



May 17, 2024
Via Email

James Comer, Chairman
Committee on Oversight and Accountability
reagan.dye@mail.house.gov

Virginia Foxx, Chairwoman
Committee on Education and the Workforce
isaiah.knox@mail.house.gov

CC:
Jamie Raskin, Ranking Member
Committee on Oversight and Accountability
julie.tagen@mail.house.gov

Robert Scott, Ranking Member
Committee on Education and the Workforce
David.Dailey@mail.house.gov

Dear Chairman Comer and Chairwoman Foxx,

We, the undersigned advocates for free expression and constitutional rights, write in objection to your Committees' letter to Janet Yellen of May 14, 2024, requesting records related to "financing for groups who are organizing, leading, and participating in pro-Hamas, antisemitic, anti-Israel, and anti-American protests with illegal encampments on American college campuses." Your request is an affront to the First Amendment and an abuse of Congressional power.

Your [request](#) seeks Suspicious Activity Reports¹ “generated in connection” with any of the 20 listed non-profit and advocacy organizations – or any of their employees. As you acknowledge, these records are being sought to investigate these organizations’ possible ties to protest activity on U.S. college campuses. “Protests,” regardless of your views of the underlying politics involved, are expressive and associational events fully protected by the First Amendment. This sweeping request appears targeted entirely at the perceived political viewpoints of the groups listed – viewpoints that you explicitly disfavor and which you imply constitute “malign influence.”

You claim these records are necessary for your Committees to make recommendations on federal transparency laws regarding funding in higher education. But as you acknowledge in your letter, your investigatory power only reaches as far as Congress’ ability to legislate.² The First Amendment would rightly prevent Congress from regulating higher education institutions or other groups based on their viewpoints. And “Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a [legitimate legislative] purpose.”³

Our concerns about this overbroad investigation into protest activity are amplified by the specific records sought: Suspicious Activity Reports (SARs). SARs are not evidence of criminal activity and must be filed by financial institutions in order to receive legal immunity from prosecution – a strong incentive to file SARs even in the absence of illegal activity. In short, SARs constitute mandated surveillance by non-law enforcement entities. It is therefore particularly troubling that Chairman Comer has previously, and wrongly, conflated SARs with evidence of crime.⁴

Perhaps the most disturbing aspect of your letter is the statement that the Committees are seeking records about “anti-American” protest activity. In both approach and language, your letter invokes one of the more shameful periods in Congressional history: the political witch hunts led by the House Un-American Activities Committee during the Red Scare. HUAC abused its power to create blacklists of Americans suspected of anti-American political beliefs. These acts tarnished our history and trampled civil liberties.

¹ Suspicious activity reports are filings that financial institutions are required to make under the Bank Secrecy Act (as amended by the PATRIOT Act), detailing financial transactions that may be suspicious. See *generally* Office of the Comptroller of the Currency, Suspicious Activity Reports, available at <https://www.occ.treas.gov/topics/supervision-and-examination/bank-operations/financial-crime/suspicious-activity-reports/index-suspicious-activity-reports.html>. According to one study by the Bank Policy Institute, major banks file hundreds of thousands of SARs per year, and the overwhelming percentage (96%) of SARs led to no action by law enforcement. Thus, the SARs themselves are in no way evidence of illegal activity. See Bank Policy Institute, The Truth About Suspicious Activity Reports, Sept. 22, 2020, available at <https://bpi.com/the-truth-about-suspicious-activity-reports/>.

² *Barenblatt v. United States*, 360 U.S. 109, 111 (1959) (holding that “the scope of power of inquiry ... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”), as cited in footnote 1 of this Committee’s Letter dated May 14, 2024.

³ *Barenblatt*, 360 U.S. at 127.

⁴ Glenn Kessler, The Misleading Claim that Bank Reports Show Hunter Biden ‘Committed Serious Crimes,’ Washington Post, Oct. 19, 2022, available at <https://www.washingtonpost.com/politics/2022/10/19/misleading-claim-that-bank-reports-show-hunter-biden-committed-serious-crimes/>.

That this committee would straightforwardly invoke the HUAC-era abuse of Congressional power with seeming pride is ahistorical and deeply shameful.

We object to the breadth and focus of your sweeping records request, which explicitly serves the purpose of investigating protected expressive activity. If anything is “anti-American,” it is the lack of care for the First Amendment implicit in this records request. We urge you to rescind it.

Sincerely,

National Coalition Against Censorship
Knight First Amendment Institute at Columbia University.
Foundation for Individual Rights and Expression
Electronic Frontier Foundation
T’ruah
Center for Protest Law & Litigation @ Partnership for Civil Justice Fund
Government Information Watch
PEN America
Defending Rights & Dissent
RootsAction.org
Community Justice Project, Inc.
NDN Collective