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Dear attorneys general, conspiring against free speech is a crime: Glenn Reynolds

Glenn Harlan Reynolds 2:21 p.m. EDT April 11, 2016

Federal law makes it a [felony](#) “for two or more persons to agree together to injure, threaten, or intimidate a person in any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).”

I wonder if U.S. Virgin Islands Attorney General [Claude Walker](#), or California Attorney General [Kamala Harris](#), or New York Attorney General [Eric Schneiderman](#) have read this federal statute. Because what they’re doing looks like a concerted scheme to restrict the First Amendment free speech rights of people they don’t agree with. They should look up 18 U.S.C. Sec. 241, I am sure they each have it somewhere in their offices.

Here’s what’s happened so far. First, [Schneiderman](#) and reportedly [Harris](#) sought to investigate Exxon in part for making donations to groups and funding research by individuals who think “climate change” is either a hoax, or not a problem to the extent that people like Harris and Schneiderman say it is.

This investigation, which smacks of Wisconsin’s discredited Putin-style [legal assault](#) on conservative groups and their contributors, was denounced by the Competitive Enterprise Institute’s Hans Bader as [unconstitutional](#). Bader wrote:

Should government officials be able to cut off donations to groups because they employ people disparaged as “climate change deniers?” ... Only a single-issue zealot with ideological blinders and a contempt for the First Amendment would think so. ...

The First Amendment has long been interpreted as protecting corporate lobbying and donations, even to groups that allegedly deceive the public about important issues. ... So even if being a “climate denier” were a crime (rather than constitutionally protected speech, as it in fact is), a donation to a non-profit that employs such a person would not be.

Nope, but conspiring to deprive “deniers” of their free speech rights [would be](#). As Bloomberg’s Megan McArdle [noted](#): “They threw the word ‘fraud’ around a lot. But the more they talked about it, the more it became clear that what they meant by ‘fraud’ was ‘advocating for policies that the attorneys general disagreed with.’”

But here’s what happened next: After Bader’s critique, Walker, the U.S. Virgin Islands attorney general, [subpoenaed](#) the Competitive Enterprise Institute’s donor lists. The purpose of this subpoena is, it seems quite clear, to punish CEI by making people less willing to donate.

This all takes place in the context of an [unprecedented](#) meeting by 20 state attorneys general aimed, environmental news site EcoWatch reports, at targeting entities that have “stymied attempts to combat global warming.” You don’t have to be paranoid to see a conspiracy here.

Not everyone believes that the planet is warming; not everyone who thinks that it is warming agrees on how much; not everyone who thinks that it is warming even believes that laws or regulation can make a difference. Yet the goal of these state attorneys general seems to be to treat disagreement as something more or less criminal. That’s wrong. As the Supreme Court wrote in [West Virginia Board of Education v. Barnette](#), “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”

Yet prescribing such orthodoxy seems to be just what they have in mind. Their approach is — and I use this term quite deliberately — thoroughly un-American. In pursuing this action, they are betraying their oaths of office, abusing their powers and behaving unethically as attorneys.

Still, I doubt that U.S. Attorney General Loretta Lynch — whose own U.S. Department of Justice referred the [consideration](#) of legal action against “climate deniers” to the FBI — will institute criminal proceedings for civil rights conspiracy, though I suspect that a Donald Trump or Ted Cruz presidency might make such charges more likely.

But all is not lost for CEI. 42 U.S.C. Sec. 1985 provides a [civil action](#) for conspiracies to deprive individuals of civil rights. If I were CEI — or these attorneys general — I might give that law a read as well.

Meanwhile, free speech advocates are already talking about a Virgin Islands [tourism boycott](#). And voters everywhere need to ask themselves: If these government officials have

such contempt for others' constitutional rights, who might they target next for "unacceptable" speech?

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