

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXXON MOBIL CORPORATION

Plaintiff,

v.

No. 17-CV-2301 (VEC) (SN)

ERIC TRADD SCHNEIDERMAN, Attorney
General of New York, in his official capacity, and
MAURA TRACY HEALEY, Attorney General of
Massachusetts, in her official capacity,

Defendants.

DECLARATION OF JUSTIN ANDERSON

I, Justin Anderson, declare pursuant to 28 U.S.C. § 1746:

1. I am a lawyer with Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for plaintiff Exxon Mobil Corporation (“ExxonMobil”) in the above-captioned matter. I submit this Declaration in support of Plaintiff’s Opposition to Defendants’ Motions to Dismiss the Amended Complaint. I have personal knowledge of the facts stated herein, based on my experience or my consultation with others, or they are known to me in my capacity as counsel for ExxonMobil, and each of them is true and correct.

2. Attached as Exhibit A is a 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>.

3. Attached as Exhibit B is a copy of the subpoena for the production of documents issued to ExxonMobil by the New York Attorney General's Office, dated November 4, 2015.

4. Attached as Exhibit C is a copy of the Massachusetts Civil Investigative Demand ("CID") issued to ExxonMobil by the Massachusetts Attorney General's Office, dated April 19, 2016.

5. Attached as Exhibit D is a copy of a list of so-called climate "deniers" gathered by Greenpeace, obtained from <http://www.exxonsecrets.org/html/index.php>.

6. Attached as Exhibit E is a copy of the Climate Change Coalition Common Interest Agreement, obtained from <http://eelegal.org/wp-content/uploads/2016/08/Climate-Change-CIA.pdf>.

7. Attached as Exhibit F is a copy of an email 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, dated March 18, 2016, obtained from <http://eelegal.org/wp-content/uploads/2016/04/Development-of-Agenda.pdf>.

8. Attached as Exhibit G is a copy of an email from Kenny Bruno, Senior Advisor, New Venture Fund, to Lee Wasserman, Director & Secretary, Rockefeller Family Fund, dated January 5, 2016, obtained from <http://freebeacon.com/wp-content/uploads/2016/04/scan0003.pdf>.

9. Attached as Exhibit H is a copy of an email from Lemuel Srolovic, Assistant Attorney General, Office of the New York Attorney General, to Matthew Pawa, dated

March 30, 2016, obtained from <http://www.washingtonexaminer.com/ny-atty-general-sought-to-keep-lawyers-role-in-climate-change-push-secret/article/2588874>.

10. Attached as Exhibit I is a copy of an email from Michael Meade, Director, Intergovernmental Affairs Bureau, Office of the New York Attorney General, to Scot Kline, Assistant Attorney General, Office of the Vermont Attorney General, dated March 22, 2016, obtained from <http://eelegal.org/wp-content/uploads/2016/04/Gore-is-adding-star-power-and-words-to-avoid.pdf>.

11. Attached as Exhibit J is a copy of an email from Scot Kline, Assistant Attorney General, Office of the Vermont Attorney General, to Lemuel Srolovic, Assistant Attorney General, Office of the New York Attorney General, dated March 28, 2016, obtained from <http://eelegal.org/wp-content/uploads/2016/04/Common-Interest-Agreement-and-discussion.pdf>.

12. Attached as Exhibit K is a copy of an email from Lemuel Srolovic, Assistant Attorney General, Office of the New York Attorney General, to Scot Kline, Assistant Attorney General, Office of the Vermont Attorney General, dated March 24, 2016, obtained from <http://eelegal.org/wp-content/uploads/2016/04/VT-NY-OAGs-fine-w-Sharon-Eubanks-joining-Pawa-for-AGs-briefing.pdf>.

13. Attached as Exhibit L is a copy of an email from Peter Washburn, Policy Advisor, Environmental Protection Bureau, Office of the New York Attorney General, to Lemuel Srolovic, Assistant Attorney General, Office of the New York Attorney General, dated March 25, 2016, obtained from <http://eelegal.org/wp-content/uploads/2016/04/Questionnaire-responses.pdf>.

14. Attached as Exhibit M is a copy of an email from Gregory Schultz, Special Assistant Attorney General, Environmental Unit, Rhode Island Department of Attorney General, to John Oleske, Senior Enforcement Counsel, Office of the New York Attorney General, dated April 15, 2016, which was produced pursuant to a request by Energy & Environment Legal Institute under the Rhode Island Access to Public Records Act.

15. Attached as Exhibit N is an excerpted copy of an email from Peter Frumhoff, Director of Science & Policy, Union of Concerned Scientists, to Edward W. Maibach, Professor, Director of Center for Climate Change Communication, George Mason University, dated July 31, 2015, obtained from <http://freebeacon.com/wp-content/uploads/2016/05/GMU-emails.pdf>.

16. Attached as Exhibit O is a copy of the exemption log produced by the New York Attorney General's Office on January 19, 2017, pursuant to New York State Freedom of Information Law request #160286, in *Free Market Environmental Law Clinic v. Attorney Gen. of N.Y.*, No. 101759_2016 (N.Y. Sup. Ct.), obtained from https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=3s1_PLUS_ag7V3BP6D3XR8qklcA==.

17. Attached as Exhibit P is an excerpt of the exemption log produced by the New York Attorney General's Office on December 22, 2016, pursuant to New York State Freedom of Information Law request #160197, in *E&E Legal Inst. v. Attorney Gen. of N.Y.*, No. 101678_2016 (N.Y. Sup. Ct.), obtained from https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=/4gV1PMC_PLUS_ri7oT5KbMKdnw==.

18. Attached as Exhibit Q are copies of traveler vouchers submitted by the Office of the Massachusetts Attorney General, which were produced pursuant to a request by the Competitive Enterprise Institute under the Massachusetts Public Records Law.

19. Attached as Exhibit R are copies of “Tweets” posted by Maura Healey to her Twitter account on April 29, 2017, obtained from Twitter.com.

20. Attached as Exhibit S is a copy of the Union of Concerned Scientists’s profile of Peter Frumhoff, obtained from <http://www.ucsusa.org/about/staff/staff/peter-frumhoff.html#.WI-OaVMrLcs>.

21. Attached as Exhibit T is a copy of the Pawa Law Group’s description of its practice areas, obtained from <http://www.pawalaw.com/practice-areas>.

22. Attached as Exhibit U is an excerpted copy of a report published by the Union of Concerned Scientists in January 2007, obtained from http://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/exxon_report.pdf.

23. Attached as Exhibit V is a copy of a report published by the Union of Concerned Scientists and the Climate Accountability Institute in October 2012, obtained from <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>.

24. Attached as Exhibit W is a copy of a job listing by Fahr LLC, an organization owned by Tom Steyer, obtained from https://groups.google.com/forum/#!msg/jobsthatareleft/ThcHSai2uhA/IvLcWMg_KQAJ.

25. Attached as Exhibit X is a copy of an article published by *CBS News* on December 2, 2016, obtained from <http://www.cbsnews.com/news/rockefeller-family-feud-with-exxon-mobil-fossil-fuels-global-warming-climate-change/>.

26. Attached as Exhibit Y is a copy of an article by Ken Silverstein, published by the *Observer* on January 6, 2017, obtained from <http://observer.com/2017/01/exxonmobil-rockefeller-foundation-deception/>.

27. Attached as Exhibit Z is a copy of an article by David Kaiser and Lee Wasserman, published in *The New York Review of Books* on December 22, 2016, obtained from <http://www.nybooks.com/articles/2016/12/22/rockefeller-family-fund-takes-on-exxon-mobil/?printpage=true>.

28. Attached as Exhibit AA is a copy of an article by Isabel Vincent, published in the *New York Post* on September 11, 2016, obtained from <http://nypost.com/2016/09/11/schneiderman-tried-to-contact-eco-tycoon-amid-exxon-probe/>.

29. Attached as Exhibit BB is a copy of the transcript from the Public Broadcasting Service program *NewsHour*'s interview of Attorney General Eric Schneiderman, on November 10, 2015, obtained from <http://www.pbs.org/newshour/bb/exxon-mobil-mislead-public-climate-change-research>.

30. Attached as Exhibit CC is a copy of an article published in *Oil Daily*, dated November 13, 2015.

31. Attached as Exhibit DD is an excerpted copy of the transcript of oral argument that took place on March 28, 2017, before the Vermont Superior Court in *Energy & Environment Legal Institute v. Attorney Gen. of Vt.*, No. 558-9-16 (Vt. Sup. Ct.).

32. Attached as Exhibit EE is a copy of an order to show cause, filed by the New York Attorney General on October 14, 2016, in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (N.Y. Sup. Ct.).

33. Attached as Exhibit FF is an excerpted copy of the transcript of oral argument that took place on October 24, 2016, before New York Supreme Court Justice Barry R. Ostrager in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (N.Y. Sup. Ct.).

34. Attached as Exhibit GG is a copy of a timeline presented by ExxonMobil during a court conference that took place on October 24, 2016, before New York Supreme Court Justice Barry R. Ostrager, in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (N.Y. Sup. Ct.).

35. Attached as Exhibit HH is a copy of a demonstrative presented by ExxonMobil during a court conference that took place on October 24, 2016, before New York Supreme Court Justice Barry R. Ostrager in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (N.Y. Sup. Ct.).

36. Attached as Exhibit II is a copy of an order entered on October 28, 2016, by the New York Supreme Court in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (N.Y. Sup. Ct.).

37. Attached as Exhibit JJ is a copy of an order to show cause, filed by the New York Attorney General on November 14, 2016, in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (N.Y. Sup. Ct.).

38. Attached as Exhibit KK is an excerpted copy of a transcript of oral argument that took place on November 21, 2016, before New York Supreme Court Justice Barry R.

Ostrager in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (N.Y. Sup. Ct.).

39. Attached as Exhibit LL is a copy of a corrected order entered on November 30, 2016, by the New York Supreme Court in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (N.Y. Sup. Ct.).

40. Attached as Exhibit MM is a copy of an order entered by the New York Supreme Court, Appellate Division, First Department on May 23, 2017, in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (1st Dep't).

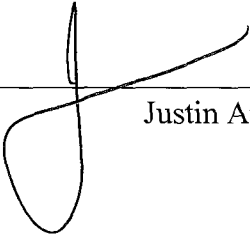
41. Attached as Exhibit NN is a copy of the emergency motion filed by ExxonMobil on June 16, 2016, in *In re Civil Investigative Demand No. 2016-EPD-36, Issued by the Office of the Attorney Gen.*, No. 2016-1888-F (Mass. Sup. Ct.).

42. Attached as Exhibit OO is a copy of the order entered by the Massachusetts Superior Court on January 12, 2017, in *In re Civil Investigative Demand No. 2016-EPD-36, Issued by the Office of the Attorney Gen.*, No. 2016-1888-F (Mass. Sup. Ct.).

43. Attached as Exhibit PP is a copy of the Notice of Motion to Reargue or, in the Alternative, for Leave to Appeal, filed on May 26, 2017, in *People by Schneiderman v. PricewaterhouseCoopers LLP*, No. 451962/16 (1st Dep't).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 15, 2017.
New York, New York



Justin Anderson

Exhibit A

AGs United For Clean Power

March 29, 2016: 11:35 am – 12:32 pm

Not for Quotation Without Confirmation of Accuracy

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.

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

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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 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

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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.

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

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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 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.

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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, 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 . . .

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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 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.

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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 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

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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 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.

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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 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

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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 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

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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, 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.

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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.

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

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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.

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

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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 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

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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?

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

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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.

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

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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 pre-judging 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 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

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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.

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?

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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 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.

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

Exhibit B



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

**SUBPOENA FOR PRODUCTION OF DOCUMENTS
THE PEOPLE OF THE STATE OF NEW YORK**

**TO: S. Jack Balagia, Jr.
Vice-President and General Counsel
Exxon Mobil Corporation
Corporate Headquarters
5959 Las Colinas Boulevard
Irving, Texas 75039-2298**

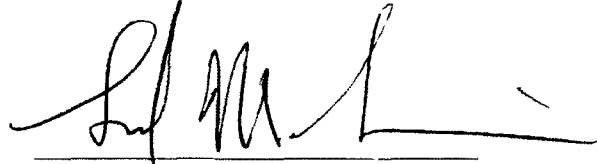
WE HEREBY COMMAND YOU, pursuant to New York State Executive Law Section 63(12) and Section 2302(a) of the New York State Civil Practice Law and Rules, to deliver and turn over to Eric T. Schneiderman, the Attorney General of the State of New York, or a designated Assistant Attorney General, on the **4th day of December, 2015** by 10:00 a.m., or any agreed upon adjourned date or time, at the at the offices of the New York State Office of the Attorney General, 120 Broadway, 26th Floor, New York, New York 10271, all documents and information requested in the attached Schedule in accordance with the instructions and definitions contained therein in connection with an investigation to determine whether an action or proceeding should be instituted with respect to repeated fraud or illegality as set forth in the New York State Executive Law Article 5, Section 63(12), violations of the deceptive acts and practices law as set forth in New York State General Business Law Article 22-A, potential fraudulent practices in respect to stocks, bonds and other securities as set forth in New York State General Business Law Article 23-A, and any related violations, or any matter which the Attorney General deems pertinent thereto.

PLEASE TAKE NOTICE that under the provisions of Article 23 of the New York State Civil Practice Laws and Rules, you are bound by this subpoena to produce the documents requested on the date specified and any adjourned date. Pursuant to New York State Civil Practice Laws and Rules Section 2308(b)(1), your failure to do so subjects you to, in addition to any other lawful punishment, costs, penalties and damages sustained by the State of New York State as a result of your failure to so comply.

PLEASE TAKE NOTICE that the Attorney General deems the information and documents requested by this Subpoena to be relevant and material to an investigation and inquiry undertaken in the public interest.

WITNESS, Honorable Eric T. Schneiderman, Attorney General of the State of New York, this 4th day of November, 2015.

By:

A handwritten signature in black ink, appearing to read 'L M Srolovic', written over a horizontal line.

Lemuel M. Srolovic
Kevin G. W. Olson
Mandy DeRoche

Office of the Attorney General
Environmental Protection Bureau

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(212) 416-6007 (facsimile)

SCHEDULE 1

A. General Definitions and Rules of Construction

1. “All” means each and every.
2. “Any” means any and all.
3. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Subpoena all information or Documents that might otherwise be construed to be outside of its scope.
4. “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.
5. “Concerning” means, directly or indirectly, in whole or in part, relating to, referring to, describing, evidencing or constituting.
6. “Custodian” means any Person or Entity that, as of the date of this Subpoena, maintained, possessed, or otherwise kept or controlled such Document.
7. “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, Blackberry 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 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.

8. "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.
9. "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 subpoena 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.
10. "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.
11. "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).
12. "Person" means any natural person, or any Entity.
13. "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.
14. "Subpoena" means this subpoena and any schedules, appendices, or attachments thereto.
15. 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.
16. The references to Communications, Custodians, Documents, Persons, and Entities in this Subpoena encompass all such relevant ones worldwide.

B. Particular Definitions

1. "You" or "Your" means ExxonMobil Corporation, ExxonMobil Oil Corporation, 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. "Climate Change" means global warming, Climate Change, the greenhouse effect, a change in global average temperatures, sea level rise, increased concentrations of carbon dioxide and other Greenhouse Gases and/or any other potential effect on the earth's physical and biological systems as a result of anthropogenic emissions of carbon dioxide

and other Greenhouse Gases, in any way the concept is described by or to You.

3. “Fossil Fuel” or “Fossil Fuels” means all energy sources formed from fossilized remains of dead organisms, including oil, gas, bitumen and natural gas, but excluding coal. For purposes of this subpoena, the definition includes also fossil fuels blended with biofuels, such as corn ethanol blends of gasoline. The definition excludes renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and wood.
4. “Greenhouse Gases” or “GHGs” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.
5. “Renewable Energy” means renewable sources of energy production, such as hydroelectric, geothermal, solar, tidal, wind, and wood.

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 Subpoena 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 Subpoena, 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 Subpoena 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 Subpoena 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 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 Subpoena Requests. If there are no Documents responsive to any particular Subpoena request, you shall so state in writing under oath in the Affidavit of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.
5. Format of Production. You shall produce Documents, Communications, and information responsive to this Subpoena in electronic format that meets the specifications set out in Attachments 1 and 2.
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 Subpoena, 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 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 Subpoena on ground 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 Subpoena. 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 Subpoena, 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 Subpoena 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 Subpoena, and you shall submit such executed Affidavit(s) of Compliance with Your response to this Subpoena.
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 Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena 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.
14. Continuing Obligation to Produce. This Subpoena 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 Subpoena.
15. No Oral Modifications. No agreement purporting to modify, limit or otherwise vary this Subpoena 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. The term "Time Period 1" as used in this Subpoena shall be from January 1, 2005 through the date of the production. The term "Time Period 2" shall be from January 1, 1977 through the date of the production.

D. Documents to be Produced

1. All Documents and Communications, within Time Period 2, Concerning any research, analysis, assessment, evaluation, modeling or other consideration performed by You, on Your behalf, or with funding provided by You Concerning the causes of Climate Change.
2. All Documents and Communications, within Time Period 2, Concerning any research, analysis, assessment, evaluation, modeling (including the competency or accuracy of such models) or other consideration performed by You, on Your behalf, or with funding provided by You, Concerning the impacts of Climate Change, including but not limited to on air, water and land temperatures, sea-level rise, ocean acidification, extreme weather events, arctic ice, permafrost and shipping channels, precipitation, flooding, water supplies, desertification, agricultural and food supplies, built environments, migration, and security concerns, including the timing of such impacts.
3. All Documents and Communications, within Time Period 2, Concerning the integration of Climate Change-related issues (including but not limited to (a) future demand for Fossil Fuels, (b) future emissions of Greenhouse Gases from Fossil Fuel extraction, production and use, (c) future demand for Renewable Energy, (d) future emissions of Greenhouse Gases from Renewable Energy extraction, production and use, (e) Greenhouse Gas emissions reduction goals, (f) the physical risks and opportunities of Climate Change, and (g) impact on Fossil Fuel reserves into Your business decisions, including but not limited to financial projections and analyses, operations projections and analyses, and strategic planning performed by You, on Your behalf, or with funding provided by You.
4. All Documents and Communications, within Time Period 1, Concerning whether and how You disclose the impacts of Climate Change (including but not limited to regulatory risks and opportunities, physical risks and opportunities, Greenhouse Gas emissions and management, indirect risks and opportunities, International Energy Agency scenarios for energy consumption, and other carbon scenarios) in Your filings with the U.S. Securities and Exchange Commission and in Your public-facing and investor-facing reports including but not limited to Your *Outlook For Energy* reports, Your *Energy Trends, Greenhouse Gas Emissions, and Alternative Energy* reports, and Your *Energy and Carbon - Managing the Risks* Report.
5. All Documents and Communications, within Time Period 1, presented to Your board of directors Concerning Climate Change
6. All Documents and Communications Concerning Climate Change, within Time Period 1, prepared by or for trade associations or industry groups, or exchanged between You and trade associations or industry groups, or sent from or to trade associations or industry groups, including but not limited to the: (i) American Petroleum Institute; (ii) Petroleum Industry Environmental Conservation Association; (PIECA); (iii) US Oil & Gas Association; (iv) Petroleum Marketers Association of America; and (v) Empire State Petroleum Association.

7. All Documents and Communications, within Time Period 1, related to Your support or funding for organizations relating to communications or research of Climate Change, including decisions to cease funding or supporting such organizations.
8. All Documents and Communications, within Time Period 1, created, recommended, sent, and/or distributed by You, on Your behalf, or with funding provided by You, Concerning marketing, advertising, and/or communication about Climate Change including but not limited to (a) policies, procedures, practices, memoranda and similar instructive or informational materials; (b) marketing or communication strategies or plans, (c) flyers, promotional materials, and informational materials; (d) scripts, Frequently Asked Questions, Q&As, and/or other guidance documents; (e) slide presentations, power points or videos; (f) written or printed notes from or video or audio recordings of speeches, seminars or conferences; (g) all Communications with and presentations to investors; and/or (h) press releases.
9. All Documents and Communications, within Time Period 1, that are exemplars of all advertisements, flyers, promotional materials, and informational materials of any type, (including but not limited to web-postings, blog-postings, social media-postings, print advertisements, radio and television advertisements, brochures, posters, billboards, flyers and disclosures) used, published, or distributed by You, on Your behalf, or with funding provided by You, Concerning Climate Change including but not limited to (a) a copy of each print advertisement placed in New York State; (b) a DVD format copy of each television advertisement that ran in New York State; (c) an audio recording of each radio advertisement that ran in New York State and the audio portion of each internet advertisement; and (d) a printout, screenshot or copy of each advertisement, information, or communication provided via the internet, email, Facebook, Twitter, You Tube, or other electronic communications system.
10. All Documents and Communications, within Time Period 1, substantiating or refuting the claims made in the materials identified in response to Demand Nos. 4, 8 and 9.
11. All Documents and Communications sufficient to identify any New York State consumer who has complained to You, or to any state, county or municipal consumer protection agency located in New York State, Concerning Your actions with respect to Climate Change; and for each New York State consumer identified: (i) each complaint or request made by or on behalf of a consumer, (ii) all correspondence between the consumer, his or her representative, and You, (iii) recordings and notes of all conversations between the consumer and You, and (iv) the resolution of each complaint, if any.

APPENDIX 1

Electronic Document Production Specifications

Unless otherwise specified and agreed to by the Office of Attorney General, all responsive documents must be produced in LexisNexis® Concordance® format in accordance with the following instructions. Any questions regarding electronic document production should be directed to the Assistant Attorney General whose telephone number appears on the subpoena.

1. Concordance Production Components. A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 7.
 - A. ***Metadata Load File.*** A delimited text file that lists in columnar format the required metadata for each produced document.
 - B. ***Extracted or OCR Text Files.*** Document-level extracted text for each produced document or document-level optical character recognition (“OCR”) text where extracted text is not available.
 - C. ***Single-Page Image Files.*** Individual petrified page images of the produced documents in tagged image format (“TIF”), with page-level Bates number endorsements.
 - D. ***Opticon Load File.*** A delimited text file that lists the single-page TIF files for each produced document and defines (i) the relative location of the TIF files on the production media and (ii) each document break.
 - E. ***Native Files.*** Native format versions of non-printable or non-print friendly produced documents.
2. Production Folder Structure. The production must be organized according to the following standard folder structure:
 - data\ (contains production load files)
 - images\ (contains single-page TIF files, with subfolder organization)
 \0001, \0002, \0003...
 - native files\ (contains native files, with subfolder organization)
 \0001, \0002, \0003...
 - text\ (contains text files, with subfolder organization)
 \0001, \0002, \0003...
3. De-Duplication. You must perform global de-duplication of stand-alone documents and email families against any prior productions pursuant to this or previously related subpoenas.
4. Paper or Scanned Documents. Documents that exist only in paper format must be scanned to single-page TIF files and OCR’d. The resulting electronic files should be

pursued in Concordance format pursuant to these instructions. You must contact the Assistant Attorney General whose telephone number appears on the subpoena to discuss (i) any documents that cannot be scanned, and (ii) how information for scanned documents should be represented in the metadata load file.

5. Structured Data. Before producing structured data, including but not limited to relational databases, transactional data, and xml pages, you must first speak to the Assistant Attorney General whose telephone number appears on the subpoena. Spreadsheets are not considered structured data.
6. Media and Encryption. All documents must be produced on CD, DVD, or hard-drive media. All production media must be encrypted with a strong password, which must be delivered independently from the production media.
7. Production File Requirements.
 - A. ***Metadata Load File***
 - Required file format:
 - ASCII or UTF-8
 - Windows formatted CR + LF end of line characters, including full CR + LF on last record in file.
 - .dat file extension
 - Field delimiter: (ASCII decimal character 20)
 - Text Qualifier: þ (ASCII decimal character 254). Date and pure numeric value fields do not require qualifiers.
 - Multiple value field delimiter: ; (ASCII decimal character 59)
 - The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 2.
 - Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
 - ***Note:*** All documents must have page-level Bates numbering (except documents produced only in native format, which must be assigned a document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each document. For document families, including but not limited to emails and attachments, compound documents, and uncompressed file containers, the metadata load file must also list the Bates range of the entire document family (ATTACHRANGE), beginning with the first Bates number (BEGDOC) of the “parent” document and ending with the last Bates number (ENDDOC) assigned to the last “child” in the document family.
 - Date and Time metadata must be provided in separate columns.
 - Accepted date formats:
 - mm/dd/yyyy
 - yyyy/mm/dd
 - yyyymmdd
 - Accepted time formats:
 - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)

- hh:mm:ss:mmm

B. *Extracted or OCR Text Files*

- You must produce individual document-level text files containing the full extracted text for each produced document.
- When extracted text is not available (for instance, for image-only documents) you must provide individual document-level text files containing the document's full OCR text.
- The filename for each text file must match the document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 500 to 1000 files.

C. *Single-Page Image Files (Petrified Page Images)*

- Where possible, all produced documents must be converted into single-page tagged image format ("TIF") files. See Section 7.E below for instructions on producing native versions of documents you are unable to convert.
- Image documents that exist only in non-TIF formats must be converted into TIF files. The original image format must be produced as a native file as described in Section 7.E below.
- For documents produced only in native format, you must provide a TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or document-level Bates number for documents produced only in native format).
- Required image file format:
 - CCITT Group 4 compression
 - 2-Bit black and white
 - 300 dpi
 - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 500 to 1000 files. Where possible documents should not span multiple subfolders.

D. *Opticon Load File*

- Required file format:
 - ASCII
 - Windows formatted CR + LF end of line characters
 - Field delimiter: , (ASCII decimal character 44)
 - No Text Qualifier
 - .opt file extension
- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
 - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
 - VOLUME – this value is optional and may be left blank.

- RELATIVE PATH – the filepath to each single-page image file on the production media.
- DOCUMENT BREAK – defines the first page of a document. The only possible values for this field are “Y” or blank.
- FOLDER BREAK – defines the first page of a folder. The only possible values for this field are “Y” or blank.
- BOX BREAK – defines the first page of a box. The only possible values for this field are “Y” or blank.
- PAGE COUNT – this value is optional and may be left blank.
- **Example:**
 ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
 ABC00002,,IMAGES\0001\ABC00002.tif,,,,
 ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
 ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

E. ***Native Files***

- Non-printable or non-print friendly documents (including but not limited to spreadsheets, audio files, video files and documents for which color has significance to document fidelity) must be produced in their native format.
- The filename of each native file must match the document’s beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For documents produced only in native format, you must assign a single document-level Bates number and provide an image file placeholder that states “Document produced only in native format.”
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form. In cases where this cannot be achieved the document’s password must be listed in the metadata load file. The password should be placed in the COMMENTS field with the format Password: <PASSWORD>.
- You may be required to supply a software license for proprietary documents produced only in native format.

APPENDIX 2**Required Fields for Metadata Load File**

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE¹
DOCID	Unique document reference (can be used for de-duplication).	ABC0001 or ###.#####.###
BEGDOC	Bates number assigned to the first page of the document.	ABC0001
ENDDOC	Bates number assigned to the last page of the document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent document in a document family (<i>i.e.</i> , should be the same as BEGDOC of the parent document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child document in a family (<i>i.e.</i> , should be the same as ENDDOC of the last child document).	ABC0008
ATTACHRANGE	Bates range of entire document family.	ABC0001 - ABC0008
PARENTDOC	BEGDOC of parent document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004...
COMMENTS	Additional document comments, such as passwords for encrypted files.	
NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.txt
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number...
CUSTODIAN	Owner of the document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname <FLastname@domain>

¹ Examples represent possible values and not required format unless the field format is specified in Attachment 1.

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE ¹
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...
SUBJECT	Subject line of the email.	
DATERCVD	Date that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd
TIMERCVD	Time that an email was received.	hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd
TIMESENT	Time that an email was sent.	hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd
CALBEGTIME	Time that a meeting begins.	hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd
CALENDTIME	Time that a meeting ends.	hh:mm:ss AM/PM or hh:mm:ss
CALENDARDUR	Duration of a meeting in hours.	0.75, 1.5...
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.docx; AttachmentFileName.pdf;...
NUMATTACH	Number of attachments.	1, 2, 3, 4....
RECORDTYPE	General type of record.	IMAGE; LOOSE E-MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E-MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced document.	Drive:\Folder\...\...\
FILENAME	Original filename of the produced document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE ¹
DOCTYPE	Name of the program that created the produced document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect...
TITLE	Document title (if entered).	
AUTHOR	Name of the document author.	Firstname Lastname; Lastname, First Name; FLastname
REVISION	Number of revisions to a document.	18
DATECREATED	Date that a document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMECREATED	Time that a document was created.	hh:mm:ss AM/PM or hh:mm:ss
DATEMOD	Date that a document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyymmdd
TIMEMOD	Time that a document was last modified.	hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	128, 512, 1024...
PGCOUNT	Number of pages per document.	1, 2, 10, 100...
IMPORTANCE	Email priority level if set.	Low, Normal, High
TIFFSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	Y, C, E, W, N, P
DUPSTATUS	Generated by the Law Pre-discovery production tool (leave blank if inapplicable).	P
MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	BC1C5CA6C1945179FEE144F25F51087B
SHA1HASH	SHA1 hash value	B68F4F57223CA7DA3584BAD7ECF111B8044F8631
MSGINDEX	Email message ID	

AFFIDAVIT OF COMPLIANCE WITH SUBPOENA

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 the Subpoena of the Attorney General of the State of New York, dated November 4, 2015 (the "Subpoena") 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 Subpoena, in full accordance with the instructions and definitions set forth in the Subpoena;
4. The enclosed production of documents and responses to the Subpoena are complete and correct to the best of my knowledge and belief;
5. No Documents or information responsive to the Subpoena 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 Subpoena;
7. The Documents contained in these productions and responses to the Subpoena 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 Subpoena, all persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena 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 Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

Signature of Affiant

Date

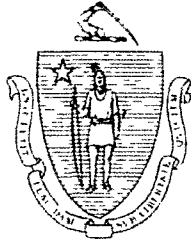
Printed Name of Affiant

Subscribed and sworn to before me
this 4th day of December 2015.

Notary Public

My commission expires:

Exhibit C



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

TEL (617) 727-2200
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.

Demand No.: 2016-EPD-36
Date Issued: April 19, 2016
Issued To: Exxon Mobil Corporation

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

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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.

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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, You Tube, 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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Issued To: Exxon Mobil Corporation

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*)

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

- 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: Do not append the Confidentiality Designation to the native file name
RemovedFrom	Last name, first name with semi colon as separator Lastname, firstname; nextlastname, nextfirstname etc.

Office of the Attorney General - Data Delivery Specification

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:

```
bBeg Bates bEnd Bates bBegin Attach bEnd Attach bFamilyID bVolume bMD5Hash bCustodian_Sources bFROM bTO bCC bBCC bSubject bSent Date bSent Time bFile Extension bD
AG000004507 bAG000004510 bAG000004507 bAG000004512 bAG000004507 bVOL001 bDoe, John bjohn.doe@someplace.com bdoe@somewhereelse.com btheboss@someplace.com b
AG000004511 bAG000004512 bAG000004507 bAG000004512 bAG000004507 bVOL001 bDoe, John bjohn.doe@someplace.com bdoe@somewhereelse.com btheboss@someplace.com b
```

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.

```
AG000004507,VOL001,IMAGES\00\00\AG000004507.TIF,Y,,,4
AG000004508,VOL001,IMAGES\00\00\AG000004508.TIF,,,,
AG000004509,VOL001,IMAGES\00\00\AG000004509.TIF,,,,
AG000004510,VOL001,IMAGES\00\00\AG000004510.TIF,,,,
AG000004511,VOL001,IMAGES\01\00\AG000004511.TIF,Y,,,2
AG000004512,VOL001,IMAGES\01\00\AG000004512.TIF,,,,
```

Technical questions regarding this specification should be addressed to:

Diane E. Barry
AAG / eDiscovery Attorney
Office of the Attorney General
One Ashburton Place
Boston MA 02108
Diane.E.Barry@state.ma.us
(617) 963-2120

Exhibit D



EXXONSECRETS.ORG

Documenting
Exxon-Mobil's
funding of climate
change skeptics

List Organizations

Launch Interactive
Map

FAQ

Search Exxon
Secrets using
Google Search

A
GREENPEACE
project

EXXONMOBIL CLIMATE DENIAL FUNDING 1998-2014

TOTAL \$30,925,235

LAUNCH OUR **INTERACTIVE MAP** TO EXPLORE THE CONNECTIONS

Dozens of organizations are funded by ExxonMobil and its foundations that work to spread climate denial
Click the links for further details about each organization's funding and activities

Search

Organization

AEI American Enterprise Institute	\$3,770,000
CEI Competitive Enterprise Institute	\$2,005,000
ALEC American Legislative Exchange Council	\$1,730,200
American Council for Capital Formation Center for Policy Research	\$1,729,523
Frontiers of Freedom	\$1,272,000
Annapolis Center	\$1,153,500
Atlas Economic Research Foundation	\$1,082,500
National Black Chamber of Commerce	\$1,025,000
US Chamber of Commerce Foundation	\$1,000,000
George C Marshall Institute	\$865,000
Heritage Foundation	\$830,000
Manhattan Institute	\$800,000
National Taxpayers Union Foundation	\$700,000
Heartland Institute	\$676,500
Pacific Research Institute for Public Policy	\$665,000
National Center for Policy Analysis	\$645,900
CFACT Committee for a Constructive Tomorrow	\$582,000
Communications Institute	\$515,000
Washington Legal Foundation	\$455,000
Center for American and International Law (formerly Southwestern Legal Foundation)	\$452,150
FREE Foundation for Research on Economics and the Environment	\$450,000
George Mason Univ Law and Economics Center	\$445,000
National Center for Public Policy Research	\$445,000
Smithsonian Astrophysical Observatory	\$417,212

International Policy Network - North America	\$390,000
Citizens for a Sound Economy (FreedomWorks)	\$380,250
Mercatus Center, George Mason University	\$380,000
Acton Institute	\$365,000
Media Research Center (Cybercast News Service formerly Conservative News)	\$362,500
Institute for Energy Research	\$337,000
Congress of Racial Equality	\$325,000
Reason Foundation / Reason Public Policy Institute	\$321,000
Hoover Institution	\$295,000
Pacific Legal Foundation	\$275,000
Capital Research Center (Greenwatch)	\$265,000
Center for Defense of Free Enterprise	\$230,000
Federalist Society	\$225,000
National Association of Neighborhoods	\$225,000
National Legal Center for the Public Interest	\$216,500
Center for a New Europe-USA	\$170,000
American Council on Science and Health	\$165,000
Chemical Education Foundation	\$155,000
PERC Property and Environment Research Center (formerly Political Economy Research Center)	\$155,000
Cato Institute	\$125,000
Federal Focus	\$125,000
Fraser Institute, Canada	\$120,000
Media Institute	\$120,000
American Spectator Foundation	\$115,000
International Republican Institute	\$115,000
Center for the Study of CO2 and Global Change	\$100,000
Environmental Literacy Council	\$100,000
Tech Central Science Foundation	\$95,000
American Conservative Union Foundation	\$90,000
Landmark Legal Foundation	\$90,000
Independent Institute	\$85,000

Free Enterprise Education Institute	\$80,000
Texas Public Policy Foundation	\$80,000
Institute for Study of Earth and Man	\$76,500
Independent Women's Forum	\$75,000
Consumer Alert	\$70,000
Mountain States Legal Foundation	\$60,000
Advancement of Sound Science Center	\$50,000
Free Enterprise Action Institute	\$50,000
Regulatory Checkbook	\$50,000
Lindenwood University, St Charles, Missouri	\$40,000
Institute for Senior Studies	\$30,000
Science and Environmental Policy Project	\$20,000
Lexington Institute	\$10,000
Institute for Policy Innovaton	\$5,000

Organization

Showing 1 to 69 of 69 entries

Exhibit E

CLIMATE CHANGE COALITION COMMON INTEREST AGREEMENT

This Common Interest Agreement (“Agreement”) is entered into by the undersigned Attorneys General of the States, Commonwealths, and Territories (the “Parties”) who are interested in advancing their common legal interests in limiting climate change and ensuring the dissemination of accurate information about climate change. The Parties mutually agree:

1. Common Legal Interests. The Parties share common legal interests with respect to the following topics: (i) potentially taking legal actions to compel or defend federal measures to limit greenhouse gas emissions, (ii) potentially conducting investigations of representations made by companies to investors, consumers and the public regarding fossil fuels, renewable energy and climate change, (iii) potentially conducting investigations of possible illegal conduct to limit or delay the implementation and deployment of renewable energy technology, (iv) potentially taking legal action to obtain compliance with federal and state laws governing the construction and operation of fossil fuel and renewable energy infrastructure, or (v) contemplating undertaking one or more of these legal actions, including litigation (“Matters of Common Interest”).

2. Shared Information. 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 (“Shared Information”). Shared Information shall include (1) information shared in organizing a meeting of the Parties on March 29, 2016, (2) information shared at and after the March 29 meeting, pursuant to an oral common interest agreement into which the Parties entered at the meeting and renewed on April 12, 2016, and (3) information shared after the execution of this Agreement.

3. Legends on Documents. To avoid misunderstandings or inadvertent disclosure, all documents exchanged pursuant to this Agreement should bear the legend “Confidential – Protected by Common Interest Privilege” or words to that effect. However, the inadvertent failure to include such a legend shall not waive any privilege or protection available under this Agreement or otherwise. In addition, any Party may, where appropriate, also label documents exchanged pursuant to this Agreement with other appropriate legends, such as, for example, “Attorney-Client Privileged” or “Attorney Work Product.” Oral communications among the Parties shall be deemed confidential and protected under this Agreement when discussing Matters of Common Interest.

4. Non-Waiver of Privileges. The exchange of Shared Information among Parties—including among Parties’ staff and outside advisors—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”).

5. 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, consumer protection, or securities 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. A Party who provides Shared Information may also impose additional conditions on the disclosure of that Shared Information. 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.

6. Notice of Potential Disclosure. The Parties agree and acknowledge that each Party is subject to applicable freedom of information or public records laws, and nothing in this Agreement is intended to alter or limit the disclosure requirements of such laws. If any Shared Information is demanded under a freedom of information or public records law or is subject to any form of compulsory process in any proceeding ("Request"), the Party receiving the Request shall: (i) immediately notify all other Parties (or their designees) in writing; (ii) cooperate with any Party in the course of responding to the Request; and (iii) refuse to disclose any Shared Information unless required by law.

7. 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.

8. Independently Obtained Information. Provided that no disclosure is made of Shared Information obtained pursuant to this Agreement, nothing in this Agreement shall preclude a Party from (a) pursuing independently any subject matter, including subjects reflected in Shared Information obtained by or subject to this Agreement or (b) using or disclosing any information, documents, investigations, or any other materials independently obtained or developed by such Party.

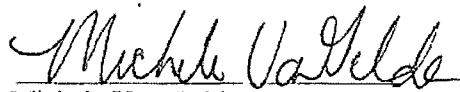
9. Related Litigation. The Parties continue to be bound by this Agreement in any litigation or other proceeding that arises out of the Matters of Common Interest.

10. Parties to the Agreement. This Agreement may be executed in counterparts. All potential Parties must sign for their participation to become effective.

11. Withdrawal. A Party may withdraw from this Agreement upon thirty 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.


12. Modification. This writing is the complete Agreement between the Parties, and any modifications must be approved in writing by all Parties.

Dated: May 18, 2016



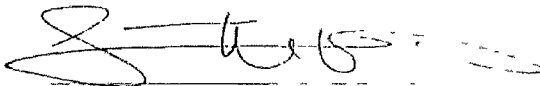
Michele Van Gelderen
Supervising Deputy Attorney General
Consumer Law Section
Office of Attorney General Kamala D. Harris
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel. (213) 897-2000

Dated 11/1/16, 2016



Matthew I. Levine
Assistant Attorney General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06106

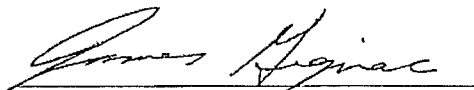
Dated: May 2, 2016



Elizabeth Wilkins
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elizabeth.wilkins@dc.gov

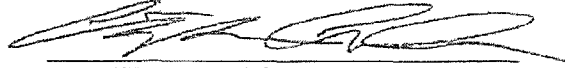
*Admitted to practice only in Maryland. Practicing in the
District of Columbia under the direct supervision of Natalie O.
Ludaway, a member of the D.C. Bar pursuant to D.C. Court of
Appeals Rule 49(c).

Dated: May 2, 2016



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jgignac@atg.state.il.us

Dated: April 29, 2016

A handwritten signature in black ink, appearing to read 'C. Courchesne', is positioned above a horizontal line.

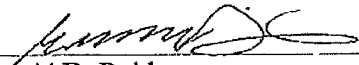
CHRISTOPHE COURCHESNE
Assistant Attorney General
Chief, Environmental Protection Division
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christophe.courchesne@state.ma.us

Dated: May 10, 2016



Joshua N. Auerbach
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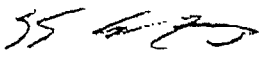
Dated: May 5, 2016


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Signature: Karen D. Olson Date: 5/16/16

Karen D. Olson
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St. Paul, MN 55101
(651) 757-1370
karen.olson@ag.state.mn.us

Dated: April 29, 2016

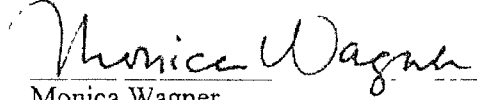

JOSEPH A. FOSTER, ATTORNEY GENERAL
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33 Capitol Street
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allen.brooks@doj.nh.gov

Dated: May 6, 2016

Tania Maestas

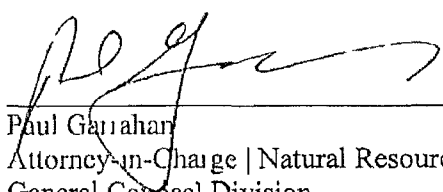
Tania Maestas
Deputy Attorney General Civil Affairs
Office of the New Mexico Attorney General
PO Drawer 1508
Santa Fe, NM 87504

Dated: *May 2* . 2016

A handwritten signature in cursive script that reads "Monica Wagner". The signature is written in dark ink and is positioned above the printed name.

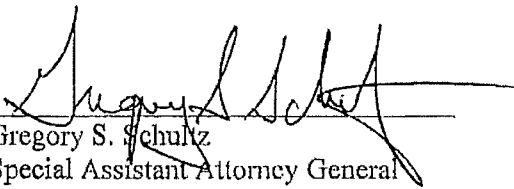
Monica Wagner
Deputy Chief
Environmental Protection Bureau
Office of the Attorney General of New York
120 Broadway, 26th floor
New York, NY 10271
212-416-6351

Dated April 29, 2016

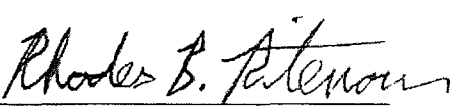


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503.929.7553 (Mobile)


Dated: April 28, 2016


Gregory S. Schultz
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street Providence, RI 02903
Tel.: (401) 274-4400, Ext. 2400

Dated: May 9, 2016

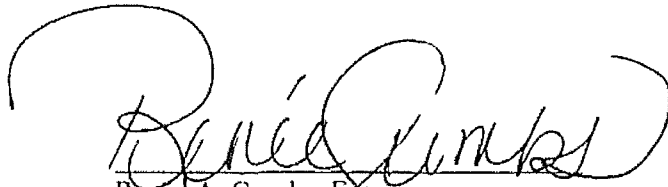
 5/9/16

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E-mail: RRitenour@oag.state.va.us

 5/9/16

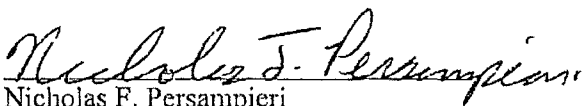
John W. Daniel
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Commerce, Environmental, and Technology
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Dated: May ^{4th}10, 2016

A large, stylized handwritten signature in black ink, which appears to read "Renee Gumbs". The signature is written over a horizontal line.


Renee A. Gumbs, Esq.
Deputy Attorney General
Department of Justice
34-38 Kronprindsens Gade
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(340) 776-3494 (Fax)
Renee.gumbs@doj.vi.gov

Dated: April 29, 2016



Nicholas F. Persampieri
Assistant Attorney General
Office of the Attorney General
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(802)-828-6902
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Dated: MAY 1, 2016



Laura J. Watson
Senior Assistant Attorney General
Washington State Office of the Attorney General
(360)-586-6743
Laura.watson@atg.wa.gov

Exhibit F

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)

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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'd scussion and have a break closer to 2:45 – 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; Damien 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. I 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
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Exhibit G

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 Upton <blipton@workingfamilies.org>, Dan Cantor <dcantor@workingfamilies.org>, John Passacantando <jpassacantando@gmail.com>, Kert Davies <kertmail@gmail.com>, won@ef.org, SEubanks@bordeslaw.com, jkrarup@vkrf.org, mp@pawalaw.com, brampbell@clif.org, Stephen Kretzmann <steve@priceofoil.org>, Carroll Muffett <cmuffett@cisl.org>, Naomi Ages <naomilages@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 H

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 I

Kline, Scot

From: Michael Meade <Michael.Meade@ag.ny.gov>
Sent: Tuesday, March 22, 2016 4:51 PM
To: Kline, Scot; Morgan, Wendy
Cc: Lemuel Srolovic; Peter Washburn; Eric Soufer; Damien LaVera; Daniel Lavoie; Natalia Salgado; Brian Mahanna
Subject: RE: Climate Change Coalition

A couple of updates to report back to the group. First, after a follow up conversation with our AG, Al Gore will now be joining us for part of the day on 3/29. This will certainly add a little star power to the announcement!

We will also be joined by MA AG Healey, which will bring our total number of AG's to a grand total of 7. I'm waiting to hear back from New Mexico, which is our possible 8th Attorney General. On the staff side, a total of 16 states (including DC and USVI) will be joining us for the meetings.

From: Kline, Scot [mailto:scot.kline@vermont.gov]
Sent: Tuesday, March 22, 2016 11:41 AM
To: Michael Meade; Morgan, Wendy
Cc: Lemuel Srolovic; Peter Washburn; Eric Soufer; Damien LaVera; Daniel Lavoie; Natalia Salgado; Brian Mahanna
Subject: RE: Climate Change Coalition

Mike:

Looks good. One suggestion. We are thinking that use of the term "progressive" in the pledge might alienate some. How about "affirmative," "aggressive," "forceful" or something similar?

Thanks.

Scot

From: Michael Meade [mailto:Michael.Meade@ag.ny.gov]
Sent: Monday, March 21, 2016 2:59 PM
To: Kline, Scot <scot.kline@vermont.gov>; Morgan, Wendy <wendy.morgan@vermont.gov>
Cc: Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>; Peter Washburn <Peter.Washburn@ag.ny.gov>; Eric Soufer <Eric.Soufer@ag.ny.gov>; Damien LaVera <Damien.LaVera@ag.ny.gov>; Daniel Lavoie <Daniel.Lavoie@ag.ny.gov>; Natalia Salgado <Natalia.Salgado@ag.ny.gov>; Brian Mahanna <Brian.Mahanna@ag.ny.gov>
Subject: Climate Change Coalition

Wendy and Scott,

Below are the broad goals and principles that we'd like to lay out as part of the coalition announcement next week. The filing of the brief and the defense of the EPA regs will highlight these principles. Let us know if you have any thoughts or edits to this. If it looks okay to you, I'll forward this around to the other offices when we have a draft release ready to go out. I'll also be asking the offices to contribute a quote from their respective AG's for the press release.

Let me know if you have any questions or comments.

Mike

Climate Coalition of Attorneys General

Principles:

- **Climate Change is Real**

The evidence that global temperatures have been rising over the last century-plus is unequivocal.

- **Climate Change Pollution Is The Primary Driver**

Natural forces do not explain the observed global warming trend.

- **People Are Being Harmed**

Climate change represents a clear and present danger to public health, safety, our environment and our economy — now and in the future.

- **Immediate Action Is Necessary**

Climate change — and its impacts — is worsening. We must act now to reduce emissions of climate change pollution to minimize its harm to people now and in the future.

Pledge:

We pledge to work together to fully enforce the State and federal laws that require progressive action on climate change and that prohibit false and misleading statements to the public, consumers and investors regarding climate change.

- **Support Progressive Federal Action; Act Against Federal Inaction**

Support the federal government when it takes progressive action to address climate change, and press the federal government when it fails to take necessary action.

- **Support State and Regional Action**

Provide legal support to progressive state and regional actions that address climate change, supporting states in their traditional role as laboratories of innovation.

- **Defend Progress**

Serve as a backstop against efforts to impede or roll-back progress on addressing climate change.

- **Support Transparency And Disclosure**

Ensure that legally-required disclosures of the impacts of climate change are fully and fairly communicated to the public.

- **Engage The Public**

Raise public awareness regarding the impacts to public health, safety, our environment and our economy caused by climate change.

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Exhibit J

Kline, Scot

From: Kline, Scot
Sent: Monday, March 28, 2016 9:08 AM
To: 'Lemuel Srolovic'
Cc: Brian Mahanna; Michael Meade; Morgan, Wendy
Subject: RF: Climate Change Conference Common Interest Agreement
Attachments: Climate Change Conf. Common Interest Agreement.v1.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)
917-621-6174 (m)
lemuel.srolovic@ag.ny.gov

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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 K

Kline, Scot

From: Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>
Sent: Thursday, March 24, 2016 9:04 AM
To: Kline, Scot
Cc: Morgan, Wendy; Matt Pawa
Subject: RE: Conference

Thanks, Scot. We are too.

-----Original Message-----

From: Kline, Scot [mailto:scot.kline@vermont.gov]
Sent: Thursday, March 24, 2016 8:18 AM
To: Lemuel Srolovic
Cc: Morgan, Wendy; Matt Pawa
Subject: Conference

We are fine with having Sharon Fubanks with Matt. Thanks.

Sent from my iPhone

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Exhibit L

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 Moade
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.

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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 NHAC 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 M

Karen Ragosta

From: Gregory Schultz
Sent: Friday, April 15, 2016 2:17 PM
To: 'John Oleske'
Subject: RE: AG Climate Change Coalition - XOM/Fossil Fuels Working Group

John:

I can't do 4/20 (medical appointment) or 4/21 (meetings). I can do 4/22 or 4/27 at 4:00 p.m.

Greg

Gregory S. Schultz
Special Assistant Attorney General
Environmental Unit
Rhode Island Department of Attorney General
150 South Main Street Providence, RI 02903
Tel.: (401) 274-4400, Ext. 2400
Fax: (401) 222-3016

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From: John Oleske [<mailto:John.Oleske@ag.ny.gov>]
Sent: Friday, April 15, 2016 1:33 PM
To: 'Amy Winn'; 'Bill Grantham'; 'Christopher Courchesne'; 'Dennis Ragen'; Gregory Schultz; 'James Gignac'; 'Jerry Reid'; 'John Daniel'; 'Joshua Auerbach'; 'Laura Watson'; 'Leslie Seffern'; 'Linda Singer'; 'Matthew Levine'; 'Melissa Hoffer'; 'Paul Garrahan'; 'Ralph Durstein'; 'Rhodes Ritenour'; 'Robert Snook'; 'Scot Kline'; 'Tam Ormiston'; 'Tania Maestas'; 'Tannis Fox'; 'Tim Nord'; 'Wendy Morgan'
Cc: Monica Wagner; Mandy DeRoche
Subject: RE: AG Climate Change Coalition - XOM/Fossil Fuels Working Group

All - I overlooked the conflict on 4/25 with the Harvard event – let's use 4/27 at 3 or 4pm as the option for that week instead, if need be.

From: John Oleske
Sent: Friday, April 15, 2016 11:55 AM
To: 'Amy Winn'; 'Bill Grantham'; 'Christopher Courchesne'; 'Dennis Ragen'; 'Greg Schultz'; 'James Gignac'; 'Jerry Reid'; 'John Daniel'; 'Joshua Auerbach'; 'Laura Watson'; 'Leslie Seffern'; 'Linda Singer'; 'Matthew Levine'; 'Melissa Hoffer'; 'Paul Garrahan'; 'Ralph Durstein'; 'Rhodes Ritenour'; 'Robert Snook'; 'Scot Kline'; 'Tam Ormiston'; 'Tania Maestas'; 'Tannis Fox'; 'Tim Nord'; 'Wendy Morgan'
Subject: AG Climate Change Coalition - XOM/Fossil Fuels Working Group

Hi everybody – thanks for expressing interest in developing a working group to address Exxon specifically, and the fossil fuel industry generally, with respect to potential regulatory and enforcement issues. We expect our initial discussions will be focused on determining the overall goals of the group and the potential for sub-group work on discrete factual and legal issues, among other things. We'd like to get started next week if possible, or the week after if necessary.

Some proposed dates and times for the first discussion are below – if folks could respond with their top choice(s), and if there's a particular slot or slots that won't work for them, both with an eye to future recurrences, I can put the responses together and come back to the group with what looks like the best consensus option. Thanks.

Suggested dates/times (all times Eastern):

Wednesday 4/20 - 2pm or 3pm

Thursday 4/21 – 1 pm, 2pm, 3pm, or 4pm

Friday 4/22 – 1pm, 2pm or 3pm

Monday 4/25 – 3pm or 4pm

John Oleske
Senior Enforcement Counsel
New York State Office of the Attorney General
(212) 416-8660
(845) 485-3904

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Exhibit N

000037

From: Peter Frumhoff <PFrumhoff@ucsusa.org>
Sent: Friday, July 31, 2015 1:03 PM
To: Edward W Maibach
Cc: Nancy Cole; Alden Meyer; Aaron Huertas
Subject: FW: Senator Whitehouse's call for a RICO investigation of the fossil fuel industry

Hi Ed,

I'm following up on the scientists letter proposal that you shared with Nancy and Alden earlier this week to let you know that (1) it prompted a lot of discussion among our staff, including with UCS president Ken Kimmell and (2) after taking a close look, we've decided to not pursue this opportunity with you.

Here's why: In reaching out to climate scientists to sign on, we feel that we'd need to give them some firmer grounding for believing that a federal investigation under the RICO statute is warranted - enough so that they'd be able to explain their rationale for signing on to reporters and others. As you know, deception/disinformation isn't itself a basis for criminal prosecution under RICO. We don't think that Sen Whitehouse's call gives enough of a basis for scientists to sign on to this as a solid approach at this point.

Just so you know, we're also in the process of exploring other state-based approaches to holding fossil fuel companies legally accountable - we think there'll likely be a strong basis for encouraging state (e.g. AG) action forward and, in that context, opportunities for climate scientists to weigh in. It would be interesting - and perhaps very useful - to consider how calls for legal accountability will play out in the court of public opinion in different states/with different subsets of the American public - something perhaps we could work with you all on as this unfolds.

So, I am sorry to decline this particular opportunity. Thanks for proposing this and please keep us in the loop on how this plays out.

Thanks, Ed.

All best,

Peter

Peter C. Frumhoff Ph.D.
Director of Science and Policy
Chief Scientist, Climate Campaign
Union of Concerned Scientists
Cambridge MA

Exhibit O

Respondent's Exemption Log for FOIL Request # 160286

Free Market Environmental Law Clinic et al. v. The Attorney General of New York Index No.101759_2016 (Mendez, J.)

Part A –Request Seeking Records Related to October and November 2015 Meetings

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
FOIL160286_000001	Email	11/9/2015	Christina Harvey	Erin Suhr, Alvin Bragg, Lemuel Srolovic and Karla Sanchez	Following up on conversation re: company specific climate change information	Law Enforcement
FOIL160286_000002	Email	11/9/2015	Christina Harvey	Erin Suhr, Alvin Bragg, Lemuel Srolovic and Karla Sanchez	Following up on conversation re: company specific climate change information	Law Enforcement
FOIL160286_000003	Email	11/10/2015	Christina Harvey	Alvin Bragg, Lemuel Srolovic and Karla Sanchez	Following up on conversation re: company specific climate change information	Intra/Inter-Agency and Law Enforcement
FOIL160286_000004	Email	11/10/2015	Lemuel Srolovic	Christina Harvey, Alvin Bragg and Karla Sanchez	Following up on conversation re: company specific climate change information	Intra/Inter-Agency and Law Enforcement
FOIL160286_000005	Email	11/10/2015	Karla Sanchez	Lemuel Srolovic, Christina Harvey and Karla Sanchez	Following up on conversation re: company specific climate change information	Intra/Inter-Agency and Law Enforcement
FOIL160286_000006-000007	Email	11/10/2015	Alvin Bragg	Karla Sanchez, Lemuel Srolovic, Christina Harvey	Following up on conversation re: company specific climate change information	Intra/Inter-Agency and Law Enforcement

Respondent's Exemption Log for FOIL Request # 160286
Free Market Environmental Law Clinic et al. v. The Attorney General of New York Index No.101759_2016 (Mendez, J.)

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
FOIL160286_000008	Email	11/9/2015	Kristen Sageser	Christina Harvey and Siobhan Kennedy	Following up on conversation re: company specific climate change information	Intra/Inter-Agency and Law Enforcement
FOIL160286_000009	Email	11/9/2015	Christina Harvey	Kristen Sageser and Siobhan Kennedy	Following up on conversation re: company specific climate change information	Intra/Inter-Agency and Law Enforcement
Total		Intra/Inter-Agency		Law Enforcement		
8		6		8		

Part B – Request Seeking Records Related to February 2015 Meeting

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
FOIL160286_000010	Email	2/23/2015	Lemuel Srolovic	Joan Smith	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000011-000012	Email	2/13/2015	Lemuel Srolovic	Michael J. Myers	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000013-000014	Email	2/11/2015	Lemuel Srolovic	Jodi Feld and Mauricio Roma	Meeting re: activities of	Intra/Inter-Agency and

Respondent's Exemption Log for FOIL Request # 160286
Free Market Environmental Law Clinic et al. v. The Attorney General of New York Index No.101759_2016 (Mendez, J.)

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
FOIL160286_000015-000016	Email	2/19/2015	Lemuel Srolovic	John Oleske, Michael J. Myers, Alvin Bragg and Steven Glassman	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000017-000018	Email	2/23/2015	Lemuel Srolovic	John Oleske, Michael J. Myers, Jodi Feld, Mauricio Roma and Guy Ben-Ishai	Sharing news article re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000019-000020	Email	2/21/2015	Lemuel Srolovic	Lemuel Srolovic	Sharing news article re: activities of specific companies regarding climate change	Law Enforcement
FOIL160286_000021-000022	Email	2/19/2015	Lemuel Srolovic	Joan Smith	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000023-	Email	2/19/2015	Lemuel	Joan Smith	Meeting re:	Intra/Inter-

Respondent's Exemption Log for FOIL Request # 160286
Free Market Environmental Law Clinic et al. v. The Attorney General of New York Index No.101759_2016 (Mendez, J.)

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
000024			Srolovic		activities of specific companies regarding climate change	Agency and Law Enforcement
FOIL160286_000025	Email	2/19/2015	Lemuel Srolovic	Joan Smith	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000026	Email	2/19/2015	Lee Wasserman	Lemuel Srolovic and Steven Glassman	Meeting re: activities of specific companies regarding climate change	Law Enforcement
FOIL160286_000027-000028	Email	2/11/2015	Jodi Feld	Lemuel Srolovic and Mauricio Roma	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000029-000030	Email	2/12/2015	Mauricio Roma	Jodi Feld and Lemuel Srolovic	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000031-000032	Email	2/11/2015	Lee Wasserman	Lemuel Srolovic	Meeting re: activities of	Law Enforcement

Respondent's Exemption Log for FOIL Request # 160286
Free Market Environmental Law Clinic et al. v. The Attorney General of New York Index No.101759_2016 (Mendez, J.)

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
FOIL160286_000033	Email	2/11/2015	Lee Wasserman	Lemuel Srolovic	specific companies regarding climate change Meeting re: activities of specific companies regarding climate change	Law Enforcement
FOIL160286_000034-000035	Email	2/11/2015	Lemuel Srolovic	Lee Wasserman	Meeting re: activities of specific companies regarding climate change	Law Enforcement
FOIL160286_000036-000037	Email	2/11/2015	Lemuel Srolovic	Lee Wasserman	Meeting re: activities of specific companies regarding climate change	Law Enforcement
FOIL160286_000038-000039	Email	2/21/2015	Lee Wasserman	Lemuel Srolovic and Steven Glassman	Sharing news article re: activities of specific companies regarding climate change	Law Enforcement
FOIL160286_000040-000041	Email	2/22/2015	Lee Wasserman	Lemuel Srolovic and Steven	Sharing news article re:	Law Enforcement

Respondent's Exemption Log for FOIL Request # 160286
Free Market Environmental Law Clinic et al. v. The Attorney General of New York Index No.101759_2016 (Mendez, J.)

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
FOIL160286_000042-000043	Email	2/20/2015	Joan Smith	Glassman	activities of specific companies regarding climate change	
FOIL160286_000044-000045	Email	2/19/2015	Lee Wasserman	Lemuel Srolovic	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000046-000047	Email	2/19/2015	Lee Wasserman	Lemuel Srolovic	Meeting re: activities of specific companies regarding climate change	Law Enforcement
FOIL160286_000048-000050	Email	2/23/2015	Lemuel Srolovic	Alan Belenz	Meeting re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000051	Email	2/19/2015	Lemuel Srolovic	Lee Wasserman	Meeting re: activities of	Law Enforcement

Respondent's Exemption Log for FOIL Request # 160286
Free Market Environmental Law Clinic et al. v. The Attorney General of New York Index No.101759_2016 (Mendez, J.)

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
FOIL160286_000052-000053	Email	2/19/2015	Lemuel Srolovic	Lee Wasserman and Steven Glassman	specific companies regarding climate change Meeting re: activities of specific companies regarding climate change	Law Enforcement
FOIL160286_000054-000055	Email	2/24/2015	Michael J. Myers	Alan Belenz and Lemuel Srolovic	Sharing news article re: activities of specific companies regarding climate change	Intra/Inter-Agency and Law Enforcement
FOIL160286_000056	Email	2/23/2015	Lee Wasserman	Lemuel Srolovic	Meeting re: activities of specific companies regarding climate change	Law Enforcement

Total	Intra/Inter-Agency	Law Enforcement
26	13	26

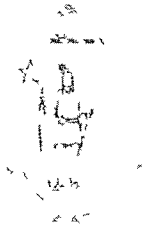
Grand Total (Part A & Part B)	Intra/Inter-Agency	Law Enforcement
34	19	34

Exhibit P

Respondent's Exemption Log for FOIL Request # 160197
Energy & Environment Legal Institute v. The Attorney General of New York Index No.101678_2016 (Bannon, J.)

Bates Range	Document Type	Document Date	Author(s)	Recipient(s)	Subject	Exemption or Privilege
FOIL106197_0000286	Email	07/11/2015	Nicholas Suplina	and Nicholas Suplina Eric Schneiderman	Criminal statutes	Intra/Inter-Agency, Work Product and Law Enforcement
FOIL106197_0000287	Email	11/21/2015	Michael Gerrard	Lemuel Strolovic	List of documents	Law Enforcement
FOIL106197_0000288					Duplicate of FOIL 106197_0002829	
FOIL106197_0000295					Duplicate of FOIL 106197_0000547	
FOIL106197_0000317						
FOIL106197_0000318	Email	12/15/2015	Larry Shapiro	Lemuel Strolovic, Lee Wasserman and Lisa Hamilton	Comments on news article	Law Enforcement
FOIL106197_0000320	Email	10/30/2015	Lemuel Strolovic	Peter Washburn, Janet Sabel and Alvin Bragg	Request approval for awarding grants	Intra/Inter-Agency
FOIL106197_0000323	Attached to 10/30/2015 Email	08/31/2015			Excel spreadsheet	Intra/Inter-Agency
FOIL106197_0000327	Attached to 10/30/2015 Email	10/30/2015			Proposed list of grant awardees	Intra/Inter-Agency

Exhibit Q



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OFFICE OF THE ATTORNEY GENERAL

ONE ANSBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727 2200
www.mass.gov/ago

April 5, 2017

VIA E-MAIL ONLY

Adam E. Schulman
Attorney
Competitive Enterprise Institute
Adam.Schulman@cei.org

Re: Your Public Records Request

Dear Attorney Schulman:

I write in response to your public records request received on February 13, 2017 and made pursuant to the Massachusetts public records law, M.G.L. c. 66, § 10. You requested copies of the following records held by the Office of the Attorney General (AGO) "in so far as they relate to legal services in connection with investigations or pursuits of legal claims against any individual, company or group for allegedly misleading the public about the dangers of climate change or the viability of renewable energy resources:

1. Any retainer or engagement agreements or contracts entered into between the AG's [O]ffice and:
 - 1) Cohen Milstein Sceller & Toll PLLC,
 - 2) Linda Singer, esq.,
 - 3) [T]he Pawa Law Group, PC,
 - 4) Matt Pawa, esq.,
 - 5) McKool Smith,
 - 6) Stanton LLP, and
 - 7) any other private law firm or lawyer.
2. Any invoices from any of the attorneys or firms above listed.
3. Any documents, including email correspondence, relating to the process of searching for, selecting or hiring any of the attorneys or firms above listed.
4. Any office policies or procedures for hiring non-governmental counsel.
5. Any computations, calculations, tallies or estimates of monies paid by the AG's [O]ffice to any of the attorneys or firms listed above.



Adam E. Schulman, Esq.
April 5, 2017
page 2

6. Any computations, calculations, tallies, or estimates of AG [O]ffice [sic] staff hours and expenses expended in connection with investigations or pursuit of legal claims against any individual, company or group for allegedly misleading the public about the dangers of climate change or the viability of renewable energy resources.
7. Any record of reimbursements made to, or requested by, the following employees of the Massachusetts Attorney General's Office:
 - 1) Christophe Courchesne,
 - 2) I Andrew Goldberg,
 - 3) Melissa Ann Hoffer,
 - 4) Peter Charles Mulcahy, and
 - 5) Richard Alan Johnston."

As to Parts One (1), Two (2), Three (3), Five (5), and Seven (7) of your request, we enclose one hundred thirteen (113) pages of records which may be responsive and are subject to disclosure under the public records law, M.G.L. c. 66, § 10 and M.G.L. c. 4, § 7, cl. 26.

Some of the records responsive to these parts of your request have been redacted in accordance with M.G.L. c. 4, § 7, cl. 26 insofar as they contain: (a) taxpayer and financial account information consisting of taxpayer ID numbers and credit card account numbers, which are specifically or by necessary implication exempted from disclosure by statute (M.G.L. c. 62C, § 21; 26 U.S.C., § 6103; and M.G.L. c. 93H); (c) associated information related to specifically named individuals, the disclosure of which may constitute an unwarranted invasion of personal privacy; (d) materials that possess a deliberative character in that they reflect legal opinions and strategy associated with ongoing deliberative processes, in this instance, cases that are currently in litigation; (f) investigatory materials, which, if disclosed, would prejudice effective law enforcement by disclosing investigative techniques or sources; and (o) the home addresses and personal e-mail addresses of certain employees of the Commonwealth, which are in the custody of a government agency which maintains records identifying those persons as such employees. In addition, the responsive records include privileged attorney-client communications that are protected from disclosure,¹ and, as such, they have been redacted or withheld as appropriate.

As to Part Four (4) of your request, please be advised that responsive records are being withheld in accordance with M.G.L. c. 4, § 7, cl. 26(b), insofar as they relate solely to internal rules and practices of the AGO, to the extent that proper performance of necessary government functions requires such withholding.

As to Part Six (6) of your request, please be advised that the AGO has no responsive records.

The public records law permits a custodian of public records to charge a requester for the expense of searching for, retrieving, and segregating responsive records in addition to charges for photocopying. See M.G.L. c. 66, § 10; 950 CMR 32.06 (1)(c) and (4). Further, M.G.L. c. 66,

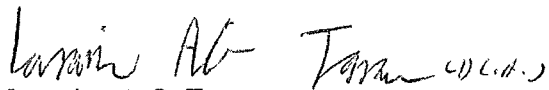
¹ See *Suffolk Const. Co., Inc. v. Division of Capital Asset Management*, 449 Mass. 444 (2007).

Adam E. Schulman, Esq.
April 5, 2017
page 2

§ 10(d)(ii)(B) provides that no fees shall be charged for the first 4.0 hours of labor required to respond to a request. Although in excess of 20.0 hours of labor was expended in responding to your request, we have waived all fees in this instance.

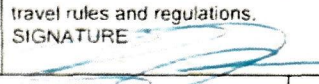
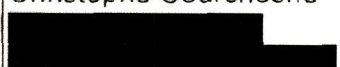

You have the right to appeal this response to the Supervisor of Records pursuant to M.G.L. c. 66, § 10A(a), and to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under M.G.L. c. 66, § 10A(c).

Very truly yours,


A handwritten signature in black ink, appearing to read "Lorraine A.G. Tarrow (D.A.)".

Lorraine A.G. Tarrow
Assistant Attorney General & Records Access Officer
General Counsel's Office

enclosures

Document ID				Department/Organization Name EEB/EPD			
Trans PV	Dept	R/Org	Number 6003	Pv Date 3/17/16	Acctg Prd	Budget FY 2016	
Action (E) (M)		SCH Pay Date		Off Liab Acct	TRAVELER'S CERTIFICATION I herby certify under penalty of perjury that the below amounts as itemized are true and correct, were incurred by me during necessary travel in the service of the Commonwealth and conform fully with travel rules and regulations. SIGNATURE 		Vendor Name and Address Christophe Courchesne 
Document Total \$302.20				Dept			
Vendor Invoice Number				Vendor Code 		Emp YES	

Date	Description	Private Auto Mileage Miles	Amount	Beginning Mileage Fares	Ending Mileage and/or Hotels	Breakfast	Lunch	Supper	Other Expenses	Total Expenses
3/17/16	Purchased airline ticket to attend meeting in New York on 3/29/16 regarding Exxon- Clean Power Plan.									\$302.20
	Not aware that Budget took care of purchasing ticket until I already paid for it myself.									
									Total	\$302.20

Reference Document														
LN	Trans	Dept	R/Org	Number	Line	Dept	Approp	Sub	Org	S/Org	Obj	S/Obj	Prog	TY
PRJ/CL/GRC		RPTG	Fund	BS Acct	Dept	Vendor Invoice Number			Description					
Af-5 Number		Disc	Dates of Services 3/29/16 to 3/29/16			Quantity	Amount \$302.20		I/D	P/F	INSTRUCTIONS TO TRAVELLERS - DIRECT INQUIRIES TO STATE ORGANIZATION			
Prepared By		Title: Administrative Assistant			Date:									
Approved By		Title: Division Chief			Date:									
Entered By		Title:  GC 3/23/16			Date:									
Supervisor's Signature		Title: Bureau Chief			Date: 3-22-16									


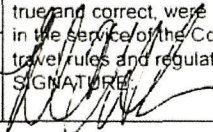


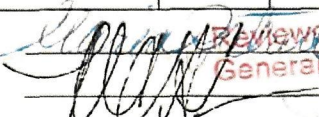
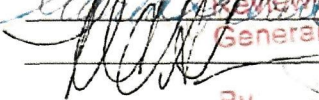
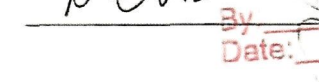
Page ____ of ____



Commonwealth of Massachusetts
Office of the Comptroller

TRAVELER VOUCHER INPUT FORM

Document ID				Department/Organization Name EEB/EPD 6003										
Trans PV	Dept	R/Org	Number 6003	Pv Date 4/1/16	Acctg Prd	Budget FY 2016								
Action (E) (M)		SCH Pay Date		Off Liab Acct	TRAVELER'S CERTIFICATION: I herby certify under penalty of perjury that the below amounts as itemized are true and correct, were incurred by me during necessary travel in the service of the Commonwealth and conform fully with travel rules and regulations. SIGNATURE: _____		Vendor Name and Address Christophe Courchesne _____ _____							
Document Total \$50.09				Dept										
Vendor Invoice Number				Vendor Code _____		Emp YES								
Date	Description			Private Auto Mileage Miles Amount		Beginning Ending Mileage and/or Fares Hotels								
4/1/16	Attend meeting in New York on 3/29/16													
	regarding Exxon- Clean Power Plan.													
	Please find attached my Garage Parking													
	Receipt as well as MetroCard receipt													
	while in NYC.													
						Total \$50.09								
Reference Document														
LN	Trans	Dept	R/Org	Number	Line	Dept	Approp	Sub	Org	S/Org	Obj	S/Obj	Prog	TY
PRJ/CL/GRC		RPTG	Fund	BS Acct	Dept	Vendor Invoice Number			Description					
Af-5 Number		Disc	Dates of Services			Quantity	Amount \$50.09		I/D	P/F	INSTRUCTIONS TO TRAVELLERS			
Prepared By		Title			Administrative Assistant		Date		4/1/16		- DIRECT INQUIRIES TO STATE ORGANIZATION			
Approved By		Title			Division Chief		Date		4/1/16					
Entered By		Title					Date							
Supervisor's Signature		Title			Bureau Chief		Date							

Document ID				Department/Organization Name EEB 6000				 Commonwealth of Massachusetts Office of the Comptroller						
Trans PV	Dept	R/Org	Number 6000	Pv Date 4/13/16	Acctg Prd	Budget FY 2016	TRAVELER VOUCHER INPUT FORM							
Action (E) (M)	SCH Pay Date		Off Liab Acct	TRAVELER'S CERTIFICATION: I hereby certify under penalty of perjury that the below amounts as itemized are true and correct, were incurred by me during necessary travel in the service of the Commonwealth and conform fully with travel rules and regulations. SIGNATURE: 			Vendor Name and Address Melissa Hoffer 							
Document Total \$95.55				Dept										
Vendor Invoice Number				Vendor Code 		Emp YES								
Date	Description			Private Auto Mileage Miles Amount		Beginning Ending Mileage and/or Fares Hotels		Breakfast	Lunch	Supper	Other Expenses	Total Expenses		
3/28/16	Trip to NYC for Exxon Case													
3/28/16	Cab from 100 Cambridge St to South Stat.										Cab	\$8.00		
3/28/16	Cab Fare from Penn Station to Hotel in NY										Cab	\$22.25		
3/29/16	Cab from NY Ag's Office to Penn Station										Cab	\$24.75		
3/29/16	Cab from South Station to home from NY										Cab	\$7.80		
											Total	\$95.55		
Reference Document														
LN	Trans	Dept	R/Org	Number	Line	Dept	Approp	Sub	Org	S/Org	Obj	S/Obj	Prog	TY
PRJ/CL/GRC		RPTG	Fund	BS Acct	Dept	Vendor Invoice Number			Description					
Af-5 Number		Disc	Dates of Services to			Quantity	Amount		I/D	P/F	INSTRUCTIONS TO TRAVELLERS			
							\$95.55				- DIRECT INQUIRIES TO STATE ORGANIZATION			
Prepared By		 Title: Administrative Assistant			Date: 4/13/16									
Approved By:		 Title: EEB Chief			Date: 4/14/16									
Entered By:		 Title: Bureau Chief			Date: 4/21/16									
Supervisor's Signature		Title			Date:									

4/13/16

Maria -

Additional requests for
reimbursement

3/28 cab fare from 100 Cambridge
to South Station \$8.00 lost
receipt. For trip to NY re:
Exxon & climate change

Thank!

Melissa

Exhibit R






Maura Healey

@maura_healey

 Follow

That shirt says it all @PeterFrumhoff! Thanks for channeling it into science & action, @UCSUSA. #climatemarch

9:40 AM - 29 Apr 2017

  12  59



Maura Healey

@maura_healey

 Follow

Thanks for all you do, @350 & @billmckibben! #PeoplesClimate
#climatemarch

10:06 AM - 29 Apr 2017

  23  49

Exhibit S

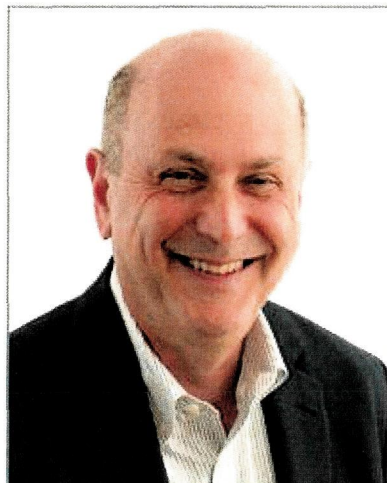
[Union of Concerned Scientists

Science for a healthy planet and safer world

Qsearch

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



Peter Frumhoff's Selected Publications

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Science for a healthy planet and safer world



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2 Brattle Square, Cambridge MA 02138-3780

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Exhibit T

1/30/2017

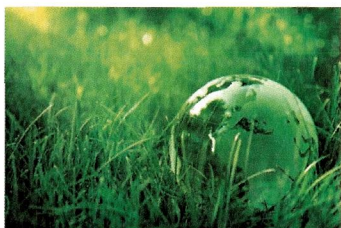
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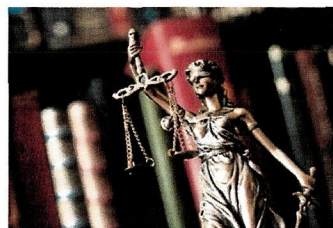
PRACTICE AREAS



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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.

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Exhibit U

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.

Union of Concerned Scientists
Two Brattle Square
Cambridge, MA 02238-9105

Phone: 617-547-5552
Fax: 617-864-9405
Email: ucs@ucsusa.org

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ACKNOWLEDGMENTS

Seth Shulman was the lead investigator and primary author of this report. Kate Abend and Alden Meyer contributed the final chapter. Kate Abend, Brenda Ekwurzel, Monica La, Katherine Moxhet, Suzanne Shaw, and Anita Spiess assisted with research, fact checking, and editing.

UCS would like to thank Kert Davies, Research Director for *ExxonSecrets.org*, for pointing the author to original source material, Annie Petsonk for providing input during initial scoping of the project, and the Natural Resources Defense Council for sharing FOIA documents. UCS is thankful to the individuals and organizations cited in this report who have explored various aspects of ExxonMobil's funding of climate contrarians and the tobacco and climate link.

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.

EXECUTIVE SUMMARY

In an effort to deceive the public about the reality of global warming, ExxonMobil has underwritten the most sophisticated and most successful disinformation campaign since the tobacco industry misled the public about the scientific evidence linking smoking to lung cancer and heart disease. As this report documents, the two disinformation campaigns are strikingly similar. ExxonMobil has drawn upon the tactics and even some of the organizations and actors involved in the callous disinformation campaign the tobacco industry waged for 40 years. Like the tobacco industry, ExxonMobil has:

- ***Manufactured uncertainty*** by raising doubts about even the most indisputable scientific evidence.
- Adopted a strategy of ***information laundering*** by using seemingly independent front organizations to publicly further its desired message and thereby confuse the public.
- ***Promoted scientific spokespeople*** who misrepresent peer-reviewed scientific findings or cherry-pick facts in their attempts to persuade the media and the public that there is still serious debate among scientists that burning fossil fuels has contributed to global warming and that human-caused warming will have serious consequences.
- ***Attempted to shift the focus*** away from meaningful action on global warming with misleading charges about the need for “sound science.”
- ***Used its extraordinary access to the Bush administration*** to block federal policies and shape government communications on global warming.

The report documents that, despite the scientific consensus about the fundamental understanding that global warming is caused by carbon dioxide and other heat-trapping emissions, ExxonMobil has funneled about \$16 million between 1998 and 2005 to a network of ideological and advocacy organizations that manufacture uncertainty on the issue. Many of these organizations have an overlapping—sometimes identical—collection of spokespeople serving as staff, board members, and scientific advisors. By publishing and republishing the non-peer-reviewed works of a small group of scientific spokespeople, ExxonMobil-funded organizations have propped up and amplified work that has been discredited by reputable climate scientists.

ExxonMobil’s funding of established research institutions that seek to better understand science, policies, and technologies to address global warming has given the corporation “cover,” while its funding of ideological and advocacy organizations to conduct a disinformation campaign works to confuse that understanding. This seemingly inconsistent activity makes sense when looked at through a broader lens. Like the tobacco companies in previous decades, this strategy provides a positive “pro-science” public stance for ExxonMobil that masks their activity to delay meaningful action on global warming and helps keep the public debate

stalled on the science rather than focused on policy options to address the problem.

In addition, like Big Tobacco before it, ExxonMobil has been enormously successful at influencing the current administration and key members of Congress. Documents highlighted in this report, coupled with subsequent events, provide evidence of ExxonMobil's cozy relationship with government officials, which enables

the corporation to work behind the scenes to gain access to key decision makers. In some cases, the company's proxies have directly shaped the global warming message put forth by federal agencies. Finally, this report provides a set of steps elected officials, investors, and citizens can take to neutralize ExxonMobil's disinformation campaign and remove this roadblock to sensible action for reducing global warming emissions.

INTRODUCTION

ExxonMobil, the world's largest publicly traded corporation, doesn't want you to know the facts about global warming. The company vehemently opposes any governmental regulation that would require significantly expanded investments in clean energy technologies or reductions in global warming emissions. That is what the public and policymakers are likely to demand when they know the truth about climate science. Consequently, the corporation has spent millions of dollars to deceive the public about global warming. In so doing, ExxonMobil has underwritten the most sophisticated and successful disinformation campaign since Big Tobacco misled the public about the incontrovertible scientific evidence linking smoking to lung cancer and heart disease. In fact, as this report shows, many of the tactics, and even some of the same organizations and actors used by ExxonMobil to mislead the public, draw upon

the tobacco industry's 40-year disinformation campaign.

This report documents ExxonMobil's central role in the current disinformation campaign about climate science, identifying the campaign's rationale, who's behind it, and how it has been able—so far—to successfully mislead the public, influence government policies, and forestall federal action to reduce global warming emissions.

ExxonMobil's cynical strategy is built around the notion that public opinion can be easily manipulated because climate science is complex, because people tend not to notice where their information comes from, and because the effects of global warming are just beginning to become visible. But ExxonMobil may well have underestimated the public. The company's strategy quickly unravels when people understand it for what it is: an active campaign of disinformation.

*Background***THE FACTS ABOUT EXXONMOBIL**

ExxonMobil is a powerful player on the world stage. It is the world's largest publicly traded company: at \$339 billion,¹ its 2005 revenues exceeded the gross domestic products of most of the world's nations.² It is the most profitable corporation in history. In 2005, the company netted \$36 billion³—nearly \$100 million in profit *each day*.

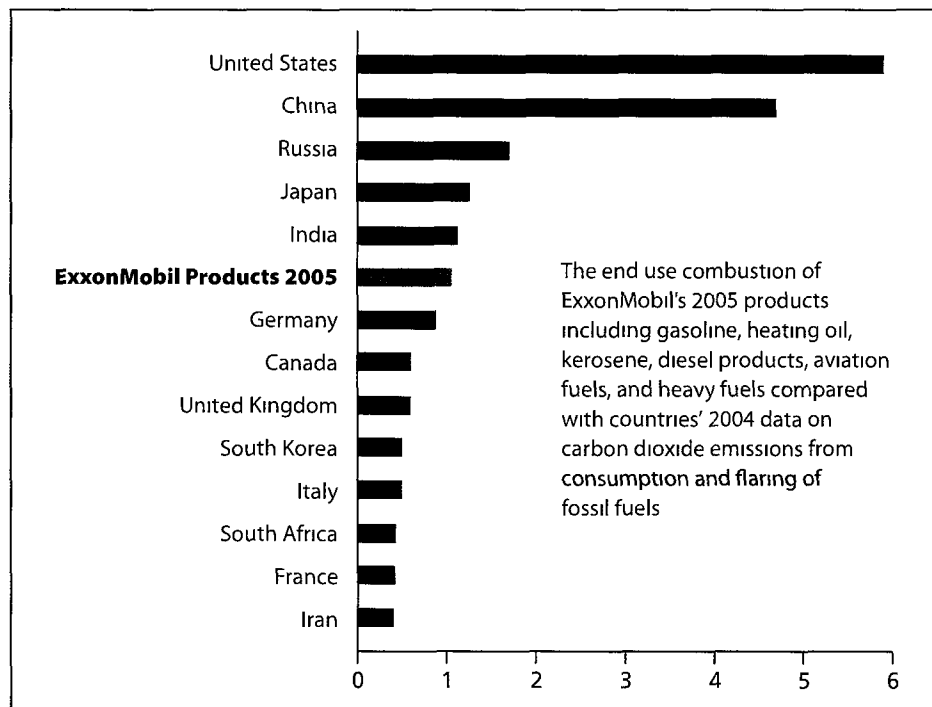
As the biggest player in the world's gas and oil business, ExxonMobil is also one of the world's largest producers of global warming pollution. Company operations alone pumped the equivalent of 138 million metric tons of carbon dioxide into the atmosphere in 2004⁴ and roughly the same level of emissions in 2005, according to

company reporting.⁵ In 2005, the end use combustion of ExxonMobil's products—gasoline, heating oil, kerosene, diesel products, aviation fuels, and heavy fuels—resulted in 1,047 million metric tons of carbon dioxide-equivalent emissions.⁶ If it was a country, ExxonMobil would rank sixth in emissions.

While some oil companies like BP, Occidental Petroleum, and Shell have begun to invest in clean energy technologies and publicly committed to reduce their heat-trapping emissions, ExxonMobil has made no such commitment.

Lee Raymond, ExxonMobil's chief executive officer (CEO) until 2006, set a brazenly unapolo-

Annual Emissions of Carbon Dioxide (Gigatons)



* Country data available at <http://www.eia.doe.gov/iea/carbon.html>

getic corporate tone on global warming. During his nearly 13 years as ExxonMobil's leader, Raymond unabashedly opposed caps on carbon dioxide emissions and refused to acknowledge the scientific consensus on global warming. Under Raymond's direction, ExxonMobil positioned itself, as Paul Krugman of the *New York Times* recently put it, as "an enemy of the planet."⁷ Not only did he do nothing to curb his company's global warming emissions, during his tenure Raymond divested the company of nearly all its alternative energy holdings.⁸ During his time as CEO, ExxonMobil's board lavishly rewarded him with compensation amounting to more than \$686 million.⁹ When Raymond retired at the end of 2005, he received an exorbitant retirement package worth nearly \$400 million, prompting sharp criticism from shareholders.¹⁰ ExxonMobil is now headed by CEO Rex Tillerson, but the corporate policies Raymond forged so far remain largely intact.

ExxonMobil has played the world's most active corporate role in underwriting efforts to thwart and undermine climate change regulation. For instance, according to the Center for Responsive Politics, ExxonMobil's PAC—its political action committee—and individuals affiliated with the company made more than \$4 million in political contributions throughout the 2000 to 2006 election cycles. It was consistently among the top four energy sector contributors. In the 2004 election cycle alone, ExxonMobil's PAC and individuals affiliated with the company gave \$935,000 in political contributions, more than any other energy company. Much of that money went in

This report identifies how strategies and tactics used by ExxonMobil mirror the well-documented campaign by the tobacco industry to prevent government regulation by creating public confusion about the link between smoking and disease.

turn to President Bush's election campaign.¹¹ In addition, ExxonMobil paid lobbyists more than \$61 million between 1998 and 2005 to help gain access to key decision makers.¹²

This report does not attempt to shed light on all ExxonMobil activities related to global warming. Instead, it takes an in-depth look at how the relatively modest investment of about \$16 million between 1998 and 2004 to select political organizations¹³ has been remarkably effective at manufacturing uncertainty about the scientific consensus on global warming. It offers examples to illustrate how ExxonMobil's influence over key administration officials and members of Congress has fueled the disinformation campaign and helped forestall federal action to reduce global warming emissions. And this report identifies how strategies and tactics used by ExxonMobil mirror the well-documented campaign by the tobacco industry to prevent government regulation by creating public confusion about the link between smoking and disease.

THE ORIGINS OF A STRATEGY

*We will never produce and market a product shown
to be the cause of any serious human ailment.*

— TOBACCO INDUSTRY RESEARCH COMMITTEE,
“FRANK STATEMENT TO CIGARETTE SMOKERS,”
PUBLISHED IN 1954¹⁴

In its campaign to sow uncertainty about the scientific evidence on global warming, Exxon-Mobil has followed a corporate strategy pioneered by the tobacco industry. Because ExxonMobil’s strategy, tactics, and even some personnel draw heavily from the tobacco industry’s playbook, it is useful to look briefly at this earlier campaign. The settlement of the lawsuit brought by the attorneys general of 46 states forced the major tobacco companies to place their enormous caches of internal documents online.¹⁵ Thanks to these archives, the details of the tobacco industry’s covert strategy are now clear.

The story begins in the mid-1950s when scientific evidence began to emerge linking smoking to cancer. The tobacco industry’s initial response was to fund a research consortium, initially called the Tobacco Industry Research Committee and later known as the U.S. Tobacco Institute, to “study the issue.” In 1954, Big Tobacco released a seminal public document called the “Frank Statement to Cigarette Smokers,” which set the industry’s tone for the coming decades. This document questioned the emerging scientific evidence of the harm caused by smoking but tried to appear concerned about the issue, pledging to the public that the industry would look closely at the scientific evidence and study it themselves.¹⁶

As we now know, tobacco industry lawyers advised the companies early on that they could

never admit they were selling a hazardous product without opening themselves to potentially crippling liability claims.¹⁷ So, rather than studying the health hazards posed by their products, the tobacco industry hired Hill & Knowlton, a leading public relations firm of the day to mount a public relations campaign on their behalf. In a key memo, Hill & Knowlton framed the issue this way: “There is only one problem—confidence and how to establish it; public assurance, and how to create it.”¹⁸ In other words, the tobacco companies should ignore the deadly health effects of smoking and focus instead on maintaining the public’s confidence in their products.

As time went on, a scientific consensus emerged about a multitude of serious dangers from smoking—and the tobacco manufacturers knew it. Despite the evidence, the industry developed a sophisticated disinformation campaign—one they knew to be misleading—to deceive the public about the hazards of smoking and to forestall governmental controls on tobacco consumption.

HOW BIG TOBACCO’S CAMPAIGN WORKED

In executing their calculated strategy over the course of decades, tobacco industry executives employed five main tactics:

- They sought to *manufacture uncertainty* by raising doubts about even the most indisputable scientific evidence showing their products to be hazardous to human health.
- They pioneered a strategy of “*information laundering*” in which they used—and even covertly established—seemingly independent front organizations to make the industry’s own case and confuse the public.
- They *promoted scientific spokespeople* and invested in scientific research in an attempt to lend legitimacy to their public relations efforts.
- They attempted to *recast the debate* by charging that the wholly legitimate health concerns raised about smoking were not based upon “sound science.”
- Finally, they *cultivated close ties with government officials* and members of Congress. While many corporations and institutions seek access to government, Tobacco’s size and power gave it enormous leverage.

In reviewing the tobacco industry’s disinformation campaign, the first thing to note is that the tobacco companies quickly realized they did not need to prove their products were safe. Rather, as internal documents have long since revealed, they had only to “maintain doubt” on the scientific front as a calculated strategy. As one famous internal memo from the Brown & Williamson tobacco 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. It is also the means of establishing a controversy.”¹⁹ David Michaels, professor of occupational and environmental health at George Washington University School of Public Health and former assistant secretary for the environment, safety and health at the Department of Energy during

the Clinton administration, has dubbed the strategy one of “manufacturing uncertainty.”²⁰ As Michaels has documented, Big Tobacco pioneered the strategy and many opponents of public health and environmental regulations have emulated it.

From the start, the goal of the tobacco industry’s disinformation campaign was simple: to

“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. It is also the means of establishing a controversy.”

— BROWN & WILLIAMSON

undermine scientific evidence of the health risks of smoking in any way possible. Thus, for forty years, the tobacco companies strove to manufacture doubt, uncertainty, and controversy about the dangers of smoking where increasingly none existed. The companies publicly fought the evidence of a link between smoking and lung cancer. They disputed the evidence of a link between smoking and heart disease. They questioned the scientific evidence showing that nicotine was highly addictive. And they tried to raise uncertainty about the scientific evidence showing the dangers of secondhand smoke. No researcher or institution was immune from their tactics. For instance, as a 2000 report from the World Health Organization details, the tobacco companies went to extraordinary lengths to try to undermine the scientific evidence at that institution. They paid WHO employees to spread misinformation, hired institutions and individuals to discredit the international organization, secretly funded reports designed to distort scientific studies, and even covertly monitored WHO meetings and conferences.²¹

Big Tobacco's strategy proved remarkably successful; "doubt" turned out to be a relatively easy product to sell. Today, smoking continues to cause an estimated 5 million deaths per year worldwide²² and some 45 million people in the United States continue to smoke²³—both illustrations of the success of the tobacco companies' campaign to prevent governments from implementing strong tobacco control policies. Meanwhile, the tobacco

industry continues to be profitable despite the multi-billion-dollar settlement of the U.S. states' lawsuit against tobacco manufacturers. The "uncertainty" argument has also proved resilient. As Murray Walker, former Vice President of the U.S. Tobacco Institute put it when he testified under oath in a 1998 trial brought against the tobacco firms: "We don't believe it's ever been established that smoking is the cause of disease."²⁴

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*

York Times has reported, ExxonMobil is often the single largest corporate donor to many of these nonprofit organizations, frequently accounting for more than 10 percent of their annual budgets.³⁹ (For more detailed information, see Appendix B, Table 1.)

A close look at the work of these organizations exposes ExxonMobil's strategy. Virtually all of them publish and publicize the work of a nearly identical group of spokespeople, including scientists who misrepresent peer-reviewed climate findings and confuse the public's understanding of global warming. Most of these organizations also include these same individuals as board members or scientific advisers.

Why would ExxonMobil opt to fund so many groups with overlapping spokespeople and programs? By generously funding a web of organizations with redundant personnel, advisors, or spokespeople, ExxonMobil can quietly and effectively provide the appearance of a broad platform for a tight-knit group of vocal climate science contrarians. The seeming diversity of the organizations creates an "echo chamber" that amplifies and sustains scientific disinformation even though many of the assertions have been repeatedly debunked by the scientific community.

Take, for example, ExxonMobil's funding of a Washington, DC-based organization called Frontiers of Freedom.⁴⁰ Begun in 1996 by former Senator Malcolm Wallop, Frontiers of Freedom was founded to promote property rights and critique environmental regulations like the Endangered Species Act.⁴¹ One of the group's staff members, an economist named Myron Ebell, later served as a member of the Global Climate Science Team, the small task force that laid out ExxonMobil's 1998 message strategy on global warming. Following the outline of the task force's plan in 1998, ExxonMobil began funding Frontiers of Freedom—a group that Vice President Dick Cheney

The network ExxonMobil created masqueraded as a credible scientific alternative, but it publicized discredited studies and cherry-picked information to present misleading conclusions.

recently called "an active, intelligent, and needed presence in the national debate."⁴²

Since 1998, ExxonMobil has spent \$857,000 to underwrite the Frontiers of Freedom's climate change efforts.⁴³ In 2002, for example, ExxonMobil made a grant to Frontiers of Freedom of \$232,000⁴⁴ (nearly a third of the organization's annual budget) to help launch a new branch of the organization called the Center for Science and Public Policy, which would focus primarily on climate change.

A recent visit to the organization's website finds little information about the background or work of the Center for Science and Public Policy.⁴⁵ The website offers no mention of its staff or board members other than its current executive director Robert Ferguson, for whom it offers no biographical information. As of September 2006, however, the website did prominently feature a 38-page non-peer-reviewed report by Ferguson on climate science, heavily laden with maps, graphs, and charts, entitled "Issues in the Current State of Climate Science: A Guide for Policy Makers and Opinion Leaders."⁴⁶ The document offers a hodgepodge of distortions and distractions posing as a serious scientific review. Ferguson questions the clear data showing that the majority of the globe's glaciers are in retreat by feebly arguing that not all glaciers have been inventoried, despite the monitoring of thousands of glaciers worldwide.⁴⁷

And, in an attempt to dispute solid scientific evidence that climate change is causing extinctions of animal species, Ferguson offers the non sequitur that several new butterfly and frog species were recently discovered in New Guinea.⁴⁸

Perhaps most notable are Ferguson's references, citing a familiar collection of climate science contrarians such as Willie Soon (see p. 30 for more on Soon). In fact, although his title is not listed on the organization's website, Soon is the Center for Science and Public Policy's "chief science researcher," according to a biographical note accompanying a 2005 *Wall Street Journal* op-ed co-authored by Ferguson and Soon.⁴⁹ Ferguson's report was not subject to peer review, but it is nonetheless presented under the auspices of the authoritative-sounding Center for Science and Public Policy.

Another organization used to launder information is the George C. Marshall Institute. During the 1990s, the Marshall Institute had been known primarily for its work advocating a "Star Wars" missile defense program. However, it soon became an important home for industry-financed "climate contrarians," thanks in part to Exxon-Mobil's financial backing. Since 1998, Exxon-Mobil has paid \$630,000 primarily to underwrite the Marshall Institute's climate change effort.⁵⁰ William O'Keefe, CEO of the Marshall Institute, formerly worked as executive vice president and chief operating officer of the American Petroleum Institute, served on the board of directors of the Competitive Enterprise Institute, and is chairman emeritus of the Global Climate Coalition.⁵¹

Since ExxonMobil began to support its efforts, the Marshall Institute has served as a clearing-house for global warming contrarians, conducting round-table events and producing frequent publications. Most recently, the Marshall Institute has been touting its new book, *Shattered Consensus: The True State of Global Warming*, edited by long-

time climate contrarian Patrick Michaels (a meteorologist). Michaels has, over the past several years, been affiliated with at least ten organizations funded by ExxonMobil.⁵² Contributors to the book include others with similar affiliations with Exxon-funded groups: Sallie Baliunas, Robert Balling, John Christy, Ross McKittrick, and Willie Soon⁵³ (for details, see Appendix B, Table 2).

The pattern of information laundering is repeated at virtually all the private, nonprofit climate change programs ExxonMobil funds. The website of the Chicago-based Heartland Institute, which received \$119,000 from ExxonMobil in 2005,⁵⁴ offers recent articles by the same set of scientists. A visit to the climate section of the website of the American Legislative Exchange Council, which received \$241,500 from Exxon-Mobil in 2005,⁵⁵ turns up yet another non-peer-reviewed paper by Patrick Michaels.⁵⁶ The Committee for a Constructive Tomorrow, which received \$215,000 from ExxonMobil over the past two funding cycles of 2004 and 2005,⁵⁷ boasts a similar lineup of articles and a scientific advisory panel that includes Sallie Baliunas, Robert Balling, Roger Bate, Sherwood Idso, Patrick Michaels, and Frederick Seitz—all affiliated with other ExxonMobil-funded organizations.⁵⁸

A more prominent organization funded by ExxonMobil is the Washington, DC-based Competitive Enterprise Institute (CEI). Founded in 1984 to fight government regulation on business, CEI started to attract significant ExxonMobil funding when Myron Ebell moved there from Frontiers of Freedom in 1999. Since then, CEI has not only produced a steady flow of vituperative articles and commentaries attacking global warming science, often using the same set of global warming contrarians; it has also sued the federal government to stop the dissemination of a National Assessment Synthesis Team report extensively documenting the region-by-region

impacts of climate change in the United States.⁵⁹ For its efforts, CEI has received more than \$2 million in funding from ExxonMobil from 1998 through 2005.⁶⁰

The irony of all these efforts is that ExxonMobil, a company that claims it is dedicated to supporting organizations favoring “free market solutions to public policy problems,”⁶¹ is actively propping up discredited studies and misleading information that would otherwise never thrive in the scientific marketplace of ideas. The tactic is seen clearly in ExxonMobil’s backing of a website called Tech Central Station, which portrays itself as a media outlet but is, in fact, part of a corporate PR machine that helps corporations like ExxonMobil to get their message out.

Tech Central Station (which received \$95,000 in funding from ExxonMobil in 2003) is a web-based hybrid of quasi-journalism and lobbying that helps ExxonMobil complete the circle of its disinformation campaign.⁶² The website is nominally “hosted” by James K. Glassman, a former journalist.⁶³ But despite Glassman’s public face, Tech Central Station was published (until it was sold in September 2006) by a public relations firm called the DCI Group, which is a registered ExxonMobil lobbying firm.⁶⁴

A Tech Central Station disclaimer states that the online journal is proud of its corporate sponsors (including ExxonMobil) but that “the opinions expressed on these pages are solely those of the writers and not necessarily of any corporation or other organization.”⁶⁵ In practice, the opposite is true. Although Tech Central Station’s content is dressed up as independent news articles, the DCI Group established the outfit to allow corporate clients and their surrogates to communicate directly to the public. Predictably, Tech Central Station contributors on the global warming issue are the familiar spokespeople from ExxonMobil-

Although Tech Central Station’s content is dressed up as independent news articles, the DCI Group established the outfit to allow corporate clients and their surrogates to communicate directly to the public.

funded organizations, including Sallie Baliunas, Robert Balling, David Legates, Patrick Michaels, Willie Soon, George Taylor, and others.⁶⁶

It is also no surprise that the DCI Group’s own literature boasts that it specializes in what it calls “corporate grassroots campaigns” and “third party support” for corporate clients, both code words for the establishment and use of front organizations to disseminate a company’s message.⁶⁷ The group’s managing partners, Tom Synhorst, Doug Goodyear, and Tim Hyde, each honed their skills in this area over the course of nearly a decade working for the tobacco firm R.J. Reynolds.⁶⁸ Synhorst was a “field coordinator” for R.J. Reynolds, heading up work for the company on issues such as state, local, and workplace smoking bans.⁶⁹ Goodyear worked for a PR firm called Walt Klein and Associates that helped set up a fake grassroots operations on behalf of R.J. Reynolds.⁷⁰ And Hyde served as senior director of public issues at R.J. Reynolds from 1988 to 1997, overseeing all of the company’s PR campaigns.⁷¹

Confounding the matter further is ExxonMobil’s funding of established research institutions that seek to better understand science, policies, and technologies to address global warming. For example, ExxonMobil’s corporate citizen report for 2005 states:

*Our climate research is designed to improve scientific understanding, assess policy options, and achieve technological breakthroughs that reduce GHG [green house gas or global warming] emissions in both industrial and developing countries. Major projects have been supported at institutions including the Australian Bureau of Agricultural and Resource Economics, Battelle Pacific Northwest Laboratory, Carnegie Mellon, Charles River Associates, the Hadley Centre for Climate Prediction, International Energy Agency Greenhouse Gas R&D Programme, Lamont Doherty Earth Observatory at Columbia University, Massachusetts Institute of Technology, Princeton, Stanford, The University of Texas, and Yale.*⁷²

In its most significant effort of this kind, ExxonMobil has pledged \$100 million over ten years to help underwrite Stanford University's Global Climate and Energy Project.⁷³ According to the program's literature, the effort seeks to develop new energy technologies that will permit the development of global energy systems with significantly lower global warming emissions.⁷⁴

The funding of academic research activity has provided the corporation legitimacy, while it actively funds ideological and advocacy organizations to conduct a disinformation campaign.

PROMOTING SCIENTIFIC SPOKESPEOPLE

Inextricably intertwined with ExxonMobil's information laundering strategy of underwriting multiple organizations with overlapping staff is the corporation's promotion of a small handful of scientific spokespeople. Scientists are trusted messengers among the American public. Scientists can and do play an important and legitimate role in educating the public and policymakers about issues that have a scientific component, including global warming. Early on, Exxon (and later

ExxonMobil) sought to support groups that worked with the handful of scientists, such as Frederick Singer (a physicist), John Christy (an atmospheric scientist), and Patrick Michaels, who had persistently voiced doubt about human-caused global warming and its consequences, despite mounting evidence.⁷⁵

However, to pull off the disinformation campaign outlined in the 1998 GCST task force memo, ExxonMobil and its public relations partners recognized they would need to cultivate new scientific spokespeople to create a sense among the public that there was still serious debate among scientists. Toward that end, the memo suggested that the team "identify, recruit and train a team of five independent scientists to participate in media outreach. These will be individuals who do not have a long history of visibility and/or participation in the climate change debate. Rather, this team will consist of new faces who will add their voices to those recognized scientists who already are vocal."⁷⁶

By the late 1990s, the scientific evidence on global warming was so strong that it became difficult to find scientists who disputed the reality of human-caused climate change. But ExxonMobil and its public relations partners persevered. The case of scientists Willie Soon and Sallie Baliunas is illustrative.

Soon and Baliunas are astrophysicists affiliated with the Harvard-Smithsonian Center for Astrophysics who study solar variation (i.e., changes in the amount of energy emitted by the Sun). Solar variation is one of the many factors influencing Earth's climate, although according to the IPCC it is one of the minor influences over the last century.⁷⁷ In the mid-1990s, ExxonMobil-funded groups had already begun to spotlight the work of Soon and Baliunas to raise doubts about the human causes of global warming. To accomplish this, Baliunas was initially commissioned to write

several articles for the Marshall Institute positing that solar activity might be responsible for global warming.⁷⁸ With the Baliunas articles, the Marshall Institute skillfully amplified an issue of minor scientific importance and implied that it was a major driver of recent warming trends.

In 2003, Baliunas and Soon were catapulted into a higher profile debate when they published a controversial review article about global warming in the peer-reviewed scientific literature. Writing in the journal *Climate Research*, the two contrarians reviewed the work of a number of previous scientists and alleged that the twentieth century was not the warmest century of the past 1,000 years and that the climate had not changed significantly over that period.⁷⁹ The Soon-Baliunas paper was trumpeted widely by organizations and individuals funded by ExxonMobil.⁸⁰ It was also seized upon by like-minded politicians, most notably James Inhofe (R-OK), chair (until January 2007) of the Senate Environment and Public Works Committee, who has repeatedly asserted that global warming is a hoax. Inhofe cited the Soon-Baliunas review as proof that natural variability, not human activity, was the “overwhelming factor” influencing climate change.⁸¹

Less widely publicized was the fact that three of the editors of *Climate Research*—including incoming editor-in-chief Hans von Storch—resigned in protest over the Soon-Baliunas paper. Storch stated that he suspected that “some of the skeptics had identified *Climate Research* as a journal where some editors were not as rigorous in the review process as is otherwise common” and described the manuscript as “flawed.”⁸² In addition, thirteen of the scientists cited in the paper published a rebuttal explaining that Soon and Baliunas had seriously misinterpreted their research.⁸³

The National Research Council recently examined the large body of published research on this topic and concluded that, “It can be said with a

Inextricably intertwined with ExxonMobil's information laundering strategy of underwriting multiple organizations with overlapping staff is the corporation's promotion of a small handful of scientific spokespeople.

high level of confidence that global mean surface temperature was higher during the last few decades of the 20th century than during any comparable period during the preceding four centuries...Presently available proxy evidence indicates that temperatures at many, but not all, individual locations were higher in the past 25 years than during any period of comparable length since A.D. 900.”⁸⁴ The brouhaha in the scientific community had little public impact. The echo chamber had already been set in motion reverberating among the mainstream media,⁸⁵ while the correction became merely a footnote buried in the science sections of a few media outlets.

This controversy did not stop Soon and Baliunas from becoming central “new voices” in ExxonMobil's effort to manufacture uncertainty about global warming. Both scientists quickly established relationships with a network of organizations underwritten by the corporation. Over the past several years, for example, Baliunas has been formally affiliated with no fewer than nine organizations receiving funding from ExxonMobil.⁸⁶ Among her other affiliations, she is now a board member and senior scientist at the Marshall Institute, a scientific advisor to the Annapolis Center for Science-Based Public Policy, an advisory board member of the Committee for a Constructive Tomorrow, and a contributing scientist

to the online forum Tech Central Station, all of which are underwritten by ExxonMobil.⁸⁷ (For more, see Appendix B, Table 2.)

Another notable case is that of Frederick Seitz, who has ties to both Big Tobacco and Exxon-Mobil. Seitz is the emeritus chair of the Marshall Institute. He is also a prominent solid state physicist who was president of the National Academy of Sciences (NAS) from 1962 to 1969.⁸⁸

In an example of the tobacco industry's efforts to buy legitimacy, the cigarette company R.J. Reynolds hired Seitz in 1979.⁸⁹ His role was to oversee a tobacco industry-sponsored medical research program in the 1970s and 1980s.⁹⁰ "They didn't want us looking at the health effects of cigarette smoking," Seitz, who is now 95, admitted recently in an article in *Vanity Fair*, but he said he felt no compunction about dispensing the tobacco company's money.⁹¹

While working for R.J. Reynolds, Seitz oversaw the funding of tens of millions of dollars worth of research.⁹² Most of this research was legitimate. For instance, his team looked at the way stress, genetics, and lifestyle issues can contribute to disease.⁹³ But the program Seitz oversaw served an important dual purpose for R.J. Reynolds. It allowed the company to tout the fact that it was funding health research (even if it specifically proscribed research on the health effects of smoking) and it helped generate a steady collection of ideas and hypotheses that provided "red herrings" the company could use to disingenuously suggest that factors other than tobacco might be causing smokers' cancers and heart disease.

Aside from giving the tobacco companies' disinformation campaign an aura of scientific credibility, Seitz is also notable because he has returned from retirement to play a prominent role as a global warming contrarian involved in organi-

zations funded by ExxonMobil. Consider, for instance, one of Seitz's most controversial efforts. In 1998, he wrote and circulated a letter asking scientists to sign a petition from a virtually unheard-of group called the Oregon Institute of Science and Medicine calling upon the U.S. government to reject the Kyoto Protocol.⁹⁴ Seitz signed the letter identifying himself as a former NAS president. He also enclosed with his letter a report co-authored by a team including Soon and Baliunas asserting that carbon dioxide emissions pose no warming threat.⁹⁵ The report was not peer reviewed. But it was formatted to look like an article from *The Proceedings of the National Academy of Sciences* (PNAS), a leading scientific journal.

The petition's organizers publicly claimed that the effort had attracted the signatures of some 17,000 scientists. But it was soon discovered that the list contained few credentialed climate scientists. For example, the list was riddled with the names of numerous fictional characters.⁹⁶ Likewise, after investigating a random sample of the small number of signers who claimed to have a Ph.D. in a climate-related field, *Scientific American* estimated that approximately one percent of the petition signatories might actually have a Ph.D. in a field related to climate science.⁹⁷ In a highly unusual response, NAS issued a statement disavowing Seitz's petition and disassociating the academy from the PNAS-formatted paper.⁹⁸ None of these facts, however, have stopped organizations, including those funded by ExxonMobil, from touting the petition as evidence of widespread disagreement over the issue of global warming. For instance, in the spring of 2006, the discredited petition surfaced again when it was cited in a letter to California legislators by a group calling itself "Doctors for Disaster Preparedness," a project of the Oregon Institute of Science and Medicine.

SHIFTING THE FOCUS OF THE DEBATE

One prominent component of ExxonMobil's disinformation campaign on global warming is the almost unanimous call for "sound science" by the organizations it funds.⁹⁹ Like the Bush administration's "Healthy Forests" program, which masks a plan to augment logging, the rallying call for "sound science" by ExxonMobil-funded organizations is a clever and manipulative cover. It shifts the focus of the debate away from ExxonMobil's irresponsible behavior regarding global warming toward a positive concept of "sound science." By keeping the discussion focused on refining scientific understanding, ExxonMobil helps delay action to reduce heat-trapping emissions from its company and products indefinitely. For example, like the company itself, ExxonMobil-funded organizations routinely contend, despite all the solid evidence to the contrary, that scientists don't know enough about global warming to justify substantial reductions in heat-trapping emissions. As ExxonMobil explains prominently on the company's website:

*While assessments such as those of the IPCC [Intergovernmental Panel on Climate Change] have expressed growing confidence that recent warming can be attributed to increases in greenhouse gases, these conclusions rely on expert judgment rather than objective, reproducible statistical methods. Taken together, gaps in the scientific basis for theoretical climate models and the interplay of significant natural variability make it very difficult to determine objectively the extent to which recent climate changes might be the result of human actions.*¹⁰⁰

In contrast, 11 of the world's major national scientific academies issued a joint statement in 2005 that declared, "The scientific understanding of climate change is now sufficiently clear to

The rallying call for "sound science" by ExxonMobil-funded organizations is a clever and manipulative cover.

justify nations taking prompt action. It is vital that all nations identify cost-effective steps that they can take now to contribute to substantial and long-term reduction in net global greenhouse gas emissions."¹⁰¹

There is no denying that the tactic of demanding "certainty" in every aspect of our scientific understanding of global warming is a rhetorically effective one. If manufactured uncertainty and governmental inaction is the goal, science will arguably never be "sound enough," or 100 percent certain, to justify action to protect public health or the environment.

Again, the tobacco industry paved the way. The calculated call for "sound science" was successfully used by tobacco firms as an integral part of a tobacco company's pioneering "information laundering" scheme. As we now know from internal tobacco industry documents, a campaign to demand "sound science" was a key part of a strategy by the cigarette manufacturer Philip Morris to create uncertainty about the scientific evidence linking disease to "second-hand" tobacco smoke, known in the industry as "environmental tobacco smoke" or ETS.¹⁰² Toward this end, in 1993, Philip Morris covertly created a front organization called "The Advancement of Sound Science Coalition" or TASSC.¹⁰³

In setting up the organization, Philip Morris took every precaution. The company opted not to use its regular public relations firm, Burson-Marsteller, choosing instead APCO Associates, a subsidiary of the international advertising and PR

firm of GCI/Grey Associates. For a sizable retainer, APCO agreed to handle every aspect of the front organization.

As part of the plan, APCO focused on expanding TASSC's ersatz "membership" and raising small amounts of additional outside money in order to conceal Philip Morris's role as its founder and exclusive underwriter. A 1993 letter from APCO on the eve of TASSC's public unveiling explains that, despite the appearance of an independent nonprofit group, APCO would "oversee day-to-day administrative responsibility" for running the organization and would draft "boilerplate speeches, press releases and op-eds to be utilized by TASSC field representatives" to further Philip Morris' goals.¹⁰⁴

The public relations firm introduced TASSC to the public through a decentralized launch outside the large markets of Washington, DC, and New York in order to "avoid cynical reporters from major media" who might discover the truth that the organization was nothing more than a front group created by Philip Morris. Top Philip Morris media managers compiled lists of reporters they deemed most sympathetic to TASSC's message.¹⁰⁵ But they left all press relations to APCO so as to, in the words of one internal memo, "remove any possible link to PM."¹⁰⁶

The TASSC campaign was a particularly obvious example of information laundering. But it also represented an important messaging strategy by using the concept of "sound science" to attach Philip Morris's disinformation about second-hand smoke to a host of other antiregulation battles. Philip Morris sought to foil any effort by the Environmental Protection Agency (EPA) to promulgate regulations to protect the public from the dangers of ETS. But the company realized that it could build more support for its discredited position that ETS was safe by raising the broader "sound science" banner. As a result, it took stands

against government efforts to set safety regulations on everything from asbestos to radon. "The credibility of EPA is defeatable," one Philip Morris strategy document explained, "but not on the basis of ETS alone. It must be part of a large mosaic that concentrates all of the EPA's enemies against it at one time."¹⁰⁷

The important point in reviewing this history is that it is not a coincidence that ExxonMobil and its surrogates have adopted the mantle of "sound science." In so doing, the company is simply emulating a proven corporate strategy for successfully deflecting attention when one's cause lacks credible scientific evidence. From the start in 1993, in TASSC's search for other antiregulation efforts to provide political cover, the organization actively welcomed global warming contrarians like Frederick Seitz, Fred Singer, and Patrick Michaels to its scientific board of advisors. Thanks to the online archive of tobacco documents, we know that in 1994, when Philip Morris developed plans with APCO to launch a TASSC-like group in Europe, "global warming" was listed first among suggested topics with which the tobacco firm's cynical "sound science" campaign could profitably ally itself.¹⁰⁸

Given these historical connections, it is disturbing that ExxonMobil would continue to associate with some of the very same TASSC personnel who had overseen such a blatant and shameful disinformation campaign for Big Tobacco. The most glaring of ExxonMobil's associations in this regard is with Steven Milloy, the former executive director of TASSC. Milloy's involvement with ExxonMobil is more than casual. He served as a member of the small 1998 Global Climate Science Team task force that mapped out ExxonMobil's disinformation strategy on global warming.

Milloy officially closed TASSC's offices in 1998 as evidence of its role as a front organization

began to surface in the discovery process of litigation against Big Tobacco. Thanks in part to ExxonMobil, however, the “sound science” disinformation campaign continued unabated. Resuscitating TASSC under the slightly altered name The Advancement of Sound Science *Center* (rather than Coalition), Milloy continues to operate out of his home in Maryland. Between 2000 and 2004, ExxonMobil gave \$50,000 to Milloy’s Advancement of Sound Science Center, and another \$60,000 to an organization called the Free Enterprise Education Institute (a.k.a. Free Enterprise Action Institute), which is also registered to Milloy’s home address.¹⁰⁹ According to its 2004 tax return, this group was founded to “educate the public about the American system of free enterprise,” employed no staff, and incurred approximately \$48,000 in expenses categorized as “professional services.”¹¹⁰

In addition to serving as a columnist on *FoxNews.com*, Milloy is also a contributor to Tech Central Station and an adjunct scholar at the Competitive Enterprise Institute, both funded by ExxonMobil.

The irony of the involvement of tobacco disinformation veterans like Milloy in the current campaign against global warming science is not lost on close watchers. Representative Henry Waxman (D-CA), for instance, chaired the 1994 hearings where tobacco executives unanimously declared under oath that cigarettes were not addictive. As Waxman marveled recently about the vocal contrarians like Milloy on global warming science: “Not only are we seeing the same tactics the tobacco industry used, we’re seeing some of the same groups.”¹¹¹ Of course, unlike the tobacco companies, ExxonMobil has yet to receive a court order to force to light internal documents pertaining to its climate change activities. Nonetheless, even absent this information, the case could hardly be clearer: ExxonMobil is waging a calcu-

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lated and familiar disinformation campaign to mislead the public and forestall government action on global warming.

BUYING GOVERNMENT ACCESS

Tobacco companies have historically been very successful at cultivating close ties in government and hiring former government officials to lobby on their behalf. This list includes, among others, Craig Fuller, who served in the Reagan and Bush administrations, and former GOP chair Haley Barbour as well as former Senate majority leader George Mitchell, who was recruited in 1997 by the tobacco industry firm Verner, Liipfert, Bernhard, McPherson, and Hand to help negotiate a settlement.¹¹²

When it comes to exerting influence over government policy, however, ExxonMobil, in its global warming disinformation campaign, may have even surpassed the tobacco industry it so clearly emulates. During the 2000 to 2006 election cycles, ExxonMobil’s PAC and individuals affiliated with the company gave more than \$4 million to federal candidates and parties.¹¹³ Shortly after President Bush’s inauguration, ExxonMobil, like other large corporate backers in the energy sector, participated in Vice President Dick Cheney’s “Energy Task Force” to set the

administration's goals for a national energy plan.¹¹⁴ ExxonMobil successfully urged the Bush administration to renege on the commitments to the Kyoto Protocol made by previous administrations.¹¹⁵ Paula Dobriansky, who currently serves as under-secretary for global affairs in the State Department and who has headed U.S. delegations negotiating follow-ons to the Kyoto Protocol in Buenos Aires and Montreal, explicitly said as much in 2001. Just months after she had been confirmed by the U.S. Senate, Dobriansky met with ExxonMobil lobbyist Randy Randol and other members of the Global Climate Coalition. Her prepared talking points, uncovered through a Freedom of Information Act request, reveal that Dobriansky thanked the group for their input on global warming policy. One of her notes reads: "POTUS [the President of the United States] rejected Kyoto, in part, based on input from you."¹¹⁶

A Freedom of Information Act request also revealed that in February 2001, immediately following the release of the authoritative 2001 report on global warming from the Intergovernmental Panel on Climate Change (IPCC),¹¹⁷ ExxonMobil successfully lobbied the Bush administration to try to oust the chair of the IPCC. In a memo sent to the White House, Randol complained that Robert Watson, who had chaired the IPCC since 1996, had been "hand-picked by Al Gore."¹¹⁸ Watson is an internationally respected scientist who has served as the director of the science division at NASA and as chief scientist at the World Bank. His work at the IPCC had met with widespread international approval and acclaim. Nonetheless, the ExxonMobil memo urged: "Can Watson be replaced now at the request of the U.S.?"¹¹⁹ At its next opportunity, the Bush administration's State Department refused to re-nominate Dr. Watson for a second five-year term as head of the IPCC, instead backing an Indian engineer-economist for the

post. In April 2002, lacking U.S. support, Dr. Watson lost his position as chair.¹²⁰ The Bush administration's move outraged many in the scientific community who saw it as a blatantly political attempt to undermine an international scientific effort.¹²¹ At the time, however, ExxonMobil's behind-the-scenes role in the incident remained secret.

Meanwhile, in an equally consequential recommendation, the 2001 ExxonMobil memo suggested that President Bush's climate team hire Harlan Watson (no relation), a staff member on the House Science Committee who had served as a climate negotiator at the 1992 Rio Earth Summit for the administration of George Bush Senior and had worked closely with members of Congress who opposed action on global warming.¹²² Shortly thereafter, the Bush administration announced Harlan Watson's appointment as its chief climate negotiator. He has steadfastly opposed any U.S. engagement in the Kyoto process.¹²³

As successful as ExxonMobil's efforts to lobby the Bush administration have been, perhaps even more striking is the way the company's disinformation campaign on global warming science has managed to permeate the highest echelons of the federal government. Between 2001 and 2005, the nerve center for much of this censorship and control resided in the office of Philip Cooney, who served during this time as chief of staff in the White House Council on Environmental Quality. Thanks to a whistle-blowing researcher named Rick Piltz in the U.S. government's interagency Climate Change Science Program who resigned in protest over the practice, we now know that Cooney spent a significant amount of time censoring and distorting government reports so as to exaggerate scientific uncertainty about global warming.¹²⁴

Cooney, a lawyer with an undergraduate degree in economics, had no scientific credentials

that might qualify him to rewrite the findings of top government scientists. Rather, before coming to the Bush administration in 2001, Cooney had spent roughly a decade as a lawyer for the American Petroleum Institute, the oil industry lobby that worked with ExxonMobil in 1998 to develop a global warming disinformation campaign. In that capacity, Cooney served as a “climate team leader” seeking to prevent the U.S. government from entering into any kind of international agreement or enacting any domestic legislation that might lead to mandatory limits on global warming emissions.¹²⁵ After joining the White House staff in 2001, Cooney furthered much the same work agenda from the top ranks of the Bush administration.

During his tenure, Cooney altered and compromised the accuracy of numerous official scientific reports on climate change issued by agencies of the federal government.¹²⁶ For instance, in 2002, as U.S. government scientists struggled to finalize the Climate Change Science Program’s strategic plan, Cooney dramatically altered the document, editing it heavily and repeatedly inserting qualifying words to create an unwarranted aura of scientific uncertainty about global warming and its implications.¹²⁷ (See Appendix C for sample edit.)

As Rick Piltz explained in his resignation letter when he exposed Cooney’s efforts, the government agencies had adapted to the environment created within the Bush administration by “engaging in a kind of anticipatory self-censorship on this and various other matters seen as politically sensitive under this administration.” Even beyond the outright suppression and distortion by Cooney and others, according to Piltz, this self-censorship on the part of career professionals marked one of the most insidious and “deleterious influences of the administration” on climate research efforts within the government.¹²⁸

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On June 10, 2005, Cooney resigned, two days after the *New York Times* first reported Piltz’s revelations. Despite the suspicious timing, the White House claimed that Cooney’s resignation was unrelated to Piltz’s disclosures.¹²⁹ But it was not surprising when Cooney announced, one week after he left the White House, that he was accepting a high-ranking public relations position at ExxonMobil.¹³⁰

One of the most damning incidents involving Cooney also illustrates the extent of ExxonMobil’s influence over the Bush administration policy on global warming. In May 2002, the administration issued the “U.S. Climate Action Report,” which the U.S. State Department was obligated by treaty to file with the United Nations. Major elements of the report were based on an in-depth, peer-reviewed government research report analyzing the potential effects of global warming in the United States. That report, titled “U.S. National Assessment of the Potential Consequences of Climate Variability and Change,”¹³¹ predates the Bush administration and had already been attacked by ExxonMobil.¹³² The report generated widespread headlines such as one in the *New York Times* proclaiming: “Climate Changing, US Says in Report.”¹³³

Not surprisingly, ExxonMobil vociferously objected to the conclusion of the multiagency “Climate Action Report” that climate change posed a significant risk and was caused by human-made emissions.¹³⁴ Concerned about the matter, Cooney contacted Myron Ebell at the Exxon-Mobil-funded Competitive Enterprise Institute. “Thanks for calling and asking for our help,” Ebell responded in a June 3, 2002, email to Cooney that surfaced as a result of a Freedom of Information Act request.¹³⁵ Ebell urged that the President distance himself from the report. Within days, President Bush did exactly that, denigrating the report in question as having been “put out by the bureaucracy.”¹³⁶

In the June 3 email, Ebell explicitly suggests the ouster of then-EPA head Christine Todd Whitman. “It seems to me that the folks at the EPA are the obvious fall guys and we would only hope that the fall guy (or gal) should be as high up as possible,” Ebell wrote. “Perhaps tomorrow we will call for Whitman to be fired.”¹³⁷ Sure enough, Whitman would last for less than a year in her post, resigning in May 2003.¹³⁸ Finally, Ebell pledged he would do what he could to respond to the White House’s request to “clean up this mess.”¹³⁹

A major piece of Ebell’s “clean-up” effort presumably came on August 6, 2003, when the Competitive Enterprise Institute filed the second of two lawsuits calling for the Bush administration to invalidate the National Assessment (a peer-reviewed synthesis report upon which the U.S. Climate Action Report was based). The CEI lawsuit called for it to be withdrawn because it was not based upon “sound science.”¹⁴⁰

Given the close, conspiratorial communication between Ebell and Cooney that had come to light, the lawsuit prompted the attorneys general of Maine and Connecticut to call upon the U.S. Justice Department to investigate the matter.¹⁴¹

However, the Bush administration Justice Department, then led by John Ashcroft, refused to launch such an investigation, despite the fact that the Maine and Connecticut attorneys general stated forcefully that the evidence suggested that Cooney had conspired with Ebell to cause the Competitive Enterprise Institute to sue the federal government. As Maine Attorney General Steven Rowe noted: “The idea that the Bush administration may have invited a lawsuit from a special interest group in order to undermine the federal government’s own work under an international treaty is very troubling.”¹⁴²

A key piece of evidence, unnoticed at the time, strongly suggests just how the scheme fit together. In 2002, in a move virtually unprecedented in its corporate giving program, Exxon-Mobil offered an additional \$60,000 in support for the Competitive Enterprise Institute — specifically earmarked to cover the organization’s unspecified “legal activities.”¹⁴³

In addition to a high level of administration access, ExxonMobil has cultivated close relationships with members of Congress. In July 2005, ExxonMobil’s generous campaign contributions paid off when Congress passed the Energy Policy Act of 2005. This bill, modeled on the President’s 2001 energy plan, provides more than \$7.4 billion in tax breaks and subsidies to the oil and gas industry over 10 years and excludes any provisions that would mandate reductions in U.S. global warming emissions.¹⁴⁴

Joe Barton (R-TX), chair of the House Energy and Commerce Committee from 2004 through 2006 and the lead author of the 2005 energy bill, has received more than \$1 million from the oil and gas industry over the course of his career, including \$22,000 in PAC contributions from ExxonMobil between 2000 and 2006.¹⁴⁵ In addition to shepherding through the massive oil and gas subsidies in that bill, Representative Barton

has played a key role in elevating misleading information and delaying congressional action on global warming. Before he became chair of the full committee in 2004, Barton chaired the Energy and Air Quality Subcommittee. In that capacity, he stated at a March 2001 hearing that as long as he was the subcommittee chair, regulation of global warming emissions would be “off the table indefinitely.” As Barton put it: “I don’t want there to be any uncertainty about that.”¹⁴⁶ In his capacity as chair of the full committee, Barton has held true to his word, holding only two climate-related hearings, both aimed at attacking reputable climate scientists.¹⁴⁷

In February 2005, the American Petroleum Institute—of which ExxonMobil is a powerful member¹⁴⁸—contacted members of Congress to raise questions about aspects of two climate studies from 1998 and 1999.¹⁴⁹ In June 2005, Representative Barton followed the oil industry’s lead, sending letters to three climate scientists—Drs. Michael Mann, Raymond Bradley, and Malcolm Hughes—as well as the Intergovernmental Panel on Climate Change and the National Science Foundation, questioning many aspects of these studies. The letter to the scientists requested a vast amount of data and information related to their research over the past 15 years. While Rep. Barton’s request specifically targeted the results of the so-called “hockey stick” studies (a 2,000-year record of Northern Hemisphere temperature), it also demanded a significant amount of data irrelevant to that set of peer-reviewed studies.

While a spokesman for the representative claims he was only “seeking scientific truth,”¹⁵⁰ Barton seems to willfully misunderstand that the findings of the study in question are only one among a large body of evidence that support the scientific consensus that global warming is under way and that human activity is contributing significantly over the past several decades. Rather

“The idea that the Bush administration may have invited a lawsuit from a special interest group (ExxonMobil-funded CEI) in order to undermine the federal government’s own work under an international treaty is very troubling.”

— STEVEN ROWE,
ATTORNEY GENERAL, MAINE

than basing his inquiry on a careful review of peer-reviewed scientific literature or documents from leading scientific bodies like the National Academy of Sciences, Barton cited a *Wall Street Journal* editorial as his primary source of global warming information.

The scientific community has weighed in strongly. The National Academy of Sciences and the American Association for the Advancement of Science—which rarely take stands on Congressional investigations—sent letters of concern to Barton, as did twenty leading climate scientists. Representative Sherwood Boehlert (R-NY), chair of the House Science Committee, and Representative Waxman (D-CA), then ranking member on the House Government Reform Committee, both submitted letters protesting the tone and content of this investigation.

Despite this response, Representative Barton held two hearings in July 2006, both aimed at attacking the Mann study. Not surprisingly, the witnesses invited to testify at the second hearing included John Christy, who, as detailed earlier, is one of the scientists affiliated with ExxonMobil funded organizations—the Competitive Enterprise Institute and the George C. Marshall Insti-

tute—and Stephen McIntyre, a mining executive also affiliated with the Marshall Institute.

Meanwhile, the most vocal opponent to climate action in the Senate is James Inhofe (R-OK), chair—until January 2007—of the Environment and Public Works Committee. He adamantly denies the reality of global warming and has prevented consideration of climate bills by his committee during his tenure as chair from 2003 to 2006. In September 2005, he went so far as to invite Michael Crichton, a science fiction writer, to testify at a hearing on climate science and policy. Despite Crichton's lack of expertise, he attempted to undermine peer-reviewed climate science in his testimony. Inhofe was also a coplaintiff in the first Competitive Enterprise Institute lawsuit, filed in 2000, which attempted to bar the distribution or use of the National Assessment. Senator Inhofe has received a total of

\$847,123 from ExxonMobil and others in the oil and gas industry over the course of his career.¹⁵¹ Like Big Tobacco before it, ExxonMobil has been enormously successful at influencing the current administration and key members of Congress. From successfully recommending the appointment of key personnel in the Bush administration, to coordinating its disinformation tactics on global warming with high-ranking Bush administration personnel, to funding climate change contrarians in Congress, ExxonMobil and its proxies have exerted extraordinary influence over the policies of the U.S. government during the Bush administration. The cozy relationship ExxonMobil enjoys with government officials has enabled the corporation to work effectively behind the scenes to block federal policies and shape government communications on global warming.

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

contributions from ExxonMobil and its executives until the disinformation campaign ceases and the corporation ends its opposition to mandatory regulation of global warming emissions from fossil fuels.

Policy Action

The true signal that ExxonMobil's disinformation campaign has been defeated will come when Congress passes policies that ensure global warming emission reductions. Congress should bring stakeholders—including ExxonMobil—to the table, as lawmakers develop and enact a set of policies to achieve mandatory global warming emission reductions such as improved energy efficiency standards for appliances and vehicles, renewable electricity standards, and economywide caps on global warming emissions. In addition, Congress should shift government energy support and incentives away from conventional coal, oil, and gas and toward clean, renewable energy sources. Lawmakers should also encourage the integration of low carbon fuels into the supply chain by developing policies to ensure that more gas stations sell biofuels such as E85 and that flexible fuel vehicles comprise a greater percentage of the vehicle fleet.

These actions will not only reduce global warming emissions, but will help address national security concerns about our growing oil dependence, reduce demand pressures that are driving up natural gas prices, save energy consumers billions of dollars, and create hundreds of thousands of new jobs producing clean energy and vehicle technologies.¹⁵⁵

Through these and other efforts, our elected representatives can bring ExxonMobil's campaign of disinformation on global warming to an end.

SHAREHOLDER ENGAGEMENT

Investors will pay a steep price if ExxonMobil refuses to prepare to do business in a world where global warming emission reductions are required,

as they most certainly will be over the next several years. Investors can help shift ExxonMobil's position on global warming and clean energy solutions. ExxonMobil shareholders can join major institutional investors in calling on the company to begin to invest in clean energy options that would protect the long-term health of the corporation and the planet.¹⁵⁶

In 2006, shareholders offered a resolution calling on the ExxonMobil board to establish policies designed to achieve the long-term goal of making ExxonMobil the recognized leader in low-carbon emissions in both the company's production and products. In May 2006, 17 leading U.S. pension funds and other institutional investors holding \$6.75 billion in ExxonMobil shares asked for a face-to-face-meeting with members of the ExxonMobil board of directors. This request stemmed from growing concerns in the financial world that ExxonMobil is "a company that fails to acknowledge the potential for climate change to have a profound impact on global energy markets, and which lags far behind its competitors in developing a strategy to plan for and manage these impacts," as articulated in a letter to ExxonMobil from investors in May of 2006.¹⁵⁷ Connecticut State Treasurer Denise Nappier elaborated on the group's concerns, stating that "in effect, ExxonMobil is making a massive bet—with shareholders' money—that the world's addiction to oil will not abate for decades, even as its competitors are taking significant steps to prepare for a rapidly changing energy environment. As investors, we are concerned that ExxonMobil is not sufficiently preparing for 'tomorrow's energy' and runs the risk of lagging significantly behind its rivals."¹⁵⁸

ExxonMobil's competition is indeed moving forward in renewable energy research and deployment. In 2005, BP launched BP Alternative Energy, a project that plans to invest \$8 billion

over the next ten years to advance clean energy technologies such as solar, wind, and bioenergy.¹⁵⁹ Similarly, Shell has invested \$1 billion in alternative energy development since 2000. It is a major biofuels distributor, a developer of the next generation of solar technology, and it has 350 MW of operational wind capacity.¹⁶⁰ While these companies could do more to address global warming, their actions represent an important step. Investors can encourage ExxonMobil to convert funds currently used for the disinformation campaign to add to the recent research and development investments ExxonMobil contributes to institutions devoted to legitimate climate science and solutions research.

Shareholders should also support resolutions calling on ExxonMobil to disclose the physical, financial, and competitive risks that global warming poses to the corporation. For example, the 2005 hurricane season suggests that the country's oil refining infrastructure is vulnerable to an increase in the severity of extreme weather events that scientists project are likely to occur with continued warming. ExxonMobil's total natural gas production decreased in 2005 partly as a result of the impacts of Hurricanes Katrina and Rita in the Gulf of Mexico.¹⁶¹

Individuals who do not have a direct investment in ExxonMobil may own pension funds and mutual funds invested in ExxonMobil. These investors can insist that their fund managers assess the global warming risk of ExxonMobil investments and support global warming shareholder resolutions targeting ExxonMobil. While institutional investors increasingly support these resolutions, mutual fund companies are lagging behind and putting investors at risk. None of the top 100 U.S. mutual funds support climate change resolutions. For example, the three largest mutual fund companies: American Funds, Fidelity, and Vanguard all have major holdings in ExxonMobil,

Investors will pay a steep price if ExxonMobil refuses to prepare to do business in a world where global warming emission reductions are required.

but have not yet committed to support future climate resolutions. More pressure from investors is needed to influence these and other mutual fund companies.

MEDIA ACCOUNTABILITY

Too often, journalists' inclination to provide political "balance" leads to inaccurate media reporting on scientific issues. Far from making news stories more balanced, quoting ExxonMobil-funded groups and spokespeople misleads the public by downplaying the strength of the scientific consensus on global warming and the urgency of the problem. Citizens must respond whenever the media provides a soapbox for these ExxonMobil-sponsored spokespeople, especially when the story fails to reveal their financial ties to ExxonMobil or those of their organizations.

Toward this end, citizens can send letters to the editor highlighting the financial ties that quoted "experts" have to ExxonMobil or ExxonMobil-funded organizations. They can also encourage individual reporters and media outlets to report science accurately. Well-established scientific information should be reported as such, and members of the press should distinguish clearly between those views of their sources that are supported in the peer-reviewed scientific literature versus those that have only been propped up in the ExxonMobil-financed echo chamber.

CONSUMER ACTION

Finally, consumers can exercise their influence in

the marketplace by refusing to purchase ExxonMobil's gasoline and other products until the company ends its disinformation campaign. ExxposeExxon, a collaborative campaign led by many of the nation's largest environmental and public interest advocacy organizations, has already gathered boycott pledges from more than 500,000 consumers who are calling on the company to change course on global warming.¹⁶² In particular, consumers should demand that ExxonMobil stop funding groups that disseminate discredited information on global warming and require the organizations it funds to disclose their funding sources and to subject their published, science-based information to peer review.

It is time for ExxonMobil customers to hold the corporation accountable for its environmental rhetoric. For example, ExxonMobil's 2005 Corporate Citizen Report states, "We seek to drive incidents with environmental impact to zero, and to operate in a manner that is not harmful to the environment."¹⁶³ Even while making such pronouncements, ExxonMobil has, as this report demonstrates, been engaged in a disinformation campaign to confuse the public on global warming. At the same time, heat-trapping emissions from its operations continue to grow.

It is critical that ExxonMobil impose strict standards on the groups that receive funding for climate-related activities. Not only should it cease funding groups who disseminate discredited information on global warming, it should require funded organizations to acknowledge ExxonMobil support for their work. An incident at a September 2005 National Press Club briefing indicates the importance of such disclosure. At the briefing, Indur Goklany, an analyst at the ExxonMobil-funded National Center for Policy Analysis, presented "Living with Global Warming," a paper that favors adapting to global warm-

ing over curbing the problem with emission reduction. Neither the paper nor Goklany advertised the organization's ties to ExxonMobil, which would have remained undisclosed had not an audience member asked Goklany about the organization's \$315,000 in funding from ExxonMobil between 1998 and 2004. Requiring individuals like Goklany to disclose this information will help the public more effectively evaluate the independence of their statements.

In June 2005, U.S. State department documents revealed that the White House considered ExxonMobil "among the companies most actively and prominently opposed to binding approaches [like Kyoto] to cut greenhouse gas emissions."¹⁶⁴ Customers should press ExxonMobil to end its opposition to federal policies that would ensure reductions in U.S. global warming emissions. Moreover, it should be urged to set a goal to reduce the total emissions from its products and operations and demonstrate steady progress toward that goal. Consumers should also call on ExxonMobil to prepare to comply with imminent national and international climate policies by transitioning to cleaner renewable fuels and investing in other clean energy technologies. In particular, ExxonMobil should develop a plan to increase production of low-carbon cellulosic ethanol and make it available at its fueling stations.

To make their actions visible to the company, consumers should relay their demands directly to Rex Tillerson at ExxonMobil's corporate headquarters (5959 Las Colinas Boulevard, Irving, Texas 75039-2298; phone number 972-444-1000).

To access web tools focused on holding ExxonMobil accountable for its activities on global warming, visit www.ExxposeExxon.com. The site includes sample letters to Rex Tillerson and members of Congress.

Exhibit V

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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are the sole responsibility of the participants quoted.*

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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 \$12 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 years¹⁷

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 Giantz 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. Giantz 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.’”

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. Legal strategies themselves are a double-edged sword. The more adversarial the discourse, the more minds are going to be closed.

—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 trade²⁵ "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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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 Kewer, 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.

Exhibit W

Google Groups

JOB: Deputy Scheduler for Fahr, LLC, San Francisco

h...@fahrllc.com

Aug 19, 2015 2:53 PM

Posted in group: **GAIN Jobs via JobsthatareLEFT**

Please email a cover letter and resume to H...@fahrllc.com.

About us:

Fahr LLC acts as the "umbrella" entity to manage and support a variety of entities and efforts related to climate change, advanced energy, sustainable food systems, and socially responsible finance. The entities and efforts include NextGen Climate's political and policy groups, various philanthropic funds, The Ranch, The Family Office's operational and investment activities, and various affiliated entities and projects.

We are the nexus between a handful of exciting and powerful efforts aimed to curb climate change and make the world a better place. We are a group of smart and passionate people from diverse backgrounds who are united around shared values about our future and a core belief that we have the power to change the course of history. As a team, we work together to strategize how best to maximize our collective impact.

About this role:

The many demands and commitments facing The Principal make his time a precious commodity, and the job of the Deputy Scheduler is to support The Principal and the Director of Strategic Planning and Scheduling in managing that resource. The Principal must rely on the scheduling team to strategically administer his time in a way that maximizes his strengths while driving the goals and objectives of him and the organization.

Responsibilities:

- Scheduling: Serve as secondary point of contact for incoming scheduling requests appropriately for approval and responses; schedule meeting, travel and speech preps with The Principal and relevant team members; lead and schedule trip calls for all related travels; collect information for detailed travel schedules and ensure timely collection of memos and remarks for travel and meetings; distribute travel schedules to senior and traveling staff; serve as an advocate for The Principal and maximize his time on the road and in the office; serve as a resource for advance staff on the ground and provide them with contacts and other relevant information pertaining to The Principal's schedule; work in conjunction with the DoSPS and the personal aide to ensure The Principal has all pertinent logistical and briefing information for events and meetings; oversee all travel reservations; manage relevant follow-up and document on notes, call sheets and other correspondence; work with team to manage personal travel, events and meetings.
- Administrative duties as needed.
- Other activities as directed.

About you:

- Candidate should possess a bachelor's degree or equivalent experience
- Minimum 5+ years of scheduling experience for high-level elected officials or equivalent in the private sector
- Proven knowledge and proficiency of information systems and the supporting infrastructure of computers, data sources and desktop software (Microsoft Office Salesforce)
- Must be a highly organized self-starter with a willingness to work hard in a fast-paced and rapidly changing environment
- Good organizational and problem solving skills, as well as a fastidious attention to detail
- Excellent verbal and written communication skills
- Tactful, professional, discreet trustworthy and courteous
- Experience managing other employees
- Love a challenging fast-paced environment
- Ability to resolve conflict, manage ever-changing schedules and travel as needed
- Comfortable with constant use of hands/fingers/arms position requires 7-8 hours per day of constant operation of computer, phone and other office productivity machinery (i.e., a calculator, copy machine, and computer printer).
- Patience and a good sense of humor highly valued

Culture and Workplace

- ▪ Headquartered in prime downtown San Francisco location
 - Our space reflects our values- we have 'living walls" with plants that hang from ceiling to floor, adjustable height desks, and furniture constructed with wood sourced from The Ranch
 - We recently entirely renovated our office space in collaboration with the Living Building Challenge and WELL Standard, the most rigorous performance standard tests for healthy and efficient office spaces
 - We have a kitchen stocked with delicious organic locally sourced foods as well as regularly catered meals from local food vendors
 - 4 weeks vacation- we believe in work-life balance and happy employees
 - Generous benefits package- everything you'd expect plus the opportunity to enroll in a 401K plan

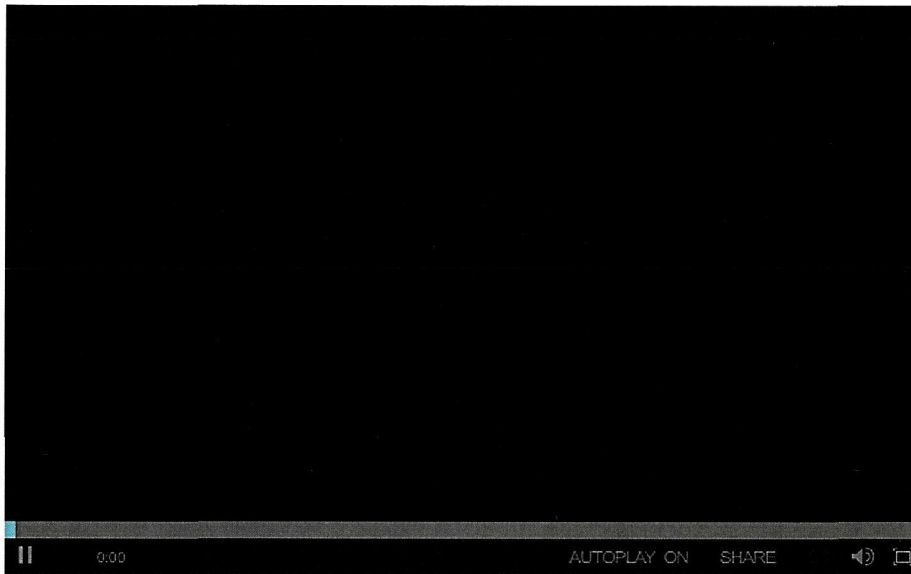
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Exhibit X

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CBS NEWS / December 2, 2016, 7:04 AM

Rockefeller descendants speak out against company to which they owe their prosperity

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Only on "CBS This Morning," members of the Rockefeller family are giving their first TV interviews about a public falling out with ExxonMobil. The energy giant is one of the successors to Standard Oil, founded by John D. Rockefeller. But some of his descendants are now criticizing [ExxonMobil's record on climate change](#).

According to Forbes, the Rockefellers are the 23rd richest family in the U.S. with a fortune of \$11 billion, reports CBS News correspondent Don Dahler. Today, much of that wealth goes toward philanthropy through organizations like the Rockefeller Brothers Fund and the Rockefeller Family Fund, both of which backed reports that suggest ExxonMobil knew more than it was letting on about the threat of global warming.

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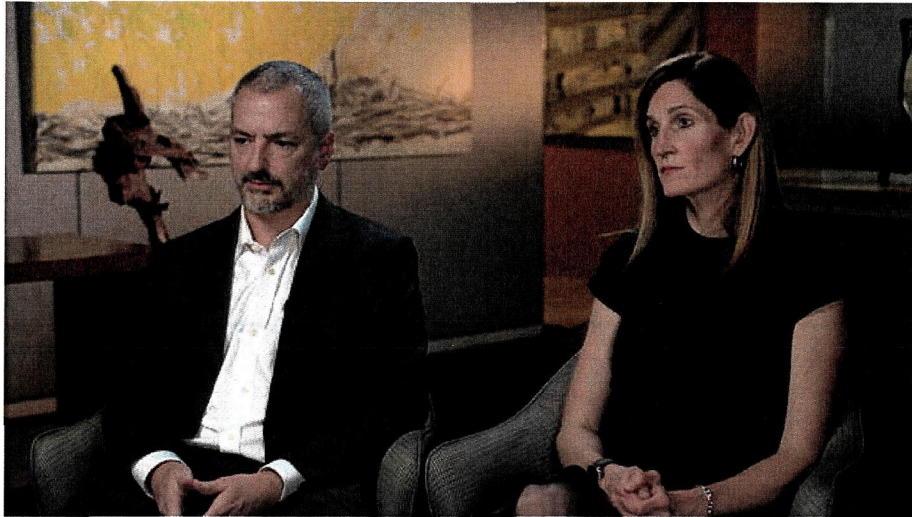
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"If the board of ExxonMobil is not answering your calls, this is your opportunity. What would you say directly to them?" Dahler asked David Kaiser, president of the Rockefeller Family Fund.



David Kaiser, president of the Rockefeller Family Fund, and Valerie Rockefeller Wayne, trustee and chair of Rockefeller Brothers Fund / **CBS NEWS**

"If I was talking to the board of ExxonMobil, I would say that right now, their company seems to be morally bankrupt," Kaiser said.

Fifth-generation descendants of John D. Rockefeller are speaking out against the company to which they owe their prosperity. Kaiser is the grandson of former Chase bank chairman David Rockefeller. Valerie Rockefeller Wayne is the daughter of former Sen. Jay Rockefeller.

"Because the source of the family wealth is fossil fuels, we feel an enormous moral responsibility for our children, for everyone -- to move forward," Wayne said.

They're doing that by looking back.

The charities they run funded investigations that appeared in the Los Angeles Times and InsideClimate News. The reports suggest "Exxon had been at the forefront of climate change research" since the late 1970s and knew the burning of fossil fuels "would warm the planet and could eventually endanger humanity," even while the company downplayed the science in a series of newspaper ads and television interviews.

"This is complicated. Don't believe statements that say it's clear that things are warming. It's not clear," Frank Sprow told CBS News in a 2000 interview while he was ExxonMobil vice president.

Exxon Mobil accuses the Rockefellers of conspiring against the corporation.

In a phone call with CBS News, a company official described it as a "coordinated campaign ... to vilify the company." A spokesman initially sent us a statement saying the reports were "funded and then promoted by activists," claiming they're "not credible and have been widely discredited." The company later retracted that statement, telling us they "don't have a comment."

"The company has taken the unusual step of publicly criticizing you and the family funds, calling you conspirators. This has gotten personal," Dahler said to Kaiser.

"Well, you know it's really very silly. ... For something to count as a conspiracy it can't just have been done in concert with other people, it also has to be illegal and we haven't done anything illegal," Kaiser responded.



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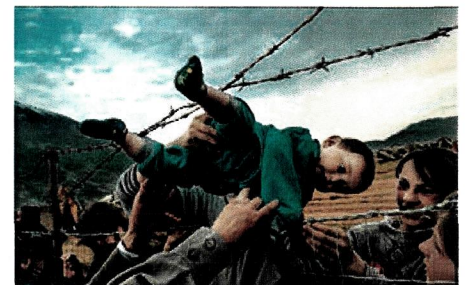
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Kaiser said a large majority of the family supports their efforts. But not everyone is on board.

“These family funds do not speak on behalf of all 200 family members,” said Ariana Rockefeller, Kaiser’s cousin.

Rockefeller insists all sides should be working together on solutions for climate change.

“I don’t think denouncing a family legacy is the best way to go about doing this,” she said.



Ariana Rockefeller / CBS NEWS

Still, Kaiser and Wayne said it’s important to learn what the company has done to clear up the debate over what to do next.

“What we would hope from Exxon is that they would admit what they’ve done -- these decades of denial -- and continue what they’ve started in a very small way to do now, which is to look at alternatives and we really hope they become an industry leader,” Wayne said. “They can set the tone for the industry in doing more, but the truth has to come out.”

New York and Massachusetts have announced fraud **investigations** to determine if ExxonMobil misled the public about its research on climate change. Exxon has launched a **vigorous defense**, suing the attorneys general of both states in federal court alleging a “conspiracy” with what it claims are “politically motivated investigations.”

ExxonMobil now acknowledges the risk of climate change and reports spending billions of dollars to find ways to lower greenhouse gas emissions.

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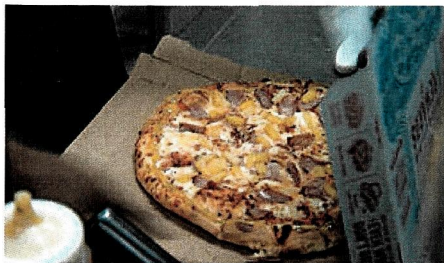
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In the last seven years, the company has outperformed Amazon, Apple, Facebook and Google, with its stock going from \$9 a share to over \$180 today



Saturday Sessions: The Marcus King Band performs "Rita is Gone"

Born in South Carolina, Marcus King was brought up on the blues, performing with his bluesman father, Marvin. Last year the band released their critically acclaimed second album produced by Warren Haynes of The Allman Brothers

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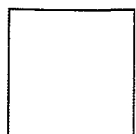
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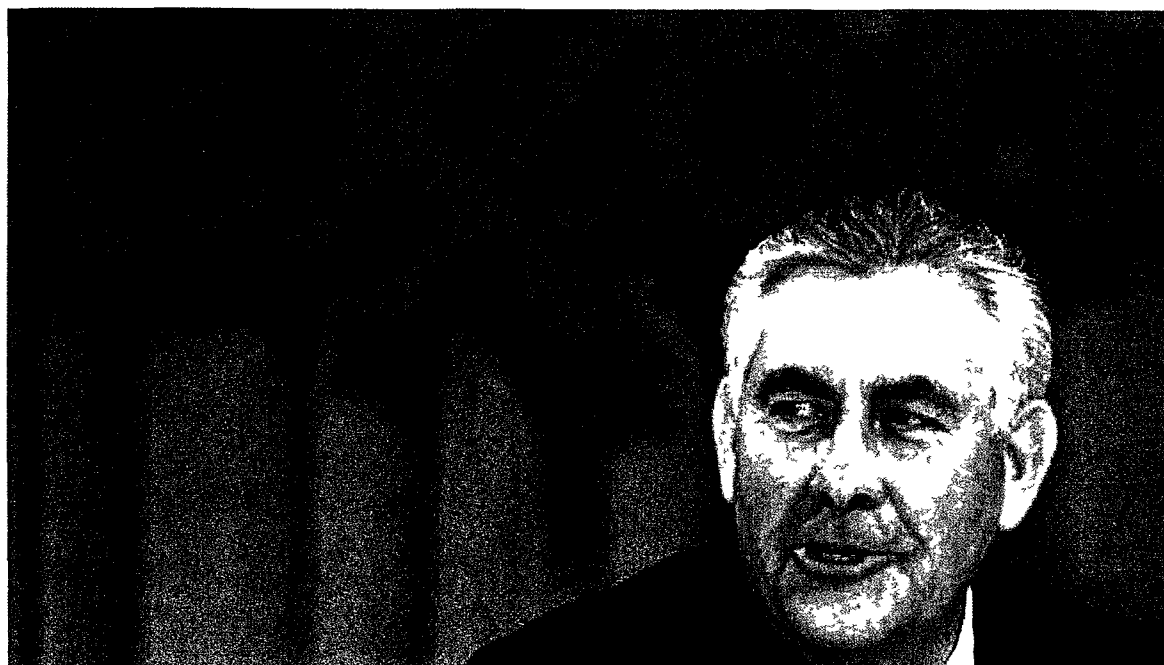


Rockefeller Foundations Enlist Journalism in ‘Moral’ Crusade Against ExxonMobil

Media squeals when corporations sponsor self-serving reporting but lap it up when agenda squares

By Ken Silverstein • 01/06/17 12 30pm

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Rex Tillerson, chairman and CEO of ExxonMobil and Donald Trump's pick for secretary of state. Flickr Creative Commons

When corporations and right-wing business groups fund think tanks and non-profits they are invariably called out, quite rightly, for trying to buy and shape media coverage. Journalists tend to dismiss the paid-for studies and reports as tainted and, if they cite them at all, flag said studies and reports with consumer warnings about their problematic origins.

No industry has been more criticized for seeking to influence the media than oil and gas, and no single company more targeted than ExxonMobil. The company's CEO, Rex Tillerson, is of course Donald Trump's nominee to be secretary of state, and ExxonMobil is the world's largest oil company.

An NPR story last year thrashed the company for "pouring millions and millions of dollars" into dozens of groups, "some of which were transparently industry front groups, and some of which were right-wing economics advocacy groups, that themselves spent decades in various degrees of climate denial."

However, when liberal advocacy groups and foundations fund journalism directly, there's less discussion about potential conflicts of interests or the integrity of the work product — and especially if the journalism embraces a beloved cause like climate change and attacks a popular villain like the fossil fuel industry.

A case in point is how two Rockefeller family foundations have been involved in an advocacy campaign that accuses ExxonMobil of covering up what it knew about climate change in order to maximize its profits while endangering the American public. Part of the campaign has been to bring legal action against the company, on the grounds that it acted similarly to tobacco companies that hid the link between smoking and cancer. Meanwhile, Rockefeller foundations have funded journalism enterprises that have produced stories that overlap with the advocacy agenda.

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For the most part, the Rockefellers have not only avoided criticism but have had their liberal do-gooder brand polished by, among others, the New York Times, the Washington Post, the New Yorker, the New York Review of Books and NPR (whose funders include the Rockefeller Foundation). And while the Rockefellers have portrayed their fight as one purely driven by ethics and virtue, crusading against climate change hasn't been bad for foundation business either.

(Note: Not all individual members of the 200-plus Rockefeller family have endorsed the campaign, but I'm using "the Rockefellers" for shorthand at times in this story because many of them have and two of their foundations have funded and supported the Exxon campaign.)

Back in 2014, the Rockefeller Brothers Fund was showered with commendations after announcing that it would no longer invest its \$818 million portfolio in fossil fuels. The divestment decision, which was seen as a role model and has since been embraced by other large foundations, was portrayed as a profoundly moral one. "It became increasingly uncomfortable to be fighting global warming on the one hand [through charitable grants] and then investing in businesses that cause global warming," Fund president Stephen Heintz said.

Earlier this year, the Rockefeller Family Fund announced it would dump its ExxonMobil stock, referring to the company's "morally reprehensible conduct" in suppressing information about global warming. This, too, was greeted with lavish praise and seen as a sign of enhanced Rockefeller benevolence because family patriarch John D. Rockefeller founded Standard Oil, of which ExxonMobil is the largest direct descendant.



Valerie Rockefeller Wayne. Screenshot

In 2015 Valerie Rockefeller Wayne, chair of the Rockefeller Brothers Fund, explained the divestment to The Guardian: "We all have a moral obligation. Our family in particular – the money that is for our grant-making, and what we are doing now, and that helps fund our lifestyles came from dirty fuel sources."

It's all quite heartwarming, yet there are a few reasons to be at least a little bit skeptical. First, the two foundations took these steps almost a century and a half after Standard Oil was created. Family members have made a lot of money in the meanwhile and it seems pretty late in the day to win plaudits for dropping fossil fuel investments.

It's also unlikely that divestment will have any adverse impact on family members' lifestyles—the Rockefellers are the 23rd richest family in the U.S. with a fortune of \$11 billion, according to Forbes—or on their foundations' bottom line. Oil prices had already started dropping when the announcement was made in 2014 and have generally plunged since, tanking the shares of energy stocks. As an industry, energy stocks were the worst performers of 2015. ExxonMobil's share price has dropped by more than 10 percent in the past two years.

Meanwhile, the Rockefeller Brothers Fund didn't drop fossil fuel investments entirely and has said it would only do it—and ramp up promised investments in renewables—on a phased-in basis. Heintz has said it would only fulfill the pledge when it figured out how it could be done “without causing harm to the overall performance of [our] investment portfolio” (The fund still has about \$24 million in fossil fuel investments, which represents 3.1 percent of the endowment—when the process started, 6.6 percent of the endowment was invested in fossil fuels. The fund has invested \$100 million in alternative energy sources over the same period).

Beyond that, charities, not just corporations, deserve scrutiny when it comes to their donations. The Rockefellers are a powerful family, and historically they haven't been shy about throwing money around to promote a political agenda that has not always been altruistic.

Way back at the turn of the 20th century, John D. Rockefeller recognized the value of family branding and political engineering and spent lavishly to soften his Robber Baron image. “Not even God himself can stop me from giving my money to the University of Chicago,” he wrote, and his investment paid off as the school's academics duly trotted out studies proving the virtues of the “free market” and the inevitability and ultimately proper capitalist distribution of income that made the few rich and the many poor.

“I have no sympathy...for the Tillerson gang at Exxon, but the Big Green foundations operate in pretty much the same way.” – Jeffrey St. Clair

Back in the 1990s, the Rockefeller Family Fund was run by a man named Donald Ross, who was close to the Democratic Party and who sought to shape the environmental movement's agenda to match up with Bill Clinton's administration. The Fund also held a number of surprising holdings with oil and gas companies, mining companies and timber firms. Indeed, the Fund was simultaneously running a campaign — unsuccessful in the end — to protect ancient forests in the Pacific Northwest and holding a strong position in timber firms stripping the region like Weyerhaeuser and Boise Cascade.

“I have no sympathy at all for the Tillerson gang at Exxon, but the Big Green foundations operate in pretty much the same way when it comes to public relations,” Jeffrey St. Clair, the editor of

CounterPunch and a longtime environmental activist, told the Observer. “It’s not their style to give money away without expecting something in return.”

The Rockefeller Family Foundation (which has an endowment of about \$130 million) has long targeted the oil industry and honed in on ExxonMobil last January during a meeting at its Manhattan offices. The agenda was to “establish in the public’s mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm” and to “delegitimize” Exxon as a political actor. The ultimate goal would include “getting discovery” from ExxonMobil through legal action brought by public officials, thus “creating scandal” around the country.

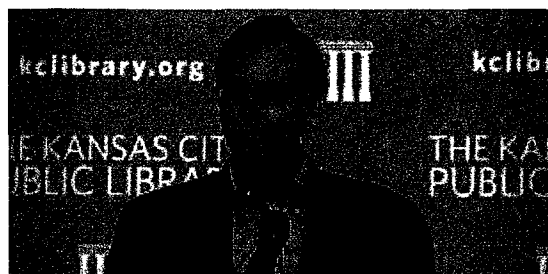
Participants at the meeting included activist groups like Greenpeace and Public Citizen, and trial lawyers who have won judgments against the industry before, like Sharon Eubanks, the federal government’s lead counsel in its racketeering case against Philip Morris, and Matt Pawa, a litigator who had won a \$236 million verdict against ExxonMobil in 2013 for contaminating New Hampshire’s groundwater.

But to be successful, the advocacy campaign needed to strike a chord in the media, and its key themes were covered by InsideClimate News, “an independent, not-for-profit, non-partisan news organization” that covers energy issues “plus the territory in between where law, policy and public opinion are shaped.”

Back in 2013, it won a Pulitzer Prize, which are awarded by Columbia University, for an investigation into a million-gallon spill of Canadian tar sands oil into the Kalamazoo River. It was nominated again in 2016 for a series called “Exxon: The Road Not Taken,” which argued that the company had suppressed the danger of climate change for decades. (It didn’t win, but Columbia gave it its John B. Oakes Award for Distinguished Environmental Journalism.)

The Rockefeller Brothers Fund is one of InsideClimate News’ biggest funders, but it says it knew nothing about the ExxonMobil series until it was published.

The advocacy campaign’s argument was also amplified by the Columbia Journalism School and its dean, Steve Coll, a well-regarded, Pulitzer Prize-winning journalist who had previously been a top editor at the *Washington Post*, head of the New



America Foundation and the author of several bestselling books.

Steve Coll speaks at an event about "ExxonMobil and American Power" in Kansas City in 2013 [YouTube](#)

Rockefeller family foundations donated more than \$1 million to the New America Foundation after Coll was appointed to run it in 2007. His salary there quintupled over five years to \$320,730, nonprofit disclosure forms show. During Coll's years at the New America Foundation he wrote Private Empire, a sharply critical corporate biography of ExxonMobil. (I liked it and spoke to Coll when he was researching the book because I'd written extensively about ExxonMobil's sleazy deals with the corrupt dictatorship of Equatorial Guinea, which he covered.)

When private companies give money to think tanks, it's pretty apparent that it's part of a lobbying or media campaign. For example, Google CEO Eric Schmidt chaired New America's board and his company is one of its largest donors. The think tank also had company-paid Google Scholars, as the *Washington Post* noted in a story titled "Google, once disdainful of lobbying, now a master of Washington influence." With their lavish endowments and extensive political agendas, one assumes that foundations were also looking to win influence when they donate to think tanks.

In 2012, Coll left New America and the following year signed on at Columbia. The two Rockefeller foundations donated a combined \$300,000 to Columbia in 2013 and 2014, which helped underwrite a partnership between the university's Energy & Environmental Reporting Project and the *Los Angeles Times*. They teamed up on a series that covered much of the same ground as the *InsideClimateNews* series and that also was nominated for a Pulitzer Prize. The stories (written by the students who took part in the fellowship) initially failed to disclose — until after ExxonMobil protested — that the Rockefeller family had donated to the Project, along with other liberal foundations like the Energy Foundation, Open Society Foundations and the Tellus Mater Foundation.

"We supported public interest journalism to better understand how the fossil fuel industry was dealing with the reality of climate science internally and publicly," Lee Wasserman, director of the Rockefeller Family Fund — and the convener of the January meeting at its offices which laid out the Exxon campaign—told Reuters when its funding was exposed.

After these series were published, New York Attorney General Eric Schneiderman dutifully launched an investigation of ExxonMobil and the state has issued subpoenas seeking records of the company's climate research for the past 40 years. Other state attorneys general have also announced investigations of ExxonMobil and several members of Congress called on the

Department of Justice to investigate the company using the Racketeer Influenced and Corrupt Organizations Act (RICO), which was designed to prosecute mob activity and was also employed to investigate tobacco companies in the 1990s.

The company has launched an aggressive counterattack against the Rockefeller foundations for organizing what ExxonMobil calls a “conspiracy” against it. It has gotten a Texas judge to approve subpoenas for foundation communication with its campaign allies. Texas Congressman Lamar Smith, who receives significant political donations from ExxonMobil, has sent a letter to Rockefeller funds with subpoenas for similar internal files.

Alan Jeffers, an ExxonMobil spokesman, has accused the Rockefeller family of financing journalism and seeking to prompt legal action against the company. In an email, he criticized late exposure of Rockefeller funding for the reporting and accused activists and the media of using “cherry-picked statements attributed to various company employees to wrongly suggest definitive conclusions were reached by company researchers at the early stages of scientific investigation of the potential for climate change...To suggest that we had reached definitive conclusions, decades before the world’s experts and while climate science was in an early stage of development, is not credible.”

Jeffers suggested that Rockefeller funding for Columbia and *InsideClimateNews* weighted the reportorial scales and produced predetermined findings that supported the foundations’ advocacy agenda.



Attorneys general like Eric Schneiderman may have been deceived by a Los Angeles Times story about ExxonMobil
Twitter

InsideClimate News says all of its work is independent of donors and Stacy Feldman, the group’s executive editor, has issued a statement saying that ExxonMobil has never specified anything “inaccurate or misleading in the series, nor has it requested any corrections.”

Steve Coll told me that the Columbia/*Los Angeles Times* series was not an initiative of the Rockefellers but grew out of his reporting of *Private Empire*. “It was entirely my idea, there was reporting left on the table

from the book that had to do with what ExxonMobil knew about climate change and when it knew it,” he told me. “I then went out and raised the money for it after I got to Columbia. We gave

them updates about the project, but the journalism component was totally independent and Rockefeller had no input or editorial control.”

Coll stood by the series’ findings, which he said were fair and deeply reported. He acknowledged that working with foundations that have advocacy positions created an “appearance problem,” that he said is the topic of an ongoing conversation within journalism, including at Columbia. “Foundation funding is something of a new frontier and there are uncomfortable aspects to it,” he said. “We’re working on a new policy at Columbia to provide to donors, laying out the need for editorial independence and disclosure requirements.”

Heintz told the Observer that the Rockefeller Brothers Fund and the Rockefeller Family Fund are distinct institutions that share office space but have different boards and operate independently. He said they didn’t coordinate their funding of the journalism projects.

His fund has given InsideClimate News grants of \$800,000 over the four years since it was founded, money Heinz said was for general support, not to attack ExxonMobil. The fund gave \$100,000 over two years to Columbia’s Graduate School of Journalism postgraduate fellowship programs, which was used to support the Energy and Environmental Reporting project.

“We knew because of their proposal that they’d be looking at what the oil companies knew and when they knew it, and that they’d be looking at Exxon but we had no input into their work,” Heinz said. “We didn’t know that InsideClimate News and Columbia were working on similar investigations.

The difference between foundation funding and corporate funding, he said, is the profit motive. “Their aim is to make money and that’s a very different starting point than philanthropy,” he said. “Exxon has far greater financial resources than we have and in addition they are able to lobby, which we’re prohibited from doing.”

I’m not attacking the integrity of the reporting on ExxonMobil. And I’m in no position to, since I’ve received foundation and nonprofit backing for my own work — which supported a lot of critical work about the energy industry, including a book called The Secret World of Oil, which was backed by George Soros’ Open Society Foundations and includes quite a bit of criticism of ExxonMobil.

But all of this points to a problem in journalism because almost no one funds investigations anymore, except foundations and non-profits. Corporations always have an agenda when they dispense money to shape public opinion. But so do foundations and private donors. It's hard to argue that it's only a problem when you disagree with the point of view being promoted.

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Exhibit Z

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The New York Review of Books

The Rockefeller Family Fund Takes on ExxonMobil

David Kaiser and Lee Wasserman
DECEMBER 22, 2016 ISSUE

Merchants of Doubt. How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming

by Naomi Oreskes and Erik M. Conway
 Bloomsbury, 355 pp., \$18.00 (paper)

Private Empire: ExxonMobil and American Power

by Steve Coll
 Penguin, 685 pp., \$19.00 (paper)

Exxon: The Road Not Taken

by Neela Banerjee, John H. Cushman Jr., David Hasemyer, and Lisa Song
 InsideClimate News, 88 pp., \$5.99 (paper)

What Exxon Knew About the Earth's Melting Arctic

an article by Sara Jerving, Katie Jennings, Masako Melissa Hirsch, and Susanne Rust
Los Angeles Times, October 9, 2015

How Exxon Went from Leader to Skeptic on Climate Change Research

an article by Katie Jennings, Dino Grandoni, and Susanne Rust
Los Angeles Times, October 23, 2015

Big Oil Braced for Global Warming While It Fought Regulations

an article by Amy Lieberman and Susanne Rust
Los Angeles Times, December 31, 2015

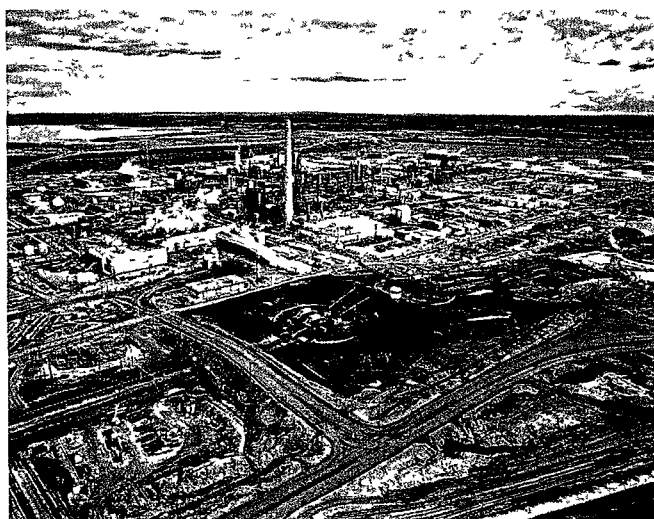
Archival Documents on Exxon's Climate History

available at www.climatefiles.com

Smoke, Mirrors and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science

a report by the Union of Concerned Scientists, January 2007
 available at ucsusa.org

In the [first part of this article](#), we described recent reporting that ExxonMobil's leaders knew humans were altering the world's climate by burning fossil fuels even while the company was helping to fund and propel the movement denying the reality of climate change.¹ Ever since the *Los Angeles Times* and *InsideClimate News* started publishing articles showing this in late 2015, ExxonMobil has repeatedly accused its critics of "cherry-picking" the evidence, taking its statements out of context, and "giving an incorrect impression about our corporation's approach to climate change."² Meanwhile, New York Attorney General Eric Schneiderman is one of several officials who have been investigating whether the company's failures to disclose the business risks of climate change to its shareholders constituted consumer or securities fraud.



Garth Lenz

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Since ExxonMobil claims that it has been misrepresented, we encourage it to make public all the documents Schneiderman has demanded, so that independent researchers can consider all the facts. In the meantime we suggest that anyone who remains unconvinced by the record we have collected and published of the company's internal statements confirming the reality of climate change consider its actions, especially its expenditures. Regardless of its campaign to confuse policymakers and the public, Exxon has always kept a clear eye on scientific reality when making business decisions

A plant owned by Syncrude, a joint venture of ExxonMobil's Canadian subsidiary Imperial Oil, which processes oil from the tar sands of northern Alberta, Canada's biggest source of carbon emissions and the US's largest source of imported oil, photographed by Garth Lenz from his traveling exhibition "The True Cost of Oil"

In 1980, for example, Exxon paid \$400 million for the rights to the Natuna natural gas field in the South China Sea. But company scientists soon realized that the field contained unusually high concentrations of carbon dioxide, and concluded in 1984 that extracting its gas would make it "the world's largest point source emitter of CO₂ [which] raises concern for the possible incremental impact of Natuna on the CO₂ greenhouse problem." The company left Natuna undeveloped. Exxon's John Woodward, who wrote an internal report on the field in 1981, told *InsideClimate News*, "They were being farsighted. They weren't sure when CO₂ controls would be required and how it would affect the economics of the project."²

ADVERTISING

This, of course, was a responsible decision. But it indicates the distance between Exxon's decades of public deception about climate change and its internal findings. So do investments that Exxon and its Canadian subsidiary Imperial Oil made in the Arctic. As Ken Croasdale, a senior ice researcher at Imperial, told an engineering conference in 1991, concentrations of greenhouse gases in the atmosphere were increasing "due to the burning of fossil fuels. Nobody disputes this fact." Accordingly,

any major development with a life span of say 30–40 years will need to assess the impacts of potential global warming. This is particularly true of Arctic and offshore projects in Canada, where warming will clearly affect sea ice, icebergs, permafrost and sea levels.

Croasdale based these projections on the same climate models that Exxon's leaders spent the next fifteen years publicly disparaging. But following his warnings that rising seas would threaten buildings on the coast, bigger waves would threaten offshore drilling platforms, and thawing permafrost would threaten pipelines, Exxon began reinforcing its Arctic infrastructure.⁴

Similarly, as Steve Coll⁵ wrote in *Private Empire: ExxonMobil and American Power* (2012), the company's

investments in skeptics of the scientific consensus coincided with what at least a few of ExxonMobil's own managers regarded as a hypocritical drive inside the corporation to explore whether climate change might offer new opportunities for oil exploration and profit.

The company tried to use the work of one of its most celebrated earth scientists, Peter Vail, to predict how alterations to the planet's surface made by the changing climate could help it discover new deposits of oil and gas. "'So don't believe for a minute that ExxonMobil doesn't think climate change is real,' said a former manager.... 'They were using climate change as a source of insight into exploration.'"⁶

Soon after Rex Tillerson replaced Lee Raymond as CEO at the start of 2006, he created a secret task force to reconsider the company's approach to climate change—"so that it would be more sustainable and less exposed," according to one participant.⁷ Tillerson may have been afraid that the company's aggressive denial campaign had made it vulnerable to lawsuits.⁸

Under his leadership, as Coll has shown, the company gradually began to change its public position on climate. In 2006 its British subsidiary promised the UK's Royal Society it would stop funding organizations that were misinforming the public about climate science.⁹ In 2007 Tillerson stated, "We know the climate is changing, the average temperature of the earth is rising, and greenhouse gas emissions are increasing." (That was more than Raymond had ever admitted, but Tillerson still wouldn't acknowledge that fossil fuel combustion caused global warming)¹⁰ In January 2009—twelve

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days before President Obama's inauguration would situate the company in much less welcoming political territory—Tillerson announced that ExxonMobil had become concerned enough about climate change to support a carbon tax.¹¹

The climate measure then under active discussion in Washington, however, was a cap-and-trade bill. There was almost no political support for a carbon tax at the time, and Tillerson's announcement may have been meant to divert support from the reform that seemed most plausible.¹² Indeed, since then, although ExxonMobil continues to claim that it supports a carbon tax, it has given much more money to members of Congress who oppose such a tax than to those who endorse one.¹³ As of last year it was still funding organizations that deny global warming or fight policies proposed to address it.¹⁴ And at its annual shareholder meetings it still fiercely resists almost all meaningful resolutions on climate change.¹⁵

The Securities and Exchange Commission requires companies to disclose known business risks to their investors, and Exxon's leaders have been acutely conscious of the changing climate's danger to the oil business for almost forty years. The company didn't start telling its shareholders about that danger until 2007,¹⁶ however, and in our opinion has never disclosed its full scope. To take just one very important example, the valuation of any oil company depends largely on its "booked reserves," meaning the quantities of buried oil and gas to which it owns the rights.¹⁷ Ultimately, however, ExxonMobil may not be able to sell most of its booked reserves, because the world's governments, in trying to prevent catastrophic climate change, may have to adopt policies that make exploiting them economically unfeasible.

In 2013 the Intergovernmental Panel on Climate Change (IPCC) formally endorsed the idea of a global "carbon budget," estimating that, to keep warming to the two degrees Celsius then considered the largest increase possible without incurring catastrophe, humanity could only burn about 269 billion more tons of fossil fuels.¹⁸ (We are currently burning about ten billion tons a year.)¹⁹ As of 2009, however, the world had 763 billion tons of proven and economically recoverable fossil fuel reserves.²⁰

If ExxonMobil can sell only a fraction of its booked reserves—if those reserves are "stranded"—then its share price will probably decline substantially. The company has long been familiar with the concept of a carbon budget, but claims to believe it is "highly unlikely" that the world will be able to comply with the IPCC's recommendation for such a budget. In 2014 it stated, "We are confident that none of our hydrocarbon reserves are now or will become 'stranded.'" ²¹ Because it is a matter of the highest urgency that humanity find a way to adopt the IPCC's global carbon budget, however, it seems to us that ExxonMobil has been much too sanguine about its business prospects.²² As a *Baltimore Sun* editorial about the company's long history of climate deceptions put it, "Surely there ought to be consequences if a for-profit company knowingly tells shareholders patent falsehoods (and then those investors make decisions about their life savings without realizing they've been lied to)."²³

It is up to government officials, not public interest advocates, to determine whether ExxonMobil's conduct has violated any state or federal laws within the relevant statutes of limitations. Recognizing this, the Rockefeller Family Fund (RFF) informed state attorneys general of our concern that ExxonMobil seemed to have failed to disclose to investors the business risks of climate change. We were particularly encouraged by Schneiderman's interest in this matter, because New York's Martin Act is arguably the most powerful tool in the nation for investigating possible schemes to defraud.²⁴ If ExxonMobil fully complies with Schneiderman's subpoena, he will be able to make a thorough review of the company's disclosures to shareholders on climate change and the history of its internal knowledge. He will then be able to decide whether or not to hold ExxonMobil legally responsible based on all the facts.

No state AG's office can easily compete with ExxonMobil's legal resources, however, not even New York's. Schneiderman has been intrepid so far, but would benefit greatly from cooperation from the AGs of Massachusetts, California, and other states, as well as from the federal government. ExxonMobil has already launched aggressive legal actions against the Virgin Islands, Massachusetts, and New York in response to their investigations, and this may deter others from joining Schneiderman's efforts.²⁵ Still, we hope that other AGs will recognize how dangerous it is when a corporation can use its wealth to discourage enforcement of possible violations of laws governing securities and consumer protection. If they believe the laws of their states may have been violated, they should initiate investigations of their own.

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The RFF has also consulted with other advocates about ways to use what we know about ExxonMobil to educate the public about climate change.²⁶ The company's suggestion that our communications with governmental officials and like-minded public interest advocates constitutes "conspiracy," however, is absurd, ignoring the long record American civic associations have of addressing deep societal problems by use of the First Amendment.

ExxonMobil's success in forestalling any sort of adequate response to climate change for a quarter-century makes it imperative that Congress address this swiftly descending crisis now with all possible force and urgency. If the companies that bear so much responsibility for blocking climate action have broken any laws in the process, we hope they will be held accountable. We also hope, secondarily, to make it difficult for elected officials to accept ExxonMobil's money and do its bidding.

Texas Congressman Lamar Smith has taken more money in campaign contributions from oil and gas companies, including ExxonMobil, than from any other industry during his congressional career.²⁷ It is not hard to see why companies intent on blocking new climate policies are eager to support him. Last year, for example, the National Oceanic and Atmospheric Administration published an article in *Science* refuting the already discredited canard that climate data show no warming over the past two decades.²⁸ In response Smith issued a subpoena to the agency, demanding all its internal e-mails about climate research. An article in *US News and World Report* observed that Smith's "brand of oversight may signal a new era for science, one where research itself is subject to political polarization."²⁹ According to Eddie Bernice Johnson, the ranking minority member of the House Science Committee, Smith has repeatedly called former tobacco industry scientists, consultants, and public relations firms to testify at his committee's hearings, and has relied on their guidance in previous investigations.³⁰ *Wired* last year called him "Congress' Chief Climate Denier."³¹

Recently, Smith has accused several AGs and environmental organizations, including the Rockefeller Family Fund, of "undermin[ing] the First Amendment of the Constitution." He has told us at the RFF that "Congress has a duty to protect scientists and researchers from the criminalization of scientific inquiry" and "a responsibility to investigate whether [the state inquiries into ExxonMobil] are having a chilling effect on the free flow of scientific inquiry and debate regarding climate change."³² As the dean of the Yale Law School wrote in *The Washington Post*, "It is hard to exaggerate the brazen audacity of this argument."³³ Johnson wrote to Smith that "in a Congress in which the Committee on Science, Space, and Technology's oversight powers have been repeatedly abused, this latest action stands apart.... Never in the history of this formerly esteemed Committee has oversight been carried out with such open disregard for truth, fairness, and the rule of law."³⁴ The *San Antonio Express-News*, Smith's hometown paper, which had previously endorsed his bids for reelection, declined to do so this year because of his "abuse of his position as chairman" and his "bullying on the issue of climate change."³⁵

Congressional committees have very limited jurisdiction over state law enforcement officers engaged in the good-faith execution of their duties, and never before has Congress subpoenaed a state attorney general.³⁶ The AGs investigating ExxonMobil are trying to determine whether the company has defrauded shareholders according to the laws of their states.³⁷ Fraud, of course, is not protected by the First Amendment, and since the AGs are responsible for prosecuting fraud, they must be free to investigate it.

As for the nonprofit organizations the Science Committee has subpoenaed, including our own, it is obviously not within our power to violate anyone's First Amendment rights. The Supreme Court has called it "a commonplace that the constitutional guarantee of free speech is a guarantee only against abridgment by government, federal or state."³⁸ That aside, we have no wish to silence anyone, or to interfere with free scientific inquiry. For the best ideas to prevail, however, people must be allowed to point out instances of inaccurate or dishonest



Will Rose Greenpeace

Greenpeace activists preparing to board an ExxonMobil oil rig in Norwegian waters to protest its plans to drill for oil in the Russian Arctic March 2014

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speech. And indeed, by calling attention to the deep, largely orchestrated dishonesty that has characterized the climate denial movement ever since its inception, we are supporting genuine scientific inquiry.

We have tried to reach a reasonable accommodation with the Science Committee. But we do wish to criticize ExxonMobil on moral grounds for its long effort to confuse and deceive the public about climate change. Moreover, we believe that the willingness of some members of Congress to echo and defend ExxonMobil's obfuscation of established climate science is an inexcusable breach of the public trust. It is our First Amendment right to express these views.

In fact, the Science Committee is doing to the people and organizations it subpoenaed exactly what it accuses us of doing. It is trying to chill the First Amendment rights of those who would petition government, speak freely, and freely associate to advocate for responsible climate policies.³⁹ The legal fees we have incurred because of its demands are bearable for the RFF, but they would be crippling for many smaller organizations. We also face civil or criminal liability if we are held in contempt of Congress because we will not accede to these demands.

More seriously, the committee's actions now force all organizations that would collaborate with others when taking on powerful special interests to consider that they might be ordered to reveal their strategies to any hostile member of Congress with subpoena power. This is a clear injury to the First Amendment right of association. As the Ninth Circuit wrote in *Perry v. Schwarzenegger* (2010):

Implicit in the right to associate with others to advance one's shared political beliefs is the right to exchange ideas and formulate strategy and messages, and to do so in private. Compelling disclosure of internal campaign communications can chill the exercise of these rights.⁴⁰

Many commentators have noted that the committee is doing the same things to us that it falsely accuses us of doing.⁴¹ By accusing us of harming the First Amendment rights of others when it is attacking ours, it is trying to turn what would otherwise be self-evidently outrageous conduct into a dispute. This is not so different from ExxonMobil's politicized variant of the "Tobacco Strategy"—people will be tempted simply to take the side with which they sympathize ideologically. Meanwhile, the committee is creating a distraction from the real issues, which are what Exxon knew, and when; what it did with its knowledge; and what options humanity has left to prevent the worst consequences of climate change.

Thousands of scientists from around the world contribute to the Intergovernmental Panel on Climate Change's reports, reviewing and synthesizing the published literature on climate science every few years. The summaries for policymakers that encapsulate those reports must then be considered and approved, line by line, by representatives of over 120 different countries.⁴² Because of the remarkable number of scientists participating in the IPCC's work, it is generally considered the world's greatest institutional authority on climate science.⁴³ But because it requires the approval of so many nations, including oil producers like Saudi Arabia and Kuwait, and because it is subject to political manipulation, as happened when ExxonMobil convinced the Bush administration to have its chairman replaced in 2001,⁴⁴ the IPCC's conclusions are generally considered quite conservative.⁴⁵

Still, the predictions of the IPCC's latest report, published last year, are dire.⁴⁶ In this century, disastrous weather events such as storms, droughts, floods, fires, and heat waves will become more common and more severe. Changes to regional weather will have especially serious consequences in places that are already poor, as areas that are semiarid now, for example, become too dry to farm at all. Low-lying islands and coastal cities around the world will be threatened by rising sea levels. In many parts of the world, both the quantity and the quality of fresh water will decline.

For a time, some places will see agricultural productivity increase as the planet warms and rainfall distribution shifts; but others will face shortages of food and the possibility of famine. Globally, total agricultural output is expected to be lower at the end of the century than it is now. The challenge of feeding the world's people will be exacerbated by declining fisheries as the oceans warm and turn more acidic. Many plant and animal species will become extinct as climatic changes outpace their ability to adapt, others will migrate to new regions, and all of this will have cascading effects on most ecosystems. (For example, the combination of much larger wildfires than we are used to seeing and invasive beetle species may endanger the world's boreal forests—and if they disappear, they will release vast additional quantities of carbon dioxide into the atmosphere.) Old diseases will spread and new ones emerge.

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These different effects of climate change will interact with each other in complex ways, some of which may not be predictable now. It seems clear, however, that the poorest parts of the world will become poorer still, and economies everywhere will be threatened. (A 1980 American Petroleum Institute meeting in which Exxon participated concluded that at a “3% per annum growth rate of CO₂, a 2.5° C rise [in average global temperature] brings world economic growth to a halt in about 2025.”)⁴⁷ Conflict over dwindling resources will increase around the world; so, dramatically, will human migration and political instability.

As a group of retired American generals and admirals who studied the national security implications of climate change concluded in 2007:

Economic and environmental conditions in already fragile areas will further erode as food production declines, diseases increase, clean water becomes increasingly scarce, and large populations move in search of resources.

Weakened and failing governments, with an already thin margin for survival, foster the conditions for internal conflicts, extremism, and movement toward increased authoritarianism and radical ideologies.

It is true that scientists still disagree about precisely how severe the effects of climate change will be, and when. But, the generals and admirals wrote, “As military leaders, we know we cannot wait for certainty. Failing to act because a warning isn’t precise enough is unacceptable.”⁴⁸

The world’s governments should have acted decades ago. When the Exxon scientist James Black wrote in 1978 that “the need for hard decisions regarding changes in energy strategies might become critical” in “five to ten years,” he was right.⁴⁹ That was humanity’s best chance to start making the transition to a clean energy economy before so much CO₂ was released into the atmosphere that a great deal of warming became unavoidable. In our opinion, the reason the world has failed to act for so long is in no small part because the climate denial campaign that Exxon helped devise and lead was so successful.

Just as the tobacco industry gained decades of huge profits by obfuscating the dangers of smoking, the oil industry secured decades of profits—in Exxon’s case, some of the largest profits of any corporation in history—by helping to create a fake controversy over climate science that deceived and victimized many policymakers, as well as much of the public. The bogus science it paid for through front groups, which was then repeated and validated by industry-funded, right-wing think tanks and a too-easily cowed press, worked just as well for ExxonMobil as it had for R.J. Reynolds. A 2004 study by Naomi Oreskes in *Science* examined 928 peer-reviewed papers on climate science and found that not a single one disputed global warming’s existence or its human cause.⁵⁰ But according to a recent Yale University study, only 11 percent of Americans understand that there is a scientific consensus on these points.⁵¹

The climate deniers succeeded in politicizing a formerly nonpartisan issue and a threat to all humanity.⁵² In consequence, for decades now, meaningful congressional action to address climate change has been impossible. Without the agreement and leadership of the United States, the world’s largest cumulative emitter of CO₂, it has been impossible to achieve a meaningful global accord on climate change. The recently completed Paris agreement on climate, for which the Obama administration fought, will be effective—but only if the world’s nations live up to the commitments they made in it. Although, as a result in part of the actions of ExxonMobil, we have already missed our best chance to prevent a reordering of the world’s ecological balance due to climate change, we can still avoid its worst effects. There is an enormous difference between the new, local disasters that the changing climate is already causing around the world⁵³ and the global catastrophe that will become unavoidable within a few decades unless humanity takes decisive action soon.

—This is the second part of a two-part article

1 See ‘[The Rockefeller Family Fund vs. Exxon](#)’ *The New York Review*, December 8, 2016. [↗](#)

2 See [Understanding the #ExxonKnew ‘controversy’](#), Paul Barrett and Matthew Philips, ‘[Can ExxonMobil Be Found Liable for Misleading the Public on Climate Change?](#)’ *Bloomberg Businessweek*, September 7, 2016. The company has argued, among other things, that it is unfair to expect that it could have understood the reality of climate change before the rest of the world’s scientific community. So it would be ‘if any one expected that. But by the late 1970s there was a scientific consensus that the earth would begin to warm appreciably within the next few decades because of the carbon dioxide released by fossil fuel combustion and by deforestation. Exxon understood and agreed with this scientific consensus as it emerged. It doesn’t seem to have begun seriously trying to create doubt about climate science until the late 1980s.’ [↗](#)

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- 3 See Neela Banerjee and Lisa Song [Exxon's Business Ambition Collided with Climate Change Under a Distant Sea](#), *InsideClimate News*, October 8, 2015, www.offshore-technology.com/projects/Natuna/ ↗
 - 4 See Sara Jerning, Katie Jennings, Masako Melissa Hirsch, and Susanne Rust, [What Exxon Knew About the Earth's Melting Arctic](#), *Los Angeles Times*, October 9, 2015. Other big oil companies like Mobil (before it merged with Exxon) and Shell, which also opposed policies meant to reduce the impact of climate change, were similarly raising the decks of offshore platforms, protecting pipelines from increasing coastal erosion, and designing helipads, pipelines and roads [for] a warming and buckling Arctic. See Amy Lieberman and Susanne Rust, [Big Oil Braced for Global Warming While It Fought Regulations](#), *Los Angeles Times*, December 31, 2015. We have focused on Exxon in these articles partly because more is known about its record on climate, and partly because it was more aggressive than its competitors in promoting the denial campaign. See Steve Coll, *Private Empire: ExxonMobil and American Power* (Penguin, 2012), pp. 185–541, 623–624 ↗
 - 5 Coll is now the dean of Columbia University's Graduate School of Journalism. As we explained in the first of these articles, it was a team of independent reporters from the Journalism School that published the articles about Exxon in the *Los Angeles Times*, and our organization, the Rockefeller Family Fund, was the leading funder of this effort ↗
 - 6 Coll, *Private Empire*, pp. 185–186 ↗
 - 7 Coll, *Private Empire*, p. 336 ↗
 - 8 Coll writes: "What distinguished the corporation's activity during the late 1990s and the first Bush term was the way it crossed into disinformation. Even within ExxonMobil's New York Street office, a haven of lifelong employees devoted to the corporation's viewpoints and principles, an uneasy recognition gathered among some of the corporation's lobbyists that some of the climate policy hackers in the ExxonMobil network were out of control and might do shareholders real damage, in ways comparable to the fate of tobacco companies." (*Private Empire*, p. 184) ↗
 - 9 See [2006 Letter From the Royal Society to Esso UK Limited](#). In 2007, ExxonMobil also told a group of American environmentalists that it had decided to stop funding the most controversial climate denial organizations. (See Coll, *Private Empire*, pp. 343–346) ↗
 - 10 See Coll, *Private Empire*, p. 347 ↗
 - 11 See Coll, *Private Empire*, pp. 534–535 ↗
 - 12 See Coll, *Private Empire*, pp. 534–541. Cap-and-trade is a market-based mechanism designed to reduce pollution—in this case, greenhouse gases. The Waxman-Markey Bill passed by the US House of Representatives in 2009 set a cap that established the total amount of allowable greenhouse gas emissions from certain industries. The cap declined over time until emissions would have been reduced by 80 percent in 2050 from 2005 levels. Under the bill, permits to emit carbon—which, when added together, comprised the cap—were either auctioned or allocated to the states, to historic polluters (e.g., utilities, refineries, cement plants) or for other public purposes. The bill required emitters to obtain and submit a permit for each ton of pollution they produced. No industry was allocated so many permits that it would not need to purchase additional ones. This was intended to create a clear financial incentive to reduce emissions. As the cap declined and the number of allocated permits shrank, the incentive would become even stronger.
- By contrast, under a carbon tax regime there is no cap. Instead, typically, the first importer or producer of fossil-based fuel is assessed a tax based on the carbon content of the fuel. Because coal contains the most carbon, it would be charged at the highest rate, followed by oil and then natural gas. The tax would be passed along to consumers, creating a market signal to reduce consumption of the carbon-based fuels ↗
- 13 See Elliott Negin, [ExxonMobil's Latest Campaign to Stymie Federal Climate Action](#), *The Huffington Post*, August 8, 2016 ↗
 - 14 See Elliott Negin, [ExxonMobil Is Still Funding Climate Science Denier Groups](#), *The Huffington Post*, July 13, 2016 ↗
 - 15 See Steven Mufson, [Climate Resolutions Fall Short at ExxonMobil's Annual Meeting](#), *The Washington Post*, May 25, 2016 ↗
 - 16 See Lieberman and Rust, "Big Oil Braced for Global Warming" ↗
 - 17 See Coll, *Private Empire*, pp. 51–57 ↗
 - 18 See [IPCC Report Contains Grave Carbon Budget Message](#) ↗
 - 19 See [World Sets Record for Fossil Fuel Consumption](#), Anandesh Pandey, [Climate Change: 10 Billion Tons of Carbon Are Now Being Released Every Year, the Fastest in 66 Million Years](#), *International Business Times*, March 22, 2016 ↗
 - 20 See Malte Meinshausen, Nicolai Meinshausen, William Hare, Sarah C. B. Raup, Katja Frieler, Reto Knutti, David J. Frame, and Myles R. Allen, [Greenhouse-Gas Emission Targets for Limiting Global Warming to 2°C](#), *Nature*, April 30, 2009 ↗
 - 21 See [Energy and Carbon — Managing the Risks](#), pp. 1–12 ↗
 - 22 We do not know whether or not ExxonMobil was also being disingenuous in its claims about the likelihood of compliance with the IPCC's global carbon budget. It is the sort of question that we hope Schneideman's investigation will be able to answer ↗
 - 23 See [Frosh's Temperature Rise](#), *The Baltimore Sun*, June 1, 2016 ↗
 - 24 The Martin Act is New York State's version of a "blue sky" law, a statute designed to protect the public against the fraudulent sale of securities or other fraudulent schemes. It gives the New York attorney general extremely broad discretion: he may investigate "all deceitful practices contrary to the plain rules of common honesty" and "acts tending to mislead or deceive the public."
- The statute does not require that the state prove intent to defraud. Under the Martin Act, the attorney general can pursue civil proceedings, which include injunctive relief or restitution, on criminal actions. Prior to commencement of an action, the state may subpoena any documents deemed "relevant or material to the inquiry." (See Nina Hart, [Moving at a Glacial Pace: What Can State Attorneys General Do About SEC Inattention to Nondisclosure of Financially Material Risks Arising from Climate Change?](#), Center for Climate Change Law, Columbia Law School, pp. 30–31; [Moving at a Glacial Pace: What Can State Attorneys General Do about SEC Inattention to Nondisclosure of Financially Material Risks Arising from Climate Change?](#)) ↗
- 25 See [Exxon Fights MASS Investigation](#), [Memorandum of Law in Support of Defendant Attorney General Maura Healey's Motion to Dismiss Plaintiff's Original Petition for Declaratory Relief](#), Letter to Gregory Hodges, Esq., Paul Barrett, [Exxon Chooses War in New York's Probe of Climate Change Research](#), *Bloomberg Businessweek*, October 18, 2016 ↗
 - 26 In January, the RFF hosted a meeting of public interest advocates at our office. One of the participants (not affiliated with the RFF) circulated an e-mail suggesting "examples" of possible common goals "for the group" including "to establish in [the] public's mind that Exxon is a corrupt institution that has pushed humanity (and all creation) toward climate chaos and grave harm" and "to delegitimize them as a political actor." Reporters somehow acquired and wrote about this e-mail (see Amy Harder, Devlin Barrett, and Bradley Olson, [Exxon Fires Back at Climate-Change Probe](#), *The Wall Street Journal*, April 13, 2016; Alana Goodman, [Memo Shows Secret Coordination Effort Against ExxonMobil by Climate Activists, Rockefeller Fund](#), *The Washington Free Beacon*, April 14, 2016) and Congressman Lamar Smith has since cited it in his criticism of us. (See [Letter, June 17, 2016 to Ms. Faith F. Galt](#).)
- From our perspective, the e-mail contained some rhetorical bravado (though it was never intended for publication, of course) and while we consider Exxon's actions immoral, we have no particular interest in persuading the public that the company is corrupt. Otherwise, however, we don't think the e-mail said or suggested anything that is far from the truth ↗
- 27 See [Top Industries Representative John Boehner](#) ↗
 - 28 Thomas R. Karl, Anthony Auer, Boyu Huang, Jay H. Lawrimore, James R. McMahon, Matthew J. Menne, Thomas C. Peterson, Russell S. Vose, and Huai-Min Zhang, [Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus](#), *Science*, June 26, 2015 ↗

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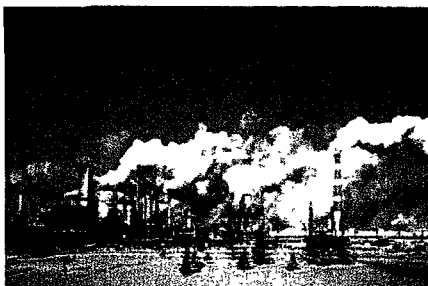
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- 29 See Alan Neuhauser, "Lamar Smith is Hot and Bothered About Climate Science," *U.S. News and World Report*, November 23, 2015. During the three years of Smith's chairmanship, the Science, Space, and Technology Committee has issued more subpoenas than in the rest of its fifty-four-year history put together. ↵
- 30 See [Letter, June 23, 2016](#). ↵
- 31 See Eric Niller, "Congress' Chief Climate Denier Lamar Smith and NOAA Are at War," *Wired*, November 11, 2015. ↵
- 32 See [Letter to Faith E. Gav, June 17, 2016](#). ↵
- 33 See Robert Post, "ExxonMobil Is Abusing the First Amendment," *The Washington Post*, June 24, 2016. Post was referring to the First Amendment argument made by ExxonMobil's allies generically, not specifically to Smith. ↵
- 34 See [Letter, June 23, 2016](#). ↵
- 35 See "Lamar Smith's Bully Tactics Cross the Line," *San Antonio Express-News*, October 17, 2016. ↵
- 36 See [www.mass.gov/ago/docs/energy-utilities/exxon/lt-to-congressman-lamar-smith-7-26-16.pdf](#). Senator Sheldon Whitehouse of Rhode Island recently wrote that "the constitutional principle of federalism requires 'proper respect' to states' constitutional functions, and what more proper and inherent state function is there than investigation and prosecution of violations of state law? If the committee is obstructing that state function on behalf of a private party, that raises obvious due process evils of government power unleashed under hidden private control." (Sheldon Whitehouse, "Standoff Over a House Panel's Subpoenas Raises Key Issue," *The National Law Journal*, August 29, 2016.) ↵
- 37 See John Schwartz, "Exxon Mobil Fraud Inquiry Said to Focus More on Future Than Past," *The New York Times*, August 19, 2016. ↵
- 38 *Hudgens v. National Labor Relations Board*, 424 US 507, 513 (1976). ↵
- 39 We were disturbed to see that in an exchange with our lawyers, Smith cited *Barenblatt v. United States* (1959)—a decision that seemed to ratify the infamous witch-hunts of the House Un-American Activities Committee—as precedent and justification for his committee's demand that we turn over our private correspondence. See [Letter to Faith E. Gav, June 17, 2016](#). ↵
- 40 *Perry v. Schwarzenegger*, 591 F.3d 1147, 1162–63 (9th Cir. 2010). ↵
- 41 See, e.g., "House GOP Members Pursue an Objectionable Defense of Fossil Fuels," *Los Angeles Times*, August 4, 2016; Sheldon Whitehouse and Elizabeth Warren, "Big Oil's Master Class in Rigging the System," *The Washington Post*, August 9, 2016; [Letter to Chairman Smith, September 12, 2016](#). ↵
- 42 The IPCC is a body of the United Nations. Any country that is a member of one of two other UN bodies, the World Meteorological Organization and the United Nations Environmental Program, is eligible to participate in the IPCC. ↵
- 43 See Naomi Oreskes and Erik Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming* (Bloomsbury, 2010), p. 2. ↵
- 44 See [ExxonMobil Lobbyist Randy Randol 2001 Memorandum to White House on IPCC team](#), David Hasenmyer and John H. Cushman Jr., "Exxon Sowed Doubt About Climate Science for Decades by Stressing Uncertainty," *InsideClimate News*, October 22, 2015, Greenpeace, "Denial and Deception: A Chronicle of ExxonMobil's Efforts to Corrupt the Debate on Global Warming," May 12, 2002, p. 14. ↵
- 45 Oreskes and Conway, *Merchants of Doubt*, pp. 204, 206–207. ↵
- 46 Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report*, edited by the Core Writing Team, Rajendra K. Pachauri, and Leo Meyer (IPCC, 2015). See especially pp. 56–73. [Climate Change 2014: Synthesis Report](#). ↵
- 47 See [CO2 and Climate Task Force](#). ↵
- 48 *National Security and the Threat of Climate Change* (The CNA Corporation, 2007), pp. 6, 7. The admirals and generals involved in the study were General Gordon R. Sullivan, USA (Ret.), Admiral Frank "Skip" Bowman, USN (Ret.), Lieutenant General Lawrence P. Farrell Jr., USAF (Ret.), Vice Admiral Paul G. Gafney II, USN (Ret.), General Paul J. Kern, USA (Ret.), Admiral T. Joseph Lopez, USN (Ret.), Admiral Donald L. "Don" Pilling, USN (Ret.), Admiral Joseph W. Prueher, USN (Ret.), Vice Admiral Richard H. Truly, USN (Ret.), General Charles F. "Chuck" Wald, USAF (Ret.), and General Anthony C. "Tony" Zinni, USMC (Ret.). The RFF supported this convening of generals and admirals, but needless to say they exercised independent judgment in reaching their conclusions. ↵
- 49 See [1978 Exxon Memo on Greenhouse Effect for Exxon Corporation Management Committee](#). ↵
- 50 See Naomi Oreskes, "Beyond the Ivory Tower: The Scientific Consensus on Climate Change," *Science*, December 3, 2004. ↵
- 51 See [Climate Change in the American Mind](#). ↵
- 52 Yale sociologist Justin Farrell told the *Los Angeles Times* that ideological "polarization around climate change" was manufactured by those whose financial and political interests were most threatened. See Lieberman and Rust, "Big Oil Braced for Global Warming." See also Justin Farrell, "Corporate Funding and Ideological Polarization About Climate Change," *Proceedings of the National Academy of Sciences of the United States of America*, January 5, 2016. ↵
- 53 IPCC, *Climate Change 2014: Synthesis Report*, pp. 49–51. ↵

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Exhibit AA

NEWS EXCLUSIVE

Schneiderman tried to contact eco-tycoon amid Exxon probe

By Isabel Vincent

September 11, 2016 | 6:18am



Tom Steyer and New York State Attorney General Eric Schneiderman

When state Attorney General Eric Schneiderman **took on ExxonMobil over climate change last year**, it seemed like an odd global crusade for a local politician.

Perhaps he was drilling for campaign cash, critics now contend after The Post obtained an e-mail that appears to show the state's top cop was seeking a tree-hugging billionaire's help to finance a run for governor in 2018.

In March 2016, four months after announcing the Exxon probe, the Democratic AG tried to arrange a phone meeting with hedge-fund mogul Tom Steyer, an environmental activist and Exxon enemy.

"Eric Schneiderman would like to have a call with Tom regarding support for his race for governor . . . regarding Exxon case," reads the March 10 e-mail.

The note was sent by Steyer lawyer Ted White to Erin Suhr, Steyer's director of strategic planning at Fahr LLC, which oversees Steyer's political and philanthropic efforts. White, a Colorado lawyer, is Fahr's managing partner.

"Anyone have any flags on this call before I add to Tom's call sheet for Monday?" Suhr replied the next day in an e-mail.

A spokeswoman for Steyer and the two Fahr execs confirmed the e-mail exchange but said the phone meeting never happened.

She also said White has not donated to the AG's campaign.

Steyer is a heavyweight Dem donor who has poured cash into Hillary Clinton's coffers, organized a fund-raiser for President Obama and helped bankroll Clinton acolyte Terry McAuliffe's successful 2013 gubernatorial bid in Virginia. Steyer's NextGen Climate Action PAC spent nearly \$70 million on elections in 2014.

Steyer had accused Exxon of misleading investors on climate change for nearly 30 years. In January, as Schneiderman rallied attorneys general in other states to the cause, Steyer urged California's attorney general to join the investigation.

But with AGs deserting the case, many wonder why Schneiderman took on an issue so far afield.

"It all smacks of politics," said former New York AG Dennis Vacco. "What's unsettling to me about this probe is that many of Attorney General Schneiderman's supporters are investors in alternative-energy companies and enemies of Exxon."

The March e-mail alludes to a run for governor, but Schneiderman had denied any such ambition months earlier, telling Politico on Nov. 12, "I am not running for governor in 2018."

His spokesman, Eric Soufer, called the e-mails "nonsense" and said neither the AG nor his staff communicated with White or Steyer about a run for governor.

"If anything, Mr. White may be referring to Mr. Steyer's reported interest in a run for governor of California," Soufer said.

But a source close to White told The Post, "That's not our interpretation of the e-mail."

FILED UNDER ATTORNEY GENERAL, CLIMATE CHANGE, ERIC SCHNEIDERMAN, EXXON, INVESTIGATIONS, TOM STEYER

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Exhibit BB



Has Exxon Mobil misled the public about its climate change research?

November 10, 2015 at 6:45 PM EDT

Oil giant Exxon Mobil was recently subpoenaed by New York's attorney general in an investigation of whether the company has intentionally downplayed the risks of climate change. Judy Woodruff hears from Eric Schneiderman, attorney general of New York, and Kenneth Cohen, vice president of Public & Government Affairs for the Exxon Mobil Corporation.

JUDY WOODRUFF: First, a new tack in the battle over climate change: going after energy companies for alleged financial fraud.

New York State Attorney General Eric Schneiderman recently subpoenaed oil giant ExxonMobil, apparently seeking documents that might show the company had downplayed the risks to profits and therefore to investors of stronger regulations on burning fossil fuels. Exxon's history has been the subject of recent reporting by Inside Climate News, The Los Angeles Times and others.

The reporting has alleged the company misled the public about what its own scientists found about the risks of climate change and greenhouse gases.

Here is a clip of a video produced by PBS' Frontline in collaboration with Inside Climate News, a not-for-profit journalism organization that covers energy and the environment.

MAN: Proponents of the global warming theory say that higher levels of greenhouse gases are causing world temperatures to rise and that burning fossil fuels is the reason.

The scientific evidence remains inconclusive as to whether human activities affect the global climate.

WOMAN: We found a trail of documents that that go back to 1977.

Exxon knew carbon dioxide was increasing in the atmosphere, that combustion of fossil fuels was driving it, and that this posed a threat to Exxon. At that time, Exxon understood very quickly that

governments would probably take action to reduce fossil fuel consumption. They're smart people, great scientists, and they saw the writing on the wall.

JUDY WOODRUFF: That's a Frontline excerpt.

I spoke earlier this evening with New York State Attorney General Eric Schneiderman.

Welcome, Attorney General Eric Schneiderman.

Let me just begin by asking in — what is it that ExxonMobil has done, in your view, that caused you to launch this investigation?

ERIC SCHNEIDERMAN, Attorney General, New York: We have been looking at the energy sector generally for a number of years, and have — had several investigations that relate to the phenomenon of global warming, climate change, and the human contribution to it.

So we have subpoenaed, issued a broad subpoena to Exxon because of public statements they have made and how they have really shifted their point of view on this in terms of their public presentation and public reporting over the last few decades.

In the 1980s, they were putting out some very good studies about climate change. They were compared to Bell Labs as being at the leadership of doing good scientific work. And then they changed tactics for some reason, and their numerous statements over the last 20 years or so that question climate change, whether it's happening, that claim that there is no competent model for climate change.

So we're very interested in seeing what science Exxon has been using for its own purposes, because they're tremendously active in offshore oil drilling in the Arctic, for example, where global warming is happening at a much more rapid rate than in more temperate zones. Were they using the best science and the most competent models for their own purposes, but then telling the public, the regulators and shareholders that no competent models existed?

Things like that. We're interested in what they were using internally and what they were telling the world.

JUDY WOODRUFF: And what law would be violated by doing this?

ERIC SCHNEIDERMAN: Well, in New York, we have laws against defrauding the public, defrauding consumers, defrauding shareholders.

We're at the beginning of the investigation. We have to see what documents are in there, but certainly all of the claims would lie in some form of fraud.

JUDY WOODRUFF: Well, I'm sure you're not surprised to know Exxon is categorically denying this. The CEO, Rex Tillerson, said this week nothing could be further from the truth.

In the company's written statement, they start out by saying for many years, they have included all the information they have about the risks of climate change in their public filings, in their reports to shareholders.

ERIC SCHNEIDERMAN: We know that they have been issuing public statements that are at odds with that, and that they have been funding organizations that are even more aggressive climate change deniers.

And they have made numerous statements, both Exxon officials and in Exxon reports, but also through these organizations they fund, like the American Enterprise Institute, ALEC, the American Legislative Exchange Council, through their activities with the American Petroleum Institute, so directly and through other organizations, Exxon has said a lot of things that conflict with the statement that they have always been forthcoming about the realities of climate change.

JUDY WOODRUFF: Well, let me read you, Attorney General Schneiderman, something else that Exxon has been saying where they reacted to some of the reporting that was done on this which is similar to what you're describing.

They say these are allegations based on what they call deliberately cherry-picked statements attributed to various ExxonMobil employees to wrongly suggest that conclusions were reached decades ago by researchers. He said they were statements taken completely out of context and ignored other available statements at the same time.

ERIC SCHNEIDERMAN: Well, then they should welcome this investigation, because, unlike journalists, my staff is going to get to read all of the documents in context, and they will have an opportunity to explain the context of the statements and whether there are contradictions or not.

So, we're at the very beginning stages. We don't want to prejudge what we're going to find, but the public record is troubling enough that we brought — that we decided we had to bring this investigation.

Another area that — where they have been active and we're concerned about is overestimating the costs of switching to renewable energy. They have issued reports, one as recently as last year in response to shareholder requests and public requests, estimating that switching over to renewables by the end of this century would raise energy costs, to the point that they would cost — they would be 44 percent of the median income of an American family.

We want to see how they arrived at that conclusion, which we believe to be vastly overstated.

JUDY WOODRUFF: How do you draw a line between ExxonMobil doing research and talking openly about the debate out there about what is known about climate change, and on the other hand advocating for policies that they think are going to be better for their own bottom line?

ERIC SCHNEIDERMAN: Well, there's nothing wrong with advocating for your own company.

What you're not allowed to do is commit fraud. You're not allowed to have the best climate change science that you're using to build — in your planning of offshore oil towers in the Arctic, where you have to take into account rising sea levels and the melting of the permafrost and things like that. If you're using that internally, but what you're putting out to the world, directly and through these climate denial organizations, is completely in conflict with that, that's not OK.

JUDY WOODRUFF: New York State Attorney General Eric Schmitt, we thank you.

ERIC SCHNEIDERMAN: Thank you.

JUDY WOODRUFF: And joining me now is Kenneth Cohen. He is vice president for public and government affairs with ExxonMobil Corporation.

Kenneth Cohen, welcome.

Let me just begin by asking flat out, has Exxon in any way misled or been dishonest with the public about what it knows about climate change?

KENNETH COHEN, Vice President of Public & Government Affairs, Exxon Mobil Corporation: Well, Judy, first, thank you for the invitation to come on tonight's program.

And I also appreciate opening with that question, because the answer is a simple no. And what the facts will show is that the company has been engaged for many decades in a two-pronged activity here.

First, we take the risks of climate change seriously. And we also have been working to understand the science of climate change. And that activity started in the late '70s and has continued up to the present time. Our scientists have produced over 150 papers, 50 of which have been part of peer-reviewed publications.

Our scientists participate in the U.N.'s climate body. We have been participating in the U.N. activities beginning in 1988, running through the present time. At the same time, we have also been engaged in discussions on policy.

And in the discussions on policy, for example, in the late '90s, we were part of a large business coalition that opposed adoption in the U.S. of the Kyoto protocol. Now, why did we do that? We opposed the Kyoto protocol because it would have exempted from its application over two-thirds of the world's emitters. Think about that. And that was in 1997.

Going forward, if that policy were in effect today, it would have excluded almost 80 percent of the world's emissions. So that wasn't a good policy approach.

JUDY WOODRUFF: Well, let me ask you about one of the points that the attorney general made. He said Exxon over the last few decades, in his words, has shifted tactics, from taking climate change seriously, engaging in serious research, to, he said, much more recently questioning whether it's happening at all.

Is that an accurate, a fair description of the shift that's taken place?

KENNETH COHEN: No, it's not. And the facts are as follows.

We have endeavored with — to understand the science of this very complex subject, as I mentioned, beginning in the '70s and running to the present time. This is a very complex area. This is a very complex system, climate.

What we discovered, what our scientists discovered, working in conjunction with the U.S. government, with the Department of Energy, working in conjunction with some of the leading research institutions around the world in the '70s and the '80s, was that the tools available the science to get a handle on the risk, these tools needed to develop, and we, for example, were part of developing, working with others, some of the complex modeling that is used today.

And, today, that work continues. Now, on the policy side, we have to remember that ExxonMobil is a large energy provider, one of the world's largest energy companies. We have a two-pronged

challenge in front of us. We produce energy that the modern world runs on.

And what we strive to do is produce that energy while at the same time reducing the environmental footprint associated with our operations and, most importantly, with consumers' use of the energy.

JUDY WOODRUFF: And I think people understand that, but I think what is striking was his — was the attorney general's comment that Exxon — what he's concerned about and wants to know is whether Exxon was using one set of scientific models to do its work in the Arctic, for example, where Exxon has been engaged in drilling, and on the other hand telling the public, telling its shareholders a very different set of facts about the state of climate change.

KENNETH COHEN: Well, the facts will show that the company has been engaged with, not only on our own, but with — in conjunction with some of the leading researchers.

Our view of this very complex subject over the years, over the decades has mirrored that of the broader scientific community. That is to say, the discussions that have taken place inside our company, among our scientists mirror the discussions that have been taking place and the work that's been taking place by the broader scientific community.

That's what the facts will show.

JUDY WOODRUFF: Just final question. He made a point of saying that Exxon has funded a number of organizations that he said that have been openly climate change deniers. He mentioned the American Enterprise Institute. He mentioned the American Petroleum Institute and the American Legislative Exchange.

Has Exxon been funding these organizations?

KENNETH COHEN: Well, the answer is yes. And I will let those organizations respond for themselves.

But I will tell you that what we have been engaged in, both — we have been focused on understanding the science, participating with the broader scientific community in developing the science, while at the same time participating in understanding what would be and working with policy-makers on what would be appropriate policy responses to this evolving body of science.

That's why we were involved with large business coalitions challenging the adoption of the Kyoto protocol in the United States. And we then moved to oppose, for example, early adoption of cap-and-

trade approaches in the U.S. One of the earlier approaches in the last decade would have exempted, for example, coal from its operations.

So we favor the adoption — policy-makers should consider policy and should adopt policy. We have disclosed the risks of climate change to our investors beginning in the middle part of the last decade and extending to the present time.

JUDY WOODRUFF: Kenneth Cohen, vice president for ExxonMobil, we appreciate having your point of view, as we do the New York attorney general.

Thank you.

KENNETH COHEN: Thank you.

Exhibit CC

New York Attorney General Comments on Exxon Probe

Oil Daily

November 13, 2015 Friday

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Length: 725 words

Body

New York Attorney General Eric Schneiderman has offered details about the scope and rationale for his office's investigation of whether Exxon Mobil misled investors and the public by concealing facts about climate change and the risks it might pose to the oil and gas industry.

Unlike the New York attorney general's previous probes into four electric utilities -- Dynegy, AES, Xcel and Dominion -- and coal giant Peabody Energy, the scope of the Exxon investigation will be much broader than mere disclosure of climate risk in reports to investors.

Over the past eight years, New York investigated the utility companies -- three of which had plans to build more coal-fired power plants -- and Peabody for allegedly failing to warn investors of risks related to climate change in their filings to the Securities and Exchange Commission (SEC).

In contrast, the Exxon probe is seeking to find out if there were "inconsistencies" in how Exxon used its climate change research and knowledge since the late 1970s to make business decisions versus how it presented that information to investors and the public. Schneiderman's office has said the probe could be expanded to other oil companies.

The New York state investigation was spurred by accusations from [InsideClimateNews](#) and the [Los Angeles Times](#) that Exxon buried internal research dating back to the late 1970s that showed a link between burning fossil fuels and global warming, but that the company subsequently funded climate-change denial groups. The company rejects the allegations (OD Oct.23'15).

Schneiderman told a gathering sponsored by [Politico](#) in New York on Thursday that Exxon appeared to be "doing very good work in the 1980s on climate research" but that its "corporate strategy seemed to shift" later.

He said the company had funded organizations that were "aggressive climate deniers" such as the American Enterprise Institute, the American Legislative Exchange Council, and the American Petroleum Institute.

The New York attorney general said his probe was still at the "very beginning" and its subsequent course would depend on Exxon's "response to our subpoena." Exxon is currently assessing its response.

Schneiderman noted his office's assertive past efforts to "take action on climate change" and said the Exxon probe was "one aspect to it." He said society's failure to address climate change would be "viewed poorly by history."

New York Attorney General Comments on Exxon Probe

Exxon and others have described the investigation as politically motivated. It has been facilitated by New York's controversial Martin Act, which gives the attorney general and his staff extraordinary powers to investigate and prosecute fraud (OD Nov.12'15).

Exxon has also said that InsideClimateNews and the LA Times "cherry-picked" information from its past research -- which it said never came to definitive conclusions on the complex science of climate change -- and took this information out of context.

Schneiderman said his office would be the judge of that. "We've issued a subpoena so we can read all the documents since 1977 and can see what the context was," he said.

Exxon began disclosing climate risk in its SEC filings in 2006, after current Chief Executive Rex Tillerson took the helm and adopted a much softer line on climate change than his predecessor, Lee Raymond.

However, Schneiderman said that as recently as 2010 an Exxon official still asserted that there "is no competent model" to assess climate change and its impacts.

"This is a well-run company full of engineers and we would assume its research would reflect that," he said.

Legal experts say it could be difficult for Schneiderman to make a case against Exxon, citing the gradual evolution of climate science over the years, the wide leeway granted by the SEC on disclosure of climate risk, and the challenge of establishing a direct link between adverse impacts of climate change and the practices of an individual company.

Nevertheless, they also point out that the New York attorney general wields a powerful weapon in the form of the broadly written Martin Act.

The state law, which dates from 1921, targets "all deceitful practices contrary to the plain rules of common honesty." It can result in civil or criminal charges -- and big financial penalties -- without requiring any proof of intent to defraud.

Paul Merolli, Washington

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New York Attorney General Comments on Exxon Probe

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Exhibit DD

IN THE VERMONT SUPERIOR COURT
WASHINGTON COUNTY CIVIL DIVISION

ENERGY & ENVIRONMENT LEGAL) Case No. 558-9-16 Wncv
INSTITUTE,)
Plaintiff,) Montpelier, Vermont
-against-) March 28, 2017
ATTORNEY GENERAL OF VERMONT,) 1:05 PM
Defendant.)
_____)

TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE MARY MILES TEACHOUT,
SUPERIOR COURT JUDGE

APPEARANCES:

MATTHEW D. HARDIN, ESQ.
Attorney for the Plaintiff

WILLIAM E. GRIFFIN, ESQ.
Attorney for the Defendant

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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 (Proceedings convened at 1:05 PM)

2 THE COURT OFFICER: All rise.

3 THE COURT: Please be seated.

4 THE COURT OFFICER: The matter before the Court is
5 docket number 558-9-16 Wncv. Plaintiff Energy & Environment
6 Legal Institute represented by Attorney Hardin. Defendant
7 Attorney General of the State of Vermont represented by
8 Attorney Griffin.

9 THE COURT: Good afternoon.

10 MR. MATTHEW HARDIN: Good afternoon.

11 THE COURT: We're here for oral argument on the
12 pending motion for summary judgment. I've reviewed your
13 arguments. This is your opportunity to emphasize points that
14 you'd like to make. I have a few questions, but start with
15 your own --

16 MR. GRIFFIN: Thank you, Your Honor.

17 THE COURT: -- presentation.

18 MR. GRIFFIN: So I'd like to start with a brief
19 colloquy because I think it shows the arguments that the
20 parties have made in the proceedings before today.

21 This started with a request for records made by the
22 Energy Institute -- Environment Institute. They asked for
23 records relating to a common interest agreement: an agreement
24 between the Attorney General of Vermont and the attorney
25 general in other states. That's attached to the -- attached

1 to the complaint: attachment 1.

2 That request was reviewed and denied by an Assistant
3 Attorney General Melanie Kehne. She cited two statutes that
4 protected the information that was requested: a section in
5 Title 3, Section 317(b)(3). (B)(3) covers different ethical
6 standards, including the Vermont Rules of Professional
7 Conduct. And in particular, she cited Rule 1.6 Rules of
8 Professional Conduct. That's the rule that provides for the
9 confidentiality -- that protects the confidentiality of client
10 information.

11 She also cited 317(b)(4), another subsection. And
12 that section protects and applies common law privileges. And
13 in particular, she cited the attorney-client privilege and
14 also the work product privilege.

15 There was an appeal as provided by the Access to
16 Records Act. The appeal went to the Deputy Attorney General
17 who was then Susanne Young.

18 The appeal challenged only the Subsection (b)(4)
19 claim, the attorney-client privilege. It did not challenge
20 the assertion of the (b)(3) protection; the Rule 1.6, the
21 ethical rule.

22 That appeal letter is also attached to the complaint.
23 It's attachment 3 dated August 17th.

24 The Deputy Attorney General reviewed the appeal and
25 issued a written decision which is attached to the complaint:

1 attachment 4. She affirmed the decision and, with respect to
2 the matter that was appealed, the (b)(4) exemption. She also
3 pointed out that the -- that the assistant attorney general
4 had cited (b)(4) and she -- she meaning the Deputy Attorney
5 General -- indicated that that was a second ground for
6 exempting a document.

7 So at that point, the plaintiff filed a complaint in
8 this court. The exit complaint itself made a reference to
9 Rule 1.6, but the gist of the complaint focused on the
10 attorney-client privilege matter, the (b)(4) exemption.

11 The State -- on December 7, the State filed this
12 motion for summary judgment. In that motion, we argued both
13 subsections in the Access to Records Act in both (b)(3) and
14 (b)(4). We argued that Rule 1.6 applied because this was
15 information relating to the representation of a client. The
16 Attorney General's representation of the State of Vermont.
17 And we also argued the (b)(4) exemption -- the attorney-client
18 exemption.

19 THE COURT: Just one little detail. I think you've
20 been referring to (b) all the way along.

21 MR. GRIFFIN: Yes.

22 THE COURT: I don't have the statute right here, but
23 the other citations are 317(c).

24 MR. GRIFFIN: What'd I do? Get -- oh, (c). Yeah.

25 THE COURT: (3) and (4).

1 MR. GRIFFIN: Yeah, I've got that wrong.

2 THE COURT: Okay. All right.

3 MR. GRIFFIN: All the way through. Too many letters;
4 too many numbers. Thank you, Your Honor for catching that for
5 me.

6 So we're here today primarily, to -- what I really
7 want to emphasize is that in our motion we argued the
8 Professional Conduct Rule. The defendants have not responded
9 to that argument at all. The only reference in their memo to
10 Rule 1.6 is they suggest that that's -- that's the source of
11 the attorney-client privilege. I don't think that's accurate,
12 but regardless, Subsection (c)(3) is a free-standing exemption
13 in the Access to Records Law. And the Rules of Professional
14 Conduct generally, and Rule 1.6 in particular, is that it's a
15 free-standing body of law.

16 That question comes up from time to time. And
17 typically, what I find is the best source of law on that is,
18 if you still have some green books on the bench there, but in
19 the green books, the one that has the administrative orders on
20 page 738. There's a comment 3 to Rule 1.6. And in that
21 comment, they have a good short summary of the different
22 sources of confidentiality and privileges. And in plain
23 English, sort of distinguish the attorney-client privilege,
24 the confidentiality conferred by Rule 1.6 and the work product
25 common law privilege. But there are three distinct sources of

1 privilege and they're all brought into this case by
2 Subsections (c)(3) and (c)(4).

3 So it's -- I guess at this point I'm responding to a
4 defense that hasn't been raised, but I just want to underscore
5 that, in this respect, dealing with the Climate Change
6 Coalition, the Attorney General is an attorney. We have a
7 client; the State of Vermont. Other attorneys general
8 represent their states, but what's important here is the
9 Attorney General of Vermont may have received a variety of
10 information relating to this representation. And that is
11 precisely what these plaintiffs want to see. And that is
12 precisely the information that is protected by the statute and
13 by Rule 1.6. I think that's the short categorical response to
14 their request and to their complaint.

15 We've also briefed the attorney-client privilege
16 aspect of it, because we think that applies. I think that
17 part of the debate here is they've cited a New York State
18 court decision which suggests that the -- the Common Interest
19 Doctrine does not apply unless there's litigation pending.
20 We've cited cases, including -- actually, this may have been
21 in a dissent in the New York case that pointed out the Second
22 Circuit recognizes that attorneys and clients have lots of
23 communications that are -- that are pre-litigation or they may
24 be transactional. They may be someone coming in for advice.
25 And these communications are protected and, by extension, to

1 the extent that an attorney is providing legal services and
2 consults with others on a confidential basis, I think it's
3 good policy and commonsense that that privilege should apply
4 here.

5 I think we pointed out in the Killington case --
6 Killington v. Lash -- that was not litigation in the sense
7 that the Rule of Evidence applied and the Court accepted the
8 attorney-client exemption in that case. I think there's
9 another case in our brief, but we're relying primarily on our
10 brief for the attorney-client privilege, but I think the Court
11 can reach it, but I think the case is really more simply
12 addressed by the categorical exemption that applies to matters
13 protected by Rule 1.6.

14 THE COURT: One question I have about that is, under
15 your Rule 1.6 argument and the argument that the client is the
16 State of Vermont, it seems to me that that rationale means
17 that the Attorney General's Office would never be responding
18 to any public records request. That anything that happens in
19 the Attorney General's Office would all fall within that
20 umbrella that you're claiming whether or not there's a common
21 interest agreement.

22 MR. GRIFFIN: That's right. We're not relying --
23 that's free-standing, apart from any common interest
24 agreement. And --

25 THE COURT: So is that your argument?

1 MR. GRIFFIN: That -- that is -- that is --

2 THE COURT: That the Attorney General's Office --

3 MR. GRIFFIN: That is --

4 THE COURT: -- never has to comply with any public
5 records request because it is the attorney for the State of
6 Vermont?

7 MR. GRIFFIN: We have to determine what is the
8 interest of the state and we have to do that because the
9 legislature gave us that direction in Title 3, Section -- try
10 to get the numbers right here -- Section 159, which is one of
11 the statutes that defines the authority and the responsibility
12 of the Attorney General. The Attorney General is obligated to
13 determine the interests of the state. And so when we have a
14 request for documents, obviously, some documents we -- a lot
15 of documents we produce, having determined it's in the
16 interest of this state. And that is -- that was -- I think
17 that's the way the statute -- that's the statutory framework
18 that the legislature has created. But it's really, in this
19 instance -- I don't know what alternative there would be. But
20 as a practical matter, the Attorney General then has to
21 answer, obviously, to the Court, as in this instance. Has to
22 answer to legislators. Well aware of that in the last couple
23 weeks as we're seeking an appropriation. I think the Attorney
24 General answers to the voters every two years. So it's --

25 THE COURT: Well, that leads into my next question.

1 MR. GRIFFIN: Yes?

2 THE COURT: Which is the argument that the Office of
3 the Attorney General itself is -- it's been argued that it's,
4 actually, is or can be something of a political position.
5 It's popularly elected. There's no requirement that the
6 Attorney General be an attorney. The staff members have to
7 be, but the Attorney General himself or herself does not. And
8 by appealing to the public voters, has the ability to really
9 set political agendas. And that whole type of activity seems
10 quite removed from the source of the Common Interest Doctrine
11 the way you, yourself, outlined it in your memo as having
12 started. Having grown out of the situation where there might
13 be related defendants.

14 MR. GRIFFIN: That's correct.

15 THE COURT: And who have parallel litigation who want
16 to exchange information.

17 MR. GRIFFIN: It could be litigation. It could be an
18 investigation. It could be action at federal agencies. And I
19 think the political aspect is sort of far-fetched in this
20 context. If you consider the -- this would be attachment 1, I
21 think, to my affidavit in this case. That's the common
22 interest agreement.

23 THE COURT: You're saying that issues regarding
24 climate change are not political?

25 MR. GRIFFIN: Well, I would refer the Court to

1 paragraph 1 where the Attorney General of Vermont and the
2 attorneys general of other states identify the legal
3 interests. And there are five interests identified. And item
4 1 is potentially taking legal actions. Item 2 is potentially
5 conducting investigations. Item 3 is potentially conducting
6 investigations of illegal conduct. 4 is legal action
7 contemplating legal action to obtain compliance with state and
8 federal laws relating to energy infrastructure. And item 5 is
9 another example of litigation.

10 THE COURT: Right. But you're --

11 MR. GRIFFIN: So it's core legal action; it is not
12 political action.

13 THE COURT: That is what the agreement says, but your
14 argument is that the exemption that you're relying on is
15 really much broader than that. It's that the Attorney
16 General's Office is, as the State of Vermont is a client;
17 therefore, anything with the Attorney General's Office does or
18 has in its possession is exempt from the Public Records Act
19 unless you choose to reveal it. I understand that that's your
20 argument.

21 MR. GRIFFIN: That is correct, and it's because we're
22 a law office by statute, by the people we employ who are
23 lawyers and people who support -- who support legal actions
24 and legal investigation, and if anyone could come in
25 randomly -- let me give one example. So someone -- big

1 business, small business gets information that the Attorney
2 General's Office may be -- may be looking at a consumer fraud
3 or a securities fraud problem. They consult with an attorney.
4 You know, I've got rumors someone's talking to someone; I
5 think the Attorney General is looking at it. So what can they
6 do? Then they can make a public records request. Send us
7 every email that -- or correspondence that mentions the X, Y,
8 Z Corporation. The information we might have would be
9 consultation with witnesses, emails within the office, maybe
10 communications with witnesses, maybe -- maybe public
11 information that we'd be gathering financial records, SEC
12 filings relating to a corporation. And if potential
13 adversaries in litigation or in negotiations have access to
14 all that information, which we -- we, the people -- we, the
15 State of Vermont would not be able to obtain with respect to
16 folks on the other side of the table. It would put the public
17 and the state at a tremendous disadvantage.

18 THE COURT: Well, that leads me to the question I
19 have related to the specific request here.

20 MR. GRIFFIN: Okay.

21 THE COURT: And the rationale for the common interest
22 agreement shield had to do with protecting mental impressions
23 and strategies and things like that.

24 MR. GRIFFIN: Right.

25 THE COURT: But the plaintiff here has argued that

1 they're not asking for that. They're only asking for -- not
2 for the content -- as I understand it, not for the content of
3 what communications were, but whether or not there was a
4 request, whether or not it was denied. And that's without
5 going --

6 MR. GRIFFIN: So -- so -- so --

7 THE COURT: -- into the content, or how would any
8 mental impressions be revealed at all under the circumstances?

9 MR. GRIFFIN: So let's assume that there was a
10 request for a document. That would come to an attorney in the
11 Attorney General's Office. He or she might communicate with
12 others in the office as to whether this would disadvantage the
13 State's interests in some ways. So there would be a mental
14 impression going on there. There would be a responsive mental
15 impression. There might be some legal analysis, if we're
16 doing an investigation or contemplating litigation. How would
17 that --

18 THE COURT: But if -- let me just give an example. I
19 forgot who all the states are that are a member. Let's just
20 say Virginia. I can't remember if Virginia is or not. Let's
21 just use it as an example. Let's just -- what the plaintiff
22 is asking for is a request by any party to the agreement to
23 share documents, any consent of such sharing and any objection
24 to such sharing. What's the matter with saying Virginia asked
25 for some information under this agreement on October 5th,

1 2016. Our office objected and did not, in a letter November
2 1st, and did not share it -- period with no content. I mean,
3 I'm going to be asking, of course, the plaintiff, but the way
4 I read it, it isn't asking for content. It's just asking was
5 there a request? Was consent given or was consent denied? So
6 how would there be any content that would -- deserving of
7 protection under the common interest theory.

8 MR. GRIFFIN: Let me find their language, if you'd
9 give me a minute here.

10 So I'm going to the statement of facts, paragraph 3,
11 which I think quotes their -- the plaintiff's request. And it
12 also may be attached to their complaint.

13 THE COURT: You're right.

14 MR. GRIFFIN: I think it's attachment 1 to the
15 complaint.

16 THE COURT: The requests are specifically set forth
17 on page 2 of your statement of facts.

18 MR. GRIFFIN: Okay. So they want all emails
19 reflecting any request by any party seeking consent to share.

20 THE COURT: Okay. I see that. Email or text
21 correspondence --

22 MR. GRIFFIN: So I'm sitting in the Attorney
23 General's Office. We're considering this matter. We're
24 contemplating investigations and other legal action and we get
25 a request from John Smith. Let's put a little more focus on

1 it. We get a request from EELI and so one thing we might
2 consider is where are they -- who are these people? Where are
3 they going with this? And we Google them and we find, you
4 know, coal or Exxon or whatever -- and so we're thinking this
5 is -- we better -- we better give this some thought before we
6 -- before we share information with this entity. Or it might
7 be a news organization and we think, well, what are they going
8 to do with it? Well, they're going to publish it to the
9 world. So that would be -- I mean, that would be my mental
10 impression and, you know, let's exercise some caution.

11 Is there some public interest in publishing this
12 information at this time? Probably not. As with a lot of
13 investigations, you like to talk to witnesses, gather
14 information before you announce to the world what -- you know,
15 what options are on the table.

16 So and again, I -- you know, I, from my own
17 perspective, I sort of turn it around. And if I'm on the
18 other side, if I'm representing a corporation or what have
19 you, and someone comes in and says, you know, I don't want
20 your substantive information; I just want to know who you
21 talked with last October. I want to know if this -- if this
22 phrase is in any of your emails. I mean, they'd laugh out
23 loud, because it's -- one, because it would be an ethical
24 violation for them to publish that information. And why
25 shouldn't the public have the same protection as a corporation

1 or private citizen.

2 THE COURT: Thank you.

3 MR. GRIFFIN: Thank you, Your Honor.

4 MR. HARDIN: Your Honor, I think there are several
5 issues and I think that the overarching theme that you see,
6 and you pointed it out, is the broadness of the argument that
7 the Attorney General is making, basically, that, under 1.6,
8 everything is confidential, except for things that they
9 selectively choose to disclose. They made that argument in
10 another case, 349, as well.

11 Everything is exempt except what they choose to
12 disclose, and now they say, because they've taken into
13 consideration the best interests of the State of Vermont.
14 They disclose what they feel like and they don't disclose what
15 they don't feel like. And it's now come out in oral argument
16 that one of the things that they do to determine who's
17 entitled or who they will provide public records to is they do
18 a Google search. And it turns out that, when you Google my
19 clients, you might find out things like coal or Exxon. So my
20 clients don't have rights under the Public Records Act because
21 a Google search conducted by Attorney General's employees says
22 that they're bad people, basically, and I just don't think
23 that's what the law is. I believe that the law is neutral. I
24 believe that it applies to all of the citizenry. And I
25 believe here that Your Honor also pointed out, my clients

1 General's Office, essentially, signing the contract in which
2 they attempt to write themselves out of the law. And if you
3 give a broad reading to the Common Interest Doctrine generally
4 and to this common interest agreement at issue in this case, I
5 think it punches a hole in the Vermont Public Records Act.

6 THE COURT: Anything that I've interrupted you from
7 saying?

8 MR. HARDIN: I don't believe so, Your Honor.

9 THE COURT: Okay. Thank you.

10 MR. HARDIN: Thank you.

11 THE COURT: Mr. Griffin?

12 MR. GRIFFIN: I'd like to come back to the Public
13 Records Act, since that's what this case is about, and just
14 picking up on the last point that the Attorney General's
15 Office and the State is trying to punch a hole through the
16 Act. The legislature in 317(c)(3) provided an exemption. And
17 I'm going to quote from the legislature's statute: "Records
18 which it made public pursuant to this subchapter would cause
19 the custodian to violate newly-adopted standards of ethics or
20 conduct for any professional regulated by the state." This
21 exemption was created by the legislature. It's not some
22 invention of the Attorney General's Office.

23 So that takes us to the standards of conduct for
24 lawyers and, in particular, 1.6: confidentiality of client
25 materials.

1 I think one major area of disagreement between the
2 parties here is -- I'm looking at page 5 of the plaintiff's
3 memo where they indicate that the Common Interest Doctrine is
4 an outgrowth of the attorney-client privilege which is found
5 in Rule 1.6 of the Vermont Rules of Professional Conduct. The
6 attorney-client privilege is not found in the Vermont Rules of
7 Professional Conduct. It is a common law doctrine. It's also
8 referenced in the Rules of Evidence. It's also referenced in
9 case law such as Killington. But we have, actually, three
10 separate bodies of law here: the work product, which we're
11 not arguing about today; the attorney-client privilege; and
12 the confidentiality rule.

13 So when the plaintiffs are arguing about waiver and
14 such, waiver is not a part of the Rule 1.6. If an attorney,
15 by accident or by recklessness releases information relating
16 to the representation of a client, that doesn't mean that the
17 client's file is now open to the public or to the press or to
18 groups like EELI. This is a free-standing body of law and
19 it's a free-standing argument in this case and I think it
20 really hasn't been argued at all by the -- by the plaintiffs
21 in the proceedings, the appeal to the Deputy and the briefing
22 in this case. And I think that's -- we're making both
23 arguments. We think we win on both arguments. But the claims
24 about waiver and what have you have nothing to do with the
25 confidentiality protection afforded by 1.6.

1 Just one minor point, but I use the example of -- the
2 question was what sort of mental impressions would a lawyer go
3 through if they got a request for communications between the
4 states here on releasing documents. And I started with the
5 example of this requester, because that's who we're dealing
6 with, and I don't even know if it was in this case, but we
7 have so much going on with these folks that, at one point, I
8 did Google to see why they were coming up here from Maryland
9 to engage in this. But I also gave the example of a media
10 requester, because that's going to have the same consequences
11 for my client, the State of Vermont, if they were going to
12 publish that information. And we agree totally with the
13 suggestion that the access to records law applies equally to
14 all of -- all requesters. I didn't mean to suggest otherwise
15 and I'm not suggesting otherwise. The question is what is the
16 interests of this state. Thank you.

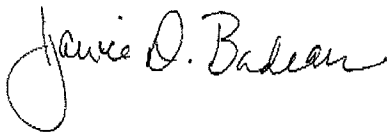
17 THE COURT: Okay. I'll take it under advisement.
18 Thank you very much.

19 THE COURT OFFICER: All rise.

20 (Proceedings concluded at 1:49 PM)

C E R T I F I C A T I O N

I, Janice D. Badeau, the court approved transcriber,
do hereby certify the foregoing is a true and correct
transcript from the official electronic sound recording of the
proceedings in the above-entitled matter.



March 31, 2017

JANICE D. BADEAU

DATE

AAERT Certified Electronic Transcriber CET**D-665

Exhibit EE

At IAS Part ____ of the Supreme Court of
the State of New York, held in and for the County
of New York, at the County Courthouse at 60
Centre Street, New York, New York, on the ____
day of October, 2016

PRESENT: The Hon. _____
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,

Petitioner,

For an order pursuant to C.P.L.R. § 2308(b) to compel
compliance with a subpoena issued by the Attorney
General

- against -

PRICEWATERHOUSECOOPERS LLP and
EXXON MOBIL CORPORATION,

Respondents.

Index No. _____

ORDER TO SHOW CAUSE

**ORAL ARGUMENT
REQUESTED**

Upon the Office of the Attorney General's Memorandum of Law in Support of its motion to compel compliance with a *subpoena duces tecum* issued to PricewaterhouseCoopers LLP ("PwC") dated August 19, 2016 in connection with the Attorney General's investigation of Exxon Mobil Corporation ("Exxon") (together with PwC, "Respondents"), the annexed Affirmation of Katherine C. Milgram in Support of such motion to compel dated October 14,

2016, and upon all the other documentation submitted in support of such motion, and sufficient cause having been alleged therefor, it is hereby

ORDERED that the Respondents appear and show cause before IAS Part ____ of the Supreme Court, New York County, at the Courthouse located at ____ Street, Room ____, New York, New York, on the ____ day of October 2016, at ____ a.m./p.m. or as soon thereafter as counsel may be heard, why an Order should not be issued pursuant to New York Civil Procedure Law and Rules Sections 403(d) and 2308(b)(1):

1. compelling Respondents, within 10 days of issuance of this Order, to comply with the Attorney General's *Subpoena Duces Tecum* dated August 19, 2016, without applying a purported accountant-client privilege; and
2. granting such other and further relief as the Court deems just and proper.

ORDERED that any opposition papers shall be served on Petitioner by electronic mail to Petitioner's counsel, Katherine C. Milgram, at katherine.milgram@ag.ny.gov, by 5:00 p.m. three days prior to the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED that any reply papers shall be served on Respondents by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr., at twells@paulweiss.com and Michele Hirshman, at mhirshman@paulweiss.com, and to Respondent PwC's counsel, David Meister, at david.meister@skadden.com, and Jocelyn Strauber, at jocelyn.strauber@skadden.com, by 5:00 p.m. one day prior to the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED, that service of a copy of this Order and the papers upon which it is granted by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr. and Michele Hirshman,

and to Respondent PwC's counsel, David Meister and Jocelyn Strauber, on or before
_____, shall be deemed sufficient service.

ENTER:

J.S.C.

Exhibit FF

1

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK : CIVIL TERM : PART 61 Mot Seq 001
4 -----x

5 In the Matter of the Application of:

6 THE PEOPLE OF THE STATE OF NEW YORK, by
7 ERIC T. SCHNEIDERMAN, Attorney General of the
8 State of New York,

9 Petitioner,

10 Index No.
11 451962/16

12 for an Order pursuant to CPLR § 2308(b) to
13 compel compliance with a Subpoena issued by the
14 Attorney General,

15 -against-

16 PRICEWATERHOUSECOOPERS LLP and EXXON MOBIL
17 CORPORATION,

18 Respondents.
19 -----x

20 October 24, 2016
21 60 Centre Street
22 New York, NY 10007

23 B e f o r e:

24 HON. BARRY R. OSTRAGER, Justice.

25 A p p e a r a n c e s:

26 STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
ERIC T. SCHNEIDERMAN
Attorneys for Petitioner
120 Broadway
New York, New York 10271
BY: MANISHA M. SHETH, ESQ., and
KATHERINE C. MILGRAM, ESQ., and
JOHN OLESKE, ESQ., and
JONATHAN C. ZWEIG, ESQ.,
Assistant Attorneys General

(Appearances continue on next page.)

WLK

1
2
3 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
4 Attorneys for Respondent PRICEWATERHOUSECOOPERS LLP
5 Four Times Square
6 New York, New York 10036
7 BY: DAVID MEISTER, ESQ., and
8 JOCELYN E. STRAUBER, ESQ.

9
10 PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP
11 Attorneys for Respondent EXXON MOBIL CORPORATION
12 1285 Avenue of the Americas
13 New York, New York 10019
14 BY: THEODORE V. WELLS, JR., ESQ., and
15 MICHELE HIRSHMAN, ESQ., and
16 MICHELLE K. PARIKH, ESQ., and
17 EDWARD C. ROBINSON, JR., ESQ.

18
19 MINUTES OF PROCEEDINGS

20
21
22 Reported By:
23 William L. Kutsch
24 Senior Court Reporter
25
26

WLK

Proceedings

THE COURT: All right. I'm prepared to offer everyone an apology here.

There are two significant items of disclosure.

The first item of disclosure is that an envelope was delivered to me from the New York Attorney General, which was not e-filed, and the respondents, to the best of my knowledge, are not aware that this was delivered to my Chambers. I have not looked at this material, so I'm going to return it to the Attorney General.

(Hanging.)

THE COURT: The second item of disclosure, which is more significant, or potentially more significant, is that as I was reading the papers in this case over the weekend, I realized that I am an Exxon shareholder. I own 1,050 shares of Exxon stock in an account, and I own an additional 2,000 shares of Exxon stock in an IRA account.

According to the Canons of Judicial Ethics, I will be disqualified from hearing this case unless the parties, pursuant to Section 100.3(F), were satisfied to allow me to continue on the case.

The circumstance that I have shares in Exxon would not in any way, in my opinion, affect my impartiality in the case, but the rules are the rules.

So I'm prepared to disqualify myself if that's the desire of the parties. I'm prepared to continue on the case

WLK

Proceedings

1
2 Patel. But, as I demonstrated, that's not what the Patel
3 court said, but he cites to that. And then the court says:
4 "Anyway, this is a federal question case and, accordingly,
5 federal privilege law governs." That's an accurate
6 statement. So, he cites Patel incorrectly.

7 But the bottom line is, no court has ruled that
8 there is no privilege, and especially the two Texas courts,
9 they don't do it.

10 Now, again, our core position is that Patel and
11 Arnold are not controlling for our case; that we have a
12 totally different argument involving the interaction between
13 (b)(2) and (b)(3) and whether (b)(2) is exhaustive, and
14 whether you can drop down to (b)(3) as they want to to save
15 it. Those are different. That's a point different than is
16 raised in any of these cases.

17 And what we are asking your Honor to do ultimately
18 is not deal on an abstract record, to permit us to develop a
19 record so that you could do the balancing test in the
20 context of concrete documents, and that you will rule as you
21 see fit, but that you not go down the road, as they've asked
22 you, to say that Texas courts have ruled on this issue,
23 because they have not.

24 That completes my argument.

25 Thank you.

26 Your Honor, excuse me. One last thing.

WLK

Proceedings

I do not think what is going on in Texas has any relevancy to this motion and dispute about the PwC subpoena and the attorney-client privilege, but the New York Attorney General has made reference to the Texas litigation, and if I could take maybe five or ten minutes just to at least explain what is going on there to your Honor, because I don't think it's been fairly described.

THE COURT: Why don't you tell me what it is that you are seeking vis-à-vis the New York Attorney General in the Texas proceeding.

MR. WELLS: Okay. Our original action in Texas was against the Attorney General of the Virgin Islands. I have a timeline that I could give to you as an exhibit that I think would help, your Honor. We can put it up.

This is a timeline of what is going on in Texas.

I start with the first bullet, which is November 4, 2015, when Attorney General Schneiderman issued the subpoena to ExxonMobil.

The day after the subpoena was issued, the New York Times had a full-blown story here about the ExxonMobil subpoena and investigation. The New York Times had the story before we even got the subpoena. We didn't get the subpoena until late at night before this full-blown story is in the paper the next day.

The next thing that happens is March 15, 2016, the

WLK

Proceedings

Virgin Islands Attorney General issues a subpoena to ExxonMobil.

March 29, 2016, Attorney General Schneiderman hosts a public press conference entitled: "Attorney Generals United for Clean Power," and they called themselves the "Green 20", with Vice President Al Gore, and they hold a conference, and they get on stage, and it's on the Internet, and what they say is that these attorney generals had banded together because the United States Congress is in gridlock about the issue of climate change, and they are going to step into the void and deal with the fact that Congress has not been able to deal with climate change. And one of the ways they are going to do it is to investigate ExxonMobil.

And that's really what -- up until then, we met with them, we kind of forgotten, you know, the leak to the New York Times in producing documents, but without question, the world changes the day they get on stage and basically say they have decided that we're guilty, they're coming after us for political reasons, and they're sitting there with the vice president.

What happens next, on April 13th -- and the Attorney General of the Virgin Islands is up on stage with him -- April 13th, we then file a petition in the Texas court seeking a declaration that the Virgin Islands subpoena is unconstitutional. We sue based on the First Amendment

WLK

Proceedings

and the Fourth Amendment in terms of the suppression of our right to participate in the climate change debate.

Six days later, Attorney General Healey issues a subpoena.

So what's going on now, we started with Attorney General Schneiderman, they've had the press conference, the Attorney General of the Virgin Islands has jumped on us, now the Attorney General of Massachusetts.

We then reach a settlement with the Attorney General of the Virgin Islands where he decides, rather than fighting us in Texas, he's going to withdraw his subpoena.

Then in June of 2016, we file a complaint and motion for a preliminary injunction against enforcement of the subpoena by the state of Massachusetts. We're now in Texas.

And a quick question: "Mr. Wells, why are you in Texas? Why don't you go to Massachusetts? Why don't you go to the Virgin Islands?" It's our position that there is a group of attorney generals who has decided to use their law enforcement powers for a political purpose, and the only place we can get them all, rather than fight them separately in each court, is in our home state of Texas. That's the only forum.

We also actually, when we filed against the state of Massachusetts in Texas, we did also filed against the

WLK

Proceedings

1
2 state of Massachusetts in Massachusetts, but we asked that
3 court to stay it. It hasn't issued a ruling yet. We argue
4 that I think in December.

5 Now, then there's an article in the New York Times
6 where Attorney General Schneiderman gives an extensive
7 interview, and he states that there may be massive
8 securities fraud at Exxon, so he made this public statement
9 now in August. Then the same day, he makes the public --
10 he's quoted in the New York Times, we get the subpoena for
11 PwC documents. Okay? This all comes: New York Times,
12 massive securities fraud, then he serves a subpoena on PwC.

13 Then on September 19th, this is a critical date,
14 September 19th, we go to Texas and we argue the preliminary
15 injunction against the state of Massachusetts before Judge
16 Kinkeade. During the oral argument, Judge Kinkeade says to
17 us, in essence: "Well, what are you doing about New York?
18 You sue in Massachusetts, but you produce it to New York."
19 At least as we read the court, he's got some concerns that,
20 "Well, why are you suing in Mass. and not New York?" And
21 that's how we read it, that he had those concerns, because
22 he even said: "Doesn't New York have the same motive as
23 Attorney General Healey?"

24 Then what happened, this is what they don't tell
25 you in their papers. They're trying to create the picture
26 in their papers that they filed this action in front of your

WLK

Proceedings

Honor to enforce the PwC subpoena on Friday, and we ran down to Texas and filed something on Monday. Nothing could be further from the truth. They don't tell you about what happened on Thursday. They make the story start on Friday like they filed an order to show cause. Nobody cared about, in all due respect, this accountant issue. What happened on Thursday was that Judge Healey -- I'm sorry, Judge Kinkeade on Thursday issued an opinion, and his opinion said that we were going to get discovery against the Mass. AG, as we read it, the other attorney generals, because we had made a sufficient showing of bad faith under the *Younger* doctrine, and that's when we decide to join them on Monday, but it's because of what happened in that opinion.

Then on the 14th, they filed their action the next day, then we filed our action against the Attorney General of New York in Texas.

In terms of where the Texas case is right now, two things have happened that are not on the chart. Earlier this week -- well, at the end of last week, the state of Massachusetts filed a motion for reconsideration, saying to Judge Kinkeade: We want you to reconsider your order not dismissing the case for jurisdictional purposes and also giving ExxonMobil discovery rights.

We filed a motion to expedite the filing of the Amended Complaint so the New York AG can be brought into the

WLK

Proceedings

1
2 case because the next step is, we're going to have a
3 discovery conference, and there's no question it's going to
4 be heated because right now we have the right, as we read
5 the order, to take the deposition of both the Mass. AG
6 people and really everybody, as we read it, that was at that
7 March 29th conference. And we would like to get the New
8 York AG in the case as we work out these discovery issues.
9 So that is what we have done.

10 In terms of where Texas is going to go, it's months
11 down the road because right now we're going to engage
12 without a question in fairly heated discovery issues. We
13 are going to try to take depositions of the state AG's. I
14 have no doubt that the state AG's are going to contest Judge
15 Kinkeade's order. And I have no doubt that they are going
16 to say "investigative privilege." They have, all the AG's
17 have entered into what they call a common-interest
18 agreement. We believe that is a pretext to keep from the
19 public and from us exactly what they have been doing for
20 political purposes, because there's going to be litigation
21 over that common-interest privilege which we submit is
22 designed to keep people from learning the true facts, but
23 it's going to be months down the road.

24 But when they -- so the order to show cause on
25 Friday and the following Monday were not tied together.
26 What was tied was what happened on Thursday. And we

WLK

1 Proceedings

2 immediately said in our papers: "We submit to your Honor
3 jurisdiction. We have no problem with your Honor's ruling
4 on this." We said that immediately. And that is our
5 position.

6 But in terms of where Texas is, that's the one
7 place we can get multiple attorney generals who are coming
8 after ExxonMobil with what we believe are pretextual
9 subpoenas designed not really to ferret out any wrongdoing
10 but really for political purposes because we had deigned not
11 to toe the line in terms of what they see as was politically
12 correct with respect to the issue of climate change.

13 One last point.

14 ExxonMobil has been on the record for years now
15 that we recognize the seriousness of climate change. All of
16 these attorney generals operate within a four- to six-year
17 statute of limitations. And we have been, prior to the
18 statutory period, been on the record, we recognize that
19 climate change, the issue is real, it deserves attention.

20 But this is part of a political agenda, and I
21 understand that the New York AG made our complaint in Texas
22 part of the record, and I would invite your Honor to read
23 the complaint because it sets forth in more detail what I've
24 laid out on this timeline.

25 Last point.

26 I just want to read from Judge Kinkeade's order

WLK

1 Proceedings

2 that was issued on Thursday. I would like to hand to your
3 Honor a copy of the judge's order.

4 THE COURT: Thank you.

5 MR. WELLS: This is what Judge Kinkeade ruled on
6 Thursday, signed October 13th. He said: "The court finds
7 the allegations about Attorney General Healey and the
8 anticipatory nature of Attorney General Healey's remarks
9 about the outcome of the Exxon investigation to be
10 concerning to this court. The foregoing allegations about
11 Attorney General Healey, if true, may constitute bad faith
12 in issuing the CID which would preclude Younger abstention.
13 Attorney General Healey's comments and actions before she
14 issued the CID require the court to request further
15 information so that it can make a more thoughtful
16 determination about whether this lawsuit should be dismissed
17 for lack of jurisdiction.

18 "Conclusion.

19 "Accordingly, the court ORDERS that jurisdictional
20 discovery by both parties be permitted to aid the court in
21 deciding whether this lawsuit should be dismissed on
22 jurisdictional grounds."

23 So that is where the case is as it stands.

24 But again, we are in Texas and we are fighting
25 multiple attorney generals, and Texas is the one forum where
26 we can fight them together. We may end up having, as we do

WLK

1 Proceedings

2 in Mass., we may end up at some point, I don't know, having
3 New York litigation also. Right now, we have given them
4 over one million pages of documents, and that may come to
5 pass. But at this moment, we are in Texas because Texas is
6 the only state, because it's where we're based, where we can
7 bring our constitutional claims against multiple attorney
8 generals rather than fighting state by state by state.

9 Thank you.

10 MS. SHETH: Your Honor, may I be heard?

11 THE COURT: Briefly.

12 MS. SHETH: Thank you, your Honor.

13 Let me briefly just address what Mr. Wells just
14 said.

15 We are not -- the New York AG is not a party to
16 that action in Texas at present, and the order that he just
17 put up in front of your court does not -- is not directed at
18 the New York AG, and the quoted statements were not about
19 statements made by the New York AG.

20 Now, let me turn back to the issue which is before
21 your Honor involving the PwC documents and this purported
22 privilege.

23 Just quickly in response to the CDP documents, to
24 date we have only received 30 such Carbon Disclosure Project
25 documents. If that's the full universe, then we would like
26 a representation that that production is complete. But we

WLK

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MS. SHETH: I apologize, your Honor.

THE COURT: -- with a note saying: "This is not e-filed," that those are documents that were submitted under seal. So if you want to resubmit them to me for review with an appropriate cover letter, I will review them.

MS. SHETH: Happy to do so.

Thank you, your Honor.

THE COURT: Thank you.

I think you should both order a copy of the transcript because you will both want a copy of the transcript, and to the extent that you can get it expedited, that would be a good idea.

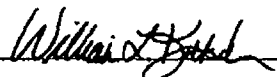
Thank you.

(At this time the proceedings were concluded.)

-oOo-

C E R T I F I C A T I O N

This is to certify the within is a true and accurate transcript of the proceedings as reported by me.



William L. Kutsch, SCR

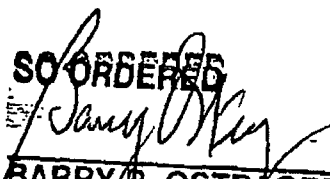

SO ORDERED
BARRY R. OSTRAGER, J.S.C.
WLK

Exhibit GG

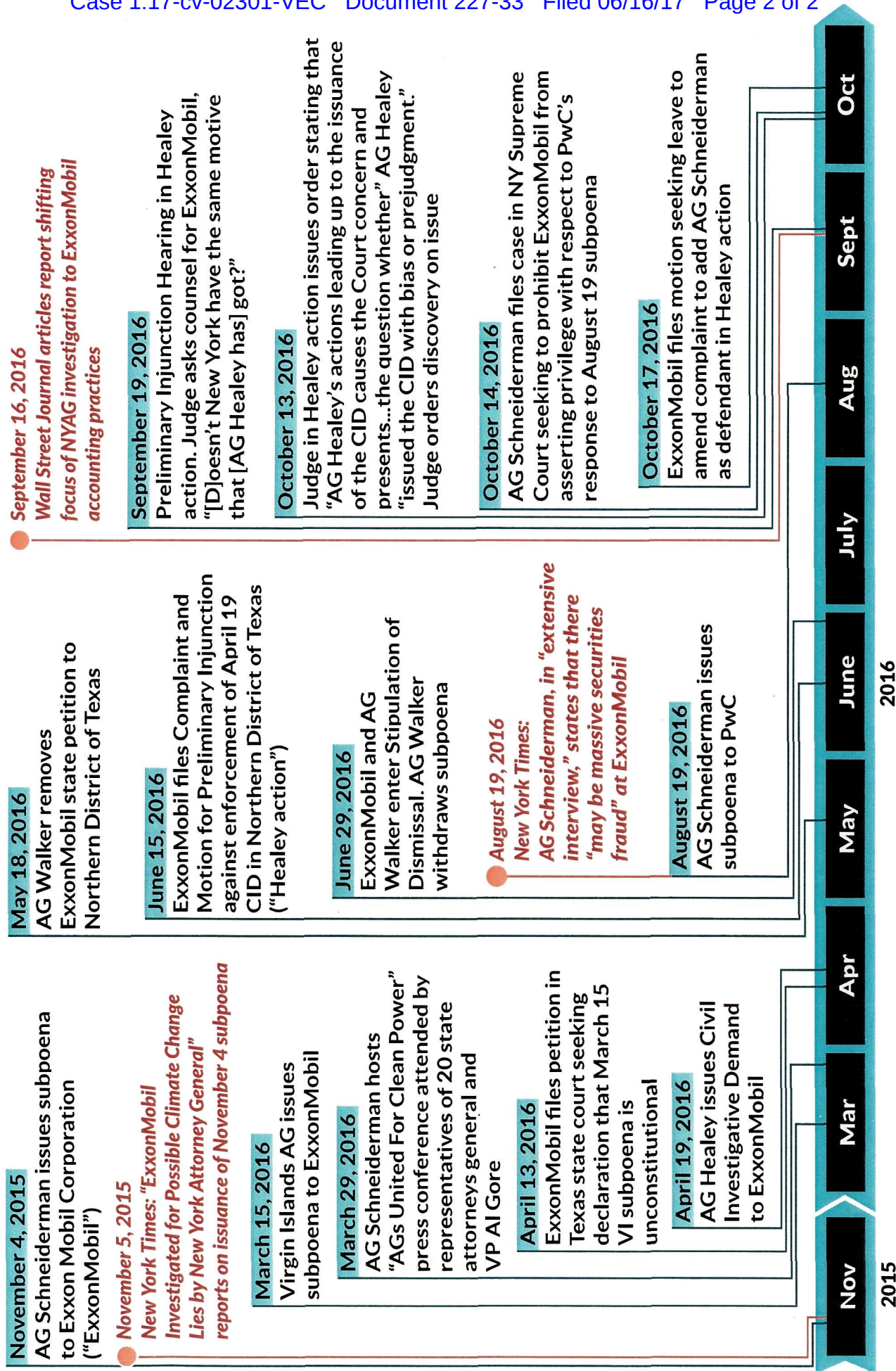


Exhibit HH

Judge Kinkeade's October 13, 2016 Order

Case 4:16-cv-00469-K Document 73 Filed 10/13/16 Page 1 of 6 PageID 2299

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-K

ORDER

Plaintiff Exxon Mobil Corporation's Motion for a Preliminary Injunction (Doc. No. 8) and Defendant Attorney General Healey's Motion to Dismiss (Doc. No. 41) are under advisement with the Court. Plaintiff Exxon Mobil Corporation ("Exxon") moves to enjoin Defendant Attorney General Maura Tracy Healey of Massachusetts from enforcing the civil investigative demand ("CID") the Commonwealth of Massachusetts issued to Exxon on April 19, 2016. The Attorney General claims that the CID was issued to investigate whether Exxon committed consumer and securities fraud on the citizens of Massachusetts. Exxon contends that the Attorney General issued the CID in an attempt to satisfy a political agenda. Compliance with the CID would require Exxon to disclose documents dating back to January 1, 1970 that relate to what Exxon possibly knew about climate change and global warming.

1

The Court finds the allegations about Attorney General Healey and the anticipatory nature of Attorney General Healey's remarks about the outcome of the Exxon investigation to be concerning to this Court. The foregoing allegations about Attorney General Healey, if true, may constitute bad faith in issuing the CID which would preclude *Younger* abstention. Attorney General Healey's comments and actions before she issued the CID require the Court to request further information so that it can make a more thoughtful determination about whether this lawsuit should be dismissed for lack of jurisdiction.

III. Conclusion

Accordingly, the Court **ORDERS** that jurisdictional discovery by both parties be permitted to aid the Court in deciding whether this law suit should be dismissed on jurisdictional grounds.

SO ORDERED.

Signed October 13th, 2016.

Ed Kinkeade
ED KINKEADE
UNITED STATES DISTRICT JUDGE

Source: Dkt. No. 73
Exxon Mobil Corp. v. Healey, No. 4:16-CV-469-K

Exhibit II

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 61

_____X
In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, Attorney General
of the State of New York,

Index No. 451962/16

Petitioner,

DECISION & ORDER

For an order pursuant to C.P.L.R. § 2308(b) to compel
compliance with a subpoena issued by the Attorney
General

Motion Seq. No. 001

-against-

PRICEWATERHOUSECOOPERS LLP and
EXXON MOBIL CORPORATION,

Respondents.

_____X
OSTRAGER, J:

Presently before the Court is a petition by the Office of the New York Attorney General (“NYAG”) seeking an order pursuant to CPLR section 2308(b) compelling respondent PricewaterhouseCoopers LLP (“PWC”) to comply with a *subpoena duces tecum* issued by the NYAG on August 19, 2016 (the “Subpoena”) and compelling respondent Exxon Mobil Corporation (“Exxon”) to allow PWC to produce responsive documents without withholding some based on a purported accountant-client privilege. The Subpoena, attached as Exhibit A to the Affirmation of Katherine C. Milgram, Chief of the Investor Protection Bureau of the Office of the Attorney General, was issued in connection with the Attorney General’s investigation of Exxon’s representations about the impact of climate change on its business, including on its assets, reserves, and operations.

A highly publicized subpoena was originally issued to Exxon on November 4, 2015. Concurrent with additional publicity, including an interview of Attorney General Schneiderman in the New York Times, the NYAG issued its investigative subpoena to PWC on August 19, 2016. Both subpoenas relate to potential Martin Act violations by Exxon in connection with its allegedly misleading public disclosures relating to climate change. All parties agree that this Court is the proper forum in which to resolve the NYAG's application.

It is undisputed that Exxon has produced at least one million documents to the NYAG pursuant to the subpoena issued to Exxon. The question raised by the instant petition is whether the production of PWC documents would violate Texas Occupations Code Section 901.457, which is captioned "Accountant-Client Privilege." The answer to this question turns, in the first instance, on whether New York law applies to an investigative subpoena issued by the NYAG with respect to a New York investigation involving companies that do business in New York. If, as the NYAG claims, New York law applies, counsel agree that there is no accountant-client privilege as New York law does not recognize any such privilege. If, as Exxon claims, Texas law applies to the Subpoena, there is an issue as to whether Texas Operations Code Section 901.457 would operate to preclude production of non-attorney client communications on the grounds of an accountant-client privilege. Significantly, PWC takes no position on the applicability of the Texas Occupations Code Section 901.457.

The short answer to the latter issue is that Texas Operations Code Section 901.457 does not preclude production of the requested documents. It is therefore unnecessary to resolve the choice of law issue, although as set forth *infra*, New York law is applicable to the NYAG's petition.

The precursor statute to Texas Operations Code Section 901.457 was originally enacted in 1979. As originally enacted, the statute appears to have created a limited accountant-client privilege subject to several carve outs, although no Texas case has specifically recognized an accountant-client privilege. The statute was subsequently amended multiple times, first in 1989 and, thereafter in 1999, 2001, and again in 2013. Each succeeding amendment to the statute modified in some respect the carve outs to any arguable accountant-client privilege.

The case law and legislative history relating to the intent and proper interpretation of Texas Operations Code Section 901.457 and its predecessors is sparse and not dispositive of this case. In all events, all of the limited case law addressing the statute predates the 2013 version of the statute, except for one federal case that mentions the state law but applies federal law. This Court finds that the statute has a plain meaning. Specifically, subdivision (b) of the statute provides in relevant part:

This section does not prohibit a license holder [PWC] from disclosing information that is required to be disclosed:

- (1) by the professional standards for reporting on the examination of a financial statement;
- (2) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the Securities Act of 1933 (*15 U.S.C. Section 77a et seq.*) and its subsequent amendments, the Securities Exchange Act of 1934 (*15 U.S.C. Section 78a et seq.*) and its subsequent amendments, or The Securities Act (*Article 581-1 et seq., Vernon's Texas Civil Statutes*);
- (3) under a court order signed by a judge if the order:
 - (A) is addressed to the license holder;
 - (B) mentions the client by name; and
 - (C) requests specific information concerning the client;
- (4) in an investigation or proceeding conducted by the board;
- (5) in an ethical investigation conducted by a professional organization of certified public accountants;

(6) in the course of a peer review under Section 901.159 or in accordance with the requirements of the Public Company Accounting Oversight Board or its successor; or

(7) in the course of a practice review by another certified public accountant or certified public accountancy firm for a potential acquisition or merger of one firm with another, if both firms enter into a nondisclosure agreement with regard to all client information shared between the firms.

This Court rejects Exxon's assertion that subsections (b)(2) and (b)(3) must be read together and that because the Subpoena was not issued pursuant to one of the federal laws specified in (b)(2), the NYAG may not seek a court order compelling production pursuant to (b)(3). As a matter of pure statutory construction, this interpretation of the statute is flawed because there is no textural support for the proposition that the carve out in (b)(3) is tethered to the carve out in (b)(2) while the carve outs in (b)(4), (b)(5), (b)(6), and (b)(7) are not. Consequently, the carve out in (b)(3) would be satisfied by an order from this Court compelling compliance by Exxon and PWC of the investigative subpoenas issued by the NYAG inasmuch as those subpoenas request specific information concerning Exxon. *Cf. In re Arnold*, 2012 WL 6085320 (Tex. App., Nov. 30, 2012) (holding that an order denying a motion to quash a deposition notice functioned as a court order, thus vitiating any confidentiality obligation under the statute).

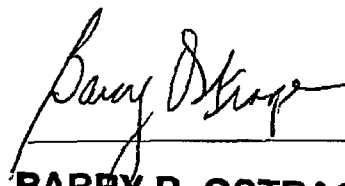
For the reasons stated above, it is not necessary to resolve the choice of law issue. If there were an applicable accountant-client privilege under Texas law, it would be nevertheless unavailing because New York law applies to the NYAG's application. New York does not recognize an accountant-client privilege, and controlling authority holds that: "The law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding is applied when deciding privilege issues[.]" *JP Morgan Chase & Co. v Indian Harbor Ins. Co.*, 98 A.D.3d 18, 25 (1st Dep't 2012); *see also G-I Holdings, Inc. v Baron & Budd*, No. 01 Civ. 0216 (RWS), 2005 U.S. Dist. LEXIS 14128, at 7 (S.D.N.Y. July 13, 2005) ("With

respect to the law of evidentiary privileges, New York courts generally apply the law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding itself.”); *Fine v Facet Aerospace Products Co.*, 133 F.R.D. 439, 443 (S.D.N.Y. 1990) (“New York courts apply the privilege law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding when deciding privilege issues.”); *People v Greenberg*, 50 AD3d 195, 198 (1st Dep’t 2008) (“New York courts routinely apply the law of the place where the evidence in question will be introduced at trial or the location of the discovery proceeding when deciding privilege issues.”) (internal quotation marks omitted).

Accordingly, it is hereby

ORDERED that the motion by the Attorney General of the State of New York to compel compliance with the investigative *subpoena duces tecum* issued on August 19, 2016 is, in all respects, granted. As stated in open court, compliance with the Subpoena shall occur in accordance with any schedule to which the parties agree, as long as that schedule is not unnecessarily protracted. Counsel shall appear for a conference on Thursday, December 15, 2016 at 9:30 a.m. in Room 341.

Dated: October 25, 2016



BARRY R. OSTRAGER
JSC

J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

BARRY R. OSTRAGER

PRESENT: _____ JSC _____
Justice

PART 61

Index Number 451962/2016
PEOPLE OF THE STATE OF NEW YORK
VS
PRICEWATERHOUSECOOPERS LLP ET AL
SEQUENCE NUMBER 001
ORDER TO COMPEL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 01

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

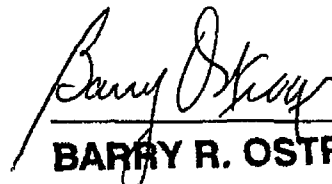
Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted in accordance with the accompanying memorandum decision. Counsel shall appear in Room 341 for a conference on December 15, 2016 at 9:30 a.m.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: October 25, 2016


_____, J.S.C.
BARRY R. OSTRAGER
JSC

1. CHECK ONE: _____ ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: _____ MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: _____ ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

Exhibit JJ

At IAS Part 61 of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse at 60 Centre Street, New York, New York, on the ____ day of November, 2016

PRESENT: The Hon. Barry R. Ostrager
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,

Petitioner,

For an order pursuant to C.P.L.R. § 2308(b) to compel
compliance with a subpoena issued by the Attorney
General

- against -

PRICEWATERHOUSECOOPERS LLP and
EXXON MOBIL CORPORATION,

Respondents.

Index No. 451962/2016

ORDER TO SHOW CAUSE

**ORAL ARGUMENT
REQUESTED**

Upon the Office of the Attorney General's Memorandum of Law in Support of its motion to compel compliance with a *subpoena duces tecum* issued to Exxon Mobil Corporation ("Exxon") dated November 4, 2015, the annexed Affirmation of John Oleske in Support of such motion to compel dated November 14, 2016, and upon all the other documentation submitted in support of such motion, and sufficient cause having been alleged therefor, it is hereby

ORDERED that Respondent Exxon appear and show cause before IAS Part 61 of the Supreme Court, New York County, at the Courthouse located at 60 Centre Street, Room 341,

New York, New York, on the ____ day of November 2016, at ____ a.m./p.m. or as soon thereafter as counsel may be heard, why an Order should not be issued pursuant to New York Civil Procedure Law and Rules Sections 403(d) and 2308(b)(1):

(1) compelling Exxon to produce, no later than November 23, 2016:

Documents concerning (i) XOM's valuation, accounting, and reporting of its assets and liabilities, including reserves, operational assets, extraction costs, and any impairment charges; and (ii) the impact of climate change and related government action on such valuation, accounting, and reporting, including documents held by additional custodians and documents found using appropriately-targeted search terms, *including, but not limited to*, documents relating to the disclosure, calculation, use and application of the proxy cost of carbon/greenhouse gases (also known as the carbon price); and

(2) retaining continuing jurisdiction over Exxon's compliance with the subpoena, and mandating such other and further relief as the Court deems just and proper in implementing a schedule for the prompt production of all other responsive documents called for by the subpoena.

ORDERED that any opposition papers shall be served on Petitioner by electronic mail to Petitioner's counsel, John Oleske, at john.oleske@ag.ny.gov, by 5:00 p.m. three days prior to the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED that any reply papers shall be served on Respondents by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr., at twells@paulweiss.com and Michele Hirshman, at mhirshman@paulweiss.com, and to Respondent PricewaterhouseCoopers LLP's ("PwC") counsel, David Meister, at david.meister@skadden.com, and Jocelyn Strauber, at jocelyn.strauber@skadden.com, by 5:00 p.m. one day prior to the date set forth above for the hearing on Petitioner's motion to compel.

ORDERED, that service of a copy of this Order and the papers upon which it is granted by electronic mail to Respondent Exxon's counsel, Theodore Wells Jr. and Michele Hirshman,

and to Respondent PwC's counsel, David Meister and Jocelyn Strauber, on or before _____, shall be deemed sufficient service.

ENTER:

J.S.C.

Exhibit KK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART - 61

-----X
In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,

Petitioner

INDEX NUMBER:
451962/2016

For an order pursuant to CPLR 2308(b) to compel
Compliance with a subpoena issued by the Attorney General,

-against-

PRICEWATERHOUSECOOPERS, LLP and EXXON MOBIL CORPORATION

Respondents
-----X

60 Centre Street
New York, New York 10007
November 21, 2016

BEFORE:

HONORABLE: Barry R. Ostrager, JSC

APPEARANCES:

State of New York
Office of the Attorney General
Eric T. Schneiderman
120 Broadway
New York, New York 10271
By: John Oleske, Esq.
Manisha M. Sheth, Esq.
Mandy DeRoche, Esq.

dh

1

2 Skadden, Arps, Slate, Meagher & Flom, LLP
3 Attorneys for Respondent,
4 PRICEWATERHOUSECOOPERS, LLP
5 Four Times Square
6 New York, New York 10036
7 By: David Meister, Esq.
8 Jocelyn E. Strauber, Esq.

6

7

8

9 Paul, Weiss, Rifkind, Wharton & Garrison, LLP
10 Attorneys for Respondents,
11 Exxon Mobil Corporation
12 1285 Avenue of the Americas
13 New York, New York 10019
14 By: Theodore Wells Jr., Esq.
15 Justin Anderson, Esq.

13

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16

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Delores Hilliard
Official Court Reporter

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dh

Proceedings

COURT CLERK: Index Number 451962/2016.

In the Matter of the Application of the.

PEOPLE OF THE STATE OF NEW
YORK versus PRICEWATERHOUSECOOPERS
LLP and EXXON MOBIL CORPORATION.

THE COURT: I have read the order to show cause,
the memorandum in support of the order to show cause, the
affirmations in support and of course the opposition.

So, as I understand the dispute here, the New York
Attorney General's office issued an information subpoena to
Exxon Mobil.

And I have looked at the text of your subpoena.
And it appears that what is called for under section D,
documents to be produced, are 11 specific categories of
documents relating to climate change issues.

Now, I am not going to trail into anything. There
is an information subpoena that was issued to
Pricewaterhousecoopers. And the last time the parties were
here I ordered that Pricewaterhousecoopers comply with that
subpoena. And then the attorneys from the Attorney General
and Pricewaterhousecoopers should work out a more recent
schedule for the production of documents than the order that
I entered.

So, this application is to compel Exxon to comply
with the production of documents that Exxon claims goes

dh

Proceedings

beyond the scope of the subpoena that is at issue.

So, I will hear from the Attorney General.

MR. OLESKE: Yes, your Honor, thank you.

John Oleske for The State, Judge.

First and foremost I need to address some confusion that I think Exxon has stated in their brief.

Documents that we are seeking to compel go beyond this kind of carve-out of category that Exxon is creating, which is the documents they claim are beyond the scope of the subpoena.

There are already, in fact, many documents. We expected the bulk of the response of documents actually do relate or indirectly to climate change. Those are part of the documents, we expect the bulk of the documents we are trying to compel.

They have advanced no argument, whatsoever, as to the burdensomeness or the overbreadth of those requests. They have argued nothing at all in response as to why they cannot produce those documents by the now extended by a year return date that we have offered for the documents that are responsive and to requests 3 and 4 in the original subpoena.

So, really, we see Exxon as having conceded the bulk of this motion.

Now, we are talking about really in this carve-out category Exxon is trying to recreate.

dh

1 Proceedings

2 broad area.

3 This subpoena in part goes back to either 10 years
4 for some items or 40 years for others. This is a huge
5 request. And we have been working cooperatively with them.
6 And they haven't briefed that.

7 That's not, that's not what got us into court and
8 had teams working around the clock to get these papers in.
9 They were very focused on these accounting documents.

10 And now for them to have flipped this court
11 conference into some discussion of when are we going to
12 finish the 11 items that nobody has briefed, discussed at
13 all, I mean, I just don't think --

14 THE COURT: I understand the issues here.

15 Obviously, the parties have been engaged for an
16 extended period of time in discussions about what documents
17 should be prioritized, what should be produced and how they
18 are going to be produced.

19 I agree with Exxon that there is a difference
20 between an inquiry relating to climate change and an
21 entirely different inquiry relating to Exxon's general
22 accounting procedures.

23 Now, if The Attorney General's office issues a
24 subpoena to Pricewaterhousecoopers which dealt with Exxon's
25 general accounting procedures, apparently, The Attorney
26 General's office has worked out a stipulation with

dh

Proceedings

Pricewaterhouse with respect to the manner in which Pricewaterhouse will produce documents relating to Exxon's general accounting procedures.

I don't see any prejudice to The Attorney General's office in awaiting the production of that information from Pricewaterhousecoopers in accordance with the schedule that The Attorney General's office worked out with Pricewaterhousecoopers.

If The Attorney General's office wants to issue a subpoena to Exxon Mobil with respect to its general accounting procedures, it is free to do so.

With respect to the climate change documents there clearly does need to be an agreement between the parties concerning the production of those documents. And The Court is not going to fix a specific date today. Because, there has been a long negotiation between the parties relating to search terms, relating to priorities, relating to the sequencing of various kinds of documents.

And so, frankly, this wasn't a matter for an order to show cause. It is a matter for the parties to come to some reasonable resolution on a consensual basis among themselves. And failing that The Court will enter an order.

MR. OLESKE: Your Honor, if I may be heard on just that one point.

We spent 5 months trying to come to that kind of

dh

Proceedings

1
2 agreement. Trying to find out when we were going to get
3 these documents.

4 And in the most recent correspondence Exxon refused
5 to modify its search terms to capture documents that we knew
6 were missing.

7 So, while the office understands completely your
8 Honor's interest in having the parties go back and try to
9 work it out without having some kind of enforcement of our
10 return date, we are kind of left in this limbo where we have
11 been for the last 5 months kind of banging our head against
12 the wall trying to get an agreement for a specific date and
13 for the universe of documents that are going to be produced.
14 And we are talking to ourselves.

15 THE COURT: Well, if you cannot get a specific
16 agreement between now and December 1st, then you can return
17 to The Court and The Court will fix a date.

18 And if necessary The Court will arbitrate what are
19 reasonable or unreasonable search terms.

20 And that is the disposition of the motion.

21 Thank you.

22 MR. OLESKE: Thank your, your Honor.

23 THE COURT: Both parties are to order a copy of the
24 transcript.

25 And the actual disposition of the order to show
26 cause is that the motion is denied with the understanding

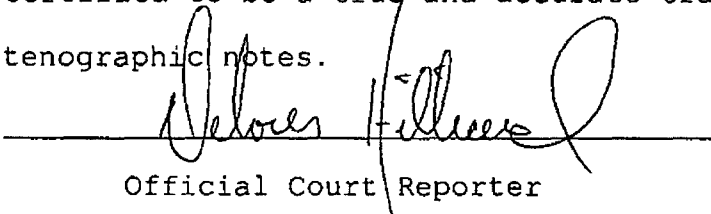
dh

Proceedings

that if the parties do not come to a consensual agreement by
December 1st The Court will impose upon the appropriate
application.

MR. OLESKE: Thank you, your Honor.

Certified to be a true and accurate transcription
of said stenographic notes.


Official Court Reporter

SO ORDERED


BARRY R. OSTRAGER, J.S.C.

11/29/16

dh

Exhibit LL

FILED: NEW YORK COUNTY CLERK 11/30/2016 12:59 PM

NYSCEF DOC. NO. 94

RECEIVED NYSCEF: 11/30/2016

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: BARRY R. OSTRAGER
JusticePART 61People of the State of New York

-v-

Price waterhouse Coopers, et alINDEX NO. 451962/16

MOTION DATE _____

MOTION SEQ. NO. 002

The following papers, numbered 1 to _____, were read on this motion to/for _____

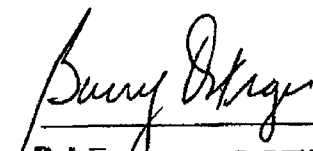
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion ~~is~~ by petitioner to compel compliance with a subpoena duces tecum issued to Exxon Mobil Corporation is denied in accordance with the decision on the record on November 21, 2016. This decision corrects the November 21 decision, which incorrectly designated the motion as sequence 003.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: November 30, 2016

 _____, J.S.C.
BARRY R. OSTRAGER

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

Exhibit MM

Sweeny, J.P., Andrias, Moskowitz, Kahn, Gesmer, JJ.

3685N In re People of the State of Index 451962/16
 New York, etc.,
 Petitioner-Respondent,

-against-

PriceWaterhouseCoopers, LLP,
Respondent,

Exxon Mobil Corporation,
Respondent-Appellant.

Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York (Theodore V. Wells, Jr. of counsel), for appellant.

Eric T. Schneiderman, Attorney General, New York (Anisha S. Dasgupta of counsel), for respondent.

Order, Supreme Court, New York County (Barry R. Ostrager, J.), entered on or about October 26, 2016, which granted the petition of New York State Attorney General (NYAG) to compel respondent Exxon Mobile Corporation (Exxon) and its independent auditor, respondent PriceWaterhouseCoopers, LLP (PwC), to comply with a subpoena duces tecum served on PwC, unanimously affirmed, without costs.

In this proceeding arising from an underlying investigation by the NYAG into alleged fraud by respondent Exxon concerning its published climate change information, the motion court properly found that the New York law on privilege, rather than Texas law, applies, and that New York does not recognize an accountant-

client privilege.

We reject Exxon's argument that an interest-balancing analysis is required to decide which state's choice of law should govern the evidentiary privilege. Our current case law requires that when we are deciding privilege issues, we apply the law of the place where the evidence will be introduced at trial, or the place where the discovery proceeding is located (*JP Morgan Chase & Co. v Indian Harbor Ins. Co.*, 98 AD3d 18, 25 [1st Dept 2012], *lv denied* 20 NY3d 858 [2013], citing *People v Greenberg*, 50 AD3d 195, 198 [2008], *lv dismissed* 10 NY3d 894 [2008])). In light of our conclusion that New York law applies, we need not decide how this issue would be decided under Texas law.

We have considered Exxon's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 23, 2017


CLERK

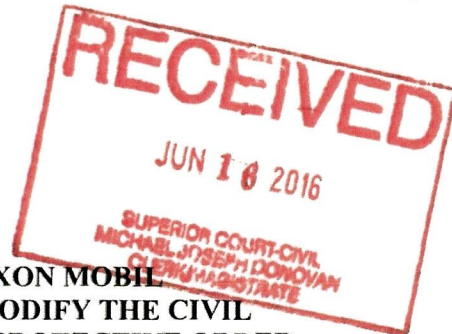
Exhibit NN

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



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

Pursuant to G.L. c. 93A, § 6(7), Superior Court Rule 9A(e), and the standards set forth in Mass. R. Civ. P. 26(c), Petitioner Exxon Mobil Corporation ("ExxonMobil"), through this special appearance and without consenting to jurisdiction, respectfully requests that this Court set aside a civil investigative demand (the "CID") served on ExxonMobil by the Attorney General. As grounds for this motion, ExxonMobil states:

1. On April 19, 2016, the Attorney General served the CID on ExxonMobil, which states that the Attorney General is investigating possible violations of G.L. c. 93A, § 2.

According to the CID, the Attorney General's investigation centers on two types of transactions:

(1) ExxonMobil's marketing and sale of energy and other fossil fuel derived products to consumers in Massachusetts, and (2) ExxonMobil's marketing and sale of securities to Massachusetts investors.

2. The Court should set aside the CID because the Court lacks personal jurisdiction over ExxonMobil in connection with any violation contemplated by the Attorney General's investigation. During the 4-year limitations period of G.L. c. 93A, § 2, ExxonMobil has not (1) sold fossil fuel derived products to consumers in Massachusetts, (2) owned or operated a

single retail store or gas station in the Commonwealth, or (3) sold any form of equity to the general public in Massachusetts. Furthermore, ExxonMobil's only sale of debt in the past decade has been to underwriters outside the Commonwealth, and ExxonMobil did not market those sales to Massachusetts consumers.

3. However, if this Court determines that it can exercise personal jurisdiction over ExxonMobil, alternatively, and solely to protect its rights and preserve its objections, ExxonMobil respectfully requests that this Court order the following relief.

4. The Court should exercise its inherent authority to disqualify the Attorney General and her office from pursuing this investigation and appoint an independent counsel, who is not compensated on a contingency-fee basis, to determine whether an investigation is warranted and, if so, to conduct that investigation. The Attorney General's public extrajudicial statements disparaging ExxonMobil and prejudging the outcome of any investigation preclude her and her office from serving as a disinterested prosecutor in any investigation of ExxonMobil.

5. The Court also should set aside, modify, or issue a protective order concerning the CID because it violates ExxonMobil's constitutional, statutory, and common law rights. The CID impermissibly infringes on ExxonMobil's constitutional rights to free speech, freedom from unreasonable searches and seizures, and guarantee of due process of law as guaranteed by Articles XII, XIV, and XVI of the Massachusetts Declaration of Rights. The CID also runs afoul of the standards set forth in Mass. R. Civ. P. 26(c) because it imposes undue burden and expense on ExxonMobil. For instance, the CID requests production of over 40 years of documents, despite the 4-year statute of limitations. Furthermore, the CID is impermissibly unspecific and does not affirmatively state that ExxonMobil may withhold documents on the basis of privilege.

6. Finally, the Court should exercise its discretion to stay adjudication of this

Petition pending the resolution of an earlier filed federal action in the United States District Court for the Northern District of Texas, *Exxon Mobil Corp. v. Healey*, Case No. 4:16-CV-469 (N.D. Tex. June 15, 2016), which seeks to enjoin the Attorney General's investigation.

7. This emergency motion is filed pursuant to Superior Court Rule 9A(e) because ExxonMobil has been unable to reach an agreement with the Attorney General that satisfactorily addresses ExxonMobil's concerns relating to the CID prior to June 16, 2016, the agreed-upon time for ExxonMobil to initiate any legal proceeding to set aside or modify the CID without waiving its right to object to the CID.

8. ExxonMobil also relies on the grounds set forth in its Memorandum 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 filed with this motion.

Respectfully Submitted,

EXXON MOBIL CORPORATION

By its attorneys,

EXXON MOBIL CORPORATION

By: /s/ Patrick J. Conlon
Patrick J. Conlon
(patrick.j.conlon@exxonmobil.com)
(*pro hac vice* pending)
Daniel E. Bolia
(daniel.e.bolia@exxonmobil.com)
(*pro hac vice* pending)
1301 Fannin Street
Houston, TX 77002
(832) 624-6336

FISH & RICHARDSON P.C.

By: /s/ Thomas C. Frongillo
Thomas C. Frongillo (BBO# 180690)
(frongillo@fr.com)
Caroline K. Simons (BBO# 680827)
(simons@fr.com)
One Marina Park Drive
Boston, MA 02210
(617) 542-5070

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON, LLP

By: /s/ Justin Anderson
Theodore V. Wells, Jr.
(*pro hac vice* pending)
Michele Hirshman
(*pro hac vice* pending)
Daniel J. Toal
(*pro hac vice* pending)
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000
Fax: (212) 757-3990

Justin Anderson
(*pro hac vice* pending)
2001 K Street, NW
Washington, D.C. 20006-1047
(202) 223-7300
Fax: (202) 223-7420

Dated: June 16, 2016

CERTIFICATE OF COMPLIANCE WITH SUPERIOR COURT RULE 9C

I, Thomas C. Frongillo, hereby certify that before serving the Emergency Motion of Exxon Mobil Corporation to Set Aside or Modify Civil Investigative Demand or Issue a Protective Order, counsel for ExxonMobil, including Theodore V. Wells Jr., Michele Hirshman, Daniel J. Toal, Patrick J. Conlon, Daniel E. Bolia, and others, conducted several Superior Court Rule 9C telephone conferences with Assistant Attorney General Andrew Goldberg and Assistant Attorney General Christophe Courchesne from the Attorney General's Office since the service of the CID on April 19, 2016. The most recent conference was conducted on June 15, 2016 at approximately 12:35 p.m. Although counsel made a good faith effort to narrow the areas of disagreement with the Attorney General's Office, the parties were unable to reach a satisfactory resolution.

/s/ Caroline K. Simons

Caroline K. Simons

Dated: June 16, 2016

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

Exhibit 00

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2016-1888-F

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

**ORDER ON EMERGENCY MOTION OF EXXONMOBIL CORPORATION
TO SET ASIDE OR MODIFY THE CIVIL INVESTIGATIVE
DEMAND OR ISSUE A PROTECTIVE ORDER AND THE COMMONWEALTH'S
CROSS-MOTION TO COMPEL EXXONMOBIL CORPORATION TO COMPLY WITH
CIVIL INVESTIGATIVE DEMAND NO. 2016-EPD-36**

On April 19, 2016, the Massachusetts Attorney General issued a Civil Investigative Demand ("CID") to ExxonMobil Corporation ("Exxon") pursuant to G. L. c. 93A, § 6. The CID stated that it was issued as:

[P]art of a pending investigation concerning potential violations of M.G.L. c. 91A, § 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 . . . 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.

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, Exhibit B. The CID requests documents generally related to Exxon's study of CO² emissions and the effects of these emissions on the climate from January 1, 1976 through the date of production

On June 16, 2016, Exxon commenced the instant action to set aside the CID. The Attorney General has cross-moved pursuant to G. L. c. 93A, § 7 to compel Exxon to comply with the CID. After a hearing and careful review of the parties' submissions, and for the reasons that follow, Exxon's motion to set aside the CID is **DENIED** and the Commonwealth's motion to

compel is **ALLOWED** subject to this Order

DISCUSSION

General Laws c. 93A § 6 authorizes the Attorney General to obtain and examine documents whenever he believes a person has engaged in or is engaging in any method, act or practice declared to be unlawful by this chapter. Among the things declared to be unlawful by chapter 93A are unfair and deceptive acts or practices in the conduct of any trade or commerce. G. L. c. 93A § 2(a). General Laws c. 93A § 6 “should be construed liberally in favor of the government.” see Matter of Civil Investigative Demand Addressed to Yankee Milk, Inc., 372 Mass. 353, 364 (1977) and the party moving to set aside a CID “bears a heavy burden to show good cause why it should not be compelled to respond.” see CUNA Mutual Ins. Soc. v. Attorney Gen., 380 Mass. 539, 544 (1980). There is no requirement that the Attorney General have probable cause to believe that a violation of G. L. c. 93A has occurred; she need only have a belief that a person has engaged in or is engaging in conduct declared to be unlawful by G. L. c. 93A. Id. at 542 n.5. While the Attorney General must not act arbitrarily or in excess of her statutory authority, she need not be confident of the probable result of her investigation. Id. (citations omitted).

I. Exxon’s Motion to Set Aside the CID

A. Personal Jurisdiction

Exxon contends that this court does not have personal jurisdiction over it in connection with any violation of law contemplated by the Attorney General’s investigation. Memorandum of Exxon Mobil Corporation in Support of its Emergency Motion to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order, page 2. Exxon is incorporated in New

Jersey and headquartered in Texas. All of its central operations are in Texas.

Determining whether the court has personal jurisdiction over a nonresident defendant involves a familiar two-pronged inquiry: (1) is the assertion of jurisdiction authorized by the longarm statute, G. L. c. 223A, § 3, and (2) if authorized, is the exercise of jurisdiction under State law consistent with basic due process requirements mandated by the United States Constitution? Good Hope Indus., Inc. v. Ryder Scott Co., 378 Mass. 1, 5-6 (1979). Jurisdiction is permissible only when both questions draw affirmative responses. Id. As the party claiming that the court has the power to grant relief, the Commonwealth has the burden of persuasion on the issue of personal jurisdiction. Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 612 n.28 (1979).

The Commonwealth invokes jurisdiction under G. L. c. 223A, § 3(a), which permits the court to assert jurisdiction over a defendant if the defendant “either directly or through an agent transacted any business in the Commonwealth, and if the alleged cause of action arose from such transaction of business.” Good Hope Indus., Inc., 378 Mass. at 6. The “transacting any business” language is to be construed broadly. See Tatro v. Manor Care, Inc., 416 Mass. 763, 767 (1994). “Although an isolated (and minor) transaction with a Massachusetts resident may be insufficient, generally the purposeful and successful solicitation of business from residents of the Commonwealth, by a defendant or its agent, will suffice to satisfy this requirement.” Id. Whether the alleged injury “arose from” a defendant’s transaction of business in Massachusetts is determined by a “but for” test. Id. at 771-772 (jurisdiction only proper if, *but for* defendant’s solicitation of business in Massachusetts, plaintiff would not have been injured).

The CID says that the Attorney General is investigating potential violations arising from

Exxon's marketing and/or sale of energy and other fossil fuel derived products to Commonwealth consumers. The Commonwealth argues that Exxon's distribution of fossil fuel to Massachusetts consumers "through more than 300 Exxon-branded retail service stations that sell Exxon gasoline and other fuel products" satisfies the transaction of business requirement. Exxon objects because it contends that for the past five years, it has neither (1) sold fossil fuel derived products to consumers in Massachusetts, nor (2) owned or operated a retail store or gas station in Massachusetts. According to the affidavit of Geoffrey Grant Doescher ("Doescher"), the U.S. Branded Wholesale Manager, ExxonMobil Fuels, Lubricants and Specialties Marketing Company at Exxon, any service station or wholesaler in Massachusetts selling fossil fuel derived products under an "Exxon" or "Mobil" banner is independently owned and operated pursuant to a Brand Fee Agreement ("BFA"). Doescher says that branded service stations purchase gasoline from wholesalers who create ExxonMobil-branded gasoline by combining unbranded gasoline with ExxonMobil-approved additives obtained from a third-party supplier. The BFA also provides that Exxon agrees to allow motor fuel sold from these outlets to be branded as Exxon or Mobil-branded motor fuel.

Exxon provided to the court and the Commonwealth a sample BFA. By letter dated December 19, 2016, the Commonwealth argued that many provisions of the BFA properly give rise to this court's jurisdiction. The Commonwealth contends that the BFA provides many instances in which Exxon retains the right to control both the BFA Holder and the BFA Holder's franchisees.¹ For example, Section 15(a) of the BFA states:

¹ The BFA mandates that all BFA Holders require their outlets to meet minimum facility, product, and service requirements, Section 13, and provide a certain level of customer service, Section 16. Moreover, Exxon requires that the BFA Holder enter into written agreements with

BFA Holder agrees to diligently promote and cause its Franchise Dealers to diligently promote the sales of Products, including through advertisements, all in accordance with the terms of this Agreement. BFA Holder hereby acknowledges and agrees that, notwithstanding anything set forth herein to the contrary, to insure the integrity of ExxonMobil trademarks, products and reputation, ExxonMobil shall have the authority to review and approve, in its sole discretion, all forms of advertising and sales promotions that will use media vehicles for the promotion and sale of any product, merchandise or services, in each case that (i) uses or incorporates a Proprietary Mark or (ii) relates to any Business operated at a BFA Holder Branded outlet. BFA Holder shall expressly require all Franchise Dealers to (a) agree to such review and control by ExxonMobil.

By letter dated December 27, 2016, Exxon disputes that any of the BFA's provisions establish the level of control necessary to attribute the conduct of a BFA Holder to Exxon. See Depliant v. Jan-Pro Franchising Int'l Inc., 465 Mass. 607, 617 (2013) (citation omitted) ("[T]he marketing, quality, and operational standards commonly found in franchise agreements are insufficient to establish the close supervisory control or right of control necessary to demonstrate the existence of a master/servant relationship for all purposes or as a general matter"); Lind v. Domino's Pizza LLC, 87 Mass. App. Ct. 650, 654-655 (2015) ("The mere fact that franchisors set baseline standards and regulations that franchisees must follow in an effort to protect the franchisor's trademarks and comply with Federal law, does not mean that franchisors have undertaken an agency relationship with the franchisee such that vicarious liability should apply"); Theos & Sons, Inc. v. Mack Trucks, Inc., 1999 Mass. App. Div. 14, 17 (1999).

each of its Franchise Dealers and in the agreement, the Franchise Dealer must commit to Exxon's "Core Values." Section 19. "Core Values" is defined on page one of the BFA.

BFA Holder acknowledges that ExxonMobil has established the following core values ("Core Values") to build and maintain a lasting relationship with its customers, the motoring public:

- (1) To deliver quality products that consumers can trust.
- (2) To employ friendly, helpful people.
- (3) To provide speedy, reliable service.
- (4) To provide clean and attractive retail facilities.
- (5) To be a responsible, environmentally-conscious neighbor.

(obligations to render prompt and efficient service in accordance with licensor's policies and standards and to satisfy other warranty related service requirements did not constitute evidence of agency relationship because they were unrelated to licensee's day-to-day operations and specific manner in which they were conducted).

Here, though, Section 15 of the BFA evidences a retention of more control than necessary simply to protect the integrity of the Exxon brand. By Section 15, Exxon directly controls the very conduct at issue in this investigation – the marketing of Exxon products to consumers. See Depianti, 465 Mass. at 617 (“right to control test” should be applied to franchisor-franchisee relationship in such a way as to ensure that liability will be imposed only where conduct at issue properly may be imputed to franchisor). This is especially true because the Attorney General’s investigation focuses on Exxon’s marketing and/or sale of energy and other fossil fuel derived products to Massachusetts consumers. Section 15(a) makes it evident to the court that Exxon has retained the right to control the “specific policy or practice” allegedly resulting in harm to Massachusetts consumers. See id. (franchisor vicariously liable for conduct of franchisee only where franchisor controls or has right to control specific policy or practice resulting in harm to plaintiff). The quantum of control Exxon retains over its BFA Holders and the BFA Holders’ franchisees as to marketing means that Exxon retains sufficient control over the entities actually marketing and selling fossil fuel derived products to consumers in the Commonwealth such that the court may assert personal jurisdiction over Exxon under G. L. c. 223A, § 3(a).

To determine whether such an exercise of personal jurisdiction satisfies – or does not satisfy – due process, “the constitutional touchstone remains whether the defendant purposefully established ‘minimum contacts’ in the forum State.” Burger King Corp. v. Rudzewicz, 471 U.S.

462, 474 (1985). The plaintiff must demonstrate (1) purposeful availment of commercial activity in the forum State by the defendant; (2) the relation of the claim to the defendant's forum contacts; and (3) the compliance of the exercise of jurisdiction with "traditional notions of fair play and substantial justice." Bulldog Investors Gen. Partnership v. Secretary of the Commonwealth, 457 Mass. 210, 217 (2010) (citations omitted). Due process requires that a nonresident defendant may be subjected to suit in Massachusetts only where "there was some minimum contact with the Commonwealth which resulted from an affirmative, intentional act of the defendant, such that it is fair and reasonable to require the defendant to come into the State to defend the action." Good Hope Indus., Inc., 378 Mass. at 7 (citation omitted). "In practical terms, this means that an assertion of jurisdiction must be tested for its reasonableness, taking into account such factors as the burden on the defendant of litigating in the plaintiff's chosen forum, the forum State's interest in adjudicating the dispute, and the plaintiff's interest in obtaining relief." Tatro, 416 Mass. at 773.

The court concludes that in the context of this CID, Exxon's due process rights are not offended by requiring it to comply in Massachusetts. If the court does not assert its jurisdiction in this situation, then G. L. c. 93A would be "de-langed," and consequently, a statute enacted to protect Massachusetts consumers would be reduced to providing hollow protection against non-resident defendants. Compare Bulldog Investors Gen. Partnership, 457 Mass. at 218 (Massachusetts has strong interest in adjudicating violations of Massachusetts securities law; although there may be some inconvenience to non-resident plaintiffs in litigating in Massachusetts, such inconvenience does not outweigh Commonwealth's interest in enforcing its laws in Massachusetts forum). Also, insofar as Exxon delivers its products into the stream of

commerce with the expectation that they will be purchased by consumers in all states, including Massachusetts, it is not overly burdened by being called into court in Massachusetts. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-298 (1980) (forum State does not exceed its powers under Due Process Clause if it asserts personal jurisdiction over corporation that delivers its products into stream of commerce with expectation that they will be purchased by consumers in forum State).

For all of these reasons, the court concludes that it has personal jurisdiction over Exxon with respect to this CID.

B. Arbitrary and Capricious

Exxon next contends that the CID is not supported by the Attorney General's "reasonable belief" of wrongdoing. General Laws c. 93A, § 6 gives the Attorney General broad investigatory powers to conduct investigations whenever she *believes* a person has engaged in or is engaging in any conduct in violation of the statute. Attorney Gen. v. Bodimetric Profiles, 404 Mass. 152, 157 (1989), see Haumon Law Offices P.C. v. Attorney Gen., 83 Mass. App. Ct. 830, 834 (2013). General Laws c. 93A does not contain a "reasonable" standard, but the Attorney General "must not act arbitrarily or in excess of his statutory authority." See CUNA Mut. Ins. Soc., 380 Mass. at 542 n.5 (probable cause not required, Attorney General "need only have a belief that a person has engaged in or is engaging in conduct declared to be unlawful by G. L. c. 93A").

Here, Exxon has not met its burden of persuading the court that the Attorney General acted arbitrarily or capriciously in issuing the CID. See Bodimetric Profiles, 404 Mass. at 157 (challenger of CID has burden to show that Attorney General acted arbitrarily or capriciously). If Exxon presented to consumers "potentially misleading information about the risks of climate

change, the viability of alternative energy sources, and the environmental attributes of its products and services.” see CID Demand Nos. 9, 10, and 11, the Attorney General may conclude that there was a 93A violation. See Aspinall v. Philip Morris Cos., 442 Mass. 381, 395 (2004) (advertising is deceptive in context of G. L. c. 93A if it consists of “a half truth, or even may be true as a literal matter, but still create an over-all misleading impression through failure to disclose material information”); Commonwealth v. DeCotis, 366 Mass. 234, 238 (1974) (G. L. c. 93A is legislative attempt to “regulate business activities with the view to providing proper disclosure of information and a more equitable balance in the relationship of consumers to persons conducting business activities”). The Attorney General is authorized to investigate such potential violations of G. L. c. 93A.

Exxon also argues that the CID is politically motivated, that Exxon is the victim of viewpoint discrimination, and that it is being punished for its views on global warming. As discussed above, however, the court finds that the Attorney General has assayed sufficient grounds – her concerns about Exxon’s possible misrepresentations to Massachusetts consumers – upon which to issue the CID. In light of these concerns, the court concludes that Exxon has not met its burden of showing that the Attorney General is acting arbitrarily or capriciously toward it.²

² The court does not address Exxon’s arguments regarding free speech at this time because misleading or deceptive advertising is not protected by the First Amendment. In re Willis Furniture Co., 980 F.2d 721, 1992 U.S. App. LEXIS 32373 * 2 (1992), citing Friedman v. Rogers, 440 U.S. 1, 13-16 (1979). The Attorney General is investigating whether Exxon’s statements to consumers, or lack thereof, were misleading or deceptive. If the Attorney General’s investigation reveals that Exxon’s statements were misleading or deceptive, Exxon is not entitled to any free speech protection.

C. Unreasonable Burden and Unspecific

A CID complies with G. L. c. 93A §§ 6(4)(c) & 6(5) if it describes with reasonable particularity the material required, if the material required is not plainly irrelevant to the authorized investigation, and if the quantum of material required does not exceed reasonable limits. Matter of a Civil Investigative Demand Addressed to Yankee Milk, Inc., 372 Mass. at 360-361 (see G. L. c. 93A § 6(4)(c) (requiring that CID describe documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate material demanded); G. L. c. 93A § 6(5) (CID shall not contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth, or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth)).

Exxon argues that the CID lacks the required specificity and furthermore imposes an unreasonable burden on it. With respect to specificity, Exxon takes issue with the CID's request for "essentially all documents related to climate change" and with the vagueness of some of the demands. Memorandum of Exxon Mobil Corporation in Support of its Emergency Motion to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order, page 18. In particular, Exxon objects to producing documents that relate to its "awareness," internal considerations," and "decision making" on climate change issues and its "information exchange" with other companies.

The court has reviewed the CID and disagrees that it lacks the requisite specificity. The CID seeks information related to what (and when) Exxon knew about the impacts of burning

fossil fuels on climate change and what Exxon told consumers about climate change over the years. Some of the words used to further describe that information – awareness and internal considerations – simply modify the “what” and “when” nature of the requests.

With respect to the CID being unreasonably burdensome, an effective investigation requires broad access to sources of information. See Matter of a Civil Investigative Demand Addressed to Yankee Milk, Inc., 372 Mass. at 364. Documentary demands exceed reasonable limits only when they “seriously interfere with the functioning of the investigated party by placing excessive burdens on manpower or requiring removal of critical records.” Id. at 361 n.8. That is not the case here. At the hearing, both parties indicated that Exxon has already complied with its obligations regarding a similar demand for documents from the New York Attorney General. In fact, as of December 5, 2016, Exxon had produced 1.4 million pages of documents responsive to the New York Attorney General’s request. It would not be overly burdensome for Exxon to produce these documents to the Massachusetts Attorney General.

Whether there should be reasonable limitations on the documents requested for other reasons, such as based upon confidentiality or other privileges, should be discussed by the parties in a conference guided by Superior Court Rule 9C. After such a meeting, counsel should submit to the court a joint status report outlining disagreements, if any, for the court to resolve.

II. Disqualification of Attorney General

Exxon requests the court to disqualify the Attorney General and appoint an independent investigator because her “public remarks demonstrate that she has predetermined the outcome of the investigation and is biased against ExxonMobil.” Memorandum of Exxon Mobil Corporation in Support of its Emergency Motion to Set Aside or Modify the Civil Investigative

Demand or Issue a Protective Order, page 8. In making this request, Exxon relies on a speech made by the Attorney General on March 29, 2016, during an “AGs United for Clean Power” press conference with other Attorneys General. The relevant portion of Attorney General Healey’s comments were:

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 Exxon Mobil. 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.

General Laws c. 93A, § 6 gives the Attorney General power to conduct investigations whenever she believes a person has engaged in or is engaging in any conduct in violation G. L. c. 93A. Bodimevic Profiles, 404 Mass. at 157. In the Attorney General’s comments at the press conference, she identified the basis for her belief that Exxon may have violated G. L. c. 93A. In particular, she expressed concern that Exxon failed to disclose relevant information to its Massachusetts consumers. These remarks do not evidence any actionable bias on the part of the Attorney General; instead it seems logical that the Attorney General inform her constituents about the basis for her investigations. Cf. Buckley v. Fitzsimmons, 509 U.S. 259, 278 (1993) (“Statements to the press may be an integral part of a prosecutor’s job ... and they may serve a vital public function.”); Goldstein v. Galvin, 719 F.3d 16, 30 (1st Cir. 2013) (“Not only do public officials have free speech rights, but they also have an obligation to speak out about matters of public concern.”); see also Commonwealth v. Ellis, 429 Mass. 362, 372 (1999) (due process provisions require that prosecutor be disinterested in sense that prosecutor must not be – nor

appear to be – influenced in exercise of discretion by personal interests). It is the Attorney General's duty to investigate Exxon if she believes it has violated G. L. c. 93A, § 6. See also G. L. c. 12, § 11D (attorney general shall have authority to prevent or remedy damage to the environment caused by any person or corporation). Nothing in the Attorney General's comments at the press conference indicates to the court that she is doing anything more than explaining reasons for her investigation to the Massachusetts consumers she represents. See generally Ellis, 429 Mass. at 378 ("That in the performance of their duties [the Attorney General has] zealously pursued the defendants, as is [his or her] duty within ethical limits, does not make [his or her] involvement improper, in fact or in appearance.").

III. Stay

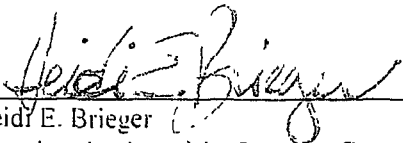
On June 15, 2016, Exxon filed a complaint and a motion for preliminary injunction in the United States District Court for the Northern District of Texas alleging that the CID violates its federal constitutional rights. Exxon Mobil requests this court to stay its adjudication of the instant motion pending resolution of the Texas federal action. See G. L. c. 223A, § 5 ("When the court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any conditions that may be just."); see WR Grace & Co. v. Hartford Accident & Indemnity Co., 407 Mass. 572, 577 (1990) (decision whether to stay action involves discretion of motion judge and depends greatly on specific facts of proceeding before court). The court determines that the interests of substantial justice dictate that the matter be heard in Massachusetts.

This matter involves the Massachusetts consumer protection statute and Massachusetts case law arising under it, about which the Massachusetts Superior Court is certainly more

familiar than would be a federal court in Texas. See New Amsterdam Casualty Co. v. Estes, 353 Mass. 90, 95-96 (1967) (factors to consider include administrative burdens caused by litigation that has its origins elsewhere and desirability of trial in forum that is at home with governing law). Further, the plain language of the statute itself directs a party seeking relief from the Attorney General's demand to the courts of the commonwealth. See G. L. c. 93A, § 6(7) (motion to set aside "may be filed in the superior court of the county in which the person served resides or has his usual place of business, or in Suffolk county"); see also G. L. c. 93A, § 7 ("A person upon whom 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."). The court declines to stay this proceeding.

ORDER

For the reasons discussed above, it is hereby **ORDERED** that the Emergency Motion of ExxonMobil Corporation to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order is **DENIED** and the Commonwealth's Cross-Motion to Compel ExxonMobil Corporation to Comply with Civil Investigative Demand No. 2016-EPD-36 is **ALLOWED** consistent with the terms of this Order. The parties are **ORDERED** to submit a joint status report to the court no later than February 15, 2017, outlining the results of a Rule 9C Conference.


 Heidi E. Brieger
 Associate Justice of the Superior Court

Dated at Lowell, Massachusetts, this 11th day of January, 2017.

Exhibit PP

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

In the Matter of the Application of the

PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York,

Petitioner-Respondent,

For an order pursuant to C.P.L.R. § 2308(b) to
compel compliance with a subpoena issued by the
Attorney General

-against-

PRICEWATERHOUSECOOPERS LLP,

Respondent-Respondent,

-and-

EXXON MOBIL CORPORATION,

Respondent-Appellant.

Index No. 451962/2016

**NOTICE OF MOTION
TO REARGUE OR, IN THE
ALTERNATIVE, FOR
LEAVE TO APPEAL**

PLEASE TAKE NOTICE that, upon the annexed affirmation of Michelle K. Parikh, dated May 26, 2017, the accompanying Memorandum of Law, and all prior pleadings and proceedings, Respondent-Appellant Exxon Mobil Corporation, by its undersigned attorneys, will move this Court, at a Motion Term of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, 27 Madison Avenue, New York, New York on June 5, 2017, or as soon thereafter as counsel may be heard, for (a) an order pursuant to § 600.14(a) of the Rules of this Court granting leave to reargue this Court's Decision and Order entered on May 23, 2017 (the "Decision and Order") in the above-referenced action or, in the alternative, (b) for an order pursuant to CPLR 5602(a)(1)(i) and § 600.14(b) of the Rules of this

Court, granting Respondent-Appellant's leave to appeal to the Court of Appeals; and (c) directing such other and further relief as the Court may deem just and proper.

Dated: May 26, 2017
New York, New York

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