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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM

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January 15, 2004

The Honorable Tommy G. Thompson
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Secretary:

Over the course of the last year, Rep. Henry A. Waxman and other House members have written a series of letters to you expressing a growing concern about the appearance that right-wing politics and ideology are being allowed to subvert science in your Department. The letters sought information about whether political considerations interfered with the dissemination of scientific facts on HHS websites, the composition of scientific advisory committees, the conduct of scientific research, and the auditing and other intrusive reviews of federal grantees. With limited exceptions, these requests for information have not been answered.

The information that HHS has failed to provide is important to our efforts, as members of the Committee on Government Reform, to fulfill our oversight and legislative responsibilities. Consequently, we are invoking our rights under the "Seven-Member Rule" (5 U.S.C. § 2954). This law requires you to "submit any information . . . relating to any matter within the jurisdiction of the committee" when requested by at least seven members of the Government Reform Committee.

**Background**

On October 21, 2002, twelve House members wrote to you about several examples of HHS actions that appeared to subvert scientific decisionmaking and suppress scientific information to advance an ideological agenda.[1] The letter detailed recent instances in which scientific information was removed from HHS websites concerning (1) the absence of a link

[1] Letter from Rep. Henry A. Waxman et al. to Tommy G. Thompson, Secretary of Health and Human Services (Oct. 21, 2002). Six of the undersigned, Reps. Waxman, Towns, Sanders, Maloney, Kucinich, and Clay, signed this letter.

between abortion and breast cancer, (2) the effectiveness and use of condoms in HIV prevention, and (3) HIV prevention programs that had been proven to work through scientific studies. The letter also expressed concern that expert appointments to scientific advisory boards were going to individuals with specific ideological viewpoints or ties to industry rather than scientific credentials. Finally, the letter stated that HHS appeared to be using financial audits and evaluations as a political tool to harass Department grantees that provide comprehensive education on prevention of sexually transmitted diseases and pregnancy, rather than the "abstinence only" education favored by social conservatives.

The October 21 letter asked six questions concerning the removal of scientific information from HHS websites, replacement of members on (and the termination of) advisory committees, the nomination process for the FDA's Reproductive Health Drugs Advisory Committee, and HHS and CDC audit policies and actions. Your response failed to address several of these questions.

On December 18, 2002, eleven House members wrote you that your response to the October 21, 2002, letter was incomplete and unsatisfactory and again asked for responses to the questions that you did not answer.[2] You have not responded to this letter.

On August 14, 2003, Rep. Waxman wrote you about a pattern of HHS audits and program reviews of organizations that provide comprehensive sex education programs that have been proven in scientific studies to be effective.[3] The letter indicated that HHS did not appear to be conducting similar audits and program reviews of grantees providing unproven "abstinence only" interventions. To determine whether HHS was using its authority to target disfavored sex education programs, Rep. Waxman asked for an accounting of your auditing practices with respect to these groups. You have not responded to this letter.

On September 11, 2003, Rep. Waxman, Minority Leader Nancy Pelosi, and Minority Whip Steny Hoyer wrote to you about new CDC policies that appear to prevent the dissemination of HIV/AIDS prevention materials that may offend social conservatives.[4] These

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[2] Letter from Rep. Henry A. Waxman et al. to Tommy G. Thompson, Secretary of Health and Human Services (Dec. 18, 2002). Four of the undersigned, Reps. Waxman, Towns, Maloney, and Cummings, signed this letter.

[3] Letter from Rep. Henry A. Waxman to Tommy G. Thompson, Secretary of Health and Human Services (Aug. 14, 2003).

[4] Letter from Rep. Henry A. Waxman, Minority Leader Nancy Pelosi, and Minority Whip Steny H. Hoyer to Tommy G. Thompson, Secretary of Health and Human Services (Sept. 11, 2003).

policies both change the composition of the committees that review these materials and require an additional and duplicative layer of review. The letter asked what evidence led CDC to make these changes. On December 2, you provided a one-page response to this letter that failed to provide the information requested. On December 19, Reps. Waxman, Pelosi, and Hoyer again wrote you to renew the request for information.[5]

On October 27 and 28 and November 13, Rep. Waxman wrote you three letters about a "hit list" of over 150 NIH grantees and over 200 NIH-funded studies related to HIV/AIDS, sexual behavior, and risk-taking activities.[6] Many NIH grantees on this list, which was apparently prepared by an organization called the Traditional Values Coalition, had received calls from NIH asking for justifications of their research. Rep. Waxman asked you for information on HHS contacts with the Traditional Values Coalition. Although you responded to the October 27 letter, you failed to provide the information about HHS contacts with the Traditional Values Coalition requested by Rep. Waxman.

Many of these and other examples of the injection of politics and ideology into science were summarized in a report released by Rep. Waxman on August 7, 2003.[7] The report described the accumulating evidence that the Administration has repeatedly interfered with science-based research and decisionmaking by federal agencies. As the editor of *Science* wrote earlier this year, there is growing evidence that the Bush Administration "invades areas once immune to this kind of manipulation."[8]

Political interference with science has profound implications. It can compromise the integrity of scientific policymaking at federal agencies with worldwide reputations for scientific excellence, including the National Institutes of Health, the Centers for Disease Control and Prevention, and the Food and Drug Administration. The American people depend upon these agencies to promote scientific research and to develop science-based policies that protect the

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[5] Letter from Rep. Henry A. Waxman, Minority Leader Nancy Pelosi, and Minority Whip Steny H. Hoyer to Tommy G. Thompson, Secretary of Health and Human Services (Dec. 19, 2003).

[6] Letter from Rep. Henry A. Waxman to Tommy G. Thompson, Secretary of Health and Human Services (Oct. 27, 2003); Letter from Rep. Henry A. Waxman to Tommy G. Thompson (Oct. 28, 2003); Letter from Rep. Henry A. Waxman to Tommy G. Thompson, Secretary of Health and Human Services (Nov. 13, 2003).

[7] Committee on Government Reform, Minority Staff, *Politics and Science in the Bush Administration* (Aug. 2003) (http://www.house.gov/reform/min/politicsandscience/).

[8] Donald Kennedy, *An Epidemic of Politics,* Science, 625 (Jan. 31, 2003).

nation's health and welfare. Undermining the scientific credibility of these agencies could do severe and long-lasting damage to the ability of the federal government to carry out critical public health initiatives.

**Information Requested**

As members of the Government Reform Committee, the principal investigative committee in the House, it is our responsibility to oversee the operations of government agencies, including the Department of Health and Human Services. To conduct this oversight effectively, we need to understand whether the Department interfered with scientific decisionmaking and, if so, why such interference may have occurred. We also need this information to assess whether additional legislation is required to prevent political interference with the conduct of science at federal agencies.

Unfortunately, you have failed to provide the information requested in the letters sent by Rep. Waxman and other members about these important matters. This failure has impeded our oversight efforts and hindered our consideration of the need for additional legislation. For this reason, we are now invoking our rights under the Seven-Member Rule to the information you have withheld.

Specifically, we request:

1. All communications (whether written, electronic, or oral) since January 2001 between HHS officials and any person outside of the executive branch regarding the removal or alteration of any scientific or technical information from any HHS website.

2. All communications (whether written, electronic, or oral) since January 2001 between HHS officials and any person outside of the executive branch making recommendations for, or making recommendations against, individuals to serve on any HHS scientific advisory committee.

3. All communications (whether written, electronic, or oral) since January 2001 between HHS officials and any person outside of the executive branch regarding organizations or persons carrying out federally funded sex education, abstinence education, or HIV/AIDS prevention programs. This request does not include communications between HHS officials and the organizations or persons carrying out the programs.

4. All communications (whether written, electronic, or oral) since January 2001 between HHS officials and any person outside of the executive branch regarding organizations or persons carrying out federally funded research related to sex practices or preferences or the spread of sexually transmitted diseases. This request does not include

communications between HHS officials and the organizations or persons carrying out the research.

5. All communications (whether written, electronic, or oral) since January 2001 between HHS officials and the Traditional Values Coalition or any person representing the Traditional Values Coalition.

This request is made under the authority of the Seven-Member Rule, which provides that "[a]n Executive agency, on request of the Committee on Government [Reform] of the House of Representatives, or of any seven members thereof . . . shall submit any information requested of it relating to any matter within the jurisdiction of the committee."[9] As a federal court recently held, "[r]eading the terms of Section 2954 in their ordinary and common meanings as this Court must . . . the Court finds that the 'Seven Member Rule' requires an executive agency to submit all information requested of it by the Committee relating to all matters within the Committee's jurisdiction upon the Committee's request."[10]

In this case, we are entitled to the requested information under the Seven-Member Rule because the information we seek is within the jurisdiction of the Committee on Government Reform. Under the Rules of the House of Representatives, the Committee has jurisdiction over "Government management and accounting measures generally."[11] Moreover, as the principal investigative committee in the House, our Committee's broad oversight jurisdiction encompasses authority to investigate "any matter" within the legislative jurisdiction of other committees so that we can make "findings and recommendations" that we report to "other standing committee[s] having jurisdiction over the matter involved."[12]

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[9] 5 U.S.C. § 2954. The statutory language refers to the "Committee on Government Operations." This Committee was renamed the Committee on Government Reform and Oversight in the 104th Congress and again renamed the Committee on Government Reform in the 106th Congress. References in law to the Committee on Government Operations are treated as referring to this Committee. *See References in Law to Committees and Officers of the House of Representatives,* Pub. L. No. 104-14, § 1(6), 109 Stat. 186 (1995).

[10] *Waxman v. Evans,* 2002 U.S. Dist. LEXIS 25975 (C.D. Cal. 2002), *vacated as moot,* 52 Fed. Appx. 84 (9th Cir. 2002), *as amended by Waxman v. Evans*, No. 02-55825 (9th Cir. Jan. 9, 2003) (order clarifying that the judgment of the district court was not reversed).

[11] Rule X(h)(4).

[12] Rule X, cl. 4(c)(2).

Please provide the requested information by January 29, 2003. If HHS withholds any information responsive to these requests, please state the basis for not providing the information requested.

Sincerely,

Henry A. Waxman

Tom Lantos

Major R. Owens

Eliot L. Engel

Carolyn B. Maloney

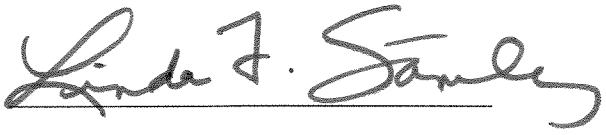
Elijah E. Cummings

Dennis J. Kucinich

C.A. Dutch Ruppersberger

Chris Van Hollen

Wm. Lacy Clay

Chris Bell

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