vote is guaranteed by the U.S. Constitution, and Congress has clear authority under the Constitution to investigate any conduct at any level of government that may infringe on this fundamental right.¹ The House of Representative has granted broad investigative authority to the Oversight Committee, and the House Rules authorize the Committee to investigate "any matter" at "any time."²

¹ The Fifteenth Amendment enshrines the right to vote and grants Congress the authority to legislate to protect this right. U.S. Const., amend. XV ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation."). Moreover, Article I of the Constitution grants Congress the right to regulate the time, place, and manner of federal elections. U.S. Const., art. I, sec. 4 ("The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations."). The Supreme Court has held that Congress' oversight authority is as broad as its legislative reach. *See, e.g., Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975) (holding that Congress' power to investigate "is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution").

² House Rule X cl. 4(c)(2). Your office's letter erroneously cites to the Committee's legislative jurisdiction, found in House Rule X cl. 1(n), which is distinct from the Committee's broad oversight jurisdiction.

The Committee has a bipartisan history of investigating issues affecting Americans' right to vote, including the administration of elections by state governments.³ The Committee also has a long history—under both Republican and Democratic Chairmen—of obtaining documents from state governments as part of its investigations.⁴ Because the Committee's authority derives from the Constitution, it is not limited by state public records laws, including Texas's Public Information Act.

Similarly, since Congress is an independent branch of government, its authority is not limited by separate, ongoing litigation. Both Republican and Democratic Chairmen have frequently conducted investigations and obtained documents on topics that were also the subject of ongoing litigation.⁵ As the Supreme Court explained in *Hutcheson v. United States*:

But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, supra, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.⁶

Related to this, although the Committee is sensitive to ongoing criminal investigations, the Committee's request seeks documents "referring or relating" to an election advisory issued by the Texas Secretary of State's Office. You have not demonstrated that the production of any specific documents responsive to this request would impact any ongoing criminal matter.

³ See, e.g., Committee on Oversight and Government Reform, *Hearing on Cyber-securing the Vote: Ensuring the Integrity of the U.S. Election Systems*, 115th Cong. (July 24, 2018) (witnesses included state and local election officials and others); Committee on Oversight and Government Reform, Subcommittee on Information Technology and Subcommittee on Intergovernmental Affairs, *Joint Hearing on Cybersecurity of Voting Machines*, 115th Cong. (Nov. 29, 2017) (witnesses included state election officials and others); Committee on Oversight and Government Reform, Subcommittee on Information Technology, *Hearing on Election Cybersecurity* (Sept. 28, 2016) (witnesses included a state election official and others).

⁴ See, e.g., Letter from Chairman Jason Chaffetz and Ranking Member Elijah E. Cummings, Committee on Oversight and Government Reform, to Governor Rick Snyder, State of Michigan (requesting documents on the Flint water crisis) (Feb. 26, 2016) (online at republicans-oversight.house.gov/wp-content/uploads/2016/02/2016-02-26-JC-EEC-to-Snyder-Michigan-Gov.-doc-req.-due-3-11.pdf). See also Letters from Chairman Darrell Issa, Committee on Oversight and Government Reform, Chairman Jim Jordan, Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, and Chairman James Lankford, Subcommittee on Energy Policy, Health Care and Entitlements, to ten governors and the Mayor of the District of Columbia (requesting documents on Affordable Care Act exchanges) (Mar. 25, 2014) (online at raskin.house.gov/sites/raskin.house.gov/files/2014-03-25.Issa%20Jordan%20Lankford%20to%2011%20Governors%20re%20state%20exchanges%20%28003%29.pdf).

⁵ See, e.g., Letter from Chairman Jason Chaffetz, Committee on Oversight and Government Reform, to Governor John Kitzhaber, State of Oregon (requesting documents on Oregon's healthcare exchange with continued investigation during concurrent litigation) (Feb. 13, 2015) (online at republicans-oversight.house.gov/wp-content/uploads/2015/05/2015-02-13-JEC-JJ-MM-WH-to-Kitzhaber-GovOR-PPACA-due-Feb.-27.pdf); Letter from Chairman Jason Chaffetz, Committee on Oversight and Government Reform, to John Kerry, Secretary of State (requesting documents on the Keystone XL Pipeline with continued investigation during concurrent litigation) (Feb. 24, 2016) (online at republicans-oversight.house.gov/wp-content/uploads/2016/06/2016-02-24-JEC-to-Kerry-DOS-Keystone-XL-due-3-9.pdf).

⁶ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

The Honorable Ken Paxton

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Please confirm by May 3, 2019, that you will comply with the Committee's request or whether the Committee should consider alternative means to obtain compliance. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



Elijah E. Cummings

Chairman



Jamie Raskin

Chairman

Subcommittee on Civil Rights and Civil
Liberties

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties