

LAW

Group, firm offer pro bono help for federal scientists

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The Union of Concerned Scientists launched an effort to provide legal tools and resources for federal scientists. [luvqs/Pixabay](#)

An advocacy group and Washington law firm are tossing a lifeline to government scientists who believe their work is being smothered or manipulated for political purposes.

The Union of Concerned Scientists has established a secure telephone line where scientists can speak pro bono to attorneys every Wednesday afternoon.

The Science Protection Project has two stated goals: Offer a safe space for scientists to report abuse and seek legal advice and address systemic challenges that make it difficult for researchers to work.

"There are many steps that can be taken that we won't know about unless federal employees bring it to our attention," said Michael Halpern, deputy director of UCS's Center for Science and Democracy. "We don't have the capacity to watchdog the entire federal government."

The initiative is part of a broader effort to provide pro bono legal tools for scientists at federal agencies and academic institutions. Supporters of such efforts say they see signs that federal agencies are increasingly injecting politics into science.

"We've seen political leaders of all parties manipulate, skew and suppress scientific information to further an agenda," said Jeff Ruch, executive director of **Public Employees for Environmental Responsibility**, or PEER.

The idea for the UCS project was hatched at the group's Christmas party last year when Lindsay Harrison, an attorney with experience in litigation over Freedom of Information Act requests and federal rulemakings, spoke with Halpern about how the legal community could help scientists.

The initiative was launched in August, with Harrison leading the legal effort at the Washington office of Jenner & Block.

Halpern said the effort is not tied specifically to the Trump administration.

"There's a growing trend to go after people who publicly share scientific information or other information that political officials find inconvenient," Halpern said. "It's not necessarily a Trump administration thing. Obama escalated the war on whistleblowers and the tendency to go after people who leaked."

He added, "Every modern administration has politicized science, and the Obama administration did not at all have a clean track record."

During President Obama's years, he said, U.S. EPA skewed its presentation of research into hydraulic fracturing, the drilling process that involves pumping sand, chemicals and water into shale formations to release oil and natural gas. The agency was forced to withdraw claims that fracking has no "widespread systemic impacts" on drinking water after its Science Advisory Board criticized the agency for not adequately backing up the conclusion.

Lexi Shultz, vice president of public affairs at the American Geophysical Union, said government scientists both need to be able to do their work without political interference and to accurately communicate the results of taxpayer-funded research.

"Scientists are now — I think, unfortunately — recognizing that they need to be aware of what their legal risks are," she said.

"No scientist should ever be asked to manipulate data or ignore chunks of science. That doesn't mean that science always informs policies. There are many factors," Shultz said. "But the science should be allowed to be unfettered."

Federal scientists, though, have to tread carefully, Ruch said.

"Scientific careers are incredibly fragile, and there are a lot of things that can derail their career," he said.

As government workers, federal scientists aren't covered by the whistleblower protection laws that protect private employees. Agency scientific integrity policies — while seen as lacking by environmentalists — are sometimes the only way to hold agencies accountable.

PEER has long tried to provide cover for federal whistleblowers, encouraging scientists who think science is being manipulated to dictate a policy outcome to get into contact with the group. PEER then uses the information to form the basis of a lawsuit against a federal agency.

PEER also files a Freedom of Information Act lawsuit about every three weeks, often because a government employee has tipped the group off to the existence of potentially damaging documents, according to Ruch.

"What they really want is to get the agency back on mission and having to pay attention to the science," he said.

Free advice

UCS based its initiative at a law firm, Halpern said, since the group's communications could be subject to subpoenas from congressional committee.

The House Science, Space and Technology Committee, for example, last year subpoenaed UCS and other environmental groups for private communications related to what Exxon Mobil Corp. knew about climate change.

"We are not attorneys. We're scientists," Halpern said. "We don't enjoy attorney-client privilege or the journalistic shield."

UCS provides funding and background information on agency scientific integrity policies, while Jenner & Block has a dedicated phone line and email address hooked up with encrypted forms of communication. Federal scientists can call at dedicated times during Wednesday afternoons, or they can send emails at any other time.

"When we take their calls, we're not their lawyers, but we listen to the situation and then we refer them to pro bono lawyers who are in a position to help give them advice," said Harrison, the Jenner & Block attorney. "They advise them about various legal options, what the risks are, and help them determine how to proceed."

The pool of available lawyers includes those with experience representing government employees and suing agencies, First Amendment specialists, and former federal attorneys.

According to Harrison, the project has so far received calls on a range of issues. Scientists have reported being told they cannot talk about data or results in a way that deviates from the administration's political objectives. Others are concerned their data collection is being restricted.

"We've gotten calls about directives around climate change and not talking about climate change," Harrison said.

In May, Harrison filed a lawsuit against the Department of Energy on behalf of the Protect Democracy Project seeking information on controversial questions on climate change on questionnaires that the Trump transition team sent department employees.

In August, at least two DOE scientists said they were told to scrub the words "climate change" and "global warming" from research proposals, sparking a social media storm. DOE denied that headquarters had given a directive to remove climate change wording ([Greenwire](#), Aug. 29).

And this week, reports surfaced that EPA removed references to climate change from its website and asked three of its scientists to not speak at a conference in Rhode Island about the condition of the Narragansett Bay and its watershed program that was to in part address climate change([Greenwire](#), Oct. 23).

Halpern said UCS is keeping an eye out for "any actions that make people less effective at doing their jobs." Along with censorship, that includes changes to federal advisory committees, plans to consolidate federal science labs and failures to disclose conflicts of interest.

UCS also wants to know about scientists "reassigned to the accounting department or put in a basement office with no telephone," Halpern said in reference to Interior Department climate official-turned-whistleblower Joel Clement. He said he was removed from his position as director of the Office of Policy Analysis in retaliation for speaking publicly about the dangers of climate change to Alaska Natives. Clement recently resigned ([E&E News PM](#), Oct. 4).

The group hopes to use information collected to develop resources for scientists.

"Reporting on that kind of information allows us to see patterns and trends and create public attention and congressional oversight," Halpern said.

'Emerging body of the law'

UCS's hotline is open to all federal scientists, from those who work in environmental agencies to those who help prepare surveys at the Census Bureau. Another initiative, the Climate Science Legal Defense Fund, specifically aids climate scientists.

The fund formed in 2011 in response to efforts by some conservative organizations and their political allies to disprove the existence of human-caused climate change through seeking private correspondence from university climate scientists. The issue came to a head in "Climategate," or when climate change doubters alleged that hacked emails showed that scientists had manipulated climate data and tried to silence critics.

Following the incident, former Virginia Attorney General Ken Cuccinelli (R) initiated an investigation into then-University of Virginia researcher Michael Mann, filing the

equivalent of a subpoena for documents to support a taxpayer fraud allegation. After a yearslong legal battle, the state Supreme Court later ruled that Cuccinelli had no authority to request the records from the university.

"Most climate scientists were frankly at a complete loss," the American Geophysical Union's Shultz said of the need for a program to provide scientists with legal advice following the incidents.

"If I have to release all of my data — work that is years in the making and I haven't published it — it's still proprietary. What do I do? What are my rights?" she said. "Most scientists don't have access to good advice in that realm."

Unlike UCS, the Climate Science Legal Defense Fund not only works with federal climate scientists but also academics and climate science writers. It helps defend climate scientists in courtroom battles and works to teach scientists about their rights. The fund put out a guide after last November's election advising scientists on how to manage emails and what to do if they become embroiled in a congressional investigation.

"We do try to do a lot of proactive work and educate scientists about their legal rights," said Lauren Kurtz, the fund's executive director. "We also help them understand areas where they don't need to be concerned and where they need to be cautious."

It's also seen an increase in work since the Trump administration took office.

Kurtz, an attorney by training, said that the fund has seen an increase in the amount of inquiries it gets "by two or three times." It's looking to add another full-time attorney to its staff of 5 ½ positions.

"The Obama administration was doing a good job of defending science and climate policies," Kurtz said. "All that changed pretty dramatically. We're navigating a whole new federal space."

Still, in at least one important case, Kurtz credited the Trump administration for maintaining the Obama administration's position in a lawsuit filed by Judicial Watch. Spurred by inquiries by House Science, Space and Technology Chairman Lamar Smith (R-Texas), the conservative group aimed to obtain emails of NOAA officials and climate scientists relating to research on the global warming "pause."

Under the Trump administration, the Justice Department defended the federal agency. Both the Climate Science Legal Defense Fund and the Union of Concerned Scientists joined an amicus brief defending NOAA in the case.

In a win for the greens, the U.S. District Court for the District of Columbia in August threw out the case.

"Some of the things have stayed the same, but more, I think, has changed," Kurtz said.

The changes have prompted PEER to also get into the climate business.

Ruch said that group is in the process of reaching out to climate officials who have left the Obama administration to ask them to monitor activity in agencies it typically has not engaged much with in the past, including DOE and NASA. The group aims to launch a climate-specific program next month.

The Trump administration, he said, might spur more efforts to provide legal protection for scientists just as the George W. Bush administration's handling of science helped frame scientific integrity as an issue.

"I think similarly under Trump, it will swing in the direction of permanent legal protection for both the scientific information and those who create it," he said.

"We're on the edge of an emerging body of the law of science."

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