

# Congress of the United States

## House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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WASHINGTON, DC 20515-6301

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April 7, 2015

Gene Karpinski  
President  
League of Conservation Voters  
1920 L Street, NW  
Suite 800  
Washington, D.C. 20036

Dear Mr. Karpinski,

The Committee on Science, Space, and Technology is conducting oversight of the Environmental Protection Agency's (EPA) preservation of text messages as required by the Federal Records Act.<sup>1</sup> On January 27, 2015, the Committee first wrote to the EPA requesting information relating to whether nearly 6,000 text messages were improperly deleted from Administrator Gina McCarthy's agency phone.<sup>2</sup> Despite numerous attempts, the Committee has been unable to obtain the information it needs from the agency.<sup>3</sup> According to the EPA, Administrator McCarthy received a text message from you in February 2015 regarding Keystone XL. The EPA claims that this is the only text message the Administrator has received during her tenure at the agency that qualifies as a federal record. As part of the Committee's oversight, I am writing to request information regarding your communications with Administrator McCarthy about Keystone XL, as well as any related documents.

The Committee's concern about the EPA allegedly misplacing or deleting text messages originated when *The Hill* reported that over 5,000 text messages may have been improperly deleted from Administrator Gina McCarthy's agency cellular phone.<sup>4</sup> According to the report, "[EPA] has decided to formally notify the National Archives and Records Administration (NARA) about the potential loss of federal records relating to text messages."<sup>5</sup> In the same article, an EPA spokeswoman was quoted as saying, "[d]espite the filing...the agency maintains

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<sup>1</sup> 44 U.S.C. §3101.

<sup>2</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Gina McCarthy, Adm'r, EPA (Jan. 27, 2015).

<sup>3</sup> See Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Gina McCarthy, Adm'r, EPA (Mar. 25, 2015).

<sup>4</sup> Timothy Cama, *EPA Tells Court it May Have Lost Text Messages*, THE HILL, October 8, 2014, available at <http://thehill.com/policy/energy-environment/220162-epa-may-have-lost-text-messages>.

<sup>5</sup> *Id.*

that the text messages neither had to be preserved nor were subject to disclosure. Text messages can legally be deleted.”<sup>6</sup>

The text message you sent to Administrator McCarthy on February 5, 2015, regarding Keystone XL, is apparently the only text message she has ever sent or received that qualifies as a federal record. Coincidentally, that one text message was preserved nine days after the EPA received the Committee’s January 27, 2015 letter. The text message you sent to Administrator McCarthy, stated “[g]reat job on the EPA comments on keystone. I feel like the end is very near...”<sup>7</sup> After receiving your text, Administrator McCarthy responded, via e-mail, “Gene-I received your text message earlier today but I do not use text messaging for work purposes. Please make sure in the future to use my email address.”<sup>8</sup> Five days later, on February 10, Administrator McCarthy forwarded your text message via e-mail to her assistant and asked him to preserve it as a federal record.<sup>9</sup>

The EPA and the League of Conservation Voters have worked closely together during Administrator McCarthy’s tenure as EPA Administrator, often toward similar goals. In 2013, you and the League of Conservation Voters led an effort to secure Administrator McCarthy’s Senate confirmation as EPA Administrator.<sup>10</sup> On April 11, 2013, you wrote in *The Huffington Post* that “[w]e need Gina McCarthy’s leadership at the EPA.”<sup>11</sup> Additionally, you wrote that “Republicans and Democrats should do in the weeks ahead what they did just a few years ago—come together and confirm Gina McCarthy.”<sup>12</sup>

Beginning in 2014, it appears the League of Conservation Voters started an effort to block Keystone XL.<sup>13</sup> On February 24, 2015, you stated that “[w]e’re thrilled that President Obama has taken the very important step of vetoing the bill to approve the dirty and dangerous Keystone XL tar sands pipeline.”<sup>14</sup> Similarly, on February 2, EPA sent a letter to the State Department citing risks of Keystone approval.<sup>15</sup> The next day, the League of Conservation Voters issued a press release titled “EPA Confirms Keystone XL Fails President Obama’s

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<sup>6</sup> *Id.*

<sup>7</sup> Text message from Gene Karpinski, President, League of Conservation Voters, to Hon. Gina McCarthy, Adm’r, EPA (Feb. 5, 2015).

<sup>8</sup> E-mail from Hon. Gina McCarthy, Adm’r, EPA, to Gene Karpinski, President, League of Conservation Voters (Feb. 5, 2015).

<sup>9</sup> E-mail from Hon. Gina McCarthy, Adm’r, EPA, to EPA Staff (Feb. 10, 2015).

<sup>10</sup> Gene Karpinski, *We Need Gina McCarthy’s Leadership at the EPA*, HUFF POST, Apr. 11, 2013, available at [http://www.huffingtonpost.com/gene-karpinski/we-need-gina-mccarthys-le\\_b\\_3061097.html](http://www.huffingtonpost.com/gene-karpinski/we-need-gina-mccarthys-le_b_3061097.html).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Letter from Gene Karpinski, President, League of Conservation Voters, to U.S. House of Rep., Jan. 8, 2014, available at <http://www.lcv.org/issues/lcv-legislative-letters/hr-2279.pdf>.

<sup>14</sup> League of Conservation Voters, Press Release, *LCV Statement on Keystone Veto*, Feb. 24, 2015, available at <http://www.lcv.org/media/press-releases/LCV-Statement-on-Keystone-Veto.html>.

<sup>15</sup> Letter from Cynthia Giles, Assistant Adm’r, EPA to Amos Hochstein, Special Envoy for Int’l Energy Affairs, Bureau of Energy Resources & Judith G. Garber, Acting Sec’y, Oceans & International Environmental and Scientific Affairs, Feb. 2, 2015, available at <http://www.epa.gov/compliance/nepa/20140032.pdf>.

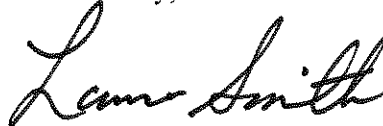
Climate Test.”<sup>16</sup> Accordingly, this Committee sent the EPA a letter the following week regarding the independence, integrity, and accuracy of EPA’s letter citing risks of Keystone; EPA has yet to produce to the Committee any documents responsive to that request.<sup>17</sup>

You and Administrator McCarthy have apparently worked closely together on important issues, and as your text message to the Administrator indicates, you have similar goals on Keystone XL. As the Committee continues its oversight of EPA’s claim that Administrator McCarthy has only sent or received one text message that qualifies as federal record, additional information is required. In light of this, and pursuant to Rule X of the U.S. House of Representatives, please provide all documents and communications between Administrator Gina McCarthy and the League of Conservation Voters, including yourself, regarding Keystone XL, from January 2013 to present, including text messages, e-mails, and phone records by noon on April 21, 2015.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact the Committee Staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Lamar Smith  
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member

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<sup>16</sup> League of Conservation Voters, Press Release, *LCV: EPA Confirms Keystone XL Fails President Obama’s Climate Test*, Feb. 2, 2015, available at <http://www.lcv.org/media/press-releases/LCV-EPA-Confirms-Keystone-XL-Fails-President-Obama-s-Climate-Test.html>.

<sup>17</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Gina McCarthy, Adm’r, EPA (Feb. 12, 2015).