



December 17, 2019

VIA EMAIL

The Honorable Henry J. Kerner, Special Counsel
Office of Special Counsel
1730 M Street, NW; Suite 218
Washington, DC 20036

Re: Complaint of George Luber, MA-19-004950

Dear Mr. Kerner,

Government Accountability Project, an independent, nonpartisan, nonprofit organization that promotes corporate and government accountability by protecting whistleblowers and advancing occupational free speech, offers this letter in support of the complaint of Dr. George Luber against the Centers for Disease Control (“CDC”), his employing federal agency.

The late federal climate science whistleblower Rick Piltz founded Climate Science Watch (now Climate Science & Policy Watch) at Government Accountability Project in 2005. Since that time, Government Accountability Project has taken a particular interest in assisting and protecting scientists from reprisal for sharing publicly-funded research, their knowledge, and their expertise. In supporting Dr. Luber in his claims against CDC, Government Accountability Project is continuing its stance in support of scientific integrity and government transparency.

Dr. Luber has suffered retaliation not only for his legal disclosures regarding improper actions taken by his superiors at CDC, but more broadly for his important, public position as a scientific authority on the impacts of human-caused climate change. Like many other career federal employees across numerous administrative agencies,¹ Dr. Luber has been a target and victim of politically motivated attacks against those who are best positioned to provide needed public warnings about the threats posed by a dramatically changing climate. These attacks are consistent in their impropriety, their indefensibility, and the danger they pose to public health and safety. So in addition to their egregious and unsupportable violations of Dr. Luber’s rights as

¹ For example, former Department of Interior employee Joel Clement, former National Park Service employee Maria Caffrey, former US Department of Agriculture employee Lewis Ziska, and former Environmental Protection Agency employees Betsy Southerland and Jacob Carter.

an employee and a whistleblower, his superiors have done incalculable harm to the public well-being by silencing and vilifying a globally-recognized expert on the public health impacts of anthropogenic climate change. Government Accountability Project stands with Dr. Luber and all such scientists and public servants whose rights are being eviscerated under the current administration.

BACKGROUND

Information referenced herein has been asserted and supported in the complaint filed on Dr. Luber's behalf, submitted August 16, 2019 by attorney Kevin Bell of Public Employees for Environmental Responsibility (PEER). Government Accountability Project offers its support for Dr. Luber on the basis of the facts contained in that complaint (described herein as appropriate), and on the basis of our organization's experience and mission.

The CDC, a federal agency under the Department of Health and Human Services, is our nation's leading public health institute. The agency has evolved and grown since its creation in 1946 to incorporate many areas affecting public health,² including adverse human health effects associated with environmental degradation and, more recently, with climate change and associated impacts in all regions across the United States. Top medical experts have warned that climate change represents a true public health emergency. Dr. George Luber has been employed by the agency since 2002, and prior to the incidents at issue here was regarded as an exemplary employee.

Moreover, Dr. Luber is an accomplished epidemiologist and recognized in the nation and the world as a leader in his field: the intersection of public health and a host of climate change impacts. He has served in many positions of influence based on his expertise and experience, including co-chair of the Climate Change and Human Health Interagency Workgroup at the US Global Change Research Program ("USGCRP"), and was a lead author on the Fifth Intergovernmental Panel on Climate Change ("IPCC") Assessment Report. For nearly a decade he was head of the Climate and Health Program at CDC, which he helped to establish in 2009. He has authored over 50 journal articles and a textbook on the subject of climate change and human health.

For 16 years Dr. Luber worked at the CDC with a spotless record, without reprimand or disciplinary action taken against him, and never receiving lower than a 4.2 out of 5 on employee evaluations. As a presidential candidate and since taking office President Trump has been open about his rejection of climate science and has referred to climate change as a hoax. As he continued to disclose specific, significant public health and safety threats associated with anthropogenic climate disruption, Dr. Luber has been made persona non grata within his agency and has been restricted from performing his job and sharing his expertise. Given his stature, this treatment represents not just abuse of one employee, but an overall attack on climate-related science and the public well-being.

² Information on CDC's history and work is available at <https://www.cdc.gov/about/history/index.html>.

The agency has demonstrated its animus and determination to silence employees through its actions to cancel even job-related communications on climate change. To illustrate, a long-planned scientific conference hosted by the CDC and others called the “Climate and Health Summit” scheduled for February 2017 was cancelled just three days after the presidential inauguration with no stated justification. Even though Dr. Lubner was in favor of proceeding as planned and refused to sign the document cancelling the event, general appearances were that Dr. Lubner had chosen to cancel the event to avoid potential political pushback from the White House. This perception had an adverse impact on Dr. Lubner’s professional relationships both within and outside the agency.

The agency has violated the Whistleblower Protection Act’s anti-gag provisions in section 2302(b)(13) by preventing Dr. Lubner from speaking publicly about his work. Prior to 2017 Dr. Lubner had regularly communicated with the media in efforts to inform the public regarding his expertise on climate and health. Dr. Lubner’s superiors at the CDC have consistently prohibited him from fulfilling those duties, even when it means blocking him from disclosing substantial and specific threats to public health or safety, or other issues protected by section 2302(b)(8). The restraint is demonstrated in emails received from the CDC by PEER in response to FOIA requests in which CDC employees express concern that another CDC office he was detailed to away from the climate program might allow him to respond to media requests. Additionally, in 2017 Dr. Lubner was prohibited from accepting an invitation to appear on a National Geographic television documentary program, Mars, and in 2018 to attend and sit on a panel at a professional conference in St. Kitts on climate change and health sponsored by Tulane University.

Moreover, according to Dr. Lubner’s legal counsel at PEER, Dr. Lubner recalls being told by someone in the CDC press office that “he would never be cleared to speak with the press again.”

Following the dissolution of the CDC Climate and Health Program, the agency reaffirmed its animus and conducted additional improper actions. According to materials received by PEER in response to a FOIA request, in March 2018 the Climate & Health Program was redesignated as a “section” rather than a program, and its staff and resources were absorbed by a CDC branch focusing on asthma which was renamed the “Asthma and Community Health Branch.” Here we note that “community health” is not term of art in epidemiology or public health. In previous plans to reorganize the branch it was to be renamed the “Asthma and Climate Health” Branch but was altered at the eleventh hour to exclude “climate” from its name. Lacking another qualified candidate, Dr. Lubner was asked to lead the new program in February 2018.

Soon thereafter³ CDC removed Dr. Lubner from his incumbent position after a hail of preliminary personnel actions: (1) the agency placed him on administrative leave; (2) he faced an unjustified, retaliatory investigation; (3) he endured personal humiliation after guards escorted him from work without permitting access to his personal effects; (4) the agency placed him on a “be on the lookout” or “BOLO” list that required him to announce in advance any intention of

³ For details regarding the timeline, refer to PEER’s August 16, 2019 formal complaint to the OSC on behalf of Dr. Lubner as well as PEER’s December 1, 2019 Supplemental Reply to the CDC’s Request for Further Information related to the July 3, 2019 CDC proposal to suspend Dr. Lubner for 120 days.

entering the building where his professional and personal effects remained housed, to undergo body and car searches, to enter with an escort, and even to be escorted on visits to the bathroom; (5) he faced unsupported accusations unprecedented in his career, such as those of inappropriate behavior towards coworkers and unprofessional conduct during work-related travel; and (6) the agency imposed an involuntary reassignment that ultimately resulted in Dr. Luber's inability to perform his duties.

Following a statement Dr. Luber made in January 2019 to his superiors that, barring internal resolution, he would take his concerns to Congress (primarily regarding the improper diversion of funds Congress had intended for climate and health), he faced further retaliation. This included an initial refusal to allow Dr. Luber to collect a Hugh M. Hefner Foundation First Amendment prize, for which he had been nominated because of his disclosures. CDC finally granted Dr. Luber permission to attend the award ceremony after his legal counsel at PEER lodged complaints with CDC Ethics and Compliance Activity staff. True to his word, from May 16 to May 21, 2019 Dr. Luber reported to congressional staff and Rep. Donna Shalala on the illegality of the dissolution of the CDC Climate and Health Program, the misuse of funds appropriated by Congress specifically for climate-related public health work, and retaliation he had faced up to that time. Less than two months later, on July 3, 2019, the agency suspended him.

DISCUSSION

Government Accountability Project believes that each of the personnel actions taken against Dr. Luber represents a prohibited personnel practice for his disclosures – for example, of abuse of authority, gross mismanagement, gross waste of funds, and censorship. It violates the Whistleblower Protection Act to take a personnel action because of lawfully disclosing information that evidences waste, fraud, abuse, and threats to public health. It violates 5 USC 2302(b)(12) for discrimination due to congressional communications, because 5 USC 7211 which protects them is a law, rule or regulation implementing or directly concerning merit system principles. The retaliation faced by Dr. Luber is directly linked to his legal disclosures. These disclosures represent Dr. Luber's reasonable belief that his superiors were engaged in improper activities.

Most clear is that the actions taken against Dr. Luber represent censorship of scientific research. Dr. Luber, a globally-recognized authority on the interactions between climate change and human health, was prohibited from speaking in an official capacity on his area of expertise to share peer-reviewed research. Whereas he had previously spoken with and been contacted by members of the press regularly for his input regarding climate and human health, he was officially prohibited from doing so, and press requests for his input were deliberately rejected without his consultation. His appearance on a National Geographic documentary television program would have brought his expertise on public health threats due to a changing climate to a broad audience, but he was not permitted to appear by his superiors. The censorship prohibited him from further disclosures protected by the Whistleblower Protection Act, and itself was a personnel action under section 2302(a)(2)(xi) that violates section 2302(b)(8), in addition to violating the anti-gag provisions of section 2302(b)(13).

Because of Dr. Luber's expertise, silencing him inherently constitutes a threat to public health and safety. As a part of the larger issue of suppression of climate science, the treatment of Dr. Luber is particularly egregious, because his work has focused on human health impacts. Given that one of the Office of Special Counsel's missions is to prevent suppression of information important to the public well-being, leadership at the CDC must be held accountable for this inexcusable behavior.

Based on the record to date, the set of allegations made against Dr. Luber were fabricated, unsubstantiated, and designed to discredit and potentially humiliate him in front of his coworkers and colleagues. Moreover, we have reason to believe that the allegations of inappropriate conduct were materially false statements known by his superiors to be untrue.

The actions taken against Dr. Luber all constitute prohibited personnel practices. Each action was taken in retaliation for one or more of the following: (1) his numerous public statements made in his official capacity as a government-employed scientist regarding the threats posed by anthropogenic climate change; (2) his disagreement with superiors regarding the cancellation of the climate event in February 2017; (3) his disclosures to superiors that absorbing the Climate and Health program into what became the Asthma and Community Health Branch was illegal and would result in diverting earmarked Congressional funding contrary to specific Congressional intent; and (4) Dr. Luber's public disclosures in May 2019 via communication with Congressional staff⁴ regarding these issues and the retaliation he had faced up to that time.

The connection between legal disclosure and PPP is evident on each occasion due to proximity in time or explicit expression, as well as through the overarching practice of vilifying climate scientists and policy experts within administrative agencies under the current administration.

Dr. Luber's complaint presents an important opportunity for the OSC to exercise its power to right the many wrongs against Dr. George Luber in his role as the head of the now-defunct Climate and Health Program for which Congress has directed \$10 million annually. We are confident that a thorough investigation will reveal the illegality of the actions taken against Dr. Luber and that there will be every reason to honor Dr. Luber's wishes and expeditiously secure his reinstatement.

Respectfully,

s/Tom Devine/s

Tom Devine
Legal Director
Government Accountability Project

⁴ This also violates section 2302(b)(12), because the Lloyd Lafollette Act protecting communications with Congress, 5 USC 721, is a law, rule or regulation directing concerning merit system principles.