

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 16-1888F

IN RE CIVIL INVESTIGATIVE
DEMAND NO. 2016-EPD-36,
ISSUED BY THE OFFICE OF THE
ATTORNEY GENERAL

**APPENDIX IN SUPPORT OF PETITION AND EMERGENCY
MOTION OF EXXON MOBIL CORPORATION TO SET ASIDE OR MODIFY
THE CIVIL INVESTIGATIVE DEMAND OR ISSUE A PROTECTIVE ORDER**



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Affidavit of Geoffrey Grant Doescher, dated June 10, 2016

Affidavit of Justin Anderson, dated June 14, 2016

Affidavit of Thomas C. Frongillo, dated June 16, 2016

Exhibits

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)
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)
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)

AFFIDAVIT OF ROBERT LUETTGEN

I, Robert Luetngen, hereby depose and state under oath:

1. I am Assistant Corporate Secretary at Exxon Mobil Corporation. I have held this position since 2010.
2. I submit this affidavit in support of the Petition and Emergency Motion of Exxon Mobil Corporation to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order. My statements in this affidavit are based on personal knowledge that I have obtained in my capacity as an employee of Exxon Mobil Corporation, from internal inquiries I made at Exxon Mobil Corporation, and from an examination of Exxon Mobil Corporation's records.
3. Exxon Mobil Corporation is incorporated in New Jersey.
4. Exxon Mobil Corporation maintains its principal office and its central operations in Texas.
5. Exxon Mobil Corporation holds its shareholder meetings in Texas.
6. Exxon Mobil Corporation does not maintain any climate change research facilities or personnel in Massachusetts.

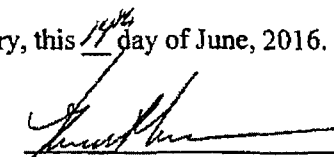
7. In the past five years, Exxon Mobil Corporation has not marketed or sold any securities or debt to the general public in Massachusetts.

8. In the past five years, Exxon Mobil Corporation has not issued any form of equity for sale to the general public in Massachusetts.

9. Aside from commercial paper, Exxon Mobil Corporation's only sale of debt in the past decade has been to underwriters outside the Commonwealth, and Exxon Mobil Corporation did not market that debt to investors in Massachusetts.

10. During the limitations period, ExxonMobil has sold short-term, fixed-rate notes, which mature in 270 days or less, to institutional investors in Massachusetts.

Signed under the penalties of perjury, this 14th day of June, 2016.


Robert Luetngen

COMMONWEALTH OF MASSACHUSETTS

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AFFIDAVIT OF GEOFFREY GRANT DOESCHER

I, Geoffrey Grant Doescher, hereby depose and state under oath:

1. I am the U.S. Branded Wholesale Manager, ExxonMobil Fuels, Lubricants and Specialties Marketing Company at Exxon Mobil Corporation. I have held this position since 2013.

2. I submit this affidavit in support of the Petition and Emergency Motion of Exxon Mobil Corporation to Set Aside, Modify, or Issue a Protective Order. My statements in this affidavit are based on personal knowledge that I have obtained in my capacity as an employee of Exxon Mobil Corporation, from internal inquiries I made at Exxon Mobil Corporation, and from an examination of Exxon Mobil Corporation's records.

3. At no point during the last five years has Exxon Mobil Corporation (1) sold fossil fuel derived products to consumers in Massachusetts, or (2) owned or operated a single retail store or gas station in the Commonwealth.

4. Any service station that sells fossil fuel derived products under an "Exxon" or "Mobil" banner is owned and operated independently.

Signed under the penalties of perjury, this 10th day of June, 2016.



Geoffrey Grant Doescher

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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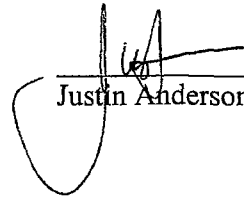
AFFIDAVIT OF JUSTIN ANDERSON

I, Justin Anderson, hereby depose and state under oath:

1. I am a counsel with the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP. I have held this position since October 2015.
2. I submit this affidavit in support of the Petition and Emergency Motion of Exxon Mobil Corporation to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order. My statements in this affidavit are based on personal knowledge.
3. Each organization listed in Request No. 5 of the civil investigative demand served on Exxon Mobil Corporation by the Attorney General of Massachusetts are organizations that have been accused by environmental advocacy groups of, at times, holding views with respect to climate change science or climate change policy with which those advocacy groups disagree.
4. To comply with the civil investigative demand issued by Massachusetts Attorney General Maura Healey on April 19, 2016, ExxonMobil would need to collect, review, and produce millions (and potentially tens of millions) of pages of documents.

5. Based on my experience and my consultation with others, responding to document requests as broad as the ones in the civil investigative demand costs millions of dollars.

Signed under the penalties of perjury, this 14 day of June, 2016.


Justin Anderson

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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IN RE CIVIL INVESTIGATIVE)
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ATTORNEY GENERAL)

AFFIDAVIT OF THOMAS C. FRONGILLO

I, Thomas C. Frongillo, hereby depose and state under oath:

1. I am a Principal at Fish & Richardson P.C., and am one of the lawyers representing petitioner Exxon Mobil Corporation (“ExxonMobil”) in this proceeding.

2. I submit this affidavit in support of the Petition and Emergency Motion of Exxon Mobil Corporation to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order. I am submitting this affidavit solely for the purpose of authenticating various documents included in the Appendix of ExxonMobil filed in support of the motion, which are identified as Exhibits A through DD in the Appendix.

3. Exhibit A is a copy of the transcript of the AGs United For Clean Power Press Conference, held on March 29, 2016, which was prepared by counsel based on a video recording of the event. The video recording is available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>.

4. Exhibit B is an unredacted copy of the civil investigative demand issued by the Office of the Attorney General of the Commonwealth of Massachusetts to Exxon Mobil Corporation.

5. Exhibit C is a true and correct copy of Seth Shulman, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control*, Union of Concerned Scientists and Climate Accountability Institute (Oct. 2012), *available at* <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12>.

6. Exhibit D is a true and correct copy of an e-mail from Lemuel Srolovic, Bureau Chief, Environmental Protection Bureau, to Matthew Pawa, President, Pawa Law Group, P.C. (Mar. 30, 2016, 9:01 PM), *available at* http://www.washingtonexaminer.com/ny-atty.-general-sought-to-keep-lawyers-role-in-climate-change-push-secret/article/2588874?custom_click=rss.

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10. Exhibit H is a true and correct copy of *Attorney General Jeff Landry Slams Al Gore's Coalition*, State of Louisiana Office of the Attorney General (Mar. 30, 2016), *available at* <https://www.ag.state.la.us/Article.aspx?articleID=2207&catID=2>.

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13. Exhibit K is a true and correct copy of *Attorney General Paxton Intervenes in First Amendment Case*, The Attorney General of Texas (May 16, 2016), *available at* <https://texasattorneygeneral.gov/news/releases/attorney-general-paxton-intervenes-in-first-amendment-case>.

14. Exhibit L is a true and correct copy of *Alabama Joins Intervention in Case To Protect First Amendment Right of Businesses from Government Threats of Criminal Prosecution*, State of Alabama Office of the Attorney General (May 16, 2016), *available at* <http://www.ago.state.al.us/News-837>.

15. Exhibit M is a true and correct copy of an e-mail from Wendy Morgan, Chief of Public Protection, Office of the Vermont Attorney General, to Michael Meade, Director, Intergovernmental Affairs Bureau, Office of the New York Attorney General (Mar. 18, 2016, 6:06 PM), *available at* <http://eelegal.org/wp-content/uploads/2016/04/Development-of-Agenda.pdf>.

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17. Exhibit O is a true and correct copy of *Peter Frumhoff*, Union of Concerned Scientists, <http://www.ucsusa.org/about/staff/staff/peter-frumhoff.html#.VyT3oYSDFHw> (last visited June 10, 2016).

18. Exhibit P is a true and correct copy of *Global Warming Solutions: Fight Misinformation*, Union of Concerned Scientists, http://www.ucsusa.org/our-work/global-warming/solutions/global-warming-solutions-fight-misinformation#.Vx-PC_krJpg (last visited June 10, 2016).

19. Exhibit Q is a true and correct copy of *Matthew F. Pawa*, Pawa Law Group, P.C., <http://www.pawalaw.com/attorneys/matthew-pawa> (last visited June 10, 2016).

20. Exhibit R is a true and correct copy of *Practice Areas*, Pawa Law Group, P.C., <http://www.pawalaw.com/practice-areas> (last visited June 10, 2016).

21. Exhibit S is a true and correct copy of Union of Concerned Scientists, *Smoke, Mirrors, and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science* (2007).

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24. Exhibit V is a true and correct copy of Stanford University Global Climate & Energy Project, *About Us*, *available at* [https://gcep.stanford.edu /about/](https://gcep.stanford.edu/about/) (last visited June 10, 2016).

25. Exhibit W is a true and correct copy of an excerpt of Exxon Mobil Corp., Annual Report (Form 10-K) (Feb. 28, 2007).

26. Exhibit X is a true and correct copy of an excerpt of Exxon Mobil Corp., Annual Report (Form 10-K) (Feb. 24, 2016).

27. Exhibit Y is a true and correct copy of *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, EPA, <http://www3.epa.gov/climatechange/endangerment> (last updated Feb. 23, 2016).

28. Exhibit Z is a true and correct copy of an e-mail from Peter Washburn, Policy Advisor, Office of New York Attorney General, to Scot Kline, Assistant Attorney General, Office of the Vermont Attorney General (Mar. 25, 2016, 11:49 AM), *available at* <http://eelegal.org/wp-content/uploads/2016/04/Questionnaire-responses.pdf>.

29. Exhibit AA is a true and correct copy of an e-mail from Scot Kline, Assistant Attorney General, Office of the Vermont Attorney General, to Brian Mahanna, Deputy Chief of Staff & Deputy Attorney General, Office of New York Attorney General, et al. (Mar. 28, 2016, 9:08 AM), *available at* <http://eelegal.org/wp-content/uploads/2016/04/Common-Interest-Agreement-and-discussion.pdf>.

30. Exhibit BB is a true and correct copy of Compl., *Exxon Mobil Corp. v. Healey*, No. 4:16-CV-469 (N.D. Tex. June 15, 2016), ECF No. 1.

31. Exhibit CC is a true and correct copy of Pl.'s Mot. for Prelim. Inj., *Exxon Mobil Corp. v. Healey*, No. 4:16-CV-469 (N.D. Tex. June 15, 2016), ECF No. 8.

32. Exhibit DD is a true and correct copy of Pl.'s Br. in Supp. of Mot. for Inj. & Decl. Relief, *Exxon Mobil Corp. v. Healey*, No. 4:16-CV-469 (N.D. Tex. June 15, 2016), ECF No. 9.

Signed under the penalties of perjury, this 16th day of June, 2016.

/s/ Thomas C. Frongillo
Thomas C. Frongillo

Exhibit A

AGs United For Clean Power Press Conference*
March 29, 2016: 11:35 am – 12:32 pm

AG Schneiderman: Thank you, good morning. I'm New York's Attorney General, Eric Schneiderman. I thank you for joining us here today for what we believe and hope will mark a significant milestone in our collective efforts to deal with the problem of climate change and put our heads together and put our offices together to try and take the most coordinated approach yet undertaken by states to deal with this most pressing issue of our time. I want to thank my co-convenor of the conference, Vermont Attorney General, William Sorrel, who has been helping in joining us here and been instrumental in making today's events possible, and my fellow attorneys general for making the trip to New York for this announcement. Many of them had been working for years on different aspects of this problem to try and preserve our planet and reduce the carbon emissions that threaten all of the people we represent. And I'm very proud to be here today with Attorney General George Jepsen of Connecticut, Attorney General Brian Frosh of Maryland, Attorney General Maura Healey of Massachusetts, Attorney General Mark Herring of Virginia, and Attorney General Claude Walker of the U.S. Virgin Islands.

We also have staff representing other attorneys general from across the country, including: Attorney General Kamala Harris of California, Matt Denn of Delaware, Karl Racine of the District of Columbia, Lisa Madigan of Illinois, Tom Miller of Iowa, Janet Mills of Maine, Lori Swanson of Minnesota, Hector Balderas of New Mexico, Ellen Rosenblum of Oregon, Peter Kilmartin of Rhode Island and Bob Ferguson of Washington.

And finally, I want to extend my sincere thanks to Vice President Al Gore for joining us. It has been almost ten years since he galvanized the world's attention on climate change with his documentary *An Inconvenient Truth*.

And, I think it's fair to say that no one in American public life either during or beyond their time in elective office has done more to elevate the debate of our climate change or to expand global awareness about the urgency of the need for collective action on climate change than Vice President Gore. So it's truly an honor to have you here with us today.

* The following transcript of the AGs United For Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>.

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So we've gathered here today for a conference – the first of its kind conference of attorneys general dedicated to coming up with creative ways to enforce laws being flouted by the fossil fuel industry and their allies in their short-sighted efforts to put profits above the interests of the American people and the integrity of our financial markets. This conference reflects our commitment to work together in what is really an unprecedented multi-state effort in the area of climate change. Now, we have worked together on many matters before and I am pleased to announce that many of the folks represented here were on the Amicus Brief we submitted to the United States Supreme Court in the *Friedrichs v. California Teacher Association* case. We just got the ruling that there was a four-four split so that the American labor movement survives to fight another day. And thanks, thanks to all for that effort and collaboration. It shows what we can do if we work together. And today we are here spending a day to ensure that this most important issue facing all of us, the future of our planet, is addressed by a collective of states working as creatively, collaboratively and aggressively as possible.

The group here was really formed when some of us came together to defend the EPA's Clean Power Plan, the new rules on greenhouse gases. And today also marks the day that our coalition is filing our brief in the Court of Appeals for the District of Columbia. In that important matter we were defending the EPA's rules. There is a coalition of other states on the other side trying to strike down the rules, but the group that started out in that matter together was 18 states and the District of Columbia. We call ourselves The Green 19, but now that Attorney General Walker of the Virgin Islands has joined us our rhyme scheme is blown. We can't be called The Green 19, so now we're The Green 20. We'll come up with a better name at some point.

But, ladies and gentlemen, we are here for a very simple reason. We have heard the scientists. We know what's happening to the planet. There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up. The U.S. Defense Department, no radical agency, recently called climate change an urgent and growing threat to our national security. We know that last month, February, was the furthest above normal for any month in history since 1880 when they started keeping meteorological records. The

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facts are evident. This is not a problem ten years or twenty years in the future. [There are] people in New York who saw what happened with the additional storm surge with Super Storm Sandy. We know the water level in New York Harbor is almost a foot higher than it was. The New York State Department of Environmental Conservation, not some radical agency, predicts that if we continue at this pace, we'll have another 1.5 feet of water in New York Harbor. It'll go up by that much in 2050. So today, in the face of the gridlock in Washington, we are assembling a group of state actors to send the message that we are prepared to step into this breach. And one thing we hope all reasonable people can agree on is that every fossil fuel company has a responsibility to be honest with its investors and with the public about the financial and market risks posed by climate change. These are cornerstones of our securities and consumer protection laws.

My office reached a settlement last year based on the enforcement of New York securities laws with Peabody Energy. And they agreed to rewrite their financials because they had been misleading investors and the public about the threat to their own business plan and about the fact that they had very detailed analysis telling them how the price of coal would be going down in the face of actions taken by governments around the world. But they were hiding it from their investors. So they agreed to revise all of their filings with the SEC. And the same week we announced that, we announced that we had served a subpoena on ExxonMobil pursuing that and other theories relating to consumer and securities fraud. So we know, because of what's already out there in the public, that there are companies using the best climate science. They are using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising. Then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding. And yet they have told the public for years that there were no "competent models," was the specific term used by an Exxon executive not so long ago, no competent models to project climate patterns, including those in the Arctic. And we know that they paid millions of dollars to support organizations that put out propaganda denying that we can predict or measure the effects of fossil fuel on our climate, or even denying that climate change was happening.

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There have been those who have raised the question: aren't you interfering with people's First Amendment rights? The First Amendment, ladies and gentlemen, does not give you the right to commit fraud. And we are law enforcement officers, all of us do work, every attorney general does work on fraud cases. And we are pursuing this as we would any other fraud matter. You have to tell the truth. You can't make misrepresentations of the kinds we've seen here.

And the scope of the problem we're facing, the size of the corporate entities and their alliances and trade associations and other groups is massive and it requires a multi-state effort. So I am very honored that my colleagues are here today assembling with us. We know that in Washington there are good people who want to do the right thing on climate change but everyone from President Obama on down is under a relentless assault from well-funded, highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action. So today, we're sending a message that, at least some of us – actually a lot of us – in state government are prepared to step into this battle with an unprecedented level of commitment and coordination.

And now I want to turn it over to my great colleague, the co-convenor of this conference, Vermont Attorney General William Sorrel.

AG Sorrel:

I am pleased that the small state of Vermont joins with the big state of New York and are working together to make this gathering today a reality. Truth is that states, large and small, have critical roles to play in addressing environmental quality issues. General Schneiderman has mentioned our filing today in the D.C. Circuit on the Clean Power Plan case. Going back some time, many of the states represented here joined with the federal government suing American Electric Power Company, the company operating several coal-fired electric plants in the Midwest and largely responsible for our acid rain and other air quality issues in the eastern part of the United States, ultimately resulting in what I believe to date is the largest settlement in an environmental case in our country's history. With help from a number of these states, we successfully litigated Vermont's adoption of the so-called California standard for auto emissions in federal court in Vermont, now the standard in the country. And right down to the present day, virtually all of the

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states represented today are involved in looking at the alleged actions by Volkswagen and the issues relating to emissions from tens of thousands of their diesel automobiles.

But today we're talking about climate change which I don't think there's any doubt, at least in our ranks, is the environmental issue of our time. And in order for us to effectively address this issue, it's going to take literally millions of decisions and actions by countries, by states, by communities and by individuals. And, just very briefly, Vermont is stepping up and doing its part. Our legislature has set goals of 75% reduction – looking from a 1990 base line – a 75% reduction in greenhouse gas emissions by 2050. Similarly, our electric utilities have a goal of 75% use of renewable energy sources by 2032. So, we've been doing our part. Our presence here today is to pledge to continue to do our part. I'm mindful of the fact that I'm between you and the real rock star on this issue, and so I'm going to turn it back to General Schneiderman to introduce the next speaker.

AG Schneiderman: Thank you. Thank you. I'm not really a rock star.

[Laughter]

Thank you Bill. It's always a pleasure to have someone here from a state whose U.S. senator is from Brooklyn.

[Laughter]

And doing pretty well for himself. So, Vice President Gore has a very busy schedule. He has been traveling internationally, raising the alarm but also training climate change activists. He rearranged his schedule so he could be here with us today to meet with my colleagues and I. And there is no one who has done more for this cause, and it is a great pleasure to have him standing shoulder to shoulder with us as we embark on this new round in what we hope will be the beginning of the end of our addiction to fossil fuel and our degradation of the planet. Vice President Al Gore.

VP Gore: Thank you very much, Eric. Thank you. Thank you very much.

[Applause]

Thank you very much, Attorney General Schneiderman. It really and truly is an honor for me to join you and your colleagues here,

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Bill Sorrel of Vermont, Maura Healey of Massachusetts, Brian Frosh of Maryland, Mark Herring of Virginia, George Jepsen of Connecticut and Claude Walker from the U.S. Virgin Islands, and the ten (let's see 1, 2, 3, 4, 5) how many other – ten other states . . . eleven other state attorneys general offices that were represented in the meetings that took place earlier, prior to this press conference.

I really believe that years from now this convening by Attorney General Eric Schneiderman and his colleagues here today may well be looked back upon as a real turning point in the effort to hold to account those commercial interests that have been – according to the best available evidence – deceiving the American people, communicating in a fraudulent way, both about the reality of the climate crisis and the dangers it poses to all of us. And committing fraud in their communications about the viability of renewable energy and efficiency and energy storage that together are posing this great competitive challenge to the long reliance on carbon-based fuels. So, I congratulate you, Attorney General, and all of you, and to those attorneys general who were so impressively represented in the meetings here. This is really, really important.

I am a fan of what President Obama has been doing, particularly in his second term on the climate crisis. But it's important to recognize that in the federal system, the Congress has been sharply constraining the ability of the executive branch to fully perform its obligations under [the] Constitution to protect the American people against the kind of fraud that the evidence suggests is being committed by several of the fossil fuel companies, electric utilities, burning coal, and the like. So what these attorneys general are doing is exceptionally important. I remember very well – and I'm not going to dwell on this analogy – but I remember very well from my days in the House and Senate and the White House the long struggle against the fraudulent activities of the tobacco companies trying to keep Americans addicted to the deadly habit of smoking cigarettes and committing fraud to try to constantly hook each new generation of children to replenish their stock of customers who were dying off from smoking-related diseases. And it was a combined effort of the executive branch, and I'm proud that the Clinton-Gore administration played a role in that, but it was a combined effort in which the state attorneys general played the crucial role in securing an historic victory for public health. From the time the tobacco companies were first found out, as evidenced by the historic attorney generals' report of 1964, it

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took 40 years for them to be held to account under the law. We do not have 40 years to continue suffering the consequences of the fraud allegedly being committed by the fossil fuel companies where climate change is concerned.

In brief, there are only three questions left to be answered about the climate crisis. The first one is: Must we change, do we really have to change? We rely on fossil fuels for more than 80% of all the energy our world uses. In burning it we've reduced poverty and raised standards of living and built this elaborate global civilization, and it looks like it'll be hard to change. So naturally, people wonder: Do we really have to change? The scientific community has been all but unanimous for a long time now. But now mother nature and the laws of physics – harder to ignore than scientists – are making it abundantly clear that we have to change. We're putting 110 million tons of man-made heat trapping global warming pollution into the thin shell of atmosphere surrounding our planet every day, as if it's an open sewer. And the cumulative amount of that man-made global warming pollution now traps as much extra heat energy in the earth's system as would be released by 400,000 Hiroshima-class atomic bombs exploding every 24 hours on the surface of our planet.

It's a big planet, but that's a lot of energy. And it is the reason why temperatures are breaking records almost every year now. 2015 was the hottest year measured since instruments had been used to measure temperature. 2014 was the second hottest. 14 of the 15 hottest have been in the last 15 years. As the Attorney General mentioned, February continues the trend by breaking all previous records – the hottest in 1,632 months ever measured. Last December 29th, the same unnatural global warming fuel storm system that created record floods in the Midwest went on up to the Arctic and on December 29th, smack in the middle of the polar winter night at the North Pole, temperatures were driven up 50 degrees above the freezing point. So the North Pole started thawing in the middle of the winter night. Yesterday the announcement came that it's the smallest winter extent of ice ever measured in the Arctic.

Ninety-three percent of the extra heat goes into the oceans of the world, and that has consequences. When Super Storm Sandy headed across the Atlantic toward this city, it crossed areas of the Atlantic that were nine degrees Fahrenheit warmer than normal

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and that's what made that storm so devastating. The sea level had already come up because of the ice melting, principally off Greenland and Antarctica. And as the Attorney General mentioned, that's a process now accelerating. But these ocean-based storms are breaking records now. I just came from the Philippines where Super Typhoon Haiyon created 4 million homeless people when it crossed much warmer waters of the Pacific. By the way, it was a long plane flight to get here and I happened to get, just before we took off, the 200-page brief that you all filed in support of the Clean Power Plan. Really excellent work. Footnotes took up a lot of those 200 pages so I'm not claiming to [have] read all 200 of them.

The same extra heat in the oceans is disrupting the water cycle. We all learned in school that the water vapor comes off the oceans and falls as rain or snow over the land and then rushes back to the ocean. That natural life-giving process is being massively disrupted because the warmer oceans put a lot more water vapor up there. And when storm conditions present themselves they, these storms will reach out thousands of kilometers to funnel all that extra humidity and water vapor into these massive record-breaking downpours. And occasionally it creates a snowpocalypse or snowmageddon but most often, record-breaking floods. We've had seven once-in-a-thousand-year floods in the last ten years in the U.S. Just last week in Louisiana and Arkansas, two feet of rain in four days coming again with what they call the Maya Express off the oceans. And the same extra heat that's creating these record-breaking floods also pull the soil moisture out of the land and create these longer and deeper droughts all around the world on every continent.

Every night on the news now it's like a nature hike through the Book of Revelation. And we're seeing tropical diseases moving to higher latitudes – the Zika virus. Of course the transportation revolution has a lot to do with the spread of Zika and Dengue Fever and Chikungunya and diseases I've never heard of when I was growing up and maybe, probably most of you never did either. But now, they're moving and taking root in the United States. Puerto Rico is part of the United States, by the way – not a state, but part of our nation. Fifty percent of the people in Puerto Rico are estimated to get the Zika virus this year. By next year, eighty percent. When people who are part of the U.S. territory, when women are advised not to get pregnant, that's something new that

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ought to capture our attention. And in large areas of Central America and South America, women are advised now not to get pregnant for two years until they try to get this brand new viral disease under control.

The list of the consequences continues, and I'm not going to go through it all, but the answer to that first question: "Do we have to change?" is clearly now to any reasonable thinking person: "yes, we have to change." Now the second question is: "Can we change?" And for quite a few years, I will confess to you that, when I answered that question yes, it was based on the projections of scientists and technologists who said, just wait. We're seeing these exponential curves just begin, solar is going to win, wind power is going to get way cheaper, batteries are going to have their day, we're going to see much better efficiency. Well now we're seeing these exponential curves really shoot up dramatically. Almost 75% of all the new investment in the U.S. in new generating capacity last year was in solar and wind – more than half worldwide. We're seeing coal companies go bankrupt on a regular basis now. Australia is the biggest coal exporter in the world. They've just, just the analysis there, they're not going to build any more coal plants because solar and wind are so cheap. And we're seeing this happen all around the world. But, there is an effort in the U.S. to slow this down and to bring it to a halt because part of the group that, again according to the best available evidence, has been committing fraud in trying to convince people that the climate crisis is not real, are now trying to convince people that renewable energy is not a viable option. And, worse than that, they're using their combined political and lobbying efforts to put taxes on solar panels and jigger with the laws to require that installers have to know the serial number of every single part that they're using to put on a rooftop of somebody's house, and a whole series of other phony requirements, unneeded requirements, that are simply for the purpose of trying to slow down this renewable revolution. In the opinion of many who have looked at this pattern of misbehavior and what certainly looks like fraud, they are violating the law. If the Congress would actually work – our democracy's been hacked, and that's another story, not the subject of this press conference – but if the Congress really would allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level. But these brave men and women, who are the attorneys general of the states represented in this historic coalition, are doing their job and – just

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as many of them did in the tobacco example – they are now giving us real hope that the answer to that third question: “Will we change?” is going to be “yes.” Because those who are using unfair and illegal means to try to prevent the change are likely now, finally, at long last, to be held to account. And that will remove the last barriers to allow the American people to move forward and to redeem the promise of our president and our country in the historic meeting in Paris last December where the United States led the global coalition to form the first global agreement that is truly comprehensive. If the United States were to falter and stop leading the way, then there would be no other leader for the global effort to solve this crisis. By taking the action these attorneys general are taking today, it is the best, most hopeful step I can remember in a long time – that we will make the changes that are necessary.

So, I’ll conclude my part in this by, once again, saying congratulations to these public servants for the historic step they are taking today. And on behalf of many people, who I think would say it’s alright for me to speak for them, I’d like to say thank you.

AG Schneiderman: Thank you very much, and now my other colleagues are going to say a few words. For whatever reason, I’ve gotten into the habit, since we always seem to do this, we do this in alphabetical order by state, which I learned when I first became an AG but I guess we’ll stick with it. Connecticut Attorney General George Jepsen who was our partner in the *Friedrichs* case and stood with me when we announced that we were filing in that case. We’ve done a lot of good work together. Attorney General Jepsen.

AG Jepsen: I’d like to thank Eric and Bill for their leadership on this important issue and in convening this conference and to recognize the man who has done more to make global warming an international issue than anybody on the entire planet – Vice President Al Gore. In the backdrop, in the backdrop of a very dysfunctional Congress, state attorneys general, frequently on a bipartisan, basis have shown that we can stand up and take action where others have not. The Vice President referenced the tobacco litigation, which was before my time but hugely important in setting the tone and the structures by which we do work together. Since becoming attorney general in 2011, we’ve taken on the big banks and their mortgage servicing issues, a \$25 billion settlement. We’ve taken on Wall Street’s Standard & Poor’s for mislabeling mortgage-backed securities – as

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a 20-state coalition – mislabeling mortgage-backed securities as AAA when in fact they were junk. Working together on data privacy issues, and now it's time that we stand up once again and take on what is the most important issue of our generation. We owe it to our children, our children's children, to step up and do the right thing, to work together and I'm committed to it. Thank you.

AG Schneiderman: Thank you. And now a relatively new colleague but someone who has brought incredible energy to this fight and who we look forward to working with on this and other matters for a long time to come. Maryland Attorney General Brian Frosh.

AG Frosh: Well, first thank you again to General Schneiderman and General Sorrel for putting together this group and it's an honor to be with you, Mr. Vice President. Thank you so much for your leadership. I'm afraid we may have reached that point in the press conference where everything that needs to be said has been said, but everyone who needs to say it hasn't said it yet.

[Laughter]

So, I will try to be brief. Climate change is an existential threat to everybody on the planet. Maryland is exceptionally vulnerable to it. The Chesapeake Bay bisects our state. It defines us geographically, culturally, historically. We have as much tidal shoreline as states as large as California. We have islands in the Chesapeake Bay that are disappearing. We have our capital, Annapolis, which is also the nuisance flood capital of the United States. It's under water way, way, way too often. It's extraordinarily important that we address the problem of climate change. I'm grateful to General Sorrel and General Schneiderman for putting together this coalition of the willing. I'm proud to be a part of it in addressing and supporting the President's Clean Power Plan. What we want from ExxonMobil and Peabody and ALEC is very simple. We want them to tell the truth. We want them to tell the truth so that we can get down to the business of stopping climate change and of healing the world. I think that as attorneys general, as the Vice President said, we have a unique ability to help bring that about and I'm very glad to be part of it.

AG Schneiderman: Thank you. And, another great colleague, who has done extraordinary work before and since becoming attorney general working with our office on incredibly important civil rights issues,

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financial fraud issues, Massachusetts Attorney General Maura Healey.

AG Healey:

Thank you very much General Schneiderman. Thank you General Schneiderman and General Sorrel for your leadership on this issue. It's an honor for me to be able to stand here today with you, with our colleagues and certainly with the Vice President who, today, I think, put most eloquently just how important this is, this commitment that we make. Thank you for your leadership. Thank you for your continuing education. Thank you for your inspiration and your affirmation.

You know, as attorneys general, we have a lot on our plates: addressing the epidemics of opiate abuse, gun violence, protecting the economic security and well-being of families across this country; all of these issues are so important. But make no mistake about it, in my view, there's nothing we need to worry about more than climate change. It's incredibly serious when you think about the human and the economic consequences and indeed the fact that this threatens the very existence of our planet. Nothing is more important. Not only must we act, we have a moral obligation to act. That is why we are here today.

The science – we do believe in science; we're lawyers, we believe in facts, we believe in information, and as was said, this is about facts and information and transparency. We know from the science and we know from experience the very real consequences of our failure to address this issue. Climate change is and has been for many years a matter of extreme urgency, but, unfortunately, it is only recently that this problem has begun to be met with equally urgent action. Part of the problem has been one of public perception, and it appears, certainly, that certain companies, certain industries, may not have told the whole story, leading many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts. Fossil fuel companies that deceived investors and consumers about the dangers of climate change should be, must be, held accountable. That's why I, too, have joined in investigating the practices of ExxonMobil. We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public.

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We are here before you, all committed to combating climate change and to holding accountable those who have misled the public. The states represented here today have long been working hard to sound the alarm, to put smart policies in place, to speed our transition to a clean energy future, and to stop power plants from emitting millions of tons of dangerous global warming pollution into our air. I will tell you, in Massachusetts that's been a very good thing. Our economy has grown while we've reduced greenhouse gas emissions and boosted clean power and efficiency. We're home to a state with an \$11 billion clean energy industry that employs nearly 100,000 people. Last year clean energy accounted for 15% of New England's power production. Our energy efficiency programs have delivered \$12.5 billion in benefits since 2008 and are expected to provide another \$8 billion over the next three years. For the past five years, Massachusetts has also been ranked number one in the country for energy efficiency. So we know what's possible. We know what progress looks like. But none of us can do it alone. That's why we're here today. We have much work to do, but when we act and we act together, we know we can accomplish much. By quick, aggressive action, educating the public, holding accountable those who have needed to be held accountable for far too long, I know we will do what we need to do to address climate change and to work for a better future. So, I thank AG Schneiderman for gathering us here today and for my fellow attorneys general in their continued effort in this important fight. Thank you.

AG Schneiderman: Thank you. And now another great colleague who speaks as eloquently as anyone I've heard about what's happening to his state, and a true hero of standing up in a place where maybe it's not quite as politically easy as it is to do it in Manhattan but someone who is a true aggressive progressive and a great attorney general, Mark Herring from Virginia.

AG Herring: Thank you, Eric. Good afternoon. In Virginia, climate change isn't some theoretical issue. It's real and we are already dealing with its consequences. Hampton Roads, which is a coastal region in Virginia, is our second most populated region, our second biggest economy and the country's second most vulnerable area as sea levels rise. The area has the tenth most valuable assets in the world threatened by sea level rise. In the last 85 years the relative sea level in Hampton Roads has risen 14 inches – that's well over a foot – in just the last century.

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Some projections say that we can expect an additional two to five feet of relative sea level rise by the end of this century – and that would literally change the face of our state. It would cripple our economy and it could threaten our national security as Norfolk Naval, the world's largest naval base, is impacted. Nuisance flooding that has increased in frequency will become the norm. They call it blue sky flooding. Storm surges from tropical systems will threaten more homes, businesses and residents. And even away from the coast, Virginians are expected to feel the impact of climate change as severe weather becomes more dangerous and frequent. Just a few weeks ago, we had a highly unusual February outbreak of tornadoes in the Commonwealth that was very damaging and unfortunately deadly.

Farming and forestry is our number one industry in Virginia. It's a \$70 billion industry in Virginia that supports around 400,000 jobs and it's going to get more difficult and expensive. And, the Commonwealth of Virginia local governments and the navy are already spending millions to build more resilient infrastructure, with millions and millions more on the horizon. To replace just one pier at Norfolk Naval is about \$35 to \$40 million, and there are 14 piers, so that would be around a half billion right there.

As a Commonwealth and a nation, we can't put our heads in the sand. We must act and that is what today is about. I am proud to have Virginia included in this first of its kind coalition which recognizes the reality and the pressing threat of man-made climate change and sea level rise. This group is already standing together to defend the Clean Power Plan – an ambitious and achievable plan – to enjoy the health, economic and environmental benefits of cleaner air and cleaner energy. But there may be other opportunities and that's why I have come all the way from Virginia. I am looking forward to exploring ideas and opportunities, to partner and collaborate, if there are enforcement actions we need to be taking, if there are legal cases we need to be involved in, if there are statutory or regulatory barriers to growing our clean energy sectors and, ultimately, I want to work together with my colleagues here and back in Virginia to help combat climate change and to shape a more sustainable future.

And for any folks who would say the climate change is some sort of made-up global conspiracy, that we're wasting our time, then

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come to Hampton Roads. Come to Norfolk and take a look for yourselves. Mayor Fraim would love to have you.

AG Schneiderman: Thank you. And our closer, another great colleague who has traveled far but comes with tremendous energy to this cause and is an inspiration to us all, U.S. Virgin Islands Attorney General Claude Walker.

AG Walker: Thank you. Thank you, General Schneiderman, Vice President Gore. One of my heroes, I must say. Thank you. I've come far to New York to be a part of this because in the Virgin Islands and Puerto Rico, we experience the effects of global warming. We see an increase in coral bleaching, we have seaweeds, proliferation of seaweeds in the water, all due to global warming. We have tourism as our main industry, and one of the concerns that we have is that tourists will begin to see this as an issue and not visit our shores. But also, residents of the Virgin Islands are starting to make decisions about whether to live in the Virgin Islands – people who have lived there for generations, their families have lived there for generations. We have a hurricane season that starts in June and it goes until November. And it's incredibly destructive to have to go through hurricanes, tropical storms annually. So people make a decision: Do I want to put up with this, with the power lines coming down, buildings being toppled, having to rebuild annually? The strengths of the storms have increased over the years. Tropical storms now transform into hurricanes. When initially they were viewed as tropical storms but as they get close to the land, the strength increases. So we're starting to see people make decisions about whether to stay in a particular place, whether to move to higher ground – which is what some have said – as you experience flooding, as you experience these strong storms. So we have a strong stake in this, in making sure that we address this issue.

We have launched an investigation into a company that we believe must provide us with information about what they knew about climate change and when they knew it. And we'll make our decision about what action to take. But, to us, it's not an environmental issue as much as it is about survival, as Vice President Gore has stated. We try as attorneys general to build a community, a safe community for all. But what good is that if annually everything is destroyed and people begin to say: Why am I living here?

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So we're here today to support this cause and we'll continue. It could be David and Goliath, the Virgin Islands against a huge corporation, but we will not stop until we get to the bottom of this and make it clear to our residents as well as the American people that we have to do something transformational. We cannot continue to rely on fossil fuel. Vice President Gore has made that clear. We have to look at renewable energy. That's the only solution. And it's troubling that as the polar caps melt, you have companies that are looking at that as an opportunity to go and drill, to go and get more oil. Why? How selfish can you be? Your product is destroying this earth and your strategy is, let's get to the polar caps first so we can get more oil to do what? To destroy the planet further? And we have documents showing that. So this is very troubling to us and we will continue our fight. Thank you.

AG Schneiderman: Thank you and Eric. And I do want to note, scripture reports David was not alone in fact, Brother Walker. Eric and Matt will take on-topic questions.

Moderator: Please just say your name and publication.

Press Person: John [inaudible] with *The New York Times*. I count two people who have actually said that they're launching new investigations. I'm wondering if we could go through the list and see who's actually in and who is not in yet.

AG Schneiderman: Well, I know that prior to today, it was, and not every investigation gets announced at the outset as you know, but it had already been announced that New York and California had begun investigations with those stories. I think Maura just indicated a Massachusetts investigation and the Virgin Islands has, and we're meeting with our colleagues to go over a variety of things. And the meeting goes on into the afternoon. So, I am not sure exactly where everyone is. Different states have – it's very important to understand – different states have different statutes, different jurisdictions. Some can proceed under consumer protection law, some securities fraud laws, there are other issues related to defending taxpayers and pension funds. So there are a variety of theories that we're talking about and collaborating and to the degree to which we can cooperate, we share a common interest, and we will. But, one problem for journalists with investigations is, part of doing an investigation is you usually don't talk a lot about what you're doing after you start it or even as you're preparing to start it.

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Press Person: Shawn McCoy with *Inside Sources*. A *Bloomberg Review* editorial noted that the Exxon investigation is preposterous and a dangerous affirmation of power. *The New York Times* has pointed out that Exxon has published research that lines up with mainstream climatology and therefore there's not a comparison to Big Tobacco. So is this a publicity stunt? Is the investigation a publicity stunt?

AG Schneiderman: No. It's certainly not a publicity stunt. I think the charges that have been thrown around – look, we know for many decades that there has been an effort to influence reporting in the media and public perception about this. It should come as no surprise to anyone that that effort will only accelerate and become more aggressive as public opinion shifts further in the direction of people understanding the imminent threat of climate change and other government actors, like the folks represented here step up to the challenge. The specific reaction to our particular subpoena was that the public reports that had come out, Exxon said were cherry picked documents and took things out of context. We believe they should welcome our investigation because, unlike journalists, we will get every document and we will be able to put them in context. So I'm sure that they'll be pleased that we're going to get everything out there and see what they knew, when they knew it, what they said and what they might have said.

Press Person: David [inaudible] with *The Nation*. Question for General Schneiderman. What do you hope to accomplish with your Exxon investigation? I'm thinking with reference to Peabody where really there was some disclosure requirements but it didn't do a great deal of [inaudible]. Is there a higher bar for Exxon? What are the milestones that you hope to achieve after that investigation?

AG Schneiderman: It's too early to say. We started the investigation. We received a lot of documents already. We're reviewing them. We're not prejudging anything, but the situation with oil companies and coal companies is somewhat different because the coal companies right now are, the market is already judging the coal industry very harshly. Coal companies, including Peabody, are teetering on the brink. The evidence that we advanced and what was specifically disclosed about Peabody were pretty clear cut examples of misrepresentations made in violation with the Securities and Exchange Commission, made to investors. It's too early to say what we're going to find with Exxon but we intend to work as

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aggressively as possible, but also as carefully as possible. We're very aware of the fact that everything we do here is going to be subject to attack by folks who have a huge financial interest in discrediting us. So we're going to be aggressive and creative but we are also going to be as careful and meticulous and deliberate as we can.

VP Gore:

Could I respond to the last couple of questions just briefly. And in doing so, I'd like to give credit to the journalistic community and single out the Pulitzer Prize winning team at *InsideClimate News*, also the *Los Angeles Times* and the student-led project at Columbia School of Journalism under Steve Coll. And the facts that were publicly presented during, in those series of articles that I have mentioned, are extremely troubling, and where Exxon Mobil in particular is concerned. The evidence appears to indicate that, going back decades, the company had information that it used for the charting of its plan to explore and drill in the Arctic, used for other business purposes information that largely was consistent with what the mainstream scientific community had collected and analyzed. And yes, for a brief period of time, it did publish some of the science it collected, but then a change came, according to these investigations. And they began to make public statements that were directly contrary to what their own scientists were telling them. Secondly, where the analogy to the tobacco industry is concerned, they began giving grants – according to the evidence collected – to groups that specialize in climate denial, groups that put out information purposely designed to confuse the public into believing that the climate crisis was not real. And according to what I've heard from the preliminary inquiries that some of these attorneys general have made, the same may be true of information that they have put out concerning the viability of competitors in the renewable energy space. So, I do think the analogy may well hold up rather precisely to the tobacco industry. Indeed, the evidence indicates that, that I've seen and that these journalists have collected, including the distinguished historian of science at Harvard, Naomi Oreskes wrote the book *The Merchants of Doubt* with her co-author, that they hired several of the very same public relations agents that had perfected this fraudulent and deceitful craft working for the tobacco companies. And so as someone who has followed the legislative, the journalistic work very carefully, I think the analogy does hold up.

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Press Person: [inaudible] with *InsideClimate News*. Along the lines of talking about that analogy: from a legal framework, can you talk about a comparison, similarities and differences between this potential case and that of Big Tobacco?

AG Schneiderman: Well, again, we're at the early stages of the case. We are not pre-judging the evidence. We've seen some things that have been published by you and others, but it is our obligation to take a look at the underlying documentation and to get at all the evidence, and we do that in the context of an investigation where we will not be talking about every document we uncover. It's going to take some time, but that's another reason why working together collectively is so important. And we are here today because we are all committed to pursuing what you might call an all-levers approach. Every state has different laws, different statutes, different ways of going about this. The bottom line is simple. Climate change is real, it is a threat to all the people we represent. If there are companies, whether they are utilities or they are fossil fuel companies, committing fraud in an effort to maximize their short-term profits at the expense of the people we represent, we want to find out about it. We want to expose it, and we want to pursue them to the fullest extent of the law.

Moderator: Last one.

Press Person: Storms, floods will arise they are all going to continue to destroy property and the taxpayers . . .

Moderator: What's your name and . . .

Press Person: Oh, sorry. Matthew Horowitz from *Vice*. Taxpayers are going to have to pay for these damages from our national flood insurance claims. So if fossil fuel companies are proven to have committed fraud, will they be held financially responsible for any sorts of damages?

AG Schneiderman: Again, it's early to say but certainly financial damages are one important aspect of this but, and it is tremendously important and taxpayers – it's been discussed by my colleagues – we're already paying billions and billions of dollars to deal with the consequences of climate change and that will be one aspect of – early foreseeing, it's far too early to say. But, this is not a situation where financial damages alone can deal with the problem. We have to change conduct, and as the Vice President indicated, other

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places in the world are moving more rapidly towards renewables. There is an effort to slow that process down in the United States. We have to get back on that path if we're going to save the planet and that's ultimately what we're here for.

Moderator: We're out of time, unfortunately. Thank you all for coming.

Exhibit B



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

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www.mass.gov/ago

CIVIL INVESTIGATIVE DEMAND

BY HAND DELIVERY

Demand No.: 2016-EPD-36

Date Issued: April 19, 2016

Issued To: Exxon Mobil Corporation
c/o Corporation Service Company, its Registered Agent
84 State Street
Boston, Massachusetts 02109

This Civil Investigative Demand ("CID") is issued to Exxon Mobil Corporation ("Exxon" or "You") pursuant to Massachusetts General Laws c. 93A, § 6, as part of a pending investigation concerning potential violations of M.G.L. c. 93A, § 2, and the regulations promulgated thereunder arising both from (1) the marketing and/or sale of energy and other fossil fuel derived products to consumers in the Commonwealth of Massachusetts (the "Commonwealth"); and (2) the marketing and/or sale of securities, as defined in M.G.L. c. 110A, § 401(k), to investors in the Commonwealth, including, without limitation, fixed- and floating rate-notes, bonds, and common stock, sold or offered to be sold in the Commonwealth.

This CID requires You to produce the documents identified in Schedule A below, pursuant to M.G.L. c. 93A, § 6(1). The Documents identified in Schedule A must be produced by May 19, 2016, by delivering them to:

I. Andrew Goldberg
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

The documents shall be accompanied by an affidavit in the form attached hereto. AAG Goldberg and such other employees, agents, consultants, and experts of the Office of the Attorney General as needed in its discretion, shall review Your affidavit and the documents produced in conjunction with our investigation.

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This CID also requires You to appear and give testimony under oath through Your authorized custodian of records that the documents You produce in response to this CID represent all of the documents called for in this CID; that You have not withheld any documents responsive to this CID; and that all of the documents You produce were records made in good faith and kept in the regular course of Your business, and it was the regular course of Your business to make and keep such records. This testimony will be taken on June 10, 2016, beginning at 9:30 a.m. at the Boston Office of the Attorney General, 100 Cambridge Street, 10th Floor, Boston, Massachusetts. The testimony will be taken by AAG Goldberg or an appropriate designee, before an officer duly authorized to administer oaths by the law of the Commonwealth, and shall proceed, day to day, until the taking of testimony is completed. The witness has the right to be accompanied by an attorney. Rule 30(c) of the Massachusetts Rules of Civil Procedure shall apply. Your attendance and testimony are necessary to conduct this investigation.

This CID also requires You to appear and give testimony under oath through one or more of Your officers, directors or managing agents, or other persons most knowledgeable concerning the subject matter areas enumerated in Schedule B, below. This testimony will be taken on June 24, 2016, beginning at 9:30 a.m. at the Boston Office of the Attorney General, 100 Cambridge Street, 10th Floor, Boston, Massachusetts. The testimony will be taken by AAG Goldberg or an appropriate designee, before an officer duly authorized to administer oaths by the law of the Commonwealth, and shall proceed, day to day, until the taking of testimony is completed. The witness has the right to be accompanied by an attorney. Rule 30(c) of the Massachusetts Rules of Civil Procedure shall apply. Your attendance and testimony are necessary to conduct this investigation.

Under G.L. c. 93A, § 6(7), You may make a motion prior to the production date specified in this notice, or within twenty-one days after this notice has been served, whichever period is shorter, in the appropriate court of law to modify or set aside this CID for good cause shown.

If the production of the documents required by this CID would be, in whole or in part, unduly burdensome, or if You require clarification of any request, please contact AAG Goldberg promptly at the phone number below.

Finally, please note that under G.L. c. 93A, §7, obstruction of this investigation, including the alteration or destruction of any responsive document after receipt of

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this CID, is subject to a fine of up to five thousand dollars (\$5,000.00). A copy of that provision is reprinted at Schedule C.

Issued at Boston, Massachusetts, this 19th day of April, 2016.

COMMONWEALTH OF
MASSACHUSETTS

MAURA HEALEY
ATTORNEY GENERAL

By: 

I. Andrew Goldberg
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel. (617) 727-2200

SCHEDULE A

A. General Definitions and Rules of Construction

1. "Advertisement" means a commercial message made orally or in any newspaper, magazine, leaflet, flyer, or catalog; on radio, television, or public address system; electronically, including by email, social media, and blog post; or made in person, in direct mail literature or other printed material, or on any interior or exterior sign or display, in any window display, in any point of transaction literature, but not including on any product label, which is delivered or made available to a customer or prospective customer in any manner whatsoever.
2. "All" means each and every.
3. "Any" means any and all.
4. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the CID all information or Documents that might otherwise be construed to be outside of its scope.
5. "Communication" means any conversation, discussion, letter, email, memorandum, meeting, note or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means, and shall include any Document that abstracts, digests, transcribes, records or reflects any of the foregoing. Except where otherwise stated, a request for "Communications" means a request for all such Communications.
6. "Concerning" means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.
7. "Custodian" means any Person or Entity that, as of the date of this CID, maintained, possessed, or otherwise kept or controlled such Document.
8. "Document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail ("e-mail"), instant messages, text messages, personal digital assistant or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or

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Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof. Except where otherwise stated, a request for "Documents" means a request for all such Documents.

9. "Entity" means without limitation any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or other firm or similar body, or any unit, division, agency, department, or similar subdivision thereof.
10. "Identify" or "Identity," as applied to any Document means the provision in writing of information sufficiently particular to enable the Attorney General to request the Document's production through CID or otherwise, including but not limited to: (a) Document type (letter, memo, etc.); (b) Document subject matter; (c) Document date; and (d) Document author(s), addressee(s) and recipient(s). In lieu of identifying a Document, the Attorney General will accept production of the Document, together with designation of the Document's Custodian, and identification of each Person You believe to have received a copy of the Document.
11. "Identify" or "Identity," as applied to any Entity, means the provision in writing of such Entity's legal name, any d/b/a, former, or other names, any parent, subsidiary, officers, employees, or agents thereof, and any address(es) and any telephone number(s) thereof.
12. "Identify" or "Identity," as applied to any natural person, means and includes the provision in writing of the natural person's name, title(s), any aliases, place(s) of employment, telephone number(s), e-mail address(es), mailing addresses and physical address(es).
13. "Person" means any natural person, or any Entity.
14. "Refer" means embody, refer or relate, in any manner, to the subject of the document demand.

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15. "Refer or Relate to" means to make a statement about, embody, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject of the document demand.
16. "Sent" or "received" as used herein means, in addition to their usual meanings, the transmittal or reception of a Document by physical, electronic or other delivery, whether by direct or indirect means.
17. "CID" means this subpoena and any schedules, appendices, or attachments thereto.
18. The use of the singular form of any word used herein shall include the plural and vice versa. The use of any tense of any verb includes all other tenses of the verb.
19. The references to Communications, Custodians, Documents, Persons, and Entities in this CID encompass all such relevant ones worldwide.

B. Particular Definitions

1. "Exxon," "You," or "Your," means Exxon Mobil Corporation, and any present or former parents, subsidiaries, affiliates, directors, officers, partners, employees, agents, representatives, attorneys or other Persons acting on its behalf, and including predecessors or successors or any affiliates of the foregoing.
2. "Exxon Products and Services" means products and services, including without limitation petroleum and natural gas energy products and related services, offered to and/or sold by Exxon to consumers in Massachusetts.
3. "Carbon Dioxide" or "CO₂" means the naturally occurring chemical compound composed of a carbon atom covalently double bonded to two oxygen atoms that is fixed by photosynthesis into organic matter.
4. "Climate" means the statistical description in terms of the mean and variability of relevant quantities, such as surface variables, including, without limitation, temperature, precipitation, and wind, on Earth over a period of time ranging from months to thousands or millions of years. Climate is the state, including a statistical description, of the Climate System. *See* Intergovernmental Panel on Climate Change (IPCC), 2012: Glossary of terms. In: Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation [Field, C.B., V. Barros, T.F. Stocker, D. Qin, D.J. Dokken, K.L. Ebi, M.D. Mastrandrea, K.J. Mach, G.-K. Plattner, S.K. Allen, M. Tignor, and P.M. Midgley (eds.)]. A Special Report of Working Groups I and II of the IPCC. Cambridge University Press, Cambridge, UK, and New York, NY, USA (the "IPCC Glossary"), p. 557.

5. "Climate Change" means a change in the state of Earth's Climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. *See IPCC Glossary, p. 557.*
6. "Climate Model" means a numerical representation of the Climate System based on the physical, chemical, and biological properties of its components, their interactions, and feedback processes, and that accounts for all or some of its known properties. Climate models are applied as a research tool to study and simulate the climate, and for operational purposes, including monthly, seasonal, interannual, and longer-term climate predictions. *See IPCC Glossary, p. 557.*
7. "Climate Risk" means the risk that variables in the Climate System reach values that adversely affect natural and human systems and regions, including those that relate to extreme values of the climate variables such as high wind speed, high river water and sea level stages (flood), and low water stages (drought). These include, without limitation, such risks to ecosystems, human health, geopolitical stability, infrastructure, facilities, businesses, asset value, revenues, and profits, as well as the business risks associated with public policies and market changes that arise from efforts to mitigate or adapt to Climate Change.
8. "Climate Science" means the study of the Climate on Earth.
9. "Climate System" means the dynamics and interactions on Earth of five major components: atmosphere, hydrosphere, cryosphere, land surface, and biosphere. *See IPCC Glossary, p. 557.*
10. "Global Warming" means the gradual increase, observed or projected, in Earth's global surface temperature, as one of the consequences of radiative forcing caused by anthropogenic emissions.
11. "Greenhouse Gas" means a gaseous constituent of Earth's atmosphere, both natural and anthropogenic, that absorbs and emits radiation at specific wavelengths within the spectrum of infrared radiation emitted by the Earth's surface, the atmosphere, and clouds. Water vapor (H₂O), carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), chlorofluorocarbons (CFCs), and ozone (O₃) are the primary Greenhouse Gases in the Earth's atmosphere. *See IPCC Glossary, p. 560.*
12. "Greenhouse Gas Emissions" means the exiting to the atmosphere of Greenhouse Gas.
13. "Methane" or "CH₄" means the chemical compound composed of one atom of carbon and four atoms of hydrogen. Methane is the main component of natural gas.

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14. "Radiative Forcing Effect" means the influence a factor has in altering the balance of incoming and outgoing energy in the Earth-atmosphere system and is an index of the importance of the factor as a potential climate change mechanism.
15. "Security" has the same meaning as defined in M.G.L. c. 110A, § 401(k), and includes, without limitation, any fixed- and floating rate-notes, bonds, and common stock, available to investors for purchase by Massachusetts residents.
16. "Sustainable Development" means development that meets the needs of the present without compromising the ability of future generations to meet their own needs. *See IPCC Glossary, p. 564.*
17. "Sustainability Reporting" means the practice of measuring, disclosing and being accountable to internal and external stakeholders for organizational performance towards the goals of Sustainable Development.
18. "Acton Institute for the Study of Religion and Liberty" or "Acton Institute" means the nonprofit organization by that name. Acton Institute is located in Grand Rapids, Michigan.
19. "American Enterprise Institute for Public Policy Research" or "AEI" means the nonprofit public policy organization by that name. AEI is based in Washington, D.C.
20. "Americans for Prosperity" means the nonprofit advocacy group by that name. Americans for Prosperity is based in Arlington, Virginia.
21. "American Legislative Exchange Council" or "ALEC" means the nonprofit organization by that name consisting of state legislator and private sector members. ALEC is based in in Arlington, Virginia.
22. "American Petroleum Institute" or "API" means the oil and gas industry trade association by that name. API is based in Washington, D.C.
23. "Beacon Hill Institute at Suffolk University" means the research arm of the Department of Economics at Suffolk University in Boston, Massachusetts, by that name.
24. "Center for Industrial Progress" or "CIP" means the for profit organization by that name. CIP is located in Laguna Hills, California.
25. "Competitive Enterprise Institute" or "CEI" means the nonprofit public policy organization by that name. CEI is based in Washington, D.C.

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26. "George C. Marshall Institute" means the nonprofit public policy organization by that name. George C. Marshall Institute is based in Arlington, Virginia.
27. "The Heartland Institute" means the nonprofit public policy organization by that name. The Heartland Institute is based in Arlington Heights, Illinois.
28. "The Heritage Foundation" means the nonprofit public policy organization by that name. The Heritage Foundation is based in Washington, D.C.
29. "Mercatus Center at George Mason University" means the university-based nonprofit public policy organization by that name. Mercatus Center at George Mason University is based in Arlington, Virginia.

C. Instructions

1. Preservation of Relevant Documents and Information; Spoliation. You are reminded of your obligations under law to preserve Documents and information relevant or potentially relevant to this CID from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit or otherwise vary the terms of this CID, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish your aforementioned preservation obligations. Nor shall you act, in reliance upon any such agreement or otherwise, in any manner inconsistent with your preservation obligations under law. No agreement purporting to modify, limit or otherwise vary your preservation obligations under law shall be construed as in any way narrowing, qualifying, eliminating or otherwise diminishing such aforementioned preservation obligations, nor shall you act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
2. Possession, Custody, and Control. The CID calls for all responsive Documents or information in your possession, custody or control. This includes, without limitation, Documents or information possessed or held by any of your officers, directors, employees, agents, representatives, divisions, affiliates, subsidiaries or Persons from whom you could request Documents or information. If Documents or information responsive to a request in this CID are in your control, but not in your possession or custody, you shall promptly Identify the Person with possession or custody.
3. Documents No Longer in Your Possession. If any Document requested herein was formerly in your possession, custody or control but is no longer available, or no longer exists, you shall submit a statement in writing under oath that: (a) describes

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in detail the nature of such Document and its contents; (b) Identifies the Person(s) who prepared such Document and its contents; (c) Identifies all Persons who have seen or had possession of such Document; (d) specifies the date(s) on which such Document was prepared, transmitted or received; (e) specifies the date(s) on which such Document became unavailable; (f) specifies the reason why such Document is unavailable, including without limitation whether it was misplaced, lost, destroyed or transferred; and if such Document has been destroyed or transferred, the conditions of and reasons for such destruction or transfer and the Identity of the Person(s) requesting and performing such destruction or transfer; and (g) Identifies all Persons with knowledge of any portion of the contents of the Document.

4. No Documents Responsive to CID Requests. If there are no Documents responsive to any particular CID request, you shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the CID request concerned.
5. Format of Production. You shall produce Documents, Communications, and information responsive to this CID in electronic format that meets the specifications set out in Schedule D.
6. Existing Organization of Documents to be Preserved. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, including but not limited to production of any Document or other material indicating filing or other organization. Such production shall include without limitation any file folder, file jacket, cover or similar organizational material, as well as any folder bearing any title or legend that contains no Document. Documents that are physically attached to each other in your files shall be accompanied by a notation or information sufficient to indicate clearly such physical attachment.
7. Document Numbering. All Documents responsive to this CID, regardless of whether produced or withheld on ground of privilege or other legal doctrine, and regardless of whether production is in electronic or paper format, shall be numbered in the lower right corner of each page of such Document, without disrupting or altering the form, sequence, organization or other order or layout in which such Documents were maintained before production. Such number shall comprise a prefix containing the producing Person's name or an abbreviation thereof, followed by a unique, sequential, identifying document control number.
8. Privilege Placeholders. For each Document withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, you shall insert one or more placeholder page(s) in the

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production bearing the same document control number(s) borne by the Document withheld, in the sequential place(s) originally occupied by the Document before it was removed from the production.

9. Privilege. If You withhold or redact any Document responsive to this CID of privilege or other legal doctrine, you shall submit with the Documents produced a statement in writing under oath, stating: (a) the document control number(s) of the Document withheld or redacted; (b) the type of Document; (c) the date of the Document; (d) the author(s) and recipient(s) of the Document; (e) the general subject matter of the Document; and (f) the legal ground for withholding or redacting the Document. If the legal ground for withholding or redacting the Document is attorney-client privilege, you shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.
10. Your Production Instructions to be Produced. You shall produce a copy of all written or otherwise recorded instructions prepared by you concerning the steps taken to respond to this CID. For any unrecorded instructions given, you shall provide a written statement under oath from the Person(s) who gave such instructions that details the specific content of the instructions and any Person(s) to whom the instructions were given.
11. Cover Letter. Accompanying any production(s) made pursuant to this CID, You shall include a cover letter that shall at a minimum provide an index containing the following: (a) a description of the type and content of each Document produced therewith; (b) the paragraph number(s) of the CID request to which each such Document is responsive; (c) the Identity of the Custodian(s) of each such Document; and (d) the document control number(s) of each such Document.
12. Affidavit of Compliance. A copy of the Affidavit of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this CID, and you shall submit such executed Affidavit(s) of Compliance with Your response to this CID.
13. Identification of Persons Preparing Production. In a schedule attached to the Affidavit of Compliance provided herewith, you shall Identify the natural person(s) who prepared or assembled any productions or responses to this CID. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this CID occurred. You shall further Identify all other natural person(s) able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be.

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14. Continuing Obligation to Produce. This CID imposes a continuing obligation to produce the Documents and information requested. Documents located, and information learned or acquired, at any time after your response is due shall be promptly produced at the place specified in this CID.
15. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this CID shall be valid or binding, and you shall not act in reliance upon any such agreement, unless an Assistant Attorney General confirms or acknowledges such agreement in writing, or makes such agreement a matter of record in open court.
16. Time Period. Except where otherwise stated, the time period covered by this CID shall be from April 1, 2010, through the date of the production.

D. Documents to be Produced

1. For the time period from January 1, 1976, through the date of this production, Documents and Communications concerning Exxon's development, planning, implementation, review, and analysis of research efforts to study CO₂ emissions (including, without limitation, from fossil fuel extraction, production, and use), and the effects of these emissions on the Climate, including, without limitation, efforts by Exxon to:
 - (a) analyze the absorption rate of atmospheric CO₂ in the oceans by developing and using Climate Models;
 - (b) measure atmospheric and oceanic CO₂ levels (including, without limitation, through work conducted on Exxon's *Esso Atlantic* tanker);
 - (c) determine the source of the annual CO₂ increment that has been increasing over time since the Industrial Revolution by measuring changes in the isotopic ratios of carbon and the distribution of radon in the ocean; and/or
 - (d) assess the financial costs and environmental consequences associated with the disposal of CO₂ and hydrogen sulfide gas from the development of offshore gas from the seabed of the South China Sea off Natuna Island, Indonesia.
2. For the time period from January 1, 1976, through the date of this production, Documents and Communications concerning papers prepared, and presentations given, by James F. Black, at times Scientific Advisor in the Products Research Division of Exxon Research and Engineering, author of, among others, the paper *The Greenhouse Effect*, produced in or around 1978.

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3. For the time period from January 1, 1976, through the date of this production, Documents and Communications concerning the paper *CO₂ Greenhouse Effect A Technical Review*, dated April 1, 1982, prepared by the Coordination and Planning Division of Exxon Research and Engineering Company.
4. For the time period from January 1, 1976, through the date of this production, Documents and Communications concerning the paper *CO₂ Greenhouse and Climate Issues*, dated March 28, 1984, prepared by Henry Shaw, including all Documents:
 - (a) forming the basis for Exxon's projection of a 1.3 to 3.1 degree Celsius average temperature rise by 2090 due to increasing CO₂ emissions and all Documents describing the basis for Exxon's conclusions that a 2 to 3 degree Celsius increase in global average temperature could:
 - Be "amplified to about 10 degrees C at the poles," which could cause "polar ice melting and a possible sea-level rise of 0.7 meter[sic] by 2080"
 - Cause redistribution of rainfall
 - Cause detrimental health effects
 - Cause population migration
 - (b) forming the basis for Exxon's conclusion that society could "avoid the problem by sharply curtailing the use of fossil fuels."
5. Documents and Communications with any of Acton Institute, AEI, Americans for Prosperity, ALEC, API, Beacon Hill Institute at Suffolk University, CEI, CIP, George C. Marshall Institute, The Heartland Institute, The Heritage Foundation, and/or Mercatus Center at George Mason University, concerning Climate Change and/or Global Warming, Climate Risk, Climate Science, and/or communications regarding Climate Science by fossil fuel companies to the media and/or to investors or consumers, including Documents and Communications relating to the funding by Exxon of any of those organizations.
6. For the time period from September 1, 1997, through the date of this production, Documents and Communications concerning the API's draft *Global Climate Science Communications Plan* dated in or around 1998.
7. For the time period from January 1, 2007, through the date of this production, Documents and Communications concerning Exxon's awareness of, and/or response to, the Union of Concerned Scientists report *Smoke, Mirrors & Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science*, dated January 2007.

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8. For the time period from April 1, 1997, through the date of this production, Documents and Communications concerning the decision making by Exxon in preparing, and substantiation of, the following statements in the remarks *Energy – key to growth and a better environment for Asia-Pacific nations*, by then Chairman Lee R. Raymond to the World Petroleum Congress, Beijing, People's Republic of China, 10/13/97 (the “Raymond WPC Statements”):
 - It is highly unlikely that the temperature in the middle of the next century will be significantly affected whether policies are enacted now or 20 years from now. (Raymond WPC Statements, p. 11)
 - Forecasts of future warming come from computer models that try to replicate Earth's past climate and predict the future. They are notoriously inaccurate. None can do it without significant overriding adjustments. (Raymond WPC Statements, p. 10)
 - Proponents of the agreements [that could result from the Kyoto Climate Change Conference in December 1997] say they are necessary because burning fossil fuels causes global warming. Many people – politicians and the public alike – believe that global warming is a rock-solid certainty. But it's not. (Raymond WPC Statements, p. 8)
 - To achieve this kind of reduction in carbon dioxide emissions most advocates are talking about, governments would have to resort to energy rationing administered by a vast international bureaucracy responsible to no one. (Raymond WPC Statements, p. 10)
 - We also have to keep in mind that most of the greenhouse effect comes from natural sources, especially water vapor. Less than a quarter is from carbon dioxide, and, of this, only four percent of the carbon dioxide entering the atmosphere is due to human activities – 96 percent comes from nature. (Raymond WPC Statements, p. 9)
9. Documents and Communications concerning Chairman Rex W. Tillerson's June 27, 2012, address to the Council on Foreign Relations, including those sufficient to document the factual basis for the following statements:
 - Efforts to address climate change should focus on engineering methods to adapt to shifting weather patterns and rising sea levels rather than trying to eliminate use of fossil fuels.
 - Humans have long adapted to change, and governments should create policies to cope with the Earth's rising temperatures.

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- Changes to weather patterns that move crop production areas around – we'll adapt to that. It's an engineering problem and it has engineering solutions.
 - Issues such as global poverty [are] more pressing than climate change, and billions of people without access to energy would benefit from oil and gas supplies.
10. Documents and Communications concerning Chairman Tillerson's statements regarding Climate Change and Global Warming, on or about May 30, 2013, to shareholders at an Exxon shareholder meeting in Dallas, Texas, including Chairman Tillerson's statement "What good is it to save the planet if humanity suffers?"
 11. Documents and Communications concerning Chairman Tillerson's speech *Unleashing Innovation to Meet Our Energy and Environmental Needs*, presented to the 36th Annual Oil and Money Conference in London, England, 10/7/15 (the "2015 Oil and Money Conference Speech"), including Documents sufficient to demonstrate the factual basis for Chairman Tillerson's representation that Exxon's scientific research on Climate Change, begun in the 1970s, "led to work with the U.N.'s Intergovernmental Panel on Climate Change and collaboration with academic institutions and to reaching out to policymakers and others, who sought to advance scientific understanding and policy dialogue."
 12. Documents and Communications concerning any public statement Chairman Tillerson has made about Climate Change or Global Warming from 2012 to present.
 13. Documents and Communications concerning changes in the design, construction, or operation of any Exxon facility to address possible variations in sea level and/or other variables, such as temperature, precipitation, timing of sea ice formation, wind speed, and increased storm intensity, associated with Climate Change, including but not limited to:
 - (a) adjustments to the height of Exxon's coastal and/or offshore drilling platforms; and
 - (b) adjustments to any seasonal activity, including shipping and the movement of vehicles.
 14. Documents and Communications concerning any research, analysis, assessment, evaluation, Climate Modeling or other consideration performed by Exxon, or with funding provided by Exxon, concerning the costs for CO₂ mitigation, including,

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without limitation, concerning the 2014 Exxon report to shareholders *Energy and Carbon – Managing the Risks* (the “2014 Managing the Risks Report”).

15. Documents and Communications substantiating or refuting the following claims in the 2014 Managing the Risks Report:

- [B]y 2030 for the 450ppm CO₂ stabilization pathway, the average American household would face an added CO₂ cost of almost \$2,350 per year for energy, amounting to about 5 percent of total before-tax median income. (p. 9)
- These costs would need to escalate steeply over time, and be more than double the 2030 level by mid-century. (p. 9)
- Further, in order to stabilize atmospheric GHG concentrations, these CO₂ costs would have to be applied across both developed and undeveloped countries. (p. 9)
- [W]e see world GDP growing at a rate that exceeds population growth through [the year 2040], almost tripling in size from what it was globally in 2000 [fn. omitted]. It is largely the poorest and least developed of the world’s countries that benefit most from this anticipated growth. However, this level of GDP growth requires more accessible, reliable and affordable energy to fuel growth, and it is vulnerable populations who would suffer most should that growth be artificially constrained. (pp. 3 – 4)
- [W]e anticipate renewables growing at the fastest pace among all sources through [the year 2040]. However, because they make a relatively small contribution compared to other energy sources, renewables will continue to comprise about 5 percent of the total energy mix by 2040. Factors limiting further penetration of renewables include scalability, geographic dispersion, intermittency (in the case of solar and wind), and cost relative to other sources. (p. 6)
- In assessing the economic viability of proved reserves, we do not believe a scenario consistent with reducing GHG emissions by 80 percent by 2050, as suggested by the “low carbon scenario,” lies within the “reasonably likely to occur” range of planning assumptions, since we consider the scenario highly unlikely. (p. 16)

16. Documents and Communications that formed the basis for the following statements in Exxon’s January 26, 2016, press release on Exxon’s 2016 Energy Outlook:

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- In 2040, oil and natural gas are expected to make up nearly 60 percent of global supplies, while nuclear and renewables will be approaching 25 percent. Oil will provide one third of the world's energy in 2040, remaining the No. 1 source of fuel, and natural gas will move into second place.
 - ExxonMobil's analysis and those of independent agencies confirms our long-standing view that all viable energy sources will be needed to meet increasing demand.
 - The Outlook projects that global energy-related carbon dioxide emissions will peak around 2030 and then start to decline. Emissions in OECD nations are projected to fall by about 20 percent from 2014 to 2040.
17. Documents and Communications concerning any research, study, and/or evaluation by Exxon and/or any other fossil fuel company regarding the Climate Change Radiative Forcing Effect of natural gas (Methane), and potential regulation of Methane as a Greenhouse Gas.
 18. Documents and Communications concerning Exxon's internal consideration of public relations and marketing decisions for addressing consumer perceptions regarding Climate Change and Climate Risks in connection with Exxon's offering and selling Exxon Products and Services to consumers in Massachusetts.
 19. Documents and Communications concerning the drafting and finalizing of text, including all existing drafts of such text, concerning Greenhouse Gas Emissions and the issue of Climate Change or Global Warming filed with the U.S. Securities and Exchange Commission (the "SEC") by Exxon, including, without limitation, Exxon's Notices of Meeting; Form 10-Ks; Form 10-Qs; Form 8-Ks; Prospectuses; Prospectus Supplements; and Free Will Prospectuses; and/or contained in any offering memoranda and offering circulars from filings with the SEC under Regulation D (17 CFR § 230.501, et seq.).
 20. Documents and Communications concerning Exxon's consideration of public relations and marketing decisions for addressing investor perceptions regarding Climate Change, Climate Risk, and Exxon's future profitability in connection with Exxon's offering and selling Securities in Massachusetts.
 21. Documents and Communications related to Exxon's efforts in 2015 and 2016 to address any shareholder resolutions related to Climate Change, Global Warming, and how efforts to reduce Greenhouse Gas Emissions will affect Exxon's ability to operate profitably.
 22. For the time period from January 1, 2006, through the date of this production, Documents and Communications concerning Exxon's development of its program

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for Sustainability Reporting addressing Climate Change and Climate Risk, including, without limitation, regarding Exxon's annual "Corporate Citizenship Report" and Exxon's "Environmental Aspects Guide."

23. Documents and Communications concerning information exchange among Exxon and other companies and/or industry groups representing energy companies, regarding marketing of energy and/or fossil fuel products to consumers in light of public perceptions regarding Climate Change and Climate Risk.
24. Exemplars of all advertisements, flyers, promotional materials, and informational materials of any type, including but not limited to web-postings, blog-posts, social media-postings, print ads (including ads on op-ed pages of newspapers), radio and television advertisements, brochures, posters, billboards, flyers and disclosures used by or for You, Your employees, agents, franchisees or independent contractors to solicit or market Exxon Products and Services in Massachusetts, including but not limited to:
 - A copy of each print advertisement placed in the Commonwealth;
 - A DVD format copy of each television advertisement that ran in the Commonwealth;
 - An audio recording of each radio advertisement and audio portion of each internet advertisement;
 - A copy of each direct mail advertisement, brochure, or other written promotional materials;
 - A printout, screenshot or copy of each advertisement, information, or communication provided via the internet, email, Facebook, Twitter, YouTube, or other electronic communications system; and/or
 - A copy of each point-of-sale promotional material used by You or on Your behalf.
25. Documents and Communications sufficient to show where each of the exemplars in Demand No. 24 was placed and the intended or estimated consumers thereof, including, where appropriate, the number of hits on each internet page and all Commonwealth Internet Service Providers viewing same.
26. Documents and Communications substantiating the claims made in the advertisements, flyers, promotional materials, and informational materials identified in response to Demand Nos. 22 through 24.
27. Documents and Communications concerning Your evaluation or review of the impact, success or effectiveness of each Document referenced in Demand Nos. 22 through 24, including but not limited to Documents discussing or referring in any way to: (a) the effects of advertising campaigns or communications; (b) focus groups; (c) copy tests; (d) consumer perception; (e) market research; (f) consumer

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research; and/or (g) other study or survey or the reactions, perceptions, beliefs, attitudes, wishes, needs, or understandings of potential consumers of Exxon Products and Services in light of public perceptions of Climate Change, Greenhouse Gas Emissions, and Climate Risk.

28. Documents sufficient to show Exxon's organizational structure and leadership over time, including but not limited to organizational charts, reflecting all Exxon Entities in any way involved in:
 - (a) the marketing, advertisement, solicitation, promotion, and/or sale of Exxon Products and Services to consumers in the Commonwealth; and/or
 - (b) the marketing, advertisement, solicitation, promotion, and/or sale to investors of Exxon Securities in the Commonwealth.
29. Documents and Communications sufficient to identify each agreement entered into on or after April 1, 2010, through the present, between and among Exxon and the Commonwealth of Massachusetts, its agencies, and/or its political subdivisions, for Exxon to provide Exxon Products and Services in Massachusetts.
30. Documents sufficient to identify all claims, lawsuits, court proceedings and/or administrative or other proceedings against You in any jurisdiction within the United States concerning Climate Change and relating to Your solicitation of consumers of Exxon Products and Services and/or relating to Your solicitation of consumers of Exxon Securities, including all pleadings and evidence in such proceedings and, if applicable, the resolution, disposition or settlement of any such matters.
31. Documents sufficient to identify and describe any discussion or consideration of disclosing in any materials filed with the SEC or provided to potential or existing investors (e.g., in prospectuses for debt offerings) information or opinions concerning the environmental impacts of Greenhouse Gas Emissions, including, without limitation, the risks associated with Climate Change, and Documents sufficient to identify all Persons involved in such consideration.
32. Transcripts of investor calls, conferences or presentations given by You at which any officer or director spoke concerning the environmental impacts of Greenhouse Gas Emissions, including, without limitation, the risks associated with Climate Change.
33. Documents and Communications concerning any subpoena or other demand for production of documents or for witness testimony issued to Exxon by the New

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York State Attorney General's Office concerning Climate Change and Your marketing of Exxon Products and Services and/or Exxon Securities, including, through the date of Your production in response to this CID, all Documents produced to the New York State Attorney General's Office pursuant to any such subpoena or demand.

34. Documents sufficient to Identify all other federal or state law enforcement or regulatory agencies that have issued subpoenas or are otherwise currently investigating You concerning Your marketing of Exxon Products and Services to consumers and/or of Exxon Securities to investors.
35. Documents sufficient to Identify any Massachusetts consumer who has complained to You, or to any Massachusetts state or local consumer protection agency, concerning Your actions with respect to Climate Change, and for each such consumer identified, documents sufficient to identify each such complaint; each correspondence between You and such consumer or such consumer's representative; any internal notes or recordings regarding such complaint; and the resolution, if any, of each such complaint.
36. Documents and communications that disclose Your document retention policies in effect between January 1, 1976 and the date of this production.
37. Documents sufficient to Identify Your officers, directors and/or managing agents, or other persons most knowledgeable concerning the subject matter areas enumerated in Schedule B, below.
38. Documents sufficient to identify all natural persons involved in the preparation of Your response to this CID.

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SCHEDULE B

Pursuant to the terms of this CID, you are commanded to produce one or more witnesses at the above-designated place and time, or any agreed-upon adjourned place and time, who is or are competent to testify as to the following subject matter areas:

1. Your compliance with Massachusetts General Law Chapter 93A, § 2, and the regulations promulgated thereunder concerning, the marketing, advertising, soliciting, promoting, and communicating or sale of: (1) Exxon Products and Services in the Commonwealth and/or to Massachusetts residents; and (2) Securities in the Commonwealth and/or to Massachusetts residents.
2. The marketing, advertising, soliciting, promoting, and communicating or sale of Exxon Products and Services in the Commonwealth and/or to Massachusetts residents, including their environmental impacts with respect to Greenhouse Gas Emission, Climate Change and/or Climate Risk.
3. The marketing, advertising, soliciting, promoting, and communicating or sale of Securities in the Commonwealth and/or to Massachusetts residents, including as to Exxon's disclosures of risks to its business related to Climate Change.
4. All topics covered in the demands above.
5. Your recordkeeping methods for the demands above, including what information is kept and how it is maintained.
6. Your compliance with this CID.

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SCHEDULE C

**CHAPTER 93A. REGULATION OF BUSINESS PRACTICES FOR CONSUMERS
PROTECTION**

Chapter 93A: Section 7. Failure to appear or to comply with notice

Section 7. A person upon whom a notice is served pursuant to the provisions of section six shall comply with the terms thereof unless otherwise provided by the order of a court of the commonwealth. Any person who fails to appear, or with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this chapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody or control of any person subject to any such notice, or knowingly conceals any relevant information, shall be assessed a civil penalty of not more than five thousand dollars.

The attorney general may file in the superior court of the county in which such person resides or has his principal place of business, or of Suffolk county if such person is a nonresident or has no principal place of business in the commonwealth, and serve upon such person, in the same manner as provided in section six, a petition for an order of such court for the enforcement of this section and section six. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

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SCHEDULE D

See attached "Office of the Attorney General - Data Delivery Specification."

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AFFIDAVIT OF COMPLIANCE WITH CIVIL INVESTIGATIVE DEMAND

State of _____

County of _____

I, _____, being duly sworn, state as follows:

1. I am employed by _____ in the position of _____;
2. The enclosed production of documents and responses to Civil Investigative Demand 2016-EPD-36 of the Attorney General of the Commonwealth of Massachusetts, dated April 19, 2016 (the "CID") were prepared and assembled under my personal supervision;
3. I made or caused to be made a diligent, complete and comprehensive search for all Documents and information requested by the CID, in full accordance with the instructions and definitions set forth in the CID;
4. The enclosed production of documents and responses to the CID are complete and correct to the best of my knowledge and belief;
5. No Documents or information responsive to the CID have been withheld from this production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;
6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the instructions in the CID;
7. The Documents contained in these productions and responses to the CID are authentic, genuine and what they purport to be;
8. Attached is a true and accurate record of all persons who prepared and assembled any productions and responses to the CID, all persons under whose personal supervision the preparation and assembly of productions and responses to the CID occurred, and all persons able competently to testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine and what they purport to be; and
9. Attached is a true and accurate statement of those requests under the CID as to

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which no responsive Documents were located in the course of the aforementioned search.

Signature of Affiant

Date

Printed Name of Affiant

Subscribed and sworn to before me

this __ day of _____ 2016.

Notary Public

My commission expires:



Office of the Attorney General - Data Delivery Specification ONE – Production Load File

I. General

1. Images produced to the Office of the Attorney General should be single page series IV TIFF images, 300 dpi or better quality. TIFFs may be Black & White or color.
2. Bates Numbers should be placed in the lower right hand corner unless to do so would obscure the underlying image. In such cases, the Bates number should be placed as near to that position as possible while preserving the underlying image. Bates numbers should contain no spaces, hyphens or underscores. Example: AG0000000001.
3. Spreadsheets and Powerpoint ESI should be produced as native ESI and name for the bates number associated with the first page of the item. If the item has a confidentiality designation, please **DO NOT** append it to the bates numbered file name. The designation should be stored in a field in the DAT.
4. For any ESI that exists in encrypted format or is password-protected, instructions on means for access should be provided with the production to the AGO. (For example, by supplying passwords.)
5. All records should include at least the following fields of created data:
 - a. Beginning Bates Number (where TIFF Images are produced)
 - b. Ending Bates Number
 - c. Beginning Attachment Range
 - d. Ending Attachment Range
 - e. RemovedFrom: If records were globally deduplicated, this field should contain a concatenated list of all custodians or sources which originally held the item.
 - f. MD5 Hash or other hash value
 - g. Custodian / Source
 - h. Original file path or folder structure
 - i. FamilyID
 - j. Path/Link to natives
 - k. Path/Link to text files (**do not produce inline text in the dat file**)
 - l. Redacted – Bit Character field (1 or 0 where 1=Yes and 0=No)
 - m. Production date
 - n. Volume name
 - o. Confidentiality or other treatment stamps
6. Email should be produced with at least the following fields of metadata:
 - a. TO
 - b. FROM
 - c. CC
 - d. BCC
 - e. Subject
 - f. Path to text file (**do not produce inline text in the dat file**)

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- g. Sent Date (dates and times must be stored in separate fields)
 - h. Sent Time (dates and times must be stored in separate fields and without time zones)
 - i. File extension (.txt, .msg, etc.)
 - j. Attachment count.
7. eFiles should be produced with at least the following individual fields of metadata:
- a. Author
 - b. CreateDate (dates and times must be stored in separate fields)
 - c. CreateTime (dates and times must be stored in separate fields with no time zones or am/pm)
 - d. LastModifiedDate (dates and times must be stored in separate fields)
 - e. LastModifiedTime (dates and times must be stored in separate fields with no time zones or am/pm).
8. Deduplication (Removed From data field)
- a. If the producing entity wishes to deduplicate, exact hash value duplicates may be removed on a global basis if the producing entity provides a field of created data for each deduplicated item that provides a concatenated list of all custodians or other sources where the item was original located. This list should be provided in the RemovedFrom data field.
 - b. Any other form of deduplication must be approved in advance by the Office of the Attorney General.

II. File Types and Load File Requirements

a. File Types


Data: Text, images and native files should each be delivered as subfolders in a folder named "DATA". See screen shot "Example Production Deliverable."

- Images: Single page TIFF images delivered in a folder named "IMAGES."
- Text: Multipage text files (one text file per document), delivered in a folder named "TEXT."
- Natives: Delivered in a folder named "NATIVES".

Load Files: Concordance format data load file and Opticon format image load file should be delivered in a folder named LOAD (at the same level as the folder DATA in the structure). See screen shot "Example Production Deliverable."

Office of the Attorney General - Data Delivery Specification

ONE – Production Load File

 Example Production Deliverable

 VOL001

 DATA

 IMAGES

 NATIVES

 TEXT

 LOAD

b. Fields to be Produced in ONE Data Load File – Concordance Format

Field Name	Description/Notes
BegBates	Starting Bates Number for document
EndBates	Ending Bates Number for document
BegAttach	Starting Bates Number of Parent document
EndAttach	Ending Bates Number of last attachment in family
FamilyID	Parent BegBates
Volume	Name of Volume or Load File
MD5Hash	
Custodian_Source	If the source is a human custodian, please provide the name: Last name, first name. If this results in duplicates, add numbers or middle initials Last name, first name, middle initial or # If the source is not a human custodian, please provide a unique name for the source. Ex: AcctgServer
FROM	Email
TO	Email
CC	Email
BCC	Email
Subject	Email
Sent Date	Email
Sent Time	Email
File Extension	
Attch Count	Email
Doc Type	Email, attachment
Original FilePath	Original location of the item at time of Preservation.
FileName	
CreateDate	Loose files or attachments. Date and Time must be in separate fields.
CreateTime	Loose files or attachments. Date and Time must be in separate fields and the Time field should not include Time Zone (EDT, EST etc)
LastModDate	Loose files or attachments (Date and Time must be in separate fields)
LastModTime	Loose files or attachments. Date and Time must be in separate fields and the Time field should not include Time Zone (EDT, EST, AM, PM etc)
Redacted	This is a Boolean/bit character field. Data value should be "0" or "1" where 0 = No and 1=Yes.
Confidentiality Designation	NOTE: <i>Do not append the Confidentiality Designation to the native file name</i>
RemovedFrom	Last name, first name with semi colon as separator Lastname,firstname; nextlastname, nextfirstname etc.

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ONE – Production Load File

Encrypted_pwp	This is a single character field. Data value should be "N" or "Y". (File is or is not encrypted/password protected)
EncryptKey_password	For those files where Encrypted_pwp is Y, provide password or encryption key information in this field.
ProdDate	MM\DD\YYYY
TextLink	path to the text files should begin with TEXT\
NativeLink	path to the native files should begin with NATIVES\

The Data load file for ONE is the same as a Concordance load file, with the same field delimiters () and text qualifiers (b). Here is a screen shot of part of a ONE load file with the fields identified above:

```
|Seg Bates|PbEndBates|pbRegAttach|pbRegAttacmp|pfFamilyTtp|pvVolume|pMDSHash|ppCustodian_Sources|pFROM|pTO|pCC|pBCC|psSubject|psSent_Date|psSent_Time|pFile_Extension|pD
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pAG0000004512|pAG0000004512|pAG0000004507|pAG0000004507|pVOL001|pbPDoc_e, Johnjp|johndeo@someplace.com|jbde@somewhereelse.com|jtheboss@someplace.com|jb|p

c. Fields required for an Images Load File – Opticon Format

The Images load file for ONE is the same as an OPTICON load file. It contains these fields, although Folder Break and Box Break are often not used.

Field Name	Description/Notes
Alias	Imagekey/Image link - Beginning bates or ctrl number for the document
Volume	Volume name or Load file name
Path	relative path to Images should begin with IMAGES\ and include the full file name and file extension (tif, jpg)
Document Break	Y denotes image marks the beginning of a document
Folder Break	N/A - leave blank
Box Break	N/A - leave blank
Pages	Number of Pages in document

Here is a screen shot of an opticon load file format in a text editor with each field separated by a comma. Alias, Volume, Path, Document Break, Folder Break (blank), Box Break (blank), Pages.

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Exhibit C



Establishing Accountability for Climate Change Damages: *Lessons from Tobacco Control*

Summary of the Workshop on Climate Accountability,
Public Opinion, and Legal Strategies

Martin Johnson House
Scripps Institution of Oceanography
La Jolla, CA, June 14–15, 2012

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The Union of Concerned Scientists is the leading
science-based nonprofit working for a healthy
environment and a safer world. More information
about UCS is available on the UCS website at
www.ucsusa.org.

The Climate Accountability Institute engages
in research and education on anthropogenic
climate change, dangerous interference with the
climate system, and the contribution of fossil fuel
producers' carbon production to atmospheric
carbon dioxide content. This encompasses the
science of climate change, the civil and human
rights associated with a stable climate regime not
threatened by climate-destabilizing emissions of
greenhouse gases, and the risks, liabilities, and
disclosure requirements regarding past and future
emissions of greenhouse gases attributable to
primary carbon producers.

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Preface

The workshop sought to compare the evolution of public attitudes and legal strategies related to tobacco control with those related to anthropogenic climate change.

For many years after scientists first concluded that smoking causes cancer, the tobacco companies continued to win court cases by arguing, among other things, that smokers assumed the risk of smoking and that no specific cancer deaths could be attributed to smoking. At some point, however, the tobacco companies began to lose legal cases against them even though the science had not substantively changed. Juries began to find the industry liable because tobacco companies had known their products were harmful while they publicly denied the evidence, targeted youth, and manipulated nicotine levels.

To explore how this transformation happened, and to assess its implications for people working to address climate change, the Union of Concerned Scientists and the Climate Accountability Institute brought together about two dozen leading scientists, lawyers and legal scholars, historians, social scientists, and public opinion experts for a June 14–15, 2012, workshop at the Scripps Institution of Oceanography in La Jolla, CA.

Specifically, the workshop sought to compare the evolution of public attitudes and legal strategies related to tobacco control with those related to anthropogenic climate change, fostering an exploratory, open-ended dialogue about whether we might use the lessons from tobacco-related education, laws, and litigation to address climate change. The workshop explored which changes now being observed (e.g., increasing extreme heat, sea level rise) can be most compellingly attributed to human-caused climate change, both scientifically and in the public mind. Participants also considered options for communicating this scientific attribution of climate impacts in ways that would maximize public understanding and produce the most effective mitigation and adaptation strategies.

The workshop explored the degree to which the prospects for climate mitigation might improve with public acceptance (including judges and juries) of the causal relationships between fossil fuel production, carbon emissions, and climate change. Participants

debated the viability of diverse strategies, including the legal merits of targeting carbon producers (as opposed to carbon emitters) for U.S.-focused climate mitigation. And finally, the group sought to identify the most promising and mutually reinforcing intellectual, legal, and/or public strategies for moving forward. We are pleased to share the outcome of these preliminary workshop discussions. Among the many points captured in this report, we want to highlight the following:

- A key breakthrough in the public and legal case for tobacco control came when internal documents came to light showing the tobacco industry had knowingly misled the public. Similar documents may well exist in the vaults of the fossil fuel industry and their trade associations and front groups, and there are many possible approaches to unearthing them.
- Drawing upon the forthcoming “carbon majors” analysis by Richard Heede, it may be feasible and highly valuable to publicly attribute important changes in climate, such as sea level rise, to specific carbon producers. Public health advocates were effective in attributing the health impacts of smoking to major tobacco companies.
- While we currently lack a compelling public narrative about climate change in the United States, we may be close to coalescing around one. Furthermore, climate

Climate change may loom larger today in the public mind than tobacco did when public health advocates began winning policy victories.

change may loom larger today in the public mind than tobacco did when public health advocates began winning policy victories. Progress toward a stronger public narrative might be aided by use of a “dialogic approach” in which climate advocates work in partnership with the public. Such a narrative must be both scientifically robust and emotionally resonant to cut through the fossil fuel industry’s successful efforts to sow uncertainty and confusion.

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Climate Accountability, Public Opinion, and Legal Strategies Workshop

*Martin Johnson House, Scripps Institution of Oceanography,
La Jolla, CA, June 14-15, 2012*

1. Introduction

Tobacco companies realized they did not need to prove their products were safe. Rather, they had only to implement a calculated strategy to foster doubt about the science.

For decades after U.S. tobacco firms first became aware of strong scientific evidence linking smoking to cancer in the mid-1950s, the industry adopted a public relations strategy that knowingly sought to confuse people about the safety of its products. As we now know, tobacco industry lawyers long advised their clients that if they admitted to selling a hazardous product they would be vulnerable to potentially crippling liability claims. So, despite the scientific evidence, the industry developed and implemented a sophisticated disinformation campaign designed to deceive the public about the hazards of smoking and forestall governmental controls on tobacco consumption.

As time went on, a scientific consensus emerged about a multitude of serious dangers from smoking. On January 11, 1964, for instance, the U.S. government released the first report by the Surgeon General's Advisory Committee on Smoking and Health,

which specifically warned the public about the link between smoking and lung cancer.¹ Nonetheless, the tobacco industry's disinformation campaign continued. As internal documents have long since revealed, the tobacco companies quickly realized they did not need to prove their products were safe. Rather, they had only to implement a calculated strategy to foster doubt about the science in the minds of the public. As one infamous internal memo from the Brown & Williamson company put it: "Doubt is our product, since it is the best means of competing with the 'body of fact' that exists in the minds of the general public."² The industry also managed to convince juries that smoking was a voluntary act, that the public was well informed of "potential risks," and that smokers therefore only had themselves to blame for whatever harm may have occurred.

It has become increasingly clear during the past decade or more that the fossil fuel industry has adopted much the same strategy:

attempting to manufacture uncertainty about global warming even in the face of overwhelming scientific evidence that it is accelerating at an alarming rate and poses a myriad of public health and environmental dangers. Not only has the fossil fuel industry taken a page from the tobacco industry's playbook in its efforts to defeat action on climate change, it also shares with the tobacco industry a number of key players and a remarkably similar network of public relations firms and nonprofit "front groups" that have been actively sowing disinformation about global warming for years.³

At this pivotal moment for climate change, with international agreement all but stymied and governmental action in the United States largely stalled, the Union of Concerned Scientists and the Climate Accountability Institute sought to build a clearer understanding of the drivers of change that eventually proved effective against the tobacco industry. To be sure, lawyers played a huge role; scientific evidence played an important role as well. But notably, neither science nor legal strategies alone drove the changes in public understanding of the health dangers posed by smoking. Workshop participants were therefore asked to share their perspectives on a key question: given the power and resources of the tobacco industry, how were tobacco control efforts able to finally gain traction?

By gathering a distinguished and complementary group of experts, the Climate Accountability Workshop created the conditions for a well-informed discussion about the history of tobacco prevention as an example for those working on climate change: exploring how science in combination with the law, public advocacy, and possibly new technology can spur a seminal shift in public understanding and engagement on an issue of vital importance to the global community.

What follows is a summary of the workshop designed to highlight some of the major themes that emerged over the course of two days of structured dialogue. Because the discussion was often animated and wide-ranging, this report does not attempt to portray a comprehensive account of all the ideas presented, but rather the key findings that emerged.

When I talk to my students I always say, tobacco causes lung cancer, esophageal cancer, mouth cancer. . . . My question is: What is the "cancer" of climate change that we need to focus on?

—Naomi Oreskes

2. Lessons from Tobacco Control: Legal and Public Strategies

Both the tobacco industry and the fossil fuel industry have adopted a strategy of disseminating disinformation to manufacture uncertainty and forestall government action, and in so doing, have placed corporate interests above the public interest.

Workshop participants reviewed the history of tobacco control in the United States to identify lessons that might be applicable to action on global warming. The first important insight was that the history of tobacco control efforts stretches back much further than most people realize. The American Tobacco Company was broken up as a result of the Sherman Anti-Trust Act of 1890, and several U.S. states banned tobacco entirely between 1890 and 1920 in response to concerns that the powerful tobacco industry was paying off legislators. Those bans were all overturned after successful lobbying efforts by the industry, but a landmark 1900 legal case (*Austin v. Tennessee*) set an important precedent by upholding the legal right of states to ban tobacco.⁴

A second important insight was that the battle for tobacco control continues today, despite substantial gains over the past several decades. In a point made forcefully by Robert Proctor, a science historian who frequently serves as an expert witness in tobacco litigation, “Tobacco is not over.” While the number of cigarettes smoked worldwide may no longer be growing, an estimated 6 trillion were still sold and smoked in 2012. More than 45 million

Americans continue to smoke, some 8 million live with a serious illness caused by their smoking, and more than 400,000 die prematurely each year.⁵

A few principles emerged from the long fight for tobacco control. First, any legal strategies involving court cases require plaintiffs, a venue, and law firms willing to litigate—all of which present significant hurdles to overcome. Robert Proctor generalized about the history of tobacco-related litigation by noting that tobacco opponents typically won with simplicity but lost in the face of complexity. As he noted, it is worth remembering that, “The industry can win by making plaintiffs have to pass a thousand hurdles, any one of which can derail the whole effort.” Second, public victories can occur even when the formal point is lost. In one effort that sought to stop tobacco research at Stanford University, for instance, no formal ban was enacted but the public outcry led the Philip Morris company to stop its external research programs anyway.⁶

The Importance of Documents in Tobacco Litigation

One of the most important lessons to emerge from the history of tobacco litigation is the

value of bringing internal industry documents to light. Roberta Walburn, a key litigator in the pathbreaking 1994 case *State of Minnesota and Blue Cross and Blue Shield of Minnesota v. Philip Morris et al.* [C1-94-8565], explained that her legal team, with strong backing from Minnesota Attorney General Hubert “Skip” Humphrey, made it a goal from the start of the lawsuit to use the process of legal discovery to gain access to Philip Morris’s internal documents and make them part of the public domain. Walburn noted that Humphrey was mocked and scorned by many of his colleagues for this emphasis, but it proved critical to achieving the landmark settlement.

For the previous four decades, the tobacco industry had not lost a single legal case nor been forced to release most of its internal documents. But attorneys began to see the tremendous value of the industry’s memos in an individual New Jersey smoker’s case in the 1980s, and when a paralegal leaked some internal documents in the early 1990s. By making such documents a key part of the Minnesota litigation, the legal discovery process ultimately brought some 35 million pages of industry documents to light.⁷

Of course, the release of so many documents also presented immense challenges, requiring the legal team to pore over them one page at a time. The industry also went to great lengths to hide documents throughout the discovery process, listing them under different corporate entities, “laundering” scientific documents by passing them through attorneys in order to claim attorney-client privilege, and playing word games in order to claim they didn’t have any documents on the topics sought by the plaintiffs. During pre-trial discovery in the Minnesota litigation, Walburn noted, Philip Morris was spending some \$1.2 million dollars every week in legal defense.

In the end, however, the documents proved crucial in helping to shift the focus of litigation away from a battle of the experts over the science of disease causation and toward an investigation of the industry’s conduct. As Roberta Walburn explained, their legal team was able to say to the judge and jury, “You don’t have to believe us or our experts; just look at the companies’ own words.” The strategy of prying documents from the industry also proved effective because once a lawsuit begins, litigants are required by law to retain evidence. The very first order issued by the judge in the Minnesota case was a document preservation order, which meant that the company could be held in contempt of court if it failed to comply. Companies are also required to preserve any documents they think might be pertinent to possible future litigation.

Today, the documents that have emerged from tobacco litigation have been collected in a single searchable, online repository: the so-called Legacy Tobacco Document Library (available at legacy.library.ucsf.edu) currently contains a collection of some 80 million pages. Stanton Glantz, a professor of cardiology at the University of California–San Francisco who directs the project, noted the importance of the decision to create an integrated collection accessible to all. One advantage of such a collection, he said, is that it becomes a magnet for more documents from disparate sources.

Because the Legacy Collection’s software and infrastructure is already in place, Glantz suggested it could be a possible home for a parallel collection of documents from the fossil fuel industry pertaining to climate change. He stressed the need to think carefully about which companies and which trade groups might have documents that could be especially useful. And he underscored the point that bringing documents to light must be

established as an objective independent of the litigation, or else the most valuable documents are not likely be made public.

Documents Helped Establish a Conspiracy

The release of documents from the tobacco industry became front-page news in the 1990s. The headlines did not tout the fact that tobacco causes lung cancer, which had already been widely reported; instead, they focused on the tobacco industry's lies to the public, its efforts to target children in its marketing campaigns, and its manipulation of the amount of nicotine in cigarettes to exploit their addictive properties.⁸ Many of these facts had not come to the public's attention until the industry's internal documents came to light.

Most importantly, the release of these documents meant that charges of conspiracy or racketeering could become a crucial component of tobacco litigation. Formerly secret documents revealed that the heads of tobacco companies had colluded on a disinformation strategy as early as 1953.⁹

Sharon Eubanks noted the importance of documents in a racketeering case against the tobacco industry she prosecuted during the Clinton administration. That case, *U.S.A v. Philip Morris, Inc.*, was filed after President Clinton directed his attorney general to attempt to recover from the tobacco industry the costs of treating smokers under Medicare. The Justice Department brought the case under the Racketeer Influenced and Corrupt Organizations (RICO) statute that was originally enacted to combat organized crime.

The U.S. District Court for the District of Columbia found Philip Morris and other tobacco companies charged in the case guilty of violating RICO by fraudulently covering up the health risks associated with smoking and

by marketing their products to children. The court imposed most of the requested remedies, and rejected the defendants' argument that their statements were protected by the First Amendment, holding that the amendment does not protect "knowingly fraudulent" statements. The tobacco companies appealed the ruling but a three-judge panel of the U.S. Court of Appeals for the District of Columbia unanimously upheld the decision in 2009.

Lessons for the Climate Community

One theme to emerge from this review of tobacco litigation was the similarity between the tobacco industry's disinformation campaign and the fossil fuel industry's current efforts to sow confusion about climate change. As one participant put it, "The tobacco fight is now the climate fight." Both industries have adopted a strategy of disseminating disinformation to manufacture uncertainty and forestall governmental action, and in so doing, have placed corporate interests above the public interest. Several workshop participants presented detailed evidence of the close ties between the two industries in terms of personnel, nonprofit "front groups," and funders.

Given these close connections, many participants suggested that incriminating documents may exist that demonstrate collusion among the major fossil fuel companies, trade associations, and other industry-sponsored groups. Such documents could demonstrate companies' knowledge, for instance, that the use of their products damages human health and well-being by contributing to "dangerous anthropogenic interference with the climate system."¹⁰

Finally, participants agreed that most questions regarding how the courts might rule on climate change cases remain unanswered. Most participants also agreed that pursuing a

legal strategy against the fossil fuel industry would present a number of different obstacles and opportunities compared with those faced by litigants in the tobacco cases. As Roberta Walburn noted, however, both efforts do share an important public interest imperative: “People have been harmed and there should be justice,” she said. “If you want to right a wrong you have to be bold.”

3. Climate Legal Strategies: Options and Prospects

Tobacco started with a small box of documents. We used that to wedge open a large pattern of discovery. . . . It looks like where you are with climate is as good as it was with tobacco—probably even better. I think this is a very exciting possibility.

—Stanton Glantz

A wide variety of potential legal strategies were discussed at the workshop. Participants agreed that a variety of different approaches could prove successful in spurring action and engaging the public on global warming, with suggestions ranging from lawsuits brought under public nuisance laws (the grounds for almost all current environmental statutes) to libel claims against firms and front groups that malign the reputations of climate scientists.

Several participants warned of the potential polarizing effect of lawsuits. While it is never an easy decision to bring a lawsuit, they noted, litigants must understand that if they pursue such a course they should expect a protracted and expensive fight that requires careful planning. Among the issues discussed were the importance of seeking documents in the discovery process as well as the need to choose plaintiffs, defendants, and legal remedies wisely. Another issue of concern was the potential for a polarizing lawsuit to slow the broad cultural shift in public perception (see section 5).

Strategies to Win Access to Internal Documents

Having attested to the importance of seeking internal documents in the legal discovery phase of tobacco cases, lawyers at the workshop emphasized that there are many effective avenues for gaining access to such documents.

First, lawsuits are not the only way to win the release of documents. As one participant noted, congressional hearings can yield documents. In the case of tobacco, for instance, the infamous “Doubt is our product” document came out after being subpoenaed by Congress.¹¹ State attorneys general can also subpoena documents, raising the possibility that a single sympathetic state attorney general might have substantial success in bringing key internal documents to light. In addition, lawyers at the workshop noted that even grand juries convened by a district attorney could result in significant document discovery.

Jasper Teulings, general counsel for Greenpeace International, emphasized that the release of incriminating internal documents

from the fossil fuel industry would not only be relevant to American policy but could have widespread international implications.

Importance of Choosing Plaintiffs, Defendants, and Legal Remedies

Matt Pawa, a leading litigator on climate-related issues, discussed his current case, *Kivalina v. ExxonMobil Corporation, et al.*, now pending on appeal. The lawsuit, brought under public nuisance law, seeks monetary damages from the energy industry for the destruction of the native village of Kivalina, AK, by coastal flooding due to anthropogenic climate change. Damages have been estimated by the U.S. Army Corps of Engineers and the U.S. Government Accountability Office between \$95 million and \$400 million.

The suit was dismissed by a U.S. district court in 2009 on the grounds that regulating global warming emissions is a political rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts. An appeal was filed with the Ninth Circuit Court of Appeals in November 2009, but was rejected in September 2012. The plaintiffs have yet to determine whether to take further legal action, either by calling for an *en banc* review of the appeal verdict or by re-filing the case in state court.

Pawa noted that in representing Kivalina, he chose a plaintiff whose stake in the case is patently evident, as is the harm that has come to the village. Because those facts remain largely beyond dispute, it puts the focus of the case squarely on attributing the damage to the defendants. Pawa has used the principle of “joint and several” liability, which (in his words) holds that, “If two guys are outside a bar and the plaintiff gets beaten up and only one technically does it but both of them collude in the activity, they can both be held

responsible.” Because Exxon and the other corporate defendants in the Kivalina case are indisputably large emitters of heat-trapping gases, Pawa said he will argue that they “are basically like the two guys outside that bar.” To help with his argument of causation, Pawa will also argue that Exxon and the other defendants distorted the truth. He said that litigation not only allows him to pursue a remedy for some of those most vulnerable to the effects of climate change, but also serves as “a potentially powerful means to change corporate behavior.”

Jasper Teulings recounted the unusual and controversial case in which Greenpeace International helped representatives from Micronesia—an island nation threatened by rising sea levels—request a transboundary environmental impact assessment (TEIA) in the Czech Republic, hoping to prevent the Czech government from granting a 30-year permit extension for a coal-fired power plant. That action, he said, led to a national debate about global warming in a country led by a climate skeptic, and the Czech environment minister ultimately resigned as a result. The case also drew the attention of the international media, including the *Wall Street Journal*, *Economist*, and *Financial Times*.¹²

Participants weighed the merits of legal strategies that target major carbon *emitters*, such as utilities, versus those that target carbon *producers*, such as coal, oil, and natural gas companies. In some cases, several lawyers at the workshop noted, emitters are better targets for litigation because it is easy to establish their responsibility for adding substantial amounts of carbon to the atmosphere. In other cases, however, plaintiffs might succeed in cases against the producers who unearthed the carbon in the first place.

In lawsuits targeting carbon producers, lawyers at the workshop agreed, plaintiffs need

to make evidence of a conspiracy a prominent part of their case. Richard Ayres, an experienced environmental attorney, suggested that the RICO Act, which had been used effectively against the tobacco industry, could similarly be used to bring a lawsuit against carbon producers. As Ayres noted, the RICO statute requires that a claimant establish the existence of a “criminal enterprise,” and at least two acts of racketeering (with at least one having occurred within the past four years). It is not even clear, he added, whether plaintiffs need to show they were actually harmed by the defendant’s actions. As Ayres put it, “RICO is not easy. It is certainly not a sure win. But such an action would effectively change the subject to the campaign of deception practiced by the coal, gas, and oil companies.”

The issue of requesting an appropriate legal remedy was also discussed. As one of the workshop’s lawyers said, “As we think about litigation, we need to consider: what does our carbon system look like with climate stabilization? It has to be something positive. Only then can we figure out what strategies we need to pursue.” As important as this broad vision of a legal remedy is, this participant also emphasized the advantage of asking courts to do things they are already comfortable doing, noting that, “Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties.”

Other Potential Legal Strategies

False advertising claims

Naomi Oreskes, a historian of science at the University of California–San Diego, brought up the example of the Western Fuels Association, an industry-sponsored front group that has run ads containing demonstrably false information. Oreskes noted that she has some of the

public relations memos from the group and asked whether a false advertising claim could be brought in such a case. Lawyers at the workshop said that public relations documents could probably be used as evidence in such a case but they cautioned that courts view claims designed to influence consumer behavior differently than they do those designed to influence legislative policy.

Some lawyers at the workshop did note that historical false advertising claims could be deemed relevant, especially if plaintiffs can show that the conduct has continued. In tobacco litigation, for example, plaintiffs have successfully gone back as far as four decades for evidence by establishing the existence of a continuing pattern by the tobacco industry.

Joe Mendelson, director of climate policy at the National Wildlife Federation, suggested that such a strategy might be employed to take on the coal industry’s advertising campaign, which has targeted swing states whose attorneys general are unlikely to call out the ads’ distortions. Such a legal case, Mendelson explained, might achieve a victory in terms of public education and engagement.

Libel suits

Lawyers at the workshop noted that libel lawsuits can be an effective response to the fossil fuel industry’s attempts to discredit or silence atmospheric scientists. Pennsylvania State University’s Michael Mann, for instance, has worked with a lawyer to threaten libel lawsuits for some of the things written about him in the media, and has already won one such case in Canada. Matt Pawa explained that libel cases merely require the claimant to establish falsity, recklessness, and harm. “What could be more harmful than impugning the integrity of a scientist’s reputation?” Pawa asked. Roberta Walburn noted that libel suits can also serve

to obtain documents that might shed light on industry tactics.

Atmospheric trust litigation

Mary Christina Wood, professor of law at the University of Oregon, discussed her involvement with so-called atmospheric trust litigation, a legal strategy she pioneered that is now unfolding in all 50 states. The goal of the litigation—to force massive reforestation and soil carbon sequestration that would return the planet to a sustainable level of atmospheric carbon dioxide (350 parts per million)—is grounded in the internationally recognized principle known as the Public Trust Doctrine, first enunciated by the Roman Emperor Justinian.

Under this doctrine, a state or third-party corporation can be held liable for stealing from or damaging a resource—in this case, the atmosphere—that is held as a public trust. The beneficiaries in the case are citizens—both current and future—who claim that the defendants (the state or federal government or third-party corporations) have a duty to protect and not damage that resource, which they oversee or for which they bear some responsibility.

Wood noted that this legal action has several promising features: it is being brought by children, can highlight local impacts of climate change because it is being brought in every state, and is flexible enough to be brought against states, tribes, the federal government,

or corporations. Wood said that while the atmospheric trust lawsuits are just starting, some 22 amicus briefs (in which law professors from around the country argue that the approach is legally viable) have already been filed.

Disagreement about the Risks of Litigation

Despite widespread endorsement by workshop participants of the potential value in pursuing legal strategies against the fossil fuel industry, some of the lawyers present expressed concern about the risks entailed should these cases be lost. As one participant put it, “We have very powerful laws and we need to think strategically about them so they won’t be diminished by the establishment of a legal precedent or by drawing the attention of hostile legislators who might seek to undermine them.”

Others, such as Sharon Eubanks, took issue with this perspective. “If you have a statute, you should use it,” she said. “We had the case where people said, ‘What if you screw up RICO?’ But no matter what the outcome, litigation can offer an opportunity to inform the public.” Stanton Glantz concurred with this assessment. As he put it, “I can’t think of any tobacco litigation that backfired; I can’t think of a single case where litigation resulted in bad law being made.”

4. Attribution of Impacts and Damages: Scientific and Legal Aspects

Why should taxpayers pay for adaptation to climate change? That is a sound bite that I don't hear used. Why should taxpayers bear the risk? Perhaps that question alone can help shift public perception.

—Myles Allen

Several sessions at the workshop addressed a variety of vexing issues concerning the extent to which localized environmental impacts can be accurately attributed to global warming and how, in turn, global warming impacts might be attributed to specific carbon emitters or producers. Many challenges are involved in these kinds of linkages, from getting the science right to communicating it effectively.

Myles Allen, a climate scientist at Oxford University, suggested that while it is laudable to single out the 400 Kivalina villagers, all 7 billion inhabitants of the planet are victims of climate change. He noted, for instance, that while the United Nations Framework Convention on Climate Change makes an inventory of global warming emissions, it does not issue an inventory of who is being affected. As he put it, “Why should taxpayers pay for adaptation to climate change? That is a sound bite that I don't hear used. Why should taxpayers bear the risk? Perhaps that question alone can help shift public perception.”

Allen also noted that the scientific community has frequently been guilty of talking about the climate of the twenty-second century rather

than what's happening now. As a result, he said, people too often tend to perceive climate change as a problem for our grandchildren.

Challenges of Attributing Environmental Effects to Anthropogenic Climate Change

Several of the climate scientists at the meeting addressed the scientific challenges involved in attributing specific environmental effects to anthropogenic climate change. For example, global warming, natural variability, population exposure, and population vulnerability are all factors in the disasters that make headlines. Myles Allen noted that while scientists can accurately speak about increases in average global temperature, such large-scale temperature measurements are difficult to link to specific individuals.

Claudia Tebaldi, a climate scientist at Climate Central, emphasized the problem of confounding factors: “If you want to have statistically significant results about what has already happened [on the health impacts of climate change],” she said, “we are far from being able to say anything definitive because the signal is so often overwhelmed by noise.”

Given that nearly all consequences have multiple causes, Tebaldi reviewed the difficulties entailed in efforts at so-called *single-step attribution* (in which a single variable is added or removed from a model), *multi-step attribution* (in which two or more attribution linkages are drawn), and *associative patterns of attribution* (in which linkages are mapped over time in order to detect possible patterns). She noted that the authors of the 2007 Intergovernmental Panel on Climate Change report were relatively comfortable attributing certain environmental phenomena to climate change: changes in snow/ice/frozen ground; increased runoff and anticipated snowmelt in spring; warmer water temperatures and changes in salinity, oxygen levels, and ocean acidification. But she added that it is still hard to say anything statistically significant about some key areas of concern.

Climate scientist Mike MacCracken expressed more optimism about the ability of scientists to identify patterns of changes. The traditional view, he explained, is that one cannot attribute a single weather event to human-induced climate change, but climate change reflects a difference in the frequency and intensity of weather events from the past—that is how the term is defined. So, as the distribution of weather events changes, we are seeing an increasing likelihood of what were once very rare events, but are likely to become much more frequent.

Myles Allen agreed that scientists could be far more confident about a group of events rather than a single event, but noted, “Then you are talking again about climate [as opposed to weather]. We can say with confidence how the risks are changing. Absolutely. And some harms can be caused by change in risk. But we are still talking about probabilities.” As an example, Allen cited work

Absolutely crucial is real progress on regional and local consequences of climate change. We have general notions that the Southwest will be drier. But once the science is able to say with confidence what will happen in the states of Colorado and Arizona, then the people who live there will want to pressure their representatives to fix their problem. Then political people will be much more responsive to the issue. That will be real progress in the next few years.

—Lew Branscomb

by Stefan Rahmstorf and Dim Coumou, who found an 80 percent probability that the July 2010 heat record would not have occurred without global warming.¹³

Others agreed that many different types of aggregate findings can be useful. Paul Slovic, for instance, cited the example of the book *At War with the Weather* by Howard Kunreuther. In studying economic losses from natural disasters, Kunreuther found an exponential increase in losses incurred over the last 10 or 20 years.¹⁴ Again, multiple factors need to be teased apart, such as the growth in population exposed to natural disasters, increased infrastructure replacement costs, natural variability, and the influence of climate change.¹⁵

Mike MacCracken suggested that issues related to the science itself are distinct from how findings should be communicated to the public. “The challenge,” he said, “is finding an effective lexicon that scientists are comfortable with.” Along these lines, one participant suggested that it could be helpful to communicate findings framed as a discussion. For example, a farmer could ask a question

saying, “I’m concerned because I’m seeing *this* [particular local weather].” The scientist can comfortably respond: “You’re right to be concerned because we are seeing *this, this*, and *this* [aggregate effect or strong probability of anthropogenic warming].”

Lew Branscomb, a physicist, governmental policy expert, and one of the meeting’s organizers, suggested that the evolution of climate science is an important issue. As he put it, “Absolutely crucial is real progress on regional and local consequences of climate change. We have general notions that the Southwest will be drier. But once the science is able to say with confidence what will happen in the states of Colorado and Arizona, then the people who live there will want to pressure their representatives to fix their problem. Then political people will be much more responsive to the issue. That will be real progress in the next few years.”

Determining Appropriate Standards of Evidence

A discussion arose at the workshop about the appropriate standard of evidence required when attributing specific environmental phenomena to global warming and establishing the culpability of carbon emitters and producers. Naomi Oreskes noted the important differences among standards of evidence in science, in law, and in public perception.

As she explained, “When we take these things to the public, I think we often make a category error. We take a standard of evidence applied internally to science and use it externally. That’s part of why it is so hard to communicate to the public.” Oreskes pointed out that the “95 percent proof rule” widely accepted among scientists might not be appropriate in this application. That standard of proof, she said, “is not the Eleventh Commandment. There is nothing in nature that taught us that

95 percent is needed. That is a social convention. Statistics are often used when we don’t understand the mechanisms of causation. But what if we do know what the mechanisms are? For instance, if we know how a bullet kills a human, we don’t need statistics to prove that bullets can kill.”

Oreskes went on to note that scientific knowledge in the field of climate science is very robust—more robust than in many other fields such as plate tectonics or relativity. This observation led her to wonder why climate scientists have been so reticent about communicating their results, and to postulate that in accepting such a high standard of proof, “The scientific community has been influenced by push-back from industry.”

Stanton Glantz drew a comparison to his work with the Centers for Disease Control establishing a link between smoking and breast cancer. “I fought CDC on the links between smoking and breast cancer,” he recalled. “There were 17 studies. How could you make a statement that there was no link? The epidemiologists focus on statistics but we already knew about the biology of breast cancer and damage to DNA and links to tobacco. My argument was that you needed to look at a whole body of evidence. . . . We compared the breast cancer evidence, which is stronger than the original lung cancer evidence, and that got accepted and became the default position. But the fact is, not everyone who smokes gets cancer.”

For climate change, Glantz said, all the pieces fit together and they represent a consistent body of evidence. He added that criminal trials use the standard of “beyond a reasonable doubt.” But as he put it, “Scientists have been making the ‘reasonable doubt’ standard higher and higher.”

Some of the scientists at the workshop, however, took issue with the idea that they

ought to apply different standards of proof to their work. Claudia Tebaldi, for instance, responded, “As a scientist I need to have two different standards? I don’t see that. I am not convinced that I should lower my standards of skepticism when I talk to the public. As a scientist I give you the probability. It is not my job to change my paper if the consequences are so bad. That is the job of a policy maker working with my results.”

Mary Christina Wood reminded the group that the medical profession is adept at juggling two very different standards: the standard of proof and the standard of care, and suggested that climate scientists might be able to do something similar. Dick Ayres agreed, emphasizing that, “Too high a standard of proof increases the burden on those who seek to protect public health.”

Myles Allen noted that a key problem always comes back to the issue of doubt. “If you grab a scientist off the street and ask whether we *could* have had this weather event without global warming, they will likely say yes, it could have been possible. So the reality is that there will always be a scientist available to fill that role in the court of law.” The vexing thing, Allen said, is “trying to make clear to the public that there are two uncertainties. We can be very certain about what is happening and yet very uncertain about what is going to happen tomorrow or next year.”

Attributing Environmental Damage to Carbon Producers

Richard Heede, co-founder and director of the Climate Accountability Institute, presented a preview of a research project several years in the making, in which he has been quantifying the annual and cumulative global warming emissions attributable to each of the world’s major carbon producers. By closely reviewing

annual reports and other public sources of information from the energy sector, Heede is working to derive the proportion of the planet’s atmospheric carbon load that is traceable to the fossil fuels produced and marketed by each of these companies annually from 1864 to 2010. The work deducts for carbon sequestered in non-energy products such as petrochemicals, lubricants, and road oil, and quantifies annual and cumulative emissions to the atmosphere attributable to each company. The research is still awaiting peer review before it can be finalized and publicized.

Most of the workshop’s participants responded positively to Heede’s research. Matt Pawa thought the information could prove quite useful in helping to establish joint and several liability in tort cases, but he cautioned that, in practice, a judge would likely hesitate to exert joint and several liability against a carbon-producing company if the lion’s share of carbon dioxide in the atmosphere could *not* be attributed to that company specifically. Nevertheless, he said this kind of accounting would no doubt inspire more litigation that could have a powerful effect in beginning to change corporate behavior.

Other participants reacted positively to other aspects of Heede’s research. Angela Anderson, director of the climate and energy program at the Union of Concerned Scientists, noted for instance that it could potentially be useful as part of a coordinated campaign to identify key climate “wrongdoers.” Mary Christina Wood agreed, saying the preliminary data resonated strongly with her, making her feel like “Polluters did this and they need to clean this up.” Other participants noted that it could be helpful in the international realm by changing the narrative that currently holds nations solely responsible for the carbon emitted by parties within their own borders. Finding

the specific companies responsible for emissions, they said, cuts a notably different way.

One concern raised was that some in the “American middle” might perceive it as unfair to go after a company that didn’t know carbon dioxide was harmful for much of the extended period Heede reviewed. To get a sense of this, some suggested reaching out to someone like public opinion specialist Tony Leiserowitz who could undertake polling to see how such research might be received by different segments of the public.

Robert Proctor suggested that the most effective public communication about the research would use the simplest formulation possible. One effective strategy in the fight against tobacco, he observed, was equating a year’s production of cigarettes in a particular factory to a number of deaths. Anti-tobacco activists determined that there was one smoking-related death for every one million cigarettes produced. As Proctor explained, given that the industry made roughly one cent in profit per cigarette, that meant a company such as Philip Morris made \$10,000 in profit for every death its products caused. Proctor suggested a similar strategy could be adapted to link the largest corporate carbon producers to specific climate impacts. If numbers could be generated for how many deaths per year were caused by each degree rise in global temperature, for instance, a similar case could be made against a particular company that produced or emitted a known percentage of the carbon load contributing to global warming.

Picking up on this notion, Naomi Oreskes suggested that some portion of sea level rise could be attributed to the emissions caused by a single carbon-producing company. In essence, she suggested, “You might be able to say, ‘Here’s Exxon’s contribution to what’s happening to Key West or Venice.’” Myles Allen

agreed in principle but said the calculations required, while not complicated, were easy to get wrong.

Whether or not the attribution would hold up in court, Stanton Glantz expressed some enthusiasm about such a strategy, based on his experience with tobacco litigation. As he put it, “I would be surprised if the industry chose to attack the calculation that one foot of flooding in Key West could be attributed to ExxonMobil. They will not want to argue that you are wrong and they are really only responsible for one half-foot. That is not an argument they want to have.” For similar reasons, he said, tobacco companies have never challenged death estimates, noting, “Their PR people tell them not to do that, focusing instead on more general denial and other tactics.”

Evidence of Collusion and Prospects for Constructive Engagement

Participants at the workshop also discussed one other aspect of attribution: the close connections among climate change deniers, the fossil fuel industry, and even the tobacco companies. John Mashey, a computer scientist and entrepreneur who has meticulously analyzed climate change deniers, presented a brief overview of some of his research, which traces funding, personnel, and messaging connections between roughly 600 individuals and 100 organizations in the climate change denial camp.¹⁶ Mashey noted that looking closely at the relationships between these parties—via documents, meetings, e-mails, and other sources—can help clarify the extent of collusion involved in sowing confusion on the issue. Mashey cited, for instance, memos that have surfaced from a 1998 “climate denial” plan involving most of the major oil companies (under the auspices of the American Petroleum Institute) that set the

stage for much of the disinformation of the past 10 years.¹⁷

A number of participants ultimately agreed that the various linkages and attribution data could help build a broad public narrative along the following lines:

- We have a serious problem (as shown by the science)
- We know the people responsible are the same ones responsible for a campaign of confusion
- There are solutions, but we can't get to them because of the confusion these companies have funded

Finally, there was some fundamental disagreement over the potential for engagement with the fossil fuel industry. Richard Heede expressed optimism, saying, "I would love to envision constructive engagement with industry. That would mean convincing them to participate in a plan that 'could make life worth living for future generations.'"

Some veterans of the tobacco control campaign voiced skepticism, however. Stanton Glantz recalled two instances in which activists sought engagement with the industry. In one, the National Cancer Institute met with tobacco companies to try to persuade them to make less dangerous cigarettes. "The tobacco companies used it as an opportunity to undertake intelligence gathering about health groups and it was a disaster," he recalled. Glantz did note a fundamental difference between tobacco and climate change, however: while tobacco companies offer no useful product, he explained, "The fact is we do need some form of energy. Unless other alternative energy firms replace the current carbon producers, which seems unlikely, at some point there will likely have to be some kind of positive engagement. Less clear, however, is how best to create a political environment for that engagement to work."

5. Public Opinion and Climate Accountability

The watershed moment was the congressional hearing when the tobacco companies lied and the public knew it. If that had occurred earlier, the public might not have so clearly recognized that the executives were lying. My question is: What do we know about how public opinion changed over time?

—Peter Frumhoff

Throughout several sessions, workshop participants discussed and debated the role of public opinion in both tobacco and climate accountability. It was widely agreed that, in the case of tobacco control, a turning point in public perception came at the 1994 “Waxman hearings” on the regulation of tobacco products.¹⁸ On this highly publicized occasion, a broad swath of the populace became aware that the heads of the major tobacco companies had lied to Congress and the American public. Naomi Oreskes said tobacco litigation helped make this public narrative possible.

Participants grappled with the question of how climate advocates might create a similar narrative for global warming. While there was a good deal of debate about exactly what such a narrative should be, there was widespread agreement that the public is unlikely to be spurred into action to combat global warming on the basis of scientific evidence alone. Furthermore, climate change science is so complex that skeptics within the scientific community can create doubts in the public

mind without any assistance from the fossil fuel industry or other climate change deniers.

The Importance of Creating a Public Narrative

Jim Hoggan, a public relations expert and co-founder of DeSmogBlog.com, explained the problem this way: “The public debate about climate change is choked with a smog of misinformation. Denial and bitter adversarial rhetoric are turning the public away from the issue. Communicating into such high levels of public mistrust and disinterest is tricky. We need to do some research into a new narrative.” Hoggan emphasized the importance of linking the industry’s “unjust misinformation” back to an overall narrative about sustainability, rather than getting mired in issues of whose fault climate change is and who should do what to ameliorate the situation. Noting the fact that there is broad and deep support for clean energy, Hoggan suggested the following narrative: “Coal, oil, and gas companies are engaging in a fraudulent attempt to stop the development of clean energy.”

Many participants agreed about the importance of framing a compelling public narrative. Dick Ayres added that the simple act of naming an issue or campaign can be important as well. After acid rain legislation passed in 1990, he recalled, an industry lobbyist told him, “You won this fight 10 years ago when you chose to use the words ‘acid rain.’”

Paul Slovic, a psychologist and expert on risk perception, cited his colleague Daniel Kahneman’s book *Thinking, Fast and Slow*, which has shown that people often tend to make snap judgments rather than stopping to analyze.¹⁹ Though a degree of slow thinking is necessary to comprehend climate change, he said, people instead tend to go with their quick first impressions.

Having reviewed two boxes of documents obtained from tobacco marketers by the Justice Department for its RICO case against the tobacco companies, Slovic became convinced that the industry was decades ahead of academic psychologists in understanding the interplay of emotion and reason in decision making. The sophistication of the cigarette makers’ approach showed, he said, in the effectiveness with which they used images of beautiful people doing exciting things, or words like “natural” and “light” that conveyed health (in response to mounting evidence of smoking’s link to lung cancer).

Slovic emphasized that there are huge differences between tobacco and climate risks. “Every hazard is unique, with its own personality, so to speak,” he said. “Does it pose a risk to future generations? Does it evoke feelings of dread? Those differences can make an impact on strategy.” The feeling of dread, specifically, was an important feature in people’s perception of tobacco risks, since they equated smoking with lung cancer.

**Here is one possibility for a public narrative:
“Coal, oil, and gas companies are engaging in a
fraudulent attempt to stop the development of
clean energy.”**

—Jim Hoggan

This differs from “doom-and-gloom” discussions about climate change, which can tend to turn people off rather than instilling dread. The difference is that climate change risks seem diffuse—distant in both time and location. The situation is even more complicated, Slovic added, by the fact that when people receive a benefit from an activity, they are more inclined to think the risk that activity carries is low. If they receive little benefit, they tend to think the risk is higher. As he explained, “The activities that contribute to climate change are highly beneficial to us. We love them; we are addicted to them.” That, he said, makes the problem of communicating the dangers of climate change all the more difficult.

Reaching People “Where They Live”

Several participants emphasized the phenomenon of cultural cognition, including work on the subject by Dan Kahan at Yale Law School.²⁰ Cultural cognition research suggests that we all carry around with us a vision of a just social order for the world in which we live. Kahan’s work identifies a major division between those who tend toward a worldview based on structure and hierarchy, and those who tend toward a worldview based on egalitarianism. Another axis is individualism versus communitarianism (i.e., whether a higher value is placed on the welfare of the individual or the group). In Kahan’s conception, all of us have a blend of such attributes.

Attitudes on climate change are highly correlated with these views. As a result, it is difficult to change people's views on the issue because, when they receive information, they tend to spin it to reflect their favored worldview. In light of this research, several participants expressed concern that a revelation about documents from oil companies might not work to change many minds, given the power of such pre-existing worldviews.

Brenda Ekwurzel, a climate scientist at the Union of Concerned Scientists (UCS), recounted her organization's experience with this variable, explaining that UCS, as a science-based organization, contends with an "information fire hose" when it comes to climate change. As she put it, "We love data. We scientists tend to focus on the frontal lobe and we need communications folks to remind us that there are other parts of our brain too." She said she always wants to begin a discussion by saying, "Let's talk about climate change." But that, it turns out, is not necessarily the best starting point—she has learned that it's better to start with: "Let's talk about what you care about most." The answer is likely to be family, friends, livelihood, health, and recreation.

Ekwurzel highlighted polling data that have shown some 77 percent of people in Kahan's egalitarian/communitarian sector believe experts agree about climate change,

while 80 percent of those in the hierarchical/individualist camp believe experts disagree about climate change. To overcome that barrier, UCS staff responsible for communicating about climate change began experimenting, in one case addressing an issue of great concern to a very specific constituency: the correlation between August high school football practices in Texas and an increase in heat stroke among the student athletes.

This effort, launched to coincide with the first week of football practice in Texas and Oklahoma, proved remarkably successful, Ekwurzel said, drawing local media attention in a region the organization rarely reached. It also encouraged commentary from a different set of voices than those who normally talk about global-warming-related issues, such as medical professionals. It may have been a coincidence, Ekwurzel admitted, but within six weeks of this campaign the state of Texas decided to scale back high school football practices in the summer—and the message about the consequences of warmer summers in the region reached a largely untapped audience for UCS.²¹

Identifying Wrongdoers

Participants at the workshop also discussed the benefits and risks associated with identifying wrongdoers as part of a public narrative. Some participants, such as Paul Slovic, argued that this could prove an effective strategy. Slovic cited research by Roy Baumeister and Brad Bushman suggesting that, when it comes to messages, "bad is stronger than good"—a finding that helps explain the tendency toward negative advertising in political campaigning.²² Claudia Tebaldi said she believed "there is a big difference between convincing people there is a problem and mobilizing them. To mobilize, people often need to be outraged."

Every hazard is unique, with its own personality, so to speak. Does it pose a risk to future generations? Does it evoke feelings of dread? Those differences can make an impact on strategy.

—Paul Slovic

On the other hand, several of the public opinion experts cautioned that “argument tends to trigger counter-argument.” By contrast, they pointed out, emotional messages don’t tend to trigger counter-emotions. “Abuse breeds abuse,” explained Dan Yankelovich, co-founder of Public Agenda, a nonpartisan group devoted to public opinion research and citizen education. “In this case, you have industry being abusive. But you do not want to demonize the industry. The objective ought to be to have the public take this issue so seriously that people change their behavior and pressure industry to alter their current practices. In the end, we want industry to be more receptive to this pressure, not less.”

For this reason and others, several participants expressed reservations about implementing an overly litigious strategy at this political moment. Perhaps the strongest proponent of this view was Yankelovich, who explained, “I am concerned about so much emphasis on legal strategies. The point of departure is a confused, conflicted, inattentive public. Are legal strategies the most effective strategies? I believe they are important after the public agrees how to feel about an issue. Then you can sew it up legally.” In the face of a confused, conflicted, and inattentive public, legal strategies can be a double-edged sword, he continued: “The more adversarial the discourse, the more minds are going to be closed.” In response to a comment by Richard Ayres, however, Yankelovich agreed that a legal strategy focused on the industry’s disinformation campaign could help advance public opinion on global warming, as it did in the case of tobacco.

Jim Hoggan advised, “It’s like that old adage that says, ‘Never get into a fight with a pig in public. The pig likes it. You both get dirty. And, after a while, people can’t tell the difference.’”

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—Daniel Yankelovich

Dan Yankelovich also described his theory of the “public learning curve,” which holds that public opinion moves through three recognizable phases on issues like smoking or climate change. The first is the “consciousness-raising” phase, during which the media can help dramatically to draw attention to an issue. This is followed by the “working-through” phase, during which things bog down as the public struggles over how to adapt to painful, difficult change. Yankelovich noted a paucity of institutions that can help the public work through this phase, which is frequently marked by the kind of denial and wishful thinking recognizable today in public opinion about climate change. He argued that only when the public begins to move into the third phase of “thoughtful public judgment” can legal strategies prove most effective and ultimately produce laws and regulations.

As he explained, “My sense is we are not there yet on climate change. The media has not been a help. The opposition has been successful in throwing sand in the works. People are just beginning to enter the open-minded stage. We are not decades away but I don’t have enough empirical data. My sense is that it may take about three to five more years.”

The Prospects for a “Dialogic” Approach and Positive Vision

Given the fact that the climate advocacy community has not yet coalesced around a compelling public narrative, Dan Yankelovich suggested that the topic could be a good candidate for engaging in a relatively new public opinion technique known as the “dialogic method,” in which representative groups holding different views on a subject meet over the course of a day or more to develop a narrative in an iterative fashion. The benefit of this method, he said, is that climate advocates could essentially work in partnership with the public “by having them help shape a narrative that is compelling.”

Yankelovich argued that the narrative must convey deep emotion to cut through the apathy and uncertainty prevalent in public opinion on the issue today, which has made it easier for the fossil fuel industry to sow confusion. In considering these emotional components of the narrative, he noted that anger is likely to be one of the major candidates but there may be others as well, adding that, “The notion of a custodial responsibility and concern also has deep resonance.” Finding the right public narrative, Yankelovich suggested, could help accelerate public opinion through the second phase of the curve within the next five years.

In one interesting example of mobilizing public opinion on an issue, Mary Christina Wood drew the group’s attention to the “victory speakers” campaign in World War II. When the U.S. government was contemplating entering the war, the threat of Nazi Germany seemed too far away to many Americans, who were reluctant to change their lives to mobilize for war. In response, the government orchestrated a campaign in which some 100,000 speakers, including Wood’s mother and grandmother, made five speeches each day about the need for U.S. involvement.²³ Wood suggested that the campaign helped mobilize the American people remarkably quickly.

Finally, several participants voiced strong support for the need to create a positive vision as part of the public narrative about climate change. As Naomi Oreskes put it, citing Ted Nordhaus and Michael Schellenberger’s article “The Death of Environmentalism,”²⁴ “Martin Luther King did not say, ‘I have a nightmare’! King looked at a nightmare but he painted a positive vision. Abolitionists did not say, ‘We have to collapse the economy of the South,’ even if that is what happened. No one wants to hear you are a bad person or that the way you live is bad.” Lew Branscomb concurred, noting that, “There has got to be a future people think is worth struggling for.”

6. Conclusion

There was widespread agreement among workshop participants that multiple, complementary strategies will be needed moving forward.

Workshop participants unanimously agreed that the sessions yielded a productive and well-timed interdisciplinary dialogue. Participants from the scientific and legal communities seemed especially appreciative for the opportunity to engage so intensively with experts outside their usual professional circles. The only potential gaps identified by attendees were a lack of participants from the insurance industry and a lack of emphasis on the biotic effects of climate change.

Participants made commitments to continue the discussion and collaborate on a number of the efforts discussed at the meeting. In particular, several participants agreed to work together on some of the attribution work already under way, including efforts to help publicize attribution findings in a way that will be easy for the general public to understand, and build an advocacy component around those findings. Others proposed an informal subgroup to pursue Dan Yankelovich's suggestion of using the dialogic method in conjunction with public relations specialists to help develop an effective public narrative.

Participants also made commitments to try to coordinate future efforts, continue discussing strategies for gaining access to internal documents from the fossil fuel industry and its affiliated climate denial network, and to help

build an accessible repository for those documents that are obtained.

Points of Agreement

There was widespread agreement among workshop participants that multiple, complementary strategies will be needed moving forward. For instance, in terms of what the "cancer" analog for global warming might be, participants generally accepted the proposition put forth by Angela Anderson that the answer might differ by region, with sea level rise instilling the most concern on the coasts, and extreme heat proving most compelling in the Midwest. Participants also agreed that it is better to focus on consequences of climate change happening now rather than on those projected for the distant future. Brenda Ekwurzel's anecdote about the public's engagement on the issue of high school football was offered as an example of the power that highlighting such immediate consequences can have.

Equally important was the nearly unanimous agreement on the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, in maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming. Some participants stated that pressure from the courts offers the best

current hope for gaining the energy industry's cooperation in converting to renewable energy.

Dan Yankelovich expressed a widely held sentiment when he noted what he called "a process of convergence" over the course of the workshop, in which participants with different expertise gradually incorporated broader perspectives on the problem at hand. "I know I found the tobacco example and the range of possible legal strategies very instructive," he said.

Unresolved Issues

Perhaps the largest unresolved issues from the workshop were some disagreement over how adversarial in tone efforts targeting the fossil fuel industry should be, and the extent to which outrage can mobilize the public.

On the latter point, one participant noted, "Outrage is hugely important to generate. Language that holds carbon producers accountable should be an important part of the narrative we create." But a number of participants expressed reservations about any plans that "demonized" the fossil fuel industry.

Myles Allen, for instance, worried that too adversarial a tone "could hand a victory to the 'merchants of doubt.'" He explained that because the fossil fuel industry's disinformation has effectively muted a large portion of the electorate, "Our focus ought to be to bring as many of these people back to the table and motivate them to act. We need to somehow promote a debate among different parts of the legislature to get this happening."

Lew Branscomb agreed that efforts should not seek to demonize the fossil fuel industry, noting that, "There are a lot of companies in the oil and auto business, and some of the companies will come forward on the good side. We all need their cooperation. My notion is to try to find people in the industry producing

It is possible to see glimmers of an emerging consensus on a strategy that incorporates legal action with a narrative that creates public outrage.

carbon who will come around." To accomplish this, he suggested a strategy that emphasizes facts and doesn't impugn motives.

Brenda Ekwurzel lent some historical support to such a view by citing Adam Hochschild's book *Bury the Chains*, about the long campaign to end slavery. Hochschild noted, she said, that one of the most influential pamphlets published in the abolitionists' fight offered a dispassionate accounting of facts and details about the slave trade gathered from witnesses who had participated in it. This publication had no trace of the moral finger-wagging that had marked virtually all prior pamphlets. Instead, the facts—especially a famous diagram of a slave ship—carried the day and became widely accepted. Women in the United Kingdom, for instance, soon started serving tea using only sugar that had been certified as not having come from the slave trade.²⁵ "Maybe," Ekwurzel suggested, "we need an analogous effort to offer certified energy sources from suppliers who do not spread disinformation."

Mike MacCracken supported the need to "win the middle." As he noted, "We have had an international consensus of scientists agreeing to key facts since 1990."

Angela Anderson said she hoped UCS could contribute meaningfully to the public's "working-through" stage of the process outlined by Dan Yankelovich. She noted that local climate adaptation stories offer a way to sidestep the controversy, but acknowledged that it is still an open question whether this

strategy helps people work through the issue and ultimately accept climate science as fact. “This is our theory,” she said, “But we don’t have the research yet to prove this.” Anderson added that many people expect UCS, as a science-based organization, to correct misinformation about climate science. “I don’t want to abdicate that responsibility,” she said, “and I wrestle with this, wondering what is the most effective order in which to do things and the right tone?”

While many questions like these remain unresolved, the workshop made an important contribution to the quest for answers. And it is possible to see glimmers of an emerging consensus on a strategy that incorporates legal action (for document procurement and accountability) with a narrative that creates public outrage—not to demonize industry, but to illuminate the collusion and fraudulent activities that prevent us from building the sustainable future we need and our children deserve.

Endnotes

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- ²³ See, for example: U.S. Office of War Information. 1942. Victory speaker: An arsenal of information for speakers. Online at <http://arcweb.sos.state.or.us/pages/exhibits/ww2/life/pdf/speak1.pdf>.
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Appendix A: Workshop Agenda

Climate Accountability, Public Opinion, and Legal Strategies

Martin Johnson House, Scripps Institution of Oceanography, La Jolla, CA

June 14–15, 2012

Workshop Goals

- Compare the evolution of public attitudes and legal strategies for tobacco control and anthropogenic climate change. Can we use the lessons from tobacco education, laws, and litigation to address climate change?
- Explore which impacts can be most compellingly attributed to climate change, both scientifically and in the public mind, and consider options for communicating the scientific understanding of attribution in ways most useful to inform both public understanding and mitigation strategies.
- Explore the degree to which public (including judge and jury) acceptance of the causal relationships of climate impacts to fossil fuel production and/or emissions would increase the prospects for an effective strategy for U.S.-focused climate mitigation.
- Consider the viability of diverse strategies, including the legal merits of targeting carbon producers—as opposed to carbon emitters—for U.S.-focused climate mitigation.
- Identify promising legal and other options and scope out the development of mutually reinforcing intellectual, legal, and/or public strategies to further them.

June 14, 2012

- 7:45 a.m.** Meet in La Jolla Shores Hotel lobby for shuttle to workshop venue
- 8:00 a.m.** Coffee, light breakfast
- 8:30 a.m.** Welcome and charge to participants
- 9:00 a.m.** **Session 1. The Lay of the Land: Key Issues and Concepts**
Five presentations @ five minutes each, with limit of one image/visual aid; followed by moderated discussion
Proctor: A brief history of the tobacco wars: epidemiology, “doubt is our product,” litigation and other strategies
Allen: Climate science and attribution
Heede: Attribution of emissions to carbon producers
Pawa: The legal landscape: fundamentals of law, climate change, damages, plaintiffs, and defendants
Slovic: Public opinion and risk perception on tobacco and climate
- 10:30 a.m.** Break
- 11:00 a.m.** **Session 2. Lessons From Tobacco Control: Legal and Public Strategies**
Three presentations @ seven minutes each, with limit of one image/visual aid; followed by moderated discussion
Sharon Eubanks, Stanton Glantz, Robert Proctor, Roberta Walburn: Litigation, media strategies, coordination with grassroots efforts, etc.
Key issue: What lessons can we draw from the history of public and legal strategies for controlling tobacco that might be applicable to address climate change?
- 12:30 p.m.** Lunch
- 1:30 p.m.** **Session 3. Attribution of Impacts and Associated Damages to Carbon and Climate Change: State of the Science and Expert Judgment**
Two presentations @ less than 10 minutes each; followed by moderated discussion
On science: Myles Allen and Claudia Tebaldi
Lead discussant: Mike MacCracken
Key issue: What impacts can be most compellingly attributed to carbon and climate change?
- 3:00 p.m.** Break
- 3:15 p.m.** **Session 4. Climate Legal Strategies: Options and Prospects**
Three presentations @ seven minutes each; followed by moderated discussion
Presenters: Matt Pawa, Mims Wood, Richard Ayres
Key issues: What potential options for U.S.-focused climate litigation appear most promising? To what extent would greater public (including judge and jury) acceptance of the causal relationships of climate impacts to fossil fuel production and/or emissions enhance the prospects for success?

- 5:00 p.m.** Wrap up
Shuttle service will be provided for the return trip to the hotel
- 6:30 p.m.** Drinks and dinner at the home of Lew and Connie Branscomb
Shuttle will be provided from La Jolla Shores Hotel

June 15, 2012

- 7:45 a.m.** Meet in La Jolla Shores Hotel lobby for shuttle to workshop venue
- 8:00 a.m.** Coffee, light breakfast
- 8:30 a.m.** **Session 5. Attribution of Emissions to Carbon Producers**
Presentation @ 10 minutes; followed by moderated discussion
Heede: Carbon majors analysis
Lead discussant: Matt Pawa
Key issue: Can new analyses increase the prospect for holding major carbon producers legally and publicly accountable?
- 9:30 a.m.** **Session 6. Innovative Strategies for Climate Accountability**
One to two presentations @ seven minutes each; followed by moderated discussion
Jim Hoggan, John Mashey
Key issues: What potential options for U.S.-focused climate litigation appear most promising? To what extent would greater public (including judge and jury) acceptance of the causal relationships of climate impacts to fossil fuel production and/or emissions enhance the prospects for success? What types of non-litigation public pressure might enhance their prospects for success?
- 11:00 a.m.** Break
- 11:15 a.m.** **Session 7. Public Opinion and Climate Accountability**
Moderated discussion drawing from key perspectives in public opinion
Speakers: Dan Yankelovich, Paul Slovic, Brenda Ekwurzel
Key issues: What is the role of public opinion in climate accountability?
- 12:45 p.m.** Lunch
- 2:00 p.m.** **Session 8. Discussion, outcomes, next steps**
- 4:00 p.m.** Wrap up
Shuttle service will be provided for the return trip to the hotel
- 7:30 p.m.** Drinks and dinner at La Jolla Shores Hotel restaurant

Appendix B: Participants

Climate Accountability, Public Opinion, and Legal Strategies Workshop

June 14–15, 2012

Workshop Organizers

Naomi Oreskes

*Professor of History and Science Studies,
University of California–San Diego
Adjunct Professor of Geosciences, Scripps
Institution of Oceanography*

Peter C. Frumhoff

*Director of Science and Policy,
Union of Concerned Scientists
Cambridge, MA*

Richard (Rick) Heede

*Principal, Climate Mitigation Services
Co-Founder and Director, Climate
Accountability Institute
Snowmass, CO*

Lewis M. Branscomb

*Aetna Professor of Public Policy and
Corporate Management (emeritus), John
F. Kennedy School of Government, Harvard
University*

Angela Ledford Anderson

*Director, Climate and Energy Program,
Union of Concerned Scientists
Washington, DC*

Workshop Participants

Myles Allen

*Professor of Geosystem Science, School
of Geography & the Environment,
University of Oxford
Environmental Change Institute, Oxford University
Centre for the Environment*

Richard (Dick) E. Ayres

*Attorney, The Ayres Law Group
Washington, DC*

Brenda Ekwurzel

*Climate Scientist and Assistant Director
of Climate Research and Analysis,
Union of Concerned Scientists
Washington, DC*

Sharon Y. Eubanks

*Advocates for Justice, Chartered PC
Senior Counsel, Sanford Wittels & Heisler, LLP
Washington, DC*

Stanton A. Glantz

*Professor of Medicine, University of
California–San Francisco
University of California Center for
Tobacco Control Research & Education*

James (Jim) Hoggan
President, Hoggan & Associates
 Vancouver, BC

Michael (Mike) MacCracken
Chief Scientist for Climate Change
Programs, Climate Institute
 Washington, DC

John Mashey
Techviser
 Portola Valley, CA

Joseph (Joe) Mendelson III
Director of Policy, Climate and Energy
Program, National Wildlife Federation
 Washington, DC

Matt Pawa
President, Pawa Law Group, PC
Founder, The Global Warming Legal
Action Project
 Newton Centre, MA

Robert N. Proctor
Professor of the History of Science,
Stanford University

Paul Slovic
Founder and President, Decision Research
 Eugene, OR

Claudia Tebaldi
Research Scientist, Climate Central
 Boulder, CO

Jasper Teulings
General Counsel/Advocaat, Greenpeace
International
 Amsterdam

Roberta Walburn
Attorney
 Minneapolis, MN

Mary Christina Wood
Philip H. Knight Professor and Faculty
Director, Environmental and Natural
Resources Law Program, University of
Oregon School of Law

Daniel (Dan) Yankelovich
Chair and Co-Founder, Public Agenda
 San Diego, CA

Rapporteur

Seth Shulman
Senior Staff Writer, Union of
Concerned Scientists
 Cambridge, MA



Pictured (L to R): Stanton Glantz, Richard Heede, Roberta Walburn (obscured), James Hoggan, Sharon Eubanks, Peter Frumhoff, Richard Ayres (obscured), Angela Anderson, Mary Christina Wood, Lewis Branscomb, Claudia Tebaldi, Brenda Ekwurzel, Naomi Oreskes, Robert Proctor (obscured), Joseph Mendelson, Seth Shulman, John Mashey (obscured), Myles Allen, Alison Kruger, Michael MacCracken. Not pictured: Matt Pawa, Paul Slovic, Jasper Teulings, Daniel Yankelovich.



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Concerned
Scientists

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Website: www.climateaccountability.org

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Climate Accountability Institute

App. 087

Exhibit D

Kline, Scot

From: Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>
Sent: Wednesday, March 30, 2016 9:01 PM
To: Matt Pawa
Cc: Kline, Scot
Subject: Re: Wall st journal

My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.

Sent from my iPhone

> On Mar 30, 2016, at 6:31 PM, Matt Pawa <mp@pawalaw.com> wrote:

>

> Lem and Scot - a WSJ reporter wants to talk to me. I may not even talk to her at all but if I do I obviously will have no comment on anything discussed at the meeting. What should I say if she asks if I attended? No comment? Let me know.

>

> MP

>

> Matt Pawa

> Pawa Law Group, P.C.

> 1280 Centre Street, Suite 230

> Newton Centre, MA 02459

> (617) 641-9550

> (617) 641-9551 facsimile

> www.pawalaw.com

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Exhibit E

ExxonMobil

Corporate citizenship in a changing world



May 2002
App. 091



CONTENTS

ExxonMobil's long tradition of success requires a deep respect for and an understanding of what our role in society should be. Our core principles provide the basis for our commitments to communities, customers, employees and shareholders. Meeting our commitments to these varied interests is critical to our success. We perform at our best when we maximize the contribution we make across all of these areas, and striving to do so sustainably is what corporate citizenship is all about.

THIS IS EXXONMOBIL

Corporate Citizenship in a Changing World	1
A letter from Chairman Lee Raymond.	

ExxonMobil's Investment in Technology Enables Progress	2
ExxonMobil has contributed to social and economic development using technology and innovation for over 120 years.	

OUR PRINCIPLES

How We Run Our Business	4
How we achieve our results is as important as the results themselves. We insist upon honesty and ethical behavior from all employees. We manage ExxonMobil using a straightforward and disciplined approach to investment decisions, business controls, financial management and operational excellence.	

Safety, Health and Environment	6
We seek to consistently deliver outstanding safety, health and environmental performance that sets the industry standard. Our ultimate goal is to drive injuries, illnesses and environmental incidents to zero.	

OUR COMMITMENTS

Our Commitment to Governments, Communities and Societies	16
We strive to be a good corporate citizen in all the places we operate worldwide. To us that means being a trusted neighbor and making a positive contribution in communities wherever we do business.	

Our Commitment to Customers	24
Our success depends on continuously meeting the changing needs of our customers. We are dedicated to providing high quality products and services at competitive prices.	

Our Commitment to Employees	30
Corporate citizenship begins at home. We seek to hire the best people and provide them with opportunities for growth and success. We place a priority on creating a safe work environment, as well as one that values open communication, respect and fair treatment.	

Our Commitment to Shareholders	36
We believe managing the business for sustainable results is vital to being a good corporate citizen. We are committed to enhancing the value of the investment entrusted to us by our shareholders.	



Corporate citizenship in a changing world

ExxonMobil does business in nearly 200 countries and territories on six continents. For more than 120 years we have provided energy and products that have contributed to economic growth and helped improve the lives of billions of people around the world.

Energy use grows as economic prosperity increases. And there is a proven link between economic development and advances in societal welfare and environmental improvement — particularly in the developing areas of the world.

To do business successfully for this long and on this scale requires that we be at the leading edge of competition in every aspect of our business. This requires that ExxonMobil's substantial resources — financial, operational, technological and human — be employed wisely and evaluated regularly.

While we maintain flexibility to adapt to changing conditions, the nature of our business requires a focused, long-term approach. We consistently strive to improve our performance in all aspects of our operations through learning, sharing and implementing best practices.

And to do business successfully for this long and on this scale also requires a deep respect for and understanding of different people and cultures, and a keen appreciation of what our role in society should be.

Social responsibility may be a comparatively new term now applied to corporations, but it is not a new concept for us. For many decades, ExxonMobil has rigorously adhered to policies and practices that guide the way we do business. The methods we employ to achieve results are as important as the results themselves.

We pledge to be a good corporate citizen in all the places we operate worldwide. We will maintain the highest ethical standards, comply with all applicable laws and regulations, and respect local and national cultures. We are dedicated to running safe and environmentally responsible operations.

Like other global companies, ExxonMobil is called upon to address an ever-broadening range of issues and challenges. The resourcefulness, professionalism and dedication of the directors, officers and employees of ExxonMobil make it possible for us to



meet these challenges. We have a well-trained, culturally diverse workforce focused on performance and proud of its high standards of safety and integrity.

This report describes how we translate our commitment to good corporate citizenship into action. I hope you will find it both interesting and helpful.

Sincerely,

Lee R. Raymond
CEO and Chairman

Environment

Environmental performance continues to improve

At each of our facilities we track oil and chemical spills, air emissions, water discharges and waste disposal. We closely monitor marine vessel spills.

As shown in the charts below, our emissions continue to decline. The trends in spills and

environmental regulatory compliance also are favorable.

Addressing climate change risk

We recognize that the risk of climate change and its potential impacts on society and ecosystems may prove to be significant. While research must continue to better understand these risks and possible consequences, we will continue to take

tangible actions and work with others to develop effective long-term solutions that minimize the risk of climate change from energy use without unacceptable social and economic consequences.

Overall, we believe that steps to address climate change should include:

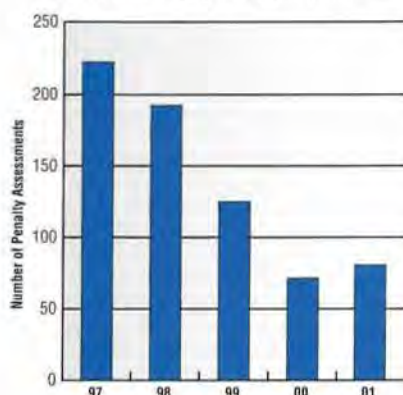
- Scientific research to improve understanding of climate change and its potential risks;
- Implementing economic steps to reduce greenhouse gas emissions now; and
- Research on innovative, advanced technologies that have potential to dramatically reduce emissions in the future. We are actively engaged in this type of research to meet customer demand for new, affordable and environmentally improved products.

Greenhouse gas emissions

The charts on page 12 show ExxonMobil's global greenhouse gas emissions. We've worked for several years to establish reliable internal procedures to measure and understand such emissions. We've also worked with others in the industry to

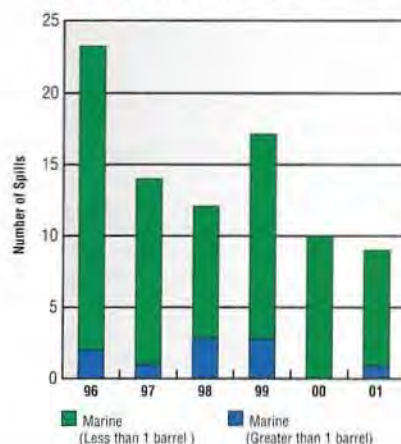
Regulatory Compliance

Environmental Regulatory Compliance



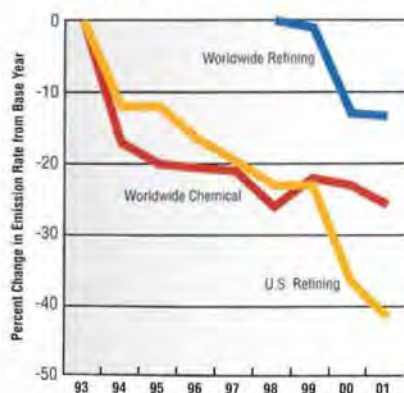
Spills

Marine Spills (Operated Fleet)



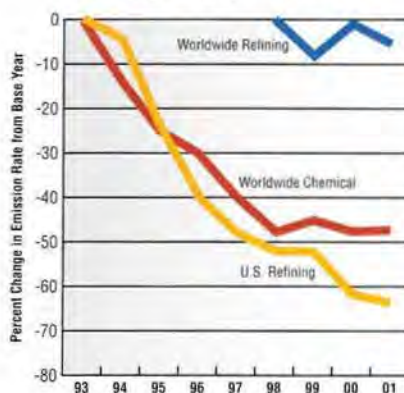
Air Emissions from Operations

Nitrogen Oxide Emissions



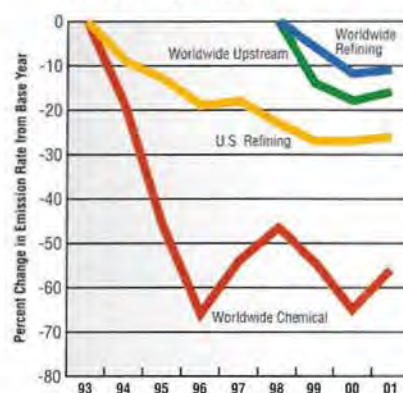
Emission Rate Bases (amount per 100 tonnes of throughput)
 1993: U.S. Refining = 0.034 tonnes NO_x
 1993: Worldwide Chemical = 0.070 tonnes NO_x
 1998: Worldwide Refining = 0.026 tonnes NO_x

Volatile Organic Compounds Emissions



Emission Rate Bases (amount per 100 tonnes of throughput)
 1993: U.S. Refining = 0.028 tonnes VOC
 1993: Worldwide Chemical = 0.130 tonnes VOC
 1998: Worldwide Refining = 0.033 tonnes VOC

Sulfur Dioxide Emissions



Emission Rate Bases (amount per 100 tonnes of throughput)
 1993: U.S. Refining = 0.055 tonnes SO₂
 1993: Worldwide Chemical = 0.022 tonnes SO₂
 1998: Worldwide Refining = 0.083 tonnes SO₂
 1998: Worldwide Upstream = 0.029 tonnes SO₂



Efficiency improvements at ExxonMobil refineries and chemical plants have reduced energy use, thereby reducing emissions of greenhouse gases.

develop common measurement techniques and to understand and benchmark emissions from comparable operations.

We believe it's important for companies to understand the greenhouse gas emissions created from their activities. For that reason, we advocate development of reliable, accountable procedures to measure and report greenhouse gas emissions through a registry. Today ExxonMobil can provide reliable information only for business activities that we operate. However, we are working with governments and industry associations to

promote development of procedures for mandatory reporting by all businesses, so that in the future we can report emissions for activities we operate and also those in which we share ownership with others.

Our total emissions exceed those of smaller petroleum companies simply because our operations are bigger. However, when scaled to the volume of oil, gas, chemicals and products that we produce, our emissions are similar to those of our competitors. Despite increases in production volumes and product sales over the last several years, total emissions have

Making things better

We're taking important steps to bolster ExxonMobil safety, health and environmental performance:

- *Our U.S. refineries voluntarily reduced so-called TRI emissions by 23 percent during 2000*, bringing the level of these emissions to just 34 percent of the 1988 baseline.*
- *Many ExxonMobil operations now apply behavior-based safety programs to reduce injuries. These programs include job task observations to help make safe behavior a habit and to address factors that cause unsafe behavior.*
- *The application of our new Passenger and Service Vehicle Management Guide helps improve safety among employees and contractors whose responsibilities include frequent driving.*
- *Together with the International Petroleum Industry Environmental Conservation Association, ExxonMobil leads the initiative to eliminate lead in gasoline in sub-Saharan Africa.*
- *We're applying new technology to reduce the flaring of natural gas. For example, at facilities in Scotland that support North Sea offshore production, we installed a flare gas recovery compressor and waste gas boiler that together reduce flaring by 90 percent.*

**Most recent data available at time of publication.*

essentially remained flat. Lower energy consumption in refineries and chemical plants helped offset a rise in carbon dioxide emissions in 2001 due to increases in development drilling and production flaring.

We work with automobile manufacturers and others to make the use of our products more efficient. This is critical because greenhouse gas emissions from the use of oil in the global economy occur predominantly (87 percent) from end-users, and less (13 percent) from operations of the oil industry. We have ongoing research programs with General Motors, Toyota and others to develop new technologies to reduce future greenhouse gas emissions.

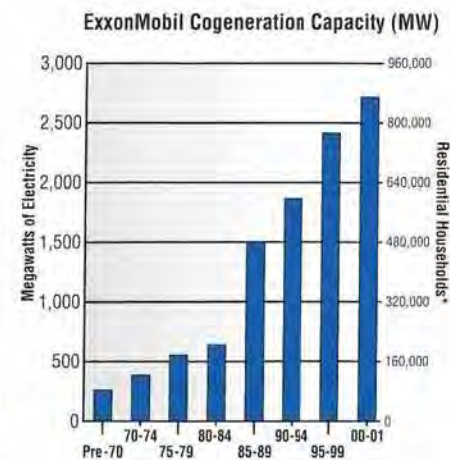
Our efforts to measure and understand operational greenhouse gas emissions and to develop and utilize advanced technologies reflect a two-decade effort to establish a sound scientific, technical and economic basis to address climate change concerns.



ExxonMobil scientists Dr. Brian Flannery and Dr. Haroon Khesghi have authored more than 40 published papers on scientific, technical, economic and policy aspects of climate change. Both served as lead authors in the recently completed United Nations' Third Assessment Report of The Intergovernmental Panel on Climate Change.

Energy efficiency improved 35 percent

Since the energy crisis of the early 1970s, we have focused on becoming more energy efficient in our operations. In fact, between 1973 and 1998 we have improved energy efficiency in our refineries and chemical plants by more than 35 percent. The energy saved over that 25-year period is equal to all the gasoline consumed by European drivers for two years. Moreover, this energy savings has the effect of avoiding carbon dioxide



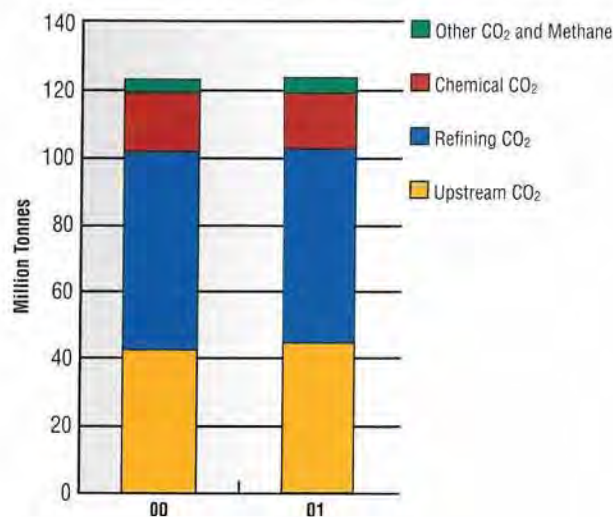
*Number of typical U.S. residential households that could be served by the additional energy captured through the improved efficiency resulting from our cogeneration assets.

emissions equal to the total emissions of the United Kingdom in 1998.

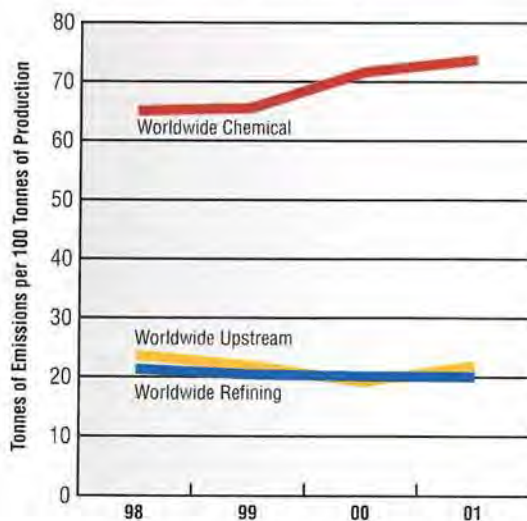
Two ongoing ExxonMobil initiatives contribute significantly to reducing greenhouse gas emissions from our operations.

First, we use cogeneration facilities that can supply 2,700 megawatts of electricity, accounting for over 40 percent of our total power-generating capacity. This

Greenhouse Gas Emissions



Greenhouse Gas Emissions





A male Attwater's prairie chicken inflates its orange neck sac as part of the bird's mating ritual. ExxonMobil donated habitat and funds to establish a sanctuary that shelters this bird that is threatened with extinction.

cogeneration reduces carbon dioxide emissions by almost seven million tonnes a year from what they would otherwise have been.

Second, we've extended our efforts in energy efficiency by applying our Global Energy Management System (G-EMS), an approach that reduces energy use, emissions and operating costs at ExxonMobil refineries and chemical plants. Opportunities have been identified to further improve energy efficiency by 15 percent, lowering emissions of carbon dioxide, sulfur dioxide, nitrogen oxide and other gases.

Energy efficiency savings over the next several years will help further reduce air emissions and greenhouse gases per unit of production.

Nurturing biodiversity

We all have a responsibility to be concerned about sustaining the world's biological diversity (biodiversity). Working with worldwide conservation associations, we seek to preserve habitats that will allow species to flourish. Some of our efforts have included donation of critical habitat to support species such as the Attwater's prairie chicken, to ensure turtle preservation and to actively participate in reforestation efforts by planting more than two million trees in the last five years.

ExxonMobil also has focused on our Save the Tiger initiative. Because of our long history with these magnificent animals as a corporate symbol, we feel a special obligation to ensure their survival.

Sustainability: managing for today and tomorrow

Sustainability is a critical consideration in how we operate the company.

We recognize the importance of sustainable development, a process that seeks to protect the aspirations of future generations.

As a major energy supplier, we seek to maximize the contributions we make to economic growth, environmental protection and social well-being over the long run.

Through the use of advanced technology, we have continued to add to the known reserves of oil and gas at a greater rate than they have been depleted, greatly extending the time period when affordable petroleum resources can meet the world's demand for energy. We believe this approach to be consistent with sustainability.

Our research and technology have enabled energy producers and consumers to improve efficiency and to reduce carbon dioxide and other emissions. Our operations continually seek ways to reduce the footprint that we leave.

We are working on ways to bring our science and technology expertise to energy-related solutions that are technically and economically viable.

We also consider the impacts of our operations on habitats and look for ways to meet our business needs without damaging habitats. We will continually look for opportunities to demonstrate that oil and gas development and biodiversity can be mutually sustained.

Science and technology research delivers improvements

ExxonMobil conducts extensive research relating to safety, health and environmental issues. We are working to improve our manufacturing processes, reduce wastes, minimize our footprint, improve operating standards and ensure the safety of our products.

Nearly 500 employees are engaged in safety, health and environment-related science and technology research.

Much of our environmental research focuses on new ways to remove nitrogen compounds from air and water emissions.

Our extensive testing of products provides information on the properties and potential risks to employees, consumers and the environment. Much of the work is done at laboratories of ExxonMobil Biomedical Sciences, Inc. (EMBSI) in New Jersey.

EMBSI provides services in toxicology, occupational and public health, and product stewardship to affiliates worldwide.

Its 160-member staff of industrial hygienists and medical professionals assists employees and contractors through the occupational health network. This network assures that health and safety standards are applied worldwide.

We developed systems to reduce safety incidents by including human factors in



Barbara Kelly prepares to test the biodegradability of a synthetic fluid. The ping-pong balls serve as a barrier to minimize water evaporation.

engineering projects. We are encouraged by positive safety results in recent major construction projects.

Our highly automated plants use sophisticated alarms to alert personnel of operational upsets. We have worked with

Honeywell for many years to make these systems highly reliable and easy to monitor. We've also co-developed with Akzo Nobel a new refining technology (*SCANining*) that selectively removes sulfur during the gasoline manufacturing process.

Safety performance is important in its own right. But it also reflects a discipline that carries over into everything we do, including protecting the environment and satisfying customer needs for energy and petrochemicals.

Recognition for outstanding performance

- The U.S. Department of the Interior awarded its 2001 National Safety Award for Excellence and its Corporate Citizen Award to ExxonMobil. The SAFE Award cited the company's safety and operations record at offshore facilities in the Gulf of Mexico and offshore California. Minerals Management Service Director R.M. Burton has called recipients "the best of the best."
- ExxonMobil's international marine shipping subsidiary — IMT — won the British Safety Council's Sword of Honor for its world-class safety system and integration of best practices throughout the organization. The group also won the Royal Society for the Prevention of Accidents highest award. The shipping organization has logged more than two million work hours without a lost-time injury.



ExxonMobil's SeaRiver Maritime has been honored for two consecutive years by the State of Washington for exceptional compliance with the state's voluntary standards for safety and environmental protection. Shown at the award presentation are (from left) Paul Revere, president of SeaRiver Maritime; Tom Fitzsimmons, Director of Washington's Department of Ecology; and U.S. Coast Guard Rear Admiral Erroll Brown.



A comprehensive commitment to safe operations by employees like Nazri Ason helped ExxonMobil's Malaysian affiliate achieve two consecutive years of zero lost-time injuries.

- A loss prevention system at the Campana Refinery in Argentina earned Esso the Argentinean Institute of Petroleum and Gas Safety Award.
- Two ExxonMobil employees, Linda Williamson and Mark Hidalgo, received the Outreach Award from the National Voluntary Protection Program Participants Association in 2000 and 2001, respectively. The annual award honors a single individual for his or her efforts to improve worker safety and spread the cooperative approach of the U.S. Occupational Safety and Health Administration program.
- ExxonMobil Canada received the 2001 VCR Upstream Oil and Gas Leadership Award for reducing emissions and improving energy efficiency. Since 1994 the company cut its energy consumption by an amount that would heat more than 43,000 homes for one year, and reduced CO₂ emissions by approximately 580,000 tonnes. During this period production increased 30 percent. VCR is a partnership of government agencies, industrial companies and other organizations.

- The Chamber of Shipping of America awarded its Devlin Award to 21 ExxonMobil marine transportation vessels. The Devlin Award recognizes vessels that have operated two years or longer without a lost-time injury.
- The U.S. Coast Guard presented its prestigious William M. Benkert Gold Award of Excellence for marine environmental protection to ExxonMobil's U.S. marine transportation affiliate, SeaRiver Maritime. The company also secured the Washington State Department of Ecology Exceptional Compliance Award for high standards of operations and oil spill prevention. The company is the first to be recognized by the State of Washington for exceptional compliance.
- Our chemical joint venture with Saudi Basic Industries Corporation in Al-Jubail, Saudi Arabia was recognized for safety excellence by the Construction Users Roundtable.
- The Thailand Ministry of Science, Technology & Environment presented its Outstanding Energy Conservation Award to the Esso Sriracha Refinery.



Linda Williamson, an employee at the Hull, Texas LPG storage facility, and Mark Hidalgo, an employee at the Beaumont, Texas Refinery show the awards they received for their efforts in promoting safety in the workplace.

Exhibit F



Taking on the world's toughest energy challenges.™



2006
corporate
citizenship
report

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about this report

The ExxonMobil 2006 Corporate Citizenship Report describes our efforts in a range of areas relating to the economic, environmental, and social performance of owned and operated operations. We produced this report in accordance with the reporting guidelines and indicators of the International Petroleum Industry Environmental Conservation Association (IPIECA) and the American Petroleum Institute (API) *Oil and Gas Industry Guidance on Voluntary Sustainability Reporting* (April 2005). The majority of these indicators are also consistent with the indicators used by the Global Reporting Initiative (GRI) in the *G3 Sustainability Reporting Guidelines Version 3.0 (G3)*.

In preparing this report, we benefited from comments on the 2005 Corporate Citizenship Report. We solicited feedback through a variety of mechanisms, including the corporate reporting Web site (exxonmobil.com/citizenship), online surveys, business-reply cards, and interviews with opinion leaders from nongovernmental organizations (NGOs), academia, and financial institutions. Business for Social Responsibility (BSR), an advisory organization on corporate social responsibility of which we are a member, also provided a detailed review of our 2005 report.

This report addresses our corporate citizenship accomplishments, the challenges we face, and our future plans to meet these challenges. Additional information about our operation-wide management systems and processes can be found on our Web site (exxonmobil.com/managementsystems).

We value your feedback on this report and our performance in addressing economic, environmental, and social issues.

For additional information and to provide comments, please contact:

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Note: This report covers ExxonMobil and all of its corporate subsidiaries under the brands ExxonMobil, Exxon, Mobil, and Esso. Most environmental data are reported in metric units. Financial information is reported in U.S. dollars.

LRQA attestation summary statement. Lloyd's Register Quality Assurance, Inc. (LRQA) believes the ExxonMobil reporting system is effective in delivering safety, health, and environmental indicators, which are useful for assessing corporate performance and for reporting information consistent with the IPIECA/API Guidance. For the full attestation statement, see the inside back cover.



environmental performance

focus areas:

- Energy efficiency
- Gas flaring
- Greenhouse gas emissions
- Spill prevention
- Operating in sensitive areas

Case study: Sound and the marine environment

ExxonMobil is committed to operating in an environmentally responsible manner everywhere we do business. Our efforts are guided by in-depth scientific understanding of the environmental impact of our operations, as well as by the social and economic needs of the communities in which we operate. Our operational improvement targets and plans are based on driving incidents with real environmental impact to zero and delivering superior environmental performance. We are committed to our environmental initiative—*Protect Tomorrow. Today.*

environmental management

We manage our safety, security, health, and environmental risks worldwide using our *Operations Integrity Management System (OIMS)*. This system gives us a rigorous and systematic framework by which to communicate expectations, measure progress, and ensure results. It meets the requirements of the International Organization for Standardization's standard for environmental management systems (ISO 14001).

Our business operations continue to drive improvements in their environmental performance by incorporating *Environmental Business Planning (EBP)* into the annual business planning cycle. The businesses use EBP to identify key environmental drivers, set targets in key focus areas, and identify projects and actions to achieve those targets. The EBP approach has been an effective tool to integrate environmental improvements into the company's overall business plan. We regularly engage with local communities to provide input to our EBP process. For additional information about EBP, please go to our Web site (exxonmobil.com/ebp).

For new projects and developments, we conduct environmental and social impact assessments (ESIAs) that review factors such as community concerns, sensitive environmental habitats—for example, sound and the marine environment (see case study, page 24)—and future regulatory developments. The assessment results are integrated into project decision making.

For example, ExxonMobil Development Company, which manages ExxonMobil's major new upstream projects worldwide, is developing *Environmental Standards* as guidelines to help managers plan and integrate best practices for environmental protection into new projects and drilling operations. In 2006, guidelines that address nitrogen oxides (NOx) emissions, flaring and venting, and managing offshore drill cuttings were developed. Additional guidelines for managing waste, water, and land use will be developed in 2007.

Emergency Preparedness. Risks are inherent in the energy and petrochemical business, including risks associated with safety, security, health, and the environment. ExxonMobil recognizes these risks and takes a systematic approach to reducing them.

environmental performance a closer look

Climate change: policy perspective

A global approach to the risk posed by rising greenhouse gas emissions is needed that recognizes energy's importance to the world's economies. Developing countries will weigh emissions reductions against energy-intensive economic development, which lowers poverty and improves public health.

Policymakers can work today to reduce the risk of climate change due to rising greenhouse gas emissions by seeking to:

- Promote energy efficiency both in energy supply and end use;
- Ensure wider deployment of existing emissions-reducing technology;
- Support research and development of new technologies that can dramatically lower emissions while ensuring energy availability; and,
- Maintain support for climate research, to inform policy and the pace of response.

The choice of policy tools will be important. Each should be assessed for effectiveness, scale, and cost, as well as their implications for economic growth and quality of life. In our view, effective policies will be those that:

- Promote global participation;
- Ensure any cost of carbon is uniform across the economy and is predictable; uniformity ensures economic efficiency in getting the

biggest reduction in emissions at the lowest cost, and predictability facilitates investment in technologies needed to reduce emissions;

- Maximize the use of markets, to aid rapid adoption of successful initiatives;
- Maximize transparency;
- Minimize complexity and administrative costs; and,
- Provide flexibility to adjust to ongoing understanding of the economic impact and evolving climate science.

Public Policy Research Contributions. ExxonMobil supports the development of public policy to address the risk posed by rising greenhouse gas emissions.

ExxonMobil contributes to a broad array of organizations that research significant domestic and foreign policy issues and promote discussion on issues of direct relevance to the company. Our support is transparent, and our U.S. contributions can be found on our Web site (exxonmobil.com/contributions). These groups range from the Brookings Institution and the American Enterprise Institute to the Council on Foreign Relations and the Center for Strategic and International Studies.

As most of these organizations are independent of their corporate sponsors and are tax-exempt, our financial support does not connote any substantive control over or responsibility for the policy recommendations or analyses they produce.

We place great emphasis on planning to ensure a quick and effective response capability to operational incidents. Operating businesses and major sites have well-trained teams who are routinely tested in a range of scenarios including product spills, fires, explosions, natural disasters, and security incidents. In addition to hundreds of local drills in 2006, we conducted six major regional emergency response drills, which included a major drill conducted together with the U.S. Coast Guard in Alaska. For more information on our emergency prevention and response systems, please go to our Web site (exxonmobil.com/emergencyresponse).

global climate change and greenhouse gas emissions

Climate Change. Addressing the risk posed by rising greenhouse gas (GHG) emissions while providing more energy to support economic growth and to improve global living standards is an important issue facing our world today.

Climate remains an extraordinarily complex area of scientific study. Because the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant, strategies that address the risk need to be developed and implemented.

environmental performance a closer look

Reporting greenhouse gas emissions

ExxonMobil is committed to reporting greenhouse gas emissions from our operations, and we have reported our emissions since 1998. Our calculations are based on the techniques and emissions factors provided in the internationally endorsed *Compendium of Greenhouse Gas Emission Estimation Methodologies for the Oil and Gas Industry* (American Petroleum Institute) and the *Petroleum Industry Guidelines for Reporting Greenhouse Gas Emissions* (International Petroleum Industry Environmental Conservation Association), which we helped to develop.

Calculating global GHG emissions is complex, not least because:

- Emissions from petroleum production and refining operations can vary widely due to differing geological circumstances, natural resource characteristics such as sulfur levels in crude oil, and the range of end-product specifications required in different regions, countries, or even local markets.

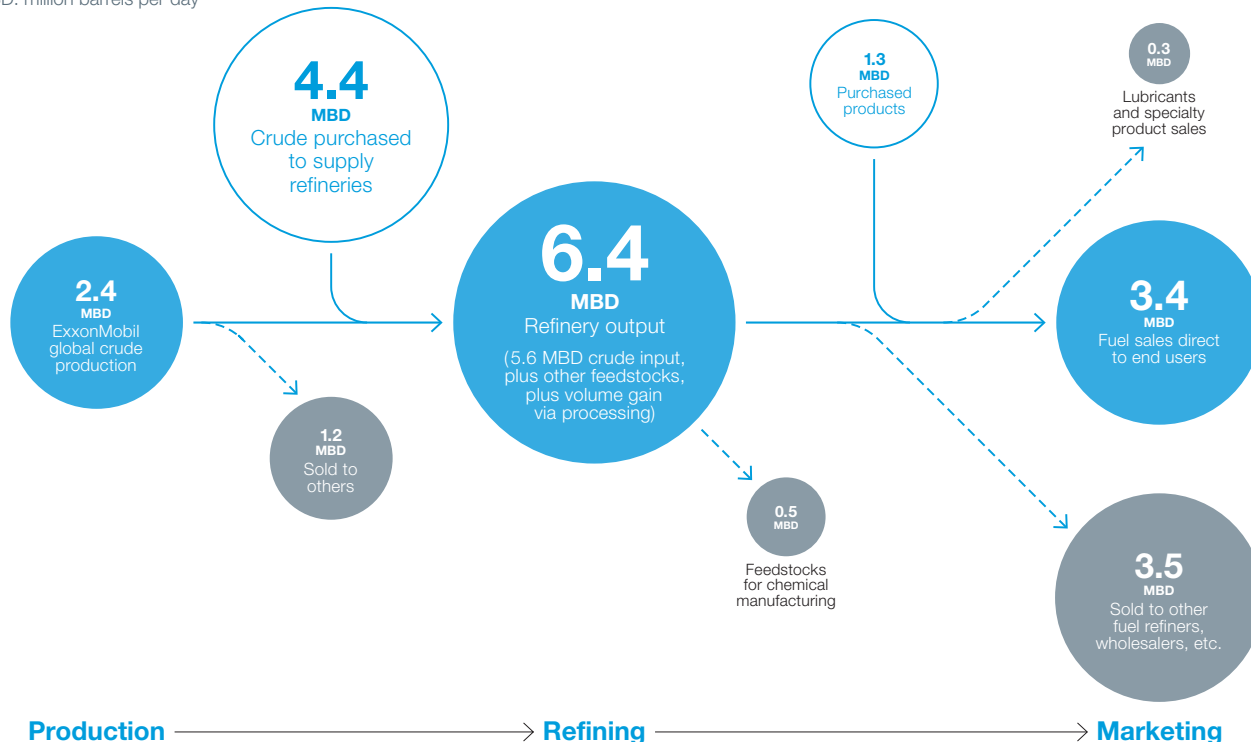
- On average, about 87 percent of petroleum-related GHG emissions are produced by end users, versus 13 percent by petroleum industry production and manufacturing operations. The emissions produced by burning specific fuels are well-known—for example, standard gasoline and diesel fuel emit 20.3 and 22.5 pounds of CO₂ per gallon, respectively. But actual end-user emissions will depend on factors such as vehicle choice, travel habits, and energy-efficiency efforts in businesses, homes, offices, and vehicles.

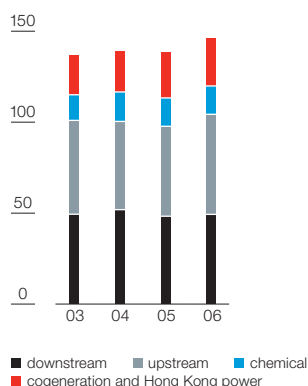
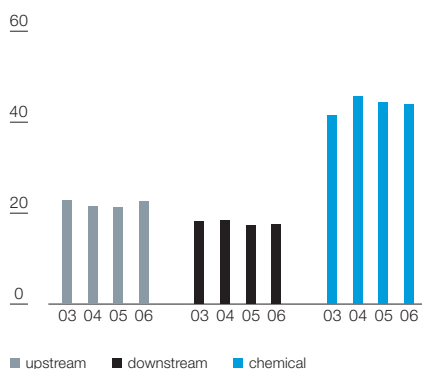
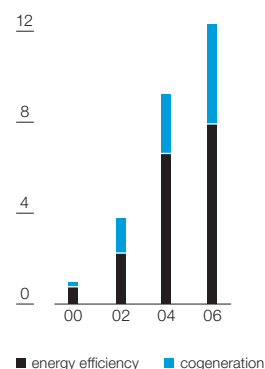
- The supply chain for crude oil from production to product marketing involves numerous changes of ownership such that approximately 20 percent of the crude oil we refined in 2006 came from our own production, and about half of the fuel products that we produced were sold to other companies who in turn sell them to others. This petroleum supply chain is illustrated below.

It is important that producers, refiners, distributors, and end users in the chain take responsibility for managing and accounting for the emissions they generate. Those who operate facilities or use fuels are in the best position to identify opportunities to control emissions.

ExxonMobil 2006 worldwide petroleum supply overview

MBD: million barrels per day



greenhouse gas emissions (absolute)direct equity, CO₂-equivalent emissions (million metric tons)**greenhouse gas emissions (normalized)**direct equity, CO₂-equivalent emissions (excluding cogeneration) (metric tons per 100 metric tons of throughput)**avoided GHG emissions from ExxonMobil actions since 1999**CO₂-equivalent emissions (million metric tons)

Meaningful approaches must be affordable to consumers, applicable in the developed and developing world, and allow for continued economic growth and improvements in living standards. Technological advances will be critical.

Greenhouse Gas Emissions. At ExxonMobil, we take the risk posed by rising GHG emissions seriously and are taking action. Our scientists and engineers are working to reduce GHG emissions today, while supporting the development of new technologies that could significantly reduce emissions in the long term. Examples include:

- Improving energy efficiency at our facilities, resulting in CO₂ emissions reduction of about 8 million metric tons in 2006 from steps taken since 1999, equivalent to taking about 1.5 million cars off the road in the United States;
- Investing in cogeneration capacity, reducing global CO₂ emissions by over 10.5 million metric tons in 2006, equivalent to taking about 2 million cars off the road in the United States;
- Continuing to support the *Global Climate and Energy Project* (GCEP) at Stanford University—a pioneering research effort to identify technologies that can meet energy demand with dramatically lower greenhouse gas emissions. Study areas include solar energy, hydrogen, biofuels, and advanced transportation;
- Working with auto and engine manufacturers to improve fuel economy by as much as 30 percent, reducing emissions of CO₂ as well as air pollutants;
- Partnering with the European Commission and other organizations to assess the viability of geological carbon storage;

- Exploring new ways to produce hydrogen for potential long-term applications ranging from vehicles to retail stations and large production facilities; and,
- Engaging with the U.S. Environmental Protection Agency in the SmartWay® Transport Partnership to improve fuel economy and reduce emissions associated with the transportation of our products.

In 2006, our greenhouse gas emissions were 146 million metric tons, a 5.4-percent increase over 2005 due to increases in oil production in Africa and the ramp-up in energy-intensive liquefied natural gas (LNG) production from new facilities in the Middle East.

Research and Development. We have been working for more than 25 years with scientific and business communities, taking part in research to create economically competitive and affordable future options for reducing global emissions associated with growing demand for energy. Because the combustion of fuels by consumers generates the majority of GHG emissions, we also work with auto and engine manufacturers, government laboratories, and academia to develop more efficient technologies for the use of petroleum products, especially in transportation. As one example, we are working on separate initiatives with Toyota and Caterpillar to develop more efficient, cleaner-burning internal combustion engines and engine systems that could improve the fuel economy of future vehicles by up to 30 percent versus current gasoline engines.

The *Global Climate and Energy Project*, now entering its fifth year, continues to expand and diversify its portfolio of research activities. Research in the past year included work in biomass energy, advanced coal utilization, solar energy, fuel cells, hydrogen, carbon capture and storage, and advanced combustion for possible transportation and other applications. In 2007, GCEP will begin research on advanced energy storage that offers the potential to enhance the commercial

Through GCEP, research is being conducted to discover affordable options for reducing global greenhouse gas emissions associated with energy use. For example, graduate student-researcher Shannon Miller investigates more efficient combustion engines in the Advanced Energy Systems Lab at Stanford University.



viability of intermittent energy sources such as wind and solar. Increasingly, GCEP funding has been awarded to scientists outside Stanford at other research institutions in the United States, Australia, the Netherlands, Switzerland, and Japan. Specific research programs launched in 2006 include the investigation of the following:

- Genetically engineering an organism that can convert solar energy into chemical energy stored as hydrogen;
- Developing far more efficient engines based on advanced combustion concepts;
- Storing carbon dioxide underground in secure formations for thousands of years;
- Developing inexpensive solar cells from organic materials; and,
- Preparing specific diesel fuels from biological feedstocks.

improving energy efficiency

In 2006, we consumed approximately 1475 trillion British thermal units (BTUs) of energy running our operations. Since the launch of our *Global Energy Management System* (GEMS) in 2000, we have identified opportunities to improve energy efficiency at our refineries and chemical plants by 15 to 20 percent. We have implemented more than half of these opportunities, with associated cost savings of approximately \$750 million per year in our Refining and Chemical businesses. As a result of these actions, we have avoided the emission of about 8 million tons of associated GHG in 2006, which is roughly equivalent to removing 1.5 million cars from U.S. roads.

We continue to implement a range of operational and facility improvements, conduct targeted research and development of energy-saving new technologies, and apply technological innovations in our projects. As part of the American Petroleum Institute's *Voluntary Climate Challenge Program*, ExxonMobil is committed to improve energy efficiency by 10 percent between 2002 and 2012 across our U.S. refining operations. We are on track to meet this commitment not only in the United States but also globally.

As an example, our Trecate, Italy, refinery improved energy efficiency by over 15 percent since 2000. About half of the improvements to date are the result of low-cost optimization of day-to-day operations. The remainder is attributable to the installation of new energy-efficient facilities. A GEMS assessment in 2006 identified additional energy-saving opportunities equivalent to \$10 million to \$15 million per year.

Cogeneration. Cogeneration is the simultaneous production of electricity and thermal heat/steam. By capturing the waste heat that otherwise escapes into the atmosphere or is lost in condensing steam back to water, we are able to use it directly within our manufacturing and production facilities. Cogeneration has been a significant factor in reducing energy consumption and improving energy efficiency at ExxonMobil facilities around the world. With the latest turbine technology, cogeneration can be twice as efficient as traditional methods of producing steam and power separately.

As an industry leader in cogeneration applications, we invested more than \$1 billion into cogeneration projects during 2004 to 2005 alone. We now have interest in about 100 such facilities in more than 30 locations worldwide with a combined capacity of 4300 MW of power. ExxonMobil's current cogeneration capacity reduces global CO₂ emissions by over 10.5 million metric tons annually. The amount of CO₂ reduced is equivalent to taking about 2 million cars off the road in the United States.

Exhibit G



**STATE AG's STRANGE, PRUITT CONDEMN ATTEMPTS TO SILENCE THOSE
WHO DISAGREE WITH PRESIDENT OBAMA'S ENERGY AGENDA**

(MONTGOMERY) – Alabama Attorney General Luther Strange and Oklahoma Attorney General Scott Pruitt released the following statement Wednesday:

“Yesterday, Al Gore, New York Attorney General Eric Schneiderman, and a small handful of other East Coast State Attorneys General announced what they called an “unprecedented coalition” that “vows to defend climate change progress made under President Obama and to push the next President for even more aggressive action” by seeking to criminally investigate energy companies for disputing the science behind global warming.

“We won’t be joining this effort, and we want to explain why. Reasonable minds can disagree about the science behind global warming, and disagree they do. This scientific and political debate is healthy, and it should be encouraged. It should not be silenced with threats of criminal prosecution by those who believe that their position is the only correct one and that all dissenting voices must therefore be intimidated and coerced into silence. It is inappropriate for State Attorneys General to use the power of their office to attempt to silence core political speech on one of the major policy debates of our time.

“We are proud to be a part of a different coalition, one driven by respect for the rule of law, rather than by ambition to use the law to silence voices with which we disagree. Our coalition of 29 states is leading the fight to challenge the legality of President Obama’s plan to kill off fossil fuels – his so-called “Clean Power Plan.” The 29 states and state Attorneys General who are part of this effort respect our proper role, which is not to pick winners and losers in the energy sector nor to silence those who disagree with us, but rather to ensure that the EPA is acting consistent with the power granted to it by Congress and to fulfill our statutory duties to ensure that the consumers in our states have access to reliable, affordable energy. In fulfilling these duties, the 29 states and their Attorney Generals understand that all sources of energy should be considered – not just those that we may prefer for one policy reason or another – so that we give ourselves the best possible chance to achieve our goal of energy independence, with reliable and affordable energy available at the lowest possible cost to our citizens.”

--30--

501 Washington Avenue • Montgomery, AL 36104 • (334) 242-7300

www.ago.alabama.gov



Exhibit H



OFFICE OF THE ATTORNEY GENERAL *State of Louisiana*

JEFF LANDRY

RECENT NEWS

3/30/2016 11:47:00 AM

Attorney General Jeff Landry Slams Al Gore's Coalition

BATON ROUGE, LA – Louisiana Attorney General issued the following statement after yesterday's press conference by former Vice President Al Gore and those state Attorneys General supportive of the EPA's power plant regulation halted last month by the United States Supreme Court:

"While I was not surprised to see these Attorneys General announce their intention to continue working in support of the unlawful and misguided Clean Power Plan – I was disturbed by their parallel announcement to 'use all tools at [their] disposal to fight for Climate Progress,' including the unfettered investigation of individual coal, oil, and natural gas companies' past or current climate opinions, views, or research. It is one thing to use the legal system to pursue public policy outcomes; but it is quite another to use prosecutorial weapons to intimidate critics, silence free speech, or chill the robust exchange of ideas.

We have seen powerful forces at work nationally targeting, most recently and visibly, our nation's coal industry. It is now abundantly clear that the crosshairs have shifted to our country's oil and natural gas industries.

In contrast to yesterday's news conference by 16 state Attorneys General from largely non-oil and gas producing states, Louisiana stands with more than 29 states and state agencies who remain in steadfast opposition to the EPA's Clean Power Plan. I will continue to work my fellow Attorneys General from across the country to ensure Louisiana workers, job creators, and consumers are not burdened by the EPA's overreach or threatened by this new and disturbing development of unleashing the prosecutorial arsenal to quell dissent on such an important issue of public debate."



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Exhibit I

- The Daily Caller - <http://dailycaller.com> -

Kansas AG Takes On Al Gore's Alarmism — Won't Join Ant-Exxon 'Publicity Stunt'

Posted By [Michael Bastasch](#) On 10:49 AM 04/04/2016 In | [No Comments](#)

Kansas Republican Attorney General Derek Schmidt had some harsh words for Democratic attorneys general who recently joined former Vice President Al Gore to call for more investigations into ExxonMobil's stance on global warming.

"I want to assure you that the State of Kansas is not participating in the Gore group's initiative, which one reporter at the New York news conference likened to a 'publicity stunt,'" Schmidt wrote in a letter to the Kansas Corporation Commission.

Schmidt sent the letter Friday after 17 Democratic attorneys general met in New York City to announce they would fight to support the Environmental Protection Agency's so-called Clean Power Plan from legal challenges. New York AG Eric Schneiderman, who led the group, also called for more investigations into Exxon's alleged misleading of the public over global warming science.

Currently, New York, California, Massachusetts and the U.S. Virgin Islands are investigating Exxon's activities surrounding global warming, which are all inspired by reporting from InsideClimate News and Columbia University. Schmidt said he would not be joining the other AGs in investigating Exxon.

"Eleven of the 17 attorneys general who participated are the same folks who took part in the 2010 sue-and-settle lawsuit that used federal courts to try to force the adoption of the federal energy regulations that became the 'Power Plan,'" Schmidt wrote.

"If anything was 'unprecedented' about the event this week it was the strictly partisan nature of announcing state 'law enforcement' operations in the presence of a former vice president of the United State who, presumably, has no role in the enforcement of the 17 states' securities or consumer protection laws," he wrote.

At the AG event, Gore claimed Exxon was committing "fraud" by supposedly covering up, for decades, science about how bad global warming would get all while funding groups opposed to energy regulations and those skeptical of climate science.

New York AG Schneiderman even suggested harsher punishments than financial penalties for companies that mislead the public on global warming.

"Financial damages alone may be insufficient," Schneiderman said during the Tuesday event in New York City Tuesday. "The First Amendment does not give you the right to commit fraud."

For months, Democratic politicians have been calling for the Department of Justice (DOJ) to launch a Racketeer Influenced and Corrupt Organizations Act, or RICO, investigation into groups they see as casting doubt on the theory of catastrophic global warming. RICO is what the DOJ used to go after the tobacco industry for misleading the public about the dangers of smoking.

"But, this vast denial apparatus that propagates the false doubt, that props up the phony science, that gets these yahoos who can't survive ... peer-reviewed scrutiny onto Fox News, onto the cable shows, saying that their scientists, they create an artificial conflict about this and that's why I think there's doubt," Rhode Island Democrat Sen. Sheldon Whitehouse, the main proponent of using RICO against skeptics and fossil fuel groups, told attendees at a League of Conservation Voters event in 2015.

"A lot of people haven't seen through the scam that's being perpetrated," Whitehouse said. "So that's one of the reasons I hope that we get another lawsuit out of the Department of Justice, like the one they brought against the tobacco industry that showed that the whole fraudulent scam was a racketeering enterprise, held them accountable for it."

There are, however, major constitutional concerns with launching a RICO probe into groups who disagree with Democrats on global warming. Either way, Schmidt pledged not to go along with the Democratic crusade against Exxon.

"In Kansas, we won't take our eye off the ball," Schmidt wrote. "The federal administration's attempt to impose central economic planning over our nation's energy sector threatens to significantly drive up the cost of electricity for hard-working Kansas families and businesses."

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Exhibit J



West Virginia AG 'disappointed' in probes of Exxon Mobil

By [KYLE FELDSCHER \(@KYLE_FELDSCHER\)](#) • 4/5/16 3:17 PM

The investigation by three attorneys general into what Exxon Mobil knew about climate change and when is driven by political desire to push climate change policies, West Virginia's attorney general said Tuesday.

Speaking on the "Inside Shale Weekly" radio show in West Virginia, Patrick Morrissey said he was deeply disappointed by the attorneys general from New York, Massachusetts and the U.S. Virgin Islands investigating Exxon Mobil for possibly covering up its knowledge of climate change.

Morrissey said he believed the attorneys general are abusing the powers of their office and said he was "disappointed."

"They're looking at additional measures in order to address their policy ideas, but that's not what it's about to be attorney general," he said. "You cannot use the power of the office of attorney general to silence your critics."

New York Attorney General Eric Schneiderman announced he is investigating what Exxon Mobil knew and when, and reports indicate California Attorney General Kamala Harris began doing

the same in January. Last week, Massachusetts Attorney General Maura Healey and U.S. Virgin Islands Attorney General Claude Earle Walker announced they would do the same.

The investigations stem from media reports that Exxon Mobil learned in 1977 from a senior scientist that burning fossil fuels would warm the planet. A year later, the company began researching how carbon dioxide released from the burning of fossil fuels would affect the planet.

Six years after the internal document was produced, Exxon Mobil went on the offensive, according to the report. The company began paying for efforts that would cast doubt on climate change, including founding the Global Climate Coalition.

At the same time, the company was building climate change projections into the company's future plans. Among those plans was future drilling in the Arctic because the polar ice caps would melt.

Exxon Mobil has repeatedly denied the claims and has cast aspersions on the media reports, noting that Inside Climate News received funding from the Rockefeller Brothers Fund, which works against climate change.

Morrissey, who is one of the 30 attorneys general suing the Obama administration to block the Clean Power Plan regulations on power plants, said he believed the attorneys general are acting because they're concerned the regulation may be struck down.

The Supreme Court stayed the plan in February until legal challenges are completed. Morrissey said he thinks the attorneys general got "more aggressive" after that.

"They want to eliminate fossil fuels and that should not be driving anything," Morrissey said. "I won't speak to whether it does, but it should not be driving any legal activity."

Exhibit K

THE ATTORNEY GENERAL OF TEXAS

KEN PAXTON

Attorney General Paxton Intervenes in First Amendment Case

Monday, May 16, 2016 – Ft. Worth



Attorney General Ken Paxton on Monday joined Alabama in asking a state judge to put an end to a ridiculous investigation launched against ExxonMobil by Claude Earl Walker, Attorney General of the U.S. Virgin Islands. Walker, working with a Washington, D.C.-based private law firm, issued a subpoena for more than four decades' worth of Exxon records, alleging the company has engaged in racketeering due to its stated position on climate change, in a clear contradiction to the First Amendment to the U.S. Constitution.

"This case is about abusing the power of the subpoena to force Exxon to turn over many decades' worth of records, so an attorney general with an agenda can pore over them in hopes of finding something incriminating," said Attorney General Ken Paxton. "It's a fishing expedition of the worst kind, and represents an effort to punish Exxon for daring to hold an opinion on climate change that differs from that of radical environmentalists."

The First Amendment ensures that all people are free to hold opinions and promote them in public debate. This action by the Virgin Islands' AG could effectively set a precedent that anyone can be criminally investigated because of their stated opinions. ExxonMobil, which employs thousands in Texas, faces high court costs if the investigation goes forward.

This version updates with the correct brief:

https://www.texasattorneygeneral.gov/files/epress/files/2016/2016-05-16_exxon_states_intervention.pdf

AG Ken Paxton Speaks About Exxon Being Targeted for Climate Ch... 



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Related News

AG Paxton: Judge Approves Texas Intervention in DOL Case

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Attorney General Paxton Warns of Scams, Unscrupulous Contractors After Hail Storms

Attorney General Paxton announces promotions

Attorney General Paxton Statement on Letter Regarding Transgender Guidance

Exhibit L

NEWS RELEASE

Luther Strange

Alabama Attorney General



FOR IMMEDIATE RELEASE

May 16, 2016

For More Information, contact:

Mike Lewis (334) 353-2199

Joy Patterson (334) 242-7491

Page 1 of 1

ALABAMA JOINS INTERVENTION IN CASE TO PROTECT FIRST AMENDMENT RIGHT OF BUSINESSES FROM GOVERNMENT THREATS OF CRIMINAL PROSECUTION

(MONTGOMERY) – Attorney General Luther Strange announced that Alabama has joined Texas in requesting that a Texas judge rule against an unconstitutional investigation conducted by the Attorney General of the Virgin Islands against ExxonMobil for its views on climate change.

“The fundamental right of freedom of speech is under assault by an Attorney General pursuing an agenda against a business that doesn’t share his views on the environment,” said Attorney General Strange. “The Attorney General of the Virgin Islands, an American Territory, is abusing the power of his government office to punish and intimidate a company for its climate change views which run counter to that of his own.

“This is more than just a free speech case. It is a battle over whether a government official has a right to launch a criminal investigation against anyone who doesn’t share his radical views,” Attorney General Strange added. “In this case an attorney general has subpoenaed ExxonMobil to provide some 40 years’ worth of records so that it can conduct a witch hunt against the company for its views on the environment. This is a very disturbing trend that must be stopped and I am pleased to join with Texas Attorney General Ken Paxton in filing an intervention plea in support of the First Amendment.”

The intervention plea was filed Monday in the case of *ExxonMobil Corporation v. Claude Earl Walker, Attorney General of the United States Virgin Islands*.

A copy of the intervention plea is attached.

--30--



EXXON MOBIL CORPORATION	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
CLAUDE EARL WALKER, Attorney	§	
General of the United States Virgin	§	TARRANT COUNTY, TEXAS
Islands, in his official capacity,	§	
COHEN MILSTEIN SELLERS &	§	
TOLL, PLLC, in its official capacity	§	
as designee, and LINDA SINGER, in	§	
her official capacity as designee,	§	
	§	
<i>Defendants.</i>	§	17 TH JUDICIAL DISTRICT

**PLEA IN INTERVENTION OF THE
STATES OF TEXAS AND ALABAMA**

The States of Texas and Alabama intervene under Rule 60 of the Texas Rules of Civil Procedure to protect the due process rights of their residents.

I. Background.

At a recent gathering on climate change in New York City, Claude Earl Walker, Attorney General of the United States Virgin Islands, announced an investigation by his office (“Investigation”) into a company whose product he claims “is destroying this earth.” Pl. Compl. Ex. B at 16. A week earlier, ExxonMobil Corporation, a New Jersey corporation with principal offices in Texas, was served with a subpoena seeking documents responsive to alleged violations of the penal code of the Virgin Islands. *Id.* at ¶ 20, Ex. A at 1. Though General Walker signed the subpoena, it arrived in an envelope postmarked in Washington, D.C, with a return address for Cohen Milstein, a law firm that

describes itself as a “pioneer in plaintiff class action lawsuits” and “the most effective law firm in the United States for lawsuits with a strong social and political component.” *Id.* at ¶¶ 4, 20. ExxonMobil now seeks to quash the subpoena in Texas state court, asserting, *inter alia*, that the Investigation violates the First Amendment and that the participation of Cohen Milstein, allegedly on a contingency fee basis, is an unconstitutional delegation of prosecutorial power. *See generally id.*

The intervenors are States whose sovereign power and investigative and prosecutorial authority are implicated by the issues and tactics raised herein. General Walker’s Investigation appears to be driven by ideology, and not law, as demonstrated not only by his collusion with Cohen Milstein, but also by his request for almost four decades worth of material from a company with no business operations, employees, or assets in the Virgin Islands. *Id.* at ¶ 7. And it is disconcerting that the apparent pilot of the discovery expedition is a private law firm that could take home a percentage of penalties (if assessed) available only to government prosecutors. We agree with ExxonMobil that serious jurisdictional concerns exist, but to protect the fundamental right of impartiality in criminal and quasi-criminal investigations, we intervene.

II. Standard for Intervention.

Rule of Civil Procedure 60 provides that “[a]ny party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” TEX. R. CIV. P. 60. “Rule 60 . . . provides . . . that

any party may intervene” in litigation in which they have a sufficient interest. *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982). “A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation.” *Jabri v. Alsayyed*, 145 S.W.3d 660, 672 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Law Offices of Windle Turley v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex. App.—Fort Worth 2003, no pet.)). And an intervenor is not required to secure a court’s permission to intervene in a cause of action or prove that it has standing. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990).

There is no pre-judgment deadline for intervention. *Tex. Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31, 36 (Tex. 2008). Texas courts recognize an “expansive” intervention doctrine in which a plea in intervention is untimely only if it is “filed after judgment.” *State v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015) (quoting *First Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984)). There is no final judgment in this case, thus making the States’ intervention timely.

III. Intervenors Have an Interest in Ensuring Constitutional Safeguards for Prosecutions of its Residents.

The alleged use of contingency fees in this case raises serious due process considerations that the intervenors have an interest in protecting.

To begin, government attorneys have a constitutional duty to act impartially in the execution of their office. The Supreme Court has explained that attorneys who represent the public do not represent an ordinary party in litigation, but “a sovereignty whose obligation to govern impartially is as

compelling as its obligation to govern at all.” *Berger v. United States*, 295 U.S. 78, 88, (1935).

Contingency fee arrangements cut against the duty of impartiality by giving the attorney that represents the government a financial stake in the outcome. Thus, the use of contingency fees is highly suspect in criminal cases and, more generally, when fundamental rights are at stake. *State v. Lead Indus., Ass’n, Inc.*, 951 A.2d 428, 476 n. 48 (R.I. 2008) (doubting that contingent fees would ever be appropriate in a criminal case); *Int’l Paper Co. v. Harris Cty.*, 445 S.W.3d 379, 393 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (contingency fees are impermissible in cases implicating fundamental rights).

Here, the Investigation appears to be a punitive enforcement action, as all of the statutes that ExxonMobil purportedly violated are found in the criminal code of the Virgin Islands. 14 V.I.C. §§ 551, 605, 834. In addition, ExxonMobil asserts a First Amendment interest to be free from viewpoint discrimination. Intervenors, in sum, have a strong interest in ensuring that contingency fee arrangements are not used in criminal and quasi criminal cases where a multitude of fundamental rights, including speech, lie in the balance.

IV. Conclusion and Prayer for Relief.

The States identified herein, Texas and Alabama, by and through this intervention, request notice and appearance, and the opportunity to defend the rule of law before this Court.

Respectfully submitted,

<p>LUTHER STRANGE Attorney General of Alabama 501 Washington Ave. Montgomery, Alabama 36104</p>	<p>KEN PAXTON Attorney General of Texas</p> <p>JEFFREY C. MATEER First Assistant Attorney General</p> <p>BRANTLEY STARR Deputy Attorney General for Legal Counsel</p> <p>AUSTIN R. NIMOCKS Associate Deputy Attorney General for Special Litigation</p> <p><u>/s/ Austin R. Nimocks</u> AUSTIN R. NIMOCKS Texas Bar No. 24002695</p> <p>Special Litigation Division P.O. Box 12548, Mail Code 001 Austin, Texas 78711-2548</p> <p><i>ATTORNEYS FOR INTERVENORS</i></p>
---	--

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been served on the following counsel of record on this 16th day of May, 2016, in accordance with Rule 21a of the Texas Rules of Civil Procedure, electronically through the electronic filing manager:

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/s/ Austin R. Nimocks
Austin R. Nimocks
Associate Deputy Attorney General for
Special Litigation

Exhibit M

Morgan, Wendy

From: Morgan, Wendy
Sent: Friday, March 18, 2016 6:06 PM
To: 'Michael Meade'
Subject: RE: Clean Power Plan and Exxon Mobil

Great – thx

From: Michael Meade [mailto:Michael.Meade@ag.ny.gov]
Sent: Friday, March 18, 2016 5:43 PM
To: Kline, Scot <scot.kline@vermont.gov>; Morgan, Wendy <wendy.morgan@vermont.gov>
Cc: Brian Mahanna <Brian.Mahanna@ag.ny.gov>; Peter Washburn <Peter.Washburn@ag.ny.gov>; Damien LaVera <Damien.LaVera@ag.ny.gov>; Natalia Salgado <Natalia.Salgado@ag.ny.gov>; Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>; Eric Soufer <Eric.Soufer@ag.ny.gov>; Daniel Lavoie <Daniel.Lavoie@ag.ny.gov>
Subject: RE: Clean Power Plan and Exxon Mobil

AG Frosh from Maryland will also be joining. That's puts us at 6 AG's present for the press conference—and 13 states participating in the meetings.

Have a great weekend!

Mike

From: Michael Meade
Sent: Thursday, March 17, 2016 3:55 PM
To: 'Kline, Scot'; Morgan, Wendy
Cc: Brian Mahanna; Peter Washburn; Damien LaVera; Natalia Salgado; Lemuel Srolovic
Subject: RE: Clean Power Plan and Exxon Mobil

I wanted to send around some additional thoughts regarding who may do what on 3/29. We can hopefully talk about this some more at 4:00.

Monday, March 28 (Optional)
6:00-8:00
Happy Hour with EPB and visiting AAG's

Attorneys General Climate Change Meeting

Date: **March 29, 2016**

Location: 120 Broadway, New York, NY

Schedule:

9:00 to 9:30 – Welcome (breakfast provided) <Lem Kicks off meeting and staff intros>

9:30 to 10:15 – Peter Frumhoff, Union of Concerned Scientists, presentation on imperative of taking action now on climate change (AGs and staff only) <Lem Introduces Peter>

10:15 to 10:30 – break

10:30 to 11:15 – Pawa Law office presentation regarding climate change litigation (AGs and staff only) <VT Introduces Pawa>

11:15 to 11:30 – break

11:30 am to 12:30 – press conference around AG climate change coalition's support of federal Clean Power plan and other climate change actions (Attending AGs) <Mike to coordinate- AG's participating, staff sitting in audience>

12:30 to 1:00 – lunch and follow-up from morning (lunch provided)

1:00 to 1:45 – NY AG office presentation regarding fossil fuel company disclosure investigations (AGs and staff only) <NY facilitates>

1:45 to 2:45 – closed working session (AGs and staff only) <VT & NY >

- Sharing of AG office activities
- Discussion of expanding coalition work beyond "EPA-practice," e.g., investigations of fossil fuel company disclosures, utility efforts to barrier renewables.

2:45 to 3:00 – break

3:00 to 4:30 – Continued--closed working session (AGs and staff only) <VT & NY>

- Continued discussion
- Coalition next steps

4:30 – end.

From: Kline, Scot [<mailto:scot.kline@vermont.gov>]

Sent: Tuesday, March 15, 2016 12:06 PM

To: Michael Meade; Morgan, Wendy

Cc: Brian Mahanna; Peter Washburn; Damien LaVera; Natalia Salgado; Lemuel Srolovic

Subject: RE: Clean Power Plan and Exxon-Mobil

Mike:

We are good with the new agenda. One item we should discuss more in our next call is the structuring of the afternoon discussion and who will facilitate it.

Thanks.

Scot

From: Michael Meade [<mailto:Michael.Meade@ag.ny.gov>]

Sent: Monday, March 14, 2016 5:18 PM

To: Morgan, Wendy <wendy.morgan@vermont.gov>; Kline, Scot <scot.kline@vermont.gov>
Cc: Brian Mahanna <Brian.Mahanna@ag.ny.gov>; Peter Washburn <Peter.Washburn@ag.ny.gov>; Damien LaVera <Damien.LaVera@ag.ny.gov>; Natalia Salgado <Natalia.Salgado@ag.ny.gov>; Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>
Subject: RE: Clean Power Plan and Exxon Mobil

I made the changes you suggested below. If it looks okay to this group, we can circulate tomorrow.

Draft Schedule for Attorneys General Climate Change Meeting

Date: March 29, 2016

Location: 120 Broadway, New York, NY

Schedule:

9:00 to 9:30 Welcome (breakfast provided)

9:30 to 10:15 – Peter Frumhoff, Union of Concerned Scientists, presentation on imperative of taking action now on climate change (AGs and staff only)

10:15 to 10:30 – break

10:30 to 11:15 Pawa Law office presentation regarding climate change litigation (AGs and staff only)

11:15 to 11:30 – break

11:30 am to 12:30 – press conference around AG climate change coalition's support of federal Clean Power plan and other climate change actions (Attending AGs)

12:30 to 1:00 – lunch and follow-up from morning (lunch provided)

1:00 to 1:45 – NY AG office presentation regarding fossil fuel company disclosure investigations (AGs and staff only)

1:45 to 2:45 – closed working session (AGs and staff only)

- Sharing of AG office activities
- Discussion of expanding coalition work beyond “EPA-practice,” e.g., investigations of fossil fuel company disclosures, utility efforts to barrier renewables.

2:45 to 3:00 – break

3:00 to 4:30 – Continued--closed working session (AGs and staff only)

- Continued discussion
- Coalition next steps

4:30 – end.

From: Morgan, Wendy [<mailto:wendy.morgan@vermont.gov>]
Sent: Friday, March 11, 2016 9:33 AM
To: Michael Meade; Kline, Scot
Cc: Brian Mahanna; Peter Washburn; Damien LaVera; Natalia Salgado; Lemuel Srolovic
Subject: RE: Clean Power Plan and Exxon-Mobil

Thanks! I like the clarity on who is invited to what

My two thoughts are:

11:30 am to 12:30 noon – is a little ambiguous do you mean 1230pm?

I also wonder about the afternoon break – I'd put NY and start the staff discussion and have a break closer to 245 – that also allows us to divide the discussion into parts more easily (keep us on track) – maybe identifying those parts should be our next Thursday agenda item?

Have a good weekend -- Wendy

From: Michael Meade [<mailto:Michael.Meade@ag.ny.gov>]
Sent: Thursday, March 10, 2016 5:27 PM
To: Kline, Scot <scot.kline@vermont.gov>; Morgan, Wendy <wendy.morgan@vermont.gov>
Cc: Brian Mahanna <Brian.Mahanna@ag.ny.gov>; Peter Washburn <Peter.Washburn@ag.ny.gov>; Damien LaVera <Damien.LaVera@ag.ny.gov>; Natalia Salgado <Natalia.Salgado@ag.ny.gov>; Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>
Subject: RE: Clean Power Plan and Exxon-Mobil

Wendy and Scott—

Here's our latest agenda. If you are okay with it, then we'll start sharing with other offices.

Best,
Mike

Draft Schedule for Attorneys General Climate Change Meeting

Date: March 29, 2016

Location: 120 Broadway, New York, NY

Schedule:

9:00 to 9:30 -- Welcome (breakfast provided)

9:30 to 10:15 – Peter Frumhoff, Union of Concerned Scientists, presentation on imperative of taking action now on climate change (AGs and staff only)

10:15 to 10:30 – break

10:30 to 11:15 – Pawa Law office presentation regarding climate change litigation (AGs and staff only)

11:15 to 11:30 – break

11:30 am to 12:30 – press conference around AG climate change coalition's support of federal Clean Power plan and other climate change actions (Attending AGs)

12:30 to 1:00 – lunch and follow-up from morning (lunch provided)

1:00 to 1:45 – NY AG office presentation regarding fossil fuel company disclosure investigations (AGs and staff only)

1:45 to 2:45 – closed working session (AGs and staff only)

- Sharing of AG office activities
- Discussion of expanding coalition work beyond “EPA-practice,” e.g., investigations of fossil fuel company disclosures, utility efforts to barrier renewables.

2:45 to 3:00 – break

3:00 to 4:30 – Continued--closed working session (AGs and staff only)

- Continued discussion
- Coalition next steps

4:30 – end.

From: Lemuel Srolovic

Sent: Thursday, February 25, 2016 10:22 AM

To: 'Kline, Scot'; Morgan, Wendy

Cc: Brian Mahanna; Michael Meade; Peter Washburn; Damion LaVera; Natalia Salgado

Subject: RE: Clean Power Plan and Exxon Mobil

Scot and Wendy – Looking forward to our conversation at 11. Here's our initial thinking about the schedule for the event.

Draft Schedule for Attorneys General Climate Change Meeting at NY AG's Office

Date: On or about April 1, 2016

Location: 120 Broadway, New York, NY

Schedule:

11 am to 12 noon – press conference around AG climate change coalition's support of federal Clean Power plan and other climate change actions

12 noon to 1:30 – follow-on media time and lunch

1:30 to 2:15 - NY AG office presentation regarding fossil fuel company investigations (AGs and staff only)

2:15 to 2:30 – break

2:30 to 3:15 – Pawa Law office presentation regarding climate change litigation (AGs and staff only)

3:15 to 3:30 - break

3:30 to 4:30 – closed session AG office discussion

4:30 – end.

From: Kline, Scot [<mailto:scot.kline@vermont.gov>]
Sent: Tuesday, February 23, 2016 3:40 PM
To: Lemuel Srolovic
Cc: Morgan, Wendy; Brian Mahanna; Tasha L. Bartlett
Subject: RE: Clean Power Plan and Exxon-Mobil

Lem:

Wendy has developed a conflict for the Thursday call at 11:30. We are wondering whether you and Brian can do the call earlier that morning – 11 or earlier?

Thanks.

Scot

From: Lemuel Srolovic [<mailto:Lemuel.Srolovic@ag.ny.gov>]
Sent: Thursday, February 18, 2016 10:04 PM
To: Kline, Scot <scot.kline@vermont.gov>
Cc: Morgan, Wendy <wendy.morgan@vermont.gov>; Brian Mahanna <Brian.Mahanna@ag.ny.gov>; Tasha L. Bartlett <Tasha.Bartlett@ag.ny.gov>
Subject: Re: Clean Power Plan and Exxon-Mobil

Scot – thanks for update. We'll draft possible run of conference day. Look forward to our next conversation. Lem

Sent from my iPhone

On Feb 18, 2016, at 3:42 PM, Kline, Scot <scot.kline@vermont.gov> wrote:

Lem and Brian:

Wendy and I connected with our AG. He thinks what we talked about today makes sense. We are good with doing the event in NY. Bill recalled that the videotaping for individual AG's was done by AARP at an event. So that was not a regular press event. Sounds like a more traditional press event might be more in line with our event.

If you can get us a preliminary draft of the conference day, that would be helpful. Also, maybe we can target some possible dates for the event in next week's call.

Thanks.

Scot

From: Lemuel Srolovic [<mailto:Lemuel.Srolovic@ag.ny.gov>]
Sent: Wednesday, February 17, 2016 10:13 AM
To: Kline, Scot <scot.kline@vermont.gov>; Morgan, Wendy <wendy.morgan@vermont.gov>
Cc: Brian Mahanna <Brian.Mahanna@ag.ny.gov>; Tasha L. Bartlett <Tasha.Bartlett@ag.ny.gov>
Subject: RE: We Need to Reschedule This Afternoon's Conversation

Excellent! Please call Brian Mahanna's line at 212-416-8579. Speak with you tomorrow, Lem

From: Kline, Scot [<mailto:scot.kline@vermont.gov>]
Sent: Wednesday, February 17, 2016 8:35 AM
To: Lemuel Srolovic; Morgan, Wendy
Subject: RE: We Need to Reschedule This Afternoon's Conversation

Lem:

Thursday from 2-3 works on this end.

Should we call you? If so, let me know what number.

Thanks.

Scot

From: Lemuel Srolovic [<mailto:Lemuel.Srolovic@ag.ny.gov>]
Sent: Tuesday, February 16, 2016 6:34 PM
To: Kline, Scot <scot.kline@vermont.gov>; Morgan, Wendy <wendy.morgan@vermont.gov>
Subject: RE: We Need to Reschedule This Afternoon's Conversation

Scot and Wendy – wow, for us working this school vacation week here in NYS, it's a bit crazy!

Our deputy chief of staff is now tied up tomorrow at 4. Here's what he and I have free:

Tomorrow at 5:30

Thursday 2-3

Friday before 11.

Hopefully one of these works for you two.

Sorry this is proving to be hard to land.

Lem

From: Kline, Scot [<mailto:scot.kline@vermont.gov>]
Sent: Tuesday, February 16, 2016 4:54 PM
To: Morgan, Wendy
Cc: Lemuel Srolovic
Subject: Re: We Need to Reschedule This Afternoon's Conversation

Okay here.

Sent from my iPhone

On Feb 16, 2016, at 4:52 PM, Morgan, Wendy <wendy.morgan@vermont.gov> wrote:

I can make it work for me.

From: Lemuel Srolovic [<mailto:Lemuel.Srolovic@ag.ny.gov>]
Sent: Tuesday, February 16, 2016 4:48 PM
To: Kline, Scot <scot.kline@vermont.gov>
Cc: Morgan, Wendy <wendy.morgan@vermont.gov>
Subject: RE: We Need to Reschedule This Afternoon's Conversation

Hi Scot and Wendy – sorry I missed the e mail regarding today at 4? Does tomorrow at 4 still work for you? Regards, Lem

From: Kline, Scot [<mailto:scot.kline@vermont.gov>]
Sent: Tuesday, February 16, 2016 3:25 PM
To: Lemuel Srolovic
Cc: Morgan, Wendy
Subject: Re: We Need to Reschedule This Afternoon's Conversation

Lem:
Are we on for a call at 4 today? Thanks.
Scot

Sent from my iPhone

On Feb 15, 2016, at 4:25 PM, Kline, Scot <scot.kline@vermont.gov> wrote:

Lem: Let's try for tomorrow at 4. We may need a call in number if the weather is bad as expected here -- Wendy and I may be calling in from different locations.
Thanks. Scot

Sent from my iPhone

On Feb 13, 2016, at 7:20 AM, Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov> wrote:

Scot -- we can do either Tue or Wed at 4. Preference?

Have a good weekend. Winter now for sure!

Lem

Sent from my iPhone

On Feb 9, 2016, at 2:24 PM, Kline, Scot
<scot.kline@vermont.gov> wrote:

Lem:

No problem. Let's shoot for Tuesday or Wednesday of this coming week. Tuesday morning until 10 or late afternoon (4 p.m. on) or Wednesday from 4 on, should work here. Wendy's schedule is a bit up in the air because of legislative work.

Just so you know, we circled back with our AG and the thought on this end is for something scaled down and focused more on Exxon Mobil without a lot of publicity. Maybe an invite or two to the outside for a presentation. It would be an opportunity for states to hear about Exxon-Mobil and your efforts, and explore whether there is interest in doing something together as a group or supporting you in whatever way makes sense.

Please let us know if one of the above times works for you. If not, please suggest some others.

Thanks,

Scot

From: Lemuel Srolovic
[mailto:Lemuel.Srolovic@ag.ny.gov]
Sent: Tuesday, February 09, 2016 1:10 PM
To: Kline, Scot
<scot.kline@vermont.gov>
Subject: We Need to Reschedule This Afternoon's Conversation

Scot (and Wendy) – sorry for late notice but we need to re-schedule this afternoon's group call. Something's come up today that's engaging our exec folks.

Could we re-schedule to Tue/Wed. of next week? We're working on framing and substance and want to keep the ball moving forward.

Sorry again for inconvenience.

Lem

Lemuel M. Srolovic
Bureau Chief
Environmental Protection
Bureau
New York State Attorney
General
212-416-8448 (o)
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Exhibit N



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Press Release: Emails Reveal Schneiderman, Other AG's Colluding with Al Gore and Greens to Investigate Climate Skeptics

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by Steve Milloy, Senior Policy Fellow On May 13, The Energy &



E&E Legal Letters Issue XI: Full DC Circuit to Review Obama Power Plan

by Chaim Mandelbaum, FME Law Counsel On May 16th, 2016, the D.C. Circuit



For Immediate Release:
April 15, 2016

Contact:

Craig Richardson

Richardson@eelegal.org

703-981-5553

Emails Reveal Schneiderman, Other AG's Colluding with Al Gore and Greens to Investigate Climate Skeptics

Washington, D.C. (April 15, 2016) – The offices of New York Attorney General Eric Schneiderman (D), and other politically-aligned AGs, secretly teamed up with anti-fossil fuel activists in their investigations against groups whose political speech challenged the global warming policy agenda, according to e-mails obtained by the Energy & Environment Legal Institute (E&E Legal).

E&E Legal released these emails on the heels of a Wall Street Journal [report](#) about a January meeting, in which groups funded by the anti-fossil fuel Rockefeller interests met to urge just this sort of government investigation and litigation against their political opponents. After the Competitive Enterprise Institute (CEI) criticized these AGs' intimidation campaign, the U.S. Virgin Islands' Claude Earl Walker — one of the AGs working with Schneiderman — subpoenaed ten years of CEI records relating to the global warming issue.

The e-mail correspondence between Schneiderman's staff, the offices of several state attorneys general, and activists was obtained under Vermont's Public Records Law, and also show Schneiderman's office tried to obscure the involvement of outside activists. His top environmental lawyer encouraged one green group lawyer who briefed the AGs before their March 29 "[publicity stunt](#)" press conference with former U.S. Vice President Al Gore not to tell the press about the coordination. At that event the AGs announced they were teaming up to target opponents of the global warming agenda.

David Schnare, E&E Legal's General Counsel, noted, "These emails show Schneiderman's office suggested their outside-activist green allies deceive the press; meanwhile, AGs in his coalition have subpoenaed at least one policy group's correspondence with the media. We call on these AGs to immediately halt their investigation and lay out for the public the full extent of this collusion, producing all records or information provided them in briefings or other work with the outside activists, including those they are trying to keep secret through a Common Interest Agreement."

The latter point references the New York and Vermont AGs trying to claim privilege for discussions and emails even with outside groups in this effort to go after shared political opponents, including each state that receives an open records request immediately alerting the rest to that fact. In that case, according to the Schneiderman office's draft, every state was to immediately return any records to New York. To its credit Vermont objected to that as, naturally, being against state laws.

The documents cover the weeks leading up to that aforementioned press conference with numerous AGs, led by Schneiderman and Gore. They show communication and coordination between:

- Lem Srolovic, chief of the New York Attorney General's Environmental Protection Bureau
- Scot Kline, a Vermont assistant attorney general
- Matt Pawa, an environmental lawyer who works with the Climate Accountability Institute and the Global Warming Legal Action Project of the Civil Society Institute
- Peter Frumhoff, director of science and policy for the Union of Concerned Scientists

Pawa and Frumhoff have been pushing for this investigation for years, at least since a 2012 [workshop](#) titled “Establishing Accountability for Climate Change Denial,” a brainstorming session in California for activists on convincing attorneys general to investigate “deniers” through the Racketeer Influenced and Corrupt Organizations Act (RICO).

“These emails strongly suggest the financial motive for AGs to pursue their political opponents, not content with merely silencing and scaring away support for those who dare disagree with their extreme global warming agenda,” said Craig Richardson, E&E Legal’s Executive Director. “Alarming, government officials are actively trying to cover up their coordination by using a Common Interest Agreement, even to claw back records already circulated, which another attorney general properly objected to as violating state law.”

Emails recently obtained by CEI also show academics aspiring to “convince state AGs to file suit” under RICO laws, also plainly with an eye toward obtaining a massive settlement to underwrite the global warming campaign. CEI awaits a ruling by a Virginia court on other related correspondence that should prove highly relevant to these AGs’ campaign.

As the Vermont and New York correspondence show, Pawa and Frumhoff were invited to secretly brief the state attorneys general. They each received 45 minutes to provide arguments on “climate change litigation” and “the imperative of taking action now” immediately prior to the AGs’ press conference, according to schedules prepared by Schneiderman’s office.

The next day, March 30, Pawa wrote to Srolovic of New York and Kline seeking help. A *Wall Street Journal* reporter wanted to talk to Pawa, and he asked the two officials: **“What should I say if she asks if I attended?”**

Srolovic of the New York State Attorney General’s office replied: **“My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.”**

The documents obtained by E&E Legal also include responses to a questionnaire sent to the state attorneys general by the New York AG’s office. The US Virgin Islands Attorney General noted he had just completed an \$800 million settlement from Hess Oil company — used to create an “environmental response trust” and promote solar power — and was interested in using this coalition to identify “other potential litigation targets” and ways to “increase our leverage”.

AGs across the country have criticized these investigations, calling them efforts to “silence critics”

Attorneys General across the country have come out strongly against these investigations. West Virginia AG Patrick Morrisey [said](#), “You cannot use the power of the office of the Attorney General to silence your critics.” Oklahoma AG Scott Pruitt and Alabama AG Luther Strange issued a [joint press release](#) stating, “It is inappropriate for State Attorneys General to use the power of their office to attempt to silence core political speech on one of the major policy debates of our time.” AG Jeff Landry of Louisiana [said](#), “It is one thing to use the legal system to pursue public policy outcomes; but it is quite another to use prosecutorial weapons to intimidate critics, silence free speech, or chill the robust exchange of ideas.”

Following are the actual e-mails E&E Legal received through its open records request:

- [Work groups and first call set](#)
- [Vermont OGA cover letter](#)

- [Vermont OAG intended authorities](#)
- [Vermont & New York OAGs fine with Sharon Eubanks joining Pawa for AGs briefing](#)
- [Questionnaire responses](#)
- [New York OAG wants to call Vermont OAG w something learned](#)
- [New York OAG wants Pawa to not confirm participation to WSJ](#)
- [Gore is adding star power and words to avoid](#)
- [Development of Agenda](#)
- [Common Interest Agreement and discussion](#)
- [Calls with Pawa and Frumhoff](#)
- [Call agenda](#)
- [AG's principles](#)

[The Energy & Environment Legal Institute](#) (E&E Legal) is a 501(c)(3) organization engaged in strategic litigation, policy research, and public education on important energy and environmental issues. Primarily through its petition litigation and transparency practice areas, E&E Legal seeks to correct onerous federal and state policies that hinder the economy, increase the cost of energy, eliminate jobs, and do little or nothing to improve the environment.

-30-

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Posted by [Craig Richardson](#) on Friday, April 15th, 2016 @ 9:30PM

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5 Comments to "Press Release: Emails Reveal Schneiderman, Other AG's Colluding with Al Gore and Greens to Investigate Climate Skeptics" [add comment](#)

[Attorneys General Drafted 'Agreement' to Keep #ExxonKnew Strategy Secret, Emails Show](#)
April 18, 2016 at 10:20 am

[...] how to avoid disclosing public documents relating to an investigation of ExxonMobil, according to newly released emails. The correspondence, first covered by Reuters, also shows the New York Office of the Attorney [...]

[Reply](#)

[AGs, activists accused of 'collusion' on Exxon probe amid new emails - GOP Party](#)

April 18, 2016 at 4:45 pm

[...] obtained and released by the Energy & Environment Legal Institute show a number of state attorneys general and their staff received advice and guidance from [...]

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April 18, 2016 at 9:26 pm

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[Climate advocacy subpoenas, III - Overlawyered](#)

April 19, 2016 at 12:30 am

[...] Al Gore made no mention of huddles with Rockefeller philanthropies that led up to it [Reuters; summaries of conversations via pro-CEI public records [...]

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[FERC bars the door - Big Sky Headlines](#)

May 19, 2016 at 10:54 am

[...] aggressive campaign to shine a spotlight on the Exxon debacle. Exxon's allies — who uncovered separate emails that show an anti-Exxon private lawyer and an official at the Union of Concerned Scientists briefed [...]

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Exhibit O



Peter Frumhoff

Director of Science & Policy

Peter C. Frumhoff is director of science and policy at the Union of Concerned Scientists, and chief scientist of the UCS climate campaign. He ensures that UCS brings robust science to bear on our efforts to strengthen public policies, with a particular focus on climate change. A global change ecologist, Dr. Frumhoff has published and lectured widely on topics including climate change impacts, climate science and policy, tropical forest conservation and management, and biological diversity. He was a lead author of the Intergovernmental Panel on Climate Change's (IPCCs) 2007 Fourth Assessment Report and the 2000 IPCC Special Report on Land Use, Land-Use Change, and Forestry, and served as chair of the 2007 Northeast Climate Impacts Assessment. He serves on the Advisory Committee on Climate Change and Natural Resource Science at the U.S. Department of the Interior, the board of directors of the American Wind Wildlife Institute, and the steering committee for the Center for Science and Democracy at UCS. He is an associate of the Harvard University Center for the Environment.



In 2014, Dr. Frumhoff served as a Cox Visiting Professor in the School of Earth Sciences at Stanford University. Previously, he has taught at Tufts University, Harvard University, and the University of Maryland. He also served as an AAAS Science and Diplomacy Fellow at the U.S. Agency for International Development, where he designed and led conservation and rural development programs in Latin America and East Africa. He holds a Ph.D. in ecology and an M.A. in zoology from the University of California, Davis, and a B.A. in psychology from the University of California, San Diego.

Dr. Frumhoff has been quoted widely, including by *The Boston Globe*, *Christian Science Monitor*, *The Guardian*, *National Journal*, *Newsweek*, *The New York Times*, and *The Washington Post*, and has appeared on National Public Radio.



Peter Frumhoff's Selected Publications

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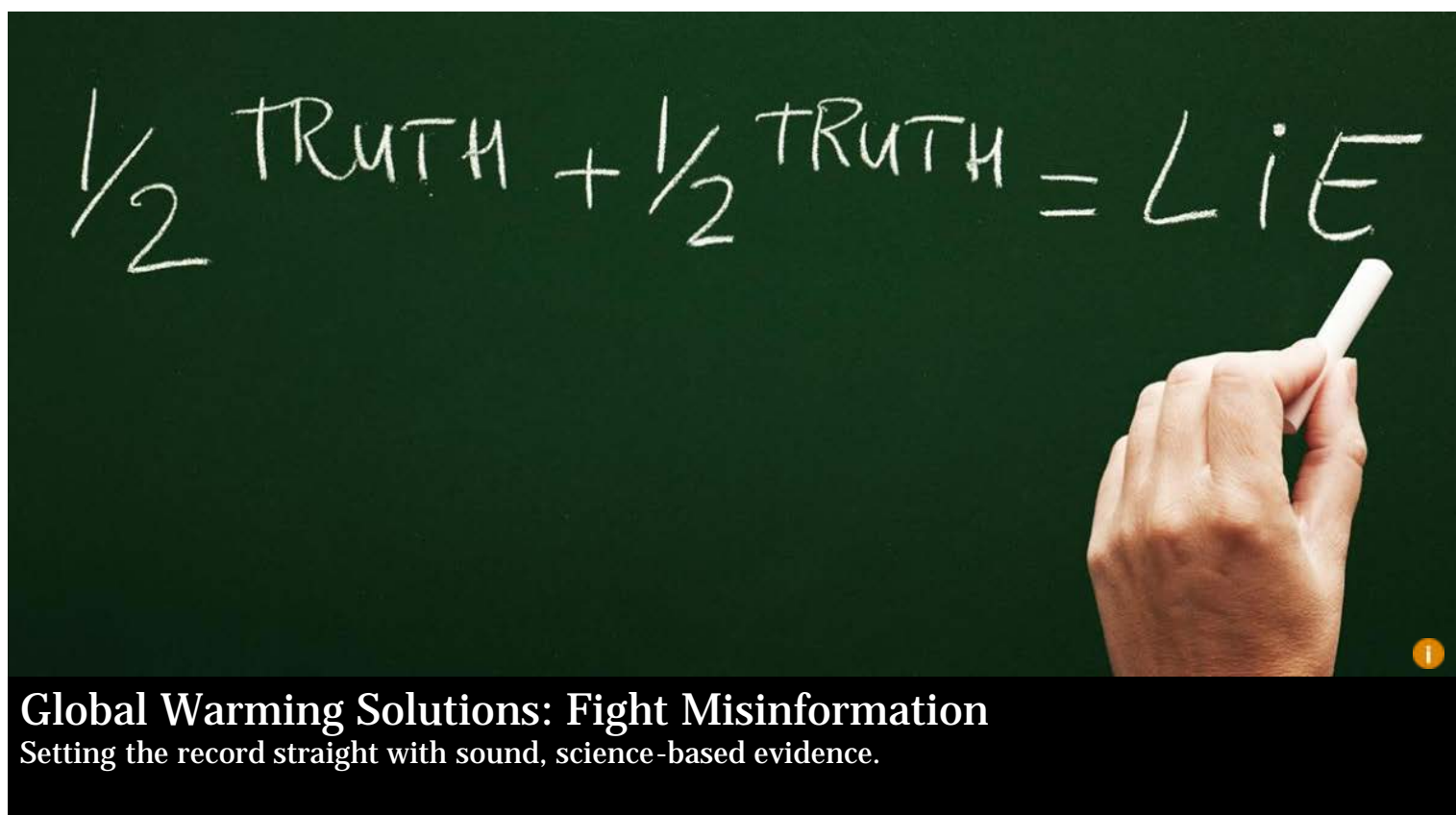
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Other

Peter Frumhoff and a panel discussion (including Gus Speth) on “Who is Responsible for Climate Change?” on October 16, 2015 — watch a [video](#) of the event.

Exhibit P



Global Warming Solutions: Fight Misinformation
Setting the record straight with sound, science-based evidence.

Why has it been so difficult to achieve meaningful solutions to global warming?

Media pundits, partisan think tanks, and special interest groups [funded by fossil fuel and related industries](#) raise doubts about the truth of global warming.

These contrarians downplay and distort the evidence of climate change, demand policies that allow industries to continue polluting, and attempt to undercut existing pollution standards.

This barrage of misinformation misleads and confuses the public about the growing consequences of global warming — and makes it more difficult to implement the solutions we need to [effectively reduce the man-made emissions](#) that cause global warming.

Together with its members and supporters, UCS actively fights misrepresentations of climate science and provides sound, science-based evidence to set the record straight, including resources to help you communicate the real facts about global warming.

Holding fossil fuel companies accountable



Major fossil fuel companies have known for decades that their products—oil, natural gas, and coal—cause global warming. Their own scientists told them so more than 30 years ago. In response, they decided to deceive shareholders, politicians, and the public—you!—about the facts and risks of global warming.

These companies should immediately stop funding climate deception. They should bear their fair share of responsibility for the damage caused by their products.

Learn more:

- [Major Fossil Fuel Companies Knew about Global Warming...and Did Worse than Nothing](#) >

The Climate Deception Dossiers



For nearly three decades, many of the world's largest fossil fuel companies have knowingly worked to deceive the public about the realities and risks of climate change. They continue to do so today. Their deceptive tactics are now highlighted in The [Climate Deception Dossiers](#)—collections of internal company and trade association documents that have either been leaked to the public, come to light through lawsuits, or been disclosed through Freedom of Information (FOIA) requests. Additional examples of deception can be found in our infographic, [Climate Science vs. Fossil Fuel Fiction](#).

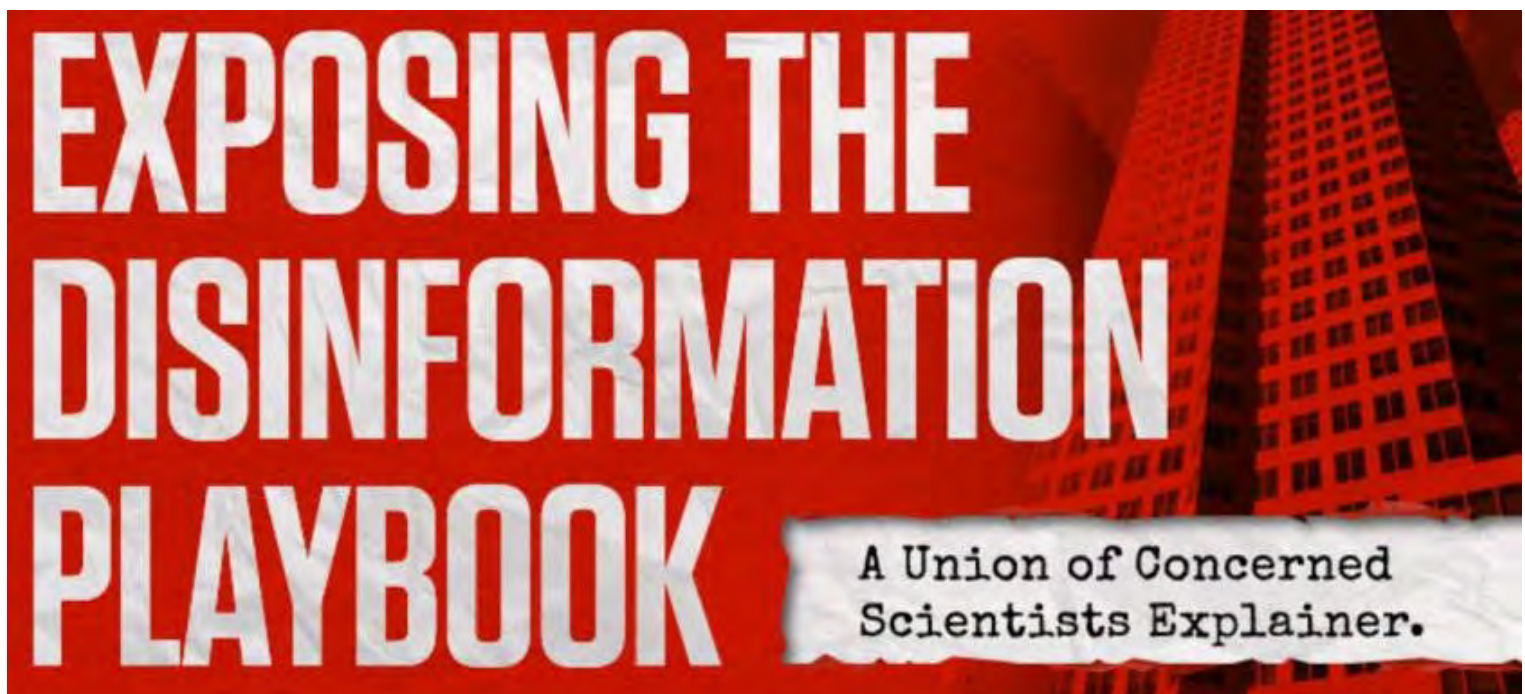
Documenting inaccurate coverage of climate science by major cable news outlets



Photo: Grafissimo/iStock

CNN, Fox News, and MSNBC are the most widely watched cable news networks in the U.S. An [analysis of 2013 coverage](#) shows that the accuracy of climate science coverage varies significantly by network — and that all of them can and should take steps to improve.

Exposing the fossil fuel industry's disinformation playbook



In this [interactive slideshow](#), UCS reveals the secret tactics used by the fossil fuel industry to spread disinformation and delay action on climate change — the very same tactics used by Big Tobacco for years to mislead the public about the dangers of smoking.

Learn more:

- [Who's Fighting the Clean Power Plan and EPA Action on Climate Change? >](#)

Calling out Fox News for misleading coverage of climate science



Millions of Americans get information about climate science from the Fox News Channel, yet a 2012 [UCS snapshot analysis](#) found that representations of climate science on Fox News Channel were misleading 93 percent of the time.

Another prominent News Corporation outlet, the Wall Street Journal's opinion page, similarly misled the public in 81 percent of letters, op-eds, columns, and editorials.

Showing how the news media help the fossil fuel industry spread disinformation



A [UCS investigation](#) showed that the U.S. news media routinely fail to inform the public about the fossil fuel industry funders behind climate change contrarian think tanks. From 2011 - 2012, two-thirds of stories from eight top news organizations did not identify the fossil fuel industry funding of eight prominent climate contrarian groups.

Exposing special interest groups and policy makers who misrepresent climate science



[Got Science?](#), a monthly UCS column, features stories of policy makers and special interest groups who have run roughshod over scientific evidence. Past columns have [debunked fake government reports](#), [countered misinformation about renewable energy](#), and [exposed state-level efforts to suppress research on sea level rise](#).

Fighting back against attacks on climate science and scientists



Photo: arturbo/iStock

UCS set the record straight in several recent instances of misinformation about climate science, and fought back against deliberate attacks on climate scientists, including:

- [Actively — and successfully — fighting back](#) against attacks on climate scientist Michael Mann by Virginia Attorney General Ken Cuccinelli.
- [Defending the Intergovernmental Panel on Climate Change \(IPCC\)](#) from misleading allegations about its 2007 climate change assessment.
- [Revealing the truth about ExxonMobil's disinformation tactics](#), which included funneling nearly \$16 million to a network of 43 advocacy organizations that seek to confuse the public on climate science.
- [Debunking misinformation about "Climategate,"](#) a manufactured controversy over emails stolen from the University of East Anglia's Climatic Research Unit.
- Setting the record straight in the popular press for books that distort the facts about climate science, including [The Skeptical Environmentalist](#), [SuperFreakonomics](#), and Michael Chrichton's thriller, [State of Fear](#).

Resources for effectively communicating climate science



You can help fight misinformation about global warming by effectively communicating the facts about climate science, whether to your friends, your community, the media, or directly to policy makers.

UCS offers a range of resources to help you improve your science communication skills and develop effective techniques for presenting information about global warming, including a series of webinars designed to provide you with useful tools and best practices for talking about global warming and understanding how people perceive and take in information.

Learn more:

- [Webinar Series: A Scientist's Guide to Communicating Climate Science](#)
- [America's Climate Choices Webinar Series](#)
- [Webinar Series: A Voice for Science and Scientists in California Climate Policy](#)
- [Increasing Public Understanding of Climate Risks and Choices](#)
- [Suggested Scientific Concepts on Urgency](#)
- [Global Warming Materials for Educators](#)

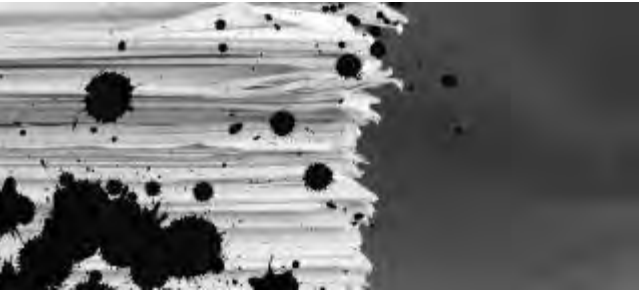
[INFOGRAPHIC]

CLIMATE SCIENCE VS. FOSSIL FUEL FICTION



Fossil fuel companies and their lobbying groups have been deceiving the public for nearly 30 years about the facts of global warming.

[TAKE ACTION]



ExxonMobil claims that, "We do not fund or support those who deny the reality of climate change." But actions speak louder than words.

Tell ExxonMobil to stop funding front groups that distort or deny climate change. >

Exhibit Q



HOME / ATTORNEY PROFILES /

MATTHEW F. PAWA

ATTORNEY, PRESIDENT

Matt Pawa has represented governments, environmental organizations and conservation groups, citizens, businesses, and injured persons in a wide range of legal matters. Many of his cases involve issues of national importance and cutting edge legal issues. Mr. Pawa has extensive trial court experience and has argued numerous appeals. He has represented the State of New Hampshire in [MTBE litigation](#) since 2003, which resulted in over \$130 million in pre-trial settlements from the nation's largest oil companies and a jury verdict of \$236 million against ExxonMobil in 2013. In addition to his trial court responsibilities in the MTBE litigation, Mr. Pawa argued and prevailed in three appeals in the New Hampshire Supreme Court. Mr. Pawa was recognized as a [Massachusetts Lawyer of the Year in 2013](#) for his work on the MTBE case. In 2014, in the [Lobsterboat Blockade case](#) he obtained dismissal of all criminal charges against global warming protestors who had used a tiny lobster boat to block a massive coal shipment.

Mr. Pawa is a regular speaker at law schools and at legal symposia and bar association meetings and is frequently quoted in national news outlets. He has taught an environmental law course at Boston College Law School. Mr. Pawa pioneered the field of global warming litigation, having worked closely with eight state attorneys general and the City of New York on the first ever [global warming tort case](#). Prior to entering private practice, Mr. Pawa served as a Deputy State's Attorney in Burlington, Vermont, where he prosecuted a high profile case that entailed an emergency appeal to the Vermont Supreme Court, [garnered national media attention](#), and ultimately resulted in a conviction.

Mr. Pawa attended the University of Pennsylvania Law School, where he served on the law review, graduated with honors, and won a national prize for legal writing. He received a Bachelor of Science degree from Cornell University.

Mr. Pawa is a member of the Board of Trustees of the Center for International Environmental Law. He is also a member of the Boston Triathlon Team and competes in triathlons from spring through fall.

To read a client endorsement of Mr. Pawa, [click here](#). You can follow Mr. Pawa on Twitter [here](#).

TALK TO AN ATTORNEY

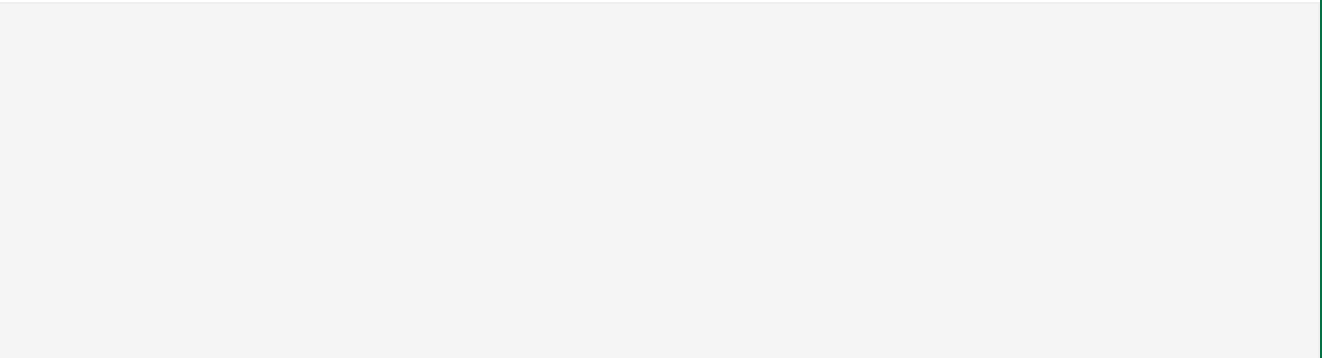


Exhibit R



PRACTICE AREAS



Environmental Litigation

Our environmental law practice handles major cases with national and even international significance. We are most well known for our role in launching global warming litigation.

[READ ON](#)



Personal Injuries

We represent injured persons in a wide variety of cases for recovery of substantial monetary damages against wrongdoers. We currently represent child victims of instant soup spills. We brought personal injury cases arising from the prescription drugs Seroquel and Zyprexa on behalf of numerous individuals and,

working with attorneys nationwide, settled the cases on favorable terms for our clients.

[READ ON](#)

The Pawa Law Group, P.C. is a litigation and trial firm. Our firm offers significant experience representing governments, large and small businesses, environmental and conservation groups, citizens, property owners, non-profit organizations and injured persons. We handle individual cases and class actions. We have litigated cases in virtually all courts in Massachusetts and the District of Columbia and in numerous courts throughout the country.

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Exhibit S

Smoke, Mirrors & Hot Air

**How ExxonMobil Uses Big Tobacco's Tactics
to Manufacture Uncertainty on Climate Science**

Union of Concerned Scientists
January 2007

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The Union of Concerned Scientists is the leading science-based nonprofit working for a healthy environment and a safer world.

UCS combines independent scientific research and citizen action to develop innovative, practical solutions and secure responsible changes in government policy, corporate practices, and consumer choices.

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UCS would also like to thank the following individuals for their helpful comments on various aspects of the report: Naomi Oreskes, Rick Piltz, James McCarthy, Don Wuebbles, Erik Conway, Kevin Knobloch, Alden Meyer, and Peter Frumhoff.

We would also like to acknowledge the invaluable resource that has been created by the court ordered public disclosure of tobacco industry documents.

The findings and opinions expressed in this report do not necessarily reflect the opinion of the reviewers who provided comment on its content. Both the opinions and the information contained herein are the sole responsibility of the Union of Concerned Scientists.

EXXONMOBIL'S DISINFORMATION CAMPAIGN

Victory will be achieved when average citizens “understand” (recognize) uncertainties in climate science.

—INTERNAL MEMO BY THE AMERICAN PETROLEUM INSTITUTE, 1998

In the late 1980s, when the public first began to hear about global warming, scientists had already conducted more than a century of research on the impact of carbon dioxide on earth's climate (see Appendix A for more information). As the science matured in the late 1980s, debate, a key component of the scientific process, surfaced among reputable scientists about the scope of the problem and the extent to which human activity was responsible. Much like the status of scientific knowledge about the health effects of smoking in the early 1950s, emerging studies suggested cause for concern but many scientists justifiably argued that more research needed to be done.²⁵

Exxon (and later ExxonMobil), concerned about potential repercussions for its business, argued from the start that no global warming trend existed and that a link between human activity and climate change could not be established.²⁶ Just as the tobacco companies initially responded with a coalition to address the health effects of smoking, Exxon and the American Petroleum Institute (an organization twice chaired by former Exxon CEO Lee Raymond) joined with other energy, automotive, and industrial companies in 1989 to form the Global Climate Coalition.²⁷ The coalition responded aggressively to the emerging scientific studies about global warming by opposing governmental action designed to address the problem.

Drawing on a handful of scientific spokespeople during the early and mid-1990s, the Global Climate Coalition emphasized the remaining uncertainties in climate science.²⁸ Exxon and other members of the coalition challenged the need for action on global warming by denying its existence as well as characterizing global warming as a natural phenomenon.²⁹ As Exxon and its proxies mobilized forces to cast doubt on global warming, however, a scientific consensus was emerging that put their arguments on exceptionally shaky scientific ground (see Appendix A).

MANUFACTURING UNCERTAINTY

By 1997, scientific understanding that human-caused emissions of heat-trapping gases were causing global warming led to the Kyoto Protocol, in which the majority of the world's industrialized nations committed to begin reducing their global warming emissions on a specified timetable. In response to both the strength of the scientific evidence on global warming and the governmental action pledged to address it, leading oil companies such as British Petroleum, Shell, and Texaco changed their stance on climate science and abandoned the Global Climate Coalition.³⁰

ExxonMobil chose a different path.

In 1998, ExxonMobil helped create a small task force calling itself the “Global Climate Science Team” (GCST). Members included Randy Randol,

ExxonMobil's senior environmental lobbyist at the time, and Joe Walker, the public relations representative of the American Petroleum Institute.³¹ One member of the GCST task force, Steven Milloy, headed a nonprofit organization called the Advancement of Sound Science Coalition, which had been covertly created by the tobacco company Philip Morris in 1993 to manufacture uncertainty about the health hazards posed by second-hand smoke.³²

A 1998 GCST task force memo outlined an explicit strategy to invest millions of dollars to manufacture uncertainty on the issue of global warming³³—a strategy that directly emulated Big Tobacco's disinformation campaign. Despite mounting scientific evidence of the changing climate, the goal the team outlined was simple and familiar. As the memo put it, "Victory will be achieved when average citizens understand (recognize) uncertainties in climate science" and when public "recognition of uncertainty becomes part of the 'conventional wisdom.'"³⁴ (For full text of the memo, see Appendix C.)

Regardless of the mounting scientific evidence, the 1998 GCST memo contended that "if we can show that science does not support the Kyoto treaty...this puts the United States in a stronger moral position and frees its negotiators from the need to make concessions as a defense against perceived selfish economic concerns."³⁵

ExxonMobil and its partners no doubt understood that, with the scientific evidence against them, they would not be able to influence reputable scientists. The 1998 memo proposed that ExxonMobil and its public relations partners "develop and implement a national media relations program to inform the media about uncertainties in climate science."³⁶ In the years that followed, ExxonMobil executed the strategy as planned underwriting a wide array of front organizations to publish in-house articles by select

scientists and other like-minded individuals to raise objections about legitimate climate science research that has withstood rigorous peer review and has been replicated in multiple independent peer-reviewed studies—in other words, to attack research findings that were well established in the scientific community. The network ExxonMobil created masqueraded as a credible scientific alternative, but it publicized discredited studies and cherry-picked information to present misleading conclusions.

INFORMATION LAUNDERING

A close review reveals the company's effort at what some have called "information laundering": projecting the company's desired message through ostensibly independent nonprofit organizations. First, ExxonMobil underwrites well-established groups such as the American Enterprise Institute, the Competitive Enterprise Institute, and the Cato Institute that actively oppose mandatory action on global warming as well as many other environmental standards. But the funding doesn't stop there. ExxonMobil also supports a number of lesser-known organizations that help to market and distribute global warming disinformation. Few of these are household names. For instance, most people are probably not familiar with the American Council for Capital Formation Center for Policy Research, the American Legislative Exchange Council, the Committee for a Constructive Tomorrow, or the International Policy Network, to name just a few. Yet these organizations—and many others like them—have received sizable donations from ExxonMobil for their climate change activities.³⁷

Between 1998 and 2005 (the most recent year for which company figures are publicly available), ExxonMobil has funneled approximately \$16 million to carefully chosen organizations that promote disinformation on global warming.³⁸ As the *New*

PUTTING THE BRAKES ON EXXONMOBIL'S DISINFORMATION CAMPAIGN

For more than two decades, ExxonMobil scientists have carefully studied and worked to increase understanding of the issue of global climate change.

—EXXONMOBIL WEBSITE, 2006 ¹⁵²

In September 2006, the Royal Society, Britain's premier scientific academy, sent a letter to ExxonMobil urging the company to stop funding the dozens of groups spreading disinformation on global warming and also strongly criticized the company's "inaccurate and misleading" public statements on global warming.¹⁵³ ExxonMobil responded by defending the statement in its 2005 Corporate Citizenship Report that scientific uncertainties make it "very difficult to determine objectively the extent to which recent climate changes might be the result of human actions."¹⁵⁴ However, ExxonMobil also stated that it has stopped funding the Competitive Enterprise Institute, although it is unclear whether its support is discontinued permanently. Either way, as of this publication date, this commitment leaves intact the rest of ExxonMobil's carefully constructed echo chamber of climate disinformation.

The unprecedented letter from the British Royal Society demonstrates the level of frustration among scientists about ExxonMobil's efforts to manufacture uncertainty about global warming. ExxonMobil's dismissive response shows that more pressure is needed to achieve a real change in the company's activities.

The time is ripe to call for a dramatic shift in ExxonMobil's stance on global warming. After nearly 13 years, Lee Raymond, an outspoken enemy of environmental regulation, stepped down at the end of 2005 and the company promoted

Rex Tillerson to the position of CEO. While Tillerson has been less confrontational than his predecessor on the global warming issue, he has yet to make real commitments on global warming. He has an opportunity to implement key changes in ExxonMobil's climate change activities and should be encouraged to do so through a wide variety of approaches: congressional action, shareholder engagement, media accountability, and consumer action.

CONGRESSIONAL ACTION

Elected officials can and should assert their independence from ExxonMobil in several ways.

Oversight

Lawmakers should conduct oversight of ExxonMobil's disinformation campaign as well as its effort to delay action on global warming. Congressional investigations played a key role in revealing the extent of Big Tobacco's work to hide the public health impacts of smoking. By requiring ExxonMobil executives to testify before Congress and by obtaining internal documents through subpoena, congressional investigators could expose additional information about ExxonMobil's strategic disinformation campaign on global warming.

Campaign Contributions

Lawmakers and candidates should reject campaign

Exhibit T

From: Kenny Bruno <kenny.bruno@verizon.net>
Date: Tue, Jan 5, 2016 at 4:42 PM
Subject: Exxon meeting DRAFT Agenda and logistics
To: Lee Wasserman <lwasserman@rffund.org>, Bill McKibben <bill.mckibben@gmail.com>, Jamie Henn <jamie@350.org>, Rob Weissman <rweissman@citizen.org>, Bill Lipton <blipton@workingfamilies.org>, Dan Cantor <dcantor@workingfamilies.org>, John Passacantando <j.passacantando@gmail.com>, Kert Davies <kertmail@gmail.com>, won@ef.org, SEubanks@bordaslaw.com, lkrarup@vkrf.org, mp@pawalaw.com, bcampbell@clf.org, Stephen Kretzmann <steve@priceofoil.org>, Carroll Muffett <cmuffett@ciel.org>, Naomi Ages <naomi.ages@greenpeace.org>

Dear All,

If you are receiving this message then we believe you are attending the meeting this coming Friday Jan 8 regarding Exxon.

The meeting will take place at:

Rockefeller Family Fund

475 Riverside Dr entrance on Claremont @ 120th St. in Upper Manhattan, 1

Train to 116th St. from Penn Station

Please confirm whether you are attending in person (preferred, of course!) or remotely. If remotely see instructions below.

Here is a DRAFT Agenda, your suggestions are welcome.

DRAFT Agenda

Exxon: Revelations & Opportunities

Friday January 8 11 AM – 3 PM

475 Riverside Dr @ 120th ST Manhattan

10:45: Arrival and Coffee

11:00 – 11:15 Introductions and purpose of the meeting (Lee)

11:15-12:00 – Goals of an Exxon campaign

What are our common goals? Examples include:

- To establish in public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm.
- To delegitimize them as a political actor
- To force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc.
- To call into question climate advantages of fracking, compared to coal.
- To drive divestment from Exxon.
- To drive Exxon & climate into center of 2016 election cycle.

Exhibit U

- Washington Free Beacon - <http://freebeacon.com> -

Memo Shows Secret Coordination Effort Against ExxonMobil by Climate Activists, Rockefeller Fund

Posted By *Alana Goodman* On April 14, 2016 @ 5:00 pm In Issues | [No Comments](#)

A small coalition of prominent climate change activists and political operatives huddled on Jan. 8 for a closed-door meeting at the Rockefeller Family Fund in Manhattan. Their agenda: taking down oil giant ExxonMobil through a coordinated campaign of legal action, divestment efforts, and political pressure.

The meeting—which included top officials at GreenPeace, the Working Families Party, and the Rockefeller Family Fund—took place as climate change groups have pushed for a federal criminal probe of ExxonMobil’s environmental impact, similar to the 1990s racketeering case against Big Tobacco.

A copy of the meeting’s agenda, obtained by the *Washington Free Beacon*, provides a rare glimpse inside the anti-ExxonMobil crusade, which has already spurred investigations into the oil giant by Democratic attorneys general in several states.

According to the memo, the coalition’s goals are to “delegitimize [ExxonMobil] as a political actor,” “force officials to disassociate themselves from Exxon,” and “drive divestment from Exxon.” The memo also proposed “creating scandal” by using lawsuits and state prosecutors to obtain internal documents from ExxonMobil through judicial discovery.

The secret meeting was first reported by the *Wall Street Journal* on Wednesday, but the group’s agenda was not posted in full until now.

The agenda was drafted by Kenny Bruno, an activist with the New Venture Fund. Bruno emailed the memo to a small group of around a dozen attendees, including Naomi Ages at GreenPeace; Dan Cantor, executive director of the New York Working Families Party; Jamie Henn, co-founder at 350.org; and Rob Weissman, president at Public Citizen.

According to the agenda, the meeting would be opened by Lee Wasserman, director of the Rockefeller Family Fund. The organization funds many environmental groups and hosted the meeting at its Manhattan office.

"If you are receiving this message then we believe you are attending the meeting this coming Friday Jan 8 regarding Exxon," wrote Bruno. "The meeting will take place at: Rockefeller Family Fund."

The email included a "DRAFT Agenda" for "Exxon: Revelations & Opportunities."

Under a section headlined "goals," the agenda listed: "To establish in the public's mind that Exxon is a corrupt institution"; "To delegitimize them as a political actor; and "To drive Exxon & climate into center of 2016 election."

The agenda also outlined "the main avenues for legal actions & related campaigns," including state attorneys general, the Department of Justice, international litigation, and tort lawsuits.

"Which of these has the best prospects for successful action? For getting discovery? For creating scandal?" said the memo.

The Rockefeller Family Fund did not immediately return request for comment.

California announced an investigation into ExxonMobil's statements on climate change in January, shortly after the meeting took place.

Several other states attorneys general, including New York's Eric Schneiderman and Massachusetts' Maura Healey, have also launched investigations into whether ExxonMobil broke the law by allegedly covering up internal conclusions on climate change and misleading investors.

ExxonMobil filed court papers on Wednesday challenging another investigation by the U.S. Virgin Island's attorney general's office, the *Wall Street Journal* reported.

In the filing, the oil company denounced the "chilling effect of this inquiry, which discriminates based on viewpoint to target one side of an ongoing policy debate" and "strikes at protected speech at the core of the First Amendment."

Article printed from Washington Free Beacon: <http://freebeacon.com>

URL to article: <http://freebeacon.com/issues/memo-shows-secret-coordination-effort-exxonmobil-climate-activists-rockefeller-fund/>

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Exhibit V



STANFORD UNIVERSITY
GLOBAL CLIMATE & ENERGY PROJECT

[About Us](#)

The Global Climate and Energy Project (GCEP) at Stanford University seeks new solutions to one of the grand challenges of this century: supplying energy to meet the changing needs of a growing world population in a way that protects the environment.

GCEP's mission is to conduct fundamental research on technologies that will permit the development of global energy systems with significantly lower greenhouse gas emissions.

The GCEP sponsors include private companies with experience and expertise in key energy sectors. In December 2002, four sponsors – ExxonMobil, GE, Schlumberger, and Toyota – helped launch GCEP at Stanford University with plans to invest \$225 million over a decade or more. DuPont and Bank of America joined the GCEP partnership in 2011 and 2013, respectively, bringing new perspectives and insights about the global energy challenge.

GCEP develops and manages a portfolio of innovative energy research programs that could lead to technologies that are efficient, environmentally benign, and cost-effective when deployed on a large scale. We currently have a number of exciting research projects taking place across disciplines throughout the Stanford campus and are collaborating with leading institutions around the world.

Objectives:

We believe that no single technology is likely to meet the energy challenges of the future on its own. It is essential that GCEP explore a range of technologies across a spectrum of globally significant energy resources and uses.

As a result, our primary objective is to build a diverse portfolio of research on technologies that will reduce greenhouse gas emissions, if successful in the marketplace.

Among GCEP's specific goals:

1. Identify promising research opportunities for low-emissions, high-efficiency energy technologies.
2. Identify barriers to the large-scale application of these new technologies.
3. Conduct fundamental research into technologies that will help to overcome these barriers and provide the basis for large-scale applications.
4. Share research results with a wide audience, including the science and engineering community, media, business, governments, and potential end-users.

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Exhibit W



Company:	EXXON MOBIL CORP
Document:	10-K • 2/28/2007
Section:	Entire Document
File Number:	001-02256
Pages:	118

11/9/2015 1:58:12 PM

2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2006

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to
Commission File Number 1-2256

EXXON MOBIL CORPORATION

(Exact name of registrant as specified in its charter)

NEW JERSEY
(State or other jurisdiction of
incorporation or organization)

13-5409005
(I.R.S. Employer
Identification Number)

5959 LAS COLINAS BOULEVARD, IRVING, TEXAS 75039-2298

(Address of principal executive offices) (Zip Code)

(972) 444-1000

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, without par value (5,693,398,774 shares outstanding at January 31, 2007)	New York Stock Exchange
Registered securities guaranteed by Registrant: SeaRiver Maritime Financial Holdings, Inc. Twenty-Five Year Debt Securities due October 1, 2011	New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting stock held by non-affiliates of the registrant on June 30, 2006, the last business day of the registrant's most recently completed second fiscal quarter, based on the closing price on that date of \$61.35 on the New York Stock Exchange composite tape, was in excess of \$364 billion.

Documents Incorporated by Reference:

Proxy Statement for the 2007 Annual Meeting of Shareholders (Part III)

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EXXON MOBIL CORPORATION
FORM 10-K
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2006

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PART I

Item 1. *Business.*

Exxon Mobil Corporation, formerly named Exxon Corporation, was incorporated in the State of New Jersey in 1882. On November 30, 1999, Mobil Corporation became a wholly-owned subsidiary of Exxon Corporation, and Exxon changed its name to Exxon Mobil Corporation.

Divisions and affiliated companies of ExxonMobil operate or market products in the United States and most other countries of the world. Their principal business is energy, involving exploration for, and production of, crude oil and natural gas, manufacture of petroleum products and transportation and sale of crude oil, natural gas and petroleum products. ExxonMobil is a major manufacturer and marketer of commodity petrochemicals, including olefins, aromatics, polyethylene and polypropylene plastics and a wide variety of specialty products. ExxonMobil also has interests in electric power generation facilities. Affiliates of ExxonMobil conduct extensive research programs in support of these businesses.

Exxon Mobil Corporation has several divisions and hundreds of affiliates, many with names that include *ExxonMobil*, *Exxon*, *Esso* or *Mobil*. For convenience and simplicity, in this report the terms *ExxonMobil*, *Exxon*, *Esso* and *Mobil*, as well as terms like *Corporation*, *Company*, *our*, *we* and *its*, are sometimes used as abbreviated references to specific affiliates or groups of affiliates. The precise meaning depends on the context in question.

Throughout ExxonMobil's businesses, new and ongoing measures are taken to prevent and minimize the impact of our operations on air, water and ground. These include a significant investment in refining infrastructure and technology to manufacture clean fuels as well as projects to reduce nitrogen oxide and sulfur oxide emissions and expenditures for asset retirement obligations. ExxonMobil's 2006 worldwide environmental expenditures for all such preventative and remediation steps, including ExxonMobil's share of equity company expenditures, were about \$3.2 billion, of which \$1.1 billion were capital expenditures and \$2.1 billion were included in expenses. The total cost for such activities is expected to remain in this range in 2007 and 2008 (with capital expenditures approximately 40 percent of the total).

Operating data and industry segment information for the Corporation are contained in the Financial Section of this report under the following: "Quarterly Information", "Note 17: Disclosures about Segments and Related Information" and "Operating Summary". Information on oil and gas reserves is contained in the "Oil and Gas Reserves" part of the "Supplemental Information on Oil and Gas Exploration and Production Activities" portion of the Financial Section of this report. Information on Company-sponsored research and development activities is contained in "Note 3: Miscellaneous Financial Information" of the Financial Section of this report.

The number of regular employees was 82.1 thousand, 83.7 thousand and 85.9 thousand at years ended 2006, 2005 and 2004, respectively. Regular employees are defined as active executive, management, professional, technical and wage employees who work full time or part time for the Corporation and are covered by the Corporation's benefit plans and programs. Regular employees do not include employees of the company-operated retail sites (CORS). The number of CORS employees was 24.3 thousand, 22.4 thousand and 19.3 thousand at years ended 2006, 2005 and 2004, respectively.

ExxonMobil maintains a website at www.exxonmobil.com. Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 are made available through our website as soon as reasonably practical after we electronically file or furnish the reports to the Securities and Exchange Commission. Also available on the Corporation's website are the Company's

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Corporate Governance Guidelines and Code of Ethics and Business Conduct, as well as the charters of the audit, compensation and nominating committees of the Board of Directors. All of these documents are available in print without charge to shareholders who request them. Information on our website is not incorporated into this report.

Item 1A. Risk Factors.

ExxonMobil's financial and operating results are subject to a number of factors, many of which are not within the Company's control. These factors include the following:

Industry and Economic Factors: The oil and gas business is fundamentally a commodity business. This means the operations and earnings of the Corporation and its affiliates throughout the world may be significantly affected by changes in oil, gas and petrochemical prices and by changes in margins on gasoline and other refined products. Oil, gas, petrochemical and product prices and margins in turn depend on local, regional and global events or conditions that affect supply and demand for the relevant commodity. These events or conditions are generally not predictable and include, among other things:

- general economic growth rates and the occurrence of economic recessions;
- the development of new supply sources;
- adherence by countries to OPEC quotas;
- supply disruptions;
- weather, including seasonal patterns that affect regional energy demand (such as the demand for heating oil or gas in winter) as well as severe weather events (such as hurricanes) that can disrupt supplies or interrupt the operation of ExxonMobil facilities;
- technological advances, including advances in exploration, production, refining and petrochemical manufacturing technology and advances in technology relating to energy usage;
- changes in demographics, including population growth rates and consumer preferences; and
- the competitiveness of alternative hydrocarbon or other energy sources.

Under certain market conditions, factors that have a positive impact on one segment of our business may have a negative impact on another segment and vice versa.

Competitive Factors: The energy and petrochemical industries are highly competitive. There is competition within the industries and also with other industries in supplying the energy, fuel and chemical needs of both industrial and individual consumers. The Corporation competes with other firms in the sale or purchase of needed goods and services in many national and international markets and employs all methods of competition which are lawful and appropriate for such purposes.

A key component of the Corporation's competitive position, particularly given the commodity-based nature of many of its businesses, is ExxonMobil's ability to manage expenses successfully. This requires continuous management focus on reducing unit costs and improving efficiency including through technology improvements, cost control, productivity enhancements and regular reappraisal of our asset portfolio as described elsewhere in this report.

Political and Legal Factors: The operations and earnings of the Corporation and its affiliates throughout the world have been, and may in the future be, affected from time to time in varying degree by political and legal factors including:

- political instability or lack of well-established and reliable legal systems in areas where the Corporation operates;

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- other political developments and laws and regulations, such as expropriation or forced divestiture of assets, unilateral cancellation or modification of contract terms, and de-regulation of certain energy markets;
- laws and regulations related to environmental or energy security matters, including those addressing alternative energy sources and the risks of global climate change;
- restrictions on exploration, production, imports and exports;
- restrictions on the Corporation's ability to do business with certain countries, or to engage in certain areas of business within a country;
- price controls;
- tax or royalty increases, including retroactive claims;
- war or other international conflicts; and
- civil unrest.

Both the likelihood of these occurrences and their overall effect upon the Corporation vary greatly from country to country and are not predictable. A key component of the Corporation's strategy for managing political risk is geographic diversification of the Corporation's assets and operations.

Project Factors: In addition to some of the factors cited above, ExxonMobil's results depend upon the Corporation's ability to develop and operate major projects and facilities as planned. The Corporation's results will therefore be affected by events or conditions that impact the advancement, operation, cost or results of such projects or facilities, including:

- the outcome of negotiations with co-venturers, governments, suppliers, customers or others (including, for example, our ability to negotiate favorable long-term contracts with customers, or the development of reliable spot markets, that may be necessary to support the development of particular production projects);
- reservoir performance and natural field decline;
- changes in operating conditions and costs, including costs of third party equipment or services such as drilling rigs and shipping;
- security concerns or acts of terrorism that threaten or disrupt the safe operation of company facilities; and
- the occurrence of unforeseen technical difficulties (including technical problems that may delay start-up or interrupt production from an Upstream project or that may lead to unexpected downtime of refineries or petrochemical plants).

See section 1 of Item 2 of this report for a discussion of additional factors affecting future capacity growth and the timing and ultimate recovery of reserves.

Market Risk Factors: See the "Market Risks, Inflation and Other Uncertainties" portion of the Financial Section of this report for discussion of the impact of market risks, inflation and other uncertainties.

Projections, estimates and descriptions of ExxonMobil's plans and objectives included or incorporated in Items 1, 2, 7 and 7A of this report are forward-looking statements. Actual future results, including project completion dates, production rates, capital expenditures, costs and business plans could differ materially due to, among other things, the factors discussed above and elsewhere in this report.

Exhibit X

10-K 1 xom10k2015.htm FORM 10-K

2015

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2015

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number 1-2256

EXXON MOBIL CORPORATION

(Exact name of registrant as specified in its charter)

NEW JERSEY
(State or other jurisdiction of
incorporation or organization)

13-5409005
(I.R.S. Employer
Identification Number)

5959 LAS COLINAS BOULEVARD, IRVING, TEXAS 75039-2298

(Address of principal executive offices) (Zip Code)

(972) 444-1000

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class

Name of Each Exchange
on Which Registered

Common Stock, without par value (4,152,756,609 shares outstanding at January 31, 2016)

New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in a proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerate" "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐

Non-accelerated filer ☐ Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting stock held by non-affiliates of the registrant on June 30, 2015, the last business day of the registrant's most recently completed second fiscal quarter, the closing price on that date of \$83.20 on the New York Stock Exchange composite tape, was in excess of \$346 billion.

Documents Incorporated by Reference: Proxy Statement for the 2016 Annual Meeting of Shareholders (Part III)

EXXON MOBIL CORPORATION
FORM 10-K
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2015

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PART I

ITEM 1. BUSINESS

Exxon Mobil Corporation was incorporated in the State of New Jersey in 1882. Divisions and affiliated companies of ExxonMobil operate or market products in the United States and most other countries of the world. Their principal business is energy, involving exploration for, and production of, crude oil and natural gas, manufacture of petroleum products, transportation and sale of crude oil, natural gas and petroleum products. ExxonMobil is a major manufacturer and marketer of commodity petrochemicals, including olefins, aromatics, polyethylene and polypropylene plastics and a wide variety of specialty products. Affiliates of ExxonMobil conduct extensive research programs in support of these businesses.

Exxon Mobil Corporation has several divisions and hundreds of affiliates, many with names that include *ExxonMobil*, *Exxon*, *Esso*, *Mobil* or *XTO*. For convenience and simplicity in this report the terms *ExxonMobil*, *Exxon*, *Esso*, *Mobil* and *XTO*, as well as terms like *Corporation*, *Company*, *our*, *we* and *its*, are sometimes used as abbreviated references to the Corporation, its affiliates or groups of affiliates. The precise meaning depends on the context in question.

Throughout ExxonMobil's businesses, new and ongoing measures are taken to prevent and minimize the impact of our operations on air, water and ground. These include a significant investment in refining infrastructure and technology to manufacture clean fuels, as well as projects to monitor and reduce nitrogen oxide, sulfur oxide and greenhouse gas emissions and expenditures for asset retirement obligations. Using definitions and guidelines established by the American Petroleum Institute, ExxonMobil's 2015 worldwide environmental expenditures for all such preventative and remediation steps, including ExxonMobil's share of equity company expenditures, were \$5.6 billion, of which \$3.8 billion were included with the remainder in capital expenditures. The total cost for such activities is expected to decrease to approximately \$5 billion in 2016 and 2017, mainly reflecting project activity in Canada. Capital expenditures are expected to account for approximately 30 percent of the total.

The energy and petrochemical industries are highly competitive. There is competition within the industries and also with other industries in supplying the energy, fuel and chemical products needed of both industrial and individual consumers. The Corporation competes with other firms in the sale or purchase of needed goods and services in many national and international markets and employs all methods of competition which are lawful and appropriate for such purposes.

Operating data and industry segment information for the Corporation are contained in the Financial Section of this report under the following: "Quarterly Information", "Non-Operating Disclosures about Segments and Related Information" and "Operating Summary". Information on oil and gas reserves is contained in the "Oil and Gas Reserves" part of the "Supplemental Information on Oil and Gas Exploration and Production Activities" portion of the Financial Section of this report.

ExxonMobil has a long-standing commitment to the development of proprietary technology. We have a wide array of research programs designed to meet the needs identified in our business segments. Information on Company-sponsored research and development spending is contained in "Note 3: Miscellaneous Financial Information" of the Financial Section of this report. ExxonMobil held approximately 11 thousand active patents worldwide at the end of 2015. For technology licensed to third parties, revenues were approximately \$158 million in 2015. Although technology is an important contributor to the overall operations and results of our Company, the profitability of each business segment is not dependent on any individual patent, trade secret, trademark, license, franchise or concession.

The number of regular employees was 73.5 thousand, 75.3 thousand, and 75.0 thousand at years ended 2015, 2014 and 2013, respectively. Regular employees are defined as executive, management, professional, technical and wage employees who work full time or part time for the Corporation and are covered by the Corporation's benefit plans and pension programs. Regular employees do not include employees of the company-operated retail sites (CORS). The number of CORS employees was 2.1 thousand, 8.4 thousand and 9.8 thousand at years ended 2015, 2014 and 2013, respectively. The decrease in CORS employees reflects the multi-year transition of the company-operated retail network in Europe from a more capital-efficient Branded Wholesaler model to a more capital-intensive Branded Retailer model.

Information concerning the source and availability of raw materials used in the Corporation's business, the extent of seasonality in the business, the possibility of renegotiating contracts or termination of contracts at the election of governments and risks attendant to foreign operations may be found in "Item 1A. Risk Factors" and "Item 2. Properties" of this report.

ExxonMobil maintains a website at exxonmobil.com. Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to these reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 are made available through our website as soon as reasonably practical after the reports are electronically filed or furnished to the Securities and Exchange Commission. Also available on the Corporation's website are the Company's Corporate Governance Guidelines and Code of Ethics and Business Conduct, as well as the charters of the audit, compensation and nominating committees of the Board of Directors. Information on our website is incorporated into this report.

ITEM 1A. RISK FACTORS

ExxonMobil's financial and operating results are subject to a variety of risks inherent in the global oil, gas, and petrochemical businesses. Many of these risk factors are not within the Company's control and could adversely affect our business, our financial and operating results, or our financial condition. These risk factors include:

Supply and Demand

The oil, gas, and petrochemical businesses are fundamentally commodity businesses. This means ExxonMobil's operations and earnings may be significantly affected by changes in oil, gas, and petrochemical prices and by changes in margins on refined products. Oil, gas, petrochemical, and product prices and margins in turn depend on local, regional, and global events or conditions that affect supply and demand for the relevant commodity. Any material decline in oil or natural gas prices could have a material adverse effect on certain of the Company's operations, especially in the Upstream segment, financial condition and proved reserves. On the other hand, a material increase in oil or natural gas prices could have a material adverse effect on certain of the Company's operations, especially in the Downstream and Chemical segments.

Economic conditions. The demand for energy and petrochemicals correlates closely with general economic growth rates. The occurrence of recessions or other periods of negative economic growth will typically have a direct adverse impact on our results. Other factors that affect general economic conditions in the world or in a major region, such as changes in population growth rates, periods of civil unrest, government austerity programs, or currency exchange rate fluctuations, can also impact the demand for energy and petrochemicals. Sovereign debt downgrades, defaults, inability to access debt markets due to credit or legal constraints, liquidity crises, the breakup or restructuring of fiscal, monetary, or political systems such as the European Union, and other events or conditions that impair the functioning of financial markets and institutions also pose risks to ExxonMobil, including risks to the safety of our financial assets and to the ability of our partners and customers to fulfill their commitments to ExxonMobil.

Other demand-related factors. Other factors that may affect the demand for oil, gas, and petrochemicals, and therefore impact our results, include technological improvements in energy efficiency; seasonal weather patterns, which affect the demand for energy associated with heating and cooling; increased competitiveness of alternative energy sources that have so far generally not been competitive with oil and gas without the benefit of government subsidies or mandates; and changes in technology or consumer preferences that allow for choices, such as toward alternative fueled or electric vehicles.

Other supply-related factors. Commodity prices and margins also vary depending on a number of factors affecting supply. For example, increased supply from the development of new oil and gas supply sources and technologies to enhance recovery from existing sources tend to reduce commodity prices to the extent such supply increases are not commensurate with growth in demand. Similarly, increases in industry refining or petrochemical manufacturing capacity tend to reduce margins on the affected products. World oil and gas supply levels can also be affected by factors that reduce available supplies, such as adherence by member countries to OPEC production quotas and the occurrence of wars, hostile actions, natural disasters, disruptions in competitors' operations, or unexpected unavailability of distribution channels that may disrupt supplies. Technological changes also alter the relative costs for competitors to find, produce, and refine oil and gas and to manufacture petrochemicals.

Other market factors. ExxonMobil's business results are also exposed to potential negative impacts due to changes in interest rates, inflation, currency exchange rates, and other global or regional market conditions. We generally do not use financial instruments to hedge market exposures.

Government and Political Factors

ExxonMobil's results can be adversely affected by political or regulatory developments affecting our operations.

Access limitations. A number of countries limit access to their oil and gas resources, or may place resources off-limits from development altogether. Restrictions on foreign investment in the oil and gas sector tend to increase in times of high commodity prices, when national governments may have less need of outside sources of private capital. Many countries restrict the import or export of certain products based on point of origin.

Restrictions on doing business. ExxonMobil is subject to laws and sanctions imposed by the U.S. or by other jurisdictions where we do business that may prohibit ExxonMobil or certain of its affiliates from doing business in certain countries, or restricting the kind of business that may be conducted. Such restrictions may provide a competitive advantage to competitors who may not be subject to comparable restrictions.

Lack of legal certainty. Some countries in which we do business lack well-developed legal systems, or have not yet adopted clear regulatory frameworks for oil and gas development. Lack of legal certainty exposes our operations to increased risk of adverse or unpredictable actions by government officials, and also makes it more difficult for us to enforce contracts. In some cases these risks can be partially offset by agreements to arbitrate disputes in an international forum, but the adequacy of this remedy may still depend on the legal system to enforce an award.

Regulatory and litigation risks. Even in countries with well-developed legal systems where ExxonMobil does business, we remain exposed to changes in law (including changes in law that result from international treaties and accords) that could adversely affect our results, such as:

- increases in taxes or government royalty rates (including retroactive claims);
- price controls;
- changes in environmental regulations or other laws that increase our cost of compliance or reduce or delay available business opportunities (including changes related to offshore drilling operations, water use, or hydraulic fracturing);
- adoption of regulations mandating the use of alternative fuels or uncompetitive fuel components;
- adoption of government payment transparency regulations that could require us to disclose competitively sensitive commercial information, or that could cause us to be subject to the non-disclosure laws of other countries; and
- government actions to cancel contracts, re-denominate the official currency, renounce or default on obligations, renegotiate terms unilaterally, or expropriate assets.

Legal remedies available to compensate us for expropriation or other takings may be inadequate.

We also may be adversely affected by the outcome of litigation, especially in countries such as the United States in which very large and unpredictable punitive damage awards occur, or by government enforcement proceedings alleging non-compliance with applicable laws or regulations.

Security concerns. Successful operation of particular facilities or projects may be disrupted by civil unrest, acts of sabotage or terrorism, and other local security concerns that may require us to incur greater costs for security or to shut down operations for a period of time.

Climate change and greenhouse gas restrictions. Due to concern over the risk of climate change, a number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions. These include adoption of cap and trade regimes, carbon taxes, restrictive permitting, increased efficiency standards, and incentives for renewable energy. These requirements could make our products more expensive, lengthen project implementation times, and reduce demand for hydrocarbons, as shift hydrocarbon demand toward relatively lower-carbon sources such as natural gas. Current and pending greenhouse gas regulations may also increase our compliance costs, for monitoring or sequestering emissions.

Government sponsorship of alternative energy. Many governments are providing tax advantages and other subsidies to support alternative energy sources or are mandating the use of specific fuels or technologies. Governments are also promoting research into new technologies to reduce the cost and increase the scalability of alternative energy sources. We are conducting our own research efforts into alternative energy, such as through sponsorship of the Global Climate and Energy Project at Stanford University and research into products from algae and biomass that can be further converted to transportation fuels. Our future results may depend in part on the success of our research efforts and on our ability to adapt and apply the strengths of our current business model to providing the energy products of the future in a cost-competitive manner. See “Management Effectiveness” below.

Management Effectiveness

In addition to external economic and political factors, our future business results also depend on our ability to manage successfully those factors that are at least in part within our control. The extent to which we manage these factors will impact our performance relative to competition. For projects in which we are not the operator, we depend on the management effectiveness of one or more co-venturers whom we do not control.

Exploration and development program. Our ability to maintain and grow our oil and gas production depends on the success of our exploration and development efforts. Among other factors, we must continuously improve our ability to identify the most promising resource prospects and apply our project management expertise to bring discovered resources into production as scheduled and within budget.

Project management. The success of ExxonMobil’s Upstream, Downstream, and Chemical businesses depends on complex, long-term, capital intensive projects. These projects often require a high degree of project management expertise to maximize efficiency. Specific factors that can affect the performance of major projects include our ability to: negotiate successfully with joint venturers, partners, governments, suppliers, customers, or others; model and optimize reservoir performance; develop markets for project outputs, such as through long-term contracts or the development of effective spot markets; manage changes in operating conditions and costs, including costs of third party equipment or services such as drilling rigs and shipping; prevent, to the extent possible, and respond effectively to unforeseen technical difficulties that could delay project startup or cause unscheduled downtime; and influence the performance of project operators where ExxonMobil does not perform that role.

Exhibit Y



Climate Change

Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act

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[Action](#)
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Action

On December 7, 2009, the Administrator signed two distinct findings regarding

Resources and Tools

- [Findings](#)
- [Technical Support Document](#)
- [Response to Comment Documents](#)
- [Press Release](#)
- [Resources](#)
 - [Legal Basis \(PDF\)](#) (1 p, 117K)
 - [Health Effects \(PDF\)](#) (1 p, 95K)
 - [Environmental and Welfare Effects \(PDF\)](#) (1 p, 45K)
 - [Climate Change Facts \(PDF\)](#) (1 p, 39K)
 - [Light Duty Vehicle Program \(PDF\)](#) (1 p, 39K)
 - [Timeline \(PDF\)](#) (1 p, 30K)
- [Denial of Petitions for Reconsideration of the Endangerment and Cause or Contribute Findings](#)
- [June 26, 2012 Greenhouse Gas Court Decision](#)
- [Frequently Asked Questions \(PDF\)](#) (3 pp, 38K)

greenhouse gases under section 202(a) of the Clean Air Act:

- **Endangerment Finding:** The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases □ carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆) □ in the atmosphere threaten the public health and welfare of current and future generations.
- **Cause or Contribute Finding:** The Administrator finds that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution which threatens public health and welfare.

These findings do not themselves impose any requirements on industry or other entities. However, this action was a prerequisite for implementing greenhouse gas emissions standards for vehicles. In collaboration with the National Highway Traffic Safety Administration, EPA finalized emission standards for [light-duty vehicles](#) (2012-2016 model years) in May of 2010 and [heavy-duty vehicles](#) (2014-2018 model years) in August of 2011.

Findings

These findings were signed by the Administrator on December 7, 2009. □ On December 15, 2009, the final findings were published in the *Federal Register* (www.regulations.gov) under Docket ID No. EPA-HQ-OAR-2009-0171. □ The final rule was effective January 14, 2010.

- [Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act \(PDF\)](#) (52 pp, 308K)

Scientific and technical information summarized to support the Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act can be found here:

- [Technical Support Document for the Findings \(PDF\)](#) (210 pp, 2.5MB)

Response to Comments

EPA's response to public comments received on the Proposed Findings and accompanying Technical Support Document may be found here:

- [Volume 1: General Approach to the Science and Other Technical Issues](#) Download a [PDF version of Volume 1](#) (69 pp, 305K)
 - [Appendix A. IPCC Principles and Procedures](#) (12 pp, 48K)
 - [Appendix B. USGCRP/CCSP Procedures and Responsibilities](#) (30 pp, 151K)
 - [Appendix C. NRC Report Development Procedures](#) (25 pp, 4.3MB)
- [Volume 2: Validity of Observed and Measured Data](#) Download a [PDF version of Volume 2](#) (93 pp, 507K)
 - [Appendix A. Climate Research Unit \(CRU\) Temperature Data Web Site](#) (5 pp, 61K)
 - [Appendix B. CRU Statement on Data Availability](#) (3 pp, 47K)
 - [Appendix C. United Kingdom Hadley Centre Statement on Release of CRU Data](#) (1 pp, 28K)
 - [Appendix D. Response of Keith Briffa to Stephen McIntyre](#) (2 pp, 40K)
- [Volume 3: Attribution of Observed Climate Change](#) Download a [PDF version of Volume 3](#) (58 pp, 283K)
- [Volume 4: Validity of Future Projections](#) Download a [PDF version of Volume 4](#) (81 pp, 418K)
- [Volume 5: Human Health and Air Quality](#) Download a [PDF version of Volume 5](#) (95 pp, 557K)
- [Volume 6: Agriculture and Forestry](#) Download a [PDF version of Volume 6](#) (43 pp, 191K)
- [Volume 7: Water Resources, Coastal Areas, Ecosystems and Wildlife](#) Download a [PDF version of Volume 7](#) (65 pp, 290K)
- [Volume 8: Other Sectors](#) Download a [PDF version of Volume 8](#) (25 pp, 112K)
- [Volume 9: Endangerment Finding](#) Download a [PDF version of Volume 9](#) (37 pp, 159K)
- [Volume 10: Cause or Contribute Finding](#) Download a [PDF version of Volume 10](#) (18 pp, 88K)
- [Volume 11: Miscellaneous Legal, Procedural, and Other Comments](#) Download a [PDF version of Volume 11](#) (36 pp, 172K)
 - [Appendix A. Summary Comments Received Pertaining to Economic Issues \(PDF\)](#) (3 pp, 21K)

Resources

- [Press Release](#)
- Press Kit

You will need Adobe Reader to view some of the files on this page. See [EPA's PDF page](#) to learn more.

- [Legal Basis \(PDF\)](#) (1 p, 117K)
- [Trasfondo legal \(PDF\)](#) (2 pp, 32K)
- [Health Effects \(PDF\)](#) (1 p, 95KB)
- [Efectos a la salud \(PDF\)](#) (1 p, 79K)
- [Environmental and Welfare Effects \(PDF\)](#) (1 p, 45K)
- [Efectos medioambientales \(PDF\)](#) (2 pp, 32K)
- [Climate Change Facts \(PDF\)](#) (1 p, 39K)
- [Datos sobre el cambio climático \(PDF\)](#) (2 pp, 33K)
- [Light Duty Vehicle Program \(PDF\)](#) (1 p, 39K)
- [Timeline \(PDF\)](#) (1 p, 30K)
- [Frequently Asked Questions \(PDF\)](#) (3 pp, 38K)

To access materials related to the proposed finding, please visit the [Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Clean Air Act](#) archive.

Denial of Petitions for Reconsideration

EPA denied [ten Petitions for Reconsideration of the Endangerment and Cause or Contribute Findings](#) on July 29, 2010.

Background

On April 2, 2007, in *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court found that greenhouse gases are air pollutants covered by the Clean Air Act. The Court held that the Administrator must determine whether or not emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision. In making these decisions, the Administrator is required to follow the language of section 202(a) of the Clean Air Act. The Supreme Court decision resulted from a petition for rulemaking under section 202(a) filed by more than a dozen environmental, renewable energy, and other organizations.

On April 17, 2009, the Administrator signed proposed endangerment and cause or contribute findings for greenhouse gases under Section 202(a) of the Clean Air Act. EPA held a 60-day public comment period, which ended June 23, 2009, and received over 380,000 public comments. These included both written comments as well as testimony at two public hearings in Arlington, Virginia and Seattle, Washington. EPA carefully reviewed, considered, and incorporated public comments and has now issued these final Findings.

WCMS

Last updated on Tuesday, February 23, 2016

Exhibit *Z*

Kline, Scot

From: Peter Washburn <Peter.Washburn@ag.ny.gov>
Sent: Friday, March 25, 2016 11:49 AM
To: Lemuel Srolovic; Kline, Scot; Morgan, Wendy
Cc: Michael Meade
Subject: Afternoon Discussion: State Responses
Attachments: Question Responses.docx

Wendy, Scot, Lem –

For this afternoon's discussion. See attached responses received from participating states re: what they are looking to add to/get out of the afternoon discussion.

As an overall summary, the responses demonstrate a strong desire among the states to learn what each other are up to -- a validation of the value of this meeting -- as well as to support and sustain coordination on individual and collective efforts into the future -- a validation of the value of a coalition.

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

Attorneys General Climate Change Coalition

Questionnaire Responses

(1) What do you hope to get or learn during the afternoon? We want to make sure we cover what we can of your particular interests.

CT (Matthew Levine) – I hope to learn more about the substance of the disclosure investigation and the legal theories to support taking any action. It would also be helpful to understand the magnitude of such an action and the resources available to undertake it.

DC (Elizabeth Wilkins) – I am interested in hearing generally what other states are doing on climate change-related efforts and, in particular, in how they've staffed these efforts if they do not have a section dedicated to environmental issues.

IL (James Gignac) – Nothing more specific than what the agenda items are designed to draw out (discussion of coordination, possible new initiatives, etc.).

MA (Melissa Hoffer) – We'd like to learn the status of other states' investigations/plans and potential avenues for information sharing and coordination.

ME (Jerry Reid) – I am interested in learning more about potentially unfair and deceptive trade practices of Exxon as they relate to global warming, and the level of interest among our states in pursuing these claims.

OR (Paul Garrahan) – We look forward to learning about NY's oil company investigation, primarily. And to hear any other ideas you and other states may have. And to build our working relationship.

RI (Greg Schultz) – I am most interested in personally meeting the various state AAGs that I have worked with since 2009 on Clean Air Act and Climate Change issues. I would also be interested in looking ahead to our challenges for this year and beyond, such as possible other EPA-related actions and rulemaking, etc.

USVI (Claude Earl Walker) – We are eager to hear what other attorneys general are doing and find concrete ways to work together on litigation to increase our leverage.

VA (Daniel Rhodes) – We are mostly interested in hearing about efforts ongoing in the other jurisdictions present and how Virginia may complement those efforts and move forward here.

WA (Laura Watson) – We are interested in the discussion about utility efforts to barrier renewables. I am told that this has not been a problem in our state, or at least not a problem that we currently have the tools to address. I am interested in hearing what types of issues other states are seeing and what tools they are using to address those.

We are also interested in finding out whether other states are taking action on ocean acidification or whether this is largely a West Coast issue at this point.

We are also wondering whether other states are looking at the insurance side of things. Are states running into issues with insurance companies limiting coverage for climate-related claims?

(2) Please provide a very brief description of the office activities you will describe at the 1:45 segment of the agenda. We'd like to group related activities together. You will have 2-3 minutes to describe your activities.

CT (Matthew Levine) – I can briefly describe the various legal actions that Connecticut has participated in (many of which we have joined with New York and the extended coalition of States). I can also discuss Connecticut's extensive efforts to combat climate change through actions by our agency and shifting to renewable sources of energy. We have been successful in defending several legal challenges to the State's commitment to increase renewables sources of energy.

DC (Elizabeth Wilkins) – DC has not previously taken many affirmative steps to combat climate change. To the degree that we have had any involvement, it has been because we represent our Department of Energy and Environment in front of our Public Service Commission on matters related to creating incentives for more widespread use of sustainable energy.

IL (James Gignac) – Climate and energy-related activities of the Illinois Attorney General's Office include:

- Participation in federal multi-state cases involving air quality and carbon emissions;
- Enforcement actions and state regulatory matters involving coal-burning power plant emissions and coal ash;
- FERC and MISO issues involving capacity payments to coal plants;
- Financial challenges of coal industry (both mining and power sectors);
- Involvement in state level policy and regulations on energy efficiency, renewables, and utility business models

MA (Melissa Hoffer) – Advancing clean energy and making smart energy infrastructure investments (addresses our positions on new gas pipelines, LTKs for cleaner energy); promoting utility customer choice (solar incentives, grid mod); readiness and resilience (storm response, grid mod).

ME (Jerry Reid) – Maine has long participated with New York, Massachusetts and other like-minded states in litigation to bring about meaningful federal regulation of greenhouse gas emissions. Today this is primarily in the form of litigation supporting EPA in challenges to the Clean Power Plan.

OR (Paul Garrahan) – I assume this item is asking what work out offices are doing on climate change issues? Other than our CAA litigation with other states, we are also defending Oregon's Clean Fuels Program (low carbon fuel standards) at the 9th Circuit (after successfully getting the challenge dismissed by the district court) and at the Oregon Court of Appeals (rule making challenge). We also continue to defend the state in a public trust doctrine case asserting that the state has not taken sufficient steps to cut GHG emissions. That case is also currently at the Oregon Court of Appeals (for a second time).

RI (Greg Schultz) – I'm not sure exactly what you are looking for here. Perhaps I could discuss the challenges of working in a small state with limited environmental staff. For instance, as part of a 3-person Environmental and Land Use Unit within the RIAG's office, I prosecute a wide variety of civil environmental enforcement actions in state court; defend state agencies on environmental and related matters; litigate state's rights in land, including public rights-of-way, beaches and parks; counsel state agencies on environmental matters, including rulemaking; represent the State in multi-state environmental litigation, etc.

USVI (Claude Earl Walker) We just finished litigation against Hess Oil over an enforcement matter relating to Hess's decision to close its oil refinery in St. Croix, Virgin Islands, after receiving billions of dollars in tax breaks. As part of our \$800 million settlement, we were able to create an environmental response trust that will deal with clean-up of the site and help convert part of it to solar development, we hope. We also have issued a subpoena to ExxonMobil and are preparing third party subpoenas on the common issue of its potential misrepresentations regarding its knowledge of climate change.

VA (Daniel Rhodes) – No response.

WA (Laura Watson) – As you know, Washington State is one of the parties to the multi-state litigation defending the Clean Power Plan. We have also intervened in a lawsuit in defense of Oregon's low carbon fuel standard. We are looking at possible causes of action based on fossil fuel company disclosures and have just started looking at possible common law causes of action (e.g., nuisance suits). Other than that, the bulk of our climate work consists of providing legal support to our clients in the Governor's Office and the Department of Ecology. Specifically, we are supporting a regulatory effort to cap carbon emissions from transportation fuels, natural gas, and stationary sources. We are also providing legal support related to the development of environmental impact statements for two large coal export facilities proposed in Washington and three proposed oil terminals.

(3) Specific items you would like to discuss in the discussion of expanding the coalition's work beyond the federal/EPA advocacy and litigation.

CT (Matthew Levine) – None.

DC (Elizabeth Wilkins) – Nothing to add – DC will most likely be primarily in listening mode as this work is new for us.

IL (James Gignac) – Consider how to increase our office's coordination on matters involving DOE, FERC, and ISOs/RTOs. How we can better link the consumer and environmental interests of our offices in these venues? Similarly, regarding state energy and climate policies, can we strengthen or bolster our office's sharing of knowledge, materials, experts, etc. on things like energy efficiency, renewable portfolio standards, demand response, net metering, and utility rate design? Finally, I would be interested in talking with any other states (time permitting) dealing with coal mine or power plant closures and issues of jobs, property taxes, decommissioning or clean-up, and site re-use.

MA (Melissa Uoffer) – See above.

ME (Jerry Reid) – None.

OR (Paul Garrahan) – We don't have any particular ideas, other than our interest in the possible oil company litigation, but we are open to other possibilities.

RI (Greg Schultz) – I am open for any discussion. I would like to hear from the NHAG and other states on their MTBE litigation.

USVI (Claude Earl Walker) – We are interested in identifying other potential litigation targets.

VA (Daniel Rhodes) – Not sure we have specific items for the afternoon discussion at this time but likely will be prompted by the discussions. We would be very interested in any discussion and thoughts about resource sharing through collaborative thinking in the formation of coalition building.

WA (Laura Watson) – I think I probably covered this in response to the first question. The only thing I'd add is that we're interested in the legal theories under section 115 of the federal Clean Air Act, although it looks like the focus in the agenda is on non-federal actions.

(4) Will any consumer protection or securities staff be participating? Fossil fuel company disclosure investigations raise consumer protection and securities issues as well as climate change. If enough folks from that part of your offices are participating, we could plan a break out session for them.

CT (Matthew Levine) – We will not have someone from our Consumer protection division but I work closely with that group and am getting familiar with the consumer protection and securities issues related to climate change and we would likely be the group (environment) that works on these issues.

DC (Elizabeth Wilkins) - I will be the only person from DC participating.

IL (James Gignac) - Not in the meeting itself, but we have do have consumer protection staff interested in learning more about the issues. We do not have securities staff.

MA (Melissa Hoffer) - No.

ME (Jerry Reid) - No.

OR (Paul Garrahan) - Yes, Sr AAG Tim Nord will attend from our consumer protection unit.

RI (Greg Schultz) - No.

USVI (Claude Earl Walker) - Yes, we will have our outside counsel/Special Assistant Attorney General, who has specialized in consumer protection work.

VA (Daniel Rhodes) - No response.

WA (Laura Watson) - Our CP folks will not be attending but I have been in contact with them and intend to report back to them after the meeting. I've reviewed our office's internal analysis on the various causes of action available in Washington State and can contribute at least generally to the discussion.

(5) Any other thoughts about the afternoon's working session?

CT (Matthew Levine) - None.

DC (Elizabeth Wilkins) - None.

IL (James Gignac) - None.

MA (Melissa Hoffer) - None.

ME (Jerry Reid) - None.

OR (Paul Garrahan) - We look forward to the discussion.

RI (Greg Schultz) - I would be interested in discussing the possibility of setting up additional AG meetings with NESCAUM (Northeast States for Coordinated Air Use Management) on regional air issues (NESCAUM works closely with state air agencies on a variety of air issues). I work closely with my state air agency, but never seem to sit down with them to discuss their specific issues and concerns.

USVI (Claude Earl Walker) - None.

VA (Daniel Rhodes) - None.

WA (Laura Watson) – None.

Exhibit AA

Kline, Scot

From: Kline, Scot
Sent: Monday, March 28, 2016 9:08 AM
To: 'Lemuel Srolovic'
Cc: Brian Mahanna; Michael Meade; Morgan, Wendy
Subject: RE: Climate Change Conference Common Interest Agreement
Attachments: Climate Change Conf. Common Interest Agreement.vt.edits.docx

Lem:

Thanks for the draft. We have an overall comment and two suggested language changes. First the latter. The suggested changes are redlined in the attached document. One is worth brief explanation: in paragraph 5 (iii), we have a couple of concerns: we don't think we can return documents of which we have taken possession under our state law unless ordered by a court to do so; and our office is okay with refusing to disclose covered documents if we can do so under our law, but we really avoid taking on an affirmative obligation to always litigate those issues.

The overall comment is whether we really need a common interest agreement for the conference, particularly given the short time left before the conference. We are concerned that this will distract people and take away time and focus from the conference itself. Our thought has been that anyone providing anything in writing at the conference should assume that it may get produced because of some state's public record laws. Matt and Peter should stick to what is in the public domain or be prepared to have those materials become public.

Our two cents.

Thanks.

Scot

From: Lemuel Srolovic [mailto:Lemuel.Srolovic@ag.ny.gov]
Sent: Friday, March 25, 2016 5:18 PM
To: Kline, Scot <scot.kline@vermont.gov>; Morgan, Wendy <wendy.morgan@vermont.gov>
Cc: Brian Mahanna <Brian.Mahanna@ag.ny.gov>; Michael Meade <Michael.Meade@ag.ny.gov>
Subject: Climate Change Conference Common Interest Agreement

Scot and Wendy – sorry for the delay but here's our proposed common interest agreement which is pared down from the VW template. We'd like to distribute to attending offices asap and ask them to sign.

Look ok to you?

Thanks,

Lem

Lemuel M. Srolovic
Bureau Chief

Environmental Protection Bureau
New York State Attorney General
212-416-8448 (o)
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CLIMATE CHANGE CONFERENCE COMMON INTEREST AGREEMENT

This Common Interest Agreement ("Agreement") is made and entered into by and between the undersigned Attorneys General of the States, Commonwealths, and Territories (the "Parties") who are attending along with their staff and certain outside advisors—a conference sponsored by the Office of the Attorneys General of New York and Vermont that will take place in the City of New York on Tuesday, March 29, 2016 (the "Conference"). The Parties mutually agree:

1. The Parties share common legal interests with respect to the following topics that are expected to will be discussed at the Conference (i) undertaking the defense of claims under federal law in *State of West Virginia, et al. v. United States Environmental Protection Agency*, No. 15-1363 (D.C. Cir.) and related proceedings, (ii) taking other legal actions to compel or defend federal measures to limit greenhouse gas emissions, (iii) conducting investigations of representations made by companies to investors, consumers and the public regarding fossil fuels, renewable energy and climate change, (iv) conducting investigations of potential illegal conduct to limit or delay the implementation and deployment of renewable energy technology, (v) taking legal action to obtain compliance with federal and state laws governing the construction and operation of fossil fuel and renewable energy infrastructure or (vi) contemplating undertaking one or more of these legal actions, including litigation ("Matters of Common Interest").

2. It is in the Parties' individual and common interests to share documents, mental impressions, strategies, and other information regarding the Matters of Common Interest and any related investigations and litigation at the Conference, and thereafter as they so choose ("Shared Information").

3. Non-Waiver of Privileges: The exchange of Shared Information among Parties including among Parties' staff and outside advisors attending the Conference—does not diminish in any way the privileged and confidential nature of such information. The Parties retain all applicable privileges and claims to confidentiality, including the attorney client privilege, work product privilege, common interest privilege, law enforcement privilege, deliberative process privilege and exemptions from disclosure under any public records laws that may be asserted to protect against disclosure of Shared Information to non-Parties (hereinafter collectively referred to as "Privileges").

4. Nondisclosure. Shared Information shall only be disclosed to: (i) Parties; (ii) employees or agents of the Parties, including experts or expert witnesses; (iii) government officials involved with the enforcement of antitrust, environmental, or consumer protection laws who have agreed in writing to abide by the confidentiality restrictions of this Agreement; (iv) criminal enforcement authorities; (v) other persons, provided that all Parties consent in advance; and (vi) other persons as provided in paragraph 6. Nothing in this Agreement prevents a Party from using the Shared Information for law enforcement purposes, criminal or civil, including presentation at pre-trial and trial-related proceedings, to the extent that such presentation does not (i) conflict with other agreements that the Party has entered into, (ii) interfere with the preservation of the Privileges, or (iii) conflict with court orders and applicable law.

5. Notice of Potential Disclosure. If any Shared Information is subject to any form of compulsory process in any proceeding or is demanded under a public records law ("Request"),

the Party receiving the Request shall: (i) immediately notify all other Parties (or their designees) in writing; (ii) cooperate with any Party responding to the Request; and (iii) ~~if requested return and/or refuse to disclose any Shared Information unless otherwise required by law, administrative order, or court order.~~

6. Inadvertent Disclosure. If a Party discloses Shared Information to a person not entitled to receive such information under this Agreement, the disclosure shall be deemed to be inadvertent and unintentional and shall not be construed as a waiver of any Party's right under law or this Agreement. Any Party may seek additional relief as may be authorized by law.

7. Related Litigation. The Parties continue to be bound by this Agreement in any litigation or other proceeding that arises out of the Matters of Common Interest.

8. Parties to the Agreement. This Agreement may be executed in counterparts. All potential Parties must sign for their participation to become effective.

9. Withdrawal. A Party may withdraw from this Agreement upon thirty (30) days written notice to all other Parties. Withdrawal shall not terminate, or relieve the withdrawing Party of any obligation under this Agreement regarding Shared Information received by the withdrawing Party before the effective date of the withdrawal.

10. Modification. This writing is the complete Agreement between the parties, and any modifications must be approved in writing by all Parties.

Signature: _____ Date: _____

[Name]

[Title]

[Office]

[Phone]

[Email]

Exhibit BB

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	NO. 4:16-CV-469
	§	
MAURA TRACY HEALEY, Attorney	§	
General of Massachusetts, in her	§	
official capacity,	§	
	§	
Defendant.	§	
	§	

**EXXONMOBIL’S COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Exxon Mobil Corporation (“ExxonMobil”) brings this action for declaratory and injunctive relief against Maura Healey, the Attorney General of Massachusetts. ExxonMobil seeks an injunction barring the enforcement of a civil investigative demand to ExxonMobil, and a declaration that the civil investigative demand violates ExxonMobil’s rights under state and federal law. For its Complaint, ExxonMobil alleges as follows based on present knowledge and information and belief:

INTRODUCTION

1. Frustrated by the federal government’s perceived inaction, a coalition of state attorneys general with a goal to end the world’s reliance on fossil fuels announced their “collective efforts to deal with the problem of climate change” at a joint press conference, held on March 29, 2016, with former Vice President and private citizen Al Gore as the featured speaker. The attorneys general declared that they planned to “creatively” and “aggressively” use the powers of their respective offices on behalf of the

coalition to force ExxonMobil¹ and other energy companies to comply with the coalition's preferred policy responses to climate change. As the statements of the Attorney General of Massachusetts and others made unmistakably clear, the press conference was a politically motivated event urged on by activists.²

2. The press conference was the culmination of years of planning. Since at least 2012, climate change activists and plaintiffs' attorneys have contemplated different means of obtaining the confidential records of fossil fuel companies, including the use of law enforcement power to obtain records that otherwise would be beyond their grasp.³ At a 2012 workshop entitled "Climate Accountability, Public Opinion, and Legal Strategies," the attendees discussed at considerable length "Strategies to Win Access to Internal Documents" of companies like ExxonMobil.⁴ They concluded that "a single sympathetic state attorney general might have substantial success in bringing key internal documents to light."⁵

3. Members of this group of activists and attorneys were on call at the March press conference. During a private session with the attorneys general, a climate change activist and a private environmental lawyer, who has previously sued ExxonMobil, made

¹ ExxonMobil was formed as a result of a merger between Exxon and Mobil on November 30, 1999. For ease of discussion, we refer to the predecessor entities as ExxonMobil throughout the Complaint.

² A transcript of the AGs United for Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>. A copy of this transcript is attached as Exhibit A and is incorporated by reference. *See* Ex. A at App. 1-21. All citations in the format "Ex. _" refer to exhibits to the Declaration of Justin Anderson, dated June 14, 2016, attached hereto.

³ Ex. N at App. 125.

⁴ *Id.* at App. 119-20, 125, 145-49.

⁵ *Id.* at App. 125.

presentations on the “imperative of taking action now on climate change” and on “climate change litigation.”⁶

4. The attorneys general recognized that the involvement of these individuals—especially a private attorney likely to seek fees from any private litigation made possible by an attorney general-led investigation of ExxonMobil—could expose the special interests behind their investigations. When that same attorney asked the New York Attorney General’s office what he should tell a reporter if asked about his involvement, the chief of that office’s environmental unit told him not to confirm his attendance at the conference.⁷

5. Statements made by Attorney General Healey and others at the press conference confirmed that the civil investigative demand (“CID”) that was thereafter issued and served on ExxonMobil was the product of the activists’ misguided enterprise.

6. The Attorney General of New York announced that the attorneys general had joined together to address “th[e] most pressing issue of our time,” namely, the need to “preserve our planet and reduce the carbon emissions that threaten all of the people we represent.”⁸ Although the federal government had not acted, he promised that the assembled “group of state actors [intended] to send the message that [they were] prepared to step into this [legislative] breach.”⁹ To that end, the New York Attorney General reminded the press that his office “had served a subpoena on ExxonMobil,” to investigate “theories relating to consumer and securities fraud.”¹⁰

⁶ Ex. I at App. 76-85.

⁷ Ex. P at App. 155.

⁸ Ex. A at App. 2.

⁹ *Id.* at App. 4.

¹⁰ *Id.*

7. The Attorney General of the United States Virgin Islands, Claude Walker, pledged to do something “transformational” to end “rel[iance] on fossil fuel,” beginning with “an investigation into a company” that manufactures a “product” he believes is “destroying this earth.”¹¹ Attorney General Walker’s “transformational” use of his office’s powers includes the issuance of a subpoena signed by a member of his staff but mailed to ExxonMobil in Irving, Texas, by Cohen Milstein, a Washington, D.C., law firm that touts itself as a “pioneer in plaintiff class action lawsuits” and “the most effective law firm in the United States for lawsuits with a strong social and political component.”

8. Attorney General Healey similarly pledged “quick, aggressive action” by her office to “address climate change and to work for a better future.”¹² She then announced that, in the service of those goals, her office also had commenced an investigation of ExxonMobil and that she already knew what the outcome of the just-launched investigation would be: It would reveal “a troubling disconnect between what Exxon knew” and what it “chose to share with investors and with the American public.”¹³ Three weeks later, she served the CID on ExxonMobil.

9. The Massachusetts Attorney General’s CID purports to investigate whether ExxonMobil committed consumer or securities fraud by misrepresenting its knowledge of climate change in marketing materials and communications with investors.

10. Its allegations, however, are nothing more than a weak pretext for an unlawful exercise of government power to further political objectives. The statute that purportedly gives rise to the investigation has a limitations period of four years. Mass. Gen. Law ch. 93A, § 2; Mass. Gen. Law ch. 260, § 5A. For more than a decade,

¹¹ *Id.* at App. 16-17.

¹² Ex. A at App. 14.

¹³ *Id.*

however, ExxonMobil has widely and publicly confirmed that it “recognize[s] that the risk of climate change and its potential impacts on society and ecosystems may prove to be significant.”¹⁴

11. Despite the limitations period and ExxonMobil’s longstanding public recognition of the risks of climate change, the CID nevertheless demands that ExxonMobil produce effectively every document about climate change it has generated or received in the last 40 years, thereby imposing a breathtaking burden on ExxonMobil, which would need to collect and review millions of documents to comply with the CID.

12. Worse still, the CID targets ExxonMobil’s communications with the Attorney General’s political opponents in the climate change debate—*i.e.*, organizations and individuals who hold views about climate change, and the proper policy responses to it, with which, based on her statements at the press conference, Attorney General Healey disagrees. The organizations identified by the CID each have been derided as so-called “climate deniers,” meaning that they have expressed skepticism about the science of climate change or Attorney General Healey’s preferred modes of addressing the problem.

13. The statements by the attorneys general at the press conference, their meetings with climate activists and a plaintiffs’ attorney, and the remarkably broad scope of the CID unmask the investigation launched by the Massachusetts Attorney General for what it is: a pretextual use of law enforcement power to deter ExxonMobil from participating in ongoing public deliberations about climate change and to fish through decades of ExxonMobil’s documents in the hope of finding some ammunition to enhance the Massachusetts Attorney General’s position in the policy debate concerning how to

¹⁴ Ex. S at App. 183; *see also* Ex. T at App. 193 (“Because the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant, strategies that address the risk need to be developed and implemented.”).

respond to climate change. Attorney General Healey is abusing the power of government to silence a speaker she disfavors.

14. Through her actions, Attorney General Healey has deprived and will continue to deprive ExxonMobil of its rights under the United States Constitution, the Texas Constitution, and the common law. ExxonMobil therefore seeks a declaration that the CID violates ExxonMobil's rights under Article One of the United States Constitution; the First, Fourth, and Fourteenth Amendments to the United States Constitution; Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution; and constitutes an abuse of process under the common law. ExxonMobil also seeks an injunction barring enforcement of the CID. Absent an injunction, ExxonMobil will suffer imminent and irreparable harm for which there is no adequate remedy at law.

PARTIES

15. ExxonMobil is a public, shareholder-owned energy company incorporated in New Jersey with principal offices in the State of Texas. ExxonMobil is headquartered and maintains all of its central operations in Texas.

16. Defendant Maura Healey is the Attorney General of Massachusetts. She is sued in her official capacity.

JURISDICTION AND VENUE

17. This court has subject matter jurisdiction over this action pursuant to Sections 1331 and 1367 of Title 28 of the United States Code. Plaintiff alleges violations of its constitutional rights in violation of 28 U.S.C. § 1983. Because those claims arise under the laws of the United States, this Court has original jurisdiction over them. 28 U.S.C. § 1331. Plaintiff also alleges related state law claims that derive from the same

nucleus of operative facts. Each of Plaintiff’s state law claims—like its federal claims—is premised on Attorney General Healey’s statements at the press conference, her service of the CID, and the CID’s demands. This Court therefore has supplemental jurisdiction over those claims. 28 U.S.C. § 1367(a).

18. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b) because all or a substantial part of the events giving rise to the claims occurred in the Northern District of Texas. Specifically, the CID requires ExxonMobil to collect and review a substantial number of records stored or maintained in the Northern District of Texas.

FACTS

A. The “Green 20” Coalition of Attorneys General Announces a Plan to Use Law Enforcement Tools to Achieve Political Goals.

19. On March 29, 2016, the Attorney General of New York, Eric Schneiderman, hosted a press conference in New York City dubbed “AGs United for Clean Power.” The purpose of the conference was to discuss the coalition’s plans to take “progressive action on climate change,” including investigating ExxonMobil.¹⁵ Former Vice President Al Gore was the event’s featured speaker, and attorneys general or staff members from over a dozen other states were in attendance. Attorney General Healey attended and participated in the press conference.

20. The attorneys general, calling themselves the “Green 20” (a reference to the number of participating attorneys general), explained that their mission was to “com[e] up with creative ways to enforce laws being flouted by the fossil fuel

¹⁵ Ex. MM at App. 327.

industry.”¹⁶ Expressing dissatisfaction with the perceived “gridlock in Washington” regarding climate change legislation, Attorney General Schneiderman said that the coalition had to work “creatively” and “aggressively” to advance that agenda.¹⁷

21. Attorney General Schneiderman announced that the assembled “group of state actors [intended] to send the message that [it was] prepared to step into this [legislative] breach.”¹⁸ He continued:

We know that in Washington there are good people who want to do the right thing on climate change but everyone from President Obama on down is under a relentless assault from well-funded, highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action. So today, we’re sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination.¹⁹

22. Attorney General Schneiderman’s comments left no doubt that the purpose of the “coordination” was not to investigate alleged violations of law, but “to deal with th[e] most pressing issue of our time,” namely, the need to “preserve our planet and reduce the carbon emissions that threaten all of the people we represent.”²⁰

23. Attorney General Schneiderman declared that the debate about climate change and the range of permissible policy responses to it was over: “[W]e are here for a very simple reason. We have heard the scientists. We know what’s happening to the planet. There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the

¹⁶ Ex. A at App. 3.

¹⁷ *Id.* at App. 3-4.

¹⁸ *Id.* at App. 4.

¹⁹ *Id.* at App. 5.

²⁰ *Id.* at App. 2.

American public that really need to be cleared up.”²¹ Attorney General Schneiderman reminded the press that his office “had served a subpoena on ExxonMobil,” to investigate “theories relating to consumer and securities fraud.”²²

24. Having explained the reason for the conference, Attorney General Schneiderman then introduced former Vice President Al Gore.

25. Attorney General Schneiderman explained that “there is no one who has done more for this cause” than Gore, who recently had been “traveling internationally, raising the alarm,” and “training climate change activists.”²³ Again, “the cause” to which Attorney General Schneiderman referred was not preventing consumer or securities fraud. Instead, the shared goal of the attorneys general and the former Vice President was to end “our addiction to fossil fuels and our degradation of the planet.”²⁴

26. In an effort to legitimize what the attorneys general were doing, Gore cited perceived inaction by the federal government to justify action by the Green 20. He observed that “our democracy’s been hacked . . . but if the Congress really would allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level.”²⁵

27. Gore went on to condemn those who question the viability of renewable energy sources, faulting them for “slow[ing] down this renewable revolution” by “trying to convince people that renewable energy is not a viable option.” He then accused the fossil fuel industry of “using [its] combined political and lobbying efforts to put taxes on

²¹ *Id.* at App. 3.

²² *Id.* at App. 4.

²³ *Id.* at App. 6.

²⁴ *Id.*

²⁵ *Id.* at App. 10.

solar panels and jigger with the laws” and said “[w]e do not have 40 years to continue suffering the consequences of the fraud.”²⁶

28. When it was his turn to speak, Virgin Islands Attorney General Claude Walker began by hailing Vice President Gore as one of his “heroes.” Attorney General Walker announced that his office had “launched an investigation into a company that we believe must provide us with information about what they knew about climate change and when they knew it.”²⁷ That thinly veiled reference to ExxonMobil was later confirmed in a press release naming ExxonMobil as the target of his investigation.²⁸

29. Continuing the theme of the press conference, Attorney General Walker admitted that his investigation of ExxonMobil was really aimed at changing public policy, not investigating actual violations of existing law:

It could be David and Goliath, the Virgin Islands against a huge corporation, but we will not stop until we get to the bottom of this and make it clear to our residents as well as the American people that we have to do something transformational. We cannot continue to rely on fossil fuel. Vice President Gore has made that clear.²⁹

30. For Attorney General Walker, the public policy debate on climate change is settled: “We have to look at renewable energy. That’s the only solution.”³⁰

31. As for the energy companies like ExxonMobil, Attorney General Walker accused them of producing a “product [that] is destroying this earth.”³¹ He complained

²⁶ *Id.* at App. 8-10.

²⁷ *Id.* at App. 16.

²⁸ Ex. C at App. 53-55.

²⁹ Ex. A at App. 17.

³⁰ *Id.*

³¹ *Id.*

that, “as the polar caps melt,” those “companies [] are looking at that as an opportunity to go and drill, to go and get more oil. Why? How selfish can you be?”³²

32. During her turn at the podium, Attorney General Healey also began by lauding Gore “who, today, I think, put most eloquently just how important this is, this commitment that we make.”³³

33. The Attorney General then articulated her view that “there’s nothing we need to worry about more than climate change,” and that the attorneys general “have a moral obligation to act” to alleviate the threat to “the very existence of our planet.”³⁴

34. Attorney General Healey therefore pledged to take “quick, aggressive action” to “address climate change and to work for a better future.”³⁵ In the service of that goal, she announced that her office was investigating ExxonMobil. Remarkably, she also announced, in advance, the findings of her investigation weeks before she even issued the CID:

Fossil fuel companies that deceived investors and consumers about the dangers of climate change should be, must be, held accountable. That’s why I, too, have joined in investigating the practices of ExxonMobil. We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public.³⁶

Attorney General Healey’s comments unambiguously reflected her pre-ordained determination that ExxonMobil had engaged in unlawful deception in connection with the debate over climate change policy.

³² *Id.*

³³ *Id.* at App. 13.

³⁴ *Id.*

³⁵ *Id.* at App. 14.

³⁶ *Id.* at App. 13.

35. The political motivations articulated by Attorney General Healey and the other press conference attendees struck a discordant note with those who rightfully expect government attorneys to conduct themselves in a neutral and unbiased manner. One reporter reacted by asking whether the press conference and the investigations were nothing more than “publicity stunt[s].”³⁷

B. The Attorneys General of Other States Condemn the Green 20’s Investigations.

36. The press conference drew a swift and sharp rebuke from other state attorneys general who criticized the Green 20 for using the power of law enforcement as a tool to muzzle dissent and discussions about climate change. The attorneys general of Alabama and Oklahoma stated that “scientific and political debate” “should not be silenced with threats of criminal prosecution by those who believe that their position is the only correct one and that all dissenting voices must therefore be intimidated and coerced into silence.”³⁸ They emphasized that “[i]t is inappropriate for State Attorneys General to use the power of their office to attempt to silence core political speech on one of the major policy debates of our time.”³⁹

37. The Louisiana Attorney General similarly observed that “[i]t is one thing to use the legal system to pursue public policy outcomes; but it is quite another to use prosecutorial weapons to intimidate critics, silence free speech, or chill the robust exchange of ideas.”⁴⁰ Likewise, the Kansas Attorney General questioned the “unprecedented” and “strictly partisan nature of announcing state ‘law enforcement’ operations in the presence of a former vice president of the United State[s] who,

³⁷ *Id.* at App. 18.

³⁸ Ex. D at App. 57.

³⁹ *Id.*

⁴⁰ Ex. E at App. 59.

presumably [as a private citizen], has no role in the enforcement of the 17 states' securities or consumer protection laws."⁴¹ The West Virginia Attorney General criticized the attorneys general for "abusing the powers of their office" and stated that the desire to "eliminate fossil fuels . . . should not be driving any legal activity" and that it was improper to "use the power of the office of attorney general to silence [] critics."⁴²

38. More recently, the Committee on Science, Space, and Technology of the United States House of Representatives launched an inquiry into the investigations undertaken by the Green 20.⁴³ That committee was "concerned that these efforts [of the Green 20] to silence speech are based on political theater rather than legal or scientific arguments, and that they run counter to an attorney general's duty to serve as the guardian of the legal rights of the citizens and to assert, protect, and defend the rights of the people."⁴⁴ Perceiving a need to provide "oversight" of what it described as "a coordinated attempt to attack the First Amendment rights of American citizens," the Committee requested the production of certain records and information from the attorneys general.⁴⁵ The activists and the attorneys general have thus far refused to cooperate with the inquiry.⁴⁶

39. Several senators similarly have urged United States Attorney General Loretta Lynch to confirm that the Department of Justice is not and will not investigate United States citizens or corporations on the basis of their views on climate change.⁴⁷ The senators observed that the Green 20's investigations "provide disturbing

⁴¹ Ex. F at App. 61.

⁴² Ex. G at App. 64-66.

⁴³ Ex. H at App. 69-74.

⁴⁴ *Id.* at App. 69 (internal quotation marks omitted).

⁴⁵ *Id.* at App. 72.

⁴⁶ *See, e.g.*, Ex. Z at App. 235-36; Ex. AA at App. 238-40.

⁴⁷ *See* Ex. BB at App. 243-245.

confirmation that government officials at all levels are threatening to wield the sword of law enforcement to silence debate on climate change.”⁴⁸ The letter concluded by asking Attorney General Lynch to explain the steps she is taking “to prevent state law enforcement officers from unconstitutionally harassing private entities or individuals simply for disagreeing with the prevailing climate change orthodoxy.”⁴⁹

C. In Closed-Door Meetings, the Green 20 Privately Meet with Climate Activists and Plaintiffs’ Lawyers.

40. The impropriety of the statements made by Attorney General Healey and the other members of the Green 20 at the press conference are surpassed only by what they said behind closed doors.

41. In advance of the conference, the chief of the Massachusetts Attorney General’s Office’s Energy & Environment Bureau indicated that the office sought to “learn the status of states’ investigations/plans” and explore avenues for “coordination.” The bureau chief also noted that the office was taking actions to “advanc[e] clean energy.”⁵⁰

42. During the morning of the press conference, the attorneys general attended two presentations. Those presentations were not announced publicly, and they were not open to the press or general public. The identity of the presenters and the titles of the presentations, however, were later released by the State of Vermont in response to a request under that state’s Freedom of Information Act.

⁴⁸ *Id.* at App. 244.

⁴⁹ *Id.*

⁵⁰ Ex. J at App. 158-59.

43. The first presenter was Peter Frumhoff, the director of science and policy for the Union of Concerned Scientists.⁵¹ His subject was the “imperative of taking action now on climate change.”⁵²

44. According to the Union of Concerned Scientists, those who do not share its views about climate change and responsive policy make it “difficult to achieve meaningful solutions to global warming.”⁵³ It accuses “[m]edia pundits, partisan think tanks, and special interest groups” of being “contrarians,” who “downplay and distort the evidence of climate change, demand policies that allow industries to continue polluting, and attempt to undercut existing pollution standards.”⁵⁴

45. Frumhoff has been targeting ExxonMobil since at least 2007. In that year, Frumhoff contributed to a publication issued by the Union of Concerned Scientists, titled “Smoke, Mirrors, and Hot Air: How ExxonMobil Uses Big Tobacco’s Tactics to Manufacture Uncertainty on Climate Science,”⁵⁵ which brainstormed strategies for “putting the brakes” on ExxonMobil’s alleged “disinformation campaign.”⁵⁶

46. Matthew Pawa of Pawa Law Group, P.C.⁵⁷ hosted the second presentation on the topic of “climate change litigation.”⁵⁸ The Pawa Law Group, which boasts of its “role in launching global warming litigation,”⁵⁹ previously sued ExxonMobil and sought to hold it liable for causing global warming. That suit was dismissed because, as the court properly held, regulating global warming emissions is “a political rather than a legal

⁵¹ Ex. J at App. 87.

⁵² Ex. I at App. 77.

⁵³ Ex. K at App. 95-95.

⁵⁴ *Id.*

⁵⁵ Ex. LL at 319.

⁵⁶ *Id.* at 322.

⁵⁷ Ex. L at App. 109-110.

⁵⁸ Ex. I at App. 77.

⁵⁹ Ex. M at App. 112.

issue that needs to be resolved by Congress and the executive branch rather than the courts.”⁶⁰

47. Frumhoff and Pawa have sought for years to initiate and promote legal actions against fossil fuel companies in the service of their political agenda and for private profit. In 2012, for example, Frumhoff hosted and Pawa presented at a conference entitled “Climate Accountability, Public Opinion, and Legal Strategies.”⁶¹ The conference’s goal was to consider “the viability of diverse strategies, including the legal merits of targeting carbon producers (as opposed to carbon emitters) for U.S.-focused climate mitigation.”⁶²

48. The 2012 conference’s attendees discussed at considerable length “Strategies to Win Access to Internal Documents” of companies like ExxonMobil.⁶³ Even then, “lawyers at the workshop” suggested that “a single sympathetic state attorney general might have substantial success in bringing key internal documents to light.”⁶⁴

49. Indeed, that conference’s attendees were “nearly unanimous” regarding “the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, in maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming.”⁶⁵

50. As recently as January 2016, Pawa and a group of climate activists met to discuss the “[g]oals of an Exxon campaign.” The goals included:

⁶⁰ Ex. N at App. 126; *see also* *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 857-58 (9th Cir. 2012).

⁶¹ Ex. N at App. 117-18, 146.

⁶² *Id.* at App. 118.

⁶³ *Id.* at App. 125.

⁶⁴ *Id.*

⁶⁵ *Id.* at App. 141.

To establish in public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm. To delegitimize them as a political actor. To force officials to disassociate themselves from Exxon, their money, and their historic opposition to climate progress, for example by refusing campaign donations, refusing to take meetings, calling for a price on carbon, etc. To call into question climate advantages of fracking, compared to coal. To drive divestment from Exxon. To drive Exxon & climate into center of 2016 election cycle.⁶⁶

51. The Green 20 press conference thus represented the culmination of Frumhoff and Pawa's collective efforts to enlist state law enforcement officers in their quest to enact their preferred policy responses to global warming and obtain documents for private lawsuits.

52. The attorneys general in attendance at the press conference understood that the participation of Frumhoff and Pawa, if reported, could expose the private, financial, and political interests behind the announced investigations. In an apparent attempt to improperly shield their communications from public scrutiny, the attorneys general drafted—and may have executed—a common interest agreement in connection with the Green 20 conference.⁶⁷ In addition, the day after the conference, a reporter from *The Wall Street Journal* called Pawa.⁶⁸ In response, Pawa asked the New York Attorney General's Office, “[w]hat should I say if she asks if I attended?”⁶⁹ The environmental bureau chief at the office, in an effort to conceal from the press and public the closed-door meetings, responded, “[m]y ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.”⁷⁰

⁶⁶ See Ex. OO at App. 336; see also Ex. O at App. 151-53.

⁶⁷ Ex. NN at App. 333-34.

⁶⁸ See Ex. P at App. 155.

⁶⁹ *Id.*

⁷⁰ *Id.*

53. The press conference, the closed-door meetings with activists, and the activists' long-standing desire to expose ExxonMobil's "internal documents" as part of a campaign to put "pressure on the industry," inducing it to support "legislative and regulatory responses to global warming,"⁷¹ form the partisan backdrop against which the CID must be considered. The thoroughly political goals of the activists—which the Massachusetts Attorney General adopted as her own at the press conference—are reflected in the CID itself.

D. The CID Demands 40 Years' of ExxonMobil's Records, Even Though ExxonMobil Could Not Have Violated the Statute Purportedly Under Investigation.

54. Three weeks after the press conference, on April 19, 2016, the Massachusetts Attorney General's Office served the CID on ExxonMobil's registered agent in Suffolk County, Massachusetts.

55. According to the CID, there is "a pending investigation concerning [ExxonMobil's] potential violations of Mass. Gen. Law ch. 93A, § 2."⁷² That statute prohibits "unfair or deceptive acts or practices" in "trade or commerce"⁷³ and has a four-year statute of limitations.⁷⁴ The CID specifies two types of transactions under investigation: ExxonMobil's (i) "marketing and/or sale of energy and other fossil fuel derived products to consumers in the Commonwealth," and (ii) "marketing and/or sale of securities" to Massachusetts investors.⁷⁵ The requested documents pertain largely to information related to climate change in the possession of ExxonMobil and located at its principal place of business in Texas.

⁷¹ Ex. N at App. 141.

⁷² Ex. B at App. 23.

⁷³ Mass. Gen. Law ch. 93A, §2(a).

⁷⁴ Mass. Gen. Law ch. 260, § 5A.

⁷⁵ Ex. B at App. 23.

56. ExxonMobil could not have committed the possible offenses that the CID purports to investigate for at least two reasons.

57. First, at no point during the past five years—more than one year before the limitations period began—has ExxonMobil (i) sold fossil fuel derived products to consumers in Massachusetts, or (ii) owned or operated a single retail store or gas station in the Commonwealth.⁷⁶

58. Second, ExxonMobil has not sold any form of equity to the general public in Massachusetts since at least 2010, which is also well beyond the limitations period.⁷⁷ In the past decade, ExxonMobil has sold debt only to underwriters outside the Commonwealth, and ExxonMobil did not market those offerings to Massachusetts investors.⁷⁸

59. The CID's focus on events, activities, and records outside of Massachusetts is demonstrated by the items it demands ExxonMobil search for and produce. For example, the CID demands documents that relate to or support 11 specific statements.⁷⁹ None of those statements were made in Massachusetts.⁸⁰ The CID also seeks ExxonMobil's communications with 12 named organizations,⁸¹ but only one of these organizations has an office in Massachusetts and ExxonMobil's communications with the other 11 organizations likely occurred outside of Massachusetts. Finally, the

⁷⁶ Any service station that sells fossil fuel derived products under an "Exxon" or "Mobil" banner is owned and operated independently. In addition, distribution facilities in Massachusetts, including Everett Terminal, have not sold products to consumers during the limitations period.

⁷⁷ Ex. GG at App. 292.

⁷⁸ *Id.* This is subject to one exception. During the limitations period, ExxonMobil has sold short-term, fixed-rate notes, which mature in 270 days or less, to institutional investors in Massachusetts, in specially exempted commercial paper transactions. *See* Mass. Gen. Laws ch. 110A, § 402(a)(10); *see also* 15 U. S. C. § 77c(a)(3).

⁷⁹ Ex. B at App. 36-37 (Request Nos. 8-11).

⁸⁰ *Id.*

⁸¹ *Id.* at App. 35 (Request No. 5).

CID requests all documents and communications related to ExxonMobil's publicly issued reports, press releases, and Securities and Exchange Commission ("SEC") filings, which were issued outside of Massachusetts,⁸² and all documents and communications related to ExxonMobil's climate change research, which also occurred outside of Massachusetts.⁸³

60. Even if ExxonMobil had engaged in some theoretically relevant conduct in Massachusetts, ExxonMobil has made no statements in the past four years that could give rise to fraud as alleged in the CID. For more than a decade, ExxonMobil has publicly acknowledged that climate change presents significant risks that could affect its business. For example, ExxonMobil's *2006 Corporate Citizenship Report* recognized that "the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant" and reasoned that "strategies that address the risk need to be developed and implemented."⁸⁴ In addition, in 2002, ExxonMobil, along with three other companies, helped launch the Global Climate and Energy Project at Stanford University, which has a mission of "conduct[ing] fundamental research on technologies that will permit the development of global energy systems with significantly lower greenhouse gas emissions."⁸⁵

61. ExxonMobil has also discussed these risks in its public SEC filings. For example, in its 2006 10-K, ExxonMobil stated that "laws and regulations related to . . . risks of global climate change" "have been, and may in the future" continue to impact its operations.⁸⁶ Similarly, in its 2015 10-K, ExxonMobil noted that the "risk of climate

⁸² *Id.* at App. 38-40 (Request Nos. 15-16, 19, 22).

⁸³ *Id.* at App. 34-35, 37-40 (Request Nos. 1-4, 14, 17, 22).

⁸⁴ Exxon Mobil Corp., *2006 Corporate Citizenship Report* 15 (2007).

⁸⁵ Stanford University Global Climate & Energy Project, *About Us*, available at <https://gcep.stanford.edu/about/index.html> (last visited Apr. 12, 2016).

⁸⁶ Exxon Mobil Corp., Annual Report (Form 10-K) 2-3 (Feb. 28, 2007).

change” and “current and pending greenhouse gas regulations” may increase its “compliance costs.”⁸⁷ Long before the limitations period of Mass. Gen. Law ch. 93A, § 2, ExxonMobil disclosed and acknowledged the risks that supposedly gave rise to the Massachusetts Attorney General’s investigation.

62. Resting uneasily with the absence of any factual basis for investigating ExxonMobil’s alleged fraud is the heavy burden imposed by the CID. Spanning 25 pages and containing 38 broadly worded document requests, the CID unreasonably demands production of essentially any and all communications and documents relating to climate change that ExxonMobil has produced or received over the last 40 years. For example, the CID requests all documents and communications “concerning Exxon’s development, planning, implementation, review, and analysis of research efforts to study CO₂ emissions . . . and the effects of these emissions on the Climate” since 1976 and all documents and communications concerning “any research, study, and/or evaluation by ExxonMobil and/or any other fossil fuel company regarding the Climate Change Radiative Forcing Effect of” methane since 2010.⁸⁸ It also requests all documents and communications concerning papers and presentations given by ExxonMobil scientists since 1976⁸⁹ and demands production of ExxonMobil’s climate change related speeches, public reports, press releases, and SEC filings over the last 20 years.⁹⁰ Moreover, it fails to reasonably describe several categories of documents by, for example, requesting

⁸⁷ Exxon Mobil Corp., Annual Report (Form 10-K) 3 (Feb. 24, 2016).

⁸⁸ Ex. B at App. 34, 39 (Request Nos. 1, 17).

⁸⁹ *Id.* at App. 36 (Request Nos. 2-4).

⁹⁰ *Id.* at App. 36 (Request No. 8 (all documents since 1997)); *id.* at App. 39-40 (Request No. 22 (all documents since 2006)); *id.* at App. 36-39 (Request Nos. 9-12, 14-16, 19 (all documents since 2010)). The CID also demands the testimony of ExxonMobil officers, directors, or managing agents who can testify about a variety of subjects, including “[a]ll the topics covered” in the CID. *Id.* at App. 43 (Schedule B).

documents related to ExxonMobil's "awareness," "internal considerations," and "decision making" with respect to certain climate change matters.⁹¹

E. The CID Targets Organizations that Have Been Derided by the Press as "Climate Deniers."

63. The CID's narrower requests, however, are in some instances more troubling than its overly broad ones. They appear to target groups simply because they hold views with which Attorney General Healey disagrees. All 12 of the organizations that ExxonMobil is directed to produce its communications with have been identified by environmental advocacy groups as opposing policies in favor of addressing climate change or disputing the science in support of climate change.⁹²

F. ExxonMobil's Efforts to Protect its Rights.

64. On April 13, 2016, ExxonMobil brought a declaratory judgment action in a Tarrant County district court against Attorney General Walker and the private attorneys to whom he had delegated his investigative power. ExxonMobil sought a declaration that Attorney General Walker's subpoena was illegal and unenforceable, because it violated several of ExxonMobil's rights under the United States and Texas constitutions, and was an abuse of process under common law.⁹³

65. On May 16, 2016, the Attorneys General of Texas and Alabama intervened in that action in an effort to protect the constitutional rights of their citizens.⁹⁴ The plea filed by the Texas and Alabama Attorneys General criticized Attorney General Walker and his private attorneys for undertaking an investigation "driven by ideology,

⁹¹ See *id.* at App. 35-36, 39 (Request Nos. 7-8, 18).

⁹² See, e.g., Ex. JJ at App. 306-308.

⁹³ Pl's Original Pet. for Declaratory Relief at 22-26, *Exxon Mobil Corp. v. Walker*, No. 4:16-cv-00364-K, ECF No. 1-5 (April 13, 2016).

⁹⁴ Ex. W at App. 214-220.

and not law.”⁹⁵ The Texas Attorney General called Attorney General Walker’s purported investigation “a fishing expedition of the worst kind” and recognized it as “an effort to punish Exxon for daring to hold an opinion on climate change that differs from that of radical environmentalists.”⁹⁶ The Alabama Attorney General echoed those sentiments, stating that the pending action in Texas “is more than just a free speech case. It is a battle over whether a government official has a right to launch a criminal investigation against anyone who doesn’t share his radical views.”⁹⁷

66. Two days later, Attorney General Walker and the other defendants removed that case to this Court.⁹⁸ In response, ExxonMobil moved to remand the proceedings to state court because, under the reasoning of a recent decision by the Fifth Circuit, ExxonMobil’s suit against Attorney General Walker is not ripe in federal court because ExxonMobil faces no sanctions for refusing to comply with Attorney General Walker’s subpoena until he moves to enforce it.⁹⁹

67. Unlike Attorney General Walker’s subpoena, ExxonMobil faces immediate sanctions if it fails or refuses to comply with Attorney General Healey’s CID. Noncompliance with the CID results in the assessment of a “civil penalty.”¹⁰⁰ And if ExxonMobil does not respond to the CID, it risks waiving any objections to it. This suit is therefore ripe for adjudication in federal court.

⁹⁵ *Id.* at App. 215.

⁹⁶ Ex. X at App. 222.

⁹⁷ Ex. Y at App. 226.

⁹⁸ See Notice of Removal, *Exxon Mobil Corp. v. Walker*, No. 4:16-cv-00364-K, ECF No. 1 (May 18, 2016).

⁹⁹ See Memorandum of Law in Supp. of Mot. to Remand, *Exxon Mobil Corp. v. Walker*, No. 4:16-cv-00364-K, ECF No. 12 (May 23, 2016).

¹⁰⁰ Mass. Gen. Law ch. 93A § 7.

68. June 16, 2016 is the deadline under Massachusetts law (as extended on consent) for objecting to the CID. Under Massachusetts law, ExxonMobil must respond to the CID in a Massachusetts court, because otherwise it risks waiving its objections.

69. Accordingly, ExxonMobil expects to appear specially in Massachusetts to file a protective motion. ExxonMobil plans to file that motion for the sole purpose of preserving its rights, and to avoid an argument that it has waived its objections.¹⁰¹ Because Massachusetts lacks personal jurisdiction over ExxonMobil, ExxonMobil will appear specially and assert its objections subject to its argument regarding personal jurisdiction. ExxonMobil will also ask the Massachusetts court to stay its consideration of ExxonMobil's objections because ExxonMobil believes that this Court should resolve the enforceability of the CID in the first instance.

**THE MASSACHUSETTS ATTORNEY GENERAL'S CID VIOLATES
EXXONMOBIL'S RIGHTS**

70. The facts recited above demonstrate the pretextual nature of the stated reasons for Attorney General Healey's investigation. The statements made by the Massachusetts Attorney General at the press conference reveal the political purpose of the investigation: to change the political calculus surrounding the debate about policy responses to climate change by (1) targeting the speech of the Massachusetts Attorney General's political opponents, and (2) exposing ExxonMobil documents that may be politically useful to climate activists.

71. The pretextual character of the CID is brought into sharp relief when the scope of the CID—which demands 40 years of records—is contrasted with the four-year limitations period of the statute that purportedly authorizes the investigation.

¹⁰¹ See *Attorney General v. Bodimetric Profiles*, 533 N.E.2d 1364, 1365 (Mass. 1989).

72. The CID's demands for millions of documents that span four decades are not justified by any legitimate law enforcement objective. The CID purports to investigate ExxonMobil's deception of Massachusetts consumers and investors in trade or commerce. But ExxonMobil could not have deceived Massachusetts consumers or investors during the statutory period. Accordingly, the CID's demands for millions of documents, which concern only out-of-state activities, are not relevant to any action that Attorney General Healey is authorized to bring.

73. Neither Attorney General Healey nor any other public official may use the power of the state to prescribe what shall be orthodox in matters of public concern. By deploying the law enforcement authority of the Massachusetts Attorney General's Office to target one side of a political debate, her actions violated the First Amendment.

74. It follows from the political character of the CID and its remarkably broad scope that the CID also violates the Fourth Amendment. Its burdensome demands for irrelevant records violate the Fourth Amendment's reasonableness requirement, as well as its prohibition on fishing expeditions.

75. The Massachusetts Attorney General's investigation likewise fails to meet the requirements of due process. She has publicly declared not only that she believes ExxonMobil and other fossil fuel companies pose an existential risk to the planet, but also that she knows how the investigation will end: with a finding that ExxonMobil violated the law.¹⁰² Moreover, Attorney General Healey publicly announced the improper purpose of her investigation: to silence ExxonMobil's voice in the public debate regarding climate change. The improper political bias that inspired the Massachusetts

¹⁰² *Supra* ¶¶ 32-34.

investigation disqualifies Attorney General Healey from serving as the disinterested prosecutor required by the Constitution.

76. In the rush to fill what another attorney general described as a “[legislative] breach” regarding climate change, Attorney General Healey also has impermissibly trod on exclusively federal turf. Her Office’s investigation regulates speech that occurs almost entirely outside of Massachusetts. Where a state seeks to regulate out-of-state speech, as the Massachusetts Attorney General’s Office did here by issuing the CID, the state improperly encroaches on Congress’s exclusive authority to regulate interstate commerce and violates the Dormant Commerce Clause.

77. Finally, the CID constitutes an abuse of process, because it was issued for the improper purposes described above.

EXXONMOBIL HAS BEEN INJURED BY THE CID

78. The Massachusetts CID has injured, is injuring, and will continue to injure ExxonMobil.

79. ExxonMobil is an active participant in the policy debate about potential responses to climate change. It has engaged in that debate for decades, participating in the Intergovernmental Panel on Climate Change since its inception and contributing to every report issued by the organization since 1995. Since 2009, ExxonMobil has publicly advocated for a carbon tax as its preferred method to regulate carbon emissions. Proponents of a carbon tax on greenhouse gas emissions argue that increasing taxes on carbon can “level the playing field among different sources of energy.”¹⁰³ While the Massachusetts Attorney General and the other members of the Green 20 are entitled to disagree with ExxonMobil’s position, no member of that coalition is entitled to silence

¹⁰³ Ex. FF at App. 259.

or seek to intimidate one side of that discussion (or the debate about any other important public issue) through the issuance of overbroad and burdensome subpoenas. ExxonMobil intends—and has a Constitutional right—to continue to advance its perspective in the national discussions over how to respond to climate change. Its right to do so should not be violated through this exercise of government power.

80. As a result of the improper and politically motivated investigation launched by the Massachusetts Attorney General, ExxonMobil has suffered, now suffers, and will continue to suffer violations of its rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution and under Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution. Attorney General Healey's actions also violate Article One of the United States Constitution and constitute an abuse of process under common law.

81. Acting under the laws, customs, and usages of Massachusetts, Attorney General Healey has subjected ExxonMobil, and is causing ExxonMobil to be subjected, to the deprivation of rights, privileges, and immunities secured by the United States Constitution and the Texas Constitution. ExxonMobil's rights are made enforceable against Attorney General Healey, who is acting under the color of law, by Article One, Section Eight of the United States Constitution, and the Due Process Clause of Section 1 of the Fourteenth Amendment to the United States Constitution, all within the meaning and contemplation of 42 U.S.C. § 1983, and by Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution.

82. Absent relief, Attorney General Healey will continue to deprive ExxonMobil of these rights, privileges, and immunities.

83. In addition, ExxonMobil is imminently threatened with further injury that will occur if it is forced to choose between conforming its constitutionally protected speech to Attorney General Healey's political views or exercising its rights and risking sanctions and prosecution.

84. The CID also imminently threatens ongoing injury to ExxonMobil because it subjects ExxonMobil to an unreasonable search in violation of the Fourth Amendment. Complying with this unreasonably burdensome and unwarranted fishing expedition would require ExxonMobil to collect, review, and produce millions of documents, and would cost millions of dollars.

85. If ExxonMobil's request for injunctive relief is not granted, and Attorney General Healey is permitted to enforce the CID, then ExxonMobil will suffer these imminent and irreparable harms. ExxonMobil has no adequate remedy at law for the violation of its constitutional rights.

CAUSES OF ACTION

A. First Cause of Action: Violation of ExxonMobil's First and Fourteenth Amendment Rights

86. ExxonMobil repeats and realleges paragraphs 1 through 85 above as if fully set forth herein.

87. The CID's focus on one side of a policy debate in an apparent effort to silence, intimidate, and deter those possessing a particular viewpoint from participating in that debate contravenes, and any effort to enforce the subpoena would further contravene, the rights provided to ExxonMobil by the First Amendment to the United States Constitution, made applicable to the Commonwealth of Massachusetts by the Fourteenth Amendment, and by Section Eight of Article One of the Texas Constitution.

88. The CID is an impermissible viewpoint-based restriction on speech, and it burdens ExxonMobil's political speech. Attorney General Healey issued the CID based on her disagreement with ExxonMobil regarding how the United States should respond to climate change. And even if the CID had not been issued for that illegal purpose, it would still violate the First Amendment, because it burdens ExxonMobil's political speech, and its demands are not substantially related to any compelling governmental interest.

B. Second Cause of Action: Violation of ExxonMobil's Fourth and Fourteenth Amendment Rights

89. ExxonMobil repeats and realleges paragraphs 1 through 85 above as if fully set forth herein.

90. The issuance of the CID contravenes, and any effort to enforce the subpoena would further contravene, the rights provided to ExxonMobil by the Fourth Amendment to the United States Constitution, made applicable to the Commonwealth of Massachusetts by the Fourteenth Amendment, and by Section Nine of Article One of the Texas Constitution to be secure in its papers and effects against unreasonable searches and seizures.

91. The CID is an unreasonable search and seizure because it constitutes an abusive fishing expedition into ExxonMobil's climate change research over the past 40 years, without any basis for believing that ExxonMobil violated Massachusetts law. Its overbroad and irrelevant requests impose an undue burden on ExxonMobil and violate the Fourth Amendment's reasonableness requirement, which mandates that a subpoena be limited in scope, relevant in purpose, and specific in directive.

C. Third Cause of Action: Violation of ExxonMobil's Fourteenth Amendment Rights

92. ExxonMobil repeats and realleges paragraphs 1 through 85 above as if fully set forth herein.

93. Attorney General Healey's investigation of ExxonMobil contravenes the rights provided to ExxonMobil by the Fourteenth Amendment to the United States Constitution and by Section Nineteen of Article One of the Texas Constitution not to be deprived of life, liberty, or property without due process of law.

94. The CID deprives ExxonMobil of due process of law by violating the requirement that a prosecutor be disinterested. Attorney General Healey's statements at the Green 20 press conference make clear that she is biased against ExxonMobil.

D. Fourth Cause of Action: Violation of ExxonMobil's Rights Under the Dormant Commerce Clause

95. ExxonMobil repeats and realleges paragraphs 1 through 85 above as if fully set forth herein.

96. Article I, Section 8 of the United States Constitution grants Congress exclusive authority to regulate interstate commerce and thus prohibits the States from doing so. The issuance of the CID contravenes, and any effort to enforce the CID would further contravene, the rights provided to ExxonMobil under the Dormant Commerce Clause.

97. The CID effectively regulates ExxonMobil's out-of-state speech while only purporting to investigate ExxonMobil's marketing and/or sale of energy and other fossil fuel derived products to consumers in the Commonwealth and its marketing and/or sale of securities to investors in the Commonwealth.

98. The CID demands documents that relate to (1) statements ExxonMobil made outside the Commonwealth, and (2) ExxonMobil's communications with organizations residing outside the Commonwealth. It therefore has the practical effect of primarily burdening interstate commerce.

E. Fifth Cause of Action: Abuse of Process Claim

99. ExxonMobil repeats and realleges paragraphs 1 through 86 above as if fully set forth herein.

100. Attorney General Healey committed an abuse of process under common law by (1) issuing the CID in the absence of a belief that the documents sought are relevant to ExxonMobil's trade or commerce in the Commonwealth, as required by the authorizing statute; (2) having an ulterior motive for issuing and serving the CID, namely, an intent to prevent ExxonMobil from exercising its right to express views with which she disagrees; and (3) causing injury to ExxonMobil's reputation and violating its constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that Attorney General Healey be summoned to appear and answer and that this Court award the following relief:

1. A declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that the issuance of the CID violates ExxonMobil's rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution; violates ExxonMobil's rights under Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution; and violates the Dormant Commerce Clause of the United States Constitution;

2. A declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that the issuance of the CID constitutes an abuse of process, in violation of common law;

3. A permanent injunction prohibiting enforcement of the CID;
4. Such other injunctive relief to which Plaintiff is entitled; and
5. All costs of court together with any and all such other and further relief as this Court may deem proper.

Dated: June 15, 2016

EXXON MOBIL CORPORATION

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Exhibit CC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



EXXON MOBIL CORPORATION,

Plaintiff,

v.

MAURA TRACY HEALEY, Attorney
General of Massachusetts, in her
official capacity,

Defendant.

CIVIL ACTION NO. 4:16-CV-469-A

ORAL ARGUMENT REQUESTED

**PLAINTIFF EXXON MOBIL CORPORATION'S
MOTION FOR A PRELIMINARY INJUNCTION**

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Counsel for Exxon Mobil Corporation

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff Exxon Mobil Corporation (“ExxonMobil”) respectfully submits this Motion for a Preliminary Injunction. In support thereof, Plaintiff shows the Court as follows:

1. Plaintiff moves the Court for a preliminary injunction to prohibit the Defendant’s enforcement of the civil investigative demand (“CID”) it issued to Plaintiff on April 19, 2016.
2. As set out more fully in Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion for a Preliminary Injunction, Plaintiff has a substantial likelihood of prevailing on the merits of its claims that enforcement of the CID would violate Plaintiff’s rights under the United States and Texas constitutions.
3. There is a substantial threat that failure to grant the requested injunction will result in imminent irreparable injury to Plaintiff. Any threatened injury to Defendant from a preliminary injunction is outweighed by the threatened injury to Plaintiff if the injunction is not entered. Finally, granting the injunction will not disserve the public interest.
4. Plaintiff is willing to post a bond in the amount the Court deems appropriate.

PRAYER

For these reasons, and those set out in the Memorandum of Law in Support of Plaintiff Exxon Mobil Corporation’s Motion for a Preliminary Injunction, Plaintiff requests that the Court enter a preliminary injunction prohibiting Defendant from enforcing the CID.

Dated: June 15, 2016

Respectfully submitted,

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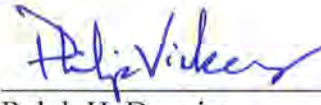
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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2016, a copy of the foregoing instrument was served on the following party via **certified mail, return receipt requested**, in accordance with the Federal Rules of Civil Procedure:

Maura Healey
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Philip A. Vickers

CERTIFICATE OF CONFERENCE

I hereby certify that at approximately 10:15 a.m., CDT, on June 15, 2016, Michele Hirshman (who is one of Plaintiff's attorneys in this matter and whose application for *pro hac vice* admission is pending) and I called Andy Goldberg, Assistant Attorney General for Massachusetts. Mr. Goldberg is the Assistant Attorney General Defendant Healey has previously designated and authorized to communicate with ExxonMobil in connection with the CID. We informed Mr. Goldberg in the message of the filing of the Complaint in this Court and of ExxonMobil's intention to file today a Motion for Preliminary Injunction asking the Court to enjoin enforcement of the CID. We requested that Mr. Goldberg call Ms. Hirshman and me before 11:30 a.m. CDT to advise us of Defendant's position with respect to the request for a preliminary injunction. Ms. Hirshman also asked Mr. Goldberg to speak with Defendant Healey promptly to determine when her office would be prepared to confer concerning Plaintiff's motion.

Ms. Hirshman and I then called Mr. Goldberg's colleague, and apparently his supervisor, Cristophe Courchesne, the Chief of the Massachusetts Attorney General's Environmental Protection Division, and left a similar voicemail. At 10:30 a.m. CDT, a copy of the Complaint was emailed to Mr. Goldberg, Mr. Courchesne, and to Melissa Hoffer, who is believed to be Mr. Courchesne's colleague and supervisor. The email explained that Plaintiff intended to file an application for a preliminary injunction. Each of Mr. Goldberg, Mr. Courchesne and Ms. Hoffer were asked to contact us by 11:30 a.m. CDT to propose a time when a representative of Defendant Healey would be available to confer.

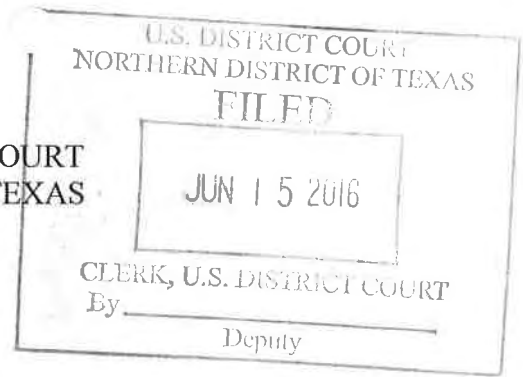
At approximately 11:25 a.m. CDT, Mr. Goldberg called and left a message for Ms. Hirshman. Ms. Hirshman, Patrick Conlon of ExxonMobil, and I returned Mr. Goldberg's call at approximately 11:40 a.m. CDT. Ms. Hirshman advised him of ExxonMobil's intention to file a motion for preliminary injunction to enjoin enforcement of the CID. Mr. Goldberg advised that Defendant would not agree to the relief sought so this motion is presented to the Court for its consideration.



Philip A. Vickers

Exhibit DD

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



EXXON MOBIL CORPORATION,

Plaintiff,

v.

MAURA TRACY HEALEY, Attorney
General of Massachusetts, in her
official capacity,

Defendant.

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No. 4:16-CV-469-A

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF EXXON
MOBIL CORPORATION'S MOTION FOR A PRELIMINARY INJUNCTION**

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Exxon Mobil Corporation (“ExxonMobil” or the “Company”) respectfully submits this memorandum of law in support of its motion for a preliminary injunction.

PRELIMINARY STATEMENT

This case is about freedom of political speech. Even though ExxonMobil’s forthright and public recognition of the risks associated with climate change long predates the limitations period and independently forecloses the possibility of securities or consumer fraud in this case, Defendant Maura Healey, the Attorney General of Massachusetts (the “Attorney General”), has misused her law enforcement authority by deploying it against her political opponents in the debate over climate change. Because the Attorney General does not believe that ExxonMobil shares her views on climate change, her office served ExxonMobil with a civil investigative demand (“CID”) that requires ExxonMobil to produce 40 years’ worth of documents relating to climate change. The Attorney General’s actions violate ExxonMobil’s constitutional rights and fly in the face of the universally recognized principle that the coercive machinery of law enforcement should not be used to limit debate on public policy.

The Attorney General issued the CID according to a plan devised by state officials, climate change activists, and plaintiffs’-side environmental attorneys who support certain policy responses to climate change and aim to silence those who disagree. The public officials made their intentions known at a joint press conference held on March 29, 2016, featuring the remarks of former Vice President and private citizen Al Gore. During that press conference, a coalition of attorneys general with a goal to end the world’s reliance on fossil fuels announced their frustration with perceived congressional inaction on climate change and pledged to use law

enforcement tools “creatively” and “aggressively,” not to investigate violations of law, but to impose their preferred policy response to climate change.¹

This public announcement was the culmination of years of planning. Since at least 2012, climate change activists have sought to obtain the internal records of fossil fuel companies, and they identified the use of law enforcement tools as a particularly powerful means of obtaining records that would be otherwise beyond their grasp.² At a 2012 workshop entitled “Climate Accountability, Public Opinion, and Legal Strategies,” the attendees discussed at considerable length “Strategies to Win Access to Internal Documents” of companies like ExxonMobil.³ They concluded that “a single sympathetic state attorney general might have substantial success in bringing key internal documents to light.”⁴ And, those activists were on call at the press conference. During a private session with the attorneys general, a climate change activist and a private environmental lawyer, who has previously sued ExxonMobil, made presentations on the “imperative of taking action now on climate change” and on “climate change litigation.”⁵

The attorneys general recognized that the involvement of these individuals—especially a private attorney likely to seek fees from any private litigation made possible by a government investigation of ExxonMobil—could expose the special interests behind their announcement. When that same private attorney asked the New York Attorney General’s office what he should tell a reporter if asked about his involvement, the chief of that office’s environmental unit, in an attempt to conceal the private attorney’s participation in these meetings from the press and public, told him not to confirm his attendance at the conference.⁶ This desire to shield from the

¹ See Ex. A at App. 3 (transcript of press conference prepared by counsel based on video recording). All citations in format “Ex. _” refer to exhibits to the Declaration of Justin Anderson, dated June 14, 2016.

² Ex. N at App. 125.

³ *Id.* at App. 119-20, 125, 145-49.

⁴ *Id.* at App. 125.

⁵ Ex. I at App. 76-85.

⁶ Ex. P at App. 155.

public the origins of the state officials' initiative speaks volumes about their own assessment of its propriety.

The CID is a product of this misguided enterprise. The CID purports to investigate whether ExxonMobil misled consumers and investors about the risks of climate change, but the pretextual character of the Attorney General's investigation follows from even a brief review of the statute under investigation and of a few facts that are not subject to reasonable dispute. First, the offense that the CID purports to investigate has a four-year statute of limitations.⁷ For the last decade, however, ExxonMobil has publicly recognized that "the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant" and that "strategies that address the risk need to be developed and implemented."⁸ Second, during the limitations period, ExxonMobil has not engaged in the activity supposedly under investigation in Massachusetts.

Having nothing to do with a legitimate investigation, the CID runs afoul of several constitutional provisions. First, the government may not prescribe what shall be orthodox in matters of public concern. Because the CID is aimed at one side of a policy debate and unjustifiably burdens ExxonMobil's political speech, it violates the First Amendment. Second, the CID's demand that ExxonMobil produce four decades' worth of records in connection with a baseless fishing expedition constitutes an unreasonable search of the kind proscribed by the Fourth Amendment. Third, the Attorney General cannot serve as the disinterested prosecutor that due process requires because she has improperly prejudged the outcome of her investigation, as demonstrated by her public comments on the matter. Finally, in the Attorney General's rush to fill a perceived legislative "breach" concerning climate change, she has improperly trod on

⁷ *Infra* Section I.B.2; *see also* Mass. Gen. Law ch. 93A, § 2; Mass. Gen. Law. ch. 260, § 5A.

⁸ Ex. T at App. 193.

exclusively federal turf and regulated out-of-state speech in violation of the Dormant Commerce Clause.

To protect ExxonMobil's constitutional rights, an injunction should be issued prohibiting the enforcement of the CID.

STATEMENT OF FACTS

A. The “Green 20” Coalition of Attorneys General Announces a Plan to Use Law Enforcement Tools to Achieve Political Goals.

The CID is the product of a coordinated campaign of partisan state officials urged on by climate change activists and attorneys motivated by private interests. This campaign first exposed itself to the public on March 29, 2016, when the Attorney General of New York hosted a press conference in New York City with certain other attorneys general as the self-proclaimed “AGs United for Clean Power.”⁹ The purpose of the conference was to discuss the coalition's plans to take “progressive action on climate change,” including investigating ExxonMobil.¹⁰ Former Vice President Al Gore was the event's featured speaker. The Attorney General, along with attorneys general or staff members from over a dozen other states, attended and participated in the press conference.¹¹

The attorneys general, calling themselves the “Green 20,” explained that their mission was to “com[e] up with creative ways to enforce laws being flouted by the fossil fuel industry.”¹² Expressing dissatisfaction with the perceived “gridlock in Washington” regarding climate change legislation, Eric Schneiderman, the Attorney General of New York, said that the coalition had to work “creatively” and “aggressively” to advance that agenda.¹³

⁹ Ex. A at App. 2-21.

¹⁰ See Ex. MM at App. 327.

¹¹ See Ex. A at App. 2-21.

¹² *Id.* at App. 3.

¹³ *Id.* at App. 3-4.

He announced that the assembled “group of state actors [intended] to send the message that [they were] prepared to step into this [legislative] breach.”¹⁴ He continued:

We know that in Washington there are good people who want to do the right thing on climate change but everyone from President Obama on down is under a relentless assault from well-funded, highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action. So today, we’re sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination.¹⁵

The purpose of the coalition’s “coordination” was “to deal with th[e] most pressing issue of our time,” namely, the need to “preserve our planet and reduce the carbon emissions that threaten all of the people we represent.”¹⁶ Attorney General Schneiderman declared that the debate about climate change and the range of permissible policy responses to it was over: “[W]e are here for a very simple reason. We have heard the scientists. We know what’s happening to the planet. There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up.”¹⁷ Attorney General Schneiderman then reminded the press that his office “had served a subpoena on ExxonMobil,” to investigate “theories relating to consumer and securities fraud.”¹⁸

Attorney General Schneiderman next introduced Al Gore. Gore cited perceived inaction by the federal government to justify action by state attorneys general, observing that “our democracy’s been hacked . . . but if the Congress really would allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level.”¹⁹ Gore went on to condemn those who question the viability of renewable energy sources, faulting them

¹⁴ *Id.* at App. 4.

¹⁵ *Id.* at App. 5.

¹⁶ *Id.* at App. 2.

¹⁷ *Id.* at App. 3.

¹⁸ *Id.* at App. 4.

¹⁹ *Id.* at App. 10.

for “slow[ing] down this renewable revolution” by “trying to convince people that renewable energy is not a viable option.”²⁰ He then accused the fossil fuel industry of “using [its] combined political and lobbying efforts to put taxes on solar panels and jigger with the laws.”²¹

When it was his turn to speak, Claude Walker, the Attorney General of the United States Virgin Islands, began by hailing Gore as one of his “heroes.” Attorney General Walker announced that his office had “launched an investigation into a company that we believe must provide us with information about what they knew about climate change and when they knew it.”²² That thinly veiled reference to ExxonMobil was later confirmed in a press release naming ExxonMobil as the target of his investigation.²³ Attorney General Walker admitted that his investigation of ExxonMobil was aimed at changing public policy, not investigating actual violations of existing law: “we will not stop until we get to the bottom of this and make it clear to our residents as well as the American people that we have to do something transformational. We cannot continue to rely on fossil fuel.”²⁴

During her turn at the podium, the Attorney General began by thanking Gore “who, today, I think, put most eloquently just how important this is, this commitment that we make.”²⁵ She explained that, “in my view, there’s nothing we need to worry about more than climate change.”²⁶ The Attorney General therefore pledged to take “quick, aggressive action” to “address climate change and to work for a better future.”²⁷ To advance this shared agenda on climate change policy, the Attorney General announced that she “too, ha[d] joined in

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at App. 16.

²³ Ex. C at App. 53-55.

²⁴ Ex. A at App. 17.

²⁵ *Id.* at App. 13.

²⁶ *Id.* at App. 13.

²⁷ *Id.* at App. 14.

investigating the practices of ExxonMobil.”²⁸ She also announced the pre-ordained outcome of that investigation: “We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public.”²⁹

The political motivations articulated by the Green 20 struck a discordant note with those who rightfully expect government attorneys to conduct themselves in a neutral and unbiased manner. One reporter reacted by asking whether the press conference and the investigations were mere “publicity stunt[s].”³⁰

B. In Closed-Door Meetings, the Green 20 Privately Meet with Climate Activists and Plaintiffs’ Lawyers.

The impropriety of the attorneys general’s statements at the press conference is surpassed only by what they said behind closed doors. On the morning of the press conference, the attorneys general attended two presentations.³¹ Those presentations were not announced publicly, and they were not open to the press or general public. The identity of the presenters and the titles of the presentations, however, were later released by the state of Vermont in response to a request under that state’s Freedom of Information Act.³²

The first presenter was Peter Frumhoff, the director of science and policy for the Union of Concerned Scientists.³³ His subject was the “imperative of taking action now on climate change.”³⁴ According to the Union of Concerned Scientists, those who do not share its views about climate change make it “difficult to achieve meaningful solutions to global warming.”³⁵

²⁸ *Id.* at App. 13.

²⁹ *Id.*

³⁰ *Id.* at App. 18.

³¹ Ex. I at App. 76-85.

³² Ex. II at App. 298-304.

³³ Ex. J at App. 87-93.

³⁴ Ex. I at App. 78.

³⁵ Ex. K at App. 95.

The group accuses “[m]edia pundits, partisan think tanks, and special interest groups” of being “contrarians,” who “downplay and distort the evidence of climate change, demand policies that allow industries to continue polluting, and attempt to undercut existing pollution standards.”³⁶

Matthew Pawa of Pawa Law Group, P.C. hosted the second presentation on the topic of “climate change litigation.”³⁷ The Pawa Law Group, which boasts of its “role in launching global warming litigation,” previously sued ExxonMobil and sought to hold it liable for causing global warming.³⁸ That suit was dismissed because, as the court properly held, “regulating global warming emissions is a political rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts.”³⁹

Frumhoff and Pawa have sought for years to initiate legal actions against fossil fuel companies in the service of their political agenda and for private profit. In 2012, for example, Frumhoff hosted and Pawa presented at a conference entitled “Climate Accountability, Public Opinion, and Legal Strategies.”⁴⁰ The conference’s goal was to consider “the viability of diverse strategies, including the legal merits of targeting carbon producers (as opposed to carbon emitters) for U.S.-focused climate mitigation.”⁴¹ The 2012 conference’s attendees discussed at considerable length “Strategies to Win Access to Internal Documents” of companies like ExxonMobil.⁴² Even then, Frumhoff and Pawa suggested that “a single sympathetic state attorney general might have substantial success in bringing key internal documents to light.”⁴³ Indeed, that conference’s attendees were “nearly unanimous” regarding “the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and,

³⁶ *Id.* at App. 95-96.

³⁷ Ex. I at App. 77.

³⁸ Ex. M at App. 112.

³⁹ Ex. N at App. 126.

⁴⁰ *Id.* at App. 119-20, 145-49.

⁴¹ *Id.* at App. 117-18.

⁴² *Id.* at App. 125.

⁴³ *Id.*

more broadly, in maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming.”⁴⁴ The press conference thus represented the culmination of Frumhoff and Pawa’s collective efforts to enlist state law enforcement officers in their quest to enact their preferred policy responses to global warming.

The attorneys general who attended the press conference understood that the participation of Frumhoff and Pawa, if reported, could expose the private, financial, and political interests behind the investigations. The day after the conference, a reporter from *The Wall Street Journal* called Pawa.⁴⁵ In response, Pawa asked the New York Attorney General’s Office “[w]hat should I say if she asks if I attended?” The environmental bureau chief at the office, in an effort to conceal from the press and public the closed-door meetings, responded “[m]y ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.”⁴⁶

C. The CID Demands 40 Years’ of ExxonMobil’s Records.

The Massachusetts Attorney General’s Office served ExxonMobil with the CID three weeks after the conference, on April 19, 2016. The CID demands production of essentially any and all of ExxonMobil’s communications and documents related to the subject of climate change, including all documents related to research that ExxonMobil conducted or funded, over the past 40 years.⁴⁷ For example, one of the CID’s 38 document requests demands all documents “concerning Exxon’s development, planning, implementation, review, and analysis of research efforts to study CO₂ emissions . . . and the effects of these emissions on the Climate.”⁴⁸

The CID’s more targeted requests are in some instances more troubling than its extraordinary breadth. The CID evinces a particular interest in ExxonMobil’s communications

⁴⁴ *Id.* at App. 141.

⁴⁵ Ex. P at 155.

⁴⁶ *Id.*

⁴⁷ See Ex. B at App. 23-51 (Request Nos. 1-4).

⁴⁸ *Id.* at App. 34 (Request No. 1).

with organizations perceived to be on one side of the climate change debate.⁴⁹ The CID requests all documents and communications regarding climate change sent to or received from 12 named organizations, all of which have been identified by the media as opposing certain policies in favor of addressing climate change or as disputing the science in support of climate change.⁵⁰

The CID's remarkably broad scope is particularly striking when contrasted with (1) the limitations period of the statute under investigation, and (2) the dearth of any relevant relationship between ExxonMobil and Massachusetts. The CID purports to investigate whether ExxonMobil committed consumer or securities fraud by misrepresenting to the public its understanding regarding the risks of climate change. The limitations period of the relevant statute is four years.⁵¹ During that limitations period, however, ExxonMobil has not sold fossil fuel derived products to consumers in Massachusetts.⁵² Nor has it marketed or offered any security for sale to the general public in Massachusetts.⁵³ Massachusetts courts therefore cannot even exercise personal jurisdiction over ExxonMobil in connection with the purported offenses under investigation.

During the four-year limitations period ExxonMobil has, however, publicly and repeatedly acknowledged that climate change presents significant risks that could affect its business.⁵⁴ For example, in its 2006 10-K, ExxonMobil stated that the "risks of global climate change" "have been, and may in the future" continue to impact its operations.⁵⁵ ExxonMobil's

⁴⁹ See *id.* at App. 35 (Request No. 5).

⁵⁰ See, e.g., Ex. JJ at App. 306-08.

⁵¹ *Infra* Section I.B.2. Mass. Gen. Law ch. 93A, § 2.

⁵² Ex. HH at App. 295. Any service station that sells fossil fuel derived products under an "Exxon" or "Mobil" banner is owned and operated independently.

⁵³ During the limitations period, ExxonMobil has sold short-term, fixed-rate notes in Massachusetts, in specially exempted commercial paper transactions. See Mass. Gen. Laws ch. 110A, § 402(a)(10); *see also* 15 U. S. C. § 77c(a)(3). These notes, which mature in 270 days or less, were sold to institutional investors, not individual customers.

⁵⁴ See Ex. S at App. 183; Ex. T at App. 193.

⁵⁵ Ex. U at App. 202-03.

forthright and public recognition of the risks associated with climate change long predates the limitations period and independently forecloses the possibility of securities or consumer fraud.

ExxonMobil's deadline to object to the CID is June 16, 2016. While ExxonMobil submits that Massachusetts courts are without personal jurisdiction to entertain an enforcement action, it nevertheless intends to appear specially in Massachusetts to file a protective motion in Massachusetts state court for the sole purpose of preserving its rights in that forum.

LEGAL STANDARD

A federal court should grant a motion for preliminary injunction where the plaintiff demonstrates: (1) a substantial likelihood of prevailing on the merits; (2) a substantial threat that it will suffer an irreparable injury unless the motion is granted; (3) that the threatened injury outweighs any potential harm to the enjoined party; and (4) that granting the preliminary injunction will not disserve the public interest. *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). ExxonMobil's application satisfies each of these requirements and should be granted.

ARGUMENT

I. ExxonMobil Has a Substantial Likelihood of Prevailing on the Merits.

ExxonMobil must demonstrate a substantial likelihood of success on only one of its claims to satisfy the first prong of its burden. For the reasons that follow, any of the four independent claims pressed in this action meets that requirement.

A. The CID Violates ExxonMobil's First Amendment Rights.

The CID is a direct and deliberate assault on ExxonMobil's First Amendment right to participate in the public debate over climate-change policy. The Attorney General has violated ExxonMobil's right to participate in that debate in two ways. First, as her comments at the press conference made clear, the Attorney General has chosen to regulate ExxonMobil's speech

because she disagrees with ExxonMobil’s perceived views about how the United States should respond to climate change. Second, the CID impermissibly intrudes on ExxonMobil’s protected political speech.

1. The CID Constitutes Impermissible Viewpoint Discrimination.

(a) Applicable Law

The First Amendment prohibits states from prescribing “what shall be orthodox in politics.” *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). For that reason, states may not regulate speech because of the “opinion or perspective of the speaker.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Otherwise, states would be free to “drive certain ideas or viewpoints from the marketplace.” *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991). Courts therefore review such viewpoint discrimination—state action that regulates speech on the basis of the speaker’s opinion—more strictly than any other First Amendment violation. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2223 (2015). Although most infringements on speech are subject to a balancing test, the First Amendment flatly forbids the government from engaging in viewpoint discrimination. *See, e.g., Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009).

To determine whether a regulation of speech is viewpoint-based, courts ask “whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). When making that assessment, courts may consider a wide range of sources, including the relevant officials’ own statements. *See, e.g., Ridley v. Mass. Bay Transp. Auth.*, 390 F.3d 65, 87 (1st Cir. 2004).

(b) Discussion

The Attorney General’s candid recitation of the reasons for her investigation at the press conference establishes that the CID constitutes viewpoint discrimination. From start to finish,

the Attorney General and the other speakers at the press conference faulted ExxonMobil for exercising its right to engage in the national debate about how the United States should respond to climate change. For example, former Vice President Gore accused ExxonMobil of “trying to convince people that renewable energy is not a viable option,” and of using “political and lobbying efforts to put taxes on solar panels and jigger with the laws . . . to slow down this renewable revolution.”⁵⁶

What Al Gore condemns as efforts to “jigger with the laws,” the First Amendment calls “speech.” Although the Attorney General couched the reasons for her investigation in slightly different terms, her stated justifications were nevertheless thoroughly and impermissibly tethered to ExxonMobil’s alleged opposition to the Attorney General’s preferred policy responses to climate change.

Attorney General Healey’s statements should be read in the context of the press conference as a whole. Attorney General Schneiderman explained that the Green 20 had joined together “for a very simple reason”: to respond to “what’s happening to the planet” and stop the “morally vacant forces that are trying to block every step by the federal government to take meaningful action” related to climate change.⁵⁷ The purpose of the press conference was to “send[] a message” that the attorneys general were prepared to step into the “battle” over climate change “with an unprecedented level of commitment and coordination.”⁵⁸ Attorney General Healey similarly announced that she had a “moral obligation” to move the country toward a “clean energy future” and alleviate the threat to “the very existence of our planet.” As part of her campaign “to address climate change and to work for a better future,” she explained that she was taking “quick, aggressive action” to “hold[] accountable those who have needed to be held

⁵⁶ Ex. A at App. 10.

⁵⁷ *Id.* at App. 3.

⁵⁸ *Id.* at App. 5.

accountable for far too long.”⁵⁹ Statements like these, which expressly link state action to the speaker’s viewpoint, are direct evidence of viewpoint discrimination. *Ridley*, 390 F.3d at 88-89.

The CID’s demands confirm these impermissible motives. The CID targets organizations that hold dissenting views about climate change that differ from those of the Green 20. The CID demands that ExxonMobil produce its communications with 12 organizations—every one of which has been identified by the media as questioning the climate change policies favored by the Attorney General and her allies or as disputing the science in support of climate change. Where, as here, the government targets speakers because of their views on policy, it engages in impermissible viewpoint discrimination. The content of the CID, joined with the statements made by the Attorney General and her allies, cannot be reconciled with the First Amendment.

2. The CID Cannot Survive the Demanding Test Applicable to Subpoenas that Burden First Amendment Rights.

(a) Applicable Law

A subpoena “that may infringe on First Amendment rights” must pass a two-part test. *In re Grand Jury Investigation of Possible Violation of 18 U.S.C. § 1461 et seq.*, 706 F. Supp. 2d 11, 18 (D.D.C. 2009). The government must show (1) that it has a “compelling interest” in obtaining the materials it seeks, and (2) that there is a “sufficient nexus” between its interest and the information sought. *Id.* Foremost among the categories of speech protected by the First Amendment is political speech. Speech addressing “governmental affairs” and “the manner in which government is operated or should be operated” is well-recognized as political speech entitled to particularly vigilant protection under the First Amendment. *See Mills v. Alabama*, 384 U.S. 214, 218-19 (1966). “[T]his no less true because the speech comes from a corporation rather than an individual.” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978).

⁵⁹ *Id.* at App. 13-14.

(b) Discussion

The CID violates the First Amendment for a second and independently sufficient reason: It cannot survive the rigorous test that courts apply to subpoenas that demand materials protected by the First Amendment. The CID requires ExxonMobil to produce documents bearing on its participation in the long-running and still-unresolved national debate about what policy approach the United States should take in response to the risks of climate change. ExxonMobil's research and related communications regarding climate change are an indispensable part of its informed participation in the ongoing national debate. Such documents thus fall comfortably within the protections of the First Amendment. Indeed, speech of the type demanded by the CID, which concerns "public affairs," "is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964). The Attorney General therefore must show that the CID's demands are substantially related to a compelling interest.

The Attorney General can identify no compelling interest that justifies the CID. The only interest the Attorney General and the other attorneys general discussed at the press conference was their collective desire to combat climate change by identifying and suppressing the speech of fossil fuel companies. *See supra* Section I.A.1. The Attorney General's desire to advance her political position by silencing dissenting views cannot qualify as a compelling interest under settled Supreme Court precedent. "[G]overnment has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 790-91 (2011).

Even if the Attorney General could identify a compelling state interest, the CID's demands are not substantially related to advancing any such interest. *See Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296 (1961). Because her CID intrudes on protected speech, the Attorney General must show "a substantial relation between the information sought and a

subject of overriding and compelling state interest.” *Gibson v. Fla. Legis. Investigation Comm.*, 372 U.S. 539, 546 (1963). If the “substantial relation” requirement means anything, it means that the CID is overbroad. The CID purports to investigate possible violations of a statute that has a four-year limitations period.⁶⁰ In the service of that investigation, the CID demands every document related to climate change that ExxonMobil has produced or received, and all the research it has funded, over the last 40 years. Requests that stretch more than three decades beyond the limitations period cannot possibly qualify as substantially related to any legitimate investigation. *Cf. id.* at 554. The Attorney General cannot show that the CID’s exceedingly broad demands are related to any compelling interest, as required by the First Amendment.

B. The CID Is a Burdensome and Baseless Fishing Expedition that Violates the Fourth Amendment.

The CID purports to authorize a fishing expedition into four decades’ worth of records from a company with nearly 80,000 employees, despite a marked absence of any basis for suspecting that ExxonMobil violated the law under investigation. The scope of the CID is far too broad, and the burden it imposes is unreasonable.

The CID violates the Fourth Amendment in two ways. First, the Fourth Amendment forbids the government from imposing an unreasonable burden on the recipient of a subpoena. Subpoenas therefore must be restrained and specific. *See See v. City of Seattle*, 387 U.S. 541, 544 (1967). And that is particularly true where the materials sought may be protected by the First Amendment. *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978). But there is nothing restrained or specific about the CID.

Second, the Fourth Amendment does not permit the government to rifle through all of ExxonMobil’s papers on climate change, “relevant or irrelevant, in the hope that something will

⁶⁰ *Infra* Section I.B.2. Mass. Gen. Law ch. 93A, § 2; Mass. Gen. Law. ch. 260, § 5A.

turn up.” *Fed. Trade Comm’n v. Am. Tobacco Co.*, 264 U.S. 298, 306 (1924). Instead, the investigation must follow from a legitimate suspicion that a crime has been committed. *See id.* Where, as here, there is no plausible suggestion that the recipient of a subpoena actually violated the law, a court should enjoin its enforcement. *See Major League Baseball v. Crist*, 331 F.3d 1177, 1187-88 (11th Cir. 2003).

1. The CID Imposes an Unreasonable Burden on ExxonMobil.

The CID’s document requests are breathtakingly burdensome. When the government demands information from a private party through a subpoena, the Fourth Amendment requires that the subpoena be “limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.” *City of Seattle*, 387 U.S. at 544. If the materials sought to be seized may be protected by the First Amendment, then the Court must apply these requirements with “scrupulous exactitude.” *Zurcher*, 436 U.S. at 564.

The CID cannot withstand the examination *Zurcher* requires. The CID contains 38 sweeping demands that span a 40-year period.⁶¹ It requires ExxonMobil to produce virtually every document it has ever sent or received that in any way pertains to climate change.⁶² Given the breadth of the requests and the 40-year date range, it would be difficult to overstate the costs ExxonMobil likely would incur in trying to comply with the CID. A reasonable estimate suggests that the requests embrace millions of pages, and ExxonMobil likely would need to spend millions of dollars to comply with the CID’s demands.⁶³ Even if one puts aside the breadth of the requests, the date range alone renders the CID unreasonable. It runs decades longer than periods that have been held to be unreasonable in analogous contexts. *See, e.g., In re Grand Jury Proceedings*, 707 F. Supp. 1207, 1218 (D. Haw. 1989) (eleven years); *In re Grand*

⁶¹ Ex. B at App. 23-51 (Request Nos. 1-38).

⁶² *See id.*

⁶³ Declaration of Justin Anderson at vii-ix.

Jury Proceedings Witness Bardier, 486 F. Supp. 1203, 1214 (D. Nev. 1980) (six years). The CID does not withstand a routine application of Fourth Amendment principles, let alone the rigorous examination required where the materials are protected by the First Amendment. *See Zurcher*, 436 U.S. at 564.

2. The CID Is a Baseless Fishing Expedition.

(a) Applicable Law

To qualify as a “reasonable” exercise of governmental authority under the Fourth Amendment, the CID must have been issued pursuant to a legitimate suspicion that the law has been violated. *See Am. Tobacco Co.*, 264 U.S. at 306. That means the government may not “direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime.” *Id.* Courts therefore examine subpoenas to determine whether the burden they impose is justified by any legitimate possibility that the law has been violated. When it is not, courts enjoin the enforcement of the subpoena. *See Crist*, 331 F.3d at 1187-88.

(b) Discussion

The CID is a baseless fishing expedition. It does not even attempt to limit the scope of its inquiry to documents that might be relevant to a plausible violation of the law. To the contrary, the CID’s sweeping demands reveal the pretextual character of the Attorney General’s investigation. As discussed in Section I.A, *supra*, the Attorney General’s statements at the press conference confirm her true motive: to suppress speech, not enforce the law. That conclusion also follows from the dubious bases for the investigation.

ExxonMobil could not have committed the offenses that the CID purports to investigate, because—both before and throughout the limitations periods—ExxonMobil forthrightly and publicly disclosed the risks associated with climate change. The CID supposedly investigates whether ExxonMobil committed consumer or securities fraud by misrepresenting to the public its

understanding regarding the risks of climate change. The limitations period is four years.⁶⁴ Since long before 2012, however, ExxonMobil has publicly recognized the need for action regarding climate change and the potential risks that climate change poses to its business. Since 2002, ExxonMobil has supported the Global Climate and Energy Project at Stanford University, which has a mission of “conduct[ing] fundamental research on technologies that will permit the development of global energy systems with significantly lower greenhouse gas emissions.”⁶⁵ ExxonMobil’s 2006 *Corporate Citizenship Report* recognized that “the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant.”⁶⁶ Despite noting that “[c]limate remains an extraordinarily complex area of scientific study,” it reasoned that “strategies that address the risk need to be developed and implemented.”⁶⁷ Moreover, for at least the past ten years, ExxonMobil has discussed the risks associated with climate change in its public Securities and Exchange Commission filings.⁶⁸ In its 2006 10-K, ExxonMobil stated that the “risks of global climate change” “have been, and may in the future” continue to impact its operations.⁶⁹ Similarly, in its 2009 10-K, ExxonMobil noted that the “risk of climate change” and “pending greenhouse gas regulations” may increase its “compliance costs.”⁷⁰ ExxonMobil’s forthright and public recognition of the risks associated with climate change thus predate the limitations period by years, and foreclose the possibility that it committed securities or consumer fraud under the theory articulated by the Attorney General.

That ExxonMobil could not have violated the law also follows from an examination of the activities the CID purports to investigate. The Attorney General’s investigation supposedly

⁶⁴ *Infra* Section I.B.2. Mass. Gen. Law ch. 93A, § 2, M.G.L. ch. 260, § 5A.

⁶⁵ Ex. DD at App. 253-54.

⁶⁶ Ex. T at 193.

⁶⁷ *Id.*

⁶⁸ *See, e.g.*, Ex. U at 199-203; Ex. V at 206-12.

⁶⁹ Ex. U at 202-03.

⁷⁰ Ex. V at 211.

concerns possible violations of Mass. Gen. Law ch. 93A, § 2, which prohibits “unfair or deceptive acts or practices” in “trade or commerce.” The CID says that the Attorney General is investigating ExxonMobil’s “marketing and/or sale of energy and other fossil fuel derived products” to consumers in the Commonwealth,” and its “marketing and/or sale of securities . . . to investors in the Commonwealth.”⁷¹

It is inconceivable that ExxonMobil deceived Massachusetts consumers or investors during the limitations period. At no point during the past five years has ExxonMobil (i) sold fossil fuel derived products to consumers in Massachusetts, or (ii) owned or operated a single retail store or gas station in the Commonwealth.⁷² And, ExxonMobil has not sold any form of equity to the general public in Massachusetts in the past five years, nor has it sold debt to the general public in the Commonwealth in the last decade.⁷³ The materials sought by the CID thus cannot be relevant to any possible violation of the statute. In fact, because ExxonMobil has not engaged in the activities purportedly under investigation in Massachusetts during the limitations period, it has no “suit-related” contacts with Massachusetts and is not subject to the personal jurisdiction of Massachusetts courts. *See Walden v. Fiore*, 134 S. Ct. 1115, 1121-23 (2014). The CID is therefore precisely the type of fishing expedition that the Fourth Amendment forbids.

C. The Attorney General Cannot Serve as the Disinterested Prosecutor that Due Process Requires.

The Attorney General’s improper statements at the press conference establish that she cannot serve as a disinterested prosecutor. Her comments evinced personal bias against ExxonMobil, improper motives in launching her investigations, and prejudgment of ExxonMobil’s liability.

⁷¹ Ex. B at App. 23.

⁷² Ex. HH at App. 296.

⁷³ Ex. GG at App. 292-93. This is subject to the one exception discussed above—*i.e.*, short-term, fixed-rate notes, which ExxonMobil has sold to institutional purchasers in the Commonwealth. *See supra* n.52.

1. Applicable Law

Due process guarantees ExxonMobil a prosecutor who will set aside his or her own interest—financial, political, or otherwise—in favor of a single interest: “that justice shall be done.” *Berger v. United States*, 295 U.S. 78, 88 (1935). That requirement bars a prosecutor from “injecting a personal interest . . . into the enforcement process.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249-50 (1980). It also prohibits a prosecutor from pursuing a case when he or she is “influenced by improper motives.” *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807 (1987). These fundamental safeguards “help[] to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law.” *Marshall*, 446 U.S. at 242. They similarly “preserve[] both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done.” *Id.* (citation and internal quotation marks omitted).

These principles require prosecutors to abide by “standards of prosecutorial ethics,” including their obligation to “respect the presumption of innocence” and “refrain[] from speaking in public about pending and impending cases except in very limited circumstances.” *United States v. Bowen*, 799 F.3d 336, 353-54 (5th Cir. 2015). Prosecutors violate these requirements when they make “[i]nflammatory and biased” comments about ongoing matters.” *Id.* at 358.

2. Discussion

The Attorney General cannot serve as a disinterested prosecutor in her investigation of ExxonMobil because her statements at the press conference create “an appearance of impropriety” that “undermine[s] [the public] confidence” in her investigation. *U.S. ex rel. S.E.C. v. Carter*, 907 F.2d 484, 488 (5th Cir. 1990). As explained above, her statements revealed that her investigation improperly aims to suppress dissenting views about climate change and the proper policy responses to it, not to investigate and enforce potential violations of law. *Supra*

Section I.A. The Attorney General also expressed a personal bias against ExxonMobil and a premature judgment regarding the findings of her investigation.

The Attorney General claimed that “in [her] view,” she had a “moral obligation” to combat climate change because “[n]othing is more important.”⁷⁴ And weeks before even serving the CID, the Attorney General announced the results of her investigation: “We can all see today the troubling disconnect between what Exxon knew . . . and what the company and industry chose to share with investors and with the American public.”⁷⁵

Such statements falsely and misleadingly prejudice ExxonMobil’s liability, and they have no place in a government investigation. *See Bowen*, 799 F.3d at 354. Statements of this kind—in conjunction with the Attorney General’s desire to suppress ExxonMobil’s political speech—confirm that the Attorney General cannot conduct her investigation in an even-handed manner, as required by due process. *See Wright v. United States*, 732 F.2d 1048, 1056 (2d Cir. 1984) (A prosecutor “is not disinterested if he has . . . an axe to grind against the defendant.”). The Attorney General’s investigation therefore violates due process.

D. The CID Regulates Interstate Commerce, in Violation of the Dormant Commerce Clause.

The CID violates the Dormant Commerce Clause because it overwhelmingly regulates speech that occurs outside of Massachusetts.

1. Applicable Law

The Commerce Clause grants Congress the exclusive power to regulate commerce among the states. *See* U.S. Const. art. I, § 8, cl. 3. Because Congress alone may regulate interstate commerce, states cannot “regulat[e] commerce occurring wholly outside that State’s borders.” *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 332 (1989). A state burdens the flow of interstate

⁷⁴ Ex. A at App. 13.

⁷⁵ *Id.*

commerce and violates the Dormant Commerce Clause when its action has the “practical effect of controlling conduct outside of the state.” *Pharm. Research Mfrs. of Am. v. Concannon*, 249 F.3d 66, 79 (1st Cir. 2001). The key question is “whether the practical effect of the regulation is to control conduct beyond the boundaries of the State.” *Healy*, 491 U.S. at 336.

Although many Dormant Commerce Clause cases concern the regulation of out-of-state conduct, the same principles apply when the state seeks to regulate out-of-state speech. For example, in *American Booksellers Foundation v. Dean*, the Second Circuit considered whether a Vermont statute that prohibited the distribution of sexually explicit materials to minors over the internet violated the Dormant Commerce Clause. 342 F.3d 96, 99 (2d Cir. 2003). Recognizing that “it is difficult, if not impossible, for a state to regulate internet activities without projecting its legislation into other States,” the Second Circuit held that the Vermont statute violated the Dormant Commerce Clause because “the rest of the nation [wa]s forced to comply with [Vermont’s] regulation or risk prosecution.” *Id.* at 103-04 (alteration omitted).

2. Discussion

The Attorney General has improperly used her law enforcement authority to regulate ExxonMobil’s out-of-state speech. The CID regulates ExxonMobil’s speech outside of Massachusetts, because it requests documents and communications that ExxonMobil made or created exclusively in other states and not in Massachusetts.

The CID demands materials relating to ExxonMobil’s public statements and SEC filings. But ExxonMobil maintains its principal offices and all of its central operations in Texas, and these communications were made outside of Massachusetts.⁷⁶ The CID likewise demands documents related to ExxonMobil’s research into climate change and to various speeches made by ExxonMobil executives regarding climate change. But again, those materials have no

⁷⁶ Ex. B at App. 38-40 (Request Nos. 15-16, 19, 22).

connection to Massachusetts.⁷⁷ The CID also requests ExxonMobil's communications with 12 organizations.⁷⁸ Only one of these organizations has an office in Massachusetts. The Attorney General is hard pressed to identify any document category that has a relevant connection to Massachusetts.

In light of the CID's almost exclusive focus on out-of-state speech, it should come as no surprise that the practical effect of the CID is to burden primarily out-of-state activity. Requiring ExxonMobil to produce the sought-after materials—which in no way relate to Massachusetts—effectively regulates speech that occurred wholly outside of Massachusetts, in violation of the Dormant Commerce Clause.

II. ExxonMobil Faces a Substantial Threat of Irreparable Injury.

To establish that it faces a substantial threat of irreparable injury, a party “need show only a significant threat of injury from the impending action, that the injury is imminent, and that money damages would not fully repair the harm.” *Humana, Inc. v. Jacobson*, 804 F.2d 1390, 1394 (5th Cir. 1986). “A violation of constitutional rights constitutes irreparable harm.” *Cohen v. Coahoma Cnty.*, 805 F. Supp. 398, 406 (N.D. Miss. 1992); see *Palmer ex rel. Palmer v. Waxahachie Indep. Sch. Dist.*, 579 F.3d 502, 506 (5th Cir. 2009).

As described in Section I.A, the CID violates ExxonMobil's First Amendment rights. And that is not the only impending deprivation of constitutional rights that ExxonMobil faces. Unless the injunction is granted, ExxonMobil will have two choices: (1) it can comply with the CID, which violates its First, Fourth, and Fourteenth Amendment rights and the Dormant Commerce Clause for the reasons described above, or (2) it can risk an enforcement action—and perhaps a prosecution—that is traceable to unconstitutional motives, which will subject it to

⁷⁷ Ex. B at App. 23-51 (Request Nos. 1-4, 14, 17, 22; Request Nos. 8-12, 32).

⁷⁸ Ex. B at App. 35 (Request No. 5).

precisely the same constitutional harms. Under these circumstances, if ExxonMobil has shown that it is likely to prevail on the merits, then it also faces an impending irreparable harm.

III. The Threatened Injury to ExxonMobil Outweighs any Potential Harm to the Attorney General, and an Injunction Would Serve the Public Interest.

The constitutional injuries ExxonMobil faces far outweigh any harm that would follow from the issuance of the injunction. Enjoining the enforcement of this CID will not frustrate the Attorney General's ability to enforce the law through lawful investigations. Because ExxonMobil's constitutional rights are at stake, enjoining the enforcement of the CID necessarily would serve the public interest in protecting the exercise of those rights. *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 298 (5th Cir. 2012); *White v. Baker*, 696 F. Supp. 2d 1289, 1313 (N.D. Ga. 2010).

CONCLUSION

The Attorney General and the Green 20 are entitled to their view that the world should cease relying on fossil fuels. They can campaign on that view, they can support other candidates for public office who share that view, and they can use the considerable platforms provided by their offices to urge their constituents to adopt that view. The Attorney General's office gives her no license, however, to compel by coercive force that which she has not earned through the only method of achieving political change that comports with our political system: persuasion.

Our Constitution "eschew[s] silence coerced by law—the argument of force in its worst form." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (internal quotation marks omitted). Instead, the American system "presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection." *Id.* Because the CID breaks faith with this basic ingredient of the American bargain, the Attorney General should not be permitted to enforce it.

Dated: June 15, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2016, a copy of the foregoing instrument was served on the following party via **certified mail, return receipt requested**, in accordance with the Federal Rules of Civil Procedure:

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Philip A. Vickers

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was served upon the Attorney General's Office for the Commonwealth of Massachusetts by hand delivery on June 16, 2016.

/s/ Caroline K. Simons
Caroline K. Simons