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Our Friends at CEI Face a Subpoena Over Climate Dissent

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The campaign to attach legal consequences to supposed “climate denial” has now crossed a fateful line. On April 7:

The Competitive Enterprise Institute (CEI) today denounced a subpoena from Attorney General Claude E. Walker of the U.S. Virgin Islands that attempts to unearth a decade of the organization’s materials and work on climate change policy. This is the latest effort in an intimidation campaign to criminalize speech and research on the climate debate, led by New York Attorney General Eric Schneiderman and former Vice President Al Gore....

The subpoena requests a decade’s worth of communications, emails, statements, drafts, and other documents regarding CEI’s work on climate change and energy policy, including private donor information. It demands that CEI produce these materials from 20 years ago, from 1997-2007, by April 30, 2016.

CEI General Counsel Sam Kazman said the group “will vigorously fight to quash this subpoena. It is an affront to our First Amendment rights of free speech and association.” More coverage of the subpoena at the Washington Times and Daily Caller.

A few observations:

- If the forces behind this show-us-your-papers subpoena succeed in punishing (or simply inflicting prolonged legal harassment on) a group conducting supposedly wrongful *advocacy*, there’s every reason to think they will come after other advocacy groups later. That includes yours.
- This article in the Observer details the current push to expand the probe of climate advocacy, which first enlisted New York AG Eric Schneiderman and then California’s Kamala Harris — into a broader coalition of AGs, with Massachusetts and the Virgin Islands just having signed on. More than a dozen others, such as Maryland Attorney General Brian Frosh, seem to be signaling support but have not formally jumped in. More: Peggy Little, Federalist Society.

- CEI people, many of whom we count as longtime friends and allies in the pro-liberty policy community, have been active critics of the Schneiderman effort, with Hans Bader, a senior attorney there, highly critical just a week ago.
- In these working groups of attorneys general, legal efforts are commonly parceled out among the states in a deliberate and strategic way, with particular tasks being assigned to AGs who have comparative advantage in some respect (such as an unusually favorable state law to work with, or superior staff expertise or media access). Why would one of the most politically sensitive tasks of all — opening up a legal attack against CEI, a long-established nonprofit well known in Washington and in libertarian and conservative ideological circles — be assigned to the AG from a tiny and remote jurisdiction? Is it that a subpoena coming from the Virgin Islands is logistically inconvenient to fight in some way, or that local counsel capable of standing up to this AG are scarce on the ground there, or that a politician in the Caribbean is less exposed to political backlash from CEI's friends and fans than one in a major media center? Or what?
- I recommend checking out the new Free Speech and Science Project, which intends to fight back against criminalization of advocacy by, among other things, organizing legal defense and seeking to hold officials accountable for misusing the law to attack advocacy.
- This is happening at a time of multiple, vigorous, sustained legal attacks on what had been accepted freedoms of advocacy and association. As I noted yesterday in a piece in this space, Sen. Elizabeth Warren has just demanded that the Securities and Exchange Commission investigate several large corporations that have criticized her pet plan to impose fiduciary legal duties on retirement advisors, supposedly on the ground that it is a securities law violation for them to be conveying to investors a less alarmed view of the regulations' effect than they do in making their case to the Labor Department. This is not particularly compelling as securities law, but it's great as a way to chill speech by publicly held businesses.

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